some redundancy in this agreement, but there would not be irreconcilable stipulations in one and the same clause. If I were obliged to fix a definite meaning to the disputed language I should prefer the plaintiffs' construction. But in truth I think that the clause taken as a whole is so ill thought out and expressed that it is not possible to feel sure what the parties intended to stipulate. The law imposes on shipowners the duty of providing a seaworthy ship and of using reasonable care. They may contract themselves out of those duties, but unless they prove such a contract the duties remain, and such a contract is not proved by producing language which may mean that and may mean something different. As Lord Macnaghten said in the case of *Elderslie Steamship Company* v. *Borthwick*, (1905) A.C. 93, "an ambiguous document is no protection." That is the ground on which I rest my opinion. I wish to say, with the utmost respect for Mr Scrutton's arguments, that I cannot agree with him in what I think was his contention, that there is a canon of construction by which the rigour of interpretation in some commercial documents must be proportioned to the importance of the stipulation to be construed. I know of only one standard of construction, except where words have acquired a special conventional meaning, namely, what do the words mean on a fair reading having regard to the whole document? I am afraid that it is useless to draw the attention of commercial men to the risks which they run by using confused and perplexing language in their business documents. Courts of law have no duty except to construe them when a question is raised, but it is often very difficult. And sometimes what the parties really intended fails to be carried out, because ill-considered expressions find their way into a contract.

EARL OF HALSBURY—I am entirely of the same opinion. The only observation which I wish to make is in reference to the language used by commercial men. Lord Blackburn used to say that the difference between commercial men and lawyers was that commercial men wished to write their documents short and lawyers to write them long. But a mixture of the two renders the whole thing unintelligible. I can understand cases where the documents of commercial men acquire a particular meaning, and the Courts will give effect to the common interpretation of such words. But here is a document where apparently the draughtsman has put every conceivable hypothesis into it. He was not content to put in a protective clause which might have had an effect. He has gone on as if he were a lawyer to endeavour to make the document as long as possible, and to deal with every part of the subject-matter. Not unnaturally that sort of composition leads to the document contradicting itself. In one part it is said that the defendants should not be liable at all, and in another that they should be liable under certain circumstances. How is it possible for any Court to give a construction to such a document? The result is that the draughtsman has only jumbled together a number of phrases to which no legal interpretation can be given, so that in the result the legal liability remains.

LORD MACNAGHTEN—I concur.

LORD ATKINSON—I also agree with my noble and learned friend on the Woolsack.

Appeal dismissed.

Counsel for the Appellants—J. A. Hamilton, K.C. — Bailhache. Agents — Rawle, Johnstone, & Co., Solicitors.

Counsel for the Respondents—R. Isaacs, K.C.—Scrutton, K.C.—Atkin, K.C. Agents — Parker, Garrett, Holman, & Howden, Solicitors.

HOUSE OF LORDS.

Wednesday, November 27, 1907.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Ashbourne, Macnaghten, James of Hereford, and Atkinson.)

INLAND REVENUE *v.* MAPLE & COMPANY (PARIS), LIMITED.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue—Stamp Duty—"Conveyance on Sale"—French Property—French Deed—Consideration Payable in England — Stamp Act 1891 (54 *and* 55 *Vict. cap.* 39), *sec.* 54.

One English company transferred to another English company certain property in France by a deed of "apport" executed in France according to the formalities of French law, the price of the property being payable in shares of the purchasing company.

Held that the deed was a "conveyance on sale" within the meaning of section 54 of the Stamp Act 1891, and as such chargeable with stamp duty.

Appeal from a judgment of the Court of Appeal (MOULTON and FARWELL, L.JJ., COLLINS, M.R., dissenting), reported (1906) 2 K.B. 834, affirming a judgment of WALTON, J., upon a case stated by the Commissioners of Inland Revenue.

The question was whether a certain instrument was chargeable with stamp duty as a conveyance on sale under the provisions of the Stamp Act 1891 (54 and 55 Vict. cap. 39).

Section 54 of that Act is—"For the purposes of this Act the expression 'conveyance on sale' includes every instrument and every decree or order of any court or of any commissioners whereby any property or any estate or interest in any property upon the sale thereof is trans-

ferred to or vested in a purchaser or any other person on his behalf or by his direction."

The facts sufficiently appear from the judgment of Lord Macnaghten (*infra*).

The instrument in question was called a deed of "apport." It was executed in France between the English company Maple & Company, Limited, and the English company Maple & Company (Paris), Limited. The following are the material portions of the deed—"Deed of 'Apport.'—Between the English company Maple & Company, Limited, hereinafter called the 'old company,' registered on the 8th April 1881, whose registered address is in London, with a branch in Paris, of the one part, and the English company Maple & Company (Paris) Limited, hereinafter called the 'new company,' registered on the 10th May 1905, whose registered address is in London, of the other part. It has been agreed upon as follows—'Apport.'—The old company by these presents brings into the new company under all guarantees in fact and in law the property of which the description follows and which the latter accepts. . . . (*here followed a description of the property, being the branch business of the old company carried on at 5 Rue Boudreau, Paris, with premises*). . . . In consideration of the 'apport' granted by these presents the new company allots to the old company 72,000 shares in its share capital of a nominal value of £1 each. Out of these 72,000 shares, 40,446 are allotted in consideration of the 'apport' of the moveable property and 31,554 in consideration of the 'apport' of the immoveable property above mentioned."

LORD MACNAGHTEN—This case seems to me to be very plain and very simple. But I must express my opinion with diffidence, because I find that the view which I venture to think so plain and so simple has been described by one of the learned Lords Justices in a most elaborate judgment as based on premises which are absurd and ridiculous. There are no facts in dispute. A trading company, limited by shares and registered in England, had a branch in Paris, with property there both moveable and immoveable. For some reason or other it was thought good to separate the French business from the English. So on the 10th May 1905 a company, limited by shares, was registered in England with the object of purchasing the French business. On the 5th June following an instrument in the French language was executed in Paris, both by the old company and the new, whereby the old company transferred to the new company, as from a past day, the French business with all the property attached to it, and the new company purported to allot to the old company a specified number of shares out of its share capital. In connection with the actual allotment of the shares which were the consideration of the purchase, it was, of course, necessary to register the instrument of the 5th June duly stamped. Under the Companies Act of 1900 default is visited with so heavy a penalty as to make it practically impossible to get shares allotted for a consideration other than cash without complying with the requirements of section 7. The Commissioners of Inland Revenue were asked to determine whether the instrument in question was or was not subject to duty and to fix the duty, if any. Their opinion was that it was a "conveyance on sale" within the meaning of the Stamp Act 1891, and that an *ad valorem* stamp was necessary. There is no question now raised as to the amount of duty, if duty is payable. But both Walton, J., and the Court of Appeal, Collins, M.R., dissenting, decided that the instrument was not a conveyance chargeable under the Act of 1891. From that decision the present appeal has been brought. I think that there can be no doubt that the deed of the 5th June 1905 is a "conveyance on sale" within the meaning of the Act of 1891, having regard to the definition contained in section 54. It is an "instrument whereby . . . property . . . upon the sale thereof is transferred to . . . a purchaser." According to French law, too—if that is material—it is a conveyance on sale, although it appears that in the absence of registration a purchaser without notice might obtain a perferential title. Then comes the question—How is the expression "conveyance on sale" to be understood? What limitations are to be placed upon it? Is it to be limited to conveyances executed in the United Kingdom? Such a limitation would be unreasonable when the instrument operates on property situate in the United Kingdom. A trip across the channel would afford ready means of evading duty. Now section 14, sub-section 4, of the Stamp Act 1891, shows that it was not intended so to limit the expression. Why may not that sub-section be referred to for the purpose of showing that conveyances on sale executed abroad are chargeable with duty when they relate "to any matter or thing done or to be done in any part of the United Kingdom," as well as when they relate to any property situate in the United Kingdom? Speaking for myself, I have some difficulty in seeing why it should be assumed that this instrument does not relate to property situate in the United Kingdom. The Act speaks of the "instrument." The provision is not confined to the operative part of the instrument. It speaks of the instrument as "relating to" certain subjects. There is no expression more general or far-reaching than that. This instrument relates to the capital of the new company, out of which it was agreed that a specified number of shares should be appropriated and allotted to the old company. The share capital of the new company, if it was situated anywhere, was situated in England. In my opinion, therefore, this instrument does relate to property situated in England. It certainly relates to something to be done in England. It relates to the registration in the name of the old company of the shares which were to be allotted in an English company as the

consideration for the purchase of the French property. It seems to me, though I still speak with great diffidence, that the learned Lord Justice who gave the leading judgment in favour of the respondents has not paid sufficient attention to two points which appear to me to be clear enough. In the first place, it must always be borne in mind that as regards conveyances on sale the charge is on instruments, not on persons. In the next place, I think it clear that there is nothing criminal in a purchaser omitting to stamp his conveyance. By such an omission he commits no breach of duty. He does nothing wrong. The instrument, if not duly stamped, cannot be put in evidence or made available for any purpose. That is all. . . . I agree with the judgment of Collins, M.R. I think that judgment should be entered in favour of the Commissioners, with costs here and below.

The LORD CHANCELLOR (LOREBURN) and LORDS ASHBOURNE, JAMES OF HEREFORD, and ATKINSON concurred.

Appeal sustained.

Counsel for the Appellants—Sir R. Finlay, K.C.—W. Finlay—(the Attorney-General Sir J. Lawson Walton, K.C., with them). Agents—Rawle, Johnstone, & Company, Solicitors.

Counsel for the Respondents—Danckwerts, K.C.—Beddall. Agents—Parker, Garrett, Holman, & Howden, Solicitors.

HOUSE OF LORDS.

Monday, December 2, 1907.

(Before the Lord Chancellor (Loreburn), Lords Ashbourne, Macnaghten, James of Hereford, and Atkinson.)

WEST LEIGH COLLIERY COMPANY *v.* TUNNICLIFFE AND HAMPSON.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Mine—Minerals—Subsidence—Damages—Risk of Future Subsidence.

In actions brought by surface owners against the owners of minerals to recover damages for injuries sustained by their property owing to the subsidence caused by the removal of minerals, no award of damages can be given in respect of depreciation caused by the apprehension of future subsidences; nothing can be taken into consideration except the actual damage already sustained.

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., and COZENS-HARDY, L.J., ROMER, L.J., dissenting), reported (1906) 2 Ch. 22, reversing a judgment of SWINFEN EADY, J., reported (1905) 2 Ch. 390, in an action brought by the respondents against the appellants.

The action was brought by the respondents, who were owners of cotton mills, against the appellants, who were a colliery company, to recover damages for subsidence caused by the appellants' mining operations. The question of damages was sent to an official referee, who estimated that the respondents were entitled to £1300 in respect of damage already sustained, and he assessed the damages for depreciation of the selling value of the property in consequence of apprehension of the risk of future damage by further subsidence at £13,200. The appellants contended that they were not liable for this sum. No question was raised as to the £1300. SWINFEN EADY, J., decided in favour of the appellants' contention, but his judgment was reversed by the majority of the Court of Appeal.

LORD MACNAGHTEN—I agree with Swinfen Eady, J., and Romer, L.J. I think that this case is concluded by authority. In my opinion it is impossible to reconcile the judgment under appeal with the principles laid down in this House in *Backhouse* v. *Bonomi*, 9 H.L. Cas. 503, and *Darley Main Colliery Company* v. *Mitchell*, 11 App. Cas. 127. It is undoubted law that a surface owner has no cause of action against the owner of a subjacent stratum who removes every atom of the mineral contained in that stratum, unless and until actual damage results from the removal. If damage is caused, then the surface owner "may recover for that damage," as Lord Halsbury, L.C., says in the *Darley Main* case, "as and when it occurs." The damage, not the withdrawal of support, is the cause of action. And so the Statute of Limitations is no bar, however long it may be since the removal was completed; nor is it any answer to the surface owner's claim to say that he has already brought one or more actions and obtained compensation once and again for other damage resulting from the same excavation. If this be so, it seems to follow that depreciation in the value of the surface owner's property brought about by the apprehension of future damage gives no cause of action by itself. That was the conclusion reached by Cockburn, C.J., in his dissentient judgment in *Lamb* v. *Walker*, 3 Q.B.Div. 389, which was approved in this House in the *Darley Main* case. I think, as the Chief-Justice thought, that this conclusion necessarily follows from the principles asserted by the noble and learned Lords who took part in *Backhouse* v. *Bonomi*, and particularly by Lord Cranworth and Lord Wensleydale. But if depreciation caused by apprehension of future mischief does not furnish a cause of action by itself because there is no legal wrong, though the damage may be very great, it is difficult to see how the missing element can be supplied by presenting the claim in respect of depreciation tacked on to a claim in respect of a wrong admittedly actionable. If one examines this claim in respect of depreciation, and tries to investigate its origin, it will be found, I think, that it really depends upon a notion which is now exploded, that the right of