having waived the cessor clause and the action being against the charterers, the bill of lading became immaterial.

LORD ATKINSON—You sue upon your charter-party, and when the document upon which you rely is produced it is found you have no cause of action, but by agreement you have agreed to delete the paragraph in the charter-party which takes away your cause of action.

Mr BAILHACHE—That is so.

At delivering judgment—

LORD CHANCELLOR—This was an action brought on a charter-party, and when the charter-party is looked at it contains a cessor clause. It now appears that the parties agreed that if the action were tried in Scotland the cessor clause should not be relied upon. In other words, as the case was stated and as the argument was founded, the bill of lading if material was not produced at all or put in process, and the Court was asked to decide, not upon a contract actually made, but upon a contract which never was made, although the result might or might not have been the same had the real facts been brought before the Court.

Now it is not the function of a court of law to advise parties as to what would be their rights under a hypothetical state of facts, but it is to decide what were their rights upon the real facts when the real facts are placed before the Court.

I do not suggest or suppose anyone would suggest that there was any impropriety intended by the parties to this arrangement; but what they have done is that they have placed the Court in the position that they are asked to decide, without the facts being all before them, upon a waiver of part of the contract, whereas if the waiver had not taken place, from all that appears on the face of the document there would have been no ground of action at all. I have no doubt, from the correspondence which has been sent to us, and from the statement which has been made, that this was arranged between the solicitors to the two parties, and thereby what in real substance was a feigned issue has been presented to the House.

Under those circumstances I think there is nothing to be done except to dismiss this action altogether, and I suggest to your Lordships that the following Order should be made—It appearing to their Lordships that the pursuers and the defenders concurred in asking for an Order upon the footing that they were bound by a contract different from the contract by which they were actually bound, the House declines to make any other Order than that this action be dismissed, and no expenses be allowed to either side.

LORD ATKINSON—I concur.

LORD SHAW—I also concur.

Their Lordships dismissed the action, with expenses to neither party, either in the House of Lords or in the Courts below.

Counsel for the Appellants (Pursuers)—Bailhache, K.C.—Sandeman. Agents—J. & J. Ross, W.S., Edinburgh—Holman, Birdwood, & Company, London.

Counsel for the Respondents (Defenders)—Morten, K.C.—Heale, K.C.—M. P. Fraser. Agents—Galbraith & Macpherson, Glasgow—Macpherson & Mackay, S.S.C., Edinburgh—Morten, Cutler, & Company, London.

Friday, April 8.

(Before the Lord Chancellor (Loreburn), Earl of Halsbury, Lord James, Lord Atkinson, Lord Collins, and Lord Shaw.)

LANARKSHIRE COUNTY COUNCIL *v.* AIRDRIE MAGISTRATES.

LANARKSHIRE COUNTY COUNCIL *v.* COATBRIDGE MAGISTRATES.

(*Ante* July 9, 1907, 44 S.L.R. 915.)

River—Rivers Pollution Prevention Acts—Burgh—County Council—Defences—Relevancy—Rivers Pollution Prevention Act 1876 (39 *and* 40 *Vict. cap.* 75), *secs.* 3, 8, 20; 1893 (56 *and* 57 *Vict. cap.* 31), *sec.* 1.

In a petition under the Rivers Pollution Prevention Acts to have the magistrates of certain burghs ordained to abstain from "causing to fall or flow, or knowingly permitting to fall or flow or to be carried, into certain streams any solid or liquid sewage matter, *held* that it was irrelevant to aver in defence that the streams were so polluted as to be merely sewers into which it could not possibly be an offence to put sewage.

These cases are reported *ante ut supra.*

The Magistrates of Airdrie and the Magistrates of Coatbridge appealed to the House of Lords.

At the conclusion of the appellants' argument—

LORD CHANCELLOR—This argument has the merit of singularity and also of ingenuity but I think it is one of the most hopeless arguments I have heard for a considerable time.

The Rivers Pollution Act of 1876 prohibits the pouring of sewage into streams. It defines "streams" so as to include all water-courses except "water-courses at the passing of this Act" (namely 1876) "mainly used as sewers emptying directly into the sea or tidal waters." The obvious policy and the obvious effect of the Act is to stop the pouring of foul water into a stream, but it excuses this being done in certain circumstances, as, for example, if it was being done as long ago as 1876, and the best practicable means are now used to render it harmless.

It is difficult to think of a simpler Act or one more clearly expressed. The Act states that you must not foul a stream except under particular conditions. Now undoubtedly and admittedly the now appel-

lants do foul these burns or courses of running water, which come also clearly within the definition of "streams" in the Act of 1876, and for the present hearing it must be taken that they did not bring themselves within any of the exceptions or entitle themselves to any of the excuses which are set forth in the Act. There is a point reserved upon that with which the judgment of this House will have nothing to do. Of course that point reserved is still reserved. But what the appellants say is this—Permit us to prove that these burns are sewers, and if we can prove that they are sewers, surely it cannot be an offence to pour sewage matter into the sewers. That is merely asking leave to prove that they have with or without the contribution of others committed in an aggravated degree the very offence with which they are charged. The object of the Act is to prevent streams being turned into sewers, and this is what they propose to do and have done.

It is very likely indeed that these burns have been made so dirty that they are in fact such as commonly would be called sewers. I really do not know whether that be so or not, but this I do know upon the record here, that the appellants have done what is forbidden by the Act of Parliament and have not brought themselves within any of the exceptions or excuses which are laid down and provided in the Act.

Reference has been made to several cases, notably to *Gaunt's* case. I think *Gaunt's* case, so far as I can see, has been misunderstood, but if *Gaunt's* case or any other case expresses any opinion inconsistent with the view which I have ventured to express, I for one should wholly decline to be bound by it.

I therefore move your Lordships that this appeal be dismissed with costs.

EARL OF HALSBURY—I am entirely of the same opinion, but I wish to add that *Gaunt's* case appears to me to have been perfectly rightly decided, and the argument founded upon it was, I think, founded upon an entire misapprehension of what that case decided. Otherwise I entirely concur with what the Lord Chancellor has said. I think this case was hopelessly unarguable.

LORD JAMES OF HEREFORD—I concur.

LORD ATKINSON—I concur.

LORD COLLINS—I concur.

LORD SHAW—I agree.

Their Lordships dismissed the appeals with expenses.

Counsel for the Petitioners (Respondents in the House of Lords)—Wilson, K.C.—Hon. Wm. Watson. Agents—Ross, Smith, & Dykes, S.S.C., Edinburgh—Grahames, Currey, & Spens, Westminster.

Counsel for the Respondents in the Petition (Appellants)—Cripps, K.C.—Horne. Agents—Drummond & Reid, W.S., Edinburgh (for Airdrie)—Laing & Motherwell, W.S., Edinburgh (for Coatbridge)—John Kennedy, W.S., Westminster.

COURT OF SESSION.

Thursday, March 17.

SECOND DIVISION.

[Lord Johnston, Ordinary.

THE ADMIRALTY *v.* THE ABERDEEN STEAM TRAWLING AND FISHING COMPANY, LIMITED.

Shipping Law — Damages — Measure of Damages—Collision—Cost of Repairs.

A naval vessel, injured by collision with a steam trawler in the North Sea, proceeded to the Admiralty Dockyard at Chatham and was there repaired. In an action brought by the Admiralty against the owners of the trawler, it was found that the collision was due solely to the fault of the trawler. *Held,* in assessing the damages, that the expenses of transporting, docking, and undocking the vessel, and the charge for the use of the dock, must be calculated in accordance with the ordinary charges therefor prevailing in public and private docks, and irrespective of any special circumstances rendering higher charges necessary in the dockyard where the repairs were actually carried out.

The Commissioners of the Admiralty raised an action against the Aberdeen Steam Trawling and Fishing Company, Limited, concluding for the sum of £1356, 11s. 10d., being the total cost of repairs, including charges for the use of dry dock, executed upon H.M.S. "Topaze" as the result of a collision between that vessel and the defenders' steam trawler "Stratherrick." It was held that the collision was due solely to the fault of the "Stratherrick."

The collision occurred on 25th March 1908 in the North Sea, off the mouth of the Moray Firth. The "Topaze" although damaged was able to steam to Chatham Dockyard, where she was laid up for repairs. The actual cost of repairs was £348, 2s. 10d. In addition, however, the pursuers claimed, *inter alia*, (1) the sum of £188, 14s. 10d. for transporting, docking, and undocking the ship at Chatham; (2) the sum of £180, 18s. 9d. for coating the bottom of the "Topaze"; and (3) the sum of £620 as a charge for the use of the dock at the rate of £20 per day. The defenders objected to these three charges, but subsequently abandoned their objection to the second item, and they led evidence to show that if the repairs had been carried out in a private or public yard the charges under the first and third heads would have been considerably lower.

On 28th January 1909 the Lord Ordinary (JOHNSTON) pronounced this interlocutor—"Decerns against the defenders for payment to the pursuers of the sum of £1117, 15s. 5d. sterling, with interest thereon as concluded for in the summons: Finds the pursuers entitled to expenses," &c.

Opinion.—[*After finding the "Strather-*