REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL DEALING WITH QUESTIONS OF INTEREST IN SCOTS LAW. *(Continued from page 650 ante.)*

HOUSE OF LORDS.

Friday, June 26, 1914.

(Before the Lord Chancellor (Viscount Haldane), Lords Shaw and Moulton).

THOMAS WILSON, SONS, & COMPANY, LIMITED *v.* OWNERS OF CARGO *ex* "GALILEO."

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

Ship—Bill of Lading—Loss during Transhipment—Negligence.

Under a bill of lading goods were to be delivered at Hull, and thence transhipped "at ship's expense and shipper's risk to the port of N." There was a further provision that the shipowner should have the right to convey the goods "in craft and (or) lighters to and from the steamer at the risk of the owner of the goods." At Hull the goods were put into a lighter to be taken to a ship sailing for N., and were left unattended. The lighter was unseaworthy and sank. The goods were damaged.

Held that the clause in the bill of lading did not exempt the shipowner from liability for negligence.

Judgment of the Court of Appeal (110 L.T.R. 614) *affirmed.*

Appeal from a judgment of the Court of Appeal (LORD PARKER, LORD SUMNER, and WARRINGTON, J.), reported [1914] P. 9, affirming a judgment of BARGRAVE DEANE, J., reported *ibid.* in favour of the respondents, the plaintiffs below.

The *facts* are stated by the Lord Chancellor.

LORD CHANCELLOR (HALDANE)—This case is in large measure one of construction and of fact, and I do not think that any new question of law arises in it. The appellants are owners of the steamship "Galileo," and the respondents are a shipping company who were consignors of goods to the appellants for carriage from New York to Norrköping in Sweden. The appellants, who are well-known shipowners, and had their headquarters in Hull, entered into a contract contained in bills of lading which are in the same form. The form is this—"Received in good order and condition from the consignors, to be transported by the steamship 'Galileo,' now lying in the port of New York bound for Hull, such and such goods to be delivered in like good order and condition at the port of Hull or as near thereto as she may safely get, and to be thence transhipped at the ship's expense and shippers' risk to the port of Norrköping." That is the contract. Then there are clauses in the bill of lading according to which there is power to convey goods in craft, lighters, &c., at the risk of the owners of the goods, and there are clauses making the shipowners not liable for the risk of craft or lighter or transhipment, and other stipulations of the kind protecting the shipowner in the ordinary way.

The point is this—the "Galileo" got to Hull and then there was no steamer ready to take on the goods which had been consigned, immediately, and accordingly the appellants took this course—they got the goods out of the "Galileo" into a lighter at the port of Hull, which lighter was in charge of nobody and had a defective part in its side which was covered over by a thin skin, but really consisted of rotten timber. The result was that somebody, apparently pushing off the lighter with a boat-hook—though there is no evidence bearing on this point—made a hole in the lighter, and she sank, part of her cargo being lost. The question is whether the defendants are liable. Bargrave Dean, J., has held that they are liable, and this having been confirmed by the Court of Appeal the question comes before us whether that conclusion is a conclusion with which we agree.

The main and first question turns upon the construction of the bill of lading and the words "to be thence transhipped at ship's expense and shippers' risk to the port of Norrköping." As I interpret these words "thence" refers to "from the port of Hull," and the "transhipment" is a process which commences when the goods are put on board the ship at Hull which is to take them to Norrköping. That is the view which I take, and the Court of Appeal takes, of the contract. If that is so, the goods were not transhipped when they were put on board the lighter, and they remained in the custody of the shipowners and subject to such duties as the shipowners were under. The lighter being in that condition I think that it is not a proper or natural incident of the voyage to put the goods into it, and I am opinion that none of the clauses of the bills of lading protect the shipowner in so doing. I am further of

opinion that it is very doubtful whether under such circumstances the shipowner is not liable throughout for the seaworthiness both of the ship and of the lighter until transhipment has actually taken place. It is part of the voyage—he has chosen to shift the goods from his steamer into the lighter out of the ordinary circumstances, and it may well be that he is liable for that. It is not necessary to go into that point because, if I am right, what was done was something outside what the shipowner was at liberty to do under the terms of his contract and was a breach of his contract, and that is the only reason why I do not enter into that point. If these views are well founded the judgment of the Court below was right, and I accordingly move that the appeal be dismissed with costs.

LORD SHAW—I agree with the conclusion, but I desire to rest my judgment upon this fact. This contract was one divisible into two parts. It was a slump or through contract at a slump or through rate, extending from the other side of the Atlantic to the Baltic. At Hull the situation of parties to some extent changed. The obligation of the shipper was to deliver at Hull. He was obliged to tranship at Hull into another vessel. The question at what stage transhipment begins may raise serious issues, but upon that I do not now desire to commit myself. According to the view presented by the shipowner there was an interregnum, some period during which the voyage to Hull had ended and the shipment to Sweden had not begun. That may be so. I do not wish on that point to express dissent from what was said by the Lord Chancellor. But my opinion is that whatever be the view of the contract, at all events it is not disputed that the duty resting upon the shipowners was to tranship, and it has not been maintained in argument that the ordinary duty of transhipment should not be accompanied by the ordinary duty of avoiding negligence. I find that the course of transhipment adopted was to put these valuable goods into a lighter. Upon the evidence it was demonstrated that they might as well have been put into an eggshell. It was an unseaworthy craft, liable to be probed by a boathook, to be penetrated through and through, and liable to sink. Intrinsically there is no difference between a man pretending to fulfil his obligation of transhipment by putting goods into an unseaworthy lighter and the case of a man who fulfils his obligation of transhipment by putting the goods into the sea. These goods, for all purposes of law and of fact, are just the same as if dropped by negligence in the course of what they are pleased to call transhipment into the bottom of the dock. That being so, I do not think that there was any duty of transhipment performed here. Upon that ground I hold that liability attaches to the shipowners.

LORD MOULTON—I prefer to base my judgment upon the facts rather than discuss and decide questions of law which are really not necessary for the case. In this instance I think that the shipowners are liable on the plain ground of negligence in the performance of the duty which everyone admits that they undertook. They allege that they had a right to put these goods into lighters for the purpose of their being transhipped and forwarded to the place of destination. No one can contest that they must do that with all due care. What are the facts? It is not denied that the lighters in this port are frequently left unattended, are pushed about, drift up against each other, are left without charge or control during the night and for long periods. If a person is aware of what happens and puts goods into these lighters it is his duty to see that he puts the goods into lighters which can stand such work. There is no evidence that the slightest care was taken in the selection of the lighter. The shipowners think that they are exonerated from negligence by the fact that these things are common. That is no answer to the charge of negligence. We know that in many trades there is a standard of care far less than is required. On the decided facts of this case the shipowners knew that the lighters are used in this rough way, and yet they used this lighter as the depository for these goods without taking the slightest care that the lighter was fit for the purpose. For these reasons I think that the appeal should be dismissed with costs.

Their Lordships affirmed the judgment appealed from and dismissed the appeal with expenses.

Counsel for the Appellant—Leck, K.C.—Raeburn. Agents—Botterell & Roche, for Hearfields & Lambert, Hull, Solicitors.

Counsel for the Respondents—Leslie Scott, K.C.—Roche. Agents — Waltons & Company, for A. M. Jackson & Company, Hull, Solicitors.

HOUSE OF LORDS.

Monday, June 29, 1914.

(Before the Lord Chancellor (Viscount Haldane), Lords Shaw and Moulton.)

WEBBER *v.* WANSBROUGH PAPER COMPANY, LIMITED.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1, *sub-sec.* 1—*Accident Arising Out of and in the Course of the Employment—Boundary between a Ship and the Shore.*

When a sailor leaving a ship on which he had been employed during the day had crossed on a plank connecting the ship with a permanent iron ladder fixed on the quay and had slipped and hurt himself whilst climbing the ladder, *held* that the sailor had not yet left the ship, and the accident therefore arose "out of and in the course of his employment."