Act, which is an Act lending itself to infinite refinement. The words of the Act itself rule in every case. Previous decisions are illustrations of the way in which judges look at cases, and in that sense are useful and suggestive; but I think we ought to beware of allowing tests or guides which have been suggested by the Court in one set of circumstances or in one class of cases to be applied to other surroundings, and thus by degrees to substitute themselves for the words of the Act itself.

In the present case the boy Chilton was at his work near dangerous machinery, sitting instead of standing as it was his duty to have done, and being suddenly touched by a comrade on the shoulder he turned and his foot was injured by the machinery. His sitting instead of standing was a cause of the injury—that is to say, the injury would not have happened if he had not been sitting. In my opinion Pickford, L.J., sums up the whole of the facts in saying this—"This I think is doing his work in a wrong way, and not doing something outside his sphere."

The decision of the County Court Judge was against the applicant, and it is binding upon us if there were materials which admitted of the conclusion at which he arrived, but in my opinion the facts here admit only of one conclusion, namely, that the injury by accident arose out of the employment, and that was the only real point that could be raised.

I am bound to say that I think it is an extremely clear case. This is the very kind of thing for which the Act was passed, and I hope I am not wrong in adding my surprise that this case was ever defended at all.

LORD PARKER—I agree. I think the case is a clear one, and I find myself in entire accord with the views expressed in the Court of Appeal, especially in the passage from the judgment of Pickford, L.J., which has been quoted by my noble and learned friend on the Woolsack.

LORD SUMNER—I concur.

LORD PARMOOR — The counsel for the appellants put every possible argument in their favour before your Lordships, but I cannot entertain any doubt that the decision of the Court of Appeal is right. I agree with what the noble and learned Earl on the Woolsack has said, especially in regard to the passage in the judgment of Pickford, L.J.

Appeal dismissed.

Counsel for the Appellants — Bairstow, K.C.—Richardson. Agents—Tarry, Sherlock, & King, for Reuben Cohen, Stockton-on-Tees, Solicitors.

Counsel for the Respondents—Mortimer. Agents—G. & W. Webb, for C. T. Townsend, Stockton-on-Tees, Solicitors.

HOUSE OF LORDS.

Tuesday, July 13, 1915.

(Before the Lord Chancellor (Buckmaster), Lords Atkinson, Parker, Parmoor, and Wrenbury.)

UNITED STATES STEEL PRODUCTS COMPANY *v.* GREAT WESTERN RAILWAY COMPANY.

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

Contract—Carriage of Goods—Bill of Lading—Stoppage in transitu—General Lien by the Carriers—"Owners of Such Goods."

Competition arose between the unpaid vendors' right of stopping in transit certain goods and a general lien created by a condition of the bill of lading against "the owners of such goods upon any account."

Held, in construction of the contract, that the general lien was not preferred to the vendors' right of stoppage *in transitu*. *Opinions* that "the owners" meant the persons entitled to demand and demanding the goods.

Decision of the Court of Appeal, reported [1914] 3 K.B. 567, *reversed*, and decision of Pickford, J., reported [1913] 3 K.B. 357, *restored*.

The *facts* sufficiently appear from the judgment.

The following authorities were referred to:—*Wright* v. *Snell and Others*, 5 B. & Ald. 350; *Oppenheim* v. *Russell*, 3 Bos. & P. 42; *Rushforth* v. *Hatfield*, 7 East. 224; *Leuckhart* v. *Cooper and Another*, 3 Bing. N.C. 99; *Smith* v. *Goss*, 1 Camp. 282; Smith's Mercantile Law (11th ed.), 761; Blackburn on Contract of Sale (2nd ed.), Part iii, chap. 1, p. 378.

At delivering judgment—

LORD CHANCELLOR (BUCKMASTER)—The appellants in this case, who are the United States Steel Products Company of Philadelphia, entered into a contract on the 29th December 1910 with a firm of Tupper & Company, Limited, of Batman's Hill Works, Bilston, in the county of Stafford, for the sale to them of 1500 gross tons of steel billets. By the terms of the contract the goods were to be delivered to the purchasers at their works at Bilston at a price of £4, 12s. 9d. net per ton, cost, insurance, and freight being paid by the vendors. Under this contract a consignment was made by the appellants in February 1911 of about 499 tons, but before delivery was complete Messrs Tupper & Company, Limited, became insolvent, and thereupon the appellants asserted their right as unpaid vendors to stop delivery and regain possession of the goods.

If the only rights to be considered were those between the appellants and Messrs Tupper & Company, Limited, there would be no dispute but that the appellants were justified in what they did. The goods, however, were, at the moment when the appellants' notice to stop their delivery was received, in the custody of the Great Western

Railway Company, who are the respondents to this appeal, and they claimed that, under circumstances to which I will more exactly refer, they were entitled to retain possession in order to satify a lien for moneys due to them from Messrs Tupper & Company, Limited, not for the carriage of these particular goods, but on a general account. Such a lien could not be maintained against the vendors apart from contract, and the real question in this case is whether such a contract exists. Pickford, J., has held that it does not, but his judgment was reversed by the Court of Appeal, from whom the present appeal is brought to this House.

In order to answer the question thus raised it becomes necessary to examine in some detail the history and circumstances of the case. The appellants were, as I have already stated, bound under the terms of their contract to provide carriage and pay the freight of the goods in question. They accordingly shipped them by the steamship "Manchester Shipper," a vessel which formed part of a line of steamers owned by the Manchester Liners, Limited, known as the Philadelphia-Manchester Line. The bill of lading, which was dated 28th February 1911, was made to the appellants' order, and contained this clause — "Goods to be forwarded to Batman's Hill Works, via Great Western Railway, Bilston, England, from Manchester, and the carrier is authorised by the owner to forward by a connecting carrier, and upon such conditions as the latter may exact. The carrier shall pay all charges for forwarding, but shall not be liable for any loss of or damage to the goods occurring after delivery to the connecting carrier."

At this date the appellants had full disposing power over the goods, and this condition was a condition to which they assented and which bound anyone accepting the bill. This is indeed stated by the last clause in the bill of lading, which is in these terms—"In accepting this bill of lading the shipper, owner, and consignee of the goods, and the holder of the bill of lading, agree to be bound by all its stipulations, exceptions, and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee, and holder."

The bill of lading was indorsed by the appellants and dispatched to Messrs Tupper & Company, Limited, by the post on the 10th of March 1911. On this day accordingly the property of the goods passed to the purchasers. On the same day the shipping company, the Manchester Liners, Limited, in pursuance of the authority that they had received on the bill of lading, consigned the goods by the Manchester Ship Canal Company upon terms that are contained in a consignment note of that date. The document is important, and it is necessary that I should read its actual words. They are these — "Receive and forward the undermentioned goods, to be carried at the reduced through rate below the company's ordinary through or local rate, in consideration whereof I agree to relieve the Manchester Ship Canal Company and all other companies or persons over whose lines the goods may pass, or in whose possession the same may be during any portion of the transit, from all liability for loss, damage, misdelivery, delay, or detention (including detention of traders' trucks) except upon proof that such loss, damage, misdelivery, delay, or detention arose from wilful misconduct on the part of the company's servants. And I also agree to the conditions on the back of this note. This agreement shall be deemed to be separately made with all companies or persons, parties to any through rate under which goods are carried. All charges to senders."

The general conditions on the back of this note were sixteen in all, but there is only one, No. 7, that calls for special attention. It is upon the true construction of this provision that the whole dispute depends. It is in these terms—"All goods delivered to the company will be received and held by them subject to a lien for money due to them for the carriage of and other charges upon such goods, and also to a general lien for any other moneys due to them from the owners of such goods upon any account; and in case any such lien is not satisfied within a reasonable time from the date upon which the company first gave notice to the owners of the goods of the exercise of the same, the goods may be sold by the company by auction or otherwise, and the proceeds of the sale applied to the satisfaction of every such lien and expenses."

The goods were, pursuant to this note, delivered to the Great Western Railway on the 22nd March, they arrived at Bilston Station on the 24th March, and on the same day, as Messrs Tupper & Company, Limited, had then suspended payment, the appellants directed the Manchester Liners, Limited, to stop delivery—a direction which was at once forwarded by telegraph from the Manchester Liners, Limited, to the Great Western Railway.

In answer to this request the Great Western Railway replied on the 25th March that they had already exercised a lien upon the goods for money due from Messrs Tupper & Company to them. It is not necessary to pursue the further correspondence that took place between the parties. The railway company claimed that they were entitled as against the goods to payment of £1170, money owing on a general account, apparently including a sum for costs of some legal proceedings, and to obtain the release of the goods this sum was paid to them by the appellants under an agreement which provided that in the event of a decision that the respondents had not got a lien on the steel billets ranking in priority to the appellants' rights as unpaid vendors, the respondents should repay such sum of £1170 to the appellants. The dispute was thus transferred from the goods to the money, and it is the claim to this sum that is the subject of this present appeal.

Before more closely examining the terms of the contract of 10th March, under which the respondents claim, it is, I think, desirable to state how the law stands in relation to the rival claims of unpaid vendors and carriers of goods. Apart from any express contract, it is clear that a carrier of goods,

whether by land or sea, has a lien on the goods for their freight, but this right, which arises from the common law, is confined to the carrier's charges payable on the carriage of the particular goods. Such a lien prevails against the rights of the vendors as well as those of the consignees. On the other hand a general lien—that is, a right to retain the goods for other freights due upon other transactions—can only arise by express contract or from general usage, and such a lien, apart from contract, cannot affect the right of the consignor. A claim to such a lien was considered in the case of *Wright* v. *Snell and Others*, 5 B. & Ald. 350.

In that case goods were consigned by a manufacturer in Staffordshire to his agent in London for sale on commission in May and July 1820. The carriers had at a date, stated in the report to be between September 1819 and February 1821, delivered to the consignor a printed freight note stating "That all goods would be subject to a lien, not only for the freight of such particular goods, but also for any general balance due from the respective owners." The report does not specify the exact date when this note was delivered, but the argument proceeded upon the footing that its terms were accepted as the terms of carriage.

In reliance on this provision the carriers refused delivery to the consignee until he had paid the sum of £58 for the carriage of goods not belonging to the consignors. As in the present case the goods were sold, the money was retained by the carriers, and the action was brought against them by the consignor for its recovery, and judgment was given in favour of the plaintiff.

The different position of the consignee in that case from the consignees in the present instance, and the different character of the contract, prevent the case being treated as a direct decision, but in the course of his judgment Best, J., made a statement to which reference is useful. He said—"But even supposing these goods, instead of being addressed to a factor, had been addressed to the real purchaser, the carrier would have no right to say, if the bargain was rescinded, either from the inability of the purchaser to pay or his refusal to complete the bargain, that the original owner should not have them back without paying all that might be due from the proposed vendee."

Apart from special circumstances arising from contract or usage, I see no reason to differ from this statement of the law, and indeed it was not challenged before your Lordships. But it is in relation to the law so stated that the meaning of condition 7 of the conditions endorsed upon the consignment note must be determined. Some discussion has taken place as to whether this consignment note bound Messrs Tupper & Company, the consignees of the goods; and it appears that the judgment of Lord Sumner in the Court of Appeal rested in part at least upon the view that they could not be bound. Counsel before your Lordships, both for the appellants and the respondents, admitted that Messrs Tupper & Company were bound, but as they are not before this House too great reliance should not be placed on this admission. They were certainly bound by the terms of the bill of lading which they accepted, and it would seem that the only means by which they could avoid the liabilities created by the consignment note would be by establishing that it was outside the powers which the bill of lading conferred upon the shipping company. In my opinion, however, it is not necessary that the consideration of this question should be undertaken by your Lordships. The consignment note was certainly designed to bind the consignees, for it is not in my opinion possible to assign any meaning to the words "owners of such goods" in clause 7, which would exclude them from the ambit of the phrase; in these circumstances interpretation of the document must be independent of the question whether in fact it bound the people whom it purported to affect. The efficacy and the meaning of a contract may be and in this case are different and independent questions, and the solution of the one is not assisted by the consideration of the other. Whether or not it bound Messrs Tupper & Company it certainly bound the vendors.

It is argued on behalf of the respondents that when once this is conceded it follows that the appellants (the vendors) intended not only to confer upon the carriers of the goods a general lien for all moneys due to the carriers from the consignees upon any account, but also in order to make this lien effectual that the right to stop the goods in transit should be postponed in its favour; and in support of this contention it is pointed out that the contract is one under which the vendors obtained reduced terms for the carriage which they were liable to pay. This is, no doubt, true. But it does not make the language of the clause more plain; it only affords a reason why the vendors might have been induced to postpone their rights. It does not show that in fact they have been postponed.

Now in my opinion the clause means no more than its actual words imply, viz., that the carriers are to have, first, a particular lien for the special freight and charges applicable to the particular goods, and secondly, a general lien that will cover all outstanding moneys. These two liens take their position according to the law. The first has priority over the right of stoppage in transit, the second has not.

It was argued that the fact that the first lien took precedence over the vendors' right showed that the second was intended to enjoy the same priority. Examination of the clause leads me to a contrary conclusion. The first lien was not stated to enjoy those rights, nor do they arise by virtue of the contract, they attach to it by the character of the lien itself. In the same way rights associated with the general lien are also defined, and in the absence of express bargain to the contrary they rank subsequent to those of the vendor.

It was indeed contended on behalf of the respondents that such a bargain was to be found in the consignment note, since the contrary view would destroy the value of

the general lien. I cannot accept this view. Without the provision as to the general lien the Railway Company could only have enjoyed a right against the consignees to retain the goods in respect of their general account by proof of a usage in the trade to that effect, while the contract gives them expressly rights of the widest character, which it might be difficult to support by any evidence of usage.

These considerations would be sufficient to answer the case set up by the respondents, but another view appears to have been presented to the Court of Appeal by the appellants, with which I cannot agree. The argument there seems to have been that the phrase "owners of such goods" in clause 7 meant only the consignors, that consequently the general lien was only intended to cover moneys due from them, and since no such moneys were due no lien existed. It must have been to this contention that Lord Sumner directed his observations when he said—"If you scratch out 'owners of such goods' and write in 'Tupper & Company' *cadit quæstio*, and yet what other interpretation is to be put upon it?" That in the circumstances of this case Messrs Tupper & Company were included within the meaning of the phrase "the owners of such goods" seems to me plain, but they are not the only people who answer to the description. I entirely agree with Pickford, J., that the phrase covers all persons who under the contract and the bill of lading were entitled to go to the Railway Company and receive the goods. But it does not follow from this that the general lien was a lien to be exercised as against any persons except such owners, or defeated rights that were paramount to theirs. The real question does not depend on ascertaining from whom the money is due, but as against whom the claim of retention in respect of such money can be asserted. For the reasons that I have already stated it is my opinion that such right can only be asserted against the persons who both owe the money and claim the delivery, and if a person from whom no money is due is in a position to assert his right to the goods the general lien is inoperative.

I think the judgment of the Court of Appeal should be reversed and that of Pickford, J., restored.

LORD ATKINSON—The question for decision in this case is the true construction of the seventh of the conditions printed on the back of a certain contract, dated the 10th March 1911, entered into between the Manchester Liners, Limited, and the Manchester Ship Canal Company for the carriage of certain steel billets from Manchester to Batman's Hill Works, Bilston. These Batman's Hill Works belonged to Messrs Tupper & Company, who had purchased on credit these billets from the appellants on the 15th February 1911. The purchasers had before the delivery of the goods stopped payment. The appellants, purporting to exercise their right as unpaid vendors to stop the goods *in transitu*, duly served notice on the respondents on the 24th March 1911 requiring them to stop delivery to Tupper & Company of the consignment or any part of it undelivered. In fact only a small portion of the billets had been delivered. The respondents held possession of the balance. The freight for the goods had been prepaid. Nothing whatever remained due to the respondents in respect of the carriage of these goods to their destination, but a sum of £1170 was owed by Tupper & Company to the respondents on a balance of account between them. The nature of the account or of the items composing it does not appear. The wording of the condition is wide enough to cover debts of any kind.

The respondents contend that by this condition, properly construed, the lien of the appellants as unpaid vendors for the price of the goods is postponed to a general lien for this sum of £1170 purported to be given to them by the terms of this condition. The appellants, on the other hand, contend that even if Messrs Tupper & Company are bound by this seventh condition, and have thereby as owners given to the respondents a general lien on the goods in respect of this sum of £1170, yet that this condition does not, when properly construed, amount to an agreement binding upon the appellants to postpone their vendor's lien to this general lien. The question for decision resolves itself then into this—Which of these two constructions of the condition is its true construction? But before dealing with that question it is, I think, essential, owing to some of the observations of the learned Lords Justices in the Court of Appeal, to determine who in the circumstances of the case are bound by the provisions of this condition, whatever its precise meaning may be.

The goods were shipped by the vendors on board a steamship named the "Manchester Shipper," belonging to the Manchester Liners, Limited, under a bill of lading dated the 28th February 1911, signed by the latter company, according to which they were to be delivered at the port of Manchester to the order of that company or their assignees subject to the conditions, exceptions, and restrictions in the clauses (marginal and other) in the bill of lading contained. In many of these clauses the consignees are expressly named. By the tenth clause it is provided "that goods destined to ports or places other than the ship's port of discharge are to be forwarded thence at the risk of their owners, and subject exclusively to the conditions of the carriers who may complete the transit," and by the last clause but one it is provided that "in accepting this bill of lading the shipper, owner, and consignee of the goods and the holder of the bill of lading agree to be bound by all its stipulations, exceptions, and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee, or holder." By a clause printed in the margin of the bill of lading it is provided that the goods are to be forwarded from Manchester to Batman's Hill Works, Bilston, *via* the Great Western Railway, and that "the carrier is authorised by the owner to forward by a connecting

carrier upon such conditions as the latter may exact." On the 10th March, four days before the arrival of the goods at Manchester, this bill of lading was admittedly indorsed in blank by the appellants and forwarded by post to Tupper & Company, who from the moment of the receipt of the bill of lading, if not from the moment of its posting, became holders of it, and presumably owners of the goods.

By section 1 of the Bills of Lading Act 1855 (18 and 19 Vict. c. 111) it is provided that every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself. By the second section it is provided that nothing contained in the statute should prejudice or affect any right of stoppage in transit. Tupper & Company accordingly became, by force of this statute and of the provision of this penultimate clause of the bill of lading itself, as much bound by every one of its provisions as if they had themselves signed it. Under its tenth paragraph they became bound to submit to any conditions the carrier who completed the transit of the goods might insist upon.

On the same day, the 10th March 1911, whether before or after the bill of lading had been indorsed does not appear, the connecting carrier (the respondents) made a contract with the Manchester Liners Limited for the carriage of these goods to their ultimate destination upon certain conditions. Condition 7 was one of these. One provision contained in it was to the effect that the respondents were to receive and hold the goods subject to a general lien for any moneys (other than those due for the carriage of or charges upon the goods) due from the "owners" of the goods to them upon any account. This provision thus became one of the terms of a contract by which Tupper & Company were as fully and effectually bound as if they had themselves been executing parties to the contract of carriage of the 10th March 1911. If they were, as is contended, the "owners" of these goods, within the meaning of the condition, then they contracted that the respondents should, altogether irrespective of the vendors' lien, have a general lien on the goods for such sum as they (Tupper & Company) should owe the respondents on any account. And if they were not the "owners" of the goods within the meaning of the condition, they assented that the respondent should have that general lien for such sum as the persons who were the owners should owe the respondents on any account. Indeed Mr Duke on behalf of the respondents did not dispute this.

In my view it is a matter of importance, because it would appear to me from some of the observations made in the Court of Appeal that it was assumed that this provision of condition 7 would be futile and useless unless it had the effect of postponing the vendors' lien to the general lien claimed, inasmuch as Tupper & Company were not bound by the condition, and did not by their contract create that general lien.

I am wholly unable to take that view. I think that if Tupper & Company were the owners of the goods, they, being bound by this condition, gave a right to the respondents very valuable while they continued owners even if the lien of the vendors was not postponed, for this general lien and the vendors' lien would not be conterminous. The second is only called into existence in one event, namely, the bankruptcy or insolvency of the purchaser. In that event the enforcement of it might, no doubt, render the general lien, good in other respects, valueless or comparatively valueless, but in all other circumstances the general lien might afford most effective and valuable security to the creditor to whom it was given.

In my view there is nothing illogical or inconsistent in holding, as I think Pickford, J., held, that while by the terms of this condition Messrs Tupper & Company as owners clearly contracted to give to the respondents a general lien for all sums due by them, yet that the language of the condition is not so clear and unequivocal as to bind the appellants to postpone to this general lien their own lien as unpaid vendors.

There is no controversy as to the nature, extent, and operation of a vendor's lien either at common law or by statute. The vendor's right to stop in transit means not only the right to countermand delivery to the vendee, but to order delivery to the vendor. It is subject to the possessory lien of the carrier for the charges due in respect of the carriage of the goods, but is not subject to any general lien which the carrier might have as against the consignee of the goods in respect of freight due on other goods—*Oppenheim* v. *Russell*, 3 Bro. & P. 42. The vendor by stopping the goods in transit does not thereby regain the property in them, nor does he thereby cancel the sale. In no proper sense of the word does he by the stoppage become the "owner" of the goods. It is the indebtedness of the "owners" for which a general lien is given. Yet if the goods had been sold during transit and before notice given, to a *bona fide* holder to whom the bill of lading had been indorsed, or the document of title mentioned in the 47th section of the Sale of Goods Act 1893 transferred, he would unquestionably be the "owner" of the goods and yet might owe nothing to the respondents.

Again, it was, as I understand, admitted by Mr Duke that the vendors' lien was not lost but merely postponed to the general lien of the respondents. If that be so, it would follow that, Tupper & Company remaining the owners, the vendors upon payment of this sum of £1170 would be entitled to the possession of the goods though they were not "owners" and did not as "owners"

owe the respondents anything, and yet it was only the liability of the "owners" which was secured.

The first three lines of the conditions, which merely embody the existing rule of law, do not raise this difficulty, as the word "owners" is not found in them. Under them whoever was entitled to demand possession of the goods would be bound to pay the carriage of them and the other charges mentioned, no matter from whom those moneys might be due. The second clause of the condition appears to me to be most ambiguous. In the construction of it the word "owners" cannot receive its ordinary meaning. At law the vendor's lien would clearly take precedence of the general lien, however valid. It is not shown that the vendors knew of the existence, nature, or extent of the indebtedness covered by it. That indebtedness might have arisen from transactions unconnected with any goods or their transit. It might have exceeded, as in fact it did exceed in this case, the price of the goods carried.

It is, I think, necessary before one decides that the vendors have postponed their lien, and thus practically given up *in toto* all the benefits of their legal right, to find in these conditions a clear agreement, express or implied, upon their part so to do. Their mere assent to the creation of a general lien by Tupper & Company would not suffice, nor would, I think, even a mere contract by them that Tupper & Company should as owners give the lien. The only consideration received by the vendors to induce them to take a course so contrary to their interest, and apparently so reckless, was this, that the goods were to be forwarded at the lower rate, which rate they had to pay; but the general lien which the respondents got, whether it ranked behind or in front of the lien of the vendors, might well have been in itself a sufficient inducement to them to carry the goods at a lower rate.

In my opinion there is not to be found in this condition any clear and definite agreement, express or implied, binding on the appellants to postpone their lien as unpaid vendors to the general lien thereby purported to be given by Tupper & Company, as owners to the respondents. If that be so, then upon the authorities their lien ranks in front of the latter lien, and the appellants were entitled to obtain the possession of these goods without paying the sum of £1170.

I think therefore that the decision appealed from was erroneous and should be reversed; that the decision of Pickford, J., as he then was, was right and should be restored; and this appeal be allowed, with costs.

LORD PARKER—On the 29th December 1910 the appellants agreed to sell to Messrs Tupper & Company, Limited, 1500 tons of steel billets to be delivered c.i.f. to buyers' works, Bilston, England. The goods were to be shipped by about equal monthly quantities in February, March, and April 1911, and each delivery was to be treated as a separate contract. Pursuant to this agreement, the appellants, on the 28th February 1911, shipped a parcel of steel billets on board the steamship "Manchester Shipper," taking therefor a bill of lading to their order or assigns, according to which, though the port of discharge was Manchester, goods destined to places other than Manchester were to be forwarded thence at the risk of their owners, and subject exclusively to the conditions of the carriers who might complete the transit. There was a marginal note to the effect that the goods were to be forwarded *via* the Great Western Railway from Manchester to the works of Messrs Tupper & Company, Limited, at Bilston, upon such conditions as the connecting carrier might exact. Accordingly on the 10th March 1911 the owners of the steamship "Manchester Shipper," pursuant to the authority conferred on them by the bill of lading, entered into a contract with the Manchester Ship Canal Company to forward the goods to Messrs Tupper & Company at Bilston, at the reduced through rate therein mentioned. The contract provided that it should be deemed to have been entered into separately with all companies or persons parties to the through rate. The Great Western Railway Company was such a party, and the contract therefore may be considered to have been entered into with them. It provided, clause 7, that all goods delivered to the company—that is, for the purposes of this case, the Great Western Railway Company—should be received and held subject to a lien for money due to them for the carriage of and other charges upon such goods, and also to a general lien for any other moneys due to them from the "owners" of such goods upon any account, and, further, that in case any such lien were not satisfied within a reasonable time from the date upon which the company first gave notice to the owners of the goods of the exercise of the same, the goods might be sold by the company by auction or otherwise, and the proceeds of sale applied to the satisfaction of every such lien and expenses. The question your Lordships have to decide depends primarily upon the construction of this clause, for it has not been contended that the contract was outside the authority conferred by the bill of lading, or that anyone claiming a title to the goods under the bill of lading was not bound by the authority so given, at any rate unless and until it had been rescinded. Indeed the bill of lading contains an express provision to that effect.

On the same day on which the contract of carriage was entered into, the bill of lading, indorsed in blank, was forwarded by the appellants' London house to Messrs Tupper & Company, Limited. It was assumed in argument that under these circumstances the property in the goods was in Messrs Tupper & Company at the date of the contract of carriage. I will adopt this assumption, though I do not think it is necessarily correct. Clearly, however, the appellants, as unpaid vendors, had the right to stop

the goods in transit for the purpose of asserting their lien for unpaid purchase money. It is admitted that as between the appellants and Messrs Tupper & Company this right of stoppage has been duly exercised, so that the vendor's lien prevails, but it is contended on behalf of the respondents that such lien is by virtue of the contract of carriage postponed to the lien thereby created in favour of the Great Western Railway Company for certain moneys due to them from Messrs Tupper & Company on general account. It is not disputed that the lien of the Great Western Railway Company for money due to them for the carriage of and other charges upon the goods in question would take precedence, apart from any agreement, over any vendor's lien, but all these moneys were prepaid by the appellants. It seems, however, reasonably clear that a carrier cannot claim any general lien upon goods which he carries unless such lien be created by express agreement. It is equally clear that no such express agreement between carrier and consignee will oust the right of the consignor to stop the goods in transit for the purpose of asserting his lien for unpaid purchase money. To oust this right there must be an express agreement by the consignor. The respondents' counsel in their argument accordingly relied on the seventh clause of the contract of carriage—first, as an agreement on the part of Messrs Tupper & Company creating the lien in question for moneys due from them as the owners of the goods, and secondly, as an agreement on the part of the appellants postponing their vendor's lien to the lien so created. It was assumed in argument on both sides that the agreement according to its true construction operated in the manner first suggested by the respondents' counsel. The dispute was whether it also operated in manner secondly suggested. The Court of Appeal, on the other hand, were of opinion that Messrs Tupper & Company were not parties to or bound by the agreement at all, and therefore that the clause creating the lien of the Great Western Railway Company, if any effect be given to it, must operate simply upon the interest of the appellants as unpaid vendors, and preclude them from setting up their vendors' lien as against the lien thereby expressed to be created in favour of the Great Western Railway Company.

It does not seem to me to be very material whether Messrs Tupper & Company be considered a party to the agreement or otherwise. As endorsees of the bill of lading they were both by general law and by the terms of the bill itself bound by its provisions, and could not claim the goods thereunder without giving effect to any lien created under the authority thereby conferred. I am of opinion therefore that the Great Western Railway Company could by virtue of the agreement have lawfully refused to deliver the goods to Messrs Tupper & Company until they had paid the amount due from them to the Railway Company on general account. It might of course be contended, on the one hand, that the creation of this lien prevented the vendors from fulfilling their contract for delivery at the Bilston Works, and on the other hand that the acceptance of the indorsed bill precluded the purchasers from raising this point, but your Lordships are not in the present appeal concerned with either contention. It is enough to say that by virtue of the contract of carriage Messrs Tupper & Company could not demand delivery of the goods by the Great Western Railway Company except on the terms of satisfying the lien thereby created.

It was assumed by the Court of Appeal that the word "owners" in clause 7 of the contract of carriage referred to the persons who at the date of the contract were the legal owners of the goods. I have the gravest doubts whether the contract can be so interpreted. The contract is a common form contract for use in cases in which the consignor desires to secure what has been called a preferential rate in lieu of the rates ordinarily chargeable for carriage by the companies concerned, and under these circumstances I think that the expression "owners" in the clause may well be used to denote the person entitled to the delivery of the goods, whoever such person may be, and does not necessarily refer to the person who at the date of the contract or at any other time may have the legal property in the goods. These common form contracts are intended to meet a variety of cases, and it is highly improbable that their effect was intended to be quite different according to whether the legal ownership, as to which the carriers did not necessarily know anything, was in one person or another. The goods carried might for all the carrier could tell be the property of consignor, consignee, or some third party, and the property might shift during the transit. Thus in the present case Messrs Tupper & Company might at the date of the contract have resold the goods and passed the property to a sub-purchaser. Again, but for the indorsement of the bill of lading the property in the goods in question would have remained in the appellants, and according to the respondents' contention no one could have obtained delivery without satisfying all money due from the appellants to the Great Western Railway Company. Or again, the appellants might have indorsed the bill of lading in favour of a third party for re-indorsement and delivery to Messrs Tupper & Company in exchange for a draft in payment of the purchase price, in which case the agreement might create a lien for moneys due from the third party. These difficulties would not be met by construing "owners" as the owner for the time being, for *non constat* that the person entitled to delivery would be the owner. On the other hand, all difficulty is avoided by treating the word "owners" as meaning the persons entitled to demand delivery, whoever they may be, when the time for delivery comes, and this construction seems to be borne out by the fact that the company cannot sell to satisfy their lien without notice to the owners. If "owners" means the person demanding delivery this provision raises no difficulty, but if it means

the person having the legal property, as opposed to the person demanding delivery, all sorts of difficulties might arise in enforcing the lien.

If, as I think, this be the true construction of the contract of carriage, the "owners" were in the events that have happened the appellants. They were entitled to demand delivery by virtue of the stoppage in transit. They can only get such delivery on payment of what is due from them to the carriers on general account, as well as the charges in respect of the goods themselves. But there is no question of their having to pay anything due to the respondents from Messrs Tupper & Company, who ceased to be entitled to delivery as soon as the right of stoppage was exercised. If, however, I am wrong in this construction, I still think that the appeal ought to succeed. There is, in my opinion, great difficulty in giving to clause 7 the double-edged effect for which the respondents contend. Had the parties to the contract intended that clause 7 should not only create a lien for moneys due from Messrs Tupper & Company as the actual owners, but should give such lien priority over the right of the appellants as unpaid vendors, the contract would in my opinion have contained an express provision to that effect. Had the carriers insisted on any such express provision it is difficult to believe that the appellants would have been willing, for the sake of the preferential rate, to accept the risk which such a clause would involve. The debt from the owners in respect of which the lien was created might have far exceeded the value of the consignment.

For the above reasons I have come to the conclusion that the judgment of Pickford, J., was right and ought to be restored.

Lord Parmoor—The appellants, by a contract of the 29th December 1910, agreed to sell to Tupper & Company, carrying on business at Bilston, 1500 tons of steel billets. In February 1911 the appellants dispatched to Tupper & Company approximately 500 tons of steel billets. The goods were shipped with the Manchester Liners Limited, who were further authorised by the appellants to forward the goods from the port of destination, Manchester, to the works of Tupper & Company at Bilston. On the 10th March 1911 the Manchester Liners Limited contracted with the Manchester Ship Canal Company for the forwarding of the goods over the Great Western Railway system to Bilston. On the same day the appellants forwarded to Tupper & Company the shipping documents and the bills of lading indorsed in blank. These bills of lading were duly received by Tupper & Company, and thereupon the property in the goods passed to them.

The goods arrived at Manchester on the 14th March 1911, and were duly forwarded by the respondents, arriving at or near Bilston about the 18th March. A portion of the goods was delivered to Tupper & Company, but on the 22nd March the respondents stopped delivery, and claimed to hold the balance in their possession under a general lien for money due to them from Messrs, Tupper & Company, amounting to £1170. The appellants had received no payment for any part of the goods, and on the 24th March 1911 they, as unpaid vendors, gave notice to the respondents to stop delivery of the goods, or any portion thereof undelivered. It is not disputed that the respondents were entitled to hold the goods under a lien for freight as against the appellants, but the respondents claimed further that they were entitled under the contract of carriage to hold the goods as against the appellants under a general lien until they received payment of the general balance of £1170 due to them from the consignees Messrs Tupper & Company.

Whether the respondents were so entitled or not depends entirely on the conditions on which they held the goods under the contract of carriage, and the question is one of construction.

The contract is in a form very generally adopted when goods are carried from station to station at owner's risk under special conditions. There are a number of these conditions on the back of the consignment-note which are binding upon and affect any party in respect of the receiving, forwarding, or delivery of the goods if they are reasonable, and signed by such party, or by the person delivering the goods for carriage. There was an option of sending the goods by the ordinary rate, the respondents accepting the ordinary liability, and it is not suggested that the conditions are unreasonable. Contracts at owner's risk have been extensively adopted, to the benefit and convenience both of the traders and the railway companies. The person delivering the goods for carriage, and who signed the contract, was R. J. Darlington, for Manchester Liners Limited, who were agents of the appellants.

The contract therefore is binding upon the appellants and all other parties in a position to make any claim on the respondents in respect of the receiving, forwarding, and delivery of the goods. Condition 7 is as follows:—"All goods delivered to the company will be received and held by them subject to a lien for money due to them for the carriage of and other charges upon such goods, and also to a general lien for any other moneys due to them from the owners of such goods upon any account, and in case any such lien is not satisfied within a reasonable time from the date upon which the company first gave notice to the owners of the goods of the exercise of the same, the goods may be sold by the company by auction or otherwise, and the proceeds of sale applied to the satisfaction of every such lien and expenses."

There is often a difficulty in contracts of carriage to distinguish between the respective rights of the consignors or consignees. To meet this the appellants as senders of the goods are made liable in the first instance to pay the moneys due to the respondents for the carriage of the goods. It is a condition in the contract that where the charges of the carrier are not prepaid the goods are accepted for carriage only upon the condition that the sender remains liable

for payment of the amount due to the carrier for the carriage of such goods without prejudice to the company's rights, if any, against the consignee or any other person. It is only necessary to add that the words "consignor" and "consignee" are found in the conditions, but that the general lien attaches, not in respect of moneys due to the respondents from the consignor or consignee, but from the owners of the goods.

Apart from any obligation created by the contract, the respondents would have the right to hold the goods for money due to them on their carriage, as against unpaid vendors who have exercised their right to stop delivery. It is not necessary to consider whether any greater right of lien is given in this respect under the contract than would arise from the common law obligation, since the moneys due to the respondents for the carriage of and other charges upon the goods have been paid. In substance there is no need to insert this term in the contract to meet the case of a claim to possession of the goods by an unpaid vendor, and I doubt whether the contract was framed with reference to the rights of an unpaid vendor. On the other hand, it has long been established that the respondents have no common law right to hold the goods against an unpaid vendor who has stopped delivery under a general lien for any other moneys due to them on any account from the owners of the goods. If such a right exists in the present case it must be imposed by the contract. It was pointed out in an early case—*Rushforth* v. *Hatfield*, 7 East, 224—that if it is not convenient for the consignee to pay for the carriage of specific goods at the time of delivery, it is easy for the carrier to stipulate that they shall have a lien for their balance upon other goods which they may thereafter carry for him. A general lien of this character has been extensively introduced in contracts of carriage in order to protect carriers in respect of moneys due to them on ledger accounts. These contracts have been found to be convenient as a matter of business and of advantage both to the carrier and to the trader, and in the present case the respondents have a general lien for moneys due to them from the owners of the goods on any account.

The expression "the owners of such goods" under the terms of the contract means the persons for the time being entitled to demand and demanding actual possession of the goods by delivery from the carriers. I agree in this respect with the judgment of Pickford, J. Bray, J., in his judgment in the Court of Appeal says—"I do not think it means the owners for the time being; I think it means the owners of the goods at the time this contract was made." I am unable to agree in this construction, but assume, although the matter is not quite free from doubt, that the owners at that date were the consignees Messrs Tupper & Company. It is clear that when the goods first reached the destination to which they were consigned, and delivery of a portion thereof was made, the persons entitled to actual possession by delivery from the carriers were the consignees Messrs Tupper & Company, and that a sum of £1170 was due from them to the respondents on general account.

I do not doubt that as against Messrs Tupper & Company the respondents were entitled to a right of general lien for the sum of £1170. Before, however, the delivery was completed the respondents, having reason to doubt the solvency of Messrs Tupper & Company, stopped further delivery. The appellants subsequently on March 24 gave notice to the respondents to "stop delivery billets Tupper & Company pending instructions," a notice effective in reference to the portion of the goods still in the possession of the carriers, and of which delivery had not been made. So soon as this notice had been given the respondents became liable to re-deliver the portion of the goods not actually delivered, to the appellants or according to their directions. It is not suggested that there were any moneys due to the respondents from the appellants on any general account, but if such moneys had been due the respondents would have had a general lien upon the goods to the amount of such moneys, and could have refused to deliver the goods to the appellants, or according to their directions, until such moneys had been paid. In other words the carriers would have the protection for which they bargained, a right to hold the goods subject to a general lien for moneys due to them on any account from the person rightly claiming to take or direct delivery.

It makes no difference that on the arrival of the goods at their destination Messrs Tupper & Company had a right to claim delivery and received actual possession of a portion of the goods. The effect of the notice of stoppage *in transitu* has the same operation against the portion of the goods undelivered as it would have had against the whole parcel if none had been delivered, and in respect of that portion the appellants became entitled to demand or to direct possession. It is said that on this construction the main object of the contract would be defeated and the carrier deprived of his right to a general lien in respect of a ledger account due to him from a consignee. I do not think that this is the main object of the contract. In my opinion the words "owners of such goods" have been carefully selected, and the condition is not intended to give the respondents a right to retain goods against a person rightly claiming possession for moneys due to them on general account from some other person. In any event the only question before your Lordships is one of construction, and, subject to the provisions of the Railway and Canal Traffic Acts, it is open to the contracting parties to make any contract which will best meet the varying business contingencies.

In my opinion the appeal succeeds and the judgment of the Court below should be restored.

LORD WRENBURY—The question for decision is limited to the construction of a

single clause—nay, more, to the meaning of a single word in the clause. The clause is condition No. 7 in the contract of carriage of the 10th March 1911; the word is "owners." It is not disputed that while the right of the unpaid vendor to stop *in transitu* is subject to the particular lien of the carrier for charges for carriage, it over-rides any general lien of the carrier in the absence of special contract to the contrary. The whole question is whether between the consignors —the unpaid vendors—and the Great Western Company, the carriers, there existed a special contract to the contrary. Condition No. 7 is by the words on the face of the contract note of the 10th March 1911 rendered binding upon the parties to that note. The parties are the Manchester Liners Limited and the Manchester Ship Canal Company. The contract however, binds the United States Company, the consignors, as having been made on their behalf under the authority given by the bill of lading of the 28th February 1911, and binds the Great Western Railway Company as a party to the through rate by virtue of the words to that effect in the contract of carriage. It is said that it binds the consignee also by virtue of the concluding words of the bill of lading. I do not doubt that it does, but it is, I think, immaterial whether it does or not.

Condition 7, then, is part of a valid contract, binding at any rate the two parties to this appeal. The only question is, what does it mean? The condition is one which comes into operation when, notwithstanding the lien in favour of the carrier for which it provides (whatever that lien is), another party claims that the carrier must deliver the goods, because, as that party asserts, there is no subsisting lien in favour of the carrier.

The condition deals with two liens—the one the carrier's common law lien for charges for carriage, the other the contractual lien created by the words on which the question arises. The vendor consigning the goods may of course give such rights paramount to the right arising in himself upon stoppage *in transitu* as he thinks proper. It is said that by the first words of the clause he has given such a paramount right to the carrier's common law lien. This seems to me erroneous. That paramount right existed already. The consignor could not give the carrier that which the carrier already possessed. By the next words the consignor gives some paramount right. What is it? There are three possible meanings. First, the words may mean to grant in priority to the right of the unpaid vendor a right in the carrier to a charge on the goods for any money due from the consignor; or secondly, to a charge for any money due from the consignee; or thirdly, to a charge for any money due from such person (whoever he turns out to be) as is entitled to claim and claims delivery of the goods.

To my mind the third is the only reasonable or possible meaning of the words. The first meaning would render it impossible for the consignee (if entitled to delivery) to get the goods without paying the consignor's debt, howsoever arising. The second would render it impossible for the consignor (if entitled to delivery) to get the goods without paying the consignee's debt, howsoever arising. The third is perfectly intelligible, and strictly pertinent to questions arising when someone comes and demands delivery and is met by the assertion of a lien in favour of the carrier, who in the absence of a lien would be bound to deliver.

The word "owners" means, I think, "persons entitled to claim and claiming delivery." This is the meaning which Pickford, J., gave to the word, and in my opinion he was right in that view.

For these reasons I think that this appeal succeeds.

The House allowed the appeal and restored the judgment of Pickford, J.

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Counsel for the Respondents—Duke, K.C. —Macassy, K.C.—H. A. MacCardie. Agent —L. B. Page, Solicitor.

HOUSE OF LORDS.

Monday, February 8, 1915.

(Before Earl Loreburn, Lords Atkinson, Parker, Sumner, and Parmoor.)

HAYWARD *v.* WESTLEIGH COLLIERY 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.* 2 (1) (*a*)—*Notice of Accident—Onus of Proof that Employer was not Prejudiced by Absence of Notice.*

Consideration of the *onus* of proof that the employer has not been prejudiced in his defence by the omission to give the notice required by the Workmen's Compensation Act 1906 of a claim under the Act. *Reversal* of the decision of the Court of Appeal, who had, on this ground, set aside the arbiter's award.

The *facts* appear from their Lordships' judgment, which was delivered as follows:—

Earl Loreburn—In this case I regret that I cannot agree with the opinion expressed by the Court of Appeal.

There are two questions. The first is, was there evidence warranting the learned County Court Judge in finding that the injury which the deceased sustained was an injury by an accident arising out of and in the course of his employment? The deceased was a man who worked at a colliery, bringing full tubs from the working place to the shunt, and it was proved that scratches are very common on the arm or the leg when men in this employment come into contact with the tub or with the coal face or with stones. On the 1st April the deceased went to work, his knee being perfectly sound, at