actual transaction in question with the result that evidence is not admissible to prove that the clerk acted fraudulently and in excess of his authority.

In the hearing of the appeal a very large number of cases were referred to in the exhaustive arguments of counsel. I desire only to refer further to two of these cases. It must be taken that the rule expressed by Ashurst, J., in *Lickbarrow* v. *Mason* (2 T.R. 63) is too wide when he says "he may lay it down as a broad general principle that whenever one of two innocent parties suffers by the act of a third person, he who has enabled such person to occasion the loss must sustain it," and that the accurate rule is stated by Blackburn, J., in *Swan* v. *North British Australasian Company*, 2 H.L.C. 175, who, referring to the judgment of Wilde, B., says "That he omits to qualify the rule (he had stated) by saying that the neglect must be in the transaction itself and be the proximate cause of leading the party into that mistake, and also must be the neglect of some duty to the person led into that belief, or, what comes to the same thing, to the general public of whom that person is one, and not merely neglect of what would be prudent in respect to the party himself, or even of some duty owing to third persons with whom those seeking to set up the estoppel are not privy." The other case to which I would refer is *Young* v. *Grote*. This has been referred to in a great number of subsequent cases, and in the main with approval; but whatever may have been the basis of decision in that case the principles involved in the duty which a customer owes to his banker have been further defined and made more exact in a number of subsequent decisions.

In my opinion the appeal should be allowed.

Their Lordships allowed the appeal, with expenses.

Counsel for the Appellants—D. Hogg, K.C.—A. Neilson. Agents—Morley, Shirreff, & Company, Solicitors.

Counsel for the Respondents—H. Gregon, K.C.—Jowitt. Agent—E. H. Coopman, Solicitor.

HOUSE OF LORDS.

Monday, July 8, 1918.

(Before the Lord Chancellor (Finlay), Viscount Haldane, Lords Atkinson, Sumner, and Parmoor.)

ATTORNEY-GENERAL *v.* BENJAMIN SMITH & COMPANY.

(On Appeal from the Court of Appeal in England.)

Ship—Bill of Lading—Deviation—Effect of Clauses of Exception.

Goods were shipped for carriage from Australia to London by a steamer employed by the Crown as a transport under a bill of lading which conferred on the carriers liberty, *inter alia*, "to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages or otherwise howsoever given by H.M.'s Government. . . ." The ship was used for about 3 months as a warehouse at Imbros and Mudros for meat, part of which was transhipped from other vessels. On proceeding with the voyage the ship was torpedoed by the King's enemies and the goods lost. A petition of right was presented by the respondents, the shippers, claiming that the use of the ship as a warehouse constituted a deviation from the voyage and precluded the appellant from relying on a clause in the bill of lading exempting him from liability for damage by the King's enemies.

Held that the use of the ship as a warehouse was inconsistent with the main object of the contract and therefore did not come under the exceptions reserved in the bill of lading.

Decision of the Court of Appeal, 116 L.T.R. 515, *upheld*.

The facts appear from their Lordships' considered judgment.

Lord Chancellor (Finlay)—This appeal arises out of a petition of right filed by Benjamin Smith & Company, now the respondents, against the Attorney-General, on behalf of His Majesty, to recover damages for the loss of fifty bales of sheepskins carried on board the steamship "Marere" under a bill of lading signed on behalf of His Majesty by agents of the Commonwealth Government of Australia. The "Marere" was sunk in the Mediterranean by a German submarine, and the sheepskins were lost. The bill of lading contained an exception from liability on the part of the Crown for any loss caused by acts of the King's enemies. The question on the appeal is whether, as contended by the petitioners, the benefit of this exception has been lost owing to a deviation and change in the character of the adventure alleged to have taken place before the "Marere" was torpedoed.

The "Marere" had been requisitioned by the Crown at the beginning of the war in August 1914, and was being worked for the Crown under this requisition when the petitioners' goods were shipped. The shipment took place at Melbourne under a bill of lading dated the 14th July 1915, signed by authority of the Commonwealth Government of Australia, and held by the petitioners. The bill of lading expressed that there had been shipped on board A 21 "Marere," bound for London "*via* ports subject to Government requirements, with liberty to receive and to discharge goods and passengers, and to take in coal, cargo, supplies, and for any other purpose, and to call at any port or ports in any order, and to sail with or without pilots, and to tow and assist vessels in all situations, and to deviate for the purpose of saving life and property, the following goods, namely, fifty bales sheepskins, being marked and numbered as in the margin, and to be delivered (subject to the exceptions and conditions hereinafter mentioned)

in the like good order and condition from the ship's deck at her anchorage (where the ship's responsibility shall cease) at the aforesaid port of London (or so near thereto as she may safely get) unto order or to his or their assigns."

Condition 1 contained an exception from liability for the act of God or the King's enemies, and a number of other perils. Condition 4 was in the following terms:—"4. With liberty to proceed to and stay at any port or port, place or places, in any order or rotation backwards and (or) forwards, and notwithstanding that such ports or places are out or away from the customary or geographical route, to the port of discharge hereinbefore mentioned, for the purpose of receiving and (or) discharging goods, coals, supplies, or passengers, or for any other purpose whatsoever, whether *ejusdem generis* or not, and to return once or oftener to any port or ports, place or places, without any liability whatsoever resting on the shipowners on the ground of deviation by reason of any route taken as above, and with liberty on the way to call and stay at an intermediate port or ports to discharge or take on board passengers, cargo, coal, or other supplies, and to sail with or without pilots, and to tow and assist vessels in all situations. Steamer to be at liberty to leave ports to assist vessels in distress and (or) for the purpose of saving life and (or) property."

Stamped in the margin in purple ink was the following clause:—"The insulated space on the ship having been taken by His Majesty's Government, the ship in addition to any liberties expressed or implied in this B/lading shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, or otherwise howsoever given by His Majesty's Government or any department thereof, any person acting or purporting to act with the authority of His Majesty or of His Majesty's Government or of any department thereof, and anything done or not done by reason of any such orders or directions shall not be deemed a deviation, ship free to carry contraband of war and like risks."

The terms of this clause have reference to the fact that on the 13th April 1915 an Order in Council had been made by which all the cold storage space in all British steamships plying between Australia and Great Britain had been requisitioned for the use of the Crown. There was also stamped in the margin of the bill of lading a clause in red ink—"If and so long as the ship is insured against war risks with a war risks insurance association under or in connection with a war risks insurance scheme of His Majesty's Government the ship in addition to any liberties expressed or implied in this bill of lading shall have the liberty to comply with any orders or direction as to departure, arrival, routes, ports of call, stoppages, or otherwise howsoever given by His Majesty's Government or any department thereof or any person acting or purporting to act with the authority of His Majesty or of His Majesty's Government or of any department thereof or by any committee or person having under the terms of the war risks insurance on the ship the right to give such orders or directions and nothing done or not done by reason of any such orders or directions shall be deemed a deviation."

The "Marere" left Melbourne on the 20th August 1915, carrying troops and horses and a large quantity of Government stores, guns, ammunition, and waggons. Among the Government stores on board were 4000 tons of frozen meat. There were also on board certain amounts of ordinary traders' goods, including the petitioners'. Troops, guns, stores, and ammunition were landed at Suez and Alexandria, and on the 20th September the vessel was sent on to Mudros carrying, *inter alia*, the 4000 tons of frozen meat. She remained at Mudros for two days, and was then sent on to Imbros, where she remained from the 7th October till the 4th December discharging meat for the use of the troops engaged on the Gallipoli Expedition. The rate of discharge was slower than the commercial rate, as it was conditioned by the requirements of the troops. After the 4th December the "Marere" returned to Mudros with 150 tons of the frozen meat on board, and there she took on board 500 tons more meat from two other vessels. The whole of these 650 tons were discharged at Mudros as required. All the movements of the "Marere" were carried out under the orders of the naval transport authorities. On the 16th January she sailed for Gibraltar under orders, and in course of her voyage she was torpedoed in the Mediterranean by a German submarine.

Sankey, J., decided in favour of the Crown, but his decision was reversed by the Court of Appeal, who gave judgment in favour of the petitioners (now respondents). This appeal is brought by the appellant asking that the judgment of Sankey, J., in his favour should be restored.

Mudros and Imbros are between 600 and 700 miles steaming from Alexandria, and are off the course of a vessel bound for London from the Suez Canal. It was contended for the respondents that the employment of the vessel from the 20th September 1915 to the 16th January 1916 was not in accordance with the contract contained in the bill of lading and amounted to a deviation and alteration of the adventure, so that the Crown cannot take advantage of the exception of risks from the King's enemies contained in the first condition of the bill of lading.

Attention was directed to the conditions under which the vessel was requisitioned by the Government in August 1914, and was being worked by the Government at the time of the shipment of the petitioners' goods. These requisitions are, however, in no way referred to in the bill of lading, and are not material for the purposes of the question before the House, which must depend on the terms of the bill of lading itself together with what was done.

The bill of lading provided for the carriage of the petitioners' goods from Melbourne to London "*via* ports subject to Government requirements," and the marginal clause in

purple ink referring to the fact that the insulated space on board had been taken by the Government reserved liberty to the ship to comply with any orders or directions as to departure, arrival, route, ports of call, stoppages, or otherwise howsoever given by His Majesty's Government or any department thereof, and provided that anything done by reason of any such orders or directions should not be deemed a deviation. There was a good deal of argument about the fourth condition and the red ink marginal clause, but they are both in my opinion not material for the purposes of this appeal, which falls to be decided on the terms contained in the body of the bill of lading and in the marginal clause in purple ink.

There is no doubt that if there takes place any deviation in the course of a voyage not warranted by the terms of the contract, or any material variation in the nature of the employment of the vessel or character of the adventure contemplated by the bill of lading, the benefit of any exception contained in the bill of lading will be lost. It was hardly argued that the mere sending of the vessel to Mudros and Imbros was a deviation not authorised by the bill of lading, and no such contention would have succeeded. This, no doubt, involved a detour far out of the ordinary course of a voyage between Melbourne and London, but in my opinion it was authorised by the bill of lading, and particularly by the marginal clause in purple ink. It was adopted under a direction of His Majesty's Government as to the route to be followed and the ports of call and cannot be deemed a deviation having regard to the terms of the marginal clause to which I have adverted.

But other and more difficult questions are raised by the use made of the vessel at Imbros and at Mudros. At Imbros the meat was not unloaded in the ordinary commercial course, but was delivered as it was required for the purposes of the troops engaged on the Gallipoli Expedition. It is said that this amounted to the employment of the vessel as a hulk or storeship and not for the purposes of the voyage, which would comprise unloading in the ordinary way and rates at ports of discharge. Some seven weeks were spent in this way at Imbros, and it is said that this was quite an unreasonable time, and amounted to a departure from the terms of the contract of carriage of the petitioners' goods. It is, however, to be observed that during the whole of this time the vessel was discharging frozen meat which she had brought from Australia, and in ascertaining what is a reasonable rate of discharge all the circumstances must be looked at. The meat had been brought for supply to the troops, and it was in my opinion not an unreasonable course to discharge it as it was wanted by them. It does not appear that the whole of the meat could have been landed in the ordinary course of commercial discharge and stored at Imbros, and I agree with the majority of the Court of Appeal in thinking that the delay owing to the mode of discharge adopted there cannot be regarded as having the effect which an unauthorised deviation would have on the liability of the shipowners.

Other considerations, however, arise with regard to the stay at Mudros from the 4th December to the 16th January. The discharge of the 150 tons of meat which the "Marere" had brought from Melbourne can have occupied only a small part of the time of the vessel's second stay at Mudros, having regard to the small quantity which remained. She took on board 500 tons more from other ships, and in respect of these 500 tons she was certainly used as a hulk or storeship and not in the discharge of the cargo which she had carried on her voyage. The evidence is meagre, but I doubt whether the discharge of the 150 tons already on board plus the 500 tons taken on board at Mudros from other vessels would account for the whole of the stay made on this occasion at Mudros.

Whatever the cause, there was such an amount of delay at Mudros on this second occasion as to amount to a material variation in the employment contemplated by the contract, and this on the authorities would have the effect of an unauthorised deviation, and indeed would be commonly spoken of as a "deviation," which in its current though inaccurate use includes unauthorised delay upon the voyage.

I therefore agree with the majority of the Court of Appeal in thinking that this appeal should be dismissed with costs on account of the unauthorised delay at Mudros upon this second occasion.

VISCOUNT HALDANE—The steamship "Marere" left Melbourne on the 20th August 1915 bound for London "*via* ports subject to Government requirements." She proceeded first of all to Suez, then to Port Said, then to Alexandria, and later to Mudros and Imbros. On a subsequent part of her voyage, and while on the way from Mudros, whither she had returned, to Gibraltar she was sunk not far from Malta by an enemy ship of war. From Melbourne she had conveyed troops, horses, guns, and Government stores, including a large quantity, amounting to 4000 tons, of frozen meat. The "Marere" had been requisitioned by the Government both for her insulated or refrigerated spaces and for transport of troops, but as she was a cargo steamer available for general purposes the agents of the Government determined to allow ordinary traders' goods to be shipped in the spare cargo space. As the result, the respondents arranged with the Government to ship on board her, destined for London, fifty bales of sheepskins, which in the event were lost when the steamer was sunk. The question on the appeal is whether, under circumstances to which I shall refer, the terms of the bill of lading protect the Government, against whom the respondents have proceeded by petition of rights, from a claim for loss occasioned by non-delivery of the goods so shipped. The Court of Appeal, reversing judgment of Sankey, J., have held that in the circumstances of the actual voyage these terms do not protect the Government.

The bill of lading provided initially that

as the Government had taken the insulated space the ship should be at liberty to comply with any orders of the Government as to "departure, arrival, ports of call, stoppages, or otherwise howsoever." It then stated that fifty bales of sheepskins had been shipped on the "Marere," bound for London "*via* ports subject to Government requirements," with liberty to receive and discharge goods and passengers and to take in coal, cargo, supplies, and for any other purpose, and to call at any port or ports in any order. But by subsequent provisions of the contract, loss arising from, among other causes, the acts of the King's enemies was excepted, and the vessel was given liberty "to proceed to and stay at any port or place in any order, backwards and forwards, and notwithstanding that such ports or places are out of the customary or geographical route, for the purpose of receiving and for discharging goods, coal, supplies, or passengers, or any other purpose whatever, whether *ejusdem generis* or not."

After leaving Alexandria, which she did at the very beginning of October 1915, the steamer would, if she had proceeded straight to London, have reached that port in ordinary course just before the middle of the month. But, as she was entitled under the terms of the bill of lading to do, she proceeded under government orders to Mudros, and arrived there on the 3rd October. The military authorities then took over the 4000 tons of frozen meat, and began to discharge it into lighters for consumption by the troops. But the rate of discharge was slow, only about 10 or 15 tons a day. The steamer remained at Mudros only two days on this occasion, and proceeded under further orders to Imbros. This port she reached on the 7th October and remained there till about the 4th December. On arrival she began to discharge more of the frozen meat at the rate of 50 to 90 tons a day, finally leaving only 150 to 200 tons out of the original 4000 in the end undischarged. The rate of discharge appears to have been slower than would ordinarily have been the case because there was no accommodation at Imbros for storage, and the meat is proved to have been taken out merely as the troops required it. On the 4th December the steamer, by order of the naval transport officer, returned to Mudros. She was there taken alongside another vessel, also laden with frozen meat, and 150 or 200 tons from this vessel were put on the "Marere," which so had about 350 tons in all on board. She appears then to have been used as a store ship for supply of the local needs, discharging for this purpose 25 to 50 tons a day. It seems that later on about another 300 tons were put on board the "Marere" from another vessel for gradual discharge, and the "Marere" was thus used, in language accepted by the master in his evidence, "as a hulk in order to put the stuff on board, and thus relieve the other steamer." The "Marere" under these circumstances kept on discharging 25 to 50 tons of frozen meat a day for the supply of the local needs, and she remained at Mudros thus engaged until the 16th January, when she sailed for Gibraltar.

The view taken by the Court of Appeal was that under these circumstances the steamer must be taken to have been detained by the Government and used as a storehouse for the preservation and issue of supplies during some weeks in which the voyage was interrupted for this purpose.

I think that the Court of Appeal was right in this view of the facts, and the remaining question is whether the terms of the bill of lading protect the Government as owners of the ship from loss by a peril which would have been excepted had there not been such a deviation from normal employment. Now no doubt the words which I have quoted from the bill of lading do, if taken by themselves, give a very wide liberty of deviation and uses. But they cannot be properly read in isolation as if they stood alone. They occur in a contract which must be read as a whole. The Government agreed use of the ship with the respondents was to make a voyage which was specified as the main purpose of the contract. The sheepskins were to be conveyed on board the steamer from Melbourne to London. The language conferring liberties on the vessel must, I think, be read as signifying that, although these liberties are expressed to be wide, they are not to be such as to destroy the character of what was bargained for, carriage by steamer of cargo from Melbourne to London. It was said by Sankey, J., that the Government were to be free to use the vessel for military purposes. No doubt, they were. But then this liberty was reserved in a contract the dominant purpose of which was the undertaking of the Government to carry the goods to London. Some limit must be set on the right to employ a vessel made the subject of such a contract for military purposes. Obviously, for instance, she could not be deliberately diverted and used for an indefinite time in order to block a harbour for military ends. That would be to destroy the main object for which the respondents had bargained, the carriage of their goods, and the general words, which would, if read as standing by themselves, give an apparently unlimited discretion to the Government, must be read with such restriction of their import as will keep it consistent with the general obligation undertaken by the contract for carriage.

It seems to me that this view is the only one that is consistent with the principles of interpretation laid down in this House when *Glynn* v. *Margetson* (1893 A.C. 351) was decided. What Lord Herschell then said about the limitation of the construction which ought to be put on general words used in a printed form appears to me, *mutatis mutandis*, to be applicable to the document before us. The main object and intent which is the dominant reason of the contract must not be left out of sight when the question is, how general words, which are certainly capable of a construction which preserves this object and intent, ought to be read on consideration in their context. Neither the "insulated space" clause in this contract, nor the printed conditions, No. 4, seem to me to afford any further reaching

justification for an unrestricted interpretation than the printed form in the document construed in *Glynn* v. *Margetson*. I find myself, therefore, unable to come to any other conclusion than that the decision of the Court of Appeal in the present case was correct.

LORD ATKINSON—I concur. In my view of the case it is not necessary to repeat the facts.

I think the main object and intention of the parties to the mercantile contract contained in the bill of lading in this case was that the goods shipped should be carried from Melbourne to London in a vessel equipped and used for the carriage of goods or passengers, or perhaps both, by sea. That was the fundamental conception on which the contract was based, and the general words of the fourth clause and of the insulation space clause already referred to cannot, I think, be construed so as to destroy the foundation upon which the contract rested. Wide and various as are the rights conferred by those two clauses upon the Crown, they do not enable the Crown to alter entirely the nature of the use to which the ship is to be devoted from that of a ship for carrying goods from one place to another by sea to that of a ship upon which goods are loaded not to be carried anywhere, but merely to be discharged at the place at which they have been loaded in such quantities as might be required by those having control over them. The function which a ship so used discharges is in all essentials the same as those discharged by an ordinary warehouse built on shore—namely, to protect and keep within it the goods placed there until they are removed by one having authority to remove them, the only difference between the ship and the warehouse being that the ship is afloat. But all that portion of her equipment designed to enable her to voyage from port to port is as unneeded in her case for the use she is thus devoted to as it would be in the case of the warehouse built on land. It may well be that a ship can be, in effect, thus turned into a warehouse by prohibiting her from discharging her cargo at other than an extremely slow rate—as, for instance, if this ship "Marere" were prohibited from discharging her cargo of 4000 tons of beef at a greater rate than 20 tons per day, thus detaining her at a port for 200 working days. Taking the view of the case which I do, however, I do not deal with that point. I prefer to rest my judgment as Bankes and Warrington, L.JJ., as I understand them, have rested theirs, namely, on the fact that after the "Marere" had discharged all but 150 tons of her cargo of 4000 tons of beef, an additional 500 tons was transferred from other ships to her, not to be carried by her anywhere from the place at which she lay at the time, but to be there discharged from her as and when and at the rate required for consumption in the camps. I think the devotion of the ship to such a purpose was not treating her at all as a thing to be used for the carriage of goods from port to port by sea, and was prohibited by the implied term which formed the basis of the contract contained in the bill of lading. This reloading and slow discharge accounts for the detention of the ship at Mudros for the greater part of the time, from the 5th December till the 16th January.

I therefore think the decision appealed from was right, and should be affirmed, and the appeal be dismissed, with costs.

LORD SUMNER—On her way from Melbourne to London the steamship "Marere" after leaving Alexandria went to Imbros and Lemnos, staying about sixty days at the first island and about forty days at the second. Without good cause shown or liberty given this was on the face of it a deviation from the bill of lading voyage. She had prosecuted it neither by the accustomed route nor with the accustomed dispatch.

It is true that the Government had the right to call upon her to do what she did, nor do I question that all that she had to do was in the public interest. No one would have had her do otherwise, but the question is whether or not the Government is bound by contract to pay for the legal consequences of it. Possibly it might have been foreseen that all that she did she would have to do, but how can that affect the shippers of the cargo? The bill of lading does not incorporate or even refer to the terms and conditions for hiring transports, nor, if notice would have mattered, is it proved that they had notice of them. The question arises on a contract for the carriage of goods, on a bill of lading, signed on the Government's behalf and issued to shippers of cargo, not on a contract for the use of a ship between shipowners and charterers. One has not to ask whether the action relied on as a deviation was incidental to a voyage which the ship could be required to make, but whether it was consistent with the voyage which it had been promised to the shipper that she should make, and, if it was not, whether he had agreed to allow it and had promised not to object to it.

The terms of the bill of lading must therefore be construed and applied to the facts. The document is on the ordinary printed form of the Commonwealth and Dominion Line, essentially a mercantile contract for a mercantile object, but adapted to Government needs and exigencies of war by added clauses to a certain extent. On their true construction how far do those additions extend?

Not merely by the description of the ship as "A 21," but by the wording of the clauses, one sees that the "Marere" was requisitioned. The words "bound for London *via* ports subject to Government requirements" only mean "*via* such ports as the Government may see fit to require." It is the ports that are "subject to" this qualification—the words do not condition the whole contract. Otherwise the greater part of the instrument is otiose and the juxtaposition of the words too is wrong. Clearly the liberty of route thus conceded by the shipper in order to make the agreed voyage more elastic is

sufficient to justify the actual departure from the usual route by going from Alexandria to Lemnos and Imbros, nor was this questioned.

The delay was not involuntary or simply occasioned by the mode in which the bill of lading voyage had to be performed under the circumstances. It was no question of weather or strikes interfering with the discharge of cargo; the delay was due to the voluntary act of the carriers, parties to the bill of lading, in making use of the ship as they did. To say that the ship was simply engaged in delivering her meat cargo to its consignees at its destination, and that bad weather and lack of unloading facilities — namely cold storage ashore — protracted this operation is to misunderstand the facts. According to the only evidence on the point, the meat was consigned to and was deliverable at London, nor was it in fact in process of being discharged as part of the commercial use of the ship at a somewhat ill-equipped port, but as food brought, so to speak, to the consumers' doors and delivered to them as and when they were ready to eat it. The ship became a floating butcher's shop for the British Army. She took in fresh stocks from other ships and disposed of it on the spot in the supply of local consumption, in the same way as her own. For the time being, and that a substantial time, she ceased to be engaged in the mercantile transport of cargo.

Such a use of a ship has been held to be outside any of the ordinary liberties, by which the implied obligation not to deviate is commonly qualified, at least since the time of Lord Mansfield—*Hartley* v. *Buggin*, 3 Dougl. 39. Usage might bring such a thing within the ordinary course of a trading voyage, as, for example, in the voyages out and home to the West Coast of Africa to stay and trade, or in the Pacific in the case of a schooner sailing in the Island trade, but there is nothing of that sort here. Blackburn, J., points this distinction out in the company of *African Merchants* v. *British and Foreign Marine Insurance Company*, L.R., 8 Ex. 154. It is true that these are insurance cases, but still they are in point. A departure from the regular prosecution of the agreed voyage without leave or lawful excuse varies the risk which the underwriter covers, just as it varies the risks which the cargo owner agrees to run when he agrees to a category of excepted perils in the bill of lading. If a given deviation is permitted by the liberties in the bill of lading, the cargo owner runs the risk of loss by excepted perils; if not, that risk is run by the carrier. The facts constituting deviation are the same in each case, and alike in a bill of lading and in a voyage policy the voyage, which is material, is the agreed voyage according to the construction and tenor of the instrument.

Two clauses in this bill of lading provide for liberties to do what would otherwise be a deviation—clause 4 and the purple rubber stamp clause, which begins "the insulated space on the ship." The former does not avail the carrier; it overlaps and is inconsistent with the latter, and is more in his favour. The conflict results in an ambiguity, and he cannot rely on it. The latter is the material clause. Of this there is a somewhat similar version in a red-ink clause, which begins, "if so long as the ship is insured," but this again may be disregarded. Nothing turns on the colour scheme or the typography of this somewhat variegated bill of lading. Rubber stamps, print and typewriting, red, blue, black, and purple, must all depend on construction, but the red-ink clause deals with insurance, while the purple clause gives the carrier liberties to deviate, and accordingly the latter is the crucial matter.

The clause specifies the subject-matter of various Government orders, and says, "anything done or not done by reason of any such orders or directions shall not be deemed a deviation." Those subjects are "departures, arrivals, routes, ports of call, stoppages or otherwise." The use to which she was put cannot be justified by any of these words unless by "or otherwise." In my opinion the ordinary canons of construction apply. All the named subjects are species of common genus, namely, incidents attaching to a mercantile voyage, and the words "or otherwise" sweep in the residue of such incidents. The use made of the ship was not such an incident. The question may be put in another way. The problem is, as in *Glyn* v. *Margetson*, 1903 A.C., at p. 355, to harmonise general words applicable to all the voyages for which bills of lading in this term may be issued with the particular voyage for which the particular bill of lading was issued. The words "or otherwise," however wide they be, must still be limited to something which is not inconsistent with the main object of the contract—that is, the mercantile operation of transporting cargo to London on the voyage described in the contract. I think therefore that the terms of the bill of lading do not cover this deviation, and the fact that the purpose of the delay and the use of the ship were laudable is no more a justification than was salving and towing the ship in distress in *Scaramanga* v. *Stamp*, L.R., 5 C.P.D. 295. The result is that the exception of "King's enemies" is no longer an answer to the claim for non-delivery of the goods, and the appeal fails.

LORD PARMOOR—His Majesty's Government, having spare room to carry traders' goods on the ship "Marere" contracted to carry for the respondents fifty bales of sheepskins from Melbourne to London on the terms of a bill of lading dated Melbourne, the 14th July 1915. The bill of lading was in commercial form with a special clause, stamped on the margin, allowing the ship, in addition to any liberties expressed or implied in the bill of lading, to have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages or otherwise howsoever given by His Majesty's Government or any department thereof, and anything done or not done by reason of any such orders or directions is not to be deemed a deviation, ship

being free to carry contraband, war, and like risks. The question has arisen whether the special provisions contained in this clause would justify the deviation of the ship to the port of Mudros in Lemnos and Imbros, and the retention of the ship there, not for the discharging of the cargo of frozen meat in the ordinary way from a cargo-carrying vessel, but as a store to unload such frozen meat as from time to time was required for local use and consumption by the troops, not only from her own cargo but transhipped from other vessels. The respondents do not complain of the deviation of the ship to the port of Mudros and Imbros, but to the use made of the ship as a storage vessel, from which the frozen meat was unloaded for the purpose of local consumption.

The facts may be shortly stated. Fifty bales of sheepskins were shipped on board the steamship "Marere," which left Melbourne on the 20th August 1915 for Suez, having on board troops, horses, guns, ammunition, waggons, and Government stores, including frozen meat and also a certain amount of ordinary trading goods, including the above-mentioned bales of sheepskins. The troops, stores, guns, and ammunition were landed at Suez and Alexandria, and on the 30th September the ship left for Mudros with about 4000 tons of frozen meat. The "Marere" stayed at Mudros, and later at Imbros, from about the 7th October to about the 4th December. The cargo of frozen meat was unloaded as required for local consumption by the troops at a rate of discharge lower than the ordinary commercial rate. On the 4th December the ship returned to Mudros with about 150 or 200 tons of meat on board, and there took on board from other vessels about 500 tons more meat, which was unloaded at a rate from 25 to 50 tons a day for local consumption. The ship remained at Mudros till the 16th January 1916, and after leaving Mudros was sunk on the same day by German submarines and the whole of her cargo was lost.

In my opinion His Majesty's Government did assume the ordinary liabilities of carrying goods by sea, according to commercial law, save so far as was otherwise agreed in the bill of lading. It was argued on behalf of the Crown that the main intent and object of the voyage was a military one, and that the carriage of goods for the respondents and other traders was of secondary importance. There is no reason to doubt this statement, but the intention to use the ship for military purposes is not inconsistent with the carriage of the respondents' goods on commercial terms, in space not required for their own purposes by the Government. The question is not what was the general intention of the Government, but what is the contract made between the parties. The main intent and object of this contract was the carriage of the goods on the adventure of a voyage by a cargo-carrying vessel from Melbourne to London. The liberties of deviation given by the bill of lading should be construed to include such deviations as are consistent with the main intent and object of the commercial adventure. In my opinion the use of a ship as a store, from which the frozen meat was unloaded for purposes of local consumption, was inconsistent with the prosecution of a commercial adventure which was based on the use of the ship as a cargo-carrying vessel to carry the bales of sheepskins from Melbourne to London. If this is so, such use was not covered by the liberties given in the bill of lading. As a consequence the Crown is precluded from relying on the exception of "King's enemies," and the respondents have a good claim for the loss of their goods.

In two of the judgments in the Court of Appeal a distinction was drawn between the use of the ship in distributing her own cargo for local purposes and distributing the additional 500 tons received from other vessels. It appears to me that this distinction is not justified, and that the use of a ship in either case for such purpose is inconsistent with its use as a cargo-carrying vessel in the adventure of carrying bales of sheepskins from Melbourne to London. The appeal should be dismissed with costs.

Their Lordships dismissed the appeal, with expenses.

Counsel for the Crown—Sir G. Hewart (Sol.-Gen.)—Ricketts. Agent—Solicitor to the Treasury.

Counsel for the Cargo-owners—R. A. Wright, K.C.—Raeburn. Agents—Parker, Garrett, & Company, Solicitors.

HOUSE OF LORDS.

Monday, July 15, 1918.

(Before the Lord Chancellor (Finlay), Viscount Haldane, Lords Sumner and Wrenbury.)

CLAWLEY *v.* CARLTON MAIN 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), *Sched* 1, *secs.* 16, 17—*Redemption of a Weekly Payment—Weekly Payment which has been Made under Agreement Representing only Part of the Master's Liability.*

The question was whether the master is entitled under the Workmen's Compensation Act 1906 (Sched. 1, sec. 17), to redeem by payment of a sum down a weekly payment which has been made for six months but which does not represent the full compensation due to the servant under the Act.

Held that the payment contemplated by section 17 is one which exhausts the master's liability, therefore the section was inapplicable to the case.

Their Lordships' considered judgment sets out the facts.

Lord Chancellor (Finlay)—The question in this case is whether under clause 17