because the paragraph headed "Discharging Berth" imposes an absolute duty upon the receiver of the cargo to provide or arrange (on or before the arrival of the ship) a vacant available and suitable berth to which she can forthwith proceed and be at liberty to forthwith commence her discharge, and that there is a correlative duty of the same absolute character imposed upon the receiver to enable the ship to take advantage of this liberty.

I think that contention is unsound. It is not thus that absolute unconditional obligations can be spelt out and imposed. Adopting the words of Lord Macnaghten in the judgment which I have already quoted, I may say that in order to impose the liability contended for the language used "must in plain and unambiguous terms define and specify the period within which delivery of the cargo is to be accomplished." The language relied upon in this case is not of this character.

I therefore think that the appeal upon this point fails, and that being so it is unnecessary to deal with the second point, namely, the possibility of holding the consignees as liable as one consignee would be. I think the appeal should be dismissed with costs.

LORD WRENBURY—I agree, and I have not thought it necessary to prepare an independent judgment of my own.

LORD BUCKMASTER—I had prepared a written independent opinion on this case, but after reading the opinions of the other noble and learned Lords who have preceded me I realised that I should be only clothing in different words exactly what they have already expressed. In such circumstances it would be vain repetition to deliver my opinion to the House, and I therefore content myself with expressing my entire agreement with the proposed motion and with the reasons put forward in its support.

Appeal dismissed.

Counsel for the Appellant—Compston. K.C.—Hardy. Agents—Botterell & Roche, Solicitors, for Andrew M. Jackson & Company, Hull.

Counsel for the Respondents—Mackinnon, K.C. — W. H. Owen. Agents — Trinder, Capron, & Company, Solicitors.

HOUSE OF LORDS

Friday, January 30, 1920.

(Before Lords Haldane, Dunedin, Atkinson, and Buckmaster.)

MARTEN *v.* VESTEY BROTHERS, LIMITED.

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

Insurance — Marine Insurance—Duration of the Risk — Voyage Policy — "Final Port"—Printed Form of Policy—Alteration in Writing—Construction.

A policy insured a ship but not its cargo against total loss upon a voyage "at and from any port or ports . . . on the River Plate to any port or ports . . . in France and/or in the United Kingdom (final port) . . . *via* any ports in any order." The last of the ship's cargo was discharged at Havre, and the captain then proceeded to Cardiff to coal. On the way there the ship was wrecked upon the Scilly Isles. The owners brought an action against the underwriter for the sum covered by the policy. *Held* that "final port" meant the port where the cargo was discharged, in this case Havre, and that the voyage terminated there. *Held* further (Lord Dunedin *dissenting*, and Lord Buckmaster *reserving* his opinion) that where a printed form of policy is used which but for alterations in writing would include both ship and cargo, in construing a policy confined to the ship alone the printed words though inapplicable to the particular policy may be looked at to determine the character of the adventure.

The decision of the Court of Appeal (BANKES, WARRINGTON, and SCRUTTON, L.JJ.) *reversed*. The judgment of Bailhache, J., *restored*.

The *facts* appear from the judgment of Lord Dunedin.

Their Lordships' considered judgment was delivered as follows:—

LORD HALDANE—The question here is one simply of construction of the policy of marine insurance before us. I have come to the conclusion that the view taken of what the answer should be by Bailhache, J., is preferable to that of the Court of Appeal.

It is agreed on all hands that notwithstanding the wide words of the printed form used in its preparation, the introduction into this form of the words written in and appearing in italics is enough to limit the insurance to the vessel itself, and to exclude the interest in the cargo even of its owners. If it were not for the introduction of these words it would be plain that the insurance extended to the cargo also. But the policy is drawn up with the limiting words inserted into a printed form which by usage they are held to govern, and it is agreed that by the practice of Lloyd's the limitation is so sufficiently expressed as to make the policy one concerning the vessel alone. That, however, does not seem to me to render all the words remaining in the printed form wholly negligible. They are retained in the print and belong to the framework on which the actual contract is grafted, and outside of that general framework there is no language which constitutes an agreement. They suggest that the policy read as a whole had reference to a voyage, and that expressions which refer to the general character of the adventure insured can hardly be excluded from notice. These expressions point to an adventure terminating so far as concerns the ship insured when she with her goods and merchandise have reached a port where the cargo has been discharged and landed. The insurance is to endure until the ship with her cargo shall be arrived at "any port

or ports, place or places in France and/or the United Kingdom (final port), excluding Mediterranean *via* any ports in any order," and the adventure is apparently not to terminate until arrival "as above upon the said ship, &c., and until she has moored at anchor twenty-four hours in good safety, and upon the goods and merchandises until the same be there discharged and safely landed."

Now unless the printed portion of the document is to be treated as wholly non-existent, I find it difficult to construe the meaning as being that the ship is to continue insured after she has discharged her cargo, and during an unlimited further period in which she may cruise from port to port, for instance, along the coast of Ireland and in the Hebrides, picking up new freight. I cannot read it as meaning that the ship may turn herself into a tramp going about from port to port indefinitely round the United Kingdom, and still remaining insured although running heavy risks from submarines and otherwise, and yet with no increase of the single premium of 27s. 6d., which is all that is to be paid. It is difficult to see how terms so vague could define an agreement. I think that, however oddly drawn the document may be, there is one duty from which only an Act of Parliament can absolve Judges who have to construe it, and that is to try to attach some significance to every expression that is at once appropriate and is yet not nullified by other and governing words within the four corners of the instrument. If the practice of Lloyd's really militated against this principle serious questions might arise. But I cannot think that it really does so. Applying the test, it appears to me that the words to which I have referred do indicate an intention not excluded by any other expression in the policy to make the voyage terminate with the discharge of the cargo. That took place in France, and there seems to me to be no reason for supposing that the voyage insured was to extend to an indefinite period following on this discharge. That is surely an interpretation which is as reasonable as it is natural. I may add that I agree with Scrutton, L.-J., in his impression that the words "final port" are not limited to the United Kingdom. They seem to me as they stand in their context to apply to France as well. But, for the reason I have already given, I find it very difficult to take the expression "final port" to read as satisfied by "the last port in fact in the United Kingdom at which the vessel is." Like Bailhache, J., I draw the inference from reading the instrument as a whole, even while construing it as relating to the vessel alone, that what the parties had in view was a voyage policy. No authority has been cited which appears to hinder me from coming to this conclusion, and I think that the references in the policy to discharge and safe landing of goods and merchandises, even though these last are to be regarded as wholly excluded from the subject-matter insured, do afford some guide to what was in the minds of those who thought the printed form a proper one to use as that on which even this restricted contract of insurance might be written.

I am therefore of opinion that the judgment of the Court of Appeal ought to be discharged and that of Bailhache, J., restored.

LORD DUNEDIN — The screw steamer "Brodfield" sailed from Buenos Ayres on the 19th September 1916, laden with a cargo consisting of frozen meat, frozen eggs, maize, and horses. She arrived at Dakar on the coast of Africa on or about the 5th October, where she called for orders. She was ordered to discharge the frozen meat and eggs and the maize at Havre; the horses she was to discharge at St Nazaire. She proceeded to St Nazaire and Havre and discharged as ordered, and on or about the 10th November she was completely free of cargo at Havre. At Havre the master received orders to proceed to bunker in Cardiff. She sailed from Havre on the 11th November to proceed to Barry and was stranded and totally lost on the Scillys on her way there. All these facts are admitted. The question in the case is whether the owners of the ship can recover against the underwriters for the loss of the ship under a policy of insurance. The policy of insurance is dated the 16th September 1916, and was effected in London. It is in the well-known form known as a Lloyd's Policy. The policy consists of a printed form with blanks which are filled up in writing. The filled-up parts in this case, so far as material, are as follows—"Doth make assurance and cause themselves and them and every one of them to be insured, lost, or not lost at and from [so far all these words except "themselves" were in print, but I have to quote them to make the sentence intelligible] any port or ports, place or places, on the River Plate and/or tributaries, to any port or ports, place or places, in France and/or in the United Kingdom (final port), excluding the Mediterranean, *via* any ports in any order."

The policy then proceeds in the printed form as follows— . . . "Beginning the adventure upon the said goods and merchandises from the loading thereof, aboard the said ship as above upon the said ship, &c., and shall so continue and endure, during her abode there, upon the said ship, &c.; and further, until the said ship, with all her ordnance, tackle, apparel, &c., and goods and merchandises whatsoever, shall be arrived at as above upon the said ship, &c., until she hath moored at anchor twenty-four hours in good safety, and upon the goods and merchandises until the same be there discharged and safely landed; and it shall be lawful for the said ship, &c., in this voyage to proceed and sail to and touch and stay at any ports or places whatsoever or wheresoever and for all purposes without prejudice to this insurance. The said ship, &c., goods and merchandises, &c., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at."

Then come the following written words —"Seventeen thousand pounds on safe arrival of steamer only."

This is followed by another written clause as follows — "This insurance is against total loss only to be paid in the event of the total and/or constructive and/or arranged total loss of the steamer. Warranted free of all average. Warranted free from any claim consequent on loss of time whether arising from a peril of the sea or otherwise. No claim to attach hereto for delay, deterioration, and/or loss of market."

Then follow the printed words touching the adventures and perils, which it is unnecessary to quote, and the final portion ends with the ordinary N.B.:—"*N.B.*—Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded; sugar, tobacco, hemp, flax, hides, and skins are warranted free from average under five pounds per cent.; and all other goods, also the ship and freight, are warranted free from average under three pounds per cent., unless general, or the ship be stranded, sunk, burnt, on fire, or in collision."

There are appended other clauses in writing dealing with war risks, which it is also unnecessary to quote.

Now the question raised is very short and sharp. All are agreed that the vessel was covered till she discharged at Havre. The insurers say the risk ended when she had there discharged her cargo; the owners say she was still insured on her voyage from Havre to Barry. Bailhache, J., before whom the case was tried, found in favour of the underwriter. His judgment was reversed by the Court of Appeal, Scrutton, L.J., evidently considering the case one of considerable difficulty.

I believe that we are unanimous in thinking that the judgment of Bailhache, J., was right and that the appeal should be allowed, but the appellant put forward an argument of far-reaching importance. The argument is, that in attempting to discover the duration of the risk which is insured against for the ship alone you are at liberty to draw conclusions from the presence of the words in the printed form which refer to the insurance of goods. This is in my humble opinion so entirely inconsistent with the practice of nearly two centuries, and would be held to be such a disastrous innovation by the mercantile world, that I feel constrained to express my earnest dissent from it. The asseveration or denial of this argument is infinitely more far-reaching and more important than the decision on the merits of this particular case. The form known as "Lloyd's Policy" is a very ancient document. It undoubtedly owed its original form to the time now long passed away when the ordinary state of affairs was that the shipowner and the merchant were one and the same person. Like Antonio in "The Merchant of Venice" he sent out his argosy laden with his own goods, to be disposed of in foreign lands and to bring back foreign goods in exchange.

The oldest policy known in England is of date 1613, a copy of it being preserved in the Bodleian Library at Oxford, and differs little from the policy of the present day; but the actual printed form of policy which we now have was arranged in 1779 at a general meeting of members of Lloyd's, who undertook to establish a particular form of marine insurance policy and not to allow any alterations in that policy. With the exception of the introduction in 1874 of what is known as the "Waiver Clause," and the alteration in 1850 of the phrase at the commencement of the policy, "In the name of God, Amen," to "Be it known that," the printed policy at present is the policy of 1779.

Now undoubtedly it might have been better—it would have saved this and perhaps other controversies—if, when modern times had come, the underwriters had reformed this document and adopted a separate form for insurance on ship, goods, and freight respectively when the insurance was only to cover one of these three things. But they have not done so. Nay more, they have not in practice even taken the trouble, when a policy is effected on one, to delete the phrases obviously only applying to the other two things which may be insured. But they leave blanks in the policy, and these blanks are filled up so as to fix what is the subject insured, and additional and special clauses are often written on the margin or affixed to the policy by gum.

This may be a bad practice, but it is a universal practice, and I venture to say that no underwriter who has undertaken a risk on ship alone by reason of a voyage policy ever dreams that his undertaking is to be read in the light of what the printed form says about goods. After all, the question is, What was the contract made by the parties? and it is our business to decide that and not to form rules as to how commercial men ought to conduct their business. And in face of the universal practice of underwriters to use the form in this way, it is in my opinion untrue to say that they have contracted that an insurance of ship alone shall be interpreted in the light of printed words which are only appropriate when the insurance is not effected on ship alone but on goods.

In approaching this case I therefore disregard altogether the parts of the policy contained in the printed form which refer to an insurance of goods. Attempts to invoke the inappropriate parts of such a policy to construe the appropriate have been made before this. I quote the words of Lord Penzance in the case of *Dudgeon* v. *Pembroke*, 1877, 2 A.C. 284—"It has been suggested that by reason of the policy having been drawn up on a printed form, the printed terms of which are applicable to a voyage, and also to goods, as well as to the ship, the policy is something less or something more than a time policy, but the practice of mercantile men of writing into their printed forms the particular terms by which they desire to describe and limit the risk intended to be insured against without striking out the printed words which may be applicable to a larger or different contract, is too well known and has been too constantly recognised in courts of law to permit of any such conclusion."

I may at once point out another circumstance which is in my judgment strongly in

favour of that view. The learned counsel for the appellant, though I think somewhat invited by some of your Lordships, did not dare to say that on this policy the ship might not have proceeded on ballast from the River Plate, yet if the clause as to merchandise is to be looked at for the purpose of deciding that this was a cargo-carrying ship, then a voyage in ballast would be contrary to the terms of the policy.

I now come to the consideration of the case. No one doubts that this is a voyage policy. The sole question therefore is, what is the voyage? The beginning is clear—"at and from the River Plate." What is the termination? All the authorities agree that the *terminus ad quem* in a voyage policy must be clearly specified, otherwise the policy is void. That does not mean that there may not be a group of ports designated, but it is available in consideration of one aspect of this case. There is a certain amount of authority, which, although not directly in point, touches the fringe of this question. Thus, in *Camden* v. *Cowley* (1763, 1 W. Blackstone, 417) Lord Mansfield, after consulting a jury who had examined before them insurance brokers and others conversant with the trade, held that on an insurance of a ship from London to Jamaica, that insurance ended when she touched at the first port and delivered part of her cargo, though she had still on board some cargo to deliver at other ports of Jamaica. With that may be contrasted *Moore* v. *Taylor* (1834, 1 A. & E. 25), where the ship was chartered at and from the West India Islands, Jamaica and San Domingo excepted, to her port or ports of discharge in the United Kingdom during her stay there and thence back to Barbados and all or any of the West India Islands, Jamaica and San Domingo excepted, until the ship should be arrived at her final port as aforesaid. She discharged her cargo substantially at Barbados, and was proceeding to Berbice when she was lost. It was held that she was not covered because the jury had held that the cargo was substantially discharged at Barbados, and that final port must be taken as the final port of discharge.

Now that case would be exactly this were it not for the fact that "as aforesaid" is added to the words "final port," and in the earlier part of the policy "port" is called "port of discharge." Mr Littledale, J., puts his judgment on that fact, but Park, J., puts his judgment on broader grounds. He says "final port must mean the port which is final with reference to the goods to be taken on board in the United Kingdom." But it is particularly instructive to notice the argument of Sir James Scarlet, who was counsel for the owners. He is reported thus—"The owner could not decide before her arrival at Barbados at what place she should terminate the voyage and commence a new adventure, and accordingly the words inserted in the policy are 'arrived at her final port,' not her 'final port of discharge.' It could not be contended that if she had sailed from Liverpool without any cargo at all she would not have been protected by the policy to Barbados. It cannot therefore be held that the duration of the protection in the present case is to be measured by the time the cargo remains on board, for as the policy is on the ship alone its construction cannot be altered by the circumstance of her having or not having a cargo."

The argument, unsuccessful there, is really the same as the argument in this case.

It seems to me that the question of what is the voyage insured is a question of fact. It is to be gathered from the expressions in the policy, and nothing that was done could contradict them. If they are so vague as to be incapable of interpretation the policy is void. One necessity of defining a voyage consists of giving the beginning and end of the voyage. If, therefore, the policy defines in sufficiently precise language the *terminus a quo* and the *terminus ad quem*, nothing that was done in the actual voyage could affect the interpretation of the insured voyage, but where, as here, there is given a facultative *terminus ad quem* it is, I think, legitimate to see what was done in the voyage of the ship and to use that knowledge, not perhaps in the strict sense to interpret the words used, but to decide what is the application which falls to be given to the words used in the actual circumstances of the case. Now, here, what do I find? I find that the ship admittedly carried cargo and that she admittedly discharged all that cargo in France. I find also that the instruction to the master as to what he was to do after Havre, are contained in a letter produced in the following terms:—"We have arranged for you to bunker in Cardiff under contract with Messrs Evans & Reid, sufficient to take the steamer out to the River Plate and back to Dakar, where you will replenish as on the last occasion."

In these circumstances I hold that the expression "final port" in this policy was equivalent to "final port of discharge," and that the progress of the ship from Havre to Barry was not the finishing of the old voyage but the preparation for the inception of a new voyage. I agree that the final port might have been in the United Kingdom, but once dissociate "final port" from "final port of discharge" then there seem to me no *termini habiles* to fix what is the final port. There need not have been finality at Barry, and if that is so there is no such proper determination of the *terminus ad quem* as will save the policy from vitiation on the ground of uncertainty.

I am therefore of opinion that the appeal should be allowed and that the judgment of Bailhache, J., be restored.

LORD ATKINSON—The facts have already been sufficiently stated. During the argument of this case it was pressed upon your Lordships that the underwriters had, according to their inveterate custom, been unwise enough to use a printed form of policy suitable for an insurance covering both a ship and her cargo, while in fact all that was

insured against was the loss or injury of the ship. That, no doubt, is so. But the argument which, as I understood it, was based upon this fact was in my view fallacious. It was, it appeared to me, contended that because of this clumsy way of doing business the policy was to be construed as if all the printed matter dealing with goods and merchandise had been deleted from it. It may well be that where a printed form is used containing words utterly inapplicable to the subject-matter of a contract, the contract should be construed as if those words were deleted; but that is emphatically not this case. Here the provisions as to goods and merchandise are not inapplicable to the contemplated adventure of the ship. They are, on the contrary, linked to it and affect it. The adventure is the voyage of this steamer from some port or ports, place or places, on the River Plate or its tributaries to any port or ports, place or places, in France or the United Kingdom (final port). These are the termini of the voyage. But the adventure against loss in which the ship is insured does not begin till the goods and merchandise mentioned in the first paragraph of the policy have been loaded. The words in the second clause touching this point run as follows:—"Beginning the adventure upon the said goods and merchandise from the loading thereof aboard the said ship." Those words are in print, but there follow five words, the first two in writing and the following three in print. They run "*as above* upon said ship, &c." The et cetera evidently refers to the words in the earlier paragraph —"Body tackle, apparel, ordnance munitions, artillery, boat, and other furniture." The plain meaning of these words is that the adventure both as to the goods and merchandise and as to the ship and her furniture is to begin from the loading of the former on board the ship. That event affixes the beginning of the adventure for both. In no other way is it fixed. The reach of the policy, the loss it covers, is no doubt by the written words "safe arrival of ship only," restricted to the loss or injury to the ship. The printed words referring to goods and merchandise cannot, of course, extend that risk, but the above words so limit the adventure that in my view they can be looked at solely to determine what the nature and character of that adventure was. Having that effect in this case, as I think they have, then whatever be the inveterate practice of any commercial body, however eminent and distinguished, I am, I think, not only justified but bound upon this question of law, the construction of this policy of assurance, to have regard to them. Though the loss of the steamer and that alone is insured against, it was, I think, clear that the intention of the parties was that the vessel should start upon her voyage and complete a portion of it at least as a cargo-carrying ship. That this was what the parties contemplated is in addition clear from the written provision near the end of the policy. "No claim to attach thereto" for delay, deterioration, or loss of market. It has been suggested that there is no provision in the policy prohibiting the sending of this steamer from and to the named ports in ballast. No doubt there is no provision prohibiting such an adventure in so many words, but in my view there is an implied provision prohibiting it in this, that the adventure covered by the policy is one to begin with the loading of goods and merchandise, not ballast, on board the steamer. The statement of facts shows that the parties carried out that intention. She was loaded with a very miscellaneous cargo. Part of her cargo consisting of the refrigerated meat and the maize was consigned to Dakar for orders. On arriving there she was ordered to discharge this maize, the frozen meat and the eggs she carried on to Havre, and the horses she carried on to St Nazaire. During the argument I could not resist putting to myself, and indeed I fear to counsel, the question—If the voyage was not intended to end and did in fact end at her final port of discharge, St Nazaire, where was it designed to end? I concur with Bailhache, J., and, as I understand, Scrutton, L.J., in thinking that the so-called final port may, owing to the words "and/or," be situate either in France or in the United Kingdom. I assume for argument's sake, however, that the final port must be in the United Kingdom. There is nothing in the policy of assurance to fix the final port. I concur with Scrutton, L.J., in thinking that if so it can only mean the last port in the United Kingdom which the vessel enters. Well, the policy of insurance in a clause partly in print and partly written provides "that it shall be lawful for the said ship in her voyage to proceed and sail to and touch and stay at any ports or places whatsoever or wheresoever for all purposes."

There is therefore in my view no escape from the alternative, either that the voyage covered by the policy ended at the final port of discharge of the cargo, St Nazaire, or that it extended to any voyages her owners might send her upon in the coasting trade of the United Kingdom, carrying cargo from port to port in England, Scotland, or Ireland, until such time as she should pay her last visit to one of those ports, however numerous those coasting voyages might be, and whatever length of time she might be engaged in making them. There is nothing to show that Barry was intended to be the last port in the United Kingdom which she would enter.

It appears to me to be impossible to give to this policy of assurance a construction so wide as to cover the risk attending such coasting trading. And if that be so, as I think it is, then the only reasonable construction the policy can in my view receive is that which fixes the end of the voyage it covered and was intended to cover at St Nazaire, the vessel's final port of discharge. I think the decision in the case of *Moore* v. *Taylor* (1834, 1 A. & E. 25) is entirely consistent with this conclusion. In that case, as in this, the ship alone was insured. According to the headnote the insurance was made at and from St Vincent, Barbados, "and all or any of the West India Islands to her port or ports of dis-

charge and loading in the United Kingdom, during her stay there, and thence back to Barbados or all or any of the West Indian colonies until the ship shall have arrived at her final port." The vessel arrived at Barbados on the 2nd August 1821; the whole of her cargo was, as the jury found, discharged at Barbados. She then made preparation to sail from Barbados on the 11th August on another voyage but was wrecked in a hurricane on the night of the 10th. Littledale, J., in giving judgment said—"The only question for us is the construction of the policy. Now the first expression used in it relatively to the duration of the adventure is 'port or ports of discharge and loading in the United Kingdom.' The words 'final port' do not occur until a later part of the instrument, and they must be interpreted by the aid of the earlier words. I am therefore of opinion that the risk was meant to end as soon as the substantial purpose of the voyage, that is, the delivery of the cargo, was completed. I cannot agree that it was to continue while the empty ship was on a seeking voyage for a fresh cargo."

Parke, J., said—"It is contended that the adventure continued not only till the cargo was discharged but during all the time for which the vessel should be seeking a fresh cargo. But it seems to me impossible to put so wide a construction on the policy. "Final port" must mean the port which is final with reference to the goods to be taken on board in the United Kingdom."

Just as it was considered impossible in that case to construe the policy of insurance so as to cover the risk while the empty vessel was on a "seeking voyage" for new cargo, so here it is impossible, I think, to construe this policy as covering a voyage in ballast to Barry and the possible coasting trading of the ship insured from port to port in the United Kingdom. I adopt the only alternative left, as I conceive it, and construe the policy as intended to cover and actually covering the risk attending a voyage terminating at St Nazaire.

I think that the decision of the Court of Appeal was erroneous and should be reversed, that the judgment of Bailhache, J., was right and should be restored, and that the appeal be allowed with costs.

LORD BUCKMASTER—I concur. I agree in the conclusion that according to the true effect of this policy of insurance what was contemplated was a voyage that was to end with the vessel discharging her cargo, and this conclusion can in my opinion be reached without calling in aid the printed portions of the form which relate to a loaded vessel. It is therefore unnecessary to consider the extent to which the common structure of the policy affects the interpretation of the added words, and upon this question I express no opinion.

Appeal allowed.

Counsel for the Appellant—Leck, K.C.—A. R. Kennedy, K.C. Agents—Parker, Garrett, & Company, Solicitors.

Counsel for the Respondents—MacKinnon, K.C.—R. A. Wright, K.C. Agents—Ballantyne, Clifford, & Company, Solicitors.

HOUSE OF LORDS.

Friday, January 30, 1920.

(Before the Lord Chancellor (Birkenhead), Lords Haldane, Dunedin, and Buckmaster.)

PORT OF LONDON AUTHORITY *v.* ORSETT UNION.

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

Rates — Assessment — Docks — Net Annual Value—Deduction for "Tenants' Profits."

The appellants, the Port of London Authority, appealed against an assessment by the respondents upon Tilbury Docks for poor rates, claiming that in arriving at the assessable value the Assessment Committee should have made a deduction from the annual value in respect of "tenants' profits." The respondents maintained that the decision in *Mersey Docks and Harbour Board* v. *Liverpool Overseers* (1873, L.R., 9 Q.B. 84) precluded such deduction.

Held that the deduction claimed was not precluded by law, and that if and so far as *Mersey Docks and Harbour Board* v. *Liverpool Overseers* precluded Quarter Sessions from entering upon an inquiry as to the amount of profits a hypothetical tenant would expect to make, it was wrongly decided.

Remit to the King's Bench Division.

Appeal by the Port of London Authority from judgment of the Court of Appeal (BANKES, WARRINGTON, and DUKE, L.JJ.) reported [1919] 2 K.B. 1, affirming an order of the Divisional Court upon a case stated by the Essex Quarter Sessions on an appeal against a poor rate assessment made upon the appellants.

At delivering judgment—

LORD CHANCELLOR (BIRKENHEAD)—This is an appeal from an order of the Court of Appeal, dated the 24th February 1919, affirming an order of a Divisional Court of the King's Bench Division, dated the 13th November 1918.

The question now before this House arose in the course of a rating appeal to the Essex Quarter Sessions brought by the present appellants in respect of that part of their undertaking which is known as Tilbury Docks. The appellants are a public body incorporated by the Port of London Act 1908, and the docks are vested in them on the conditions laid down by that Act, which is a Public General Act.

On the 5th December 1917 the Essex Quarter Sessions made an order embodying their decision, and their findings are set out in par. 20 of the case which they subsequently stated for the opinion of the High Court:—"The Quarter Sessions in giving judgment on the said appeal fixed the gross