REPORTS OF CASES IN HOUSE OF LORDS DEALING WITH QUESTIONS OF INTEREST IN SCOTS LAW.

(Continued from page 494 ante).

HOUSE OF LORDS.

Thursday, February 16.

(Before the Lord Chancellor (Halsbury), Lord Macnaghten, and Lord Lindley.)

ELDERSLIE STEAMSHIP COMPANY *v.* BORTHWICK.

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

Ship—Bill of Lading—Liability of Shipowners for Damage to Cargo—Clauses of Exception—Interpretation—Clause Conferring Absolute Exemption—Subsequent Clause Conferring only Qualified Exemption—Seaworthiness.

The bill of lading of a cargo contained two clauses of exceptions inconsistent with each other, the first, printed in large type, conferring on the owners of the vessel an absolute exemption from liability for damage to cargo, the second, printed in smaller type, an exemption qualified by a proviso that reasonable means must have been taken to provide against defects and unseaworthiness.

The cargo was damaged by the unseaworthiness of the vessel, which might have been provided against by the owners.

Held, on the principle that effect must be given if possible to every part of a document or contract, that the first clause was qualified by the second, and that the owners of the vessel were liable in damages to the owners of the cargo. (Decision of Court of Appeal *affirmed*.)

Observed by Lord Macnaghten "that a shipowner who wishes to escape from the liability which would attach to him for sending an unseaworthy vessel to sea must say so in very plain words."

The indorsee of a bill of lading brought an action against the shipowners for damage to frozen meat shipped under the bill of lading for carriage from Melbourne to London.

The bill of lading, which was on a printed form headed "Refrigerator Bill of Lading," contained two clauses of exception, the first of which was printed in Roman type and the second in small italics.

The first clause was as follows—"Neither the steamer nor her owners nor her charterers shall be accountable for the condition of goods shipped under this bill of lading, nor for any loss or damage thereto, whether arising from failure or breakdown of machinery, insulation, or other appliances, refrigerating or otherwise, or from any other cause whatsoever, whether arising from a defect existing at the commencement of the voyage or at the time of shipment of the goods or not, nor for detention, nor for the consequence of any act, neglect, default, or error of judgment of the master, officers, engineers, refrigerating engineers, crew, or other persons in the service of the owners or charterers, nor from any other cause whatsoever." . . .

The second clause, after specifying certain matters such as the Act of God, the King's enemies, restraints of princes, proceeded, "and loss or damage resulting therefrom, or from any of the following causes or perils are excepted, viz., insufficiency in packing or in strength of packages, loss or damage from coaling on voyage, rust, vermin, . . . or by any other causes beyond the control of the owners or charterers . . . or by or from any accidents to or defects, latent or otherwise, in hull, tackle, boilers, or machinery, refrigerating or otherwise, or their appurtenances (whether or not existing at the time of the goods being loaded or the commencement of the voyage), or insufficiency of coals at the commencement or any stage of the voyage, . . . if reasonable means have been taken to provide against such defects and unseaworthiness."

The vessel upon her previous voyage had been used as a transport for horses, and in preparation for her cargo of frozen meat her owners had cleansed her with carbolic acid and other disinfectants. The cargo of meat was tainted by the fumes of carbolic acid, and the indorsees of the bills of lading brought this action against the shipowners for damages.

WALTON, J., found that the ship, being tainted with carbolic acid, was at the commencement of her voyage unseaworthy in the sense of being unfit for the carriage of her cargo, but held that the defendants were exempted from liability by the clauses of exceptions.

This decision was reversed by the Court of Appeal, which held that the terms of the bill of lading did not exempt the defendants from liability for damage caused by the unfitness of the ship to carry her cargo.

The defendants appealed to the House of Lords.

LORD CHANCELLOR (HALSBURY)—I do not think it necessary to quote any authority in this case, because, I think, construing this instrument and applying to it the ordinary canons of construction, that I must move your Lordships that the appeal be dismissed. It seems to me that if what has been called the large print had stood alone, I should not have had the smallest doubt in the world that it would have carried the shipowner the whole way. I can give no other construction to it than that which the words express, but the difficulty which is in his way, of course, is this: That he has thought proper to execute an instrument which has two different sets of phrases in it; and one rule of construction which I think prevails, and must prevail, is that you must give effect to every part of a document if you can—you must read it as a whole. He says at the commencement of it that he is not to be liable for this particular thing, but in another part of the same instrument you find another set of words which also you have to construe. Mr Carver has ingeniously spoken of independent contracts and independent paragraphs, and so on, but we must remember that this is one contract; and each of the parts of this contract must be read so as to be intelligible and to be reconciled with the others if it can be. When, as I say, at the commencement the true construction of it is, according to my view, that he is to be exempted from any liability for the particular injury that has happened, if that had stood alone I should have thought it perfectly clear that he was not liable; but instead of that he goes on to say in another part of the same contract, to which I must, if I can, give some effect because of that rule of construction from which I cannot escape—"I shall not be liable for this same injury (as I must call it) if all reasonable means have been taken to avoid it." The only mode of reading as an entire contract that instrument which has those two stipulations in it, is to suppose that you must read the first part of it thus, "I am not to be liable for this," and then what comes after it by way of exception, "I shall not be liable unless I have failed to take all reasonable means against the injury that has happened." In that way you can read the two together, and you can make a reasonable contract out of it. But reading it in the way in which it has been suggested that we should read it, as meaning, first of all, "I shall not be liable at all under any circumstances," and secondly, "I shall not be liable if I have taken all reasonable means to prevent the injury that has happened," it is impossible that you can reconcile these two together. You have in the one an absolute freedom from liability in the same case, which, according to the other, is to be treated as a qualified freedom from liability—that is, "if I have taken all reasonable means to prevent what has happened." Then what have we got to do? We have here one contract dealing with the same thing, between the same persons expressing themselves in that way. I confess that I felt for a very long time in the course of this argument that the whole thing turned upon whether you could reconcile those two parts of the contract together. I should have felt no difficulty whatever in the construction contended for by the appellants if I had found the particular part of the contract on which they relied standing alone; but then I find the other added to it; and if you are to deal with what perhaps it is not very desirable to deal with, namely, what you might think that the persons who were making the contract would understand by it at the time—I suppose that the shipper might say to himself "I see by this part of the contract that the shipowner is bound to take all reasonable means to prevent injury, and if he does not he is to be liable." Therefore, perhaps, it is more in accordance with what you would consider to be the reasonable mode of looking at the contract that you should so construe it as the person entering into it might reasonably have understood it at the time. The view which I take of the matter is that the maxim upon which the judgment of the Court of Appeal ought to be supported is this—That you must give, if you can, to a contract a meaning that will satisfy all the words of it if you can make it intelligible, and you must not reject any part of it as surplusage, or as not reconcilable with another part, if you can help it. I have pointed out what appears to me to be the only way in which these two portions of this contract are capable of being reconciled with each other; and whatever may have been the meaning of the parties at the time, I must suppose—what sometimes, perhaps, is a very violent hypothesis—that they knew exactly what they were talking about and that they intended it, but whether they did or not I must give effect to the words to which they agreed, and must reconcile them if I can. Under these circumstances it seems to me that the appeal ought to be dismissed, and I move your Lordships accordingly.

LORD MACNAGHTEN—I am entirely of the same opinion. The clause which has been called the large print clause seems to me to be perfectly clear, and the small print clause equally clear. For my part I am unable to reconcile the two, and I do think it a very wholesome rule that a shipowner who wishes to escape from the liability which would attach to him for sending an unseaworthy vessel to sea must say so in very plain words. The only way to reconcile the two clauses is to apply the qualification in the small print to the large print clause. It seems to me that by neither of the ways which have been suggested can the appeal be maintained.

LORD LINDLEY—I am of the same opinion. This is a contract between two persons, one of whom—the shipowner—prepared it. I have not the slightest doubt that the shipowner understood it as Mr Carver says he did. But when I look at it from the other side and consider whether

the shipper, the man shipping the goods, would so understand it, I say, if it were myself, certainly I should not. I should find that the defects which were to render the ship unseaworthy were only to be excepted in certain conditions—that is, if reasonable means had been taken to provide against them. That is how I should read it as a shipper, although the shipowner would not. It appears to me that the vice of Walton, J.'s, admirable judgment is that he has rather lost sight of what would be reasonably plain to the shipper. I quite agree with the principle on which the Lord Chancellor and my noble and learned friend Lord Macnaghten have proceeded in deciding this case. I agree that this bill of lading did not employ plain terms and relieve the shipowner from liability in the case of unseaworthiness—I mean by "plain terms" terms sufficiently plain to the shipper for him to understand it—he would not understand it in the sense contended for by Mr Carver.

Judgment appealed from affirmed, and appeal dismissed.

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Counsel for the Respondent—Hamilton, K.C.—Hill. Agents—Waltons, Johnson, Bubb, & Whatton, Solicitors.

HOUSE OF LORDS.

Friday, March 3.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, James of Hereford, and Lindley.)

CHAPMAN AND OTHERS *v.* PERKINS.

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

Will—Construction—Intention—Clause of Forfeiture—Forfeiture of Interest in Event of Certain Marriage—Marriage Occurring during Testator's Lifetime.

A testator by his will conferred certain interests in his estate upon his children, providing however that on the occurrence of certain enumerated events, *e.g.*, the bankruptcy of a child, or if a child contracted a marriage within a degree of kindred indicated in the will, he or she should forfeit his or her interest under the will.

During the lifetime of the testator a daughter contracted a marriage within the prohibited degree.

Held that, as regarded the forbidden marriages, the provision as to forfeiture was meant by the testator only to apply to a marriage entered into after his death, and that consequently the daughter had not forfeited her interest.

Edward Chapman by his will dated March 24, 1881, devised and bequeathed his real and personal estate to trustees, to be held by them upon trusts for the benefit of his wife and children. The will contained the following clauses:—"And I declare that if any son or daughter of mine shall do or suffer any act whether by way of alienation, charge, or otherwise, and including any act under any statutes of bankruptcy or for the relief of insolvent debtors for the time being, by reason or means whereof any part or share of him or her in any income or capital of my said estate to or of which he or she shall not have already become entitled in possession or be for the time being actually entitled to receipt, shall or but for the payment clause would become wholly or in part vested in or payable to any other person or persons, or if he or she shall contract any marriage forbidden by me as hereinafter expressed, then and in any such case his or her share, right, title, and interest of, in, and to my said trust estate and the income thereof shall thenceforth cease and determine, and my said trust estate shall thenceforth go and be held in such manner as the same would have been held if he or she had died before me without leaving any child or children at my death. And I declare that the marriages forbidden by me are in the case of son or daughter marrying with a person of any degree of kindred unless more remote than third cousin, and also in the case of a daughter's marriage contracted without the previous written consent of the trustees or trustee for the time being of this my will, or if more than two, of a majority of them."

The testator died on December 23, 1902.

On November 9, 1886, one of the testator's daughters married her first cousin.

The Court of Appeal (WILLIAMS and STIRLING, L.JJ., *diss.* COZENS-HARDY, L.J., *rev.* a decision of KEKEWICH, J.) held that as regarded the forbidden marriages, the testator's intention was that forfeiture should only take effect in the case of a marriage entered into after the testator's death, and that consequently the daughter had not forfeited her interest.

On appeal to the House of Lords their Lordships gave the following opinions:—

LORD CHANCELLOR (HALSBURY)—I do not propose to go over this elaborate argument again. It appears to me that the decision of Vaughan Williams and Stirling, L.JJ., is perfectly right. There is an intention on the part of the testator, to my mind overwhelmingly established upon the words of the will itself, and I decline to go beyond that. The argument, from the words used with reference to bankruptcy, seems to me to be disposed of by this consideration. In the cases to which reference has been made learned judges have used some such phrase as that they "have reluctantly arrived at the conclusion," or that it was "a non-natural construction of the words," but, further than that, in the cases referring to bankruptcy, there was a desire on the part of the testator that his property with which he was dealing should not go to strangers, but should go to his children, and a decided intention that the