

## HOUSE OF LORDS.

Thursday, May 21, 1908.

(Before the Lord Chancellor (Loreburn),  
Lords Ashbourne, James of Hereford,  
Robertson, and Collins.)

LARSEN v. SYLVESTER & COMPANY.  
(ON APPEAL FROM THE COURT OF APPEAL  
IN ENGLAND.)

*Ship—Charter-Party—Exceptions—Ejusdem generis*—"Or Hindrances of what kind soever."

A charter-party contained a clause exempting the parties "from all liability arising from frosts, floods, strikes, locks-out of workmen, disputes between master and men, and any other unavoidable accidents or hindrances of what kind soever beyond their control preventing or delaying the . . . shipping of the said cargo." The loading was delayed by reason of a block of other ships at the loading dock. *Held* that this was a hindrance within the terms of the exemption, and that the doctrine *ejusdem generis* did not apply to the form of words used.

An action was raised by the plaintiff (appellant) against the respondents for demurrage under a charter-party entered into by them. The defendants pleaded the clause of exemption quoted *supra* in rubric. Delay in loading had been caused by the crowded state of the harbour and a block of other vessels in the loading dock.

The County Court Judge at Hull gave judgment for the plaintiff, which was reversed by the Divisional Court (PHILLMORE and WALTON, J.J.). This was affirmed by the Court of Appeal (VAUGHAN WILLIAMS, FARWELL, and KENNEDY, L.J.J.).

The plaintiff appealed.

At the conclusion of the arguments their Lordships gave judgment—

LORD CHANCELLOR (LOREBURN)—I think that this judgment ought to be affirmed. The question is raised upon a charter-party the relevant words of which have been referred to fully. In my opinion the hindrance which delayed the shipping in this case was a block of steamers waiting their turn. I think that it was only the block which caused the hindrance. It was argued that this hindrance was not beyond the control of the charterers, because they had certain other ships which took turn before the vessel in question and so delayed her. I think that the best answer to that contention is that the facts do not establish that those vessels were responsible for the delay in question. Then Mr Hamilton argued that this hindrance was not within the words of the charter, and he invoked the doctrine of *ejusdem generis*. The language used is—"any other unavoidable accidents or hindrances of what kind soever beyond their control." Those words follow certain particular specified hindrances which it is impossible to put into

one and the same genus. It is sufficient for me to say that in the case of *Earl of Jersey v. Guardians of the Neath Union*, 22 Q.B.Div. 555, Fry, L.J., referred to words of a very similar kind and indicated what, I think, is perfectly true, namely, that you have to regard the intention of the parties as expressed in their language, and that words such as these, "hindrances of what kind soever," very often are intended to mean, as I am sure they are in this case intended to mean, exactly what they say. It is impossible to lay down any general rules for the application of the doctrine of *ejusdem generis*, but I agree with Fry, L.J., that there may be great danger in applying it too loosely. It may result, as he says, in "giving not the true effect to the contracts of parties, but a narrower effect than they were intended to have." One other point was made which I confess that I did not fully understand, namely, that this block in the harbour did not occur on or after the date of the charter. I think that it commenced before the actual hindrance of this vessel, but that it was a continuing hindrance, and I do not think that there is any ground for the objection that has been made upon that point.

LORD ASHBOURNE—I entirely agree with what has been said by my noble and learned friend upon the Woolsack. The case has been argued with great force and insistence, and it has been stated that this is in consequence of the fact that the case does not stand by itself, but there are other cases looking to it for decision. The case rests upon a statement of a very few facts which have been necessarily mentioned to us more than once during the progress of the arguments. A block for which neither of the parties was at all answerable took place in the harbour and prevented the ship from arriving at its destination—at its proper place—within the time at which otherwise it would have been quite able to arrive, and it is sought by each party to place the loss that so occurred, without any blame on either side, upon the other. It is alleged on behalf of the appellant that the block is not covered by the wide words used in the charter-party, and that the words that follow the statement of the several matters that are mentioned as grounds of excuse ("frosts, floods, strikes, locks-out of workmen, disputes between masters and men, and any other unavoidable accident") "or hindrances of what kind soever beyond their control" are to be read *ejusdem generis*, which practically means that they are to be denied all meaning whatever. Of course, if that conclusion could be reached it would be a very easy way of deciding the matter; but when parties put in words of that kind, which are obviously of considerable width, and put them in after consideration, not stopping short at any ordinary general term, but putting in "hindrances of what kind soever beyond their control," it is obvious that the more natural construction would be to assume that they meant something operative, and did not mean to use blind words to be

dismissed by the phrase that they were only *ejusdem generis*. I quite assent to the suggestion of my noble and learned friend upon the Woolsack that the words of Fry, L.J., were wise and reasonable words in the case that has been referred to, and I do not see any reason why I should be astute to discover any difference in reference to them. I can see no reason in fact or in common sense, or upon the construction of the document, why I should seek to find any special ground for excluding the block that occurred, and had the effect stated, from the general words to which I have referred. Therefore I am of opinion that the judgment appealed from should be affirmed and the appeal dismissed with costs.

LORD JAMES OF HEREFORD—I concur.

LORD ROBERTSON—I have fully appreciated the force of the argument which has been addressed to us on behalf of the appellant, an argument characterised not merely by ingenuity, but, I thought, also by great general soundness. I am bound to say that so far as I personally am concerned I should be well disposed to accede to that argument but for the words in the clause in question—"hindrances of what kind soever." I hope nothing will be deduced from our decision to-day which shakes the soundness of what is called the *ejusdem generis* system of construction, because it seems to me that both in law and also as matter of literary criticism it is perfectly sound—that is to say, that where there are specific specimens given of what are intended, a deduction is to be made from that applicable to other matters. I base my judgment solely upon this. The parties, I think, have realised, or at least may well be held to have realised, the applicability of that rule to such contracts, and they insert these words "of what kind soever" simply for the purpose of excluding that rule of construction. The effect of the insertion of these words is this—it excludes the limitation which would naturally arise from the context and gives to the word "hindrance" its full and absolute meaning. That, I take it, is the net result of this clause, and accordingly the remaining question is—giving to the word "hindrance" its full latitudes—Is the occurrence in question within it? I think that this may be solved by a very simple test. Supposing this vessel to have arrived at its further destination and to have been asked—"You are very late, what has hindered you?" the answer would have been—"The hindrance was a block in the harbour." Upon that simple ground I think that the decision which your Lordships propose is entirely in accord with what I call the net result of the clause. As I have said, I should be sorry if it were inferred from our decision that we detracted from the reasonableness and the authority of the principles of construction which are called *ejusdem generis*.

LORD COLLINS—I am of the same opinion.

LORD CHANCELLOR—I only desire to add that I agree with what my noble and learned friend Lord Robertson has said as regards the well-established rule *ejusdem generis*.

Judgment appealed from affirmed and appeal dismissed with costs.

Counsel for Appellant—J. A. Hamilton, K.C.—Bailhache. Agents—Woodhouse & Davidson, for Aske & Ferens, Solicitors, Hull.

Counsel for Respondents—Scrutton, K.C.—M'Kinnon. Agents—W. C. Crump & Son, Solicitors.

## PRIVY COUNCIL.

Tuesday, June 2, 1908.

(Present—The Right Hons. Lords Macnaghten, James of Hereford, and Atkinson, Sir Andrew Scoble, and Sir Arthur Wilson.)

### BANK OF BOMBAY v. SULEMAN SOMJI.

(ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT BOMBAY.)

Corporation—Member—Right to Inspect Corporation Documents—Interest.

A member of a corporation possesses at common law no absolute right to inspect the documents of the corporation; he must qualify some individual purpose and interest that will be served by the inspection distinct from the general interest common to all the members.

The circumstances of this case are fully stated in the considered judgment of their Lordships, which was delivered by—

LORD ATKINSON—This is an appeal from a decree, dated the 22nd January 1907, pronounced by the High Court of Judicature at Bombay (sitting in appeal from its original civil jurisdiction), by which a decree, dated the 6th August 1906, of the High Court (sitting in its ordinary original civil jurisdiction) was reversed and set aside. By this latter decree the respondent's action was dismissed with costs. The respondent is a holder of one share in the appellant company, the Bank of Bombay, one of the banks incorporated in 1876 by the Indian statute of that year entitled the Presidency Banks Act 1876. It was suggested that the respondent purchased this share for the purpose of causing annoyance to the bank, owing to the fact that some other litigation to which he was a party had been instituted against the bank and was still pending. There was no satisfactory evidence given to sustain this allegation. From the correspondence which took place between the respondent and the bank before the institution of this suit, it is in the opinion of their Lordships perfectly plain that the respondent claimed a