on this appeal. The plaintiffs were manufacturers employing workmen in their business. The defendants (as the suit was ultimately constituted) were eight persons, sued on their own behalf, and on behalf of the members of a local Toronto trade union, and also on behalf of the members of another union of wider scope. The statement of claim alleged that the defendants had conspired to injure the plaintiffs in the conduct of their business; and the first complaint was that, in pursuance of the conspiracy, the union called out the plaintiffs' men, who, in obedience to the call, went out on strike. The case went for trial, and was heard before M'Mahon, J., and jury. There was no doubt that the strike took place, and no doubt that there were resolutions of the unions directing the strike. The question relating to it was whether there was any right of action in respect thereof against the defendants. The learned Judge in charging the jury said to them—"I am going to ask you, in the questions which I am submitting, whether any of the union men who were in the plaintiffs' employment left the employment of their own volition, of their own free will, and without any regard to the resolution that was passed by the union, because if they did that, that was within their right. But if they left through the resolution that was passed, which provides that within a certain number of days, if the agreement was not signed, they would be called out and forced to leave the plaintiffs' employment, then there was an illegitimate exercise—that was a power that ought not to be exercised as against the Metallic Roofing Company. And if it was exercised to their detriment, then the union is liable in damages." The same view is expressed in subsequent passages of the learned Judge's charge, and their Lordships think that these passages cannot but have meant to the jury that the calling out of the men on strike by resolutions of the unions, if those resolutions were the cause of the strike, was an actionable wrong, without regard to motive, and without regard to the conspiracy alleged. That is a ruling which, in their Lordships' opinion, cannot be supported. It was contended, however, that at the close of the trial, before the case went to the jury, the learned Judge corrected any misapprehension which might have arisen from his earlier rulings. What passed is thus recorded—"I have asked you, gentlemen of the jury, in the first question, were the workmen of the plaintiff company wrongfully and maliciously coerced to leave its employment by the defendants or any of them? Now, if you answer that question in the affirmative, that negatives that the trade union were doing what they did in their own interest, because they were doing something that was manifestly wrong." Their Lordships think that what has been cited is insufficient to correct effectively the previous misdirection. On the ground of the misdirection already pointed out, their Lordships think that the verdict and judgment cannot be supported. They will therefore humbly advise His Majesty that the appeal should be allowed, that the judgments below should be discharged and a new trial had, that the respondents should pay the costs in the Court of Appeal and in the Divisional Court, and that the costs of the first trial should abide the result of the new trial. The respondents will pay the costs of this appeal.

Judgment appealed from reversed.

Counsel for Appellants—R. Isaacs, K.C.—O'Donoghue (of the Colonial Bar). Agents—Fox & Preece, Solicitors.

Counsel for Respondents—Lovett, K.C.—Tilley (both of the Colonial Bar). Agents—Blake & Redden, Solicitors.

HOUSE OF LORDS.

Friday, July 31, 1908.

(Before the Earl of Halsbury, Lords Ashbourne, Macnaghten, James of Hereford, and Collins.)

GREENSHIELDS, COWIE, & COMPANY *v.* THOMAS STEPHENS & SONS.

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

Ship — General Average — York-Antwerp Rules 1890-3— *Spontaneous Combustion of Cargo — "Inherent Vice" — Merchant Shipping Act* 1894 (57 *and* 58 *Vict. cap.* 60), *sec.* 502.

In adjustment of general average the damaged portion of the cargo must be taken into account as part of the loss notwithstanding that the damage is due to its "inherent vice" or peculiar liability to damage; section 502 of the Merchant Shipping Act 1894, which relieves the shipowner from liability for loss of goods by fire, does not apply in a case of general average.

The appellants were the owners of the s.s. "Knight of the Garter," and the respondents owned a cargo of coal which she carried. Damage both to ship and cargo was caused by fire under circumstances which are fully narrated in the judgment of the Earl of Halsbury. The appellants made a general average claim in respect of damage to the ship. The respondents counter-claimed in respect of the damaged cargo, but the appellants contested this on the grounds that it was a loss by fire for which they were free under statute from liability, and also that it arose from the inherent vice of the coal cargo itself. Channell, J., allowed the counter-claim, and this was affirmed by the Court of Appeal (Lord Alverstone, C.J., Buckley and Kennedy, L.JJ.).

The shipowners appealed.

At delivering judgment—

Earl of Halsbury—This is an appeal by the plaintiffs in the action against

a judgment of the Court of Appeal affirming a judgment of Channell, J., in favour of the defendants. The plaintiffs are the owners of the steamship "Knight of the Garter." The ship "Knight of the Garter" was chartered on the 23rd March 1905 to carry a cargo of coal from Calcutta to Bombay. The facts are not in dispute. The ship was loaded with 8777 tons of steam coal and 195 tons of hard coke. The vessel, being thus loaded, started from Calcutta on the 25th April. The ordinary voyage from Calcutta to Bombay is nine days. She did not reach the Hoogly bar until the 4th or 5th May, and in order to cross it she had to discharge part of her cargo into lighters and reload it outside. She left the Hoogly on the evening of the 6th May. On the 9th May smoke was seen to be rising from one of her holds. On the two following days great heat was developed, explosions were heard and fire seen, and it was decided to proceed to Colombo. During the voyage from the 9th till the 12th, when she arrived at Colombo, steam was injected into the holds in order to check the fire. Surveyors were consulted, and finally it was decided that the entire cargo should be discharged. This was accordingly done, and during this operation the coals were pumped upon, and in the end the coals were found to be damaged to the extent of 25 per cent., partly by fire and partly by water. The ship herself was also considerably damaged by the fire. An average adjustment was accordingly prepared, but its conclusions were disputed on the ground that the owners of the cargo were not entitled to any general average, because, first, the fire arose from the inherent vice of the coals shipped by them. This, indeed, was the main contention, though there were two other subordinate points to be dealt with hereafter. Mr Hamilton suggested that it was a new point, but I fail to see any novelty, or, indeed, any point at all in it. The truth is that whatever plausibility existed in the argument was due to the use of a misleading phrase—*i.e.*, "the inherent vice" of the cargo. The phrase is supposed to be justified by what is undoubtedly the fact that the coals took fire from spontaneous combustion. The phrase was used in its proper application by Willes, J., where it was pleaded as an excuse for non-delivery of a furious beast, which, notwithstanding that all reasonable means had been used by the carrier, broke loose from its place of confinement and was ultimately lost to the consignee, but without any default or error on the part of the carrier—(*Blower* v. *Great Western Railway Company*, L. Rep. 7 C. P. 655). So, of course, though the expression is in such a case figurative, it might be used when excusing non-delivery, and it might be applied to anything which by reason of its own inherent qualities was lost without any negligence by anyone. It is to the credit of the parties here that on neither side has there been any attempt to minimise or to exaggerate the facts as they are, but with all respect to the learned counsel who argued for the appellant, the result is that it is very difficult to say that there is one arguable point of law in his favour. It is absolutely clear that it is a common adventure, that it was for the safety of all, including cargo and ship, that the voyage was put an end to at Colombo, and the measures properly and prudently taken to save both. *Prima facie*, therefore, it was clearly a case of general average, and, as I have pointed out, it is the misleading phrase "inherent vice" which has lent plausibility but an absolutely fallacious effect to the argument. With respect to the point under the York-Antwerp incorporated section of these rules, upon which Channell, J., decided the case, I am unable to agree with him, since if the point which I have dealt with here is a good one, I do not see how the incorporation of the York-Antwerp rule affects the question one way or the other. As to the point under the statute, I agree with the Court of Appeal that it is much too late to raise such a point now even if there were more in it than I think that there is. The real answer, however, is that the statute is not dealing with average at all, and this has been in effect decided long ago either upon the words of this statute or words which would have raised the same point in other statutes. I confess myself unable to see any novelty in this case. It is not denied that there was a common adventure, or that there was a common danger, that there was a sacrifice voluntarily made for the common advantage of all, and that the circumstances show nothing which should exempt either party from the obligation to make good the sacrifices made for the common advantage of both. The judgment of the Common Pleas in *Johnson* v. *Chapman* (19 C.B.N.S. 563), delivered by Willes, J., where he states the English law to be that no one can maintain an action for a wrong where he has assented to or contributed to the act that occasioned his loss—this is undoubtedly good law, but here the facts do not raise that question at all; the shipowner is a party to taking in his ship the coals, with which it is assumed that both parties are equally familiar and their liability to spontaneous combustion, and all the other circumstances—climate, and quantity, and depths of hold, and the peculiarities of the River Hoogly—are equally known to both. I am therefore of opinion that this appeal ought to be dismissed, with the usual result as to costs.

Judgment appealed from affirmed.

LORDS ASHBOURNE, MACNAGHTEN, JAMES OF HEREFORD, and COLLINS concurred.

Counsel for Appellants—J. A. Hamilton, K.C. — Maurice Hill. Agents — Waltons, Johnson, Bubb, & Whatton, Solicitors.

Counsel for Respondents—Scrutton, K.C. —M'Kinnon. Agents — Thomas Cooper & Co., Solicitors.