

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

of the first schedule to the Workmen's Compensation Act 1906 the employer is entitled to redeem by payment of a lump sum a weekly payment which has been made for six months to the injured workman in a case where the weekly payment does not represent the full compensation due under the Act.

The appellant is a collier who in the employment of the respondents on the 13th August 1910 had an accident which resulted in lameness. His wages had been £1, 16s. 4d. a week. For three years the respondents paid him half wages (18s. 2d. a week) on the basis of total incapacity. He partially recovered, and they ceased to make these payments in July 1913. The appellant thereupon made application in the County Court for compensation under the Act, claiming 18s. 2d. a week. After some correspondence a settlement was arrived at by letters of the 3rd and 4th October 1913 on the following terms—(1) That the company should find Clawley a house to live in near the colliery; (2) that they should find him work in the screens at which he could sit down; (3) that they should pay him wages at which he could earn £1, 7s. 6d. a week, and that they would pay him in addition 8s. 10d. per week compensation.

Clawley accepted work and continued to work on these terms till November 1916, except that he did not occupy the house offered under the first term of the agreement. On the 21st November 1916 the Colliery Company applied under clause 17 of the first schedule to redeem the weekly payment of 8s. 10d. Clawley denied their right to redeem unless by agreement. The County Court Judge found that the incapacity was permanent "to the extent at least of the weekly payment of 8s. 10d.," and awarded that it should be redeemed at the fixed rate, which was agreed at, £221, 6s., but added a declaration that the redemption was without prejudice to the continued validity of the other terms of the agreement of October 1913, and also without prejudice to any further liability of the Colliery Company to pay further compensation if at any time it should be found that the incapacity had increased. The Colliery Company appealed against the declaration that the redemption was without prejudice to the other terms of the agreement and the further liability, and the workman entered a cross-appeal against the award of redemption on the ground that it was not a weekly payment which was redeemable.

The Court of Appeal were divided in opinion. They all agreed that the declaration as to the continuance in force as to the other terms of the agreement and as to possible further liability was wrong and must be set aside, but they differed on the question whether the weekly payment was capable of being redeemed under clause 17. Bankes, L.J., held that it was not capable of being redeemed, as in his opinion the term "weekly payment" in clause 17 should be confined to cases where the weekly payment represents the full measure of the compensation to which the workman is entitled. Lord Cozens-Hardy, M.R., and Warrington,

L.J., held that the weekly payment in question was capable of redemption as the language of clause 17 was general, and in their opinion not confined to cases in which the payment represented the whole amount of liability. The order of the Court of Appeal was that the appeal of the Colliery Company should be allowed, that the award be wholly set aside, and that (subject to the workman being afforded an opportunity, if he so desired, of applying to review the weekly payment under clause 16 of the first schedule) the proceedings to redeem should be remitted to the County Court Judge to determine whether the incapacity of the workman was or was not permanent within the meaning of the word in clause 17 of the first schedule, and to make an award accordingly final and complete. There were further directions as to costs.

In my opinion Bankes, L.J., was right in the construction which he placed upon clause 17 of the schedule. It is obvious that the redemption under clause 17 was to be a final settlement of all liability on the part of the employer. This it would be if the weekly payment represented the whole compensation to which the workman was entitled under the Act. But where the weekly payment does not represent the whole but only the balance of liability which remains after taking into account any benefits or advantages which the workman may receive from the employer and which may or may not be continued, a final settlement by redemption of the weekly payment would be grossly unjust to the workman. The true measure of compensation in such a case is the weekly payment plus so much of the benefits or advantages conceded by the employer as will make up the difference between the statutory liability and the agreed weekly payment, and to cancel the whole liability by redemption of a part only would result in the workman being deprived of a part of the compensation to which he is entitled. This injustice the County Court Judge tried to correct by preserving intact the other terms of the agreement. It appears to me that this was not competent on an application under clause 17. The County Court Judge had no power to make such an award. He could not make binding the other terms of the agreement if they were in their nature not enforceable as is the case here; indeed the award does not profess to give any efficacy to the other terms which they had not already—it merely says that the redemption is not to prejudice the other parts of the agreement. The benefits or advantages in respect of which the weekly payment was less than it otherwise would have been may not be secured by any agreement at all, and where there is an agreement it may be, as here, of such a nature as not to be readily enforceable at law. The difficulties of working out redemption under clause 17 in any case in which the weekly payment does not represent the whole measure of liability affords a strong reason for the reading of that clause which commended itself to Bankes, L.J.

The wording of the clause points strongly to this conclusion. The clause applies only

where the weekly payment has been continued for not less than six months. This is quite intelligible if the weekly payment represents the whole statutory liability. Payment for six months of that amount is regarded as an indication that the amount of the statutory liability may be treated as fixed, so that the final settlement may fairly be arrived at by payment of a lump sum on that basis. The provision as to six months' payment is quite unintelligible if the payment does not measure the liability but merely represents a balance of liability after taking into account other benefits or advantages which may be in their nature precarious. If the weekly payment measures the statutory liability the working of clause 17 is simple and comprehensible. On the view adopted by the majority of the Court of Appeal the difficulties of working it out are insuperable. It is no answer to say that the workman may apply to have the weekly payment increased on the footing that he gives up the other benefits or advantages which he has enjoyed and that redemption would then be fair. The whole question here is whether the employer is entitled to redeem a weekly payment which does not represent the whole liability.

The redemption is to be of a weekly sum which has been actually paid for not less than six months. This renders it impossible to have an award for redemption of the weekly sum plus so much of the other benefits or advantages as makes up the amount of the statutory liability, and yet no redemption on any other basis would be fair.

Cases might conceivably occur in which a portion of the statutory liability of the employer had been obliterated by an executed consideration, it might be by the payment of a lump sum, the conveyance of the fee of a cottage, or the purchase of a Government annuity for the workman, and there might be a payment of a weekly sum representing the margin of statutory liability which had not been so extinguished. In such a case redemption of the weekly payment would totally extinguish all that was left of the statutory liability. The application of clause 17 even to such a case was, however, contested by the counsel for the appellant, and the facts of the present case are so remote from the case supposed that it is not necessary to decide anything upon it.

On the view which I have above expressed as to the meaning of clause 17 it is unnecessary to remit for consideration the question whether the incapacity should be considered as permanent within the meaning of clause 17.

For these reasons, in my opinion, the judgment of the Court of Appeal and the award should be set aside and the application to redeem remitted to the County Court Judge, as it is possible that an application for revision may be made. The appellant should have his costs of this appeal and also of the proceedings which have taken place in the County Court and in the Court of Appeal.

VISCOUNT HALDANE—In this case the appellant was injured in 1910 by the accident

of a fall of coal. The respondents, his employers, admitted liability and paid compensation as from August in that year. The average weekly earnings of the appellant before the accident were £1, 16s. 4d., and compensation was paid him at the rate of one-half, amounting to 18s. 2d. a week. In June 1913 payment of compensation on this footing was discontinued, and the appellant filed a request in the Barnsley County Court to enforce such payment. The appellant had recovered from his injuries sufficiently to be able to do light work, and in the end an agreement was made in October 1913 between him and the respondents to the following effect—The respondents were to find for the appellant a house near the colliery which he was to rent from them, they were to give him work at which he could sit down, and they were to pay him wages by which he could earn £1, 7s. 6d. a week, and were in addition to pay him 8s. 10d. a week. These two sums were equivalent to his weekly wages before the accident.

The question before us arises on an application made in November 1916 by the respondents to redeem the weekly payment of 8s. 10d. under the provisions of the Workmen's Compensation Act 1906, schedule 1 (17). That clause of the schedule provides that where any weekly payment has been continued (as was here the case) for not less than six months "the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to 75 per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration." The learned County Court Judge in a very careful and full judgment found that the incapacity of the appellant was permanent to the extent at least of the weekly payment of 8s. 10d. in the sense that his earning capacity had been thus diminished permanently to an extent measured at the lowest by 8s. 10d., and might thereafter prove to have become diminished still further, so that on review under the provisions of the Act increased compensation might have to be paid, and he made a declaration to this effect. Subject to this he ordered that the respondents should be at liberty to redeem the weekly payment of 8s. 10d. for £221, 6s., an amount agreed on as correct, but merely on the footing that there was a right conferred by the Act to redeem that payment standing by itself. He also declared that the redemption was to be without prejudice to the continuing validity of the remaining terms of the agreement, and to any further liability of the respondents to pay larger compensation to the appellant if at any time it should be found that the capacity of the appellant had been diminished below the average weekly earning capacity of £1, 7s. 6d. in consequence of the injury.

The respondents appealed to the Court of Appeal, and that Court reversed this judgment, and held that, subject to the appellant being afforded an opportunity of applying to review the weekly payment, the proceedings should be remitted to the County Court to determine whether the incapacity of the appellant was or was not permanent within the meaning of clause 17 of the schedule, and to make a complete award accordingly. They held that the finding must be set aside because the County Court Judge had not found that the incapacity was permanent, and also because as an award under clause 17 must be final and conclusive he had no jurisdiction to insert in it a declaration as to future liability. They further held by a majority (Lord Cozens-Hardy, M.R., and Warrington, L.J.) that the 8s. 10d. was a weekly payment within clause 17, notwithstanding that it formed part only of the entire compensation to which the appellant was entitled, and that it was therefore redeemable. Bankes, L.J., dissented, thinking that the case was one in which no order for redemption could be made, inasmuch as an order for redemption once made was final and extinguished every claim, and that the weekly payment under consideration was not one which was of the nature contemplated by clause 17. This point was directly raised on a cross-appeal by the appellant.

In order to come to a conclusion as to which of the views was the true one it is necessary to look at the Act as a whole. Section 1 enacts that if the workman suffers, as here, personal injury by accident in his employment, he is to be entitled to compensation in accordance with the first schedule. That schedule provides, clause 1 (b), that where total or partial incapacity results from the injury a weekly payment during the incapacity not exceeding 50 per cent. of the workman's average earnings is to be the compensation, but that the weekly payment is not to exceed £1. Clause 3 provides that in fixing the amount of the weekly payment regard is to be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of the incapacity, and that in the case of partial incapacity the weekly payment is not to exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper. By clause 16 of the schedule any weekly payment may be reviewed at the request either of the employer or the workman, and the amount, in default of agreement, shall be settled by arbitration. Clause 17 I have already quoted as providing, where any weekly payment has been continued for six months, for redemption.

After considering the statute as a whole I have come to the conclusion that Bankes, L.J., was right in holding that the weekly payment of 8s. 10d. was not such a payment

as was redeemable under the provisions of clause 17 of the schedule. It will be observed that what is to be redeemed is "the liability for such a payment." Now although the language used is far from clear, I do not think that it ought to be held as importing that the whole of the liability of the respondents is to be extinguished by redemption of what is merely a part of it, or that clause 17 should apply where the provisions of clause 3 have operated, under which the amount of the weekly payment has been diminished to allow for other benefits received. The Act read as a whole plainly signifies that the workman is to have the full compensation contemplated by the initial part of the schedule. No doubt it assumes that a weekly payment may form an element in this compensation. But clause 3 plainly indicates that it is not necessary to exhaust it. Other benefits received from the employer may be taken into account, if received, in diminishing it at least temporarily, and the payment is always made subject to review under section 16. Can it have been intended to enable the employer to get rid of his liability for any addition to the weekly payment to which the workman may be entitled under clause 3, and which has been omitted merely because its place is for the time taken by the other benefits? I am of opinion that so to hold is to deprive the workman of what is clearly his right under the Act, and that it should not be so held if any other construction be possible. Reading the statute as a whole, I think that the expression in clause 17, "liability therefor," must mean a liability to the actual amount paid weekly only in cases where the amount of the weekly payment covers the liability. I do not think it was intended to extinguish by payment of a sum that may be quite inadequate the liability for the residue of the compensation which the earlier words confer by a clear title.

I find myself compelled by the intention to be collected from the Workmen's Compensation Act read as a whole, to interpret the words in clause 17 giving power to extinguish liability for a weekly payment which has continued for six months as confined to the case where the weekly payment is the full equivalent of the total compensation. On this point I agree with what was said in the Court of Appeal by Bankes, L.J.

I am therefore of opinion that we ought to discharge the orders both of the County Court Judge and of the Court of Appeal and remit the case to the County Court Judge to be dealt with, if it be desired, on the footing that redemption is inadmissible unless a weekly payment representing the entire compensation to which the workman is entitled has been adjusted. I refrain from expressing any opinion on the point which has not yet arisen and has not been argued—whether before redemption is treated as admissible the whole of such a full weekly payment must have been paid for six months.

LORD SUMNER—I concur. I have had

the advantage of reading and considering the opinion about to be delivered by my noble and learned friend Lord Wrenbury, and I entirely agree with it.

LORD WRENBURY—The workmen having suffered personal injury by accident, so as to give rise to a claim for compensation under the Act, made on the 15th September 1913 a claim for compensation accordingly. After negotiations the employer and the workman in October 1913 agreed to terms which shortly were (1) that the employers should find the workman a convenient house; (2) that they should find him certain employment at which he could earn 27s. 6d. a-week; and (3) that they should "pay him in addition 8s. 10d. per week compensation." The 27s. 6d. and 8s. 10d. together made up his full previous wage of 36s. 4d. On the 21st November 1916 the employers applied to the Court "with respect to the redemption of the weekly payment payable to the said Joseph Clawley under the said Act in respect of personal injury," &c. I note in particular the words "payable to the said Joseph Clawley under the said Act." They asked to redeem that for which the Act rendered them liable, whatever that was. The question is whether any order can be made for redemption, and if so what form of order is possible.

The County Court Judge made an order redeeming the 8s. 10d., and adding a declaration that the redemption was without prejudice to the continuing validity of the remaining terms of the agreement. In other words, he redeemed part and preserved the rest of the benefits which the agreement reserved to the workman. The Court of Appeal set aside that decision and remitted the matter to the County Court Judge in terms which it is for the moment unnecessary to state. The workman appeals.

The question turns upon the provisions of certain clauses in the Act, and in particular of clauses 16 and 17 of the first schedule. Of these clauses 17 is chief.

The first question I propose to consider is whether clause 17 applies at all to this agreement as it stands.

The frame of the Act is that (section 1 (1)) the employer is liable to pay compensation in accordance with the first schedule, and (section 1 (3)) if any question arises in any proceedings under the Act as to the liability to pay compensation, the question, if not settled by agreement, shall, subject to the provisions of the first schedule, be settled by arbitration in accordance with the second schedule. The question therefore may be, and in this case it was, settled by agreement.

If the matter had not been settled by agreement the compensation would under Schedule 1 (1) (b) have taken the form of a weekly payment. That weekly payment would have had three characteristics—first, it could not exceed 50 per cent. of the average weekly earnings (Schedule 1 (1) (b)) (in the present case that would be 18s. 2d.); secondly, in fixing its amount regard would be had to any payment, allowance, or benefit which the workman might receive from the employer (Schedule 1 (3)); and thirdly, it

would be not fixed but capable of alteration according to altered circumstances. It could be reviewed, and on review might be ended, diminished, or increased (Schedule 1 (16)). Mr Shakespeare has argued—and I see no reason to dissent from the argument—that the words "weekly payment" in clause 17 have exactly the same meaning as if the word "compensation" were substituted for them. That clause authorises redemption of "the liability therefor," that is to say, redemption of the liability for the weekly payment (the compensation) with all the three characteristics above stated. The redemption under clause 17 must, I think, be a redemption of all or nothing. If it is impossible to redeem all there can be no redemption at all.

If the compensation is fixed not by proceedings under the Act but by agreement (which the Act allows), and the agreement is that a certain weekly payment shall be made and nothing more, there is no more difficulty in a redemption under clause 17 in that case than if the amount had been fixed by arbitration. But that is not here the case. The agreement is that the workman shall have (1) the right to a house, (2) employment at 27s. 6d. a week, and (3) a weekly payment of 8s. 10d. The two former are not capable of redemption, although, of course, they could be terminated as they were created by agreement. The 8s. 10d. is capable of redemption, but there are two objections to that, viz.—first, that redemption of that benefit without redemption of the rest is not within the Act if I am right in thinking that redemption must be of all or nothing; and secondly, that the 8s. 10d. is not either by agreement or by arbitration the statutory weekly payment by way of compensation. It is a contingent contractual sum to which the parties have agreed as being satisfactory to both so long as certain other benefits are enjoyed. It does not follow that the man's working capacity is reduced to 27s. 6d. a week, or that the parties have agreed that it is so reduced because the employer has agreed to find him work at that wage. It may be that it is reduced to 20s. a week, and that the weekly payment by way of compensation would be 16s. 4d. Further, the benefits which the workman enjoys under the agreement are not (when translated into money, if they can be so translated) the amount required to make good to him his loss of earning power. They amount in the aggregate to the pecuniary equivalent of his whole earning power as if he had lost none. To redeem upon the footing of those benefits would be to redeem upon the footing of 100 per cent., not of 50 per cent., of his previous wages. In my judgment clause 17 does not apply at all to the redemption of this agreement as it stands.

But it does not follow that the employer is excluded from the statutory benefit of redemption from his statutory liability. I have already pointed out that the weekly payment by way of compensation is not a fixed thing, but a thing variable according to altered circumstances. And the concluding words of section 3 of the Act prevent

contracting out of the Act. Subject to a saving which is not applicable here "this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act." The existence of the agreement therefore is no impediment to a resort to the provisions of the Act to ascertain what is the statutory weekly payment, and to an application for redemption of all liability therefor. This may, I think, take the form either of an application for review under Schedule 1, clause 16, or of an application to fix the statutory weekly payment on the footing that there is no such agreement as that of October 1913. The agreement is one which is obviously incapable of being enforced according to its terms by either party. If the employers are minded to discontinue it and to ask for a decision upon their statutory liability they are at liberty to do so. When the statutory weekly payment has been ascertained there may be no difficulty in making an order for redemption.

From the foregoing it follows that the order of the County Court Judge was, in my opinion, erroneous, for he redeemed part and preserved the rest. The Court of Appeal set aside that order, and while indicating that it was open to the workman (not the employer) to apply for review under clause 16, remitted the matter to the County Court Judge to determine whether the incapacity of the workman was "permanent" and "to make an order accordingly final and complete." Their order therefore proceeds upon the footing that although the workman might apply under clause 16 for review, it was competent to the Judge to redeem the agreement as it stands. For the reason I have given I think this also is erroneous.

In my judgment both orders below should be discharged and the matter remitted to the County Court Judge. If the employer proceeds with the application as it stands and without making any application to review or to fix the statutory compensation, the Judge will no doubt deal with it accordingly. If either employer or workman makes some application such as above a different result may ensue. It will be for the County Court Judge to decide what the statutory compensation is, and whether in the language of clause 17 "Any weekly payment has been continued for not less than six months." Neither question arises upon this appeal. As to the latter I expressly reserve my opinion upon it, and guard myself by saying that I must not be taken to assent to the Lord Chancellor's expression of opinion that "the redemption is to be of a weekly sum which has been actually paid for not less than six months." The proceedings up to the present time seem to me to have been misconceived. As regards the costs, I agree with the order proposed by the Lord Chancellor, including the order as to costs.

I have also purposely abstained from saying anything as to the meaning of "permanent." The question does not at present arise for decision.

Their Lordships set aside the orders of

the Court of Appeal and the County Court Judge, and remitted back to the latter, with expenses to appellant.

Counsel for the Appellant—D. Hogg, K.C.—Shakespeare. Agents—Corbin, Greener, & Cook, for Raley & Sons, Barnsley, Solicitors.

Counsel for the Respondents—Bairstow, K.C.—A. Neilson. Agents—Barlow, Barlow, & Lyde, for Wilmshurst & Stones, Huddersfield, Solicitors.

HOUSE OF LORDS.

Monday, July 29, 1918.

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

BRADLEY AND OTHERS *v.* NEWSUM, SONS, & COMPANY, LIMITED.

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

Ship — Freight — Whether Due when the Crew had Abandoned the Ship under Compulsion by the King's Enemies.

The appellants, owners of the ship "J.," had contracted to deliver at Hull a cargo belonging to the respondents. Off the Firth of Forth the ship was torpedoed by an enemy submarine, and the master and crew were compelled to take to their boats under threat of violence. Further explosions were heard on board, and the ship was left apparently in a sinking state. The crew were picked up and taken to Aberdeen, where the master announced that his ship had been sunk. In fact, however, the ship had not sunk and was towed to Leith by salvors. Meantime the appellants' agents had advised the respondents of the loss of ship and cargo. The respondents having heard of the arrival of the ship at Leith claimed to elect to take possession of their cargo at Leith and that no freight was due. The action was brought by the respondents for delivery of the cargo.

Held (dis. Lord Sumner) that the ship had been abandoned in circumstances which indicated no intention not to perform the contract, and that the appellants' agents' letter did not amount to notice of abandonment of the contract so as to entitle the respondents to receive the cargo free of freight.

The facts appear from their Lordships' considered judgment:—

LORD CHANCELLOR (FINLAY)—This case relates to a contract for the carriage of cargo of timber from Archangel to Hull on the steamship "Jupiter," and the question is whether the cargo-owner, the plaintiff of the action and now respondent, was entitled without payment of freight to demand delivery of the timber at Leith, to which place the vessel had been brought by salvors. The claim rested on the contention that the