antecedent and radical business of assessing. Accordingly, when we are told that we are to look to the other Act for not only the "manner" but the "power" of assessing, it looks as if we might close the Act of 1897 in the meantime and study the earlier Act.

But then we are told that the 136th (the referring section) must be read along with and limited by the 137th section, and the latter in terms speaks of the assessment as one which shall be imposed on "all lands and heritages within the district." This, it is said, charges, as it were, the reference to the other Act with the condition that there are to be no exemptions.

I do not think this sound. It seems to me that this theory is distinctly negatived by the 136th section—the referring one—itself. For when it (in the words above quoted) authorises the assessment to be made "in like manner and under the like powers as" the other assessment, it clogs the reference by one condition only, and that is as to the limited amount of the assessment laid down in 137. This seems to me to exclude further limitations, and when one, in the light of these words, turns again to the 137th section, one sees that that is the substantive effect of the section. The rest (the words now founded on) are parenthetical. The words "all lands and heritages" may fairly be read as all lands and heritages to assess which power has just been given in the 136th section. I do not say that this is the necessary meaning, but when I find the 136th section putting a gloss on the 137th section and reading it as containing one qualification only of the reference to the other Act, and that with reference to amount, I can only say it is not merely final but reasonable.

Now, turning to the Burgh Police (Scotland) Act for the powers of assessment, there is no doubt some difficulty at first sight in threading the labyrinth. The reasoning of the Lord Ordinary, however, is so close and accurate that I can best state my view by referring to his judgment down to and until he reaches the stage of considering whether the assessment authorised by the Greenock Police Act was an assessment corresponding to the General Improvement Assessment of the Act of 1892, which is the Act to which we are referred by the Public Health Act. I think with the Lord Ordinary (to put it a little more fully) that the 373rd section, which deals with exemptions, is part of the code incorporated in the Public Health Act 1897 by the reference to the Act of 1892, and that the only question remaining is whether the Police Acts in force in Greenock had "corresponding" provisions to those in the Act of 1892. In my judgment the affirmative has been demonstrated by the passages in parallel columns printed in the appendix. Those passages were not before the Lord Ordinary, and I do not doubt that, had he known of them, his judgment, which up to that point led straight in the appellants' favour, would have given them his decision.

I am of opinion that the appeal ought to be allowed.

Interlocutors appealed from reversed with costs.

Counsel for the Pursuers and Appellants—C. A. Cripps, K.C.—Macmillan. Agents—W. B. Rainnie, S.S.C., Edinburgh—A. & W. Beveridge, Westminster,

Counsel for the Defenders and Respondents—Ure, K.C.—M'Lennan. Agents—Cumming & Duff, S.S.C., Edinburgh—John Kennedy, W.S., Westminster.

Friday, August 4.

(Before the Lord Chancellor (Halsbury), and Lords Davey, James of Hereford, and Robertson.)

ARDAN STEAMSHIP COMPANY, LIMITED *v.* WEIR & COMPANY.

(In the Court of Session January 19, 1904, reported 41 S.L.R. 230, and 6 F. 294.)

Ship—Charter-Party—Damages for Detention — Charterers' Obligation to have Cargo Ready—Custom of Port.

Held (*rev.* the judgment of the First Division) that the obligation of the charterers of a ship to have the cargo ready as soon as the vessel is in ordinary course ready to load, being apart from special stipulation express or implied an absolute obligation, distinct from the obligation to load, it was no defence to an action of damages for detention, brought by the owners of a ship which had been chartered to go to a certain port and there ship a cargo of coals that the vessel by the custom of the port had not been given a loading berth, inasmuch as the reason why she had not been given a loading berth was that she had not a loading order, her cargo being not yet available because the colliery was under obligation to load vessels in their turn and there were two other vessels to be loaded first.

Little v. *Stevenson & Company*, [1896] A.C. 108, *explained* and *distinguished*.

The case is reported *ante ut supra*.

The Ardan Steamship Company, Limited (the pursuers) appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—This is an action upon a charter-party. The vessel "Ardandearg" was chartered "to proceed to such loading berth as the freighters may name at Newcastle, New South Wales, and after being in loading berth as ordered to load in the usual and customary manner a full and complete cargo of Australian coals, as ordered by charterers, which they bind themselves to ship." Then follow certain exceptions which do not become relevant to this case.

Now, the "Ardandearg" arrived at her destination on 14th July 1900 and was then ready to load her cargo. If the respondents

had provided cargo at that date the vessel could have been loaded, and for that purpose would have at once obtained a loading berth.

There was no cargo ready for her, however, until 13th August, and even then not enough. She had twice to be moved from her berth under a very reasonable regulation at the port that a vessel should not be permitted to occupy a berth when not loading, and as there was no coal for her she had, as I say, twice to be moved, and her loading was only completed by 23rd August.

Under these circumstances the plaintiffs brought an action for the loss and damage they had sustained in respect of the detention of the "Ardandearg."

Now, it cannot be denied that the merchant is under an absolute obligation to furnish the stipulated cargo, and I do not understand upon what theory the First Division of the Court of Session overruled the judgment of the Lord Ordinary.

With great respect to their Lordships, I may say generally that I think there has been some confusion between the supply of a cargo and the obligation to load and the qualifications thereof.

I am very sorry if any observations of mine or of the late Lord Herschell have been supposed to throw any doubt upon so well-recognised a principle of commercial law as that a merchant is under an absolute obligation to supply the cargo.

The case which is supposed to have created the doubt is *Little* v. *Stevenson & Co.* (L.R. Appeal Cases, 1896, page 108), and the passage referred to is at page 116, beginning—"The proposition of law disputed was that a merchant must be always ready with his cargo at all times and in all places, and under all circumstances, to take advantage of any such contingency if it should arise."

The passage itself should be referred to, and Lord Herschell's, which is at page 118, three lines from the bottom:—"It is alleged that the obligation existed in point of law, that at all ports, under all circumstances, however unreasonable it might be to anticipate such a contingency, however deficient the quay might be in the means necessary for storing or protecting or preserving cargo, whatever difficulties there might be, in short, that was an obligation always resting upon the shipper."

I thought then, and I think still, that to use Lord Herschell's language, such an obligation on the shipper would be most unreasonable.

But what relevancy had such a case to the case before your Lordships. The controversy turns, as the Lord Ordinary finds, upon the true construction of the charter party in view of the facts as proved.

I also agree with the Lord Ordinary that delay in the loading is one thing, and the failure to provide a cargo to load is another and a very different thing. He found as a fact that the failure of the defenders to perform their primary duty of providing a cargo was the cause of the delay.

I am not quite certain that I understand the second ground upon which it is contended that the ship was liable for delay in arriving at her chartered port. It seems to me that under the circumstances detailed by the master it was quite reasonable for him to do what he did. But, of course, however reasonable, if it were a breach of contract the reasonableness of the master's conduct would be no answer. But I fail to discover where is the contract of which it is a breach. She arrived before the cancelling clause, and I am unable to follow the argument which is supposed to establish her responsibility.

I think it is quite immaterial to discuss cases in which it is either proved or assumed that there are particular circumstances known to both the parties and with reference to what they may be supposed to contract, which may affect both the providing and the loading of the cargo. It is enough to say that no such question arises here, and I am of opinion that the judgment of the Lord Ordinary ought to be restored and the judgment of the First Division reversed.

LORD DAVEY—I am of opinion that the decision of the Lord Ordinary in this case was correct; and I am so well satisfied with the reasons for his opinion given by him that I should be content to simply express my agreement were it not that we are differing from an unanimous judgment of the Inner House.

Lord Pearson has held that the delay complained of was caused not by the exceptional congestion of shipping but by the failure of the defenders (the present respondents) to perform their primary duty of providing a cargo, and that there are no clauses in the charter-party which on a sound construction will excuse the respondents for the delay.

In the case of *Postlethwaite* v. *Freeland* (5 A.C. 599, at p. 619) Lord Blackburn in advising this House said—"I am not aware of any case contradicting the doctrine that in the absence of something to qualify it the undertaking of the merchant to furnish a cargo is absolute." It has been argued that this doctrine was departed from and the obligations of the shipper or charterer to have his cargo ready were expressed in a less absolute form in some observations of the Lord Chancellor and Lord Herschell in *Little* v. *Stevenson* (1896, A.C., 108). I do not understand that to be so. I think that what was there laid down must be read with regard to the facts of that case, and that all that was meant was that the shipper's or charterer's obligation is only to have his cargo ready when the ship is ready to receive it in ordinary course, and that he is not bound to be prepared for a contingency or fortuitous circumstance not contemplated by either of the parties.

There is nothing to be found in the charter-party in the present case which, in my opinion, should be held to qualify this absolute obligation of the respondents. The exception of riot, &c., "and other causes beyond the control of the charterers which may delay her loading," in my

opinion, applies only to the process of loading the cargo when ready, and not to delay in providing the cargo. It has frequently been laid down, and may be taken to be established law, that the mere existence of circumstances beyond the control of the shipper, which makes it impracticable for him to have his cargo ready, will not relieve him from paying damages for breach of his obligation—(*Adams* v. *Royal Mail Steam Packet Company*, 5 C.B., N.S., 492, and *Ford* v. *Cotesworth*, L.R., 4 Q.B. 127, at p. 134). In *Gardner* v. *Macfarlane*, 20 R. 414, the circumstances were very similar to those in the present case. The Lord Ordinary (Lord Low) there says, at p. 421 N.—"I am of opinion that difficulty in obtaining a cargo on account of the output at the colliery which the charterers had selected being restricted is a matter with which the shipowners are not concerned, and the consequences of any delay arising therefrom must fall on the charterers." I think this is a correct statement of the law and is applicable to the present case. It has, however, been held that where the cargo is to be provided from a particular place, and the charter has been made in view of circumstances by which, as both parties know, the procuring of a cargo from that place may be delayed, the charterer is excused, and in that case the known causes of delay may be taken into account in considering whether the cargo was furnished within a reasonable time—(*Harris* v. *Dresnan*, 23 L.J. Ex. 210). I think that the opinion of the Lord President was founded on some such consideration. His Lordship thought there were circumstances in this case known to both parties which prevented the obligation of the charterers possessing the absolute character alleged. The learned Judge referred to the evidence on cross-examination of Mr Clark, a member of the firm who were managing owners of the vessel and effected the charter-party with the respondents for this voyage. Mr Clark appears to have had some previous experience with regard to sailing ships loading cargoes of coal at Newcastle; but he did not know with what colliery the respondents would make arrangements, and in fact he did not know the various collieries at Newcastle, and only knew some of them by name. But even if he must be taken to have known the usual and customary manner or the conditions of loading at the port that is not the point. The complaint here is not of delay in loading but of delay in procuring the cargo. The respondents, it should be added, do not appear themselves to have been aware, when they effected the charter, of any difficulty there might be in procuring the cargo at the colliery they selected.

It is proved by the evidence of the berthing master at Newcastle that he could have given a berth to the "Ardandearg" on the 14th July 1900, the day following her arrival in the port, if coal had been ready for her. But it appears that by a very reasonable regulation of the port a vessel is not allowed to occupy a loading berth until she has received a loading order from the colliery. I am not sure that I clearly understand the argument which the respondents found upon this regulation. It seems to be argued that the ship was not ready to be loaded until the cargo was ready for her, and therefore (I suppose) the cargo was provided as soon as she was ready for it, which looks like an argument in a circle. Putting what is in truth the same argument in another way, it is also said that by the regulation "the turn of the colliery" becomes incorporated in and forms part of "the turn of the port," and therefore that the delay took place from the practice of the port, over which the respondents have no control and which they had no power to displace for the benefit of this particular ship. This, I think, is the main ground of Lord Kinnear's opinion. But however the argument is put I cannot accede to it. It appears to me that it is only putting the old question in another way. By whose default was it that the ship did not get a loading order? The answer, in my opinion, can only be that it was the default of the respondents in not providing the cargo when the ship was ready to go on the berth to receive it. It is said that the respondents did nothing unreasonable. Be it so. But through their misfortune (it may be) they have failed to perform their contract with the shipowers. In short, the respondents have not satisfied my mind that it was any part of their contract with the appellants that the latter should await the turn of the colliery or take the risk of the cargo not being ready. And I am of opinion that, in accordance with the authorities which were cited in the course of the argument, the respondents are liable to pay damages to the appellants for the detention of the ship.

I am, therefore, of opinion that the interlocutor of the Inner House should be reversed and the interlocutor of the Lord Ordinary restored, with costs here and below.

LORD JAMES OF HEREFORD—I concur in the judgment submitted to the House.

LORD ROBERTSON—I concur.

Interlocutor appealed from reversed with costs.

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