patentee may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to Her Majesty in Council "praying that his patent may be extended for a further term. . . ." Rules prescribing the mode of advertisement were framed by the Privy Council, and rule number 7 was in the following terms—"The Lords of the Committee may excuse petitioners and opponents from compliance with any of the requirements of these rules, and may give such directions in matters of procedure and practice under section 25 of the Act as they shall consider to be just and expedient."

Held that the Judicial Committee had no power to entertain a petition for extension when there had not been any previous advertisement.

This was a motion in reference to a petition for the extension of letters-patent. The petitioner had through ignorance made no advertisement, and craved their Lordships to dispense with any, under rule 7.

Their Lordships' judgment was delivered by

LORD ROBERTSON—It is not within the competency of this board to entertain a petition for extension when there has not been any previous advertisement. In sec. 25 (1) of the Patents, Designs, and Trade Marks Act 1883 the words are—"A patentee may after advertising in manner directed by any rules made under this section." The board has occasionally—as in the case of *Lindon's Patent* (14 R.P.C. 643), where, before any rules had been made under the Act of 1883 their Lordships allowed the advertisements required by the old rules to be inserted, after the petition had been presented—made relaxation, in very special circumstances, of some of the provisions of the rules, but if their Lordships were to do what they are now asked to do they would be dispensing, not with rules, but with the statute. The application must be refused.

Motion refused.

The petitioner appeared in person.

Counsel for the Crown—Rowlatt. Agent—The Solicitor to the Treasury.

HOUSE OF LORDS

Thursday, July 4, 1907.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords James of Hereford and Atkinson.)

KRÜGER & COMPANY *v.* MOEL TRYFAN SHIP COMPANY.

Ship — Charter-Party — Bill of Lading—Charterer's Duty to Present Proper Bill of Lading—Bill of Lading Differing from Charter-Party — Shipowner Liable to Holder of Bill of Lading according to its Terms—Charterer Bound to Indemnify Shipowner.

The respondents, a firm of shipowners, chartered a vessel to the appellants. By the charter-party the shipowners were exempted from liability for accidents of navigation, even if occasioned by the master's negligence, and the master was to sign clean bills of lading without prejudice to the charter. The charterers sold the intended cargo to a purchaser, and, the cargo having been loaded, drew and presented bills of lading to the master, who signed them. The clause of exemption was not referred to in the bills, the charterers and the master both believing (erroneously) that it was incorporated by the words "all other conditions as per charter-party." The bills of lading were thereafter indorsed to the purchaser. The ship was lost owing to the master's negligence. The indorsee of the bills of lading having in an action recovered the sum of £12,571 from the shipowners on the ground of the master's negligence, *held* that the charterers were bound to indemnify the shipowners who had become liable to the indorsee owing to the charterers' breach of contract in tendering to the master for signature bills of lading disconform to the charter.

Appeal from a judgment of the Court of Appeal (SIR J. GORELL BARNES, P., FARWELL and BUCKLEY, L.JJ.), who had affirmed a judgment of Phillimore, J., in an action tried before him in the Commercial Court without a jury.

The facts sufficiently appear from the considered judgments of their Lordships *infra*.

LORD CHANCELLOR (LOREBURN)—This case raises a novel point. Shipowners, the respondents, chartered their vessel under a charter-party which relieved them from liability for negligence of the master, and with the following clause: "The master to sign clean bills of lading for his cargo, also for portions of cargo shipped (if required to do so) at any rate of freight without prejudice to this charter, but not at lower than chartered rates, unless the difference is paid to him in cash before signing bills of lading." The vessel was under the terms of the charter-party to proceed to Rangoon and there load from the charterers a cargo of rice and then proceed to Rio. She went to Rangoon and loaded the rice. Charterers' agents then presented bills of lading to the master. These bills of lading contained the words "freight for the said goods, and all other conditions as per charter-party," but did not incorporate the exception contained in the charter-party exempting the shipowners from liability for negligence of the master. Accordingly, under these bills of lading the owner was in law liable to whosoever might have the right to sue on them for the consequences of this negligence. The agents did not realise this, nor did the master, who duly signed the bills.

Both were mistaken in law, and both acted in good faith. Unfortunately the cargo was lost through the negligence of the master, and the owners were compelled to pay the value of the cargo in an action brought by the indorsees of those bills of lading. Having paid it, they brought this action against the charterers, claiming a right to be indemnified. In my view the cardinal fact which ought to govern our decision is that under this charter-party the shipowners are not to be liable for losses caused by the master's negligence in navigating the vessel. When bills of lading are given they may give rise to rights in persons other than the charterers, and on conditions other than those contained in the charter-party; and therefore it is the duty of the latter, who have to present them, to provide that they shall not expose the shipowners to risks from which by their contract they are to be exempt. Nothing has occurred that disentitles the shipowners to this protection. The master who signed the bills of lading under an excusable error of law did not waive his principals' right to be so protected, nor did his principals waive it. It is not a case of warranty. It is a case in which by contract the shipowners undertook to carry a cargo on the footing that they were not to be liable for the master's negligent navigation, and the charterers have made them so liable by the bills of lading. Hence arises a duty to give adequate indemnity. Accordingly, I move your Lordships to dismiss this appeal.

EARL OF HALSBURY—In this case it is common ground that the ship chartered by the defendants was lost by the negligence of the master. In the charter it is provided that the right of action which the common law would have given to the cargo owners is as a matter of contract between the shipowner and the merchant taken away, and as between themselves no liability could be insisted on. But the merchants who in the charter were to present bills of lading, and to present bills of lading which were to conform to the charter-party, did in fact present bills of lading which were supposed to preserve the indemnity of the shipowners but as matter of law did not do so. The master in answer to the question "Do you mean that you have never seen a negligence clause incorporated in a bill of lading before this voyage?" replied, "It is included in the charter-party always." And it is clear that he supposed that the 37th clause of the charter-party included the 6th, which is the negligence clause, whereas for a considerable number of years it has been decided that it did not. The result has been that the shipowner has been compelled to pay between £12,000 and £13,000, a sum which would indeed have been some thousands more but for the provision as to the limitation of liability. I cannot doubt that the cause of this loss was the signing by the master of a bill of lading which did not incorporate the indemnity against the master's negligence. The bill of lading was tendered by the defendants and signed by the master in ignorance of its true legal effect. I agree with the President of the Admiralty Court that the defendants were bound by their contract to tender a bill of lading if they thought proper to do so, and that such bill of lading ought to have incorporated in terms what has been called the negligence clause. I think that it is their breach of contract that has occasioned the loss. I think that there was a contract by them that if the master signed a bill of lading at their request it should not be in the form of a contract which would strike out the negligence clause. As different reasons have been discussed and assigned for the ground upon which the charterers ought to be made liable, I wish to say, inasmuch as I do not concur in some of the reasons given, that I am of opinion that the liability is imposed by the contract relations between the shipowners and the charterers, and I desire to express my concurrence in what all the three members of the Court of Appeal said in this subject. I mean on the one point as to whether or not this is a matter of contract between the parties. The President of the Probate and Admiralty Division said—"The contract is that the bills of lading shall be in accordance with the contract contained in the charter," and later on he says, "the charterers having been bound in my opinion to present bills of lading which carried out the charter-party, they have committed a breach of their contract, and they have done that which, although they were quite mistaken about the matter, and did it without any improper intention, in fact cast a greater obligation upon the shipowner than he ought to have had cast upon him, and to my mind the damages flow as a matter of course from that position in this case, having regard to the circumstances under which the loss occurred and the action was afterwards brought." Farwell, L.J., says—"There is an express contract to tender for execution a proper bill of lading in conformity with and so as not to prejudice the actual charter." Buckley, L.J., says—"The charterer ought to have tendered to the master for signature bills of lading such as would be consistent with the charter-party, if he tendered to him other bills of lading not consistent with the charter-party then the charterer committed a breach of contract in so doing." With those judgments, and especially with that part of them which lays the obligation which has been so described upon the charterers, I heartily concur. The bill of lading cannot control what has been agreed upon before between the shipowner and the merchant and has been expressed in a written instrument which is the final and concluded agreement between the parties. It is in truth a bill of lading—it is somewhat inaccurately described as a contract in the Bills of Lading Act—but Bramwell, L.J., said in *Wagstaff* v. *Anderson* (42 L. T. Rep. 720, 5 C. P. Div. 171) that "to say it is a contract adding to or varying the former contract under the charter-party is a proposition to which I never can consent."

When it is said that the master must sign any bill of lading submitted to him, I cannot agree. If the bill of lading tendered is manifestly inconsistent with the charter-party, I think that it would be his duty to refuse; but if there is nothing to excite his suspicion it is of course his duty to sign the bill of lading tendered to him. And in this case I do not quite follow the observations which have been made, to the effect that it was the common mistake of both the charterers' agent and the master which led to the catastrophe. Both of them may have been ignorant of the state of the law, although it has been settled as long ago as 1864 by a judgment delivered by Willes, Byles, and Keating, JJ. (*Russell* v. *Niemann*, 10 L. T. Rep. 786, 17 C. B., N.S. 163). It may be true as a fact that both the charterers' agent and the master were ignorant of the state of the law, but if so it is an irrelevant fact. The truth of the matter I take to be this—the contract is that if the merchant desires for the purpose of selling his goods or for any other reason to have the bill of lading signed, it is the charterers' duty both to prepare and to present for signature the bill of lading, but then he must present such a bill of lading to the master as is not inconsistent with and not to the prejudice of the charter-party. For these reasons, I am of opinion that the appeal ought to be dismissed.

LORD JAMES OF HEREFORD—The facts of this case are either admitted or clearly proved. The respondents being shipowners chartered a vessel the "Invermore" to the appellants to load a cargo of rice at Rangoon for carriage to Rio. By clauses 6 and 7 of the former charter-party the shipowners were exempted from liability for collisions, stranding, and other accidents of navigation, even when occasioned by the negligence of the master, and the master was to sign clean bills of lading without prejudice to the charter. After the execution of the charter-party the charterers sold the intended cargo to merchants. That cargo was loaded in the vessel at Rangoon, and the charterers thereupon drew and presented the bills of lading to the master for signature. The bills of lading contained the words—"and all other conditions as per charter-party," but the exemption from liability clause was not referred to. Perfect good faith existed on both sides. Doubtless those who drew the bills of lading intended to make them agree with the charter-party, and the master probably trusted to the view which they took of the matter. The mistake was caused in consequence of everybody being ignorant that legal authority had decided that words similar to those in the bills of lading did not introduce into them the exemption clause in the charter-party. The bills of lading were duly indorsed to the purchasing merchant. On the voyage the vessel was lost through the negligence of the master. An action being brought by the indorsees of the bills of lading against the shipowners on account of such negligence, a sum of £12,571 was recovered. The present action is brought by the shipowners seeking to be recouped by the charterers in respect of these damages, on the ground that their liability as between them, the shipowners, and the charterers, ought to be governed by the terms of the charter-party only, and although they the shipowners are liable to the indorsees of the bills of lading on those documents as signed by their agent the master of the ship, yet the rights of the original contractors were governed by other considerations. In support of this view the shipowners say it is true that the master is our agent, but he is our agent to act within the charter-party and according to its terms. You the charterers had imposed upon you the duty of framing the bills of lading. Innocently you drew them in a wrong form, and presented them to the master, who equally in ignorance carried out your action and signed the bills; when he did so he was not acting within his authority. I think it clear that as between the charterers and shipowners the terms of their contract must be found in the charter-party. That the bills of lading came into existence for the convenience and business purposes of the charterers is also clear. Shipowners have only to carry. They care not for whom, and have nothing to do with the terms upon which the charterers deal with their goods. But to the charterers it is all important that they should obtain bills of lading which they can indorse over, and so transfer the property in the cargo. Of the terms of such transfer the shipowner knows nothing, and thus from the nature of things and from the course of business the charterers prepare the bills of lading and tender them to the master of the vessel for signature. And so it comes to pass that the charterers, who are controlled by the charter-party and acting under it, have cast upon them the primary duty of tendering to the master bills of lading in accordance with the terms of that document. They had no right to ask the master to sign a bill of lading in any way deviating from the charter-party. In this case the charterers prepared the bills of lading with the intention of conforming with the charter-party. The mistake was innocently made in ignorance of legal decisions. And so with the master, he in like ignorance honoured the request of the charterers, thinking that both he and they were acting within the authority of the charter-party. Now, the effect of the mistake is obvious. If the bills of lading had been properly framed the shipowners would have been free from any liability for the negligence of the master. The mistake in the drawing of the bills of lading renders them so liable. The point to be determined is a narrow one, and argument on either side can be found, but my view is that the weight of argument lies with the respondents, and that they are entitled to your Lordships' judgment. By contract and by course of business the charterers undertook that the bills of lading which they presented to the master should be in accor-

dance with the charter-party. They failed in this respect, and by that failure the respondents were rendered liable for the loss occasioned by the negligence of the master. It is true that the master of the vessel accepted and signed these bills of lading, but he had no authority to sign bills of lading in the form presented to him. The charterers, the appellants, knew what the master's authority was, and I do not think that they can rely upon his unwitting acquiescence in their mistake so as to escape from liability. I therefore think that the appeal must be dismissed with costs.

LORD ATKINSON—I agree in the conclusion which has been arrived at, and in the reasons given for arriving at it. I wish to guard myself against being supposed to acquiesce in all the conclusions that have been arrived at by the Court of Appeal or the reasoning of the respective Lords Justices. Especially do I desire to guard myself against being supposed to concur in their observations to the effect that the act of the captain in signing the bill of lading is purely ministerial. I think that he is entitled to exercise his judgment, and if it appears to him that the bill of lading does not conform to the charter-party, to refuse to sign it, even at the peril of his employment.

Appeal dismissed.

Counsel for Appellants—Sir R. Finlay, K.C. — J. A. Hamilton, K.C. — M. Lush, K.C.—Chaytor. Agents—Hollams, Sons, Coward, & Hawksley, Solicitors.

Counsel for Respondents—Scrutton, K.C. —Bailhache. Agents—Holman, Birdwood & Company, Solicitors.

HOUSE OF LORDS.

Monday, July 9, 1907.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, and Atkinson.)

EDEN AND OTHERS *v.* NORTH-EASTERN RAILWAY COMPANY.

Mines—Compensation—Railway Company —Coal Required to be Left Unworked— Measure of Compensation — Railways Clauses Consolidation Act 1845 (8 *and* 9 *Vict. cap.* 20), *sec.* 78.

Under the Railways Clauses Consolidation Act 1845, section 78, a railway company is entitled to prevent the owner, lessee, or occupier of a mine or minerals, from working minerals under or near the railway, provided the company makes "compensation for such mine."

An owner of land let the minerals to a coal company for a term of twenty-one years. Under section 78, a railway company laid an embargo upon the working of a portion of the minerals. Even excluding the portion in question, the land contained more minerals than the company could exhaust during the lease. *Held* (*reversing* the Court of Appeal), that the compensation payable by the railway company was the profit which would have been made on the minerals which were by the requirement of the railway company left unworked, and not merely a sum representing the increased expenses and loss incurred by the lessors and lessees in having to work other coal.

Appeal from an Order of the Court of Appeal (VAUGHAN WILLIAMS, MOULTON, and BUCKLEY, L.JJ.), reported 1907, 1 K.B. 402, reversing a decision of Bigham, J., (1906) 1 K.B. 195, upon a special case stated by an arbitrator.

The facts appear from the considered judgments of their Lordships, *infra*.

LORD CHANCELLOR (LOREBURN) — The appellants, Mr Eden and others, are lessors and lessees respectively of coal mines, part of which lie under the line of the North-Eastern Railway. In 1892 the lessees were desirous of working the coal lying under part of the line, and, conformably with the Railways Clauses Consolidation Act 1845, gave notice to the railway company under the 78th sec. of that Act. Thereupon the railway company required the lessees to leave certain portions of the unworked coal under their line as pillars for its support, expressing their willingness to pay such compensation as the law required. In this way the railway company became bound to pay, in accordance with the Act of Parliament, "compensation for such mines or any part thereof," whatever that means. What it does mean is the real question here. Very few further facts need notice. The lessees in the ordinary way and regular course of working would have worked this coal immediately had they not been obliged under the statute to leave it in pillars as a support for the railway. Had they so worked it they would have made a clear profit out of it of £730, and the lessors would have received as rent in respect thereof the sum of £155. Accordingly, if the proper basis of compensation is the profit which lessor and lessee respectively would have made by working the coal as it would have been worked in the ordinary course, then the sums payable by the railway company are £730 and £155 respectively. And that is what they claim in this appeal. The arbitrator has further found that "there is left unworked in the Shield Row seam (that is, this seam) under the said lands a quantity of coal which the coal company will not in the ordinary course be able to exhaust within the term of the before-mentioned lease, which expires on the 1st January 1907." So, if the lessees, instead of working the reserved coal, chose to work some other part of the same mine, they would be able to make their profit on the substituted coal instead of on the coal which they would have worked if they had not been obliged to leave it in pillars as