HOUSE OF LORDS.

Friday, February 28.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Robertson, Atkinson, and Collins.)

SIR JOHN JACKSON, LIMITED *v.* OWNERS OF STEAMSHIP "BLANCHE" AND OTHERS.

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

Ship — Statute — Collision — Limitation of Liability — Charterers — "Owners" — Merchant Shipping Act 1894 (*57 and 58 Vict. c.* 60), *secs.* 503, 504.

Charterers by demise are "owners" within the meaning of section 3 of the Merchant Shipping Act 1894, and can, therefore, under that section, claim the benefit of limitation of liability, conferred by sections 503 and 504, in respect of loss or damage caused by the improper navigation of the ship by their servants. [*Cf.* section 71 of the Merchant Shipping Act 1906].

Judgment of Court of Appeal *reversed.*

Appeal from a judgment of the Court of Appeal (SIR J. GORELL BARNES, P., MOULTON and KENNEDY, L.JJ.), reported (1907) P. 254, under the name of *The Hopper No.* 66, affirming a judgment of DEANE, J., (1906) P. 34.

The nature of the case sufficiently appears from the considered judgments of their Lordships, *infra.*

LORD CHANCELLOR (LOREBURN)—There is only one question in this case, namely, whether or not charterers to whom a ship is demised can claim the limitation of liability prescribed by section 503 of the Merchant Shipping Act 1894. The appellants so chartered a ship, and in course of her navigation by a master and crew in the charterers' service she was negligently handled and injured another vessel. Both the judge of first instance and the Court of Appeal have decided that the statutory limitation of liability does not apply, because the charterers were not "owners" within the meaning of the section. It is a singular thing that, so far as can be learned, this question has never been raised before. Since 1813 there has been, in one form or another, a limitation expressly applicable to this class of liability. Whether the point has not been raised because no ship under such a charter has been to blame for a collision, or because no one thought in such case the limitation could apply, or because no one doubted that in such case the limitation would apply, cannot be known, and as soon as the decision now under appeal was first given by Deane, J., Parliament interposed. [See the Merchant Shipping Act 1906 (6 Edw. VII, cap. 48), sec. 71.] However, the case must be decided without regard to these reflections. In my opinion this appeal ought to be allowed. If this very elaborate Act of Parliament be examined, I find it impossible to resist the conclusion urged upon your Lordships by the learned counsel for the appellants. The word "owner" is used in very many sections. Sometimes it means registered owner, which is indeed the primary sense. Sometimes it must also include beneficial owner; and in other parts it seems to me that it must of necessity also include a charterer by demise, who has control of the ship and navigates her with his own master and crew; otherwise the operation of the Act becomes impracticable. For example, the salutary provision that wages shall continue to run if not duly paid—section 134 (*c*)—would not apply at all where the ship is chartered by demise, for the "owner" could not be in default. Or again, the provisions for notice to the owner and enforcement of charge, contained in section 183, would be futile unless the word "owner" there referred to some one paying wages. Similar instances might be multiplied almost indefinitely, but it is unnecessary to enlarge upon this point, for it does not really admit of dispute. It being thus ascertained that the word "owner" does in some parts of the Merchant Shipping Act 1894 include the charterers by demise, is it so in section 503? I do not know how the proper meaning of this word in each section is to be determined except by considering the object of the section itself. When limitations were first introduced the policy declared in the preamble was the encouragement of shipbuilding in Great Britain. Subsequently a like limitation was applied to foreign ships also. And we must, I think, conclude that the policy of the present section was simply to prevent ruinous damages from being inflicted upon an innocent principal as the consequence of an error of judgment in a difficult and dangerous business by his agents in charge of a vessel. I can perceive no reason that does not equally apply to the registered owner why the present appellant should be subject to an unlimited liability. I cannot doubt that if charterers by demise are to be so subject there will be an end of such charters, and it is difficult to suppose that Parliament desired this. It seems to me that the mischief against which section 503 was intended to provide is not met by construing the word "owners" in the narrow sense, and that therefore the broader interpretation which the word undoubtedly bears in many other parts of the Act ought to be applied here. Accordingly I respectfully advise your Lordships that this order be reversed, and a declaration made as desired by the appellants.

LORDS MACNAGHTEN and ROBERTSON concurred.

LORD ATKINSON—The net question for decision in this appeal is new. It is this, Whether the charterer of a ship demised to him under a charter-party such as that given in evidence in this case is entitled, should damages be recovered against him

by persons damnified by the negligent navigation of the ship over which he has control, to limit his liability under sections 503 and 504 of the Merchant Shipping Act 1894 in the same manner and to the same extent as if he were the registered owner. Bargrave Deane, J., decided that the charterer not being included in the word "owner" did not come within the terms of these sections, and was not entitled to the benefits which they confer, and the Court of Appeal upheld his decision. With all respect to the learned Judge and to the learned Lords Justices who followed him, I think that the construction which they put on these sections was somewhat narrow, and the conclusion at which they arrived erroneous. The following sections of the statute, seventeen in number — namely, Nos. 111, 127, 134, 143, 175, 183 (1), 187, 189 (3 and 4), 195 (2), 197 (5 and 6), 198 (4), 207, 221 (*a*), 224, 226, 235, 253 (3), in addition to some others not necessary to enumerate—deal with the position of the owner *vis-à-vis* the master and crew of his ship, and regulate their respective rights and obligations. If these sections are to apply to a ship chartered under a charter-party such as that above mentioned—and it has not been suggested that they do not—then in order that their requirements should not lead to absurd and ridiculous results, the word "owner" as used in them must be construed to include a charterer by demise having the entire control of the ship, as had the charterers in this case; and in *Meikle-reid* v. *West* (1 Q.B. Div. 428), it was accordingly decided, as indeed might have been expected, that in the construction of the 169th section of the Merchant Shipping Act of 1854, which corresponds with the 143rd section of the Act of 1894, the word "owner" must be held to include a charterer by demise who for the time being had under a contract with the registered owner possession and control of the ship and hired and employed the master and crew. Again, for stores ordered by the master of a ship chartered by demise, or for damage done to goods shipped in such a ship under bills of lading signed by him, the charterer is liable "as owner"—*Fraser* v. *Marsh*, 13 East. 238; *Colvin* v. *Newberry*, 1 Cl. & Fin. 283. In *Boumvoll* v. *Furness*, (1893) A.C. 8, Lord Herschell, L.C., is reported to have expressed himself as follows: — "The person who has the absolute right to the ship, who is the registered owner, the owner (to borrow the expression of real property law) in fee simple, may be properly spoken of no doubt as the owner, but at the same time he may have so dealt with the vessel as to have given all the rights of ownership for a limited time to some other person who may with equal propriety be spoken of as the owner." It is obvious, therefore, that in section 78 (3), imposing a penalty on an owner who stores goods in a space measured for propelling power, and in sections 446 and 448, dealing with the loading of dangerous goods, the word "owner" must be construed to include charterer, even though the last-named section confers a privilege upon him instead of imposing an obligation, as, indeed, do many of the sections first mentioned. The same principle of construction must apply to section 451, which deals with deck cargoes; sections 452 and 453, which provide for the precautions to be taken to prevent the shifting of grain cargoes; section 458, which imposes on the owner an obligation to use all reasonable means to ensure the seaworthiness of the ship; section 460, which confers on the owner the right to recover from the Board of Trade damages for the detention without reasonable or probable cause of a ship alleged to be unseaworthy; section 472, which deals with the removal of the master by the High Court in England or Ireland, Court of Session in Scotland, and elsewhere in the King's dominions by Courts of Admiralty, and confers on the owner the privilege of making the application for his removal, or in certain circumstances by refusing his consent of preventing it; section 442, which imposes a penalty on the owner who permits his vessel to be overloaded so as to submerge in salt water the centre of the disc indicating the load line; section 483, which provides for compensation to be paid to the owner out of the wages due to a seaman who is discharged; sections 591 and 633, which deal with pilotage—the last-mentioned section conferring the privilege of exemption from liability for damage caused by the fault or incapacity of a qualified pilot while in charge; and last of all, and most important of all, section 418, which requires that all owners and masters of ships shall obey the Collision Regulations and shall not carry or exhibit any other lights or use any other fog signals than such as are required by those regulations, and provides (1) that any infringement of these regulations by the wilful default of the master or owner shall make the person offending in respect of such offence guilty of a misdemeanour, and (2) that in a case of collision, where the regulations have been infringed, the ship which has infringed them shall, unless it be proved that the departure from them was necessary, be deemed to have been in fault. If, therefore, in these numerous sections imposing obligations and conferring privileges upon owners in relation to the crew which sails his ship, the shipper who puts his goods on board her, the crews and owners of other ships which navigate the same waters as his own, and therefore may be injured by collision with his own, it is necessary to construe the word "owner" so as to include the charterer, it would seem but natural to conclude that the same construction should be given to the word "owner" in sections 503 and 504, and the privilege which these sections confer be extended to him. It is contended, and apparently has been decided, that this cannot be done for three reasons—(1) Because in section 289, and the following sections dealing with emigrant ships, the words "owner or charterer" are used, showing, it is contended, that when the Legislature wished to deal with the case of a charterer it knew how to select

words apt for the purpose. This being a consolidation statute, it may well be that the language of the Acts whose provisions were consolidated was copied; but, however that may be, there is no force in the argument, since it is apparent that the same Legislature, on the same occasion and in the same statute, must be held to have intended to include the charterer in the description "owner" in the several sections already referred to. (2) Because of the history of this legislation limiting liability and the recitals and provisions contained in some of the earlier statutes. That history is given in Marsden on Collision (ch. 7, p. 145, 5th edit.). The earliest Act, 7 Geo. II, c. 15, appeared to have been passed in consequence of the decision in *Boucher* v. *Lawson* (H. 8, Geo. II), see per Buller, J., in *Yates* v. *Hall* (1 T.R. 73), in which the shipowner was held liable for the loss of a case of bullion put on board his ship and stolen by his servant the master. It was followed by 26 Geo. III, c. 86; then by 53 Geo. III, c. 159; and ultimately by 17 and 18 Vict. c. 104. It is quite true that the object of these statutes, as expressed in their preambles, was to increase the number of British ships and cause merchants and others to be interested in them, but I should think that few things would tend more to encourage men to build ships than to secure them facilities for hiring them out under charter-parties, and few things would tend more to induce charterers to hire them than that the protection from serious or overwhelming loss which the registered owner enjoys should be extended to the hirer. To extend that protection to charterers would, therefore, forward the policy of these Acts, not thwart it; and I see nothing in them to necessitate the conclusion that charterers by demise may not be well treated as coming within the description of "owners" within the meaning of these statutes. Besides, it must be borne in mind that the protection is now extended to the owners of foreign ships. I therefore think that there is nothing in this contention. But it is said that because the words "the owner of a British sea-going ship or any share therein" are used in the 502nd section, and the words "the owner of any sea-going ship or any share therein" used in the 503rd section, and the use of the words "or any share therein," it shows, to use the words of Moulton, L.J., that "the Legislature were thinking of the real owners and not the lessee." But it would have been necessary to introduce the words "any share therein" whether the word "owner" includes a charterer by demise or not, because each part-owner, where there are more owners than one, being one of the joint employers of the actual wrongdoers, is liable for the entire damage done, and if the damage was caused through the "actual fault" or with "the privity" of one or more of the part-owners sued, then, since all were not blameless, the liability of none of them could be limited but for those words, though some of them were blameless and came within the equity of the statute. The words "or any share therein" were introduced, in my opinion, for the protection of such meritorious persons. I am quite unable, however, to see how their presence in these sections shows that the Legislature never meant to protect a person with the special and temporary ownership possessed by a charterer by demise, who was, moreover, as meritorious an object of protection as the registered owner. The actual "fee simple" owner becomes liable, not because he is owner, but because he is the master or employer of the persons whose negligence causes the damage — Lord Cairns, L.C., in *River Wear Commissioners* v. *Adamson*, 2 App. Cas. 743; Lord Blackburn in *Simpson* v. *Thomson*, 3 App. Cas. 279. The charterer by demise becomes liable precisely for the same reason and on the same ground, and I see no reason why the word "owner" or "owners," when used in sections 503 and 504, should not be construed, as it must be construed in many other sections, so as to include a charterer by demise. I therefore think that the decisions of Deane, J., and the Court of Appeal were wrong and should be reversed, and that this appeal should be allowed, with costs appropriate to the circumstances of the case.

LORD COLLINS concurred.

Appeal sustained.

Counsel for the Appellants—J. A. Hamilton, K.C. — Dawson Miller. Agents — Thomas Cooper & Sons, Solicitors.

Counsel for the Respondents — Butler Aspinall, K.C.—A. D. Bateson. Agents—Pritchard & Sons, Solicitors.

HOUSE OF LORDS.

Thursday, March 5.

(Before the Lord Chancellor (Loreburn), Lords Robertson and Collins.)

NORTH AND SOUTH WALES BANK *v.* MACBETH.

NORTH AND SOUTH WALES BANK *v.* IRVINE.

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

Bill of Exchange—Negotiable Instrument—Cheque Payable to Order—"Fictitious Person" as Payee—Forged Indorsement—Bills of Exchange Act 1882 (45 *and* 46 *Vict. cap.* 61), *sec.* 7 (3)—*Set-off.*

M was induced by the fraud of W to draw a cheque in favour of K or order. K was an existing person, and when M drew the cheque in his favour he intended that K or his indorsee should receive the money. W obtained the cheque, forged K's indorsement, paid the cheque into his own account with the N. and S. W. Bank, and they, on