

LLOYD'S LIST LAW REPORTS

Including extended Reports of Cases appearing in
"LLOYD'S LIST and SHIPPING GAZETTE"

MICHAELMAS SITTINGS, 1944
TO
TRINITY SITTINGS, 1945

Edited by
H. P. HENLEY
of the Middle Temple, Barrister-at-Law

Vol. 78

PRINTED AND PUBLISHED BY LLOYD'S
AT LLOYD'S, LONDON, ENGLAND
1945

CONTENTS

NOTE:—These Reports should be cited as “78 Ll. L. Rep.”

	PAGE
Aberdeen & Commonwealth Line, Ltd.:—Rooney v. — [C.A.] ...	511
Admiralty. <i>See</i> Commissioners for Executing the Office of Lord High Admiral of the United Kingdom.	
<i>Ampetco</i> , The — [Adm.]	143
Athel Line, Ltd. v. Liverpool and London War Risks Insurance Association — [K.B.]	414
<i>Athelvictor</i> , The — [Adm.]	529
Austin v. Zurich General Accident & Liability Insurance Company, Ltd. — [C.A.]	185
Baker Castor Oil Company v. Insurance Company of North America — [U.S. District Ct.]	240
Beer:—Simon, Haynes, Barlas & Ireland v. — [K.B.]	337
<i>Benedict</i> , The — [Adm.]	40
Boase (W. H.) & Co., Ltd., and Another:—Dowd v. — [C.A.]	383
Bonham v. Zurich General Accident & Liability Insurance Company, Ltd. — [K.B.]	64
— [C.A.]	245
Borough of Willesden v. Municipal Mutual Insurance, Ltd. — [K.B.]	20
— [C.A.]	256
<i>Braconbush</i> , The — [K.B.]	70
Bristol Aeroplane Company, Ltd.:—Young v. — [C.A.]	6
British & Continental Steamship Company, Ltd.:—Yorke v. — [C.A.]	181
<i>British Diligence</i> , The — [Adm.]	266
<i>British Engineer</i> , The — [Adm.]	31
British Fishing Vessels Mutual War Risks Association, Ltd.:—United Scottish Insurance Company, Ltd. v. — [K.B.]	70
British Oil & Cake Mills, Ltd. v. Greenock Harbour Trustees and Others — [Ct. of Sess.]	453
Brown, Atkinson & Co., Ltd.:—Mabro v. — [K.B.]	555
Camsey v. William Doxford & Sons, Ltd. — [C.A.]	93
Canadian Pacific Steamships, Ltd.:—Moore v. — [L'pool Assizes]	120
Carter v. Ocean Steam Ship Company, Ltd. — [K.B.]	504

CONTENTS—*continued*.

	PAGE
Charles G. Dunn Shipping Company and Another:—Romain v. — [K.B.]	421
<i>Cheldale</i> (Owners):—Owners of Cargo in <i>Greystoke Castle</i> v. — [C.A.]	129
Clinker v. Stevens and Another — [K.B.]	501n
Coggins & Griffith (Liverpool), Ltd.:—Colfar v. — [H.L.] ...	177
— and Another:—McFarlane v. — [C.A.]	383
Coker and Another:—Smith & Co. and Others v. — [C.A.] ...	205
Colfar v. Coggins & Griffith (Liverpool), Ltd. — [H.L.] ...	177
Collett v. National Fur Company, Ltd. — [C.A.]	1
<i>Comanche</i> , The — [Adm.]	266
Commissioners for Executing the Office of Lord High Admiral of the United Kingdom and Others v. <i>Josefina Thorden</i> (Owners) and her cargo — [K.B.]	197
Commissioners of Inland Revenue v. Gardner, Mountain & D'Ambrumenil, Ltd. — [K.B.]	572
Continental Grain Company, Incorporated v. Twitchell — [K.B.]	107
— [C.A.]	251
<i>Cornwood</i> , The — [Adm.]	60
Court Line, Ltd. v. The King — [C.A.]	390
Crown:—Hill v. — [K.B.]	229
—:—Larrinaga Steamship Company, Ltd. v. — [H.L.] ...	167
Cyprus Palestine Plantations Company, Ltd. v. Olivier & Company (Cyprus), Ltd. — [P.C.]	87
Dowd v. W. H. Boase & Co., Ltd., and Another — [C.A.] ...	383
Doxford (William) & Sons, Ltd.:—Camsey v. — [C.A.] ...	93
<i>Drudge</i> , The — [Adm.]	439
<i>Empire Waimana</i> , The — [Adm.]	445
Ewer.(George) & Co.:—Homecraft Weavers v. — [K.B.] ...	496
<i>F J. Wolfe</i> , The — [Adm.]	486
Gardner, Mountain & D'Ambrumenil, Ltd.:—Commissioners of Inland Revenue v. — [K.B.]	572
<i>Gateshead</i> , The — [Adm.]	481
<i>Geo. W. McKnight</i> , The — [Adm.]	551
<i>Glaisdale</i> , The — [Adm.]	403
— [C.A.]	477
Great Western Railway Company v. Port Talbot Dry Dock Company — [Off. Ref. Ct.]	115
— v. Royal Norwegian Government — [K.B.]	152
Green & Silley Weir, Ltd., and Another:—Romain v. — [K.B.]	421
Greenock Dockyard Company, Ltd., and Others:—British Oil & Cake Mills, Ltd. v. — [Ct. of Sess.]	453

CONTENTS—*continued*.

	PAGE
Greenock Harbour Trustees and Others:—British Oil & Cake Mills, Ltd. v. — [Ct. of Sess.]	453
<i>Greystoke Castle</i> (Owners of cargo <i>ex</i>) v. <i>Cheldale</i> (Owners) — [C.A.]	129
Harland & Wolff, Ltd., and Another:—Hill v. — [C.A.] ...	4
Harrow and Another v. Johnston Bros. and Others — [Ct. of Sess.]	155
Hector Steamship Company, Ltd. v. V/O Sovfracht — [K.B.] ...	275
<i>Helen Moller</i> , The — [Adm.]	288
— [C.A.]	473
<i>Highwood</i> , The — [Adm.]	147
Hill v. Harland & Wolff, Ltd., and Another — [C.A.] ...	4
— v. The Crown — [K.B.]	229
Holt (Alfred) & Co.:—Roberts v. — [L'pool Assizes] ...	236
Homecraft Weavers v. George Ewer & Co. (H. Welsh, Ltd., Third Parties) — [K.B.]	496
<i>Induna</i> (Owners) v. Port of London Authority — [Adm.] ...	515
Insurance Company of North America:—Baker Castor Oil Company v. — [U.S. District Ct.]	240
Irvin & Sons, Ltd., and Others:—Harrow and Another v. — [Ct. of Sess.]	155
Johnston Bros. and Others:—Harrow and Another v. — [Ct. of Sess.]	155
<i>Josefina Thorden</i> (Owners) and her cargo:—Commissioners for Executing the Office of Lord High Admiral of the United Kingdom and Others v. — [K.B.]	197
<i>Kaaparen</i> , The — [Adm.]	283
King, The:—Court Line, Ltd. v. — [C.A.]	390
<i>Kingsland</i> , The — [Adm.]	259
Larrinaga Steamship Company, Ltd. v. The Crown — [H.L.] ...	167
<i>Lass O'Doune</i> , The — [Adm.]	410
Lever Brothers & Unilever, Ltd. v. Manchester Ship Canal Company and Another — [Ch.]	507
Lighter No. 50, The — [Adm.]	55
<i>Lindenhall</i> (Owners) v. Port of London Authority — [C.A.] ...	215
Liverpool and London War Risks Insurance Association:—Athel Line, Ltd. v. — [K.B.]	414
<i>Llanover</i> , The — [H.L.]	461
London, Midland & Scottish Railway Company and Another:—Lever Brothers & Unilever, Ltd. v. — [Ch.]	507

CONTENTS—*continued.*

	PAGE
Mabro v. Brown, Atkinson & Co., Ltd. — [K.B.]	555
McFarlane v. Coggins & Griffith (Liverpool), Ltd., and Another — [C.A.]	383
Mahoney v. A. E. Smith & Son, Ltd. — [L'pool Assizes]	82
Manchester Ship Canal Company and Another:—Lever Brothers & Unilever, Ltd. v. — [Ch.]	507
Melmore Head, The — [Adm.]	102
Mersey Docks and Harbour Board and Another:—McFarlane v. — [C.A.]	383
Mersey Ports Stevedoring Company, Ltd., and Another:—Smith & Co. and Others v. — [C.A.]	205
Moore v. Canadian Pacific Steamships, Ltd. — [L'pool Assizes]	120
Municipal Mutual Insurance, Ltd.:—Borough of Willesden v. — [K.B.]	20
— [C.A.]	256
National Fur Company, Ltd.:—Collett v. — [C.A.]	1
Nea Hellas, The — [Adm.]	521
Nellie, The — [Adm.]	16
Nicholas v. F. J. Sparks & Sons — [C.A.]	388n
Norse King, The — [Adm.]	95
No. 50 (Lighter) — [Adm.]	55
O'Brien v. Trafalgar Insurance Company, Ltd. — [C.A.]	223
O'Flaherty v. Shaw, Savill & Albion Company, Ltd., and Another — [C.A.]	435
Ocean Steam Ship Company, Ltd.:—Carter v. — [K.B.]	504
Olivier & Company (Cyprus), Ltd.:—Cyprus Palestine Planta- tions Company, Ltd. v. — [P.C.]	87
Pacific Steam Navigation Company and Another:—Hill v. — [C.A.]	4
Perso, The — [Adm.]	44
Pierre Loti, The — [Adm.]	193
Port of Liverpool Stevedoring Company, Ltd.:—Porter v. — [C.A.]	12
Port of London Authority:—Induna (Owners) v. — [Adm.]	515
—:—Lindenhall (Owners) v. — [C.A.]	215
Port Talbot Dry Dock Company:—Great Western Railway Com- pany — [Off. Ref. Ct.]	115
Porter v. Port of Liverpool Stevedoring Company, Ltd. — [C.A.]	12
Princesa, The — [Adm.]	333
— [C.A.]	478
Princess Astrid, The — [Adm.]	99

CONTENTS—*continued*.

	PAGE
<i>Ramon de Larrinaga</i> , The — [H.L.]	167
<i>Rea</i> , Ltd., and Another:— <i>Dowd</i> v. — [C.A.]	383
—:— <i>O'Flaherty</i> v. — [C.A.]	435
<i>Rez.</i> See <i>Crown</i> ; also <i>King</i> .	
<i>Roberts</i> v. <i>Alfred Holt & Co.</i> — [L'pool Assizes]	236
<i>Romain</i> v. <i>R. & H. Green & Silley Weir, Ltd.</i> , and Another — [K.B.]	421
<i>Rooney</i> v. <i>Aberdeen & Commonwealth Line, Ltd.</i> — [C.A.]	511
<i>Royal Hellenic Government</i> v. <i>Vergottis, Ltd.</i> , and Others — [K.B.]	292
<i>Royal Netherlands Government</i> and Others:— <i>British Oil & Cake Mills, Ltd.</i> v. — [Ct. of Sess.]	453
<i>Royal Norwegian Government</i> :— <i>Great Western Railway Company v.</i> — [K.B.]	152
<i>St. Rognvald</i> , The — [Ct. of Sess.]	449
<i>Samurai</i> , The — [Adm.]	546
<i>Saxmundham</i> , The — [Adm.]	227
<i>Shaw, Savill & Albion Company, Ltd.</i> , and Another:— <i>O'Flaherty v.</i> — [C.A.]	435
<i>Shelbrit IV</i> , The — [Adm.]	50
<i>Simon, Haynes, Barlas & Ireland</i> v. <i>Beer</i> — [K.B.]	337
<i>Sims Transport Company, Ltd.</i> , and Another:— <i>Clinker</i> v. — [K.B.]	501n
<i>Smith & Co.</i> and Others v. <i>Coker</i> and Another — [C.A.]	205
— (A. E.) & Son, Ltd.:— <i>Mahoney</i> v. — [L'pool Assizes]	82
<i>Southern Princess</i> , The — [Ct. of Sess.]	26
<i>Sovfracht, V/O</i> :— <i>Hector Steamship Company, Ltd.</i> v. — [K.B.]	275
<i>Sparks (F. J.) & Sons</i> :— <i>Nicholas</i> v. — [C.A.]	388n
<i>Stevens</i> and Another:— <i>Clinker</i> v. — [K.B.]	501n
<i>Tioga</i> , The — [Adm.]	136
— [C.A.]	427
<i>Trafalgar Insurance Company, Ltd.</i> :— <i>O'Brien</i> v. — [C.A.]	223
<i>Twitchell</i> :— <i>Continental Grain Company, Incorporated</i> v. — [K.B.]	107
— [C.A.]	251
<i>United Scottish Insurance Company, Ltd.</i> v. <i>British Fishing Vessels Mutual War Risks Association, Ltd.</i> — [K.B.]	70
V/O <i>Sovfracht.</i> See <i>Sovfracht V/O.</i>	
<i>Vergottis (Andreas)</i> and Others:— <i>Royal Hellenic Government</i> v. — [K.B.]	292
<i>Vergottis, Ltd.</i> , and Others:— <i>Royal Hellenic Government</i> v. — [K.B.]	292

CONTENTS—*continued*.

	PAGE
Walker and Another v. Johnston Bros. and Others —	
[Ct. of Sess.]	155
Welsh (H.), Ltd. <i>See</i> Homecraft Weavers v. George Ewer & Co.	
Westminster Bank, Ltd., and Others:—Royal Hellenic Government	
v. — [K.B.]	292
<i>Wheelsman</i> , The — [Adm.]	525
Willesden, Borough of. <i>See</i> Borough of Willesden.	
 Yorke v. British & Continental Steamship Company, Ltd.	
— [C.A.]	181
Young v. Bristol Aeroplane Company, Ltd. — [C.A.]	6
 Zurich General Accident & Liability Insurance Company, Ltd.:—	
Austin v. — [C.A.]	185
— — — — —;—Bonham v. — [K.B.]	64
— — — — — [C.A.]	245



TABLE OF CASES CITED IN ENGLISH AND SCOTTISH JUDGMENTS.

		PAGE
<i>Akenside</i> , The	17 Ll.L.Rep. 201	44
<i>Akerblom v. Price</i>	7 Q.B.D. 129	403
<i>Alderton and Barry's Patent Application</i> , <i>In re</i>	59 R.P.C. 56	229
<i>Anna Mazaraki</i> , The	39 Ll.L.Rep. 194	403
<i>Australia (Owners) v. Nautilus (Owners</i> <i>of Cargo ex)</i>	[1927] A.C. 145; 25 Ll.L.Rep. 141	461
<i>Bain v. Central Vermont Railway Com-</i> <i>pany</i>	[1921] 2 A.C. 412	388n
<i>Banbury v. Bank of Montreal</i>	[1918] A.C. 626	181
<i>Bank Line, Ltd. v. Capel</i>	[1919] A.C. 435	390
<i>Barker v. Walters</i>	8 Beav. 92	337
<i>Barnard Castle Urban District Council</i> <i>v. Wilson</i>	[1902] 2 Ch. 746	20
<i>Bartonshill Coal Company v. McGuire</i>	(1858) 3 Macq. 300	177
... .. <i>v. Reid</i>	(1858) 3 Macq. 266	177
<i>Beauchamp v. National Mutual Indemnity</i> <i>Insurance Company</i>	57 Ll.L.Rep. 272	64
<i>Board of Trade v. Hain Steamship</i> <i>Company</i>	[1929] A.C. 534; 34 Ll.L.Rep. 197	167
<i>Bradley v. Newsom, Sons & Co.</i>	[1919] A.C. 16	390
<i>Brown v. William Hamilton & Co., Ltd.</i>	(unreported)	6
<i>Bugge v. Taylor</i>	[1941] 1 K.B. 198	223
<i>Bull (A. H.) & Co. v. West African Ship-</i> <i>ping Agency & Lighterage Company</i>	[1927] A.C. 686; 28 Ll.L.Rep. 79	388n
<i>Campbell (Donald) & Co. v. Pollak</i>	[1927] A.C. 732	143
<i>Canada Shipping Company v. British</i> <i>Shipowners' Mutual Protection</i> <i>Association</i>	23 Q.B.D. 342	529
<i>Carew v. Carew</i>	[1891] P. 360	229
<i>Carlton</i> , The	[1931] P. 186; 40 Ll.L.Rep. 101	215
<i>Carmichael & Co. v. Liverpool Sailing Ship</i> <i>Owners' Mutual Indemnity Associa-</i> <i>tion</i>	19 Q.B.D. 242	529
<i>Century Insurance Company, Ltd. v.</i> <i>Northern Ireland Road Transport</i> <i>Board</i>	[1942] A.C. 509; 72 Ll.L.Rep. 119	383, 388n, 501n
<i>Cheshire v. Bailey</i>	[1905] 1 K.B. 237	496
<i>Chieftain</i> , The	(1846) 4 Notes of Cases 459	197
<i>City of Peking</i> , The	14 App. Cas. 40	461
<i>Clarke v. Dickson</i>	E.B. & E. 148	337
<i>Clinker v. Stevens</i>	78 Ll.L.Rep. 501n	496
<i>Colemans' Depositories, Ltd., and the</i> <i>Life and Health Assurance Associa-</i> <i>tion, In re</i>	[1907] 2 K.B. 798	185
<i>Compania Maritima of Barcelona v.</i> <i>Wishart</i>	34 T.L.R. 251	70
<i>Coxwold</i> , The	[1942] A.C. 691; 73 Ll.L.Rep. 1	167, 414
<i>Daglish v. Barton</i>	[1900] 1 Q.B. 284	6
<i>Davies v. Collins</i>	[1945] 1 All E.R. 247	496
<i>Dictator</i> , The	[1892] P. 304	197
<i>Digby v. General Accident Fire & Life</i> <i>Assurance Corporation, Ltd.</i>	[1943] A.C. 121; 73 Ll.L.Rep. 175	185
<i>Donovan v. Laing, Wharton, and Down</i> <i>Construction Syndicate, Ltd.</i>	[1893] 1 Q.B. 629	383, 388n, 501n
<i>Duke of York</i> , The	73 Ll.L.Rep. 118	147
<i>Dyer v. Dyer</i>	White & Tudor, 9th Ed., p. 756	292

CASES CITED—continued.

		PAGE
East Midland Traffic Area Commissioners v. Tyler	[1938] 3 All E.R. 39 ...	64
English, Scottish and Australian Bank, Ltd. v. Inland Revenue Commissioners	[1932] A.C. 238 ...	6
Ernest Turner Electrical Instruments, Ltd. v. Performing Right Society, Ltd.	[1943] 1 Ch. 167 ...	223
<i>Ferro</i> , The ...	[1893] P. 38 ...	529
Foreman & Ellams, Ltd. v. Federal Steam Navigation Company, Ltd.	[1928] 2 K.B. 424; 30 Ll.L.Rep. 52 ...	529
France Fenwick Tyne & Wear Company, Ltd. v. H.M. Procurator-General (<i>The Prins Knud</i>)	[1942] A.C. 667; 1 Ll.P.C. (2nd) 99 ...	197
<i>Gemma</i> , The ...	[1899] P. 285 ...	197
<i>Glenochil</i> , The ...	[1896] P. 10 ...	529
Good v. London Steamship Owners' Mutual Protecting Association	L.R. 6 C.P. 563 ...	529
Gosse, Millerd, Ltd. v. Canadian Govern- ment Merchant Marine	[1927] 2 K.B. 432; [1928] 1 K.B. 717; [1929] A.C. 223; 28 Ll.L.Rep. 88; (C.A.) 29 Ll.L.Rep. 190; (H.L.) 32 Ll.L.Rep. 91 ...	529
Gray & Co. v. Christie & Co. ...	5 T.L.R. 577 ...	275
<i>Greystoke Castle</i> , The ...	68 Ll.L.Rep. 85 ...	129
Harrison v. Hill ...	[1932] Sess. Cas. (Ct. of Just.) 13	223
Hemmings v. Sceptre Life Association, Ltd.	[1905] 1 Ch. 365 ...	337
<i>Heranger</i> , The ...	[1839] A.C. 94; 62 Ll.L.Rep. 204 ...	449
<i>Hilda</i> , The ...	(1884) 12 R. 76 ...	449
Hourani v. T. & J. Harrison ...	28 Ll.L.Rep. 120 ...	529
Indermaur v. Dames ...	L.R. 1 C.P. 274; L.R. 2 C.P. 311	435
Joel v. Law Union & Crown Insurance Company	[1908] 2 K.B. 863 ...	337
<i>John and Jane</i> , The ...	4 C. Rob. 216 ...	390
<i>Kalamazoo</i> , The ...	15 Jur. 885 ...	197
<i>Kathleen</i> , The ...	22 Ll.L.Rep. 80 ...	529
Kelly & Co. v. Kellond ...	20 Q.B.D. 569 ...	6
<i>Kingalock</i> , The ...	(1854) 1 Spinks E. & A. 263	403
Kinneil Cannel & Coking Coal Company v. Sneddon	[1931] A.C. 575 ...	6
Krzus v. Crow's Nest Pass Coal Co., Ltd.	[1912] A.C. 590 ...	181
Lancaster Motor Company (London), Ltd. v. Bremith, Ltd.	[1941] 1 K.B. 675 ...	6
Larrinaga Steamship Company, Ltd. v. The Crown	78 Ll.L.Rep. 167 ...	414
Lensen Shipping Company v. Anglo-Soviet Company	52 Ll.L.Rep. 141 ...	167
<i>Liverpool</i> , The ...	[1893] P. 154 ...	403
M'Cartan v. Belfast Harbour Commis- sioners	[1911] 2 I.R. 143 ...	383
M'Carthy v. Abel ...	(1804) 5 East 388 ...	107
McCarthy v. British Oak Insurance Com- pany, Ltd.	61 Ll.L.Rep. 194 ...	64
<i>Malvern</i> , The ...	[1900] Fo. 240 ...	410
Manchester Ship Canal Company v. Horlock	[1914] 2 Ch. 199 ...	390
<i>Marpessa</i> , The ...	[1891] P. 403 ...	129

CASES CITED—continued.

PAGE

Metropolitan Water Board v. Avery ...	[1913] 2 K.B. 257; [1914] 1 K.B. 221; [1914] A.C. 118	20, 256
Mills v. Jennings ...	13 Ch. Div. 639	6
Minnehaha, The ...	Lush. 335	403
Minnetonka, The ...	[1905] P. 206	129
Mintz v. Silverton ...	36 T.L.R. 399	496
Moore v. Palmer ...	2 T.L.R. 781	501n
Morrison v. Universal Marine Insurance Company	L.R. 8 Ex. 197	337
Munro, Brice & Co. v. Marten and Others	36 T.L.R. 241	70
Nasmyth, The ...	10 P.D. 41	410
Newell v. Cross ...	[1936] 2 K.B. 632	64
Newsholme Bros. v. Road Transport & General Insurance Company	[1929] 2 K.B. 356; 34 Ll.L.Rep. 247	6
Nicholas v. F. J. Sparks & Sons ...	78 Ll.L.Rep. 388n	383
Otranto, The ...	[1931] A.C. 194; 38 Ll.L.Rep. 204	486
Passmore v. Vulcan Boiler & General Insurance Company	54 Ll.L.Rep. 92	64
Perkins v. Hugh Stevenson & Sons, Ltd.	[1940] 1 K.B. 56	6
Perrin v. Morgan ...	[1943] A.C. 399	6
Polpurrian Steamship Company v. Young	[1915] 1 K.B. 922	390
Portsmouth Steamship Company v. Liverpool & Glasgow Salvage Association	34 Ll.L.Rep. 459	167
Poulson v. John Jarvis & Co., Ltd.	122 L.T. 471	383
Produce Brokers Company, Ltd. v. Olympia Oil & Cake Company, Ltd.	21 Com. Cas. 320	6
Provincial Insurance Company v. Morgan & Foxon	[1933] A.C. 240; 44 Ll.L.Rep. 275	64
Radcliffe v. Ribble Motor Services, Ltd.	[1939] A.C. 215	177
Regina v. Jameson and Others ...	[1896] 2 Q.B. 425	181
Renpor, The ...	8 P.D. 115	197
Rez v. Daye ...	[1908] 2 K.B. 333	229
Richardson, Spence & Co. v. Rowntree ...	[1894] A.C. 217	185
Rickards v. Forestal Land, Timber & Railways Company	[1942] A.C. 50; 70 Ll.L.Rep. 173	390
Riverman, The ...	29 Ll.L.Rep. 130	152
Roberts v. Roberts ...	13 Q.B.D. 794	6
Robertson v. Petros M. Nomikos, Ltd.	[1939] A.C. 371; 64 Ll.L.Rep. 45	107, 390
Robson & Sharpe v. Drummond ...	2 B. & Ad. 303	496
Rodney, The ...	[1900] P. 112	529
Rourke v. White Moss Colliery Company	2 C.P.D. 205	383
Rowson v. Atlantic Transport Company, Ltd.	[1903] 1 K.B. 114; [1903] 2 K.B. 686	529
Ruapehu, The ...	[1927] P. 47; 25 Ll.L.Rep. 409	529
Saragossa, The ...	7 Asp. 289	449
Scottish Musician, The ...	72 Ll.L.Rep. 284	486
Selwood v. Townley Coal & Fireclay Company, Ltd.	[1940] 1 K.B. 180	6
Shepherd v. Henderson ...	7 App. Cas. 49	390
Shoemith, <i>In re</i> ...	[1938] 2 K.B. 637	6
Smith v. Baker ...	[1891] A.C. 325	177
— v. Hodson ...	Sm. L.C., Vol. 2, p. 147	337
— v. Muller ...	[1894] 1 Q.B. 192	20
South Suburban Gas Company v. Metropolitan Water Board	[1909] 2 Ch. 666	20
South-West Suburban Water Company v. St. Marylebone Union	[1904] 2 K.B. 174	20
Speed v. Swift & Co. ...	[1943] 1 K.B. 557; 75 Ll.L.Rep. 113	12, 177
Stanford, <i>Ex parte</i> ...	17 Q.B.D. 259	6
Stelling and the Ferranti, The ...	72 Ll.L.Rep. 177; (C.A.) 74 Ll.L.Rep. 145	70
Sword v. Cameron ...	(1839) 1 Sc. Sess. Cas. (2nd Series) 493	177

CASES CITED—continued.

			PAGE
Tamplin Steamship Company v. Anglo-Mexican Petroleum Products Company	[1916] 2 A.C. 397	...	390
Tarbert, The	[1921] P. 372; 8 L.L.Rep.	119	197
Tattersall v. Drysdale	[1935] 2 K.B. 174;	52	
	L.L.Rep. 21	...	185
Tomalin v. S. Pearson & Son, Ltd.	[1909] 2 K.B. 61	...	181
Unsworth v. Elder Dempster Lines, Ltd.	[1940] 1 K.B. 658;	66	
	L.L.Rep. 1	...	6
Urquhart v. Macpherson	3 App. Cas. 831	...	337
Valdes, The	31 T.L.R. 144	...	461
Velasquez, Ltd. v. Inland Revenue Commissioners	[1914] 3 K.B. 458	...	6
Vernon City, The	70 L.L.Rep. 279; 72 L.L.Rep.	223	551
Warkworth, The	9 P.D. 20; (C.A.) 145	...	529
Watson Steamship Company v. Merryweather & Co.	18 Com. Cas. 294	...	275
Weems v. Mathieson	(1861) 4 Macq. 215	...	177
Weir v. Union Steamship Company	[1900] A.C. 525	...	167
Westmorland, The	(1841) 1 Wm. Rob. 216	...	120
Wharton (Shipping), Ltd. v. Mortleman and Others	[1941] 2 K.B. 283;	70	
	L.L.Rep. 56	...	167
William Symington, The	10 P.D. 1	...	410
Wilsons and Clyde Coal Company v. English	[1936] Sess. Cas. 883; [1938] A.C. 57	...	177, 236, 511
Wood's Patent Application, <i>In re</i>	43 R.P.C. 377	...	229
Wyatt v. Guildhall Insurance Company	[1937] 1 K.B. 653; 57 L.L.Rep.	90	64
	[1903] 2 Ch. 475	...	6
Wynne-Finch v. Chaytor			
Yorkshire Dale Steamship Company v. Minister of War Transport	[1942] A.C. 691; 73 L.L.Rep.	1	167, 414

LLOYD'S LIST LAW REPORTS

Edited by H. P. HENLEY
Of the Middle Temple, Barrister-at-Law

VOL. 78 No. 1]

MONDAY, DECEMBER 4, 1944

[BY SUBSCRIPTION

COURT OF APPEAL.

Oct. 12 and 13, 1944.

COLLETT v. NATIONAL FUR COMPANY, LTD.

Before Lord Justice SCOTT, Lord
Justice DU PARCQ and Lord Justice
MORTON.

Negligence—Bailee—Loss of plaintiff's fur coat from defendant company's store—Coat, bought by plaintiff from defendants, returned for purposes of minor alteration—Plaintiff a valued customer—No charge made—Relationship between parties—Degree of care to be shown by defendants—Onus of proof—No evidence of "breaking in"—Safeguards taken by defendants and their staff—Liability of company for negligence of staff.

Held, by HUMPHREYS, J., that the coat was held by the defendants under a contract of bailment entered into for the mutual benefit of both parties, i.e., for good consideration, and that the defendants were under a duty to take that degree of care to be expected of a firm of high standing; that the loss must have occurred through the gross negligence or tortious act of a member of the defendants' staff, for which the defendants were liable; and that therefore the plaintiff was entitled to recover.

—Appeal by defendants dismissed.

Per DU PARCQ, L.J.: There could only be one other possible answer—it may be that it would be a possible answer in law if the facts justified it, and I express no opinion about that because it is a question that I need not go into—and that would be to prove that it was not negligence but a criminal act on the part of one of the defendants' servants which was the cause of the loss. But the learned Judge has not found that there was any criminal act, and it would have been wrong for him to have done so. There was no evidence on which it would be possible to make

even a suggestion of guilt against any of the persons concerned.

Though there may be a doubt about the question how far a bailee is absolved if the property in his care is stolen by one of his servants, this much is clear. If the bailee chooses to allege that the reason of the loss was the criminal act of one of his servants he, the bailee, must prove it. I do not mean that it must necessarily be proved by evidence called by him, but he must be in a position to say to the Court: "On the whole of this evidence the only conclusion to which the Court can reasonably come is that it was the crime and not the negligence of my servant which occasioned the loss." As there was no evidence on which the learned Judge could have come to such a conclusion, the point does not arise. Therefore, we are left in this position, as it seems to me, that only negligence on the part of somebody in the employment of the defendants can account for what in fact we know did happen. As my Lord has said, it is quite clear upon whom the burden lies, but apart altogether from any question of burden of proof, it seems to me that, putting the simple question: Is it more likely or not on these facts that there was negligence? the answer, wherever the onus lay, could only be that it is more likely that there was negligence.

This was an appeal by the National Fur Company, Ltd., of Brompton Road, London, S.W., from a judgment of Mr. Justice Humphreys (77 Ll.L.Rep. 367) upholding a claim by Mrs. Annie Collett, of Grosvenor House, Park Lane, London, W., to recover from the company £1000 in respect of the loss of a mink fur coat which had been delivered to them for alteration.

Mr. F. W. Beney, K.C., and Mr. Valentine Holmes (instructed by Messrs. Titmuss, Sainer & Webb) appeared for the appellants; Mr. Gilbert Paull, K.C., and Mr. H. G. Robertson (instructed by Messrs. Simmons & Simmons) represented the respondent.

Mr. BENEY said that there was no dispute as to the ownership of the coat, or its value, or that the onus was on the appellants to

C.A.]

Collett v. National Fur Company, Ltd.

[C.A.]

prove that they took all reasonable steps for its safety. Mrs. Collett was an old and valued customer of the appellants, and if the dispute had been between her personally and themselves this action would not have been necessary. But the coat had been insured and the insurers had paid her under the policy.

COUNSEL criticised the judgment on the ground that the Judge's findings of facts were not supported by the evidence. He found that the coat was stolen during ordinary business hours by a thief of extraordinary ingenuity, and yet he seemed to think that it was gross negligence for some assistant to allow herself to be tricked by the thief. He also suggested connivance by some assistant. Yet there was not a rag of evidence to justify any such suggestion, and no attack of any kind was made on her. In short, the Judge's findings of fact were inconsistent and indefinite. The loss of the coat could have taken place without any negligence, and there were several ways in which it could have so taken place. The onus was on Mrs. Collett to show that there was negligence.

JUDGMENT.

Lord Justice SCOTT: Mr. Beney has argued this case for the appellants very powerfully and with great moderation; but he has quite failed to convince me that the judgment of the learned Judge who tried the case was in any way wrong. I agree so substantially with Mr. Justice Humphreys that I do not propose to deal in any detail with the facts of the case. I will outline them very, very shortly.

The claim was by a lady who had left a very valuable coat, worth, according to the agreement in the Court below, £1000, with the National Fur Company, Ltd., in Brompton Road, from whom she had recently bought it, for a slight repair. They did the repair and indicated to her that the coat was ready. She came with a view to taking it away and found it was not there. The action was brought by her at the instance of her insurers to recover its value from the defendants, as bailees for reward in connection with the repair of the coat.

In those circumstances, it was recognised by Counsel for the defendants in the Court below that the onus of proof that the loss had taken place without any failure to exercise reasonable care to keep it safe on their part rested on the defendants. Some formal evidence was called on behalf of the plaintiff, and then the defendants called their witnesses.

The shop faces Brompton Road with its side towards Ovington Gardens. There is a showroom in front. At the back of the showroom on the right-hand corner on the Ovington Gardens side as you go in, there is a little lobby with a door into it from the showroom and with a door out of it into a closed store some 14 ft. by 12 ft., in which there were six ground stands for carrying furs, on the left-hand side as one went in.

When the coat had been repaired it was put, on Tuesday, Mar. 9, upon the farthest stand but one on the end of it nearest to the passageway, and it was last seen there by any witness for the defendants on Friday morning, Mar. 12, three days before the plaintiff came on the Monday to fetch it.

The arrangements made by the defendant company were that their three shop assistants should never all leave the showroom at the same time, and that one of them should accompany any customer round the showroom. Only on very rare occasions did they ever allow a customer to go into the storeroom, and then only if accompanied by one of the assistants.

The assistants were called and gave evidence that they did not know how the coat could have been stolen. It was common ground in the Court below, conceded by the managing director of the defendant company, that the theft must have taken place during "business hours," between the time when it was seen on the Friday and the Monday when the plaintiff came in for her coat, business hours being from 9.30 in the morning until 5.30 or 6 o'clock in the evening.

The learned Judge, having heard the whole of the evidence very carefully, came to the conclusion, on the balance of probabilities, that the defendants had not discharged the burden upon them of satisfying him that the loss had taken place without any default or want of reasonable care on the part of the defendants as bailees. He gave his reasons in detail, into which I do not propose to go.

The chief assistant was cross-examined as to her having told the detective and the assessor for the insurance company, with whom the plaintiff had insured her coat, that the coat had been stolen from one of the stands in the storeroom which was quite close to the little lobby by which it was entered; whereas, in fact, her evidence and the evidence of the other assistants was that it was on the stand farthest but one from the lobby.

The learned Judge said that there being no explanation at all tendered by the defendants as to how it was possible for the coat to have been taken out of the storeroom into and through the showroom and so into the street during business hours without some dereliction from duty on the part of one or other of the assistants, he was bound to come to the conclusion that the defendants had not discharged the burden of proof upon them.

I think that is the right view of the case, and I will leave it there with this further observation only: that I agree with the judgment of the learned Judge. Taking it as a whole, I see no ground for any real criticism of it, though some passages may call for a little explanation. The appeal must be dismissed with costs.

Lord Justice DU PARCQ: I agree that this appeal should be dismissed, and I wish only

C.A.]

Collett v. National Fur Company, Ltd.

[C.A.]

to add a few sentences because my Lord has already, if I may say so, put the matter clearly and succinctly.

The question we have to decide in this case is: Ought we to disturb the finding of the learned Judge that the defendants have not proved that this coat was lost without negligence on their part? Have they shown that its loss was not due to their negligence or that of their servants, for whose acts or omissions they are responsible? Having listened with interest to Mr. Beney's able argument, I am bound to say that I cannot for a moment doubt that the learned Judge gave the right answer to the question which he had to decide.

This coat disappeared in such circumstances and at such a time that it must somehow have got out into the street through the showroom. When the question is asked, in those circumstances, is the loss to be attributed to some negligence on the part of the defendants' servants, or is it as consistent or more consistent with the known facts that it disappeared without negligence on the part of the defendants' servants, I can only say that it seems to me quite impossible to answer that question by saying that the disappearance of the coat is consistent at all with proper care having been taken by all the defendants' servants, or with their all having done their duty. There could only be one other possible answer—it may be that it would be a possible answer in law if the facts justified it, and I express no opinion about that because it is a question that I need not go into—and that would be to prove that it was not negligence but a criminal act on the part of one of the defendants' servants which was the cause of the loss. But the learned Judge has not found that there was any criminal act, and it would have been wrong for him to have done so. There was no evidence on which it would be possible to make even a suggestion of guilt against any of the persons concerned.

Though there may be a doubt about the question how far a bailee is absolved if the property in his care is stolen by one of his servants, this much is clear. If the bailee chooses to allege that the reason of the loss was the criminal act of one of his servants, he, the bailee, must prove it. I do not mean that it must necessarily be proved by evidence called by him, but he must be in a position to say to the Court: "On the whole of this evidence the only conclusion to which the Court can reasonably come is that it was the crime and not the negligence of my servant which occasioned the loss." As there was no evidence on which the learned Judge could have come to such a conclusion, the point does not arise. Therefore, we are left in this position, as it seems to me, that only negligence on the part of somebody in the employment of the defendants can account for what in fact we know did happen. As my Lord has said, it is quite clear upon whom the burden lies, but apart altogether from any

question of burden of proof, it seems to me that, putting the simple question: Is it more likely or not on these facts that there was negligence? the answer, wherever the onus lay, could only be that it is more likely that there was negligence.

I think that the learned Judge came to a perfectly right conclusion. His judgment is very full and very careful. There is no judgment, however careful, which cannot be criticised at some point, because not everybody attaches the same weight to all the reasons which may be given for the conclusion reached. I am bound to say that none of the criticisms made shakes me at all in my view that the learned Judge rightly decided this question of fact.

Lord Justice MORTON: I agree that this appeal must be dismissed, but I should like to say, having regard to some passages in the judgment of the learned Judge, that I see no reason for concluding that any of the employees of the defendant company were guilty of any sort of dishonesty.

As it seems to me, this mink coat having disappeared from the defendant company's premises, the learned Judge had ultimately to choose between two possible explanations of its disappearance. One was that every member of the defendant company's staff did his or her duty exactly as it was laid down but that nevertheless some thief of amazing ingenuity succeeded in abstracting the coat. The other possible explanation was that some member of the company's staff failed to carry out his or her duty to the full as it was laid down, and thus the thief was enabled to carry out the theft.

The learned Judge has chosen the second of these alternatives as being the more likely, and I agree, apart from any question of burden of proof which undoubtedly lay upon the defendants, that that was the proper conclusion to arrive at.

It seems to me that a perfectly possible explanation of how the theft occurred was that at some time during the relevant period the showroom was left empty. There was an absence of the employee which later on the employee in question genuinely forgot.

In those circumstances, while I entirely agree with the conclusion at which the learned Judge arrives, I do not find it necessary to lay any sort of suggestion of dishonesty upon any of the employees of the appellants. I agree that the appeal must be dismissed.

Mr. PAULL: The appeal will be dismissed with costs?

Lord Justice SCOTT: Yes.

C.A.]

Hill v. Harland & Wolff, Ltd., and Another.

[C.A.]

COURT OF APPEAL.

Wednesday, Sept. 27, 1944.

HILL v. HARLAND & WOLFF, LTD.,
AND ANOTHER.Before Lord Justice SCOTT, Lord
Justice MACKINNON and Lord
Justice LAWRENCE.

Negligence—Safe means of access—Personal injuries sustained by plaintiff (appellant) employed as scaler by first defendants—First defendants engaged on repair work on board second defendants' steamer—Plaintiff's fall into forepeak—Alleged failure by defendants (in breach of their common law duty and/or statutory duty under the Factories Act, 1937) to provide adequate lighting—Evidence as to method of lighting—Claim dismissed by HILBERY, J.—Appeal dismissed.

This was an appeal by Mr. James Hill, of Buckingham Street, Liverpool, from a judgment of Mr. Justice Hilbery dismissing his action brought at Liverpool Assizes against Messrs. Harland & Wolff, Ltd., of Bootle, and the Pacific Steam Navigation Company, of Water Street, Liverpool, claiming damages for negligence or breach of duty.

Hill was employed as a scaler in the steamship *Orbita*, owned by the second respondents, which was being repaired by the first respondents. On Dec. 9, 1940, while going with a gang of men down into the forepeak tank of the vessel, he slipped and fell to the bottom of the tank. Both his legs were broken and one had to be amputated.

Appellant's case was that the respondents did not provide a safe means of access to the place of working, the only means of lighting the way down being candles carried in the men's hands, and that this lighting was inadequate. Mr. Justice Hilbery, in dismissing the action, assessed the damages to be awarded to Hill, if he were held to be wrong, at £3000. Appellant also contended that the amount of damages was inadequate.

Mr. E. G. Hemmerde, K.C., and Miss Rose Heilbron (instructed by Mr. Sidney Pearlman, agent for Messrs. Silverman & Livermore, of Liverpool) appeared for the appellant; Mr. F. A. Sellers, K.C., and Mr. H. I. Nelson (instructed by Messrs. Carpenters, agents for Messrs. Laces & Co., of Liverpool) represented Messrs. Harland & Wolff, Ltd.; Mr. Wilfrid Clothier, K.C., and Mr. S. Scholefield Allen (instructed by Mr. P. F. Walker, agent for Messrs. Weightman, Pedder & Co., of Liverpool) represented the Pacific Steam Navigation Company.

Counsel for the respondents were not called upon.

JUDGMENT.

Lord Justice SCOTT: In this case, the appellant, the plaintiff below, was a workman on a ship in dock at Liverpool in December, 1940. He was by trade an ordinary dock labourer. He was then aged 24. He was unable to continue his trade as a dock labourer because dock labourers were not reserved. He got a ticket from the labour exchange representing him to be a scaler, a particular trade, one of the tasks of which is to clean down the inside of water ballast tanks, parts of the ship which are not normally lit at all and which are only opened in port for the purpose of cleaning or repairs. Having been received as a scaler by the foreman in charge, he was put in a gang of scalers which was sent down to clean the forepeak of the *Orbita*. The usual way of lighting, for reasons given in evidence (which satisfied the learned Judge, and I entirely agree with him), is to use candles, the men carrying their own candles with bits of wire by which they can fasten them where they wish. He went down a ladder from the lower deck into the forepeak. Getting to the bottom of the ladder he stepped off into the air in the way described by the learned Judge, fell to the bottom of the forepeak and received serious injuries.

The action was brought by him on two grounds, breach of common law duty of care on the part of his employers, and breach of statutory duty under the Factories Act, 1937, against one or other of the two companies made defendants, the Pacific Steam Navigation Company, owners of the ship, and Messrs. Harland & Wolff, who were doing the repairs over the ship. The learned Judge, who tried the case at length and gave a very careful, considered judgment, was unable to believe the evidence of the plaintiff given four years after the event, but entirely believed the evidence of the chargehand and also of the foreman over the scalers, and came to the conclusion that the method of lighting by means of candles was, for the reasons he gave, a right method, that there was no breach of statutory duty on the part of the defendants either at common law or under the statute, and, even if there had been, that there was nobody who could be blamed but the plaintiff himself for stepping off as he did without making sure as to where he was.

The learned Judge's judgment was very careful. I agree with the whole of it, and in regard to both grounds of claim think the appeal should be dismissed as against both respondents, with costs.

Lord Justice MACKINNON: I agree. This is an exceedingly hard case, and we must all have the greatest sympathy with the plaintiff. But we must not be tempted by the hardness of the case to give a wrong legal decision against the defendants, and the hardness of the case seems to me the only ground upon which the

C.A.]

Hill v. Harland & Wolff, Ltd., and Another.

[C.A.]

plaintiff can suggest that he ought to have been given damages below.

I agree that the appeal fails.

Lord Justice LAWRENCE: I agree and have nothing to add.

Mr. HEMMERDE: My Lords, I shall have to make an application under Sect. 29 (2) of the Workmen's Compensation Act, 1925, but this would not be a very appropriate time to make it. It is really as against Messrs. Harland & Wolff.

Lord Justice MacKINNON: I have no doubt you can agree that.

Mr. HEMMERDE: If it is left open with liberty to apply, no doubt we could. There will probably be some application on the question of costs.

Mr. SELLERS: That is the only question. There is no doubt that the plaintiff is entitled to workmen's compensation; I do not think there will be any issue as to the amount. But your Lordships are familiar with the section, and when he has taken common law proceedings there is power in your Lordships to grant some contribution towards the costs of the defendants.

Lord Justice SCOTT: It is within our jurisdiction to order a deduction of costs from the amount of compensation?

Mr. SELLERS: Yes—which I suppose will have accrued to a substantial amount by now over a period of four years; and I do make that request to your Lordships.

Lord Justice SCOTT: I am anxious to avoid further costs. I hope it may be possible for you to agree the position. If not, let the case be mentioned again.

Mr. SELLERS: If your Lordship pleases.

Lord Justice SCOTT: The order will not be drawn up until we hear further.

Mr. SELLERS: I think it might prevent any further application to the Court if your Lordships would make some order as to the contribution to our costs that the plaintiff should make. Then I think the rest, the amount and the liability as to workmen's compensation, would be agreed between us.

Lord Justice SCOTT: You know the ordinary definition of charity: A. pities B. and thinks that C. might do something for him. That is, of course, very much my feeling at the present moment

Mr. SELLERS: I appreciate that, my Lord, but we have been brought to the Court of Appeal and have incurred the costs not only of a trial, which was a very careful one, but the further costs of an appeal, and there will be a substantial sum due to the plaintiff.

Lord Justice SCOTT: If you see your way to temper the wind to the shorn lamb—

Mr. SELLERS: In those circumstances, perhaps the matter had better be postponed and mentioned to your Lordships again.

Lord Justice SCOTT: You can communicate with my clerk with regard to the form of the order. Counsel can send a note of the agreed form of order to my clerk in order to save further costs if possible.

Mr. SELLERS: If your Lordship pleases.

Mr. CLOTHIER: In any event, my Lord, you will not want to see me.

Lord Justice SCOTT: No, Mr. Clothier.