your Lordships' attention by counsel. There is no real controversy about the facts. The question is, what inference ought to have been drawn from them? Here I have the misfortune to differ from my noble and learned friends who have just addressed the House. I have arrived at the same conclusion as that arrived at by Kennedy and Phillimore, JJ., and by the Court of Appeal. I cannot myself draw any other inference. Where was his home, his settled permanent home? He had one and only one, and that one was in this country; and long before he died I am satisfied that he had given up all serious idea of returning to his native country. He was an American citizen permanently settled in this country. But although so settled he was proud of his nationality and had no intention of changing it. He may at one time have looked back on Baltimore as his possible ultimate home, but he had ceased to do so long before he died. In 1880 he proposed to build a house for himself in Baltimore, but this came to nothing; and none of his later schemes for developing his property there were carried out in his lifetime, nor did they involve any change of residence on his part. A dim hope and expectation of being at some time able to return to America when he had succeeded in constructing a ship to his liking, which he never did, is spoken to by his son; but when last does not appear. I can find nothing to displace the only inference which I can draw from Mr Winans' conduct for the last twenty or twenty-five years of his life. In my opinion the appeal should be dismissed with costs.

Judgment appealed from reversed.

Counsel for the Plaintiff and Respondent—The Attorney General (Sir R. Finlay, K.C.)—The Solicitor General (Sir E. Carson, K.C.)—Vaughan Hawkins. Agent—Sir F. C. Gore, Solicitor of Inland Revenue.

Counsel for the Defendants and Appellants—Asquith, K.C.—R. M. Bray, K.C.—Willoughby Williams—Kerrick. Agent—E. H. Quicke for H. Montague Williams, Brighton.

HOUSE OF LORDS

Friday, May 17.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, and Lindley.)

STEEL, YOUNG, & COMPANY *v.* GRAND CANARY COALING COMPANY.

(On Appeal from the Court of Appeal in England.)

Shipping Law—Charter-Party—Construction of Charter-Party—Charter to Become Void if Stoppage by Strike Continuing for Six Days from Time of Vessel being Ready to Load.

Under a charter-party it was provided that the cargo should be loaded in 140 running hours, commencing when written notice was given of the ship being ready to load, any time lost through, *inter alia*, strikes not to be computed as part of the loading time unless any cargo was actually loaded during such time. It was also provided that in the event of any stoppage or stoppages arising from strikes "continuing for six running days from the time of the vessel being ready to load," the charter should become void, provided that no cargo had been shipped previous to such stoppage or stoppages.

Due notice was given to the charterers that the ship was ready to load. The loading time expired and no cargo was loaded. After the expiry of the loading time a stoppage caused by a strike commenced and lasted for more than six days. Thereafter the charterers gave notice to the owners that the charter was cancelled.

Held that in terms of the charter-party the charter only became null and void in the event of a stoppage existing at the commencement of the loading time, and that the charterers were liable in damages to the owners of the ship for the results of their having illegally cancelled the charter.

Under a charter-party between Steel, Young, & Company, the owners of a screw-steamer called the "Nith," and the Grand Canary Coaling Company, the ship was engaged to carry a cargo of coal from Newport in Monmouthshire to Santa Cruz or Las Palmas. Clause 3 of the charter-party provided—"The cargo to be loaded in 140 running hours . . . commencing when written notice is given of steamer being completely discharged of inward cargo and ballast in all her holds and ready to load. . . . Any time lost through riots, strikes, lock-outs . . . or by reason of . . . any cause beyond the control of the charterers not to be computed as part of the loading time unless any cargo be actually loaded during such time. In the event of any stoppage or stoppages arising from any of these causes continuing for six running days from the time of the vessel being ready to load, this charter shall become null and void, provided, however, that no cargo shall have been shipped on board the steamer previous to such stoppage or stoppages."

On 8th August 1900 due notice was given to the charterers that the ship was ready to load. The loading time expired on 15th August, but no cargo had been loaded.

On 20th August a strike occurred, which caused a stoppage of the coal intended for the ship. This strike lasted for six days.

On 28th August the charterers gave notice to the owners that the charter was cancelled and had become null and void in terms of the charter-party.

On 3rd September the ship obtained another charter but at a lower freight.

Thereafter the owners brought an action against the Grand Canary Coaling Company for damages for the delay from 8th

August till 3rd September, and for the difference in freight. The defendants paid into Court a sum for demurrage from 8th to 25th August.

PHILLIMORE, J., decided in favour of the plaintiffs.

On appeal the Court of Appeal (COLLINS, M.R., MATHEW, and COZENS-HARDY, L.JJ.) reversed this decision.

The plaintiffs appealed.

At delivering judgment—

LORD CHANCELLOR (HALSBURY)—In this case the whole question seems to turn upon a very narrow point—namely, the true construction of the charter-party. I have tried to see whether the language literally construed according to the ordinary plain meaning of words and sentences is susceptible of any other meaning than that which the plaintiffs attribute to it. I am unable to come to the conclusion that it is. Although I am not insensible to some of the inconvenience which may result from a literal interpretation of the words, I cannot say that any alternative interpretation that I can suggest is fit for your Lordship's adoption. No other construction can be placed upon the words than that contended for by the plaintiffs; to my mind they are not susceptible of any other meaning. The parties have placed their own interpretation upon them, and it appears to me impossible to contend under those circumstances that there is any other construction to be given to the charter-party than that for which the plaintiffs contend. If that is the true view of the charter-party, the facts raise no question which can be debated when once you give that interpretation to the charter-party. I can give no other construction to it than the literal meaning which the words convey, and therefore I move that the judgment of the Court of Appeal be reversed.

LORD MACNAGHTEN—The question in this case depends on the true construction of one clause in a charter-party, under which a screw steamer called the "Nith" was engaged to carry a cargo of coal from Newport in Monmouthshire to Santa Cruz or Las Palmas. The charter makes provision for the avoidance of the contract in the event of a stoppage occasioned by a strike or any cause beyond the control of the charterers continuing for six running days from the time of the vessel being ready to load, subject, however, to this proviso, that no cargo had been shipped on board. The point to be decided is whether the stoppage to be effective for the purpose of avoiding the contract must be in existence at the beginning of the loading time or whether it may commence at any time within a reasonable limit after notice given of the vessel being ready to load. The former construction was adopted by Phillimore, J. The Court of Appeal has taken the other view. The clause in question, so far as material, is in the following words—"3. The cargo to be loaded in 140 running hours . . . commencing when written notice is given of steamer being completely discharged of inward cargo and ballast in all her holds and ready to load. . . . Any time lost through riots, strikes, lock-outs . . . or by reason of . . . any cause beyond the control of the charterers not to be computed as part of the loading time unless any cargo be actually loaded during such time." I pause for a moment to point out that here the charter itself contemplates the possibility of cargo being loaded during a stoppage—a thing which might very well occur even though it were intended that the cargo should consist of nothing but coal. The clause proceeds as follows—"In the event of any stoppage or stoppages arising from any of these causes continuing for six running days from the time of the vessel being ready to load, this charter shall become null and void, provided, however, that no cargo shall have been shipped on board the steamer previous to such stoppage or stoppages." Of course if a charter were to be annulled after cargo had been shipped on board difficulties must arise, and it would be by no means easy to provide for the rights of the parties. It is, therefore, only reasonable, and indeed necessary, that any provision annulling a charter should not apply when once cargo is shipped. It can make no difference whether cargo actually on board has been shipped before the commencement of the stoppage or during the stoppage. The expression "such stoppage" must mean a stoppage continued for the full period of six running days. These considerations seem to make it plain that the words "previous to such stoppage or stoppages" mean previous to the completion, not previous to the commencement, of the period which may give occasion for the avoidance of the charter. It cannot, I think, be disputed that if the language of clause 3 is to be taken in its natural and ordinary signification a stoppage to be effective must be one reckoned from the commencement of the loading time. On on any other view the words "from the time of the vessel being ready to load" would be wholly idle and superfluous. So much out of place would they be that I cannot imagine any draftsman, however careless, inserting them or allowing them if inserted to remain uncancelled. The argument on the other side is that the literal construction is to be rejected and a less accurate meaning given to the word "from," because the proviso at the end of the clause shows, as it is contended, that the parties must have contemplated that there would occur between the commencement of the loading time and the six days' stoppage an interval of time during which cargo might or might not be put on board. It seems to me, however, that there is not much force in this argument if you bear in mind that the parties contemplated the possibility of cargo being put on board during a stoppage. And the force of the argument is, I think, altogether destroyed when you find that by a note in the margin of the charter, which seems to be part of

the printed form—for it also occurs in the substituted charter of the 3rd September—the charterers are at liberty to put on board twenty tons of general cargo. The loading of general cargo would not necessarily, or even probably, be prevented by a strike, lock-out, or accident which might interfere with loading coal. It appears to me, therefore, that even without resorting to a suggestion which is rejected by the Court of Appeal as a vain imagination of counsel, ingenious, but wholly unfounded, there is nothing to justify a departure from the natural and ordinary meaning of the language employed to define the commencement of a stoppage which may operate to put an end to the contract. The result is not unreasonable. There are two provisions relating to stoppages occasioned by a cause beyond the control of the charterers—a general provision and a special provision. In all cases of stoppages, partial or otherwise, the charterer may exclude from the loading time the time during which no loading takes place. In the special case of the charterer being met by a stoppage in existence at the commencement of the loading time, which is just as likely to happen as the occurrence of a stoppage afterwards during the loading time, the contract may be annulled. Looking at the matter from a charterer's point of view, that, I think, is all that can be required. From a shipowner's point of view the other construction would seem, occasionally at any rate, to offer a premium on dilatory tactics. As regards the measure of damages, it seems to me that Phillimore, J., was right. There was, in my opinion, a repudiation of the contract on the one side and an acceptance of that repudiation on the other. I am therefore of opinion that the appeal should be allowed with the usual consequences.

LORD LINDLEY—The expression "loading time" which occurs in this charter means the 140 running hours within which the ship is to be loaded, and these 140 hours begin to run after written notice that the ship is ready to load. Any time lost in loading through strikes, &c., is not to be computed as part of the loading time, unless some cargo is actually loaded during such time. So far the charter-party seems clear enough. Then if any strike, &c., continues for six days "from the time of the vessel being ready to load" the charter is to become null and void, unless any cargo shall have been shipped prior to the stoppage. The expression "six days from the time of the vessel being ready to load" points to the earliest time when she is ready, and not to any time after she is ready. I quite see the inconveniences which may arise in other cases from adhering closely to the words of the clause on which the controversy between the parties turns. But I see no absurdity or injustice in construing the clause in its most obvious and natural sense in this particular case. The case is peculiar and unusual. The ship was ready to load and her time for loading had expired before there was any strike, and the strike had lasted six days before the charterer began to load, and he then insisted that the charter had become null and void. That is the case with which your Lordships have to deal. This case does fall within the clause if construed according to its most obvious meaning. I leave other cases to be dealt with when they arise. The appellants have the advantage of being able to rely on the words as they stand, and I see no sufficient reason for extending them. As regards the damages, the correspondence shows a refusal by the charterer to load on the 28th August, persisted in from that time onwards, and I see no reason for holding that the damages have been improperly assessed. In my opinion, therefore, the appeal should be allowed, with costs here and below, and the judgment of Phillimore, J., should be restored.

Judgment appealed from reversed.

Counsel for the Plaintiffs and Appellants—Carver, K.C.—L. Noad. Agents—W. A. Crump & Son.

Counsel for the Defendants and Respondents—J. A. Hamilton, K.C.—Montague Lush, K.C. Agents—Botterell & Roche for F. Vaughan, Cardiff.