

LORD SHAW—I agree, but in doing so I should like to refer to the Scotch case of *Guthrie, Craig, & Company v. Magistrates of Brechin*, 15 R. 385, 25 S.L.R. 288, which has been referred to. In my opinion the highest deference is rightly paid to any judgment of that very great and distinguished Judge the late Lord President Inglis; but I dissent from the view which seems to have been entertained by Channell, J., that that judgment in the Scotch Court was in any way a disturbing factor in the present case. I may say, personally, that I cannot better express the judgment which I should form upon the merits of that case, and its relation to the present case, than by repeating the judgment of the learned County Court Judge in the present instance. He says, "the judge" (referring to Lord President Inglis) "there speaks of pipes, but he is distinguishing the pipes from the land and the sewage farm to which the sewage was carried. So far as it appears there was no piping, there was nothing artificial, but the pipes referred to there were pipes which carried sewage on to a farm, and then it was disposed of by course of nature; there were no artificial works." That case, so far as fact is concerned, shows the whole width of the distinction from the present case, in which you have a series of artificial works, the entry to which, no doubt, is the pipe which drains through the locality, but the exit from which is the effluent pipe, and it is only when the sewage reaches the effluent pipe that it becomes innocuous in the sense of the statute, and the statutory duty of disposal of the sewage is not performed until the effluent pipe is reached and the discharge therefrom in that innocuous condition, or in innocuous circumstances, occurs. But for that Scotch decision, which has, I think, been misapprehended, and so treated as a disturbing element, I presume that all the learned Judges in the courts below would have been unanimous in their judgments, in the sense adopted by the Court of Appeal. I think that the decision arrived at by the learned Lords Justices was right.

Appeal dismissed.

Counsel for Appellants—Danckwerts, K.C.—Ellison. Agents—Van Sandau & Company, Solicitors.

Counsel for Respondents—Scott Fox, K.C.—Lowenthal. Agents—Rawle, Johnstone, & Company, Solicitors.

## HOUSE OF LORDS.

Monday, July 19, 1909.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, Atkinson, Collins, Gorell, and Shaw, with Nautical Assessors.)

### ABRAM LYLE & SONS v. OWNERS OF STEAMSHIP "SCHWAN."

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

*Ship—Unseaworthiness—Defective Cock—Bill of Lading—Exceptions—Exercise of "Reasonable Care and Diligence" by Owners.*

The pumping apparatus of a ship was fitted with a cock of an unusual and dangerous character, as a result of which sea water entered the hold and did damage. By the bills of lading the ship-owners were protected from liability provided they had exercised "reasonable care and diligence in connection with the ship." The evidence shewed that the chief engineer (who had also inspected the vessel in the course of building) had failed to inform himself of the defective construction of the cock, and that he was unaware during the voyage in question of the danger arising therefrom.

*Held* that the ship was not seaworthy, that reasonable care and diligence had not been exercised, and that the owners were accordingly liable in damages.

The cargo-owners appealed against the judgment of the Court of Appeal (LORD ALVERSTONE, C.J., VAUGHAN WILLIAMS and BUCKLEY, L.JJ., with Nautical Assessors) dismissing their action for damages and reversing the judgment in their favour pronounced by DEANE, J.

The facts and the material clauses of the bills of lading are given in the opinions of Lords Atkinson and Gorell.

Their Lordships gave judgment as follows:—

LORD ATKINSON—In this case the plaintiffs sued to recover damages in respect of a cargo of sugar shipped on board the steamship "Schwan" to be carried from Bremen to London. The greater part of the cargo had been seriously injured, if not entirely destroyed, in transit by reason of the main hold of the ship having been flooded with sea water to the depth of about 4 feet. There is no controversy as to the extent of the damage done to the sugar, nor as to the cause of it, and the only question for decision is whether or not the shipowners are protected by the tenth clause of the bill of lading, which again resolves itself in effect into two questions—(1) Was the ship seaworthy when loaded, that is to say, reasonably fit to perform the service which the shipowner engaged her to perform, viz., to carry these goods to their destination; and (2) if not sea-

worthy in fact, had the owners and their agents proved that they had discharged the duty imposed upon them by this article, *i.e.*, had "exercised reasonable care and diligence" to make her seaworthy. It was not contended that if she was not seaworthy in fact the burden of proving the exercise of this care and diligence did not rest upon the shipowners. The ship was furnished with bilge pipes running from each of the holds, by means of which the water in the bilges could, by a suction pump worked by a donkey-engine situated in the engine-room, be drawn up and discharged into the sea through a pipe opening under water. This pipe was furnished with a seacock, but this cock was always open during pumping operations, and was not necessarily closed even at sea. On each of these bilge pipes was placed a non-return valve designed to permit the water to pass freely from the hold during pumping operations, but to prevent its return to the hold through regurgitation. This was its primary purpose. Incidentally, the valve, if closely shut, would prevent any sea water which might enter from the sea into the discharge pipe from leaking into the hold. It is clear, however, upon the evidence that, at all events in new ships such as the "Schwan" was, non-return valves of this kind are liable to get choked by chips of wood, tow, and such other substances when passing through them. When this occurs the valve does not shut down closely, and water approaching it from the sea can readily leak through it into the hold. This is, in fact, precisely what occurred in the present case. It almost necessarily follows that if the water was left free to flow from the sea down through the discharge pipes, and these non-return valves were the only appliances other than the seacocks provided to prevent it from flowing into the hold, the ship would be unseaworthy, inasmuch as her safety or that of her cargo would entirely depend on the continuously effective action of a valve or of valves which might at any moment go wrong. It is contended, however, on the part of the respondents, that an additional and effective precaution against all danger of this kind was provided by a certain cock called a "three-way cock with a two-way inlet" fitted on the pipe leading from the non-return valves to the sea. This cock is described by the trial judge as a pipe with three junctions in it, one junction opening to the sea to take in sea water, one opening to the bilges, and one to the suction pump, the three openings being in the same horizontal plane. The cock was made in Germany, where the ship was built by (it is not disputed) competent builders. It differed from cocks made in England for similar purposes in two respects. First, in the latter only two of the openings are in the same horizontal plane, the third being vertical. And second—a most vital matter—while the plug of the English manufactured cock is so constructed that no matter in what direction or to what extent it may be turned, it can never open more than two ways at once,

the plug in this cock is so constructed that although, if turned home in either one or other of the directions in which it can be turned, it only opens two ways at once, yet if not turned home but left in a somewhat intermediate position between the two extremes it opens three ways at once, and, as far as it is concerned, leaves a free passage for the water to flow from the sea down the pipes to the non-return valves. It is not disputed that it was in this way that the hold got flooded in the present case. The plug, either through negligence, carelessness, or ignorance, or by design, was left half-turned, the sea water passed down freely to the non-return valve, which was choked by a piece of tow or some such substance, and the water leaked through this valve into the hold. One would have supposed that on the discovery of the flooding the cause of it would have at once suggested itself to anyone acquainted with the structure of the cock. The fact that it did not suggest itself to any member of the crew, or to any of the persons who inspected the vessel until she was on her return voyage from London to Bremen, is the strongest evidence that they were all ignorant of the peculiar structure of the cock and the danger that might result from its use. The cock was fixed beneath the floor of the engine-room, the top of the plug being flush with the floor and visible from it. The plug was turned by a box spanner. Two grooves were cut upon the top of this plug, indicating the direction in which it should be turned, and showing when it was turned home. It was not disputed, however, that the internal construction of the cock could not be ascertained by inspecting its exterior, and that no indication whatever was given by anything external of the position or action of its internal parts when the plug was left in an intermediate position or any position closely approaching thereto. Furthermore, the cock did not conform to requirements prescribed by the English Lloyd's rules or the rules of the Bureau Veritas, or, it was contended, by those of the Germanischer Lloyd. These rules are respectively as follows:—The English Lloyd's rules provide that "the arrangement of pumps, bilge injections, suction and delivery pipes, is to be such as will not permit of water being run from the sea into the vessel by an act of carelessness or neglect." Article 34, section 10, of the rules of the Bureau Veritas provides, *inter alia*, that "valve chests, cocks and pipe connections must in all cases be so arranged that water from the sea cannot accidentally be run into the ship." The Germanischer Lloyd rules provide as follows:—"Rule 2. All seacocks, and when practicable all other valves and cocks, must be easily accessible. They are to be placed above the engine-room and stokehold floors, and must be so arranged that no doubt can arise as to whether they are open or shut. Rule 7. Wherever there is a possibility of the admission of water into a vessel's hold, the pipes leading thereto must be fitted each with two valves working independently of each other

so that the flooding of a compartment even when the valves are carelessly handled is rendered impossible." The chief engineer Meyer stated that he was himself well acquainted with the structure and action of this cock. The Judge at the trial disbelieved him. In my view the Judge's conclusion on this point was amply justified by the evidence of the captain, of Herr Motting, and most of all by the conduct of the engineer himself. The captain's evidence is clear and distinct upon the point. The evidence of Herr Motting, the respondents' surveyor, leads irresistibly to the same conclusion. And indeed that gentleman for himself says that when he inspected the ship he never saw the cock opened, that the piping arrangements on the plans tell nothing of the structure of this cock, and that "he thought" and "expected" when "it was put into the ship it would open two ways at once, and not three ways at once." The learned Judges in the Court of Appeal were apparently of opinion that this cock was, owing to its mechanism, a dangerous cock—that is, a fitting calculated to endanger in its use the ship or cargo. It was used frequently. The chief engineer stated that he used the pump every four hours on his voyage from Bremen to London, and on each of these occasions the cock must have been used. And it certainly would appear to me that a due regard for the safety of the ship and cargo would have imperatively demanded that every member of the crew likely to use this cock or interfere with it should, before the voyage commenced, have been fully instructed as to its proper use, and fully informed as to the danger to be avoided, since the best machinery may become a source of danger if placed under the control of the ignorant or unskilled, and the best equipped ship may become unseaworthy if her crew are unacquainted with the nature, structure, and proper use of the appliances with which she is furnished. In my view it is therefore clear that this ship, equipped as she was, and manned by the crew she carried, was, at the time she was loaded in fact unseaworthy. It was urged, however, by Mr Scrutton on behalf of the respondents that even if this be so the respondents are protected under clause 10 of the bill of lading, because they and their agents had exercised "reasonable care and diligence" in fulfilment of their obligation to provide a seaworthy ship, inasmuch as—(1) They had this ship built by a first-class builder; (2) had her fitted with a kind of cock in common use in Germany for ships of her kind and class; (3) had sent their own engineer Meyer over to superintend the building of her; (4) and caused her to be inspected by the proper German official. There appears to be no question as to the character of the builders, but as to the second ground relied upon, though a cock with three openings in the same horizontal plane such as this may be the design of cock commonly used in German-built vessels, there is no proof whatever that a cock

which, if the plug be placed in an intermediate position, opens three ways at once, and places the non-return valve, if the seacock be open, in direct communication with the sea is commonly used. Indeed, the evidence of Herr Motting suggests, if it does not prove, the contrary. It would be strange indeed if it were otherwise, seeing that such a cock does not conform to the requirements of the rules above mentioned. Mr P. Winstanley, a witness examined for the respondents, who inspected the ship in London, to whom the real cause of the flooding never occurred, put the matter as to the marking on the top of the plug quite plainly in the following questions and answers:—“(Q) Would you have passed it, as a Bureau Veritas surveyor, if you had known it?—You mean in building the ship?—Yes; I do not think so. (Q) It is in the teeth of your own rules, is it not?—I do not know that it is material, but our rules would require a second valve, like the one I saw produced. (Q) At any rate your rules do not contemplate a three-way cock which lets the water down into the bilges without your knowing it?—Well, that is hardly this case, is it? It is that the marks show that it is so. (Q) But the marks do not show, do they, that if you do not adjust them properly the water will find its way down?—You would have to know beforehand. Once you know it is perfectly clear according to the marks.” There is no evidence whatever that any person connected with the respondents other than Meyer, the engineer, saw the inside of this cock, was informed of the nature of its mechanism, or knew anything whatever of the danger involved in its use, or that any person other than Meyer ever took any pains to obtain information on any of these points. But Meyer's story of his knowledge of the working of the cock was inconsistent with his conduct, and was, in my opinion, rightly disbelieved. He could not have tested the cock properly or he must have discovered its defects. No officer connected with the Germanischer Lloyd was examined. Neither was any engineer or inspector unconnected with the respondents who inspected the ship before the flooding occurred examined as a witness. I concur with Deane, J., in thinking that Meyer, the agent of the respondents, designated by them to superintend on their behalf the building of this ship, failed to exercise "reasonable skill and care in connection with the ship, her tackle and appliances," and that the accident was due to his neglect. Meyer's principals are, I think, responsible for this negligence. But Meyer's default did not, in my view, at all consist, as the Court of Appeal apparently considered, in failing to use properly a particular piece of mechanism with the structure and action of which he was well acquainted, but in his failing to inform himself, when he had ample opportunity, before the ship was loaded, what the nature of that mechanism was, what the danger involved in its use, and in his failing to

insist upon its removal from the ship. On the contrary, she was permitted to go to sea with an equipment dangerous in itself but rendered doubly dangerous by reason of his ignorance of its operation. I am, therefore, of opinion that the decision appealed from was wrong and should be reversed, that the judgment of Deane, J., should be restored, and that this appeal should be allowed with costs.

LORD MACNAGHTEN and LORD JAMES OF HEREFORD concurred.

LORD COLLINS—I have had an opportunity of reading the opinion about to be delivered by my noble and learned friend Lord Gorell. I entirely agree with it and have nothing to add.

LORD GORELL—The question in this case is whether the appellants are entitled to recover from the respondents for the loss which they have sustained by reason of damage to certain bags of sugar, of which they were the owners, carried by the steamship "Schwan" from Bremen to London in November 1907, under bills of lading the material clauses of which are as follows:—“(1) The act of God . . . and all accidents, loss, and damage whatsoever from defects in hull, tackle, apparatus, machinery, boilers, steam, and steam navigation, or from perils of the seas, ports, harbours, canals, and rivers, or from any act, neglect, or default whatsoever of the pilot, master, officers, engineers, crew, stevedores, servants or agents of the owners, in the management, loading, stowing, discharging, or navigation of the ship or other craft, or otherwise, and the owners being in no way liable for any consequences of the causes before mentioned.”“(10) It is agreed that the exercise by the shipowners or their agents of reasonable care and diligence in connection with the ship, her tackle, machinery, and appurtenances shall be considered a fulfilment of every duty, warranty, or obligation, and whether before or after the commencement of the said voyage.” The bags of sugar were stowed in No. 2 hold of the vessel, and the damage was caused by sea water, which found its way into that hold in the following manner:—The suction pipe of the ballast donkey pump in the engine-room was connected through a cock with two pipes, an inlet pipe from the sea and a suction pipe from the bilges in the holds, including No. 2 hold. This cock, which is described as a three-way cock with a two-way inlet, was constructed so that by turning the plug of the cock water could be drawn by the donkey pump either from the sea or from the holds. The plug had a mark on the top of it which indicated the positions to which it should be turned in order to accomplish either object. The evidence showed that the construction of the cock was defective, in that if the plug were placed in certain positions it would be open all three ways at the same time, and therefore that water could flow direct from the sea through the cock and pipes into the holds. There were no marks on

the plug to indicate these positions. In the bilge suction pipe, where it passed through the stokehold, and could be examined, there was a non-return valve, designed so as to allow water to be pumped from the bilges, but to prevent water so pumped from flowing back from the pipe into the bilges. It is established that in the course of the voyage the plug must have been in such a position as to allow sea water to flow into the bilge suction pipe, and that something, either tow or a chip, had become fixed in the non-return valve and prevented it from closing properly, and thus the sea water flowed into the No. 2 hold and did the damage. The appellants' contention was that the defect in the cock rendered the vessel unseaworthy for the voyage—in other words, that she was not reasonably fit to carry the cargo, and that reasonable care and diligence had not been exercised by the shipowners or their agents to render her seaworthy in this respect. The "Schwan" was a new vessel, built at Rostock in Germany in 1907, under the supervision of surveyors to the Germanischer Lloyd, but none of these surveyors were called at the trial. Meyer, an engineer, superintended the building of the vessel and the fitting of the machinery on behalf of the owners, and after her completion he was chief engineer of the vessel. He swore that he saw the cock while it was being constructed, that he was well acquainted with the way in which it worked, and that he knew when it was fitted that in certain positions all three ways were open. Deane, J., who tried the case, did not believe this evidence. The learned Judge gave judgment for the plaintiffs on the ground that the defendants had not established that they exercised through their agent due care with regard to the machinery on board the vessel. I think it may be taken that although he did not say so in terms he thought that the vessel was unseaworthy, and he found that due care had not been taken by Meyer to guard against the unseaworthiness. This decision was reversed by the Court of Appeal. That Court was advised by its assessors that the cock as constructed was a dangerous cock, but that a careful engineer could have adjusted the plug so that the pipe to the bilges would be closed when the pipe communicating with the sea was open, and that the non-return valve if in working order would be a sufficient protection against the entrance of any water which might get into the pipe to the bilges in consequence of the construction of this particular valve. And the Court came to the conclusion, having regard to the advice given, that the vessel was not unseaworthy, and that so far as the cock was concerned the case fell within the principle of *Steel v. State Line Steamship Company* (3 App. Ca. 72). The Court considered that the passing of water through the cock was due to neglect of the engineer in not seeing that the plug was in its proper position, that the exceptions in the bill of lading protected the respondents, and that the obstruction in the non-return valve

was also within the said exceptions. There is no controversy in the case as to the law applicable to it. The principles of that law are very fully stated in the case to which reference has been made. The ordinary warranty that the vessel should be at the time of sailing seaworthy, that is, taking the whole circumstances together, reasonably fit for accomplishing the service which the shipowners engaged to perform, is modified in this case by the provisions of clause 10 of the bill of lading, and therefore the questions which must first be considered are whether the vessel was seaworthy, whether reasonable care and diligence were exercised by the shipowners or their agent to make her seaworthy, and whether, if these two questions are answered in the negative, the damage was occasioned by want of seaworthiness. Now I agree with the Court of Appeal in thinking that it was established that the cock was of unusual construction. It ought to have been constructed in the ordinary and proper way, so that it was impossible for water to pass from the sea into the bilges of the vessel, whereas this was not only possible but very probable unless great care were taken. The advice given to the Court below, that the cock as constructed was dangerous, appears also to be thoroughly sound. The danger which will arise if a seacock is fitted so as to permit of water passing from the sea into the holds of a vessel when the cock is in certain positions might almost be considered to be obvious, and it can hardly be said that there was any difference in the evidence of the experts on both sides on these two points. The evidence for the appellants is very emphatic, and I think it clear from the evidence called for the respondents that their witnesses would not have passed such a cock. It was stated by Herr Motting, the marine engineer, for the respondents, that the cock was of a form common in boats built in Germany, and was one of the regular pattern of the Rostock shipbuilding yard, and that he had four more under his charge fitted with similar cocks. But the cross-examination of this witness disclosed the fact that he had never examined the inside of the cock until after the damage in question arose, and cannot have known of the defective construction until that date. There was no evidence produced by the respondents from the German surveyors on these points, nor is there any real support to be found in the evidence for the shadowy suggestion made by the respondents that there was a purpose in constructing the cock in the way in which it was made. It was, however, contended by the respondents that even if the cock was of an improper and dangerous character, yet a careful engineer could have adjusted the plug so that the pipe to the bilges would be closed when the pipe to the sea was open, and so that the pipe to the sea would be closed when the pipe to the bilges was open, or, in other words, could have adjusted the plug so that water could not pass from the sea to the bilges, and that therefore the vessel

could not be considered as unseaworthy. It was said that this was analogous to the case of a porthole which was considered in the case above referred to. In such a case an accessible porthole might be open or closed as required, and if improperly left open there would be negligence but not unseaworthiness. There is, I think, no doubt that if an engineer knew exactly the working of the cock he could put the plug in such a position that there would be no danger of the incursion of water into the vessel, though the evidence makes it clear that it would be a matter of some nicety so to adjust the plug. It is on the ground that this could be done by a careful engineer that the Court of Appeal has considered the case to be one of negligence and not of unseaworthiness. But then comes in the consideration that to make the proper adjustment the necessary knowledge of the structure of the cock must be possessed by the engineer. Both sides are agreed about this. As already stated, Deane, J., who saw and heard the witness Meyer, the chief engineer, has found, as a fact, that he did not at the material time know that the cock would open three ways instead of two, and there is absolutely no evidence that any of his subordinates were warned about the danger or knew anything about the peculiar structure of the cock. In the heavy weather which the vessel met with pumping appears to have been required every four hours, and at these times the cock had to be altered, so that probably the other engineers besides the chief used it. If the cock had been of a proper and usual character there would have been no danger in its use, and in my opinion the engineers in using the machinery would be entitled to assume that it was of such character unless they were warned to the contrary. There was nothing whatever in the marks or otherwise to indicate to them any necessity for any special care. In this respect, so far as relates to the exceptions in the bill of lading, during the voyage the chief engineer was in the same position as the other engineers, for according to the judge's finding he did not know of the peculiar structure of the cock. The question then seems to be—Is a vessel seaworthy which is fitted with an unusual and dangerous fitting which will permit of water passing from the sea into her holds unless special care is used, and those who have to use the fitting in the ordinary course of navigation have no intimation or knowledge of its unusual and dangerous character, or of the need for the exercise of special care, and might as engineers of the ship reasonably assume and act upon the assumption that the fitting was of the ordinary and proper character, which would not permit of water so passing however the fitting was used? I think that this question should be answered in the negative. With all respect, in my opinion, the judgment of the Court of Appeal does not give its proper weight to this point. The position is this—the vessel was not reasonably fit to carry the cargo in the circumstances, for the cock in question was of

an unusual, improper, and dangerous character, and those who had to use it on the voyage had no reason to suspect this, though if they had known the truth they could have adjusted the cock so as to prevent any risk of water getting to the cargo. That is to say, the vessel was, in respect of this cock, not reasonably fit to be worked in the way which might ordinarily be expected. A further point to consider arises from the respondents' contention that the vessel could not be treated as unseaworthy because the bilge suction pipes were fitted with non-return valves, and that such valves formed an adequate protection against the admission of sea water into the holds through those pipes. On examination in London it was found that the non-return valve on the pipe leading into the hold where the sugar was damaged had in it a piece of tow and a wooden chip which had prevented the valve from closing properly. It was shown by the evidence that refuse of one kind or another may easily get to these valves, and they have to be examined from time to time to see that they are clear. So that these valves cannot be relied on with certainty to prevent the incursion of water into the holds. To guard against the danger of water getting into the holds through pipes leading into them, rules are laid down by Lloyd's rules for the construction of ships, the rules of the French Bureau Veritas, and the rules of the Germanischer Lloyd. All these rules contain very stringent provisions to the effect that the arrangements shall be such as will not permit of water being run from the sea into a vessel by an act of carelessness or neglect. The seventh of the German rules is this—"Wherever there is a possibility of the admission of water into a vessel's hold the pipes leading thereto must be fitted each with two valves working independently of each other, so that the flooding of the compartment, even when the valves are carelessly handled, is rendered impossible." It seems clear that this cock did not comply with either of the three sets of rules notwithstanding a suggestion that there was a sea-cock as well. I come, therefore, to the conclusion that the "Schwan" was not in the circumstances reasonably fit to carry the goods of the appellants, and that the damage was due to the unseaworthiness. Then does clause 10 of the bill of lading protect the respondents? This depends on the question of fact whether Meyer, in his capacity as the agent of the respondents to superintend the construction of the ship and her machinery, exercised reasonable care and diligence in connection with the ship, her tackle, machinery, and appurtenances. The finding of fact is that he did not. This finding is not affected by the fact that the vessel was built under the survey of the surveyors to the German Lloyd. They may not in fact have inspected this particular cock, and it certainly is a remarkable feature of the case that none of them were called by the respondents, nor was any reason given

to account for the absence of their evidence. For these reasons, in my opinion, the appeal should be allowed, and the judgment of Deane, J., restored, with costs here and below.

LORD SHAW—The facts in this case have been stated by your Lordships who have preceded me, and my view thereon is in substantial accord with the narrative given. In my opinion it is established by the evidence that the sea-cock of the "Schwan" was of unusual construction and was dangerous in the sense of permitting the access of sea water to the hold and cargo. This danger could have been avoided only on two conditions, viz., (1) that it was known to exist, and (2) that with the most scrupulous exactitude an adjustment could have been made on each use of the pump so as to avoid the peril. With regard to the first, I accept and agree with the view of Deane, J., that the danger was not known to the chief engineer, who was the owners' superintending agent while the vessel was being built at Rostock, and ought to have seen and appreciated it before the vessel put to sea; indeed, I think that such a danger did not occur to him until he was searching about in his mind for a possible cause of the accident. I therefore agree with the learned Judge who tried the case that par. 10 of the bill of lading affords no defence to the suit, because, in my view, the "reasonable care and diligence in connection with the ship," &c., were not in fact exercised. With regard to the second point, it is no doubt true that the need for care and exactitude in the working of even unusual appliances would not *per se* demonstrate unseaworthiness, and the principle of *Steel v. State Line Steamship Company (cit.)* seems so far applicable. But there is a question of degree, and in the present case I cannot hold that the positive and serious danger arising from a peculiar, and, so far as I can see, positively needlessly peculiar, construction of part of the ship's tackle or machinery did not involve unseaworthiness. In the ordinary working of the ship in all weathers by an ordinary crew, such danger, in my opinion, was present, and was present to such a degree as to render the vessel unseaworthy and her owners liable on that ground.

LORD CHANCELLOR (LOBURN)—I also think that this appeal should be allowed.

Judgment appealed from reversed.

Counsel for Appellants—Sir R. B. Finlay, K.C. — Laing, K.C. — Balloch. Agents — Cattarns & Cattarns, Solicitors.

Counsel for Respondents—Scrutton, K.C. — Bateson. Agents — Thomas Cooper & Co., Solicitors.