boy might have had a discretion to use the perhaps speedier, although the forbidden, means of reaching his destination. Nor is it as if the rule forbidding the act was notoriously disobeyed or not enforced. It was disobeyed, no doubt, but it was disobeyed surreptitiously and unknown to the employers. The act was, in my view, expressly prohibited, and there were no circumstances which could in any way justify the boy in disregarding the prohibition. The case falls within the authority of *Brice* v. *Edward Lloyd Limited*, [1909] 2 K.B. 804, and is governed by it. It is not like that of *Robertson* v. *Allan Brothers & Company* (1908 L.J., K.B. 1072, 98 Law Times R. 821). In the latter case the Master of the Rolls pointed out that the violation of the rule against the use of the skid for reaching the vessel was "winked at" by the employer—in other words, that it was not a prohibition at all.

For these reasons I think that the appeal ought to be dismissed.

Appeal dismissed.

Counsel for Appellant—Waddy, K.C.—V. M. Coutts Trotter. Agents—H. G. Campion & Company, Solicitors.

Counsel for Respondents—Scott Fox, K.C.—T. E. Ellison. Agents—Bell, Brodrick, & Gray, Solicitors.

HOUSE OF LORDS.

Monday, January 29, 1912.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Macnaghten and Atkinson, with Nautical Assessors.)

OWNERS OF "FRANCES" *v.* OWNERS OF "HIGHLAND LOCH."

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

Reparation — Ship—Collision — Launch—Choice of Two Risks.

The s.s. "Highland Loch," of 4675 tons register, was built and about to be launched at a shipbuilding yard upon the river Mersey. The ketch "Frances," of 71 tons, was anchored in the river opposite and near the line of the intended launch. She had dragged anchor and got foul of some moorings in the river. All the usual notices of the intended launch were given by the shipbuilders, who also sent warnings to the master of the "Frances" more than two hours before the launch. They requested him to move the "Frances" from her position and offered to tow her to a safe position. They continued to give warning and make the offer until immediately before the launch, which was delayed for a quarter of an hour; the master of the "Frances," however, could not heave his anchor, and refused to slip his cable unless the shipbuilders would undertake liability for a new anchor. At the launching the "Highland Loch" collided with the "Frances" and caused injury, in respect of which the owners of the "Frances" sued the shipbuilders. The building supports of the "Highland Loch" had been in course of removal for hours before the launch, and it was proved to the satisfaction of the Court that further postponement of the launch would have involved considerable danger to the ship and to the workmen engaged in the building-yard.

Held that the master of the "Frances" acted unreasonably in refusing to slip his cable and move her; that the owners of the "Highland Loch" were thereby placed in a position in which they had to take one of two risks; that in deciding to proceed with the launch they took the lesser risk and acted properly; and that the "Frances" was accordingly alone to blame.

A collision took place between the s.s. "Highland Loch" and the ketch "Frances" under the circumstances stated *supra in rubric*. The owners of the "Frances" raised an action to recover damages for this consequent injury and loss, and obtained decree in their favour. This was reversed by the Court of Appeal (VAUGHAN WILLIAMS, FARWELL and KENNEDY, L.JJ., with Nautical Assessors).

The owners of the "Frances" appealed.

At the conclusion of the argument for the appellants their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I think that there are no nice questions of law in the case, nor any questions of law at all. It is purely a question of fact. It is very clear to me that the ketch was to blame and acted unreasonably. It is unnecessary to dwell upon that, because all the learned Judges in the Courts below have agreed upon that subject. I should say that a vessel, if she could get out of the way fairly, finding herself in this position, and acting as this ketch did, offers a typical illustration of unreasonableness. Then you have to see whether the defendants were at fault. I cannot see where negligence or breach of duty on their part arises in the circumstances. It is an exceptional state of things when a launch is to take place, because temporary and exclusive use is required for a short time of the water by those who have to launch the vessel. Others must do what is reasonable to facilitate that lawful and exceptional use of the water, and the owners of the ship to be launched must do the same. I have been watching to see what grounds were alleged of neglect of duty on the part of the owners of the launch. So far as I can see these are the things suggested—that they ought to have taken precautions to see that the mooring chains should not be a source of obstruction at the bottom of the river. That suggestion was made by the junior counsel for the appellants, but I find

it nowhere suggested in any other part of the case. That, I think, is so remote that we need not trouble ourselves about it. The defendants were not owners of the buoy or the mooring chains. The second suggestion was in not warning the ketch against the trap lying at the bottom of the river. That is also a great deal too remote. One could not anticipate that the vessel would drag her anchor and that she would come foul of a mooring chain. The next complaint was that there was not a ship below the yard to warn coming vessels. This ketch was warned after she got into difficulty two hours before the launch. The fourth suggestion was continuing the removal of blocks and shores after it was known that the ketch could not be cleared. I do not see how the respondents could have been supposed to know that anyone would act in so unreasonable a manner. The next thing was that the owners of the launch ought to have promised to pay the value of the anchor. That is a most unreasonable contention. I see nothing in that, nor in the complaint that there should have been an offer of a tug to move the ketch and keep her till she got back to her anchor. If the master of the ketch thought that desirable he could have asked for it and he might have got it, but it never occurred to him until the litigation. In regard to the last point, that the launch ought not to have taken place, and that having taken place, the collision was caused without any inevitable necessity, I have only to say this—The owners of the launch were placed in an extremely difficult position. I am quite satisfied upon the evidence that it would have been a dangerous thing to the men in the shipbuilding yard, and also to those craft that might be in the river, if this launch had been postponed. The master of the ketch was thoroughly unreasonable in refusing to move her, as he could have done by slipping his anchor. The owners of the launch were placed in a position in which they had to take one of two risks. It seems to me that they took the lesser risk. Under the circumstances they did nothing to which the law can attach any blame or fix any penalty in the way of damages. I say no more, because I am entirely satisfied with the judgment of the Court of Appeal.

EARL OF HALSBURY—I am entirely of the same opinion. This is a question of fact. I am quite satisfied that the judgment which the Lord Chancellor has given disposes of all the facts which it is necessary to dispose of in order to arrive at the same conclusion as was arrived at by the Court of Appeal.

LORDS MACNAGHTEN and ATKINSON concurred.

Appeal dismissed.

Counsel for Appellants—Bailhache, K.C.—C. Robertson Dunlop. Agents—Holman, Birdwood, & Company, Solicitors.

Counsel for Respondents—Laing, K.C.—G. D. Keogh. Agents—Rawle, Johnstone, & Company, Solicitors.