single clause—nay, more, to the meaning of a single word in the clause. The clause is condition No. 7 in the contract of carriage of the 10th March 1911; the word is "owners." It is not disputed that while the right of the unpaid vendor to stop *in transitu* is subject to the particular lien of the carrier for charges for carriage, it over-rides any general lien of the carrier in the absence of special contract to the contrary. The whole question is whether between the consignors —the unpaid vendors—and the Great Western Company, the carriers, there existed a special contract to the contrary. Condition No. 7 is by the words on the face of the contract note of the 10th March 1911 rendered binding upon the parties to that note. The parties are the Manchester Liners Limited and the Manchester Ship Canal Company. The contract however, binds the United States Company, the consignors, as having been made on their behalf under the authority given by the bill of lading of the 28th February 1911, and binds the Great Western Railway Company as a party to the through rate by virtue of the words to that effect in the contract of carriage. It is said that it binds the consignee also by virtue of the concluding words of the bill of lading. I do not doubt that it does, but it is, I think, immaterial whether it does or not.

Condition 7, then, is part of a valid contract, binding at any rate the two parties to this appeal. The only question is, what does it mean? The condition is one which comes into operation when, notwithstanding the lien in favour of the carrier for which it provides (whatever that lien is), another party claims that the carrier must deliver the goods, because, as that party asserts, there is no subsisting lien in favour of the carrier.

The condition deals with two liens—the one the carrier's common law lien for charges for carriage, the other the contractual lien created by the words on which the question arises. The vendor consigning the goods may of course give such rights paramount to the right arising in himself upon stoppage *in transitu* as he thinks proper. It is said that by the first words of the clause he has given such a paramount right to the carrier's common law lien. This seems to me erroneous. That paramount right existed already. The consignor could not give the carrier that which the carrier already possessed. By the next words the consignor gives some paramount right. What is it? There are three possible meanings. First, the words may mean to grant in priority to the right of the unpaid vendor a right in the carrier to a charge on the goods for any money due from the consignor; or secondly, to a charge for any money due from the consignee; or thirdly, to a charge for any money due from such person (whoever he turns out to be) as is entitled to claim and claims delivery of the goods.

To my mind the third is the only reasonable or possible meaning of the words. The first meaning would render it impossible for the consignee (if entitled to delivery) to get the goods without paying the consignor's debt, howsoever arising. The second would render it impossible for the consignor (if entitled to delivery) to get the goods without paying the consignee's debt, howsoever arising. The third is perfectly intelligible, and strictly pertinent to questions arising when someone comes and demands delivery and is met by the assertion of a lien in favour of the carrier, who in the absence of a lien would be bound to deliver.

The word "owners" means, I think, "persons entitled to claim and claiming delivery." This is the meaning which Pickford, J., gave to the word, and in my opinion he was right in that view.

For these reasons I think that this appeal succeeds.

The House allowed the appeal and restored the judgment of Pickford, J.

Counsel for the Appellant—Sir R. Finlay, K.C. — Schiller, K.C. Agents — A. J. Greenop & Company, Solicitors.

Counsel for the Respondents—Duke, K.C. —Macassy, K.C.—H. A. MacCardie. Agent —L. B. Page, Solicitor.

HOUSE OF LORDS.

Monday, February 8, 1915.

(Before Earl Loreburn, Lords Atkinson, Parker, Sumner, and Parmoor.)

HAYWARD *v.* WESTLEIGH COLLIERY COMPANY, LIMITED.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 2 (1) (*a*)—*Notice of Accident—Onus of Proof that Employer was not Prejudiced by Absence of Notice.*

Consideration of the *onus* of proof that the employer has not been prejudiced in his defence by the omission to give the notice required by the Workmen's Compensation Act 1906 of a claim under the Act. *Reversal* of the decision of the Court of Appeal, who had, on this ground, set aside the arbiter's award.

The *facts* appear from their Lordships' judgment, which was delivered as follows:—

Earl Loreburn—In this case I regret that I cannot agree with the opinion expressed by the Court of Appeal.

There are two questions. The first is, was there evidence warranting the learned County Court Judge in finding that the injury which the deceased sustained was an injury by an accident arising out of and in the course of his employment? The deceased was a man who worked at a colliery, bringing full tubs from the working place to the shunt, and it was proved that scratches are very common on the arm or the leg when men in this employment come into contact with the tub or with the coal face or with stones. On the 1st April the deceased went to work, his knee being perfectly sound, at

five o'clock in the morning; at seven o'clock he was seen working in the colliery and seemed all right; an hour or two after that he was not all right, but required help in pushing his tub, which is not usually required. He was seen to rub his knee, and he limped a little. He complained that his leg was hurt twice on that morning in the colliery, and he came home just before three o'clock and did not walk as usual. After dinner he set to and bathed his knee; there was a slight bruise on the knee, which his wife saw, and a slight breakage of the skin, "not much to complain of, you would think," she said, but he complained that it hurt him. On the 2nd April his knee was sore and swollen, and he did not go to work; on the 3rd April he went to work and came back again much worse; on the 4th April he went to work and his leg was swollen and red; on the 5th April he sent for the doctor, who said he had a septic knee—that was on the Saturday; on the Wednesday following he was taken to the hospital, and on the Thursday he died, and it is admitted by the learned counsel in the case that he died from the injury caused to his knee. When the doctor saw him he said he had a septic knee, that there was a small abrasion, and that it was consistent with the injury on the 1st April by contact with the tub.

Now is not this evidence upon which a reasonable man is permitted to act in saying that this man hurt his knee in the colliery on the morning of the 1st April in the course of his employment, and that the injury arose out of his employment? Is it necessary always to bring someone who saw the accident? Surely not. If circumstantial evidence is of any value, surely there was ample circumstantial evidence here. The Court of Appeal did not find upon that, but they said it was a case very near the line and that they would decide upon the other point. It was submitted that no reasonable man could act in the way in which the arbitrator did act. I venture to think that if any jury were told this story they would say, "Why, of course he hurt his knee when he was working in the colliery that morning." They would say that it was not demonstrated—and few things ever are demonstrated in this world—but that this was the most probable view, and that is the view upon which they were entitled to act.

I now pass to the second point that was made, and which prevailed in the Court of Appeal, and that is whether sufficient notice was given of this accident. Notice admittedly was not given in the form required by the statute—that is to say, a written notice; but then the Act says that that is not to be a bar to the maintenance of proceedings if it is found that the respondent is not prejudiced in his defence by the want of such notice. I think the statute really means that, looking at all the matters before him, the arbitrator must find that the employer was not prejudiced by want of notice. I do not think it means that there is to be a presumption one way or another, but simply that if upon all the facts before him the arbitrator is not satisfied that there was no prejudice, then the applicant fails. The arbitrator in this case found that the employer was not prejudiced. What were the facts before him on that point? That the injury was caused on the 1st April; that it was slight; that it was evident that the wife thought that the man Pollitt had been told, but we cannot find and it is not proved at all that Pollitt was told of this accident verbally. On the 8th April, however, he was told, and on the 9th he made full inquiries. He learned nothing. He does not say that he could have learned more if he had made inquiries earlier, and no one at the hearing suggested that if proper notice had been given any further evidence could have been called or any further information could have been as a fact acquired by the company. At the hearing no one was called to show that more information could have been obtained if notice had been given sooner, or to show that in point of fact the employers were prejudiced in any way by the absence of notice. They were the people who knew best whether they had been prejudiced, and they gave no notice upon the subject. It comes therefore to this, that there being no inherent probability that I can see from the facts that the company would be prejudiced by the absence of notice for a few days, those who knew best whether they had been prejudiced, namely, the respondents, gave no evidence to say that they had been prejudiced. If they had said that they had been prejudiced they would have had to give reasons, and to state how and why the prejudice had arisen to them, and given the appellant the opportunity of showing that it could not have occurred. The learned County Court Judge came to the conclusion that there had been no prejudice. It may be—I think it is—that this is a case somewhat near the line, but I think the learned County Court Judge when he heard the facts of the case themselves was warranted in coming to the conclusion that the great probability was that no prejudice had occurred at all, and inasmuch as those who could prove that there had been prejudice did not offer any evidence to that effect, he was warranted in coming to the conclusion that the respondents had not been prejudiced in their defence.

Under those circumstances I am of opinion that the award made by the learned arbitrator ought to be confirmed.

LORD ATKINSON—I concur. With regard to this matter of prejudice I only want to say one word. The statute requires that notice should be served, and if it is not served the party who should have served it is in default. He must excuse that fault, and I think the burden of proof in the first instance rests upon that party. But if he gives evidence from which it may be reasonably inferred that the employer has not been prejudiced, I think then the burden of proof is shifted from his shoulders on to the shoulders of his employer, and if the employer is in a position to prove that notwithstanding that evidence he is prejudiced in some particular matters he is bound to

do so. If he omits to do so—as he has omitted in this case—then my impression is that it is not open to him to conjecture, as he has endeavoured to do through his counsel here, that he might have done this or he might have done that or he might have done something else that would have rebutted the evidence which has been given on behalf of the workman. He abstained from doing that, and therefore he says—"By reason of those conjectures which I have not supported you are to come to the conclusion that I was prejudiced."

I think there was ample evidence in this case, in the absence of all evidence but that which was tendered before him, upon which the learned County Court Judge might fairly, justly, rightly, and reasonably conclude that the employer was not prejudiced.

LORD PARKER—I concur. I will only say that I think this is one of those cases in which it is important to bear in mind the distinction between questions of law which may possibly be decided by the arbitrator and questions of fact. In this particular case the question is whether as a matter of fact there was any prejudice arising to the company by reason of notice not having been given at the time and in the manner mentioned by the Act. The arbitrator found that there was no such prejudice. In acting as a court of appeal from that decision it is absolutely impossible to set it aside unless the circumstances be such that no reasonable man could from the evidence before the arbitrator have come to that conclusion; and it appears to me, for the reasons stated by my noble friend on the Woolsack, that there was evidence which in this case would justify a reasonable man in coming to the conclusion that the learned arbitrator did.

The same thing really applied to the question whether the accident arose out of and in the course of the employment, and on that part of the case it does not seem to me that I can usefully add anything.

LORD SUMNER—I concur. With reference to the question whether there was any evidence which would have supported the learned County Court Judge's finding that the accident arose out of and in the course of the employment, which is really the second question in the case, I need add nothing. It seems to me that no ground is made out for interfering with the County Court Judge's finding. The learned Lords Justices in the Court of Appeal expressed no opinion upon that point, and for the reasons that have been already given I think there was ample evidence before the learned County Court Judge to justify him in the finding at which he arrived. Had he found the other way it may also well be that there would have been evidence before him sufficient to support that finding; but the matter was for him because there was evidence upon the question, and the decision is upon a question of fact.

The other question, as has been pointed out, depends in the present case upon whether there was evidence sufficient to warrant His Honour in the finding at which he arrived that the employer was not prejudiced in his defence. It is admitted that no notice was given as early as notice should have been given, and that the written notice that was given was in itself so much too late that it cannot be relied upon. Therefore the question which His Honour had before him was, At what time notice should have been given, and whether the delay in giving any notice did in fact prejudice the employer in his defence?

Now the finding that is to be arrived at is of course a finding upon all the facts which are proved, and I do not think those facts include the mere circumstance that the defendant does not give further evidence or call certain witnesses whose absence is not accounted for. The learned arbitrator has to take the facts as they have been proved before him, and if it be a case in which facts are proved on both sides he has to take the totality of the facts as he finds them and then come to his conclusion. The question for the Court of Appeal upon that is whether the totality of such facts contains evidence upon which he could without error in law come to a finding of fact such as he arrived at at all.

Here I think there was certainly evidence upon which the learned arbitrator could find that the various directions in which it is suggested that prejudice to the employer in his defence might have occurred were really not directions in which any prejudice actually was experienced. It is suggested that other inquiries might have been made if earlier notice had been given, but in fact all the witnesses of the accident were examined on one side or the other, and as the learned County Court Judge believed the two witnesses who were called for the applicant it cannot be assumed that had they been examined by the employer earlier they would have told any different tale. It is not suggested that anybody else was present in the pit at the time when—under the first finding that the accident arose out of and in the course of the employment—the accident must have occurred.

It is then suggested that something might have been done if a doctor had been instructed by the employer to examine the workman, but as to that, upon the facts which are proved and the estimate which the learned County Court Judge formed of the good faith of the case, the only substantial suggestion that can be made, as it appears to me, is that such a doctor might have furnished the employer's solicitor with materials upon which he could have instructed his counsel to cross-examine the doctor for the applicant more extensively than was done. It seems to me that that is a speculative and unsubstantial suggestion of prejudice.

The third way in which it is suggested that prejudice may have occurred is that the deceased man might have been asked in his lifetime, while he was still able to give an account of it, what had happened to him. But I think that in view of the fact that the whole case is found by the learned arbitrator to be a case raised in good faith, one cannot assume that such an investigation would have yielded any other

result than that which the evidence for the applicant gave. I think therefore that although it is competent to the employer to suggest in argument by his counsel, without necessarily calling witnesses to prove it, that this, that, or the other might have been done, when one comes to examine the things which are suggested here they have very little substance in them, and certainly do not so far balance the substantial evidence which was given by the applicant to the effect that no prejudice in the defence was caused as to make it possible to interfere with the learned County Court Judge's finding that in fact no prejudice in the defence was caused.

LORD PARMOOR—I concur. I propose to say a few words only on the second point, that is, the question of notice. I should gather from the judgment of the learned County Court Judge that he found that the notice was not given in fact as soon as practicable, and it is for that reason that importance is attached to the proviso to section 2 of the Act which raises the question as to what is the character of the defect or inaccuracy which would be a bar to the maintenance of proceedings under the Workmen's Compensation Act. In my opinion it is very necessary to regard the words themselves, and the words are these — "The want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not and would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy." Now it has been found in this case in the proceedings for settling the claim that the employer has not been prejudiced in his defence by want or defect or inaccuracy. Therefore I apprehend the only question to be whether in coming to that conclusion there is any error in law on which the learned County Court Judge can be put right in the Court of Appeal or in this House. In my opinion there is no error in law of that kind. I think there is evidence upon which it was competent for him to come to the conclusion which he did, and so long as there is competent evidence the weight of that evidence is wholly for him and not for any other court at all.

I only wish to say in addition that I think some difficulties in these cases have arisen from giving too much weight to theoretical consideration; that each case must be determined on its own facts; and having regard to the form which the case took in its hearing before the learned County Court Judge, as soon as we put theoretical considerations on one side I think there was ample evidence on which in this case the learned County Court Judge was entitled to come to the conclusion at which he did.

Appeal allowed, and the award of the County Court Judge restored, with expenses.

Counsel for the Appellants — Compton, K.C.—C. Atkinson, K.C.—Stuart Bevan. Agent—J. Woodhouse, for T. Dootson, Solicitor, Leigh.

Counsel for the Respondents — Rigby Swift, K.C.—Singleton. Agent—W. Pengree Ellen, for Peace & Darling, Solicitors, Liverpool.

HOUSE OF LORDS.

Monday, March 1, 1915.

(Before Earl Loreburn, Lords Atkinson, Parker, Sumner, and Parmoor.)

WOODS *v.* THOMAS WILSON, SONS, & COMPANY, LIMITED.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *Sched.* 1 (1) (*a*)—*Injury by Accident—Question whether Death Resulted from the Accident or from the Deceased's Diseased Condition.*

A coalheaver was struck in the abdomen by a fall of coal while coaling a ship. He died from peritonitis, and the medical evidence showed him to have been suffering from chronic appendicitis. The question arose whether his death was the result of the blow or of the disease. The arbitrator found his widow entitled to compensation on the ground that the blow was the immediate cause of death though it would not have killed a healthy man. *Held* (*diss.* Lords Parker and Sumner and *rev.* decision of Court of Appeal, 6 B.W.C.C. 750), that the award proceeded on sufficient evidence.

The *facts* appear from their Lordships' considered judgment, delivered as follows:—

EARL LOREBURN—This is a workman's compensation case, tried before His Honour Judge Fossett Lock with a medical assessor. He found that the workman died from an injury by accident arising out of and in the course of his employment, and that the death was caused in the sense of being accelerated by the injury in question. In the Court of Appeal two judges said that there had been an accident, but a majority also held that there was no evidence to support the finding that it caused or accelerated the death. In the argument before your Lordships the employers' counsel maintained that there was no evidence of accident, and no evidence of its having either caused or hastened death.

I know from experience that there is nothing upon which judicial opinion is more apt to be divided than the question whether or not there is evidence that will support a County Court Judge's decision in cases of this kind. The test is simple enough—what a reasonable man could find. But who is to find the standard reasonable man? I desire therefore to speak with reserve, but I must say what I think myself, with all respect to those who take a different view.