London house was carried on as a separate business, with a separate capital, and conducted the whole of the company's business in the United Kingdom. Sometimes the London house purchased cargoes of guano direct, and in order to pay for them got advances (1) from the head office, and (2) from bankers abroad, sometimes directly, but usually through the central office. What was decided in the case was that the sum paid for interest on these loans could not be deducted under rule 3, on the ground that the money borrowed was employed as capital, and that this interest was a sum deducted "*for*" this capital; but this case was treated as if it were a case between partners engaged in a partnership business, one or all of whom is or are trading with borrowed capital.

At page 244 Mr Justice Mathew, as he then was, says—"It appears to me clear when you look at the language of the Act that what are intended to be assessed are the profits of the particular business, and that those profits are to be ascertained in the ordinary way without reference to whether or not a particular partner or all the partners are trading with borrowed capital." And at page 245 he says—"It is perfectly clear that in the hands of partners deductions of that class and character are not to be made, because, if made, you would not be ascertaining what really are the profits, not of the partner, but of the business." Precisely so, when each of the different members of a firm brings a certain sum of money into partnership, the thing which concerns the company or firm as a trading entity is the amount brought in, not what it cost each of the contributing members to procure what he brings in. That is a matter as unconnected with the business of the firm as a trading body whose profits as such are to be ascertained, as is the loss a particular partner might sustain on the sale of the securities he might be obliged to dispose of to procure the money he brings into partnership. Mr Justice Cave deals with the matter in the same way. At page 245 he says—"It seems to me that that is not so—that the gains of the trade are independent of the question of how the capital money is found, that the gains of the trade are those which are made by legitimate trading after paying the necessary expenses, which you have necessarily to incur in order to get the profits; and that you cannot take into consideration the fact that the firm or trader has to borrow some portion of the money which is employed in the business." It does not appear to me that the reasoning on which this decision is based can apply to a bank whose business is the borrowing and lending of money, or to an investment company whose business is conducted as is that of the respondents in the present case. If it does apply, then I can only say I think it unsound as so applied, and am unable to concur in it. Moreover, the decision is not binding on your Lordships' House.

Mr Atkin, though not called on, pointed out that the words of the rule are "No sum shall be deducted *for* any sum employed or intended to be employed as capital," and would have argued, I presume, that these words could not apply to *interest* paid by a trading company for the use of money borrowed for the purposes of their trade. It is not necessary to decide the point. He may be right, but I prefer to rest my judgment on the broader ground. On the whole, therefore, I am of opinion that the decision appealed against was right and should be affirmed, and the appeal be dismissed with costs.

LORD GORELL—I have had the opportunity of reading and considering the judgment of my noble and learned friend which has just been read by him, and I fully concur in it.

LORD SHAW—I agree.

LORD CHANCELLOR—I agree.

Their Lordships dismissed the appeal with expenses.

Counsel for the Appellant—The Attorney-General (Sir Rufus Isaacs, K.C.)—the Solicitor-General for Scotland (Hunter, K.C.)—J. A. T. Robertson. Agents—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue in Scotland—Sir F. C. Gore, Solicitor of Inland Revenue in Ireland.

Counsel for the Respondents—Atkin, K.C.—Lord Kinross. Agents—Guild & Shepherd, W.S., Edinburgh—Linklater & Company, London.

Tuesday, December 19.

(Before the Lord Chancellor (Loreburn), Earl of Halsbury, Lord Atkinson, Lord Gorell, and Lord Shaw.)

CRAWFORD & LAW *v.* ALLAN LINE STEAMSHIP COMPANY, LIMITED.

(In the Court of Session, March 17, 1911, 48 S.L.R. 648, and 1911 S.C. 791.)

Ship—Bill of Lading—Through Bill of Lading—Goods Found Damaged on Arrival—Acknowledgment—Goods Received in Good Order—Onus.

Where a through bill of lading has been signed, *inter alios*, on behalf of the last carriers, the shipowners, providing that each carrier is only to be liable for damage occurring on his portion of the route, and acknowledging that the goods have been received in good order at the beginning of the transit, and the last carriers have taken no exception to the condition of the goods when handed over to them, they are liable for any damage discovered unless they prove it occurred previously.

This case is reported *ante ut supra.*

The pursuers Crawford & Law appealed to the House of Lords.

At delivering judgment—

EARL OF HALSBURY—The importance of this case depends not so much on the amount sued for as the effect to be given to what is called a bill of lading, but what goes somewhat beyond what in commercial circles is generally known by that name. It is a written document dealing with the carriage of a cargo of bags of flour to be carried from Minneapolis in Minnesota, one of the Northern States of America, to Glasgow. This transit, involving as it does carriage by railroad, inland lake, and ocean voyage, comprehends the handing over the goods to be carried by several independent carriers. It has been found convenient both to the carriers and to the owners of merchandise to devise this form of what is in some respects a novel form of bill of lading, so as to fix the responsibility of each of the successive carriers in turn for any damage or loss of or to the goods so carried under this contract during the period of transit.

The facts may here be very briefly stated. The flour was in 41,000 bags, in good order and condition, and was so delivered to the first carrier. Its route was prescribed. It was to go *via* New York, and each carrier in turn was to certify by a system of checking the state and condition of the goods carried in handing it over to his successor, and the succeeding carrier was to receive them in like order and condition, and to be responsible for himself delivering them to his own successor on the route except so far as they were marked. It is proved that this course was pursued at New York (whether this was accurately done is another matter with which I will deal presently). A somewhat trifling number were marked at New York, but a very serious number, upwards of 4000 bags, were discovered at Glasgow which had been damaged.

Here I may say that it appears to me to be irrelevant to discuss what is the nature of the damage done, and whether it may or may not be comprehended in certain other words. In respect of the question as applicable to these upwards of 4000 bags caked, the question may be separated entirely from the question of the amount of damages that may be recovered in respect of it. It is enough to say that there is no doubt that these 4000 and odd bags had been damaged, and the sole question to my mind is the responsibility upon these bills of lading. To my mind the whole question is one of law, because as a matter of fact it does not appear to me that upon the facts stated there is any real dispute between the parties. The sole question is, as I have described, the validity of this form of bill of lading.

It is proved, as I have said, that this was the course of business that was pursued from New York to Glasgow, and whether this which was involved in what I have described as the course of business was done accurately or not at New York does not appear to me (if the bill of lading as it is called is valid at all) to be very material, because, as I think the Lord Ordinary has pointed out, it is quite clear that the liability is one which follows, and one must assume that each of these carriers in turn receives the things in good order and condition except so far as they were marked in the manner which has been described.

The Lord Ordinary decided after proof that the defenders were liable by reason of the contractual engagement by the two documents called bills of lading, one signed at Minneapolis and the other at New York, but both signed by authorised agents.

Of course this part of the arrangement was most important, since but for this neither carrier nor merchant could fix responsibility for loss or damage, since there is an express engagement that no one of the independent carriers should be responsible for loss or damage except on his own part of the line. This obligation amongst others was duly signed by Mr P. R. Jarvis on behalf of the defenders. The successive obligations and responsibilities of each succeeding carrier are absolutely essential to such a system as is established by the through bill of lading, enforced as it is by the contract to which all are parties, that none of them shall be held answerable for loss or damage beyond their own line, and I am wholly unable to agree to the passage in Lord Salvesen's judgment in which he says that no bill of lading of any kind was signed by the master or agent of the steamer at New York. Of course the learned Judge does not merely mean that it must have been signed at New York. He has, I think, omitted to notice that the bill of lading which is given to us as a specimen of all the bills of lading was signed by him expressly on behalf of the steamer which was to carry the flour from New York to Glasgow—that is, on behalf of the defenders themselves. And as it appears to me that, as I have said more than once, is the only question that can arise in the cause. He appears not to have noticed this fact, and upon that the whole question turns. If this bill of lading is valid according to its true construction, I do not think it is necessary to go into the question of the incorporation of the contract, because it seems to me the bill of lading with considerable accuracy describes what is to be done and what is to be assumed if no such marks as are indicated are found upon the bags on their arrival. This has been done, and it appears to me the judgment of the Lord Ordinary is perfectly right and ought to be restored.

LORD ATKINSON—This is an appeal from an interlocutor of the Second Division of the Court of Session pronounced on the 17th of March 1911, recalling an interlocutor of the Judge Ordinary dated the 23rd December 1909.

The action in which the last-mentioned interlocutor was pronounced was raised to recover damages alleged to amount to £167, 12s. 6d. for injury done to 4112 bags of flour, portion of a cargo of 41,110 bags loaded at New York on the 19th of

December 1903 and following days on the respondents' s.s. "Corinthian," and carried by her for freight to the port of Glasgow, and there delivered to the consignees, the appellants, on the 11th of January 1904 and the days following.

It is not disputed by the respondents that these 4132 bags of flour were, when delivered in Glasgow, "caked." Caking is the damage complained of, and consists in this, that the texture of the bag getting wet, the wet got through the bag and wetted the portion of the flour immediately contiguous to its inner surface, turning the flour into dough, which when dry hardened and became what is called a cake. It is admitted on both sides that this caking does not injure the uncaked portion of the flour contained in the bag. And it is further admitted that the caking in this case resulted from the bags having been wetted by fresh water, and that this wetting did not take place in the hold of the steamer "Corinthian," though, of course, the caking might, and almost certainly would, take place there if the bags were wet when placed in the hold. It is admitted further that the bill of lading was not drawn up, delivered, or signed by the master of the ship, and that it was not conversant exclusively with the ocean voyage from New York to Glasgow. The goods had been purchased from the Pittsburg Wasburn Flour Mills Company, Limited, carrying on business at Minneapolis, Minn., in the United States of America, and were, on the 10th of October 1903, delivered to the Lehigh Valley Transportation Company, consigned to Glasgow to the order of this milling company, to be carried, as the appellants alleged, the entire way to this Scotch port under the terms of certain bills of lading, somewhat peculiar in form, for a through freight. One of these bills of lading is printed as a specimen. It is signed P. R. Jarvis, Agent, "on behalf of carriers severally but not jointly." And immediately above this signature the following paragraph is to be found:—"In witness whereof the agent signing on behalf of the said Lehigh Valley Transportation Company, and of the said Ocean Steamship Company or ocean steamer and her owner severally, and not jointly, hath affirmed two bills of lading, all of this time and date, one of which bills being accomplished, the other to stand void."

The sum sued for is of small amount, but the proper construction of through bills of lading such as this, which are common, and the determination of the rights and obligations of the parties concerned under them, are of vast importance. It is for the purpose of getting these matters finally decided that this litigation was, admittedly, commenced. The bill of lading contains on the face of it a statement that the flour was received "in apparent good order except as noted." The provision immediately following is to the effect that the goods so received "are to be carried to the port of New York, and thence by Allan State line to the port of Glasgow, Scotland . . . and to be there delivered in like good order and condition as above consigned, or to the consignee's assigns," &c. It then proceeds to provide that in consideration of the freight named, the service stipulated for is to be performed thereunder subject to the conditions, whether printed or written, contained in it. Then follow eleven conditions dealing with the service up to the port of New York.

It is only necessary to refer to three of these, namely, No. 1, providing that no carrier shall be liable for loss or damages caused, amongst other things, by "heat, frost, wet, or decay"; No. 3, providing that "no carrier shall be liable for loss or damage not occurring on its own road or its portion of the straight route, nor after the property is ready for delivery to the next carrier or consignee . . ." and also that "claims for loss or damage must be made in writing to the agent at point of delivery promptly after arrival of the property, and if delayed for more than 30 days after the delivery of the property or after due notice of delivery thereof, no carrier should be liable thereunder"; and No. 11, providing that the contract is executed and accomplished, and all liability thereunder terminates, on the delivery of the property to the steamer, her master, agents, or servants, or to the steamship company, and that the inland freight and charges should be a just lien due and payable by the steamship company.

The second part of the bill of lading deals with the service after delivery at New York, and until delivery at Glasgow. It contains nineteen separate paragraphs. Of these No. 1 provides amongst other things that the steamer should not be liable for inland damage, and No 11 that the steamer should only be responsible for such part of the goods as are actually delivered to her at the Port of New York, and should not be liable for any loss or damage that might have occurred before such delivery, while agreeing promptly to present to inland carriers for account of owners of the goods any claim for shortage, loss, or damage that may have occurred before delivery of goods at the Port of New York.

It is, I think, plain that by these provisions for the prompt delivery of claims for damage, contained in paragraph 3 (dealing with inland carriage) and in paragraph 11 (dealing with ocean carriage), it was designed to set up machinery to protect on the one hand each carrier from claims for damages not occurring on his portion of the through route, and to secure on the other hand for the owners of the goods the means of enforcing any claim he might have against the carrier on whose portion of the through route his goods were, in fact, lost or damaged The shippers contracted with the transport company to carry these goods, in the way and by the means stipulated for, to their destination at Glasgow. The shippers were neither bound nor entitled to interfere with the cargo *en route*, and if, on the arrival of the goods at Glasgow in a damaged condition,

the consignees were left to discover for themselves on what part of the route the damage was caused, they would be absolutely at the mercy of the carriers. It suits the interest of these carriers to carry goods in this way for through freights; but if they adopt that method of doing business for their own gain, it is but reasonable that, if they wish to escape liability themselves, they should be bound by noting the condition of the goods when received by them in order to protect the interest of their customers the shippers.

The second part of the bill of lading contains two other important provisions—first, by section 2, it provides that the shipment until delivery at Glasgow is to be subject to all the provisions of the American Statute of 1893, called the Harter Act. By section 4 of that Act the owner, master, or agent of every vessel transporting goods from an American port to any foreign port is bound to issue to the shippers a bill of lading containing, amongst other things, a statement of the apparent order and condition of the property delivered and received by the owner, master, or agent of the vessel for transportation, which document is thereby made *primâ facie* evidence of the receipt of the merchandise described in it; and second, paragraph 18, a condition to the effect that the property covered by the bill of lading is to be subject to all the conditions expressed in the regular forms of bills of lading in use at the time by the steamship company. One of these so-called ocean bills of lading is printed. It commences with the statement—"Received in apparent good order and condition by the Allan State line from the . . . to be transported by the good British ship, 'Corinthian' . . . to be delivered" in like order and condition at the Port of Glasgow.

Unless, therefore, the respondents violated the American law the bill of lading so signed by Jarvis must be taken to be a bill of lading issued by them for the ocean voyage, and Jarvis must be taken to be their agent for that purpose.

I am quite unable, therefore, to follow the reasoning of Lord Salvesen when he says, as he is reported to have said, that the admission contained in the through bill of lading as to the condition in which the flour was received applies, and can only apply, to Minneapolis. That condition is that the goods are in apparent good order and condition except as notified. It is more restricted than what is required by the Harter Act or by the ocean bill of lading. Neither can I follow his reasoning where he says—"It would, of course, have been different if there had been a bill of lading signed on behalf of the ship, acknowledging receipt of the flour in good order and undertaking to deliver it in the same order, for this would have been a contractual obligation which it would lie on the ship to excuse itself from discharging. Here, as I hold, there is nothing of the kind." But what are the facts? The flour arrived at New York in due course. It was there warehoused. On the 12th of November 1903 H. C. Davis, the foreign freight agent of the Lehigh Valley Railway, wrote to Austen Baldwin & Company, the agents of the respondents, to notify them of the arrival of flour "engaged with you for Glasgow," and asking for a shipping permit. The only way in which the flour was "engaged" with the respondents for Glasgow was under the through bill of lading. On the 12th of December these same agents of the respondents sent a permit authorising the receiving clerk of the "Corinthian" to receive this flour from the Lehigh Valley Railway Company.

That is followed by the delivery of the goods to the steamer on the 19th and subsequent days of December 1903 in presence of the respondents' officials, their receiving clerk, L. L. Le Furge, having been sent there for the purpose of checking the delivery and giving receipts therefor. He gave receipts on a printed form, I presume, headed Received for shipment on board steamship "Corinthian," bound to Glasgow, subject to the exceptions and restrictions of liability contained in the usual bills of lading of the company. But these latter are the bills of lading incorporated into the through bill of lading by paragraph 18 of the latter. It would therefore appear to me impossible to hold that whether Jarvis, when he signed the general bill of lading, purporting to act as agent for the respondents, amongst others, had antecedent authority from them so to do or not, they have adopted, acted upon, and taken the benefit of the contract of carriage he purported to enter into on their behalf, and can no more be permitted now to disclaim any liability it may by its terms impose upon them than if they had placed the seal of the company under Jarvis's name on the 10th of October 1903.

Neither can I concur in the suggestion of Lord Salvesen, that the inland carrier who tendered this flour to the ship was, as regards the loading, the agent of the original shipper, and that accordingly the consent of this carrier to have the goods loaded in rain binds the appellant. I think Mr Bailhache is quite right in his contention that the shippers had contracted with the first carrier to transport and deliver these goods to the steamship, just as the steamship had contracted to receive them when delivered, that the relation between the shipper and the inland carrier was the contractual relation thereby created, and that the carrier was no more the agent of the shippers to see to the proper delivery of the goods, than was the steamship company their agent to see to the proper reception and stowage of them.

It is not suggested that this flour got wet in the warehouse. If it did it must have been caked when delivered, and this should have been readily detected. It is admitted it must have got wet before it was placed in the hold of the steamer, though the caking might, and possibly did, take place there. I concur with the Lord Ordinary in thinking that respondents have failed to prove that these bags of flour

were either caked before they came into their custody, or got so wetted before they came into their custody, that as a necessary consequence they caked afterwards. If anything of that kind occurred, the evidence, I think, shows that it could have been readily detected in the process of loading, and if detected it should have been notified so as to preserve the appellants' remedy against the wrongdoer. It has not been notified, and that being so, I think the respondents are bound by the statement contained in the bill of lading that the flour was received in good order and condition save as noted, *i.e.*, save as to the 111 bags which were noted and are not included in the 4132 for which damages are claimed. I think the interlocutor appealed against was therefore erroneous, that that of the Lord Ordinary was right, and should be restored, and this appeal allowed.

LORD GORELL — The appellants in this case claim for damage to certain sacks or bags of flour carried on the respondents' steamship "Corinthian" from New York to Glasgow. The Lord Ordinary found that the respondents were liable to the appellants in respect of 4022 bags "caked," but the Second Division recalled the interlocutor of the Lord Ordinary and assoilzied the respondents from the conclusions of the action.

The summons in the action was as far back as May 1904, and the amount in dispute is not large, but the Lord Ordinary states that the object of the action was to stop the loading of flour at New York in wet weather.

The flour was despatched under through bills of lading from Minneapolis for Glasgow. It is admitted that the sacks or bags of flour when delivered to the inland carriers were in apparent good condition. According to the bills of lading, the goods were stated to be received at Minneapolis "in apparent good order (except as noted), contents and condition of contents of package unknown," to be carried to New York and thence by the Allan State Line to Glasgow, and there delivered in like good order and condition. The conditions in the bills of lading were divided into two parts. The first dealt with the service by the inland carriers, the Lehigh Valley Transportation Company, to the port of New York, which terminated with delivery to the steamer (clause 11). The delivery in this case was from the inland carriers' lighters, when the sacks or bags were placed in the steamer's slings to be hoisted on board the steamer.

The second part dealt with the service after delivery to the steamer until delivery at Glasgow. By condition 1 of the second part the steamer was not liable for inland damage, and by condition 2 of that part the shipment was subject to all the terms, provisions, and exemptions in what is known as the Harter Act—an Act of the United States of 1893. By condition 11 of the same part the steamer was only responsible for such part of the goods as were actually delivered to her at New York, and not liable for any loss or damage that might have occurred before such delivery, "while agreeing to promptly present to inland carriers for account of owners of goods any claims for shortage or loss or damage that may have occurred before delivery of goods at the port first above mentioned," *i.e.*, at New York. Condition 18 of the said second part provided "that the property covered by this bill of lading is subject to all conditions expressed in the regular forms of bills of lading in use by the steamship company at time of shipment, and to all local rules and regulations at port of destination not expressly provided for by the clauses herein."

The through bill of lading was signed by an agent on behalf of the carriers severally but not jointly.

The receipts given by the respondents at New York to the inland carriers were headed—"Received for shipment on board steamship 'Corinthian' bound to Glasgow, subject to the exceptions and restrictions of liability contained in the usual bills of lading of the company." I understand that these receipts notified that 26 sacks or bags were "caked" and that 84 were wet; but on delivery at Glasgow it was found that 4132 were "caked." "Caking" appears to be a well-recognised form of damage to flour resulting from wet. A layer next the covering becomes hard, and the covering seems to be firm and hard to the touch. It is not disputed that the caking in question was caused by fresh water. Caked flour requires reconditioning, and the expense of this process to 4022 sacks or bags (the difference between 4132 bags found caked at Glasgow and the said 110 notified at New York as wet or caked), £167, 2s. 2d., is claimed in this action.

The Harter Act, which will be found conveniently given in the late Judge Carver's work on Carriage by Sea, sec. 103, requires the giving of an ocean bill of lading or shipping document in case of goods carried out of the United States by sea, and such bill of lading must state, *inter alia*, "the apparent order and condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation, and such document shall be *prima facie* evidence of the receipt of the merchandise therein described."

The through bill of lading in question in effect incorporates by clause 18 of the second part the respondents' form of ocean bill of lading which is given in the appendix, and commences, "Received in apparent good order and condition," and provides for delivery "from ship's dock, where the shipowner's responsibility shall cease, in like order and condition at the port of Glasgow," and also incorporates the Harter Act.

In my opinion the effect of these documents is to charge the respondents with the receipt of the flour in apparent good order and condition, except so far as they notify the inland carrier that this is not the case. Here they notified 110 sacks or bags as caked or wet. There were also

notifications in respect of other matters not material to the case. Thus the appellants have an admission that the goods were received by the respondents in apparent good order and condition, except to the extent of 110 sacks or bags, and except as to other matters not material. And I think it would be for the respondents, if they could, to show that the damage complained of was in fact done before they received the goods. The Lord Ordinary found that they had not discharged the *onus* of proving this.

During part of the time on which the cargo was loaded, after intimation from the steamship agents that the steamer was ready for cargo, the weather was wet, and precautions appear to have been taken to prevent the goods from being wetted as they were being taken on board from the lighters in which they came alongside it. The Lord Ordinary found that there had not been negligence in the attempts to protect the goods, but it seems reasonably clear that they, in fact, became wetted in the loading, although it is said the loading was stopped when heavy showers or storms came on. If the bags were wet when taken on board the steamer it would be apparent, and if they were at that time caked the Lord Ordinary finds that "caking is damage to the contents of the bag indicated by external appearance."

In these cases of through bills of lading the consignors and consignees have no control over the transit, and the convenience of business requires that the shipowner, when he receives from the inland carrier, shall be careful to see what the apparent order and condition of the goods then is. If he accepts them as in apparent good order and condition, he takes the responsibility of delivering them in that order and condition, except so far as it is shown that the damage complained of was done before he received the goods or was caused by perils excepted in his part of the contract. None were relied on in this case. If they are not in apparent good order and condition he must notify the inland carrier, against whom the owner of the goods may claim, subject to any answer that carrier has. It is said that this imposes a heavy duty on the shipowner, but I do not see that this places him in any worse position than would be the case were he the first receiver of the goods, as in any ordinary case of shipment from port to port, where for his own protection he must be careful not to sign bills of lading for goods as in apparent good order and condition when the goods are not so in fact.

The result is that in this case goods are admitted to have been received by the respondents in apparent good order and condition, to have been discharged in a damaged state, and no sufficient proof is given by the respondents that the damage was in fact done before they had possession of the goods, or by perils excepted after they had such possession.

If it had been established that the damage had in fact been done before the steamer took delivery of the goods, the question would arise as to the duty imposed on the respondents to notify the inland carriers, and I think they would be liable for breach of duty in this respect if they did not make a reasonable and proper inspection in the circumstances and notify the results to the inland carrier by qualifying the receipts accordingly.

The Lord Ordinary finds that the loading of what was a very large cargo was pressed on, with the result that the examination, which would have disclosed caking, was not properly made. It seems to me the evidence shows this. An experienced witness, Mr Maloney, states it was about the biggest shipment of flour that he ever saw. The owners were evidently anxious to get the steamer away on her sailing day, and it would seem that they could not do this without going on loading notwithstanding the state of the weather, and that the result was an inadequate and hurried examination. It is not an excuse that the respondents desired to keep to the steamer's sailing date. If the shipowners do not notify, they in effect admit that the goods are received by them in apparent good order and condition, and if they wish to protect themselves they must make a proper examination. If they do notify, then the cargo owners must look to the inland carriers so far as the latter are not excused by the terms of their contract.

I am of opinion that the appeal should be allowed, and the decision of the Lord Ordinary restored.

LORD SHAW—There are two questions in this case. One is a question of law, namely, what is the proper construction of a document called in these proceedings a "through bill of lading." The other is a question of fact—as to the time and cause of certain damage suffered by a cargo covered by that bill. On both of these questions I agree with all of your Lordships that the conclusions reached by the learned Lord Ordinary (Mackenzie) were correct, and with the greatest respect to the learned Judges of the Second Division, that their judgment as expressed in the opinion of Lord Salvesen was erroneous and falls to be recalled.

1. The "through bill of lading" was for the transport of goods from Minneapolis to Glasgow *via* the Great Lakes. It was most natural that the consignor in such a case should make a contract for the entire journey and know his rights throughout, and most natural that the transporting interests should combine to facilitate such business. Your Lordships have given the details of the document. It was signed by P. R. Jarvis, agent, "on behalf of carriers, severally but not jointly," the document bearing that the agents signed "on behalf of the said Lehigh Valley Transportation Company and of the said Ocean Steamship Company or ocean steamer and her owner." There are stipulations in it, also perfectly natural, that no carrier is to be liable for loss or damage

by causes beyond his control, or not occurring on his own road or his portion of the through route; and it is provided that claims must be made in writing to the agent at the point of delivery promptly after the arrival of the goods, and if delayed for more than thirty days after delivery no carrier to be liable.

A special branch of contract with a special series of provisions applies to the sea-going portion of the route, and the earlier portion just referred to only bears upon this case as illustrating that the provisions of the entire contract point to liability for damage being promptly localised and the damage being paid, the particular carrier being thus ascertained by that carrier. In the second portion of the contract, into which the form of an ocean bill of contract is imported by reference, it is provided, entirely in accordance with the general scheme of the bargain just mentioned, that the steamer is not liable for loss that may have occurred before delivery to it, while the ocean carrier agrees to present promptly to inland carriers "any claims for shortage or loss or damage that may have occurred before delivery of goods at the port."

In the document as a whole the flour, which was the cargo, was acknowledged as received at Minneapolis in apparent good order, and it is further admitted by the joint minute of parties that each bag and sack of flour when delivered to the inland carrier was in good condition. In the adopted form of ocean bill of lading precisely the same language—"Received in apparent good order and condition"—was used. It is admitted that the Allan Line Company, the respondents, accepted delivery of the goods at New York, taking exception to the caked condition of about only a hundred sacks (I proceed upon the concessions as to figures quite properly made in argument), and that when the goods were ready for discharge at Glasgow over 4000 sacks were discovered to be caked.

Were it not for the judgment of the Second Division it would be rather difficult to discover what upon those facts constitute difficulties in the way of construing this contract. These difficulties, however, in so far as they have led to the reversal of the Lord Ordinary's judgment, appear to be reduced to two. It has been held, to use Lord Salvesen's words, that "the admission contained in the through bill of lading as to the condition in which the flour was received applies, and can only apply, to Minneapolis, and the obligation to deliver in the like good order and condition, while it is undertaken by the agent who signs it on behalf of all the carriers severally but not jointly does not apply in terms to successive carriers." I can only say that the very opposite appears to me to be the case. "In the second place, I think," says the same learned Judge, "it may well be argued that the inland carrier, by whose servants the flour is tendered for shipment, is the agent for that purpose of the original shipper." It humbly appears to me that this is not the contract of parties. Under a proper construction of this contract the several carriers must, in the view which I entertain, be held bound, unless notification to the contrary is promptly made, to the fact that the goods were received in apparent good order. And with regard to the shipowners for the Atlantic voyage, it appears to me, first, that they are expressly bound by the terms of the through bill of lading signed by Jarvis, who was agent for them as well as for the other carriers, that bill of lading stating that the goods were received in apparent good order and condition; while, further, it must be borne in mind that under the law of the United States such an obligation could not be dispensed with. It would appear to me to be a curious result if by the device of a through bill of lading a means of escape could be provided from the general shipping law of the United States.

Once, however, the point of law is settled in the sense that I have indicated, I do not find in Lord Salvesen's opinion that there would be any doubt in the mind of that learned Judge as to the legal consequences which would follow. "If there had been a bill of lading, signed on behalf of the ship, acknowledging receipt of the flour in good order, and undertaking to deliver it in the same order . . . this would have been a contractual obligation which it would lie on the ship to excuse itself from discharging." I entirely agree in that view. As, accordingly, I am, along with your Lordships, of opinion, that there was such a bill of lading on behalf of the ship in this case, I think the contractual obligation referred to rests upon the respondents. When the judgment of the Inner House is analysed, it is, however, observed that a consideration of the facts and of points as to the *onus* of proof is made from the opposite point of view, namely, that there was no such contractual obligation, and that the *onus* under a contract, worded like the present, for through carriage by land, lake, and ocean, rests upon the consignor to prove how the damage was caused and to localise where it occurred. This might be singular as a matter of business, and it appears to me to be out of keeping not only with the provisions, but with the scheme of the bargain of parties.

The construction of the contract being as stated, the determination of the case upon fact is greatly simplified. If there had been no proof whatever, standing the contract, the principle of the "*Peter der Grosse*" (1 P.D. 414) would apply. That principle is thus expressed by that very learned Judge, Sir Robert Phillimore—"Fairly construed, and giving all due weight to the legal effect of the marginal note, the result must be that apparently, and so far as met the eye, and externally, they were placed in good order on board this ship. Well, then, if that be so, if the plaintiffs have shown by *primâ facie* evidence that having put these bales and bags in good order on board the ship, they were taken out in bad order externally and

internally, I agree with the observation which was made, that it is not incumbent on them to show either how or when the damage was done." I may add, however, that, quite apart from any questions of *onus*, I could not have seen my way to differ from the view of the evidence taken by Lord Mackenzie. It appears to me that the respondents were extremely anxious for business reasons for the speedy loading of the "Corinthian," with this exceptionally large cargo of flour, and that they took weather risks, they, however, having the complete option on the documents, under "the condition that such cargo can, in the judgment of the steamer's agent (having regard to weather and other circumstances) be put on board the steamer in proper time." I do not follow the reasoning as to the weather not being exceptionally rainy for New York, or the introduction into this case of the custom of the port. If it had been necessary to fix time and cause for the damage to this cargo of flour, I think it to be fairly established that the appellants have done so, and that the responsibility rests with the shipowners.

I humbly agree in the course proposed.

Their Lordships reversed the interlocutor appealed against, with expenses.

Counsel for the Appellants—Bailhache, K.C.—Fleming. Agents—James Ness & Son, Writers, Glasgow—Gill & Pringle, W.S., Edinburgh—Woodhouse & Davidson, London.

Counsel for the Respondents—Morison, K.C.—C. H. Brown. Agents—Wilson, Caldwell, & Tait, Glasgow—Webster, Will, & Company, S.S.C., Edinburgh—Pritchard & Sons, London.

COURT OF SESSION.

Friday, November 17.

SECOND DIVISION.

[Sheriff Court at Glasgow.

ARMOUR *v.* DUFF & COMPANY.

Principal and Agent—Ship—Order by Broker—Disclosed Principal.

A. raised an action against D. & Co., steamship owners and brokers, for payment of an account for stores supplied to a vessel. He averred that D. & Co. held themselves out to him as the owners of the vessel at the time when they gave the order for the account sued on. The defenders maintained that they were merely managers for principals known to the pursuer for whom the goods were ordered. It was proved by excerpts from the register of shipping that at the date when the order was given the vessel was owned by a limited company, but was in the possession of mortgagees, by whom D.—a partner in D. & Co.—had been appointed manager.

Held that as the owners were discoverable from the register of shipping, the defenders were acting for disclosed principals, and were not themselves liable as principals.

Expenses—Successful Defender—Misleading Averment by Defender—Disallowance of Expenses.

In an action against a firm of shipbrokers for payment of an account for stores supplied to a vessel, the defenders denied liability in respect that they were not owners of the vessel. This was true, but they stated in their defences that the G. Co., Ltd., were the owners. Though the G. Co. subsequently acquired the vessel, they were not the owners at the time the order was placed, as the pursuer discovered when defences were lodged, by an examination of the register of shipping. The Sheriff-Substitute assoilzied the defenders with expenses, and the Sheriff adhered to this interlocutor. On appeal the Court affirmed the said interlocutors, except in so far as the finding for expenses was concerned, *holding* that the defenders were not entitled to expenses down to the date of the Sheriff-Substitute's interlocutor, in respect that their averments as to the ownership of the vessel were misleading and calculated to induce the pursuer to persist in the action.

Thomas W. Armour, ship store merchant, Glasgow, brought an action against T. L. Duff & Company, steamship owners and brokers, Glasgow, for payment of the sum of £228, 13s. 7d. sterling, being amount of account for goods sold and delivered.

The pursuer averred, *inter alia*—"(Cond. 1)—. . . The defenders are steamship owners and brokers, . . . and more particularly are owners of the s.s. 'Sylvia,' or in any event at the time of giving the order for the account now sued on held themselves out as owners to pursuer. (Cond. 2) The pursuer on defenders' orders and instructions sold and delivered to them on or about 24th December 1909 goods and stores for the s.s. 'Sylvia,' as detailed in the statement annexed to the initial writ, and at the prices therein charged, the total amount being £228, 13s. 7d. which is the sum sued for. The defenders' statements in answer, in so far as not coinciding herewith, are denied. . . . Further, explained and averred that said order was given by defenders as apparent owners. The pursuer never heard of any other party being owners of s.s. 'Sylvia' until defenders lodged their defences to this action. . . ."

The defenders averred in answer—"(Ans. 2) Denied, and explained that certain goods were ordered by the owners of the steamship 'Sylvia' from the pursuer and supplied to the said vessel. . . . Explained that the pursuer called for Mr T. L. Duff, the senior partner of the defenders' firm, who were brokers on behalf of the said vessel, and canvassed for the order for the stores for the said vessel. . . . Explained further that the defenders are not personally liable