1897

*Oct. 12, 13, 14.

*Dec. 9.

THE GLENGOIL STEAMSHIP CO., AND ROBERT GRAY (DEFENDANTS) ..... APPELLANTS;

AND

WILLIAM PILKINGTON AND OTHERS (PLAINTIFFS) ..... RESPONDENTS.

THE GLENGOIL STEAMSHIP CO., AND ROBERT GRAY (DEFENDANTS) ..... APPELLANTS;

AND

WILLIAM FERGUSON AND OTHERS (PLAINTIFFS) ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Maritime law—Affreightment—Carriers—Charterparty—Privity of contract—Negligence—Stowage—Fragile goods—Bill of lading—Condition—Notice—Arts. 1674, 1675, 1676 *C. C.—Contract against liability for fault of servants—Arts.* 2383 *(8)*; 2390, 2409; 2413, 2424, 2427 *C. C.*

The chartering of a ship with its company for a particular voyage by a transportation company does not relieve the owners and master from liability upon contracts of affreightment during such voyage where the exclusive control and navigation of the ship are left with the master, mariners and other servants of the owners and the contract had been made with them only.

The shipper's knowledge of the manner in which his goods are being stowed under a contract of affreightment does not alone excuse shipowners from liability for damages caused through improper or insufficient stowage.

A condition in a bill of lading, providing that the shipowners shall not be liable for negligence on the part of the master or mariners, or their other servants or agents is not contrary to public policy nor prohibited by law in the Province of Quebec.

*PRESENT: —Taschereau, Gwynne, Sedgewick, King and Girouard JJ

1897

THE GLENGOIL STEAMSHIP COMPANY v. PILKINGTON.

THE GLENGOIL STEAMSHIP COMPANY v. FERGUSON.

Where a bill of lading provided that glass was carried only on condition that the ship and railway companies were not to be liable for any breakage that might occur, whether from negligence, rough handling or any other cause whatever, and that the owners were to be "exempt from the perils of the seas, and not answerable for damages and losses by collisions, stranding and all other accidents of navigation, even though the damage or loss from these may be attributable to some wrongful act, fault, neglect or error in judgment of the pilot, master, mariners or other servants of the shipowners; nor for breakage or any other damage arising from the nature of the goods shipped," such provisions applied only to loss or damage resulting from acts done during the carriage of the goods and did not cover damages caused by neglect or improper stowage prior to the commencement of the voyage.

APPEALS (consolidated) from two judgments of the Court of Queen's Bench for Lower Canada (1), affirming the decisions of the Superior Court, District of Montreal (2), maintaining the actions respectively with costs.

The facts and questions at issue in both cases are identical and are stated in the judgment now reported. The cases were consolidated after joinder of the issues in the trial court and were heard together in both courts below and on the appeals to the Supreme Court of Canada.

Atwater Q.C. and *Duclos* for the appellant. The ship was chartered for the voyage in question by the Columba Steamship Company. The charter party is produced and it is proved that the ship was being operated for the benefit of the Columba line, and not for the Glengoil Steamship Company, who though owners of the vessel, had parted with her possession and control for this voyage. The Columba Company were, for the purposes of the voyage, *pro hac vice* owners, and the captain was subject to their orders and control. The Glengoil Steamship Company did

(1) Q. R. 6 Q. B. 294, note. (2) Q. R. 6 Q. B. 95.

1897

THE GLENGOIL STEAMSHIP COMPANY v. PILKINGTON.

THE GLENGOIL STEAMSHIP COMPANY v. FERGUSON.

not contract with the respondents, nor were they the carriers. The bills of lading were issued by the Columba Steamship Company for the carriage of goods ostensibly by their ship, and were signed by their own agents at Antwerp. Even presuming they had signed as agents for the captain, the captain himself, for the purpose of this voyage, was agent of the Columba line. The Columba line secured the freight, contracted for the carriage of the goods, received the consideration for this carriage, issued its own bills of lading. Arts. 2391, 2408 C. C.; *Frazer* v. *Marsh* (1); *Colvin* v. *Newberry* (2); *Marquand* v *Banner* (3); *Baumwoll Manufactur von Scheibler* v. *Furness* (4).

The conditions in the bill of lading constitute an express contract and do not fall within art. 1676 C. C. which applies merely to notices. The conditions are reasonable and can be validly stipulated; *Mongenais* v. *Allan* (5); *Moore* v. *Harris* (6); *Trainor* v. *The Black Diamond Steamship Co.* (7); *Ohrloff* v. *Briscall* (8); *Shaw* v. *North Pennsylvania Railroad Co.* (9); *Pollard* v. *Vinton* (10); see remarks by Lord Usher, M. R., at page 479 in *Leduc* v. *Ward* (11). I tis a self-evident fact that glass is an extremely difficult cargo to handle, and one which carriers will only accept under express and special conditions. We contend that the stowage was sufficient but that the cases in which the glass had been packed by the shippers were too slight, being made of thin soft wood, and no precautions were taken to keep it from moving within these cases. The stowage was done by competent stevedores at Antwerp, and was as

(1) 13 East 238.
(2) 1 C. & F. 283.
(3) 6 E. & B. 232.
(4) [1893] A. C. 8.
(5) Q. R. 1 Q. B. 181.
(6) 1 App. Cas. 318; 2 Q. L. R. 147.
(7) 16 Can. S. C. R. 156.
(8) L. R. 1 P. C. 231.
(9) 11 Otto 557.
(10) 15 Otto 7.
(11) L. R. 20 Q. B. D. 475.

well done as it could be under the circumstances and having regard to the nature of the goods. Soem question was raised as to the propriety of putting sand at the bottom, and the breakage was attributed to the sand sinking, and thus allowing the cases of glass to fall beneath the bottom of the combings of the hatch; but according to the evidence of the Port Warden of Montreal, who made the examination of the cargo as soon as the hatches were taken off, and gave a certificate of the breakage, the sand had not shifted, and sand is a first-class foundation. The shippers were aware of the method of stowage adopted and were satisfied with it.

Even if the loss or damage were caused by negligence or fault of any persons for whom the appellants are responsible, there is a valid contract exempting them from liability and the respondents are estopped from complaining of improper stowage. There was no improper stowage nor any fault nor negligence, and the damage was due to the perils of the sea, and there is no liability. Art. 1072 C. C. *Packard* v. *The Canadian Pacific Railway Co.* (1). It is true that the Quebec courts have held against the validity of contracts for exemption from liability for negligence, but in this case the law of the flag rules, and as the "Glengoil" is a British ship the rules of the English law must prevail.

Macmaster Q.C. for the respondents (*Farquhar Maclennan* with him). As to the liability of the ship, notwithstanding the charter party, we refer to *Baumwoll Manufactur von Scheibler* v. *Furness* (2); *Manchester Trust* v. *Furness* (3); *Hayn* v. *Culliford* (4); *Sandenan* v. *Scurr* (5); *Leary* v. *United States* (6). This charter-party did not give the charterers "exclusive control

(1) M. L. R. 5 S. C. 64.
(2) [1893] A. C. 8.
(3) [1895] 2 Q. B. D. 282, 539.
(4) 3 C. P. D. 410; 4 C. P. D. 182.
(5) L. R. 2 Q. B. 86.
(6) 14 Wall. 607.

1897

THE GLENGOIL STEAMSHIP COMPANY v. PILKINGTON.

THE GLENGOIL STEAMSHIP COMPANY v. FERGUSON.

and navigation" of the ship. Art. 2391 C. C. It was a contract to render a particular service for a fixed amount in money, the owners retaining the control and possession of the ship, and we had no notice of charter-party.

The action arose in the Province of Quebec where the delivery of the goods was contracted for. Arts. 1674, 1675, 2383 (8) 2390; 2409, 2413 C. C. declare the law and there is no proof of any foreign law applicable to the case. The master is obliged to stow and care for the cargo, arts. 1672, 1675, 2424 & 2427 C. C., and to deliver the goods, art. 2428 C. C. The owners are responsible for the acts of the master, arts. 2389 & 2390; *Steel* v. *State Line Steamship Co.* (1). The Dominion Act (2), founded upon 37 Vict. ch. 25, does not interfere with the provisions ot the Civil Code. The mere notice by conditions indorsed on the bill of lading does not bind the shippers; art. 1676 C. C. Carriers cannot stipulate against responsibility for faults of themselves or their employees. *Chemin de fer d'Orléans* v. *Barbezat* (3); *Chemin de fer de l'Ouest* v. *Savaglio* (4), and references in note. No one can free himself from responsibility for his own fault; see Sirey & Gilbert, Code de Commerce, art. 98, nos. 79–84. Such a contract is forbidden by law, and *contra bonos mores*, arts. 989, 990, 1062, 1064 C. C. No fortuitous event occurred in this case, the fault of the defendants alone caused the damages, arts. 1200-1202 C. C. A condition of non-warranty does no more than to shift the burden of proof. *Chemin de fer Paris-Lyon, etc.* v. *Abegy* (5); see also authorities cited in Dalloz, Table Dec. 1877-1887, vo. "Commissionnaire," nos. 79-85, and Sirey, Table Dec. 1881-1890, vo. "Chemin de fer." (6); *Chemin de fer de l'Est, etc.* v. *Chuchu, etc.* (7);

(1) 3 App. Cas. 72.
(2) R. S. C. c. 82.
(3) S. V. 1860, 1, 899.
(4) S. V. 1859, 1, 316.
(5) S. V. 1876, 1, 80.
(6) Nos. 190 *et seq.*
(7) Dal. 1890, 1, 209.

1897

THE GLENGOIL STEAMSHIP COMPANY v. PILKINGTON.

THE GLENGOIL STEAMSHIP COMPANY v. FERGUSON.

Compagnie Anonyme de Navigation v. *Akoun* (1); *Vatin* v. *Blanchard-Duchesne* (2).

The jurisprudence of the Province of Quebec is uniform and unbroken that the carrier cannot contract himself out of this liability, and it is quite in line with the French jurisprudence. *Samuel* v. *Edmonstone* (3); *Huston* v. *Grand Trunk Railway Co.* (4); *Allan* v. *Woodward* (5); *Watson* v. *Montreal Telegraph Co* (6); *Richelieu & Ontario Navigation Co.* v. *Fortier* (7); *Great North-Western Telegraph Co.* v *Laurence* (8); *Mongenais* v. *Allan* (9); *Gauthier* v. *Canadian Pacific Railway Co.* (10). Even supposing that there could be such exemption from liability, that exemption would have to be made in the most express terms. The general exemption in favour of the "ship" is altogether too indefinite in this bill of lading. The "ship" does not mean the owners, and certainly it does not mean the master and employees of the vessel. The law, in the United States; (*Liverpool and Great Western Steamship Co.* v. *Phœnix Insurance Co.* (11); *New York Central Railroad Co.* v. *Lockwood* (12);) in France and in the Province of Quebec, is that the clause exempting the carrier from liability for his faults or those of his employees, is contrary to public order and cannot be invoked as an exemption from liability where fault is proved.

The cases of *Peek* v. *The North Staffordshire Railway Co.* (13); *Doolan* v. *The Midland Railway Co* (14); *Robertson* v. *The Grand Trunk Railway Co.* (15); *The Grand Trunk Railway Co.* v. *Vogel* (16); and *In Re*

(1) Dal. 1892, 1, 456.
(2) Dal. 1895, 1, 40.
(3) 1 L. C. Jur. 89.
(4) 3 L. C. Jur. 269.
(5) 22 L. C. Jur. 315.
(6) 5 Legal News 87.
(7) M. L. R. 5 Q. B. 224.
(8) Q. R. 1 Q. B. 1.
(9) Q. R. 1 Q. B. 181.
(10) Q. R. 3 Q. B. 136.
(11) 129 U. S. R. 397.
(12) 17 Wall. 357.
(13) 10 H. L. Cas. 473.
(14) 2 App. Cas. 792.
(15) 24 Can. S. C. R. 611.
(16) 11 Can. S. C. R. 612.

1897

THE GLENGOIL STEAMSHIP COMPANY v. PILKINGTON.

THE GLENGOIL STEAMSHIP COMPANY v. FERGUSON.

Missouri Steamship Co. (1), were decided under different circumstances and laws from those prevailing in the Province of Quebec, which govern the present case—*lex loci contractûs* not being pleaded or proved.

The cases in which the glass was shipped were sound and sufficient and were the ordinary cases for shipping glass. The captain failed to carefully arrange and stow the glass, and did not attend to its stowage, but left it to his mate who knew nothing about the stowage of glass, and who never carried a cargo of glass before. The glass on arrival was found to have sunk down from eighteen inches to over three feet, which sinking, in the absence of sufficient bracing, allowed the glass to fall down and get broken. The surveyors all condemned the stowage. The respondents in both cases submit that even if the burden of proof of negligence should be upon them, it is clear that there was gross neglect of duty on the part of the master and crew in respect of the stowing and arranging of the cargo, and that the injury can only be attributed to that cause.

The judgment of the court, in both cases, was delivered by :

TASCHEREAU J.—The plaintiffs, present respondents, allege that the appellants are respectively owners and master of the steamship "Glengoil;" that on 14th May, 1893, appellants received at Antwerp, in Belgium, in good order and condition, for carriage to Montreal, certain cases of plate glass, the property of the respondents ; that the appellants took the glass on board the steamer, and acting through their duly authorized agents, issued bills of lading therefor to the respondents' order; that the master, Gray, and the crew and men under him were guilty of fault, negligence and want of

(1) 42 Ch. D. 321.

care in arranging and stowing the glass, and did not safely, properly or sufficiently stow it; that owing to the improper and insufficient stowage, and to the fault of the appellants the glass was damaged during the voyage to the extent of $3,667.01 *; and that the respondents had a privilege upon the steamer for this sum and were entitled to a conservatory attachment on the vessel to secure it.

The appellants severed in their defence, but each pleaded four similar pleas:

First—A general denial;

Secondly—That there was no privity of contract between the parties, inasmuch as the steamer had been chartered for the voyage in question to the "Columba Line," and the contract for the carriage of the goods was with the "Columba Line;"

Thirdly—That by the terms of the bills of lading, it was provided that the glass was carried only on condition that the ship was not liable for breakage whether from negligence, rough handling or any other cause whatever; and, further, that it was a condition of the bill of lading that the owners were exempt from perils of the sea and from damage arising from the nature of the goods, or accidents of navigation even when caused by the fault of the master or other servants of the owners;

Fourthly—That the glass was properly stowed and the stowage was approved by the respondents, shippers and representatives in Antwerp; that the damage was due to the insufficiency of the cases or packages containing the glass, and to accidents of navigation caused by tempestuous weather during the voyage.

[*REPORTER'S NOTE.—The claim for damages in the Pilkington case was $3,667.01 and in the Ferguson case $3,830.]

1897

THE GLENGOIL STEAMSHIP COMPANY v. PILKINGTON.

THE GLENGOIL STEAMSHIP COMPANY v. FERGUSON.

Taschereau J.

The trial judge found as a matter of fact that the damage suffered by the respondents was due to negligent and insufficient stowage of the glass, as alleged in the statement of claim. The Court of Appeal has concurred in that finding. There is evidence to support it, and in accordance with a well settled jurisprudence the appellants cannot expect us to reverse it. There is nothing in the case to take it out of the general rule as to appeals from conflicting evidence.

As to the appellants' plea of no privity of contract, on the ground that the ship had been chartered by the "Columba Line," we disposed of it at the hearing. The courts below rightly held that the appellant company had the exclusive control and navigation of the ship during this particular voyage (1), and that the respondents had contracted with them, and with them only. *Sandeman* v. *Scurr* (2); *Manchester Trust* v. *Furness* (3).

As to appellants' contention that the stowage had been approved of by the respondents' agents, it is not supported by the evidence, and the judgment appealed from rightly rejected it. In law, the mere fact that the shipper knew how the goods were being stowed does not alone excuse the shipowner from negligence. *Hutchinson* v. *Guion* (4).

The judgment appealed from also rejected the third of the appellants' pleas, based upon the stipulation in the bill of lading that the glass was carried only on the condition that the ship was not liable for breakage whether from negligence, rough handling or any other cause whatever, and on condition that the owners were exempt from the perils of the sea and from damage arising from the nature of the goods, or accidents of navigation, even when caused by the fault or negli-

(1) Art. 2391 C. C.
(2) L. R. 2 Q. B. 86.
(3) [1895] 2 Q. B. D. 282, 539.
(4) 28 L. J. (C. P.) 63.

gence of the pilot or master, or other servants of the owner. As to this part of the judgment we think that there is error in the reason given by the court.

This special plea is grounded on the stipulations of the bill of lading that :—

> Glass is carried only on condition that the ship and railway companies are not liable for any breakage that may occur, whether from negligence, rough handling or any other cause whatever.

and that :—

> Owners to be exempt from the perils of the seas * * * * and not answerable for damage and losses by collisions, stranding and all other accidents of navigation, even though the damage or loss from these may be attributable to some wrongful act, fault, neglect or error in judgment of the pilot, master, mariners or other servants of the ship owner ; * * * * nor for breakage or any other damage arising from the nature of the goods shipped * * * *.

The *considerant* of the Court of Appeal, overruling this plea is that :—

> Considering that the appellants could not limit their responsibility in this matter by notices of conditions known to the shippers, nor stipulate by contract immunity from their own fault or that of persons for whom they are responsible, such an agreement being prohibited by law. Art. 1676 C. C.

The learned judge who, for the court, gave the reasons for the judgment, holds that the stipulation in question is illegal, because it is immoral and contrary to public interest. Such, he says, is the uniform jurisprudence in the Province of Quebec. Assuming that to be so, though, in some of the cases cited at bar, the distinction between notices and express contracts would appear to have been lost sight of, for us to blindly follow that jurisprudence here, though more pleasant and far less onerous, would be to forget our duties. We have to scrutinize and review it, mindful always, I need not say, of the high consideration it is entitled to. It strikes one as an astounding proposition, to say the least, that what is undoubtedly licit in England,

1897

THE GLENGOIL STEAMSHIP COMPANY v. PILKINGTON.

THE GLENGOIL STEAMSHIP COMPANY v. FERGUSON.

Taschereau J.

under the British flag, which covers over two-thirds of the maritime carrying trade of the world, should be immoral and against public order in the Province of Quebec, and that what is sanctioned by law in six of the Provinces of this Dominion, should be prohibited in the seventh because of its immorality. Compare, *In re Missouri Steamship Co* (1); and *Trainor* v. *The Black Diamond Steamship Co.* (2). As well said by a learned writer in France in an elaborate review of the question:—

> La liberté laissée aux parties contractantes, en ce qui touche la responsabilité des armateurs, n'a pas empêché le commerce Anglais d'envahir le monde entier et d'être pour notre pays un trop juste sujet d'envie. (3)

Is a condition in a bill of lading, stipulating that the owners will not be responsible for the negligent acts of the master, illegal and void? The Court of Appeal answers in the affirmative, on the ground, as appears from their formal judgment, that such a stipulation is immoral and illegal because, being prohibited by article 1676 of the Civil Code, it is unlawful under article 990, which enacts that the consideration of a contract is unlawful when it is prohibited by law, or contrary to good morals or public order. We have come to the opposite conclusion. Far from prohibiting such a contract, this article 1676 implies that it is a perfectly licit one. It certainly does not take away the right to expressly agree to a limitation of this liability. On the contrary it impliedly admits it, for, if it did not exist, this enactment as to notices would altogether be a superfluous one. It merely enacts that there will be no implied contract from a notice limiting the carrier's liability even when that notice is known to the shipper, so that,

(1) 42 Ch. D. 321. (2) 16 Can. S. C. R. 156.
(3) Rev. Critique, [1869], 199.

1897

THE GLENGOIL STEAMSHIP COMPANY v. PILKINGTON.

THE GLENGOIL STEAMSHIP COMPANY v. FERGUSON.

Taschereau J.

without an express contract, the full liability of the carrier must be given effect to, notwithstanding such a notice and knowledge thereof by the shipper. It is not given as a new law, and nothing in the report of the codifiers gives room for the contention that an express contract of this nature was intended to be prohibited by this enactment. The jurisprudence in France, though perhaps formerly not uniform, now sanctions the validity of such a contract. However, as we have come to the conclusion that the appeal fails upon another ground, I will not here dwell more at length upon this question, nor on the issue with Gray, the captain, upon the more difficult question, under the law of the Province of Quebec, of the stipulation by him of non-liability for his own negligence, though both were extensively and ably argued before us. I merely refer to the following, as containing almost all that can be said or quoted on this subject. Dalloz, 1877, 1, 449; 1877, 2, 68; Sirey, 1876, 1, 337 and note; Sirey, 1879, 1, 422, (note 1–2,) and 423; Dalloz, 1884, 1, 121 and note; Sirey, 1887, 2, 136; Sirey, 1888, 1, 465, and note by Lyon-Caen; Dalloz, 1894, 1, 441 and note; Pandectes Françaises, 1896, 1, 388. An elaborate commentary on the question by Sarrut, is to be found in Dalloz, 1890, 1, 209. I refer also to Dalloz, Repertoire (Supplement), v. "Droit Maritime" no. 314, and to Sirey, Code de Commerce, nos. 79 *et seq.* under article 98 and nos. 23 *et seq.* under article 216; also to Lyon-Caen et Renault, Droit Commerciale, vol. 3, nos. 623 *et seq.*

In Louisiana, it was held by the Supreme Court that

> all contracts may be made, except those reprobated by law or public policy, and a contract by which one stipulates for exemption from responsibility for loss occasioned to another from the negligence

1897

THE GLENGOIL STEAMSHIP COMPANY v. PILKINGTON.

THE GLENGOIL STEAMSHIP COMPANY v. FERGUSON.

Taschereau J.

of his agents or servants is not against public policy, or forbidden by law. *Higgins* v. *New Orleans etc. Railroad Co.* (1).

And in Scotland, such a stipulation is also lawful. *Henderson* v. *Stevenson* (2); *Gilroy* v. *Price* (3).

In Italy it was likewise held by the Cour de Cassation at Florence (4), that:

La clause du connaissement par laquelle le proprietaire est dechargé de la responsabilité des fautes du capitaine est valable.

In Germany and in Belgium the law on the subject is the same. Therefore, it may be fairly asked, can there be anything immoral or against public order in a law that rules not only England, but also Scotland, Italy, Belgium and Louisiana, where the laws are derived from the same sources as those of the Province of Quebec?

On this point the appellant would be entitled to a judgment allowing the appeal and dismissing the action, as they are not liable for the neglect of their captain.

As to the issue with Gray, the captain, it involves the question of his right to stipulate that he would not be liable for his own negligence; on that point we do not decide, as the appeal on both issues must be dismissed, as I have intimated, upon a ground common to both, taken by the respondents, which is, that the conditions in question in the bill of lading in this case do not cover or apply to the act of negligence of the captain charged and found, the defective stowage. The stowage of goods forms part of the obligation which the carrier takes upon himself when no agreement to the contrary appears. It is a duty to be discharged by the master and the crew, and one which arises upon the mere receipt of the goods for the pur-

(1) 28 La. An. 133.
(2) L. R. 2 H. L. Sc. 470.
(3) [1893] A. C. 56.
(4) [1888] Jour. Dr. Intern, Privé, 554.

poses of carriage (1). And it is a duty which it would require an express contract to supersede or excuse. Art. 2424 C. C.; Sirey, Code Commerce, under article 222; *Sandeman* v. *Scurr* (2); *Hayn* v. *Culliford* (3); Dalloz, 1890, 1, 197.

Then conditions of this nature limiting the carrier's liability or relieving him from any, are to be construed strictly and must not be extended to any cases but those expressly specified; *Phillips* v. *Clark* (4); *Trainor* v. *The Black Diamond Steamship Co.* (5). Here the condition that glass is to be carried without liability for breakage must be read as assuming that the glass had been properly stowed. It cannot be read as covering a defective stowage. "Carried" means "during carriage," "during navigation," "in the course of the voyage," and does not cover the stowage done, of course, before the carriage begins "*The Accomac*" (6); *Hayn* v. *Culliford* (3); "*The Ferro*" (7); "*The Glenochil*" (8). The damage here, it is true, was caused during the voyage, whilst the goods were being carried, but the captain's negligence which caused this damage was prior to the voyage. The shipper relieved the ship from negligent acts of the captain or crew during the carriage, during the navigation, but on the implied condition that his goods had been properly stowed. It was unnecessary for him to stipulate expressly for a proper stowage; the law does so in such contracts. In *Hay* v. *La Compagnie Havraise* (9) the Cour de Cassation held, in accord with the English cases I have cited, that a condition as to negligence by the captain "*en navigant le*

(1) Caumont, Dict. Dr. Maritime, vo. "Arrimage."
(2) L. R. 2 Q. B. 86.
(3) 3 C. P. D. 410; 4 C. P. D. 182.
(4) 2 C. B. (N. S.) 156.
(5) 16 Can. S. C. R. 156.
(6) 15 P. D. 208.
(7) [1893] P. D. 38.
(8) [1896] P. D. 10.
(9) Dal. '89, 1, 340.

1897

THE GLENGOIL STEAMSHIP COMPANY v. PILKINGTON.

THE GLENGOIL STEAMSHIP COMPANY v. FERGUSON.

Taschereau J.

navire" did not extend to a defective stowage of the goods. Now the word "carried" in this bill of lading, means nothing else but "*en navigant le navire.*"

The other conditions as to "wrongful act, fault, neglect or error in judgment, of the pilot, master, mariners or other servants" clearly applies only to damage or loss from accidents of navigation. An accident during navigation, the result of defective stowage, is not an accident of navigation.

All the perils and acts covered by these two conditions in the bill of lading are subsequent to the stowage. *Steel* v *The State Line* (1) For in the words of Ritchie C.J., in *Trainor* v. *The Black Diamond Steamship Co.* (2) :—

> The terms of the bill of lading relate to the carriage of the goods on the voyage, and not to anything before the commencement of the voyage.

I refer also to *Tattersall* v. *The National Steamship Co.* (3).

A question might have arisen in the case as to which law applied to this contract, but as no other law has been pleaded or proved, the law of the Province of Quebec governs the case, or more correctly perhaps, should I say, the law of Belgium on the subject, if that governed, must be assumed to be the same as the Quebec law.

The appeal will be dismissed, but, as the appellant succeeds on the principal point of law argued before us, we give no costs upon this appeal.

Appeal dismissed without costs.

Solicitors for the appellants: *Atwater, Duclos & Mackie.*

Solicitors for the respondents: *Macmaster & Maclennan.*

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(1) 3 App. Cas. 72.

(2) 16 Can. S. C. R. 156.

(3) 12 Q. B. D. 297.