I think that construction is aided by the fact of the contract being "c.i.f." with its recognised legal incidents, one of which is that the shipper fulfils his obligation when he has put the cargo on board and forwarded to the purchaser a bill of lading and policy of insurance with a credit note for the freight, as explained by Lord Blackburn in *Ireland* v. *Livingstone* (L.R. 5 E. and I. App. 395, at p. 406). But I think that Mr Hamilton perhaps put his argument too high in treating this consideration as conclusive.

But I agree with my noble and learned friend (Lord Macnaghten) that on any view of the contract the interlocutor of the Lord Ordinary should have been sustained. The learned Judges have not laid down any particular measure of damages, for in the view which they have taken that the failure of the appellants to fulfil their contract with Messrs Owen was not the consequence of the default of the respondents, as alleged in the condescendence, Lord M'Laren held there was no evidence of any other damages, and gave £50 as an estimated sum for any inconvenience the appellants have been put to, and this was acquiesced in by Lord Kinnear with some misgivings. I cannot agree that there is no evidence upon which the Court could act. I am of opinion that the proper measure of damages would have been the cost of replacing the goods at their place of destination at the time when they ought to have arrived, less the value of the goods in Sweden and the amount of the freight and insurance. There was evidence that it was practically impossible to obtain another vessel to take the goods from Stocka at that time of year, and I think, therefore, that the appellants were justified in buying in or (which is the same thing for this purpose) allowing their purchasers to buy in as soon as it was apparent (as it was before the end of September) that the respondents could not perform their contract. And I think that the actual purchases made might properly be taken as evidence of the cost of replacing the goods in Cardiff in the middle of the month of October. On the other hand, the appellants had no other buyers ready to take their 400 tons of pulp, and there was evidence that it would have been a speculative and very risky thing to send that quantity to Cardiff or elsewhere for sale or without having secured a purchaser, and that prices subsequently fell. I think, therefore, there was evidence upon which the Court might, without any injustice to the respondents, have found the value of the goods in Sweden with freight and insurance would not exceed the price in Messrs Owen's contract. I am not, therefore, disposed to disagree with the alternative view taken by the Lord Ordinary if his construction of the appellants' contract with the purchasers be not adopted. I should add that I am less impressed by the pleading difficulty than I might have been had I not found that neither the Lord Ordinary nor the Inner House considered themselves precluded from giving the pursuers damages other than those arising directly out of the contract with Messrs Owen.

On these grounds I am of opinion that the interlocutor of the Inner House should be reversed and that of the Lord Ordinary restored, with costs here and below.

LORD JAMES OF HEREFORD—I agree with the judgment submitted to the House by my noble and learned friend Lord Macnaghten.

LORD ROBERTSON—I concur.

Interlocutor appealed from reversed, with costs.

Counsel for the Pursuers and Appellants—Hamilton, K.C. — Roberton - Christie. Agents—James F. Mackay, W.S., Edinburgh—Rollit, Sons, & Burroughs, London.

Counsel for the Defenders and Respondents—The Lord Advocate (Dickson, K.C.) —Bailhache—Spens. Agents—J. & J. Ross, W.S., Edinburgh—Holman, Birdwood, & Co., London.

Friday, August 4.

(Before the Lord Chancellor (Halsbury) and Lords Ashbourne and Robertson.)

GREENOCK HARBOUR TRUSTEES *v.* MAGISTRATES OF GREENOCK.

(In the Court of Session June 1, 1904, reported 41 S.L.R. 658.)

Burgh—Police—Rates and Assessments — Public Health General Assessment — Exemption — Harbour — Public Health (Scotland) Act 1897 (60 *and* 61 *Vict. c.* 38), *sec.* 136—*Burgh Police (Scotland) Act* 1892 (55 *and* 56 *Vict. c.* 55), *secs.* 359 *and* 373 (1).

The Public Health (Scotland) Act 1897 in sec. 136 enacts—"With respect to burghs subject to the provisions of the Burgh Police (Scotland) Act 1892, or having a local Act for police purposes, all charges and expenses incurred by or devolving on the local authority in executing this Act, . . . and not recovered as hereinbefore provided, may be defrayed out of an assessment (in this Act referred to as the Public Health General Assessment) to be levied by the local authority along with but as a separate assessment from the assessment hereinafter mentioned — that is to say, the said assessment shall be assessed, levied, and recovered in like manner and under the like powers, but without any limit except as in the immediately succeeding section provided, as the General Improvement Rate under the Burgh Police (Scotland) Act 1892, or where there is no such rate, by a rate levied in like manner as the General Improvement Rate under the last-mentioned Act." . . . And by section 137 it places a limit upon such Public Health General Assessment "which"

(assessment) "shall be imposed upon all lands and heritages within the district. . . ."

The Burgh Police (Scotland) Act 1892 in section 359 enacts—"Whenever the commissioners in any burgh shall resolve . . . to make provision for the general improvement of the burgh, it shall be lawful for them to charge in equal proportions all owners and occupiers of lands or premises within such burgh, with reference to the said valuation roll and to all the provisions of this Act applicable to the Burgh General Assessment, . . . with a special assessment . . . over and above any other assessment or rate to which such persons may be liable under this Act, and such special assessment shall . . . be called 'the General Improvement Rate,' and shall be leviable either from the owner or occupier of such lands or premises in equal proportions or in whole from the occupiers thereof, . . . and such assessment, so far as the occupier is concerned, shall be recoverable in the same manner as the Burgh General Assessment is authorised to be recovered." And in section 373 (1) it enacts—"No assessment authorised by this Act shall be imposed on any lands or premises exempt by Act of Parliament at the commencement of this Act from any corresponding assessment authorised to be imposed by the General Police Acts or the local police Acts respectively applicable to the burghs named in Schedule II of this Act annexed." . . .

Held (*diss.* Lord Ashbourne—*rev.* the judgment of the Second Division) (1) that the reference in the Public Health (Scotland) Act 1897 to the General Improvement Rate of the Burgh Police (Scotland) Act 1892 covered the exemption therefrom granted by section 373 (1) of the latter Act; (2) that a police rate imposed under a local Police Act upon occupiers only, used to a certain limited extent for improvement purposes, and being the only rate in the burgh so used, was a "corresponding assessment" to the General Improvement Rate within the meaning of section 373 (1) of the Burgh Police (Scotland) Act 1892; and therefore (3) that where in a burgh named in Schedule II of the Burgh Police (Scotland) Act 1892, which had not adopted that Act, the port and harbour had been by statute exempt from such police rate, the port and harbour were also exempt from the Public Health General Assessment imposed under the Public Health (Scotland) Act 1897.

The case is reported *ante ut supra.*

The Greenock Harbour Trustees (pursuers) appealed to the House of Lords.

At delivering judgment—

Lord Chancellor—I so far agree with Lord Trayner that I think that the only question is whether by specific legislation the Trustees of the Port and Harbour of Greenock are entitled to the exemption they claim. No other claim is set up upon the pleadings, and no other claim could by law exist, nor can I agree with the Lord Justice-Clerk that the question here is one of implication. Either the exemption is enacted by statute or it does not exist at all. The Lord Ordinary has with wonderful clearness and precision guided us through a maze—a somewhat bewildering maze—of statutes, and analysed the question in debate until he has reduced it to this simple one—whether the assessment authorised by the Greenock Police Act, and from which piers and harbours were exempted, was an assessment corresponding to the General Improvement Assessment of the Act of 1892.

Now, though I have followed the Lord Ordinary through all his reasoning with complete satisfaction down to this point, I am unable to concur in his conclusion. The words "corresponding assessment" are not technical, and it must be admitted that such a mode of referring to other sections of other Acts of Parliament is calculated to confuse and embarrass. Still the very looseness of it is what makes it, I think, applicable here. I think one would say, colloquially, if you were referring to the two statutes in question, which are the two corresponding sections? And I think the answer would be favourable to the appellants' contention. They do correspond in object and purpose, though to some extent they may differ in machinery. The force of the Lord Ordinary's reasoning, I think, is applied to the difference between the sections of the General Improvement Assessment of the Act of 1892.

It is true the 42nd and 43rd sections of the Greenock Police Act 1877 only gave limited powers of improvement and not general improvement. I cannot think that that prevents their being corresponding sections. I think it would be a very intelligible thing to say the corresponding sections differ in such and such particulars, and indeed the use of the word suggests that the language or even the substance of the enactment is not identical *in omnibus*, otherwise the simplest form would be instead of "corresponding" to say identical. Following, therefore, as I do, the reasoning of the Lord Ordinary, I think the conclusion erroneous; and I move your Lordships that the interlocutor should be reversed, and with it the judgment of the Second Division.

Lord Ashbourne—The pursuers seek to have it declared that they are "exempt from liability for the Public Health General Assessment under the Public Health (Scotland) Act 1897, in respect of their undertaking of the port and harbour of Greenock."

Their contention is that in Greenock assessments are imposed for police purposes under several local Acts upon occupiers only, and that "piers and harbours" are exempted from assessment. Their further contention is that in the true construction of the statutes discussed the

exemption extends to the Public Health General Asssessment under this Act of 1897.

It is purely a question of the construction of statutes. The pursuers can claim no aid from public policy or public convenience or the position of harbours in reference to other rates and taxes. It is, indeed, well settled that as a matter of public policy, public harbours and their revenues are not exempt from local assessments (*Mersey Dock Case*, 11 Ch. H.L. 443). It appears in the present case that the harbour has always been, and now is, assessed for poor and school rates and for lands valuation, registration of births, deaths, and marriages, and registration of voters, and other local assessments. If they are exempt from a police rate it is alleged that is because other arrangements were made for the policing of the harbour by section 88 of the Greenock Pier and Harbour Act 1866. Nor is the harbour omitted from the purview of the Act of 1897. The 177th section provides that any ship lying in any harbour shall be within the provisions of the Act "in the same manner as if such ship were a house within the district." It was obviously prudent to give the local health authority full power to deal with ships in a harbour, bearing in mind how often ships may bring with them cases of disease or infection.

It would be therefore not unnatural or strange, or opposed to public policy, to find Harbour Commissioners liable under a Public Health Act to a Public Health General Assessment. But the question here is—as a matter of construction are they liable, or, as they claim, are they exempt? By section 137 it is declared that the assessment is to be levied on "all lands and heritages." Unless the pursuers can show that by some other Act they are exempt from such assessment they cannot succeed.

The Lord Ordinary has so very fully and clearly discussed and marshalled the statutes that it is only necessary for me to refer to them very shortly, and only so far as may be necessary to make my meaning plain. It is claimed that section 136 imports into the Act sections of other Acts, and that thus an implied exemption of the piers and harbour of Greenock from the Public Health General Assessment can be worked out. Section 136 provides that the assessment is to be levied in like manner as the General Improvement Rate under the Borough Police (Scotland) Act 1892, or, if there is no such rate, by a rate to be levied in like manner as the General Improvement Rate. So far there is nothing to convey that the Legislature had in view more than adopting by reference the method and machinery to be adopted for assessing and levying the rate.

This view is supported by section 359 of the Act of 1892, by which authority is given to make an assessment on all owners and occupiers, and sections 340 to 358 are made applicable for the purpose. But the pursuers do not rely on these last mentioned sections, but on section 373, which enacts that no assessment authorised by this Act shall be imposed upon any lands and premises exempt by Act of Parliament *at the commencement of this Act* from any *corresponding* assessment authorised to be imposed by the General Police Acts or certain local Acts mentioned in a schedule of which Greenock was one.

I concur with the Lord Ordinary and Lord Justice-Clerk that section 373 is not incorporated by reference. But even if section 373 were held to be incorporated, and if I was satisfied that "corresponding assessments" have been shown to exist within the meaning of the statute at the commencement of the Act of 1892, how would that entitle the appellants to be exempted from a perfectly new rate which came into existence five years later? It appears to me that the judgment of Lord Trayner on this subject is worthy of much attention, and is of cogent force which has not been met by any argument I have heard.

In my view the judgments of the Lord Ordinary and of the Second Division are correct, and the appeal should be dismissed; but I need hardly say that I give my opinion with much hesitation, seeing that it is opposed to those of my noble and learned friends the Lord Chancellor and Lord Robertson.

LORD ROBERTSON—This case is a strong instance of the inconvenience of unskilful legislation by reference. In the end, but only after a great deal of very unnecessary trouble, I think the true conclusion tolerably clear, although I appreciate the very forcible reasoning of my noble and learned friend Lord Ashbourne.

The Greenock Harbour had been exempted from assessment for certain local rates, and in particular no assessment has been made on their property for the purposes of public health. The question is whether that exemption has been made applicable to a new rate imposed by the authority of the Public Health (Scotland) Act 1897. I think that it has.

The section of the Public Health Act of 1897 which authorises the new assessment now in question is the 136th. It says that the charges and expenses of executing the Act may be defrayed out of an assessment, and goes on—"The said assessment shall be assessed, levied, and recovered in like manner and under the like powers, but without any limit except as in the immediately succeeding section provided as the General Improvement Rate under the Burgh Police (Scotland) Act 1892, or when there is no such rate levied, in like manner as the General Improvement Rate under the last-mentioned Act."

Now, all this is very roundabout, and in the sequel involves a great deal of trouble, but *prima facie* it leads us clean out of the Act itself and into another Act, if we want to know what are the assessable subjects. For from the outset it must be observed that the other Act is referred to not merely for what is called repeatedly in the judgments in the Inner House "the machinery for levying and collecting," but for the

antecedent and radical business of assessing. Accordingly, when we are told that we are to look to the other Act for not only the "manner" but the "power" of assessing, it looks as if we might close the Act of 1897 in the meantime and study the earlier Act.

But then we are told that the 136th (the referring section) must be read along with and limited by the 137th section, and the latter in terms speaks of the assessment as one which shall be imposed on "all lands and heritages within the district." This, it is said, charges, as it were, the reference to the other Act with the condition that there are to be no exemptions.

I do not think this sound. It seems to me that this theory is distinctly negatived by the 136th section—the referring one—itself. For when it (in the words above quoted) authorises the assessment to be made "in like manner and under the like powers as" the other assessment, it clogs the reference by one condition only, and that is as to the limited amount of the assessment laid down in 137. This seems to me to exclude further limitations, and when one, in the light of these words, turns again to the 137th section, one sees that that is the substantive effect of the section. The rest (the words now founded on) are parenthetical. The words "all lands and heritages" may fairly be read as all lands and heritages to assess which power has just been given in the 136th section. I do not say that this is the necessary meaning, but when I find the 136th section putting a gloss on the 137th section and reading it as containing one qualification only of the reference to the other Act, and that with reference to amount, I can only say it is not merely final but reasonable.

Now, turning to the Burgh Police (Scotland) Act for the powers of assessment, there is no doubt some difficulty at first sight in threading the labyrinth. The reasoning of the Lord Ordinary, however, is so close and accurate that I can best state my view by referring to his judgment down to and until he reaches the stage of considering whether the assessment authorised by the Greenock Police Act was an assessment corresponding to the General Improvement Assessment of the Act of 1892, which is the Act to which we are referred by the Public Health Act. I think with the Lord Ordinary (to put it a little more fully) that the 373rd section, which deals with exemptions, is part of the code incorporated in the Public Health Act 1897 by the reference to the Act of 1892, and that the only question remaining is whether the Police Acts in force in Greenock had "corresponding" provisions to those in the Act of 1892. In my judgment the affirmative has been demonstrated by the passages in parallel columns printed in the appendix. Those passages were not before the Lord Ordinary, and I do not doubt that, had he known of them, his judgment, which up to that point led straight in the appellants' favour, would have given them his decision.

I am of opinion that the appeal ought to be allowed.

Interlocutors appealed from reversed with costs.

Counsel for the Pursuers and Appellants—C. A. Cripps, K.C.—Macmillan. Agents—W. B. Rainnie, S.S.C., Edinburgh—A. & W. Beveridge, Westminster,

Counsel for the Defenders and Respondents—Ure, K.C.—M'Lennan. Agents—Cumming & Duff, S.S.C., Edinburgh—John Kennedy, W.S., Westminster.

Friday, August 4.

(Before the Lord Chancellor (Halsbury), and Lords Davey, James of Hereford, and Robertson.)

ARDAN STEAMSHIP COMPANY, LIMITED *v.* WEIR & COMPANY.

(In the Court of Session January 19, 1904, reported 41 S.L.R. 230, and 6 F. 294.)

Ship—Charter-Party—Damages for Detention — Charterers' Obligation to have Cargo Ready—Custom of Port.

Held (*rev.* the judgment of the First Division) that the obligation of the charterers of a ship to have the cargo ready as soon as the vessel is in ordinary course ready to load, being apart from special stipulation express or implied an absolute obligation, distinct from the obligation to load, it was no defence to an action of damages for detention, brought by the owners of a ship which had been chartered to go to a certain port and there ship a cargo of coals that the vessel by the custom of the port had not been given a loading berth, inasmuch as the reason why she had not been given a loading berth was that she had not a loading order, her cargo being not yet available because the colliery was under obligation to load vessels in their turn and there were two other vessels to be loaded first.

Little v. *Stevenson & Company*, [1896] A.C. 108, *explained* and *distinguished*.

The case is reported *ante ut supra*.

The Ardan Steamship Company, Limited (the pursuers) appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—This is an action upon a charter-party. The vessel "Ardandearg" was chartered "to proceed to such loading berth as the freighters may name at Newcastle, New South Wales, and after being in loading berth as ordered to load in the usual and customary manner a full and complete cargo of Australian coals, as ordered by charterers, which they bind themselves to ship." Then follow certain exceptions which do not become relevant to this case.

Now, the "Ardandearg" arrived at her destination on 14th July 1900 and was then ready to load her cargo. If the respondents