not quite understand what the undertaking means or how long it is intended to last. But I must say, speaking for myself, that I do not think that this addition to the order ought to be treated as a precedent in any other case. With these observations, I concur in the motion which has been proposed. The appeal must be dismissed with costs.

LORDS ROBERTSON and ATKINSON concurred.

Appeal dismissed.

Counsel for Appellants—Eve, K.C.—Jenkins, K.C.—Whinney. Agents—Slaughter & May, Solicitors.

Counsel for Respondents—Upjohn, K.C.—Kirby. Agents—Paines, Bly, & Huxtable, Solicitors.

HOUSE OF LORDS.

Wednesday, May 29, 1907.

(Before the Lord Chancellor (Loreburn), Lords Ashbourne, Macnaghten, Robertson, and Atkinson.)

MERSEY DOCKS AND HARBOUR BOARD *v.* OWNERS OF STEAMSHIP "MARPESSA."

Ship — Collision — Damage — Measure — Demurrage—Dredger Unable to Dredge for Nine Days—House of Lords and Questions of Amount of Damages.

A dredger, the property of a harbour board, was run down and damaged through the fault of a steamer. For nine days she was unable to dredge, and the harbour board were unable to obtain another dredger to do her work. *Held* that the owners of the steamer were liable to pay to the board, under the head of demurrage, a sum representing the ordinary cost of maintaining and working the dredger for nine days, with an allowance for depreciation.

The House of Lords, in dealing with questions as to the amount of damages, is not in the habit of interfering with the decision of the Court below, unless it is clear that a wrong principle has been adopted for ascertaining the damage. It will not correct minute mistakes.

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., ROMER and COZENS-HARDY, L.JJ.), who had affirmed a judgment of SIR J. GORELL BARNES.

The facts appear sufficiently from the opinion of the Lord Chancellor (LOREBURN) *infra.*

LORD CHANCELLOR (LOREBURN) — The only question raised on this appeal is whether the damages awarded to the appellants are rightly measured. It was a case of collision, in which the steamship "Marpessa" ran down the said pump dredger "G. B. Crow," and disabled her for nine days. This dredger is used by the Mersey Docks and Harbour Board in the necessary work of dredging the bar outside Liverpool. She earns nothing in money and costs a good deal, but she does indispensable service in clearing away the sand. Negligence on the part of the steamship "Marpessa being admitted, the case came before the registrar to ascertain damages. No dispute was raised by defendants as to any of the items claimed except one—viz., the claim for demurrage for nine days at £104 per day, afterwards reduced to £102. The registrar found that £35 per day sufficed, and his report was confirmed by the President and also by the Court of Appeal. I need hardly say that your Lordships are not likely to interfere unless it is made clear that a wrong principle was adopted for the ascertainment of these damages. Now, until the case of "*The Greta Holme*," [1897] A.C. 596, the view appears to have prevailed that no damages beyond the actual loss in repairs, loss of wages, and so forth, could be recovered where an injured vessel made no money for its owners and merely rendered services in dredging. That case corrected the error, and decided that in such case general damages might be recovered as well as the cost of procuring another vessel to do the work; but it did not, and could not, lay down a rule of universal application for the ascertainment of the damages in each particular case. For the damages depend upon the facts and upon the actual loss sustained by the owner, which will vary in different cases. It seems to me that the loss sustained in the present case under the claim of demurrage is the value of the work which would have been done by the dredger during those days, had she not been disabled. So many tons of sand would have been removed, which it is the duty and interest of the plaintiffs to remove, and by reason of the defendants' negligence they were not removed. If the plaintiffs had hired another vessel to do this work they could have recovered the cost of doing it. They have not done so, no other vessel being available at so short a notice, and, perhaps, not being available at all; for the construction is peculiar. Failing that evidence, the plaintiffs were entitled to put their case in another way. They might say the cost to us of maintaining and working this dredger, while it is working, amounts to so much per day, and its depreciation daily amounts to so much more. We take the total daily sum which it costs us as a fair measure of the value of its daily services to us. Those services are at least worth what we are habitually paying for them year after year, including what we sacrifice in depreciation. In fact the plaintiffs put in a mixed claim, made up mainly on the basis of what the dredger's services cost them; but they added an item for owners' profit, which was appropriate enough if they had paid it to the owner of a vessel which they hired, but had no place in a claim based on the cost to themselves of the services rendered

by the dredger. The registrar allowed them something on this head to which they were not entitled. He also deprived them of something to which they were entitled, when he gave only the daily supplies requisite in dock instead of the daily supplies requisite when the dredger was working. There is a confusion in the registrar's award in these respects, and also in regard to general damage in the circumstances of this particular case, but the original confusion was in the claim as stated by the plaintiffs. I certainly am not disposed to disturb the findings of three tribunals on such a point, when the difference between what was found and what in rigorous logic ought to have been found is trifling. And so with the complaint that the percentage allowed for depreciation was taken not on the original but on the reduced value of the dredger. I cannot say that in point of law the depreciation must be taken on the original value, nor am I prepared to exact mathematical precision in matters such as this. In my opinion, though there is error in the registrar's report there is no case for the interposition of this House. We cannot correct every minute mistake. And if we think, as I think, that after correcting the errors on both sides the registrar might quite well arrive at substantially the same figure as he has already found, we ought to dismiss the appeal.

LORDS ASHBOURNE, MACNAGHTEN, ROBERTSON, and ATKINSON concurred.

Appeal dismissed.

Counsel for the Appellants—Sir R. Finlay, K.C.—Butler Aspinall, K.C.—Leslie Scott. Agents—Rawle & Company, Solicitors.

Counsel for the Respondents—Pickford, K.C.—Greer. Agents—Thomas Cooper & Company, Solicitors.

HOUSE OF LORDS.

Tuesday, June 18.

(Before the Earl of Halsbury, Lords James of Hereford, Robertson, and Atkinson.)

NICOLSON *v.* PIPER.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37)—*Payment during Incapacity under Agreement—Cessation of Incapacity—Termination of Payment on Application for Review—Incapacity again Supervenes—Application for Review under Schedule* 1 (12)—*Competency.*

By an agreement duly recorded under the Workmen's Compensation Act 1897, between an injured workman (appellant), and his employer (respondent), the latter agreed to pay the former a certain sum weekly as compensation during incapacity, or until the weekly payment should be ended, diminished, increased, or redeemed under the Act. Subsequently, in an arbitration at the instance of the employer for the review and termination of the weekly payments, on the ground that the injured man's incapacity had ceased, the County Court Judge pronounced an order that the agreement "be this day terminated, and that the weekly payments to the workman thereunder be ended accordingly." At a later period the injured man again became incapable, and in his turn demanded an arbitration for the review and increase of the weekly payment under Schedule 1, section 12.

Held (*affirming* a judgment of the Court of Appeal) that the application was incompetent, there being no longer any weekly payment in existence capable of being reviewed, the whole matter having been finally terminated by the Judge's order.

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., COZENS-HARDY and FARWELL, L.JJ.), affirming an order of the Judge of the County Court of Kent made in an application under the Workmen's Compensation Act 1897.

The facts are stated in the rubric.

At the conclusion of the arguments their Lordships gave judgment as follows:—

EARL OF HALSBURY—Speaking for myself in this case, I am of opinion that the judgment of the Court of Appeal is right and ought to be affirmed. The language of the judgment of the learned County Court Judge is, I think, not so ambiguous as has been suggested. It appears to me that I must follow the ordinary natural use of the words. He has decided that the payments are to be ended. The natural meaning of the words is plain. I really think that it is not capable of being expressed more clearly than in the language of the judgment itself. Upon the question of keeping alive the power of going back to the County Court Judge in the event of new circumstances arising which may render such a thing appropriate, I do not think it desirable to pronounce any definite opinion here. It is enough for me to say that the order of the County Court Judge is, to my mind, absolutely intelligible, and if I had any doubt about it I think that what the County Court Judge intended is very clearly shown by the fact which has been called to your Lordships' attention by both the learned counsel—namely, that a practice has existed now for some years of making a nominal payment in order to keep the question alive. I do not say that there is any legal effect in that practice. I mention it because, when I am considering the language of the County Court Judge, I cannot entertain any doubt that if he had intended to prolong the period during which the application might be made he would have had recourse to that practice. But he does not. He uses the language of the statute that the payment is to be "ended." Now, it has been suggested that there would have been some difficulty in