

J. C.* WILHELM GUSTAV MIEDBRODT . . . DEFENDANT;
 1875
 AND
 March 24, 25; JAMES CHARLES FITZSIMON . . . PLAINTIFF.
 April 24.

THE "ENERGIE."

ON APPEAL FROM THE COURT OF APPEAL IN CHANCERY,
 IRELAND.

Merchant Shipping Act Amendment Act, 1862, ss. 67, 68—Wrongful Detention of Cargo under a Stop Order for an excessive Amount—Master warehousing Goods—Damages.

The *E.* was chartered at *Memel* in October, 1872, to deliver at *Dublin* a full cargo of timber under a bill of lading dated the 6th of November, duly indorsed to Respondent, making the freight payable "as per charterparty," at a specified rate, to be ascertained by measurement. At *Copenhagen* necessary repairs were executed, for expenses of which the master (the Appellant) passed a bottomry bond on ship, cargo, and freight for £2975, payable three days after the ship's safe arrival in *Dublin*, which took place on the 15th of April, 1873. Thereupon the Appellant refused to deliver the cargo to the Respondent until receipt of the contribution which was due from him for general average, then calculated at £1221. This the Respondent refused, but on the 28th he offered to pay the freight and give an average bond. On the 1st of May the owners claimed a lien on the cargo for that amount and for £700 freight, but subsequently the average payable by cargo was ascertained to be £1136, and the owners offered to release the same on receipt of £1800; but the Respondent declined to give more than £1750.

On the 3rd of May the Appellant, notwithstanding the Respondent's offer on that day to pay the average contribution in full, and to give security for the freight, proceeded to discharge the timber into a warehouse of the *Dublin* Port and Docks Board under sects. 67 and 68 of the *Merchant Shipping Act Amendment Act, 1862*, putting upon it a stop order for the sum of £2200, or £360 in excess of what was due by the Respondent. On the 12th the Respondent paid the said sum of £1136, and subsequently tendered payment of freight and (under protest) of charges, but the owners refused to release the cargo until he had discharged the stop order by paying the £2200, which he did after action brought, and was then repaid the balance, £1498, due to him thereout.

In an action brought by the Respondent in the Court of Admiralty in

* *Present*:—SIR JAMES W. COLVILLE, SIR BARNES PEACOCK, SIR MONTAGUE E. SMITH, and SIR ROBERT P. COLLIER.

Ireland against the ship under the 37th section of the *Court of Admiralty (Ireland) Act*, 1867, claiming damages in respect of certain breaches of duty and breaches of contract on the part of the Appellant :—

Held (affirming the decree of the Court of Chancery in *Ireland*), that the right of action was complete on the 3rd of May, and that it must be remanded to the Admiralty Court to ascertain the damages.

Although the shipowner was at liberty to land the goods under the 67th section of the *Merchant Shipping Act Amendment Act*, the Respondent having “failed to land and take delivery,” yet there had been inserted in the stop order a sum manifestly and grossly in excess of that for which the master could *bonâ fide* claim a lien, and consequently the detention of the cargo thereunder was a wrongful act.

And after the payment of £1136 it was clearly the duty of the master to reduce the stop order to the amount for which he then had or could reasonably claim a lien.

J. C.
1875
MIEDBRODT
v.
FITZSIMON.
THE
“ENERGIE.”

APPEAL from a judgment of the Court of Appeal in Chancery, *Ireland*, dated the 13th of May, 1874 (1), which reversed a decree of the High Court of Admiralty, *Ireland*, dated the 12th of January, 1874.

The facts of the case, of which an outline is given in the above head-note, are sufficiently stated in the judgment of their Lordships.

Mr. *Cohen*, Q.C., and Mr. *Clarkson*, for the Appellant.

Mr. *Butt*, Q.C., and Mr. *J. C. Mathew*, for the Respondent.

The judgment of their Lordships was delivered by

SIR JAMES W. COLVILLE :—

The question on this appeal is whether the Respondent (the Plaintiff in the cause and the owner of the cargo), has established a good cause of action against the Appellant (the master of the ship *Energie*), for breach of duty or of contract in relation to the delivery of the cargo. The Judge of the High Court of Admiralty in *Ireland* held that he had failed to do so, and dismissed his suit. The Court of Appeal in Chancery in *Ireland*, to which, subject to a final appeal to Her Majesty in Council, an appeal from the Court of Admiralty lies, reversed that decision, maintained the action, and remitted the case to the Court below

(1) See Irish Eq. Rep. 9 Eq. 58.

J. C.
 1875
 MIEDEBRODT
 v.
 FITZSIMON.
 —
 THE
 "ENERGIE."
 —

for the purpose of ascertaining the damages. The present appeal is against that judgment.

As to the principal facts in the cause, there is little or no dispute. The vessel was chartered at *Memel* on the 8th of October, 1872, by the agent of *Joseph Dowson & Co.*, of *London*, who shipped thereon a full cargo of fir timber to be delivered at the port of *Dublin* under a bill of lading, dated the 6th of November, and duly indorsed to the Plaintiff, the owner of the cargo. This bill of lading describes the timber by running feet, but makes the freight payable "as per charterparty;" and under the latter instrument freight is to be calculated "per load of fifty cubic feet calliper measure." The vessel encountered severe weather in the *Baltic*, and had to put into *Copenhagen* for repairs, for the expenses of which the master passed a bottomry bond for £2975, payable at or before the expiration of three days after the safe arrival of the ship in *Dublin*, and hypothecating ship, cargo, and freight. The validity of this bottomry bond is not disputed. A general average statement was adjusted by which the sum of £1221 2s. 11d. was charged against the cargo.

The ship arrived in *Dublin* on the 15th of April, 1873.

There is some dispute as to what then took place. The Plaintiff by his petition alleges that on that day the master called upon him and informed him of the claim on the foot of the bottomry bond, and that until it was settled he could not deliver the cargo. But in his evidence he says this statement in his pleading is incorrect; that the master called upon him on the 16th, and promised to commence delivery on the following day, but on the 17th refused to do so, on the ground that he had received orders from the ship's agents in *London* (*Messrs. Hoffman & Co.*) not to deliver until he should receive further directions from them, there being a charge on the cargo. The master's evidence supports the statement in the petition. Certain, however, it is, that on the 18th the master called on the Plaintiff with a telegram of that date received from *Messrs. Hoffman & Co.*, which is in these words;—"Average statement ready. Net amount due from cargo £1221 2s. 11d. Ask receivers whether they wish statement sent to *Dublin*, or delivered here. We must have this money to pay bottomry before discharging commences."

And then at least, if not before, the master seems distinctly to have claimed a right of lien on the cargo for the amount due for general average.

The Plaintiff appears to have referred this question of general average to his *London* agents (Messrs. *Tagart, Boyson, & Slee*), who submitted it to the underwriters.

Between the 18th of April and the 1st of May, some correspondence went on between the Plaintiff and the master in *Dublin* and their respective agents in *London*. In *Dublin* the Plaintiff writes on the 28th of April to the master: "We have got a telegram from *London* stating that your claim will be paid, and there is nothing to prevent your discharging our cargo, and we are ready to sign average bond, as you were told on Saturday, so we now hold you accountable for any loss sustained by us by non-delivery of the cargo." In *London*, on the 29th of April, Messrs. *Hoffman & Co.*, in answer apparently to a similar application from Messrs. *Tagart, Boyson & Slee*, write as follows: "It is quite correct that Captain *Miedbrodt* will not discharge until he receives our instructions, and those instructions we cannot give him until the amount due from the cargo is paid to enable us to discharge the bottomry bond, because by that document all the interests are hypothecated to the bottomry holder."

And on the 30th of April the master writes to the Plaintiff, reminding him that the days allowed by the charterparty for taking delivery of the cargo have expired, giving notice that if the conditions precedent necessary to delivery are not complied with within twenty-four hours, he will land the cargo at the risk and expense of the Plaintiff, retaining his lien thereon, and claiming demurrage "at £6 per day, as per charterparty, for every day that may now elapse before cargo is out of the ship."

Thus matters stood on the 1st of May, when Mr. *Harper*, a member of the firm of *Hoffman & Co.*, arrived in *Dublin*. He saw the Plaintiff on that day, and endeavoured to come to a settlement with him. He began by claiming as sums for which there was a lien on the cargo, £1221 2s. 11d. for general average, and about £700 for freight. The Plaintiff disputed both items. Calculating the freight according to the running feet mentioned in the bill of lading, he made it only £671; and he complained that in the

J. C.

1875

MIEDBRODT

v.

FITZSIMON.

THE

"ENERGIE."

J. C. average statement the cargo had been valued at £2686, whereas
 1875 its invoice price was but a little above £2000, and the sum for
 MIEDBRODT which it was insured only £2300. Thereupon Mr. *Harper*
 v. agreed to calculate the average payable by cargo upon the last-
 FITZSIMON. mentioned sum, reducing its amount to £1136 2s. 4d.: and, after
 "THE the further discussion, offered to release the cargo on the pay-
 "ENIGIT." ment of £1800 and the execution of an agreement that if he
 should have received too much or too little, the error should be
 made good to the sufferer. The Plaintiff not assenting to these
 terms, offered to write a cheque for £1700, and afterwards in-
 creased his offer to £1750; but Mr. *Harper* declined to take less
 than the £1800, and thus, unfortunately for both parties, the nego-
 tiation went off on this question of £50 more or less. If the
 Plaintiff had paid the £1800, he would have got delivery of his
 cargo on the payment of less than in the event proved to be
 actually due from him; and if the other party had taken the
 £1750, they would have succeeded to that extent in their object
 of being put in funds to meet the bottomry bond; although their
 right to call upon the Plaintiff for present payment of so large a
 sum, whilst the bond was outstanding and unproduced, and the
 precise amount of freight had not been ascertained by measure-
 ment, was questionable. Neither party, therefore, evinced much
 prudence in rendering this attempt to compromise abortive. It is
 not, however, necessary for their Lordships to say which was on
 this occasion the less reasonable. They have only to determine
 whether the master by his subsequent acts incurred a legal
 liability enforceable in this action.

On the 3rd of May the master, notwithstanding a letter from the
 Plaintiff of that date offering to pay the proportion of the average
 falling on the cargo in full, and to give security for the freight,
 proceeded to discharge the cargo, and place it in the custody of
 the Port and Docks Board, under the 67th and 68th sections of the
Merchant Shipping Act Amendment Act, 1862; putting upon it a
 stop order for the sum of £2200. The delivery though begun on
 the 3rd was not completed until the 16th of May.

In the meantime the following correspondence took place between
 Messrs. *Waltons, Bubb, & Walton*, acting as the solicitors of the
 Plaintiff in *London*, and Messrs. *Hoffman & Co.* The former wrote

on the 5th of May: "We understand that you represent both the shipowner and the bottomry bondholder, and, if this is so, there will be no difficulty. Please let us know how this is, and what amount you claim from the cargo on behalf of your respective clients. Our clients are quite prepared to pay the freight on delivery of the cargo, but we understand that the master, professing to act under your instructions, is refusing to deliver unless the whole freight is paid before delivery. Please see to this." And in answer to this, Messrs. *Hoffman & Co.*, in a letter of the 6th of May, after expressing their satisfaction that the matter had got into the hands of those who were capable of understanding the position of the proprietors of the cargo, and stating that the lay days having expired, and every means having been tried whilst they were running to induce the proprietors of the cargo to pay the amount due from them, the cargo was then being landed by the captain in the custom-house docks, say, "The claims we make upon the cargo are: 1st, £1221 2s. 11d. contribution to average charges as per Messrs. *Hopkin's* statement" (thereby reverting to their original claim): "2nd. £770 for freight, demurrage, and landing charges, and on payment to us of these two sums we are willing to give a guarantee that shall be made satisfactory to you for the subsequent adjustment of either of the amounts by the repayment by us of any surplus if it should afterwards appear that such has been paid us."

Nothing appears to have come of this correspondence until the 12th of May, when the claim for general average contribution was settled by a payment to Messrs. *Hoffman & Co.* in London of £1136 2s. 4d. upon the terms expressed in the following receipt, which was signed by *Hoffman & Co.*, as agents for the master and shipowners, and also as holders, or agents for the holders, of the bottomry bond:—

"Received from Messrs. *Fitzsimon & Son* the sum of £1136 2s. 4d., in full satisfaction and discharge of all claims against the cargo per *Energie* for general average or special charges, as per statement of Mr. *Manley Hopkins*, the contributory value of the said cargo being taken at £2300 instead of £2600, and also in full satisfaction and discharge of all claims against the cargo under the bottomry bond, which is to be liquidated by the shipowner."

J. C. J.
1875
MIEDEBRODT
v.
FITZSIMON.
—
THE
"ENERGIE."
—

J. C.
 1875
 MIEDBRODT
 v.
 FITZSIMON.
 —
 THE
 "ENERGIE,"
 —

The Plaintiff, having been advised of this payment in *London* through his solicitors in *Dublin* on the 13th of May, offered to lodge with the *Port and Docks Board* the full sum of £770, being the amount of the claim made by the letter of the 6th of May, exclusive of that for general average contribution; but this offer was expressly made under protest for the purpose of obtaining the cargo, and with notice to the board not to part with the money lodged until the Plaintiff should take the necessary steps to compel the refunding of the same. The board declined to deliver the cargo until the stop order for £2200 had been withdrawn, or that sum lodged.

Upon this the Plaintiff appears to have taken simultaneous action in *London* and in *Dublin*. In *London*, on the 14th of May, Messrs. *Waltons, Bubb, & Waltons* wrote to Messrs. *Hoffman & Co.* as follows:—"We have a letter from *Dublin* complaining that, although our clients have offered to deposit with the Port and Docks Board, or to tender under protest £770, being the amount claimed by you for freight charges, &c., the board refused to deliver the cargo on the ground that it is stopped by you for £2200, and that they can accept nothing short of that sum. From this we assume that you have not advised the payment of the general average, and we shall therefore be glad if you will instruct the board by wire to deliver on the £770 being deposited." Messrs. *Hoffman & Co.*'s answer to this communication was written on the 15th, and was in the following terms:—"In reply to your note of yesterday, we can only say that this matter must now take its course, as we fear that we are not justified in interfering now with the original stop."

In the meantime the Plaintiff's solicitors in *Dublin* had served the master of the vessel on the 14th of May with a notice in these terms: "On behalf of Messrs. *James Fitzsimon & Sons*, timber merchants, *Dublin*, we hereby require you to attend at the office of Mr. *Thurgood*, superintendent of the Custom-house Dock, *Dublin*, to-morrow at twelve o'clock noon, at which time and place we shall pay you the sum of £671 10s. 4d., being the amount due by Messrs. *Fitzsimons* for freight of goods brought to *Dublin* by the ship *Energie*, or such further sum as you shall shew us to be due for freight only, and we shall pay such sum on your releas-

ing the cargo of the ship *Energie*, so that Messrs. *Fitzsimons* may remove the same."

The master and Mr. *George Fottrell*, one of the Plaintiff's solicitors, did meet at the place and time appointed. There is some discrepancy in their evidence as to what then took place. The master's statement is "that Mr. *Fottrell* had a bundle of notes in his hand. He offered me some money, but I cannot say how much." "They asked me what more I wanted; I said, demurrage and expenses, and shewed them the telegram from *Hoffman* which I received on the 15th, telling me to take any money I could get, but not to release the cargo until the charges should be paid." Mr. *Fottrell* says, "The master said that he would be happy to receive the money, but that he would not release the cargo. He would not take the money on the terms I offered it. But he shewed a telegram which he had from *Hoffman* in these words, 'Receive any money you can get, but don't release the ship.'" This telegram is not produced. Looking at the evidence by the light thrown upon it by the correspondence, their Lordships have come to the conclusion that the Plaintiff was willing to pay what was demanded for freight, though possibly under protest as to anything in excess of £671 10s. 4d.; and that, on the other hand, the master acting under instructions from Messrs. *Hoffman & Co.*, would not release the cargo except upon payment not only of freight, but of the sums claimed for demurrage and other charges; the whole probably amounting to the sum of £830 5s. 7d., as shewn by the subsequent letter of the 26th of May, and the account therein referred to.

The result was that the interview having proved infructuous, the present action was commenced on the same day, viz., the 15th of May.

The only other facts which require mention are, that on the 21st of May, the Plaintiff paid the £2200 to the Port and Docks Board and obtained delivery of his cargo; that at the same time he served the board with a letter in which he admitted the sum of £701 3s. 3½d. (the then ascertained amount of freight) to be payable to the shipowners, but required them to retain the balance pursuant to the provisions of the 72nd section of the *Merchant Shipping Act*: that on the 26th of May, the master expressed his

J. C.

1875

MIEDBRODT

v.
FITZSIMON.—
THE
"ENERGIE."
—

J. C.
 1875
 MIEDEBRODT
 v.
 FITZSIMON.
 —
 THE
 "ENERGIE."
 —

willingness to receive (as he afterwards received) the amount thus admitted to be due for freight, intimating, however, his intention to take proceedings against the Plaintiff for the recovery of the difference between that sum and the £830 5s. 7d., and to give the Port and Docks Board the statutory notice of the institution of such proceedings; but that ultimately and about the 8th of July, the Plaintiff did receive the whole balance of the £2200, being £1498 16s. 8½d., the shipowners having apparently determined to waive their alleged lien on the fund, and to pursue their remedy against the Plaintiff for the additional amount claimed in an independent action.

It is now to be considered upon what ground (if any) the present action is maintainable.

The judgment of the Court of Admiralty has found, and that of the Appellate Court assumes, that up to the 3rd of May the master was acting within his strict legal rights. Their Lordships do not dissent from that conclusion.

The argument, however, that was addressed to them on behalf of the Respondent makes it desirable to consider briefly what those rights were. That the master had, by common law, a lien for freight, and general average contribution, and, by contract, a lien for demurrage upon the cargo, was not and could not have been successfully disputed. The freight, however, was not payable before delivery, and could only be ascertained by measurement upon delivery. The case, therefore, was one of those in which the payment of the freight and the delivery of the goods are concurrent acts in which, as is shewn by the case of *Paynter v. James* (1) all that is required from the owner of the cargo is readiness and willingness to pay at the time of delivery, and in which a settlement can hardly be practically effected without some mutual trust and accommodation. In such circumstances the offer to pay so large a proportion of the freight as £650, before breaking bulk, was not unreasonable.

Again, before paying the sum demanded for average, the Plaintiff had a right to be satisfied that it was the result of a proper adjustment. He did not himself see the average statement before the 1st of May, though it had been in the hands of his

(1) Law Rep. 2 C. P. 348; 3 Maritime Cases, 76.

London agents on the 18th of April, when it was forwarded by them to the underwriters. There seems to have been a *bonâ fide* dispute as to the principle of the adjustment, which the subsequent conduct of the shipowners shews to have been at least questionable. He had, moreover, fair grounds for declining to pay the average contribution until he was satisfied that no claim would be made by the bottomry bondholder against the cargo. And of this he had no assurance before the 3rd, if before the 6th, of May. He offered at least, as early as the 28th of April, to sign an average bond, which, there being no doubt of his solvency, it would have been but reasonable in the shipowners to accept. It is true that their object was to get cash in order to pay the bondholder. But the owner of cargo is under no obligation to put the shipowners in funds to meet a debt for which they are primarily liable.

Hence it appears to their Lordships that the detention of the cargo by the master up to the 3rd of May, though not wrongful, was an act done in the rigid exercise of his rights : and that it is fairly open to argument whether, if he chose to detain the cargo under the circumstances above stated, he could impute the delay in its discharge thereby caused to the Plaintiff, or make that a ground for a claim of demurrage. It does not, however, seem to them to be necessary for the determination of this case to consider whether the lien for demurrage, which was once claimed, but finally waived, ever existed ; and they abstain the more willingly from expressing an opinion upon this point, because the claim for demurrage is said to be now *sub judice* in another *forum*.

The judgment under appeal has found that there was a wrongful detention of the cargo on and after the 3rd of May ; and that a right of action then accrued to the Plaintiff by reason of the delivery to the Port and Docks Board, begun on that day, under a stop order for the excessive sum of £2200.

In support of this judgment it has been argued that the delivery to the Port and Docks Board, of itself and irrespectively of the sum specified in the stop order, was wrongful, inasmuch as the Plaintiff had not "failed to land and take delivery" of his goods within the meaning of the 67th section of the *Merchant Shipping Act Amendment Act*. Their Lordships, however, cannot assent to this

J. C.
1875
MIEDEBRODT
v.
FITZSIMON.
—
THE
"ENERGIE,"
—

J. C.
 1875
 MIEDBRODT
 v.
 FITZSIMON.
 —
 THE
 "ENERGIE."
 —

proposition. They conceive that the word "failed" need not be taken to imply wilful default in the cargo owner; but that, upon the true construction of the section, the shipowner is at liberty to land the goods under it, whenever the delivery of them to the owner within the proper time has been prevented by the force of circumstances, whether the latter is or is not to blame. They think that this construction is fortified by some of the provisions of the section which, in certain cases, throw the risk and expense of the landing upon the shipowner.

On the other hand it was argued against the judgment that it implies, if it does not express, that the master is liable to an action for damages whenever he lands under a stop order for a sum in excess, no matter how slightly in excess, of the amount due to him. Their Lordships do not so read the judgment. The proposition said to be involved in it is not necessary to support it, and seems to be inconsistent with the 72nd section of the statute, which assumes that the master in some cases may *bonâ fide* have claimed a lien for more than was really due to him.

The provisions of the statute which relate to this question are obviously designed both to give the master the means of discharging the cargo, retaining his lien, and to give the cargo owner the means of obtaining his goods by the deposit of a sum sufficient to cover the master's claim. But they do not extend the lien. The lien for the warehouse rent and charges occasioned by a landing under the 67th section is another and distinct lien created by the 76th section. The words of the 68th clause are: "If the shipowner gives to the warehouse owner notice in writing that the goods are to remain, subject to a lien for freight, or other charges payable to the shipowner, to an amount to be mentioned in such notice, the goods so landed shall, in the hands of the warehouse owner, continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof." If, then, the master wilfully inserts in his notice a sum which he knows to be in excess of that for which he had a lien before delivery, he not only injuriously affects the cargo owner by compelling him to deposit more than the statute requires in order to release his goods, but intends to produce that result by duress of the goods; and thus the delivery to the warehouse keeper is tantamount to a wrongful

detention of the goods, and, as such, an actionable breach of duty. In the present case, the sum inserted in the notice was manifestly and grossly in excess of that for which the master could *bonâ fide* claim a lien. The outside sum claimed so late as the 6th of May was £1991 2s. 11d., being £1221 2s. 11d. for general average, and £770 for freight, demurrage, and landing charges. On the 21st of May the latter item had been swollen to £830 5s. 7d., but the average claim had then been settled by the payment of £1136 2s. 4d.; and even if the sum of £830 had been present to the mind of the master on the 3rd of May as the amount claimable, in addition to the larger sum claimed for average, the aggregate of the two would have fallen short of £2200 by £150.

It was, however, argued that the mere insertion of an excessive sum in the notice is not actionable, because the statute gives to the cargo owner, by the 69th section, the means of releasing his goods otherwise than by a deposit of the sum specified in the notice; viz., by obtaining from the shipowner either a receipt for the amount claimed as due, or a release of freight. But upon the hypothesis that the goods are wrongfully detained by the shipowner for an excessive demand, it is not to be assumed in his favour that he would give such a receipt or release upon the offer of a less sum than that demanded; and a payment to the shipowner under protest would put the cargo owner in a worse position than he would be in by the deposit of the sum claimed by the shipowner; since, in the latter case, the shipowner would have to establish his claim *ultra* the amount admitted by proceedings under the 72nd section; whereas, in an action for money had and received, the burthen of proof would be on the Plaintiff, the cargo owner.

The evidence, moreover, in this case shews that the Plaintiff did his best to obtain his timber under the 69th section. He actually paid the average; he was ready and willing to pay, though under protest, the whole amount demanded for freight; but the master, under the instructions of *Hoffmann & Co.*, refused to release the cargo upon any terms, or at all events upon any terms short of the payment of the £830; which, besides the amount claimed for demurrage, included items for which it is clear that the master when he landed the cargo had no lien. The Plaintiff, therefore,

J. C.
1875
MIEDERDORF
v.
FITZSIMON.
—
THE
"ENERGIE."
—

J. C.,
 1875
 MIEDBRODT
 v.
 FITZSIMON.
 THE
 "ENERGIE."

was driven to make the deposit of £2200 by the determination of the shipowners to use the stop order as the means of exacting the payment of charges for which they had no lien.

Their Lordships are of opinion that, from the evidence in the cause, the Appellate Court might fairly infer that it was with this object and intention that the excessive amount was originally inserted in the stop order, and, consequently, that the landing and detention of the cargo under that stop order was a wrongful act, which gave the Plaintiff a right of action, as from the 3rd of May.

Had their Lordships been of a different opinion the result would only have affected the date from which the wrongful detention is to be reckoned; for they entertain no doubt that the Plaintiff had a good cause of action on the 15th of May, the date of action brought. After the settlement of the claim for average by actual payment, it was clearly the duty of the master, and of the London agents for the ship, to reduce the stop order to the amount for which they then had, or could reasonably claim, a lien.

This they refused to do; they refused either to release the goods or to reduce the stop order upon the receipt of the freight, which the Plaintiff, on the 15th of May, was ready and willing to pay.

That this would have given to the Plaintiff a right of action, if he had not one before, their Lordships have felt no doubt, but for the reasons above stated they are of opinion that the judgment of the Appellate Court in *Ireland* was correct in finding that the right of action was complete on the 3rd of May.

Upon the point taken, to the effect that the Plaintiff being entitled at most to nominal damages the remand to the Admiralty Court is improper, it is sufficient to say that it is premature to say that the damages, though they may be small, will not be substantial. Their Lordships, will, therefore, humbly advise Her Majesty to affirm the judgment under appeal, and to dismiss this appeal with costs.

Solicitors for the Appellant: Messrs. *Hollams, Son, & Coward*.

Solicitors for the Respondent: Messrs. *Waltons, Bubb, & Walton*.