[IN THE COURT OF APPEAL.]

C. A.
1921
July 11, 12, 25, 28.

ELLIOTT STEAM TUG COMPANY, LIMITED v. THE SHIPPING CONTROLLER.

Emergency Legislation—Ship—Charterparty—Requisition by Admiralty—Compensation—Claim by Charterers—Direct Loss—Interference with Business—Injury to Ship—Action by Charterers—Indemnity Act, 1920 (10 & 11 *Geo.* 5, *c.* 48), *s.* 2, *sub-ss.* 1 (*b*), 2 (*iii.*) (*b*); *Schedule, Part II.*

By s. 2, sub-s. 1 (*b*), of the Indemnity Act, 1920, any person, not being the owner of a ship, who has "incurred or sustained any direct loss or damage by reason of interference with his . . . . business . . . . through the exercise . . . . during the war of any . . . . power under any enactment relating to the defence of the realm . . . . shall be entitled to payment or compensation in respect of such loss or damage."

By sub-s. 2 (iii.) (*b*), if the claimant would apart from the Act have no legal right to compensation, the compensation is to be assessed according to the principles set forth in Part II. of the Schedule to the Act.

A towage and salvage company hired the use of a tug for the purposes of their business by a charterparty which entitled them to the services of the tug for as long as they pleased and enabled them to terminate the hiring by a fourteen days' notice. During the currency of the charterparty the tug was requisitioned by the Admiralty:—

Held, by Bankes and Warrington L.JJ. (Scrutton L.J. dissenting), that the loss of the average net earnings of the tug during the period of the requisition was a "direct loss or damage" by reason of interference with the charterers' business within the meaning of s. 2, sub-s. 1 (*b*), of the Act, and that they were entitled to compensation:—

Held, per Curiam, that the charterers would apart from the Act have no legal right to compensation.

Held, therefore, per Bankes and Warrington L.JJ., that in accordance with s. 2, sub-s. 2 (iii.) (*b*), compensation must be assessed as directed by Part II. of the Schedule to the Act.

APPEAL from the decision of the tribunal constituted by s. 2 of the Indemnity Act, 1920.

The Elliott Steam Tug Co. claimed compensation under s. 2, sub-s. 1 (*b*) and sub-s. 2 (iii.) (*b*) of that Act and Part II. of the Schedule to the Act (1) for direct loss or damage by reason of interference with their property or business through the exercise during the war of powers conferred by the Defence of the Realm (Consolidation) Act, 1914.

The claimants owned and used tugs for the purpose of

(1) These sections and Part II. of the Schedule are set out in the judgment of Warrington L.J.

C. A. 1921

ELLIOTT STEAM TUG CO. v. THE SHIPPING CONTROLLER.

towage and salvage. They had chartered the tug *Frank* from the owners thereof by a charterparty dated November 2, 1914, which entitled the claimants to the services of the tug for as long as they pleased until they should give the owners fourteen days' notice in writing to determine the charterparty. The hire was at the rate of 155*l.* per calendar month.

On May 19, 1917, the *Frank* was requisitioned by the Admiralty and was retained by them under the requisition until November, 1919. At first the Admiralty, who dealt only with the owners, paid them 5*l.* 10*s.* a day for the use of the tug and this sum the owners handed over to the claimants. Afterwards the Admiralty undertook the insurance and maintenance of the tug, and then they paid the owners 1*l.* 4*s.* a day for the use of the tug and the owners paid this sum and no more to the claimants.

The claimants did not determine the charterparty being on the whole satisfied with its terms; but they claimed compensation for direct loss by reason of interference with their business through the requisition of the Admiralty.

They presented their claim under two heads: (1.) the amount of hire which they continued liable under the charterparty to pay to the owners of the tug throughout the period of the requisition; and (2.) the loss of profit which they would have made during that period but for the requisition after giving credit for sums paid by the Admiralty to the owners, and by the owners to them.

The tribunal allowed the claimants one month's hire of the tug under the first head of claim. No question arises in this appeal upon that head.

Upon the second head the tribunal took the view that when the tug was requisitioned the claimants ought, after a reasonable time in which to consider their position, to have given fourteen days' notice to determine the charterparty, so as to minimize their loss, and they allowed the claimants the amount of their loss of profit during thirty days. In answer to the claimants' contention that they were obliged to continue the charterparty, because they could not find a substitute for the *Frank* owing to the existence of a state of war, the

tribunal held that to allow them further compensation on that ground would contravene the principles laid down in Part II. of the Schedule of the Act.

The claimants appealed on the ground that the tribunal was wrong in holding that to award the claimants further compensation than the amount above mentioned—i.e., the loss of profits for thirty days—would be to contravene the principles laid down in Part II. of the Schedule to the Indemnity Act, 1920.

There was a cross-appeal by the Shipping Controller on the ground that there were no facts from which the tribunal could infer that the interference with the claimants' business by reason of the requisition caused them any loss of profit. (1)

Stuart Bevan K.C. and *van den Berg* for the appellants.

Sir Gordon Hewart A.-G., MacKinnon K.C. and *Ricketts* for the respondent.

Cur. adv. vult.

July 28. The following written judgments were delivered :—

BANKES L.J. This is an appeal from a decision of the tribunal set up by the Indemnity Act, 1920. By s. 2, sub-s. 1, an appeal is given upon any point of law to a party aggrieved by any direction or determination of the tribunal. By the recent Order LV.B of the Rules of the Supreme Court rules are provided regulating appeals from the tribunal. Rule 40 provides that the notice of motion to this Court shall state the point or points of law by the direction or determination on which the appellant feels aggrieved. The point of law raised by the appellants in this appeal is stated in the notice of appeal as follows : "And further take notice that the points of law by the determination of which the claimants feel aggrieved are that the Court was wrong in holding that to award the claimants further compensation than the amount above mentioned would be to contravene the principles laid down in Part II. of the Schedule to the Indemnity Act, 1920,

(1) The material parts of the notice and cross-notice of appeal are set out in the judgment of Warrington L.J.

C. A. 1921

ELLIOTT STEAM TUG CO. v. THE SHIPPING CONTROLLER.

Bankes L.J.

and furthermore the claimants will contend that upon the evidence called and the facts so found, they are entitled to the compensation claimed as aforesaid."

The facts which gave rise to the appellants' claim for compensation as found by the tribunal are shortly as follows. The appellants carry on business as tug owners. In November, 1914, they chartered the tug *Frank* from her owners upon terms which entitled the appellants to retain her as long as they pleased, with a right to determine the hiring on fourteen days' notice in writing. The hire was at the rate of 155*l.* per calendar month. On May 19, 1917, the tug was requisitioned by the Admiralty, and she was retained under the requisition until the month of November, 1919. The appellants did not determine the charterparty, because having regard to the favourable terms on which they had acquired the tug, they were anxious to keep her at their disposal when she was released from requisition. The claim put forward by the appellants for compensation represented what they claimed to be the direct loss to them arising from the requisitioning of the tug. It was made up under two heads, (1.) the amount of hire which they continued liable to pay to the owners during the whole time that the tug was under requisition; (2.) the loss of the profit which they would have made during that period by the use of the tug. They were willing to give credit for all sums which the Admiralty had paid to the owners, and which the owners had passed on to them. The view taken by the tribunal with regard to the first head of claim was that with the view of minimizing the damages resulting from the requisitioning of the tug it was the appellants' duty to have given the fourteen days' notice terminating the charter, and had this been done the obligation to pay any further hire would have ceased. The tribunal however considered that the appellants should be allowed a reasonable time within which to decide what course to take, and as a result they allowed one month to cover both the consideration period and the notice period, and gave the appellants their full claim under both heads of damage for that month. This decision was challenged by

the appellants, as a matter of law, upon the ground that there was no evidence to support the finding of the tribunal that it was a reasonable course to take, and consequently their duty to put an end to the charterparty in order to minimize the damage. This Court held that the point was not raised by the notice of appeal, and would not allow it to be proceeded with. This disposes of any question of damage in reference to the hire paid by the appellants under the charter during the period of requisition.

There remains the claim for loss of profit, or expressed more accurately the loss of what would be the average and ordinary net earnings of the tug during the period of requisition. This claim cannot be disposed of upon the same grounds as those on which the claim for the hire was disposed of. If the appellants' duty was to put an end to the charter for the purpose of minimizing damages, and they had in fact done so, it would not have been a voluntary act, and would have been done merely for the purpose of minimizing the damages which resulted from the requisitioning of the tug and would have left the other branch of the claim for damages untouched. Whether the appellants had any right to those damages depends upon the construction of the Indemnity Act, because apart from that Act it is I think clear that they could not have had any legal right to damages. The Act by s. 2, sub-s. 1, provides that any of the persons indicated in the section who has "incurred or sustained any direct loss or damage by reason of interference with his property or business in the United Kingdom through the exercise or purported exercise, during the war, of any prerogative right of His Majesty or of any power under any enactment relating to the defence of the realm, or any regulation or order made or purporting to be made thereunder, shall be entitled to payment or compensation in respect of such loss or damage; and such payment or compensation shall be assessed on the principles and by the tribunal hereinafter mentioned." By awarding the appellants damages limited to the period of one month the tribunal have found (as I think upon the evidence they were entitled to find) that the business of the

C. A. 1921

ELLIOTT STEAM TUG CO. v. THE SHIPPING CONTROLLER.

Bankes L.J.

appellants had been interfered with by the requisitioning of the tug, and that the appellants had sustained direct loss thereby. By their cross notice of appeal the respondents complain of the inference drawn by the tribunal, that the interference with the appellants' business caused them any direct loss. In my opinion the decision of the tribunal upon this point was correct, and in accordance with the authorities: see *The Argentino*. (1) The loss of what the tug might reasonably and fairly be expected to earn for the appellants had she not been requisitioned is in my opinion direct loss within the meaning of the sub-section which I have just quoted. It was urged upon the Court by the respondents' counsel that it had never been the practice of the Defence of the Realm Losses Commission to award any compensation for loss of profits, and that, as the tribunal was directed by s. 2, sub-s. 2, iii. (*b*), of the Act to assess compensation in accordance with the principles on which that Commission acted, the tribunal could not award profits. Whether this was the practice of the Commission I do not know, but of this I am sure, that since the passing of the Indemnity Act, 1920, compensation must be assessed by the tribunal set up by that Act in accordance with the directions of that Act, and not otherwise; and I am confident that the tribunal must be dealing with claims upon that footing. It does not follow that because a person proves a direct loss by reason of interference with his property he is entitled to payment or compensation, because the principles upon which payment or compensation are to be assessed are laid down by the Act. Those principles are set out in the Schedule to the Act, and they appear to have been framed with the intention of awarding compensation to individuals who suffered losses over and above what the community in general suffered owing to the war, and to exclude compensation for any special loss or any loss of special profits due to the war, or for any losses arising solely out of the existence of a state of war. It was no doubt difficult to select a form of words which would exactly and clearly convey the intention of the Legislature, and I do not propose

(1) (1888) 13 P. D. 191; (1889) 14 App. Cas. 519.

to attempt any definition of what the various expressions in the Schedule include. In the present case the tribunal have excluded the bulk of the appellants' claim for loss of profit. If they did so on the ground that the appellants failed to prove a direct loss, their decision was not in my opinion correct in law. I am not satisfied that they did so decide, or that they so intended to decide. Indeed their decision awarding some damages indicates the contrary. The written judgment of the tribunal concludes in this way: "It was contended that the impracticability of hiring a substitute tug, owing to the existence of a state of war, combined with the requisition, forced the claimants' decision and so caused the further loss; but it appears to us that to compensate the claimants for such further loss on that ground would be to contravene the principles laid down for our guidance in Part II. of the Schedule to the Indemnity Act." If by this the tribunal intended to convey that though the loss proved by the appellants was a direct loss it nevertheless was a loss excluded by the express language of Part II. of the Schedule, and therefore could not be taken into account by the tribunal, we have not at present the materials upon which we can decide the point of law raised by the appellants. This Court cannot decide questions of fact. The case therefore must be remitted to the tribunal for them to take such action (if any) as they may consider desirable and to report to the Court, if they so desire, any further findings of fact upon which this Court can proceed in dealing with the question of law submitted to it. The appeal must be adjourned. The cross-appeal fails and must be dismissed with costs.

WARRINGTON L.J. This is an appeal by claimants under the Indemnity Act, 1920, from the determination by the tribunal set up under that Act of the amount due to them for compensation.

By s. 2, sub-s. 1 (i.), of the Act the right to appeal is strictly limited to any direction or determination of the tribunal on any point of law, and by r. 40 of Order LV.B in the Rules of the Supreme Court, 1921, it is provided that the notice of

C. A. 1921

ELLIOTT STEAM TUG CO. v. THE SHIPPING CONTROLLER.

Warrington L.J.

motion, i.e., the notice of appeal, shall state the point or points of law by the decision or determination on which the appellant feels aggrieved. The jurisdiction of this Court is therefore strictly limited and we must be careful not to pass the limits there laid down.

The claimants were under a charterparty dated November 2, 1914, the charterers of a steam tug *Frank* for a period which was practically so long as they pleased unless previously determined by the charterers by a fourteen-days' notice. The tug was used by the claimants for their towage and salvage work from which they derived profits. She was on May 19, 1917, requisitioned by the Admiralty. The claimants claimed compensation under two heads: (1.) loss of profit from the use of the tug in their business of which use they had been deprived during the period of requisition; and (2.) the charter rate of hire paid by them to the owners so far as it had not been repaid out of the hire paid by the Government. The tribunal have awarded compensation under both heads for the amounts claimed, but for thirty days only. The claimants seek to have the limit of thirty days removed so far as concerns the loss of profits. The respondents on the other hand contend that nothing should have been awarded for loss of profits. I have stated the nature of the case in general terms only, but in terms which seem to me to be sufficient to explain what follows. The jurisdiction of the tribunal and the right of the claimants to compensation depend in my opinion on the Indemnity Act, 1920. By s. 1 of that Act the right to institute legal proceedings in respect of acts done in good faith by officers of the Crown during the war is speaking generally taken away, but by s. 2 a right to compensation is given. That section by sub-s. 1 provides that a person, (*a*) being the owner of a ship which has been requisitioned shall be entitled to payment or compensation as therein mentioned, "(*b*) who has otherwise incurred or sustained any direct loss or damage by reason of interference with his property or business in the United Kingdom through the exercise or purported exercise, during the war, of any prerogative right of His Majesty or of any

power under any enactment relating to the defence of the realm, or any regulation or order made or purporting to be made thereunder, shall be entitled to payment or compensation in respect of such loss or damage; and such payment or compensation shall be assessed on the principles and by the tribunal hereinafter mentioned, and the decision of that tribunal shall be final." This is followed by two provisions, one giving the limited right of appeal above referred to, the other being immaterial. Sub-s. 2 provides that "the payment or compensation shall be assessed in accordance with the following principles": Of these (i.) and (ii.) are not applicable to the present case. (iii.) is as follows: "(*a*) If the claimant would, apart from this Act, have had a legal right to compensation, the tribunal shall give effect to that right, but in assessing the compensation shall have regard to the amount of the compensation to which, apart from this Act, the claimant would have been legally entitled, and to the existence of a state of war and to all other circumstances relevant to a just assessment of compensation: Provided that this sub-section shall not give any right to payment or compensation for indirect loss. (*b*) If the claimant would not have had any such legal right, the compensation shall be assessed in accordance with the principles upon which the Commission appointed by His Majesty under Commissions dated March 31, 1915, and December 18, 1918, (commonly known as the Defence of the Realm Losses Commission), has hitherto acted in cases where no special provision is made as to the assessment of compensation, which principles are set forth in Part II. of the Schedule to this Act."

In my opinion the claimants in the present case come under sub-clause (*b*). As charterers they had no property in the ship nor had they the possession thereof and they could not at common law have maintained an action against the officers of the Crown who took possession of the ship. Accordingly that part of the Schedule which regulates in their case the assessment of compensation is Part II., which is in the following terms: "Principles on which the Defence

C. A. 1921

ELLIOTT STEAM TUG CO. v. THE SHIPPING CONTROLLER.

Warrington L.J.

of the Realm Losses Commission has hitherto acted. The compensation to be awarded shall be assessed by taking into account only the direct loss and damage suffered by the claimant by reason of direct and particular interference with his property or business, and nothing shall be included in respect of any loss or damage due to or arising through the enforcement of any order or regulation of general or local application, or in respect of any loss or damage due simply and solely to the existence of a state of war, or to the general conditions prevailing in the locality, or to action taken upon grounds arising out of the conduct of the claimant himself rendering it necessary for public security that his legal rights should be infringed, or in respect of loss of mere pleasure or amenity." The tribunal arrived at the following conclusions: (1.) that the business of the claimants as charterers was interfered with by the requisition; (2.) that the requisition interfered with the claimants' business so as to cause directly some loss of profit and some loss of charter hire; (3.) that to minimize the loss they ought to have given the fourteen days' notice to determine the charter but were entitled to a reasonable time, fixed by the tribunal at thirty days, to consider their position, and accordingly they allowed the claim under both heads for thirty days. The judgment concludes with the following passage: "The further payments of charter hire and the further loss of profits was not caused directly or even indirectly by the requisition. As Mr. Page candidly stated, the claimants themselves in their own business interests after consultation and advice decided to keep the charter on foot for so long a period as the requisition lasted. This decision and not the requisition caused the further loss. It was contended that the impracticability of hiring a substitute tug, owing to the existence of a state of war, combined with the requisition, forced the claimants' decision and so caused the further loss; but it appears to us that to compensate the claimants for such further loss on that ground would be to contravene the principles laid down for our guidance in Part II. of the Schedule to the Indemnity Act." I now turn to the appellants' notice of appeal. After

stating that he intends to appeal he defines his point in these terms: "And further take notice that the points of law by the determination of which the claimants feel aggrieved are that the Court was wrong in holding that to award the claimants further compensation than the amount above mentioned" —that is loss during the thirty days—"would be to contravene the principles laid down in Part II. of the Schedule to the Indemnity Act, 1920, and furthermore the claimants will contend that upon evidence called and the facts so found, they are entitled to the compensation claimed as aforesaid." The last contention seems to me to raise really no point of law at all. This is not drawn with the precision which in proceedings such as the present ought I think to be observed, but I think it means that there was nothing in the Schedule to justify the limitation to the thirty days.

The respondent's cross notice is as follows: "And further take notice that the point of law by the direction of determination on which the respondent feels aggrieved is the inference drawn by the Court that the interference with the claimants' business by reason of the requisition was such as to cause directly some loss of profit and some loss of charter hire and the decision of the Court that it was competent to the Court to draw such an inference from the facts proved."

I will deal first with the cross-appeal. This in my opinion fails. The question turns on the construction of the statute. I will assume that at common law the charterers could have obtained no compensation for interference with mere contractual rights, but the statute has, in my opinion, without reference to the question whether the claimants had rights at law, given compensation to any person who has incurred or sustained any direct loss or damage by reason of interference with his business. The claimants' business was that of employing the *Frank* and other tugs in towage and salvage work. They proved that profits were derived by them by the employment of the *Frank* and they lost these profits by being deprived of the *Frank*, they not being able, as they proved, to obtain on reasonable terms another tug in her

C. A. 1921

ELLIOTT STEAM TUG CO. v. THE SHIPPING CONTROLLER.

Warrington L.J.

place. I think the tribunal were justified in concluding that some loss of profit was direct loss sustained by reason of interference with business. Were the tribunal justified in confining the loss to the thirty days? As regards the minimizing the loss by determining the charter, with deference to the tribunal, the determination of the charter, though it would have rendered them no longer liable to pay hire and so have reduced their loss in that respect, would have left the loss of profit resulting from their loss of the tug unaffected, and I think the tribunal were wrong in law in limiting on this ground the period for which loss of profit was allowed. But it is open to argument that the loss after the thirty days resulting from inability to obtain another tug was not suffered by reason of "direct and particular interference" with the claimants' business by the requisition of the *Frank* but by reason of general measures taken by the Government in consequence of the existence of a state of war, and was thus due "simply and solely" to the existence of that state of war or to "general conditions prevailing in the locality." I express no opinion on the validity of this argument, for we do not know from the judgment with any certainty the view taken by the tribunal. The concluding passage of the judgment seems to indicate that they took some such view as I have suggested, but I think they ought to be requested if they think fit to make further findings of fact or to express their views in terms on the construction of Part II. of the Schedule. The matter should be referred back to them for this purpose.

The cross-appeal should in my opinion be dismissed with costs.

SCRUTTON L.J. This is an appeal under s. 2, sub-s. 1 (i.), of the Indemnity Act, 1920, from the decision of the Defence of the Realm Losses Commission upon a claim by the Elliott Steam Tug Co., charterers of the tug *Frank* owned by Charles Duncan & Co., for compensation for damage done to their business by the requisition of the tug by the Admiralty on May 19, 1917. Before the requisition of the tug the charterers

were making a profit of 5*l.* 11*s.* 4*d.* per day (not including days when the tug was not working) after paying the owners 5*l.* 3*s.* 4*d.* a day. In other words they were making a gross profit of 10*l.* 14*s.* 8*d.* a day, a net profit of 5*l.* 11*s.* 4*d.* a day. The Admiralty, who only deal with owners, at first paid the owners 5*l.* 10*s.* a day, which the owners ultimately handed over to the charterers. The charterers had continued to pay 5*l.* 3*s.* 4*d.* a day to the owners for their charter was renewable at charterers' option, and the charterers desired to preserve their rights over the tug, after the requisition ceased. These rights indeed were so valuable that the owners ultimately paid the charterers 2000*l.* to cancel the charter. In the second stage of the requisition the Admiralty took over the maintenance of the tug, and only paid the owners 1*l.* 4*s.* a day, which they paid to the charterers. At this stage the charterers, who were paying the owners 5*l.* 3*s.* 4*d.* a day, and only receiving 1*l.* 4*s.* from the Government, were obviously making a heavy loss. The question now is as to the rights of the charterers against the Government.

At common law there is no doubt about the position. In case of a wrong done to a chattel the common law does not recognize a person whose only rights are a contractual right to have the use or services of the chattel for purposes of making profits or gains without possession of or property in the chattel. Such a person cannot claim for injury done to his contractual right: see on this point the judgment of Blackburn J. in *Cattle* v. *Stockton Waterworks Co.* (1), where a contractor making a tunnel on K.'s land claimed against a wrongdoer to K.'s land, whose wrong made his contract less profitable, and was held not entitled to recover. It is for this reason that underwriters cannot sue directly a wrongdoer against property they have insured, but must proceed in the name of the assured, as explained by Lord Penzance in *Simpson* v. *Thomson.* (2) It is for this reason also that charterers under a charter not amounting to a demise do not and cannot sue in the Admiralty Court a wrongdoer who has sunk by collision their chartered ship. The same

(1) (1875) L. R. 10 Q. B. 453. (2) (1877) 3 App. Cas. 279, 289.

C. A. 1921

ELLIOTT STEAM TUG CO. v. THE SHIPPING CONTROLLER.

Scrutton L.J.

principle was applied by Hamilton J. in *Remorquage à Hélice (Société Anonyme)* v. *Bennetts* (1), to prevent the owner of a tug suing the wrongdoer who had sunk his tow, whereby he had lost the benefit of his contract of towage. When the Court of Appeal in *The Okehampton* (2) allowed sub-charterers to sue for the loss of their bill of lading freight through a collision by the defendants' wrongdoing, they did so, I think, because it was proved that the sub-charterers, not the owners, had contracted to carry the goods and had received them and had, therefore, a lien for the freight and sufficient possession as bailees to sue for damages to the goods: see *The Winkfield.* (3) This is a sufficient reason for the decision, as explained by Hamilton L.J. at the beginning of his judgment. I do not think the head-note is accurate in speaking of possessory interest in the ship.

But, secondly, at common law, the shipowner suing a wrongdoer for temporary loss of the ship's services would be entitled at common law to recover the loss of profits during that period as a direct consequence of the wrong. This is explained as regards ships by the judgments of Bowen L.J. and the House of Lords in *The Argentino.* (4) It is indeed every-day practice in injury cases, where the plaintiff is given loss of earnings or profits during the time his injury lasts as the direct consequences of the injury. I used the word "direct," because it is the word preferred after consideration of the alternatives by Lord Sumner in *Weld-Blundell* v. *Stephens.* (5) The charterer in collision cases does not recover profits, not because the loss of profits during repairs is not the direct consequence of the wrong, but because the common law rightly or wrongly does not recognize him as able to sue for such an injury to his merely contractual rights.

But, thirdly, at common law the owner of a ship while under a duty to act reasonably to reduce damages is under no

(1) [1911] 1 K. B. 243.
(2) [1913] P. 173.
(3) [1902] P. 42.
(4) 13 P. D. 191; 14 App. Cas. 519.
(5) [1920] A. C. 956, 983.

obligation to destroy his own property to reduce the damages payable by the wrongdoer. The leasehold tenant of a house would not be bound to stop paying rent to his superior landlord during the period during which a wrongdoer prevented him using the house, because by so doing he would reduce the damages the wrongdoer had to pay if by so doing he lost the tenancy of the house after the wrong of the tort feasor was repaired, or finished in its effects. It is common practice at common law to recover, (1.) net profits lost; (2.) standing charges which have reasonably to be incurred and which are not made up by profits by reason of the wrongdoer's action. In other words in a case of temporary loss of a chattel, gross profits lost are recovered so far as expenses of earning them reasonably continue; and the reasonableness is from the point of view of the owner of the chattel. If the expenses cease their amount is set off against the gross profit otherwise lost. I mention these second and third points because on neither of them do I agree with the view taken by the Commission during the argument, which was apparently that loss of profits during requisition could not be the direct consequence of the requisition; and that the charterer was obliged to abandon his charter or rather was not entitled to claim the cost of keeping it alive for his benefit after the requisition.

The charterer then has no common law right against a person who deprives him of the opportunity of earning profits by his contractual rights, by taking away the ship in respect of which he had a contract. As a consequence the Board of Arbitration which dealt with registered ships excluded the charterer from claiming for the same reason. They only allowed the owners to claim, and s. 2, sub-s. 1 (*a*), of the Indemnity Act does not apply to the case of a charterer. He does not come under s. 2, sub-s. 2 (iii.) (*a*), for apart from the Act he would have no legal right to compensation. He can only get compensation under the Act if he has sustained any direct loss or damage by reason of interference with his property or business through the exercise of prerogative rights, or powers under any statute for the defence of the

C. A. 1921

ELLIOTT STEAM TUG CO. v. THE SHIPPING CONTROLLER.

Scrutton L.J.

realm and then only on the principles set out in Part II. of the Schedule to the Act. The Commission appear to have rejected all claim for loss of profits because the charterers were unable to replace the requisitioned tug at any reasonable rates on the ground that it was "loss or damage due simply and solely to the existence of a state of war." In one view all requisitions were due to a state of war, but to adopt this interpretation would be to make the Schedule illusory and meaningless, even as applied to owners. It is difficult to interpret these very vague words, but they may perhaps exclude that part of the profits or value due to war as compared with the pre-war profits or value.

But in my opinion there is a deeper objection to the appellants' claim based on the common law principles already stated, namely, that the charterer cannot get any damages for the loss of his purely contractual rights, whether in property or business. The owner of a ship requisitioned who had been running it for his own account receives an agreed sum from the Admiralty for hire, say 5*l.* a day, and the Admiralty only deals with the owner. Suppose he has chartered his ship, does the amount payable by the Admiralty suddenly rise from 5*l.* a day for the ship run by the owner for himself to 10*l.* a day for the same ship run by the owner for the charterer? It clearly does not, in my opinion, and the reason is that the 5*l.* a day is the full value of all interests in the ship. It is probably much less than the market value of an unrequisitioned ship, but that is because of the agreed Blue Book rates. But it is the full value for the purpose of compensation and the charterer is not entitled to any additional payment. Whether he is entitled to any share of the 5*l.* depends on his contract with the owners; in this case he has had the whole of the gross rate and cannot claim any more; he must settle with the owner his share, if any, of the net rate and its advantages.

This view, which is not the view put forward by the tribunal, excludes the claim of the appellants; there is a cross-appeal against the amount awarded by the tribunal rested on the ground that the loss of profits was not direct

loss. I think it was direct loss if the charterer had a right to claim, and that, therefore, the cross-appeal fails on the point raised.

Appeal adjourned; cross-appeal dismissed.

C. A. 1921

ELLIOTT STEAM TUG CO. v. THE SHIPPING CONTROLLER.

Solicitors for appellants: *Thomas Cooper & Co.*
Solicitor for respondent: *The Treasury Solicitor.*

W. H. G.

KEANE *v.* ASHBOCKING OVERSEERS.

1921 *Oct.* 19

Rating—Tithe Rentcharge—Benefices united "for ecclesiastical purposes only" —Separate Incomes under 300l.—"District formed for ecclesiastical purposes by virtue of statutory authority"—Pluralities Act, 1838 (1 *& 2 Vict. c.* 106), *s.* 16—*Tithe Rentcharge (Rates) Act,* 1899 (62 *& 63 Vict. c.* 17), *s.* 2, *sub-s.* 1 (*b*)—*Ecclesiastical Tithe Rentcharge (Rates) Act,* 1920 (10 *& 11 Geo.* 5, *c.* 22), *s.* 1, *sub-ss.* 2, 5.

The incumbent of two benefices which had been united "for ecclesiastical purposes only" by Order in Council under s. 16 of the Pluralities Act, 1838, claimed relief in respect of rates under s. 1, sub-s. 2, of the Ecclesiastical Tithe Rentcharge (Rates) Act, 1920. The income of each benefice separately was under 300*l.*; the combined income was (as the justices found) between 300*l.* and 500*l.* The justices were of opinion that the combined income must be treated as one for the purpose of rating, and made an order for payment of one-half the amount of the rates which would, but for the Act, have been payable by the incumbent:—

Held, by the Divisional Court, that the benefices having been united "for ecclesiastical purposes only" under s. 16 of the Pluralities Act, 1838, the proviso to that section applied; and, further, that such united benefices were not a "district formed for ecclesiastical purposes by virtue of statutory authority" within the meaning of s. 2, sub-s. 1 (*b*), of the Tithe Rentcharge (Rates) Act, 1899; and therefore that the incomes of the two benefices were separately rateable, and that the incumbent was entitled to total relief from rates in respect thereof.

CASE stated by Suffolk justices.

This case was stated on a summons for rates issued by the overseers of the parish of Ashbocking. By an Order in Council dated November 25, 1919, under s. 16 of the Pluralities Act, 1838 (1), the benefices of Ashbocking and

(1) The Pluralities Act, 1838, s. 16, sets out certain formalities after which "it shall be lawful for Her Majesty in Council to make and issue