if the true construction of the contract is that the place of loading was the elevators, then the vessel was never at the place named in the charterparty as the place whence the carrying voyage was to begin. The plaintiffs, however, contend that, not only were the defendants to have the cargo at the elevators ready to deliver within a reasonable time before the expiry of the time, but they were also bound to have and keep a clear road to the elevators, so as to enable the vessel to reach the elevators in sufficient time to enable her to receive her load before the expiry of the limit.

It may be that if the elevators and the ways were the defendants' property that would have been their duty. They would certainly not be justified in keeping obstructions in the vessel's way. But, to the knowledge of both parties, the elevators were terminal warehouses, not in any manner under the control of the defendants, and all vessels arriving were subject to the custom or practice of the port by which they must load in turn, though, even if the custom was not known to them, it would make no difference. In Postlethwaite v. Freeland (1880), 5 App. Cas. at p. 613, Lord Blackburn said, referring to a charterparty which contained a reference to the custom of the port: " I do not think that this alters the question, as the express reference to the custom of the port of discharge is no more than would be implied. For I take it that a charterparty, in which there are stipulations as to loading or discharging cargo in a port, is always to be construed as made with reference to the custom of the port of loading or discharge, as the case may be. See Hudson v. Ede, L. R. 2 Q. B. 566, L. R. 3 Q. B. 412, though it was expressly found in that case that the shipowner and his broker were not aware of the usage." Later on Lord Blackburn approved of the direction of Lord Coleridge to the jury that " custom " in the charterparty did not mean custom in the sense in which the word is sometimes used by lawyers, but meant a settled and established practice of the port.

The settled and established practice at Fort William in regard to loading vessels with grain is clearly shewn to be to load at the elevators in their turn. The defendants did nothing to cause any obstruction to the plaintiffs' vessel or to prevent her from reaching the elevators and being loaded according to the custom.

The principle that has been applied in regard to discharging, where by the custom of the dock the work was done by third parties independent of both the shipowner and the charterer, as in The Jaedereu, [1892] P. 351, ought in reason to be applicable to loading.