

She made a will in accordance with English law in exercise of the power, but the will was invalid as a will according to German law. The question, therefore, arose whether it was a valid exercise of the power. The Irish Court of Appeal held that it was, and a good will for the purpose of the appointment, and that the document should be admitted to probate limited to the estate or interest of the testatrix, over which she had a power of appointment, although it was not admissible for other purposes. This decision the House of Lords (Lord Loreburn, L.C., and Lords Ashbourne, Atkinson and Shaw) affirmed, as being in accordance with long established usage.

ADMIRALTY—SHIP—BILL OF LADING—EXCEPTION AND CONDITIONS
—DAMAGE TO CARGO—SEAWORTHINESS—NEGLIGENCE OF SHIP-
OWNERS.

Lyle v. The Schwan (1909) A.C. 450. This is a case which has undergone various vicissitudes. The action was for damage to a cargo arising from alleged negligence of the shipowners. The damage arose from the fact that a three-way cock was inadvertently left open whereby an inflow of sea water took place, damaging the cargo. Deane, J., held that this was due to the negligence of the defendants' agents, for which they were liable (1908) P. 356 (noted ante, p. 66). The Court of Appeal reversed this decision, holding that there was no evidence of the ship being unseaworthy, and, so far as the damage in question arose from improper adjustment of the three-way cock, this was a defect of machinery, or a defect caused by the neglect of the engineer, against both of which, by the terms of the bill of lading, the defendants were protected: (1908) P. 356 (noted ante, p. 281). The House of Lords (Lords Atkinson, Macnaghten, James, Collins, Gorrell, Shaw and Loreburn, L.C.) have now unanimously reversed the judgment of the Court of Appeal and restored that of Deane, J. Lord Gorrell, who delivered the most elaborate judgment, sums up the turning point of the case thus: "Is a vessel seaworthy which is fitted with an unusual and dangerous fitting which will permit of water passing from the sea into her holds unless special care is used, and those who have to use the fitting in the ordinary course of navigation have no intimation or knowledge of its unusual and dangerous character, or of the need for the exercise of special care, and might, as engineers of the ship, reasonably assume and act upon the assumption, that the fitting was of the ordinary and proper character, which would not permit of water so passing, however the fitting was used? I think this question should be answered in the negative."