

INSURANCE—SHIP—DAMAGE TO HULL—LATENT DEFECT EXISTING PRIOR TO INSURANCE—COSTS OF REPLACING STERN FRAME OWING TO LATENT DEFECT.

*Hutchins v. Royal Exchange Assurance Corporation* (1911) 2 K.B. 398 was an action on a policy of marine insurance which contained what is known as the Inchmaree clause, providing that the policy should cover loss or damage to the hull through any latent defect in the hull. At the time the insurance was effected there was an unknown latent defect in the stern frame, which defect during the currency of the policy was discovered, and a new stern frame had to be substituted, and the question in the action was whether the cost of the new stern frame was a loss recoverable under the policy. Scrutton, J., who tried the action came to the conclusion that under the Inchmaree clause the loss recoverable is (1) actual total loss of part of the hull or machinery, through a latent defect coming into existence and causing the loss during the currency of the policy; (2) constructive total loss under the same circumstances, as where part of the hull survives, but is, by reason of the latent defect, of no value and cannot be profitably repaired, and (3) damage to other parts of the hull happening during the currency of the policy, through a latent defect, even if the latter came into existence before the policy. But he held that the pre-existing latent defect is not itself damage for which indemnity is recoverable, even if by wear and tear it first becomes visible during the currency of the policy. The action was, therefore, dismissed, and the Court of Appeal (Williams, Moulton, and Farwell, L.J.J.) affirmed the decision.

COUNTY COURT—REMOVAL OF ACTION FROM COUNTY COURT TO HIGH COURT—DISCRETION OF JUDGE—(ONT. JUD. ACT, S. 93(1))—COSTS.

In *Donkin v. Pearson* (1911) 2 K.B. 412, the defendants applied to remove the action from the County Court to the High Court. The Master made the order on the terms that the defendants should in any event pay the difference between the costs of the County Court and High Court. Horridge, J., reversed the order, but gave leave to appeal. The action was by a member of a trade union against the union, and the defence raised a difficult question of law, and the Divisional Court (Lord Alverstone, C.J., and Bray, and Coleridge, J.J.) held that that