

by the company to the defendants. The debenture under which the plaintiff bank claimed was payable on August 1, 1900, and provided that the debenture was to be a first charge on all the company's assets; that such charge was to be a floating security, but so that the company was not to be at liberty to create any mortgage or charge in priority to, or upon an equality with, that debenture; and that the company, until default in payment of principal or interest thereby secured, or the appointment of a receiver, should be at liberty to carry on business, and that from and after default such liberty should cease and the debenture should be immediately enforceable. The company subsequently issued another debenture to the defendants, which was payable October 1, 1900, and expressed to be subject to the debenture held by the plaintiff bank; between July 1, 1900, and October 1, 1901, goods were sold by the plaintiff company to the defendants. The plaintiff bank took steps on October 2, 1901, to stop the company carrying on business, and then appointed a receiver. Joyce, J., on this state of facts, held that the defendants were entitled to set off their debenture debt, because the floating charge of the plaintiff bank did not interfere with the company's carrying on business until the bank actually took steps to enforce it, until then it was dormant and could not affect rights acquired by third persons during the period it was so dormant.

SHIP - BILL OF LADING - "UNSEAWORTHINESS."

Rathbone v. MacIver (1903) 2 K.B. 378, is useful as furnishing an authoritative pronouncement of the Court of Appeal (Williams, Romer, and Stirling, L.JJ.) as to the meaning of the word "unseaworthiness" in a bill of lading. The bill of lading in question exempted the ship owners from liability for damage in consequence of the unseaworthiness of the ship at the commencement of, or during the voyage, provided all reasonable means were taken to guard against such unseaworthiness. It was admitted by the defendants, the ship owners, that the ship was not fit to receive the cargo at the time the goods mentioned in the bill of lading were loaded, but they claimed exemption from liability, and contended that the above mentioned clause in the bill of lading only applied to the vessel's unfitness to meet the perils of the sea and not to her unfitness to carry cargo, and Wills, J., who tried the case, so held. The Court of Appeal (Williams, Romer, and