

SHIP — CHARTERPARTY — TIME CHARTER — FRUSTRATION OF
ADVENTURE—REQUISITION BY GOVERNMENT.

Bank Line v. Capel (1919) A.C. 435. In this case the question was whether or not a time charterparty had been put an end to by reason of the frustration of the contract by reason of circumstances supervening over which the parties had no control. The charterparty in question made in February, 1915, the defendants agreed to let a steamer to the plaintiffs, the charterers, for twelve months from the time the vessel should be delivered and placed at the disposal of the charterers at a coal port in the United Kingdom as ordered by the charterers to trade between safe ports within specified limits. The charterparty excepted loss or damage arising from restraint of princes. It also provided that if the steamer was not delivered on April 30, 1915, the charterers should have the option of cancelling the charter, and should it be proved that the steamer, through unforeseen circumstances, could not be delivered by April 30, 1915, the charterers within 48 hours after receiving notice thereof should declare whether they cancel or will take delivery of the steamer, also that the charterers should have the option of cancelling the charterparty if the vessel should be commandeered by the Government. The vessel was not ready for delivery by April 30, 1915, but the charterers did not cancel the contract. On May 11 the vessel was requisitioned by the Government, and some effort was made by the charterers and owners, without success, to get the vessel released. These efforts ceased in June, 1915. In July, 1915, the owners received an offer to purchase the vessel subject to their being able to procure her release which they succeeded in doing in the following September by substituting another vessel. The charterers then commenced the present action for breach of the charterparty. Rowlatt, J., who tried the action, held that the requisitioning of the vessel by the Government operated as a frustration of the adventure, and put an end to the contract. The Court of Appeal reversed his judgment, and the House of Lords (Lord Finlay, L.C., and Lords Haldane, Shaw, Sumner and Wrenbury) have now reversed the decision of the Court of Appeal and restored the judgment of Rowlatt, J., dismissing the action, Lord Haldane dissenting.