

(noted *ante*, vol. 54, p. 222). The contract in his case was made before the war for the sale of iron. After the contract had been partly performed the war commenced and the defendants thereby became alien enemies. In these circumstances McCardie, J., held that, quite apart from any special provisions as to the suspension of the contract in case of war, on the ground of public policy, the contract was dissolved, and the Court of Appeal (Pickford, Bankes, and Warrington, L.JJ.) held that after the judgment of the House of Lords in *Ertle Bieber Co v. Rio Tinto Co.* (1918) A.C. 280, the case was unarguable and dismissed the appeal.

SHIPOWNER—CHARTERPARTY—CONTRACT TO PAY BROKER'S COMMISSION—CUSTOM—ENFORCING CONTRACT IN FAVOUR OF THIRD PARTY.

Leopold Walford v. Les Affreteurs Anonyme (1918) 2 K.B. 498. This was an action to enforce a contract made in favour of a person not a party thereto, in the following circumstances: By a charterparty made by the defendants it was provided that "a commission of three per cent. on the estimated gross amount of hire is due to Leopold Walford on signing this charter (ship lost or not lost)." The action was brought by Leopold Walford but it was arranged between the parties, to avoid the necessity of amendment, that the action should be treated as if brought by the charterers as trustees for Leopold Walford; and it was held that, so brought, the action was maintainable, following *Robertson v. Ward* (1853) 8 Ex. 299. The defendants sought to escape liability on the ground that, by a custom, brokerage was never payable, no matter what the form of the contract, unless the hire was earned. Bailhache, J., who tried the action, held that such a custom had been proved and as no hire had been in fact earned under the charterparty, no brokerage was payable; but the Court of Appeal (Pickford, Bankes, and Scrutton, L.JJ.) held that a custom which purported to override the express terms of a written instrument was bad, and that under the terms of the contract in question the brokerage was payable though no hire was earned.

RAILWAY COMPANY—UNDERTAKING LEASED TO ANOTHER COMPANY
—RENTAL—DEPRECIATION OF CAPITAL—DEBENTURE HOLDERS
—PAYMENT OF DIVIDENDS OUT OF RENTAL—RESTORATION OF CAPITAL.

Lawrence v. West Somerset Mineral Ry. (1918), 2 Ch. 250. This was an action by a debenture holder of the defendant company to restrain payment of dividends on the ground that the capital