

present action was brought for breach of contract. The Court of Appeal held that the contract was against public policy, as being in undue restraint of trade and could not, therefore, be enforced (1913) 3 K.B. 422; but the House of Lords (Lord Haldane, L.C., and Lords Moulton, Parker, and Sumner) although conceding that a contract in restraint of trade may be, on its face, so unreasonable in its terms as to be unenforceable by a Court of Law, yet, considered that as the illegality of the contract in question had not been pleaded, and the question of whether or not it was in undue restraint of trade depended on surrounding circumstances, in such a case the Court should not, as a rule, give effect to an objection of illegality; and being of the opinion that the contract on its face was not in unreasonable restraint of trade, they reversed the judgment of the Court of Appeal and gave judgment for the plaintiffs.

CONTRACT—SALE OF GOODS—BREACH—NON-DELIVERY—MEASURE OF DAMAGES.

*Williams v. Agius* (1914) A.C. 510. This was a claim for breach of a contract for the sale of coal. Agius agreed to sell to Williams a cargo of coal, to be shipped in November, 1911, at the price of 16s. 3d. per ton, c.i.f. Genoa. He failed to deliver the cargo. The contract contained an arbitration clause and the claim was accordingly referred to arbitration. It appeared that in October, 1911, Williams had agreed to sell to Ghiron, in Turin, a cargo of coals of the same amount and quality, at 19s. per ton, c.i.f. Genoa. In November, Ghiron sold to Agius the cargo he had bought from Williams and ceded to Agius all his rights under that contract. At the date of Agius's breach of contract the market price of coal was 23s. 6d. at Genoa. On the arbitration the measure of damages was in dispute. The arbitrator found that Williams intended to resell to Ghiron the cargo due to him from Agius, and appropriated that cargo to his contract with Ghiron, and he gave his award in the form of a special case and the question turned on the point whether the measure of damages was the difference between 20s. and 23s. 6d. or 16s. 3d. and 23s. 6d. The Court of Appeal decided in favour of the former, but the House of Lords (Lord Haldane, L.C., and Lords Dunedin, Atkinson, Moulton, and Parker) came to the conclusion that the arbitrator had no jurisdiction to deal with matters outside the contract and the ordinary rule as to the measure of damages applied, viz., the difference between the contract price and the market price at the date of the breach.