

REPORT OF PROCEEDINGS OF THE CONFERENCE.

But if there is any doubt about them, they have to go in, and the ultimate appeal must be to a Court. Now that, shortly stated, is exactly what happens. With regard to the cases that have been put before us by Mr. Hughes and Mr. Belcher, I should say that a great many of those stipulations were illegal so far as my experience goes, and they ought to have been contested. If anything is put in the Articles which is contrary to the law, the Courts will not sustain them.

SIR WILLIAM LYNE: Cannot you do it without going to Court?

MR. WALTER J. HOWELL: No. The principle of the law is that the Articles should be elastic to suit different circumstances, and the ultimate appeal as to what is legal or not legal is to the Courts.

HON. DUGALD THOMSON: But the Superintendent points out what he considers illegal.

MR. WALTER J. HOWELL: Very often when a crew comes before the Superintendent to be engaged, some new and altogether unknown clause is proposed to be put in the Articles. If the Superintendent has any doubts he wires up to the Board of Trade or comes to the Board of Trade and says, "What do you advise me to do?" The Board of Trade do the best they can to advise him; but unless it is perfectly clear that it is illegal all the Board of Trade can do is to say, "We cannot say it shall not go in, but we caution the parties that it is open to grave doubts, and that if it is tested, our opinion is 'they will find that to be the case.'" As the matter stands, it is simplicity itself.

MR. LLEWELLYN SMITH: I think that makes it clear what the situation is. I do not know whether the shipowners have anything to say on this; we have heard Mr. Belcher and the seamen, and we have heard Mr. Hughes and the Board of Trade.

SIR WILLIAM LYNE: Is that a matter we in Australia can legislate upon?

MR. LLEWELLYN SMITH: For your own ships.

SIR WILLIAM LYNE: We have a provision here which says, "The Agreement shall be framed so as to admit of stipulations (not contrary to law) approved by the Superintendent, being introduced therein at the joint will of the master and seamen."

MR. LLEWELLYN SMITH: That is word for word the same as ours.

SIR WILLIAM LYNE: The troublesome part seems to me to be the going to law. We generally let the Government say what is to be final, and not force them into the law courts.

MR. LLEWELLYN SMITH: We have not quite seen our way to do that, and it seems to me that your law has not either, from what you read.

MR. COX: Supposing anybody disputes that decision, is it not taken to the Courts?

SIR WILLIAM LYNE: That I have not inquired into. In this particular case, I do not know whether it has to go to the Court; but we do not allow so many appeals to the Court as you do.

MR. CUNLIFFE: Not even the Court of Arbitration?

SIR WILLIAM LYNE: We try to settle them without going to the Court. The reason is this, the wealthy shipowners have far greater advantages than the men, and we try to protect the men as far as we can from being driven into the Courts.

MR. LLEWELLYN SMITH: We go rather far in letting our Superintendents warn the crew that so far as we can see certain Articles are illegal; but if they accept them they do it at their peril.

MR. HAVELOCK WILSON: We in this country—I am speaking as representing the British seamen—we would rather take the decision of a Court of Law than we would of the Board of Trade.

SIR WILLIAM LYNE: That is not saying much for the Board of Trade.

MR. HAVELOCK WILSON: I am not casting any reflection on the Board of Trade, but I must say that we would far sooner have the interpretation of a Court of Law than we would of the Board of Trade officials. I say that without casting any reflection on the Board of Trade.

MR. LLEWELLYN SMITH: You are perfectly right.

MR. COX: Because the Court of Law gives a binding decision.

MR. DUNLOP: With reference to what Mr. Have-lock Wilson said, in a case such as has been cited, when an improper reduction of wages has been made, would it not be the duty, and would you not be perfectly satisfied, Mr. Howell, if the Shipping Master or Superintendent would take care that only the proper deduction would be made? I take it that this is his duty?

MR. WALTER J. HOWELL: Yes.

MR. DUNLOP: And without any intervention of anybody?

MR. WALTER J. HOWELL: I am not quite sure about that. If it is obviously illegal, the Superintendent is empowered to refuse to put it in.

MR. BELCHER: Do I understand that this clause, which is obviously in my opinion illegal, do I understand that this clause is allowed to go on all these Articles now without any objection being made, I mean this clause which stipulates that two weeks' pay can be deducted for absence without leave?

MR. WALTER J. HOWELL: If illegal, it is absolutely void.

CAPTAIN CHALMERS: The acting superintendent would say it is inoperative.

SIR WILLIAM LYNE: Why doesn't he strike it out?

CAPTAIN CHALMERS: Because there has not been a decision of the Court.

MR. HAVELOCK WILSON: We have never allowed them to stop that two weeks' wages. We do not care whether they put it in or not; we know what the law is, and we do not allow them to stop it.

SIR WILLIAM LYNE: It seems to me, if the Superintendent does his duty there is very little necessity to interfere with it at all, and if I was dealing with the case of a Superintendent, I would make him do his duty or I would dismiss him. We have that power.

MR. COX: And so has the Board of Trade.

MR. WALTER J. HOWELL: That is the position we take. We believe absolutely in freedom of contract within the law. If the law is clear, it is quite obvious that the Superintendent is neglecting his duty if he allows a condition to be inserted which is contrary to the law. On the other hand, if there is a doubt, that is a question to be settled by the Courts and not by the Executive, and that is the whole reason why we support the present state of affairs.

SIR WILLIAM LYNE: You say you are in favour of freedom of contract?

MR. LLEWELLYN SMITH: My difficulty about this motion is, that the debate does not seem to me to have been on it. This is a recommendation to the Board of Trade to ascertain and investigate the various clauses with a view of securing uniformity. The discussion has been on the question of the enforcement of the existing law. I do not know whether there is any amendment to anything.

MR. WALTER J. HOWELL: You cannot get uniformity for all trades.

HON. DUGALD THOMSON: "So far as possible" might be inserted.

MR. LLEWELLYN SMITH: It is rather a simplification we want.

MR. WALTER J. HOWELL: You want to secure uniformity; we want to secure elasticity.