understood the advice given is not clear. If the case had turned only on section 38 of the Act of 1867 it would have become necessary to consider the effect of the waiver clause inserted not only in the prospectus but also in the applications for shares. But it is not necessary to decide this question, for the waiver clause has no application to the appellant's liability under the Directors' Liability Act of 1890. The prospectus unfortunately stated a fact which was not true—viz., that the only contracts to which the bank was a party were the two which were mentioned in it. This untrue statement brings the case clearly and unmistakably within section 3, clause 1, of the Directors' Liability Act 1890. It is contended for the appellant that he is not liable under this Act because he had reasonable ground to believe, and did believe, that the statement in the prospectus was true. But he knew of the documents, and he knew that they were not disclosed; he thought that they were not such as required disclosure. This is a question of law, and I agree with Buckley, J., and the Court of Appeal, that a mistake of this kind does not furnish a defence to an action founded on the statute in question. *Twycross* v. *Grant* (1877, 2 C. P. Div. 469) is an authority in favour of this view, although it turned on the Act of 1867. It was there contended that there was no evidence that the plaintiff who took shares on the faith of the prospectus had sustained any damage by reason of the untrue statement contained in it. The company failed about a year after it was formed, and the plaintiff has lost the money which he paid for his shares. This appears to me to be sufficient *prima facie* evidence of some damage sustained by the plaintiff by reason of the untrue statements in question. All that has been done by the Court as yet has been to decide that the plaintiff has proved enough to entitle him to an inquiry as to the amount of damages which he has sustained by reason of such statements. This is quite in accordance with the usual practice in actions of this kind when brought in the Chancery Division, and it is extremely convenient. It saves the trouble and expense of going into evidence which will be useless if the plaintiff fails to establish any liability of the defendant to him. The appeal ought to be dismissed with costs.

Appeal dismissed and judgment appealed from affirmed.

Counsel for the Plaintiff and Respondent —Astbury, K.C.—Roskill, K.C. Agents—Rowcliffes, Rawle, & Company.

Counsel for the Defendants and Appellants—Haldane, K.C.—F. Cassel. Agents —Waterhouse & Company.

HOUSE OF LORDS.

Tuesday, May 17, 1904.

(Before Lords Davey, James of Hereford, and Robertson.)

MIDLAND RAILWAY COMPANY *v.* SHARPE.

(On Appeal from the Court of Appeal in England.)

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *First Schedule, sec.* 1 (*a*)—*Earnings—Lodging Allowance.*

The word "earnings" in the Workmen's Compensation Act 1897 means the full amount which a workman receives on account of and in return for his services, and includes remuneration which, without accounting for the use of it to his employers, he receives in consideration of peculiar conditions affecting his employment.

In terms of the rules of a railway company the guards in their employment received fixed lodging allowances for each night which they were compelled in the course of their employment to spend away from home. They were not bound to account to the railway company for these allowances.

Held that in estimating the compensation due to a railway guard under the Workmen's Compensation Act 1897 the lodging allowance formed part of his earnings.

In an arbitration under the Workmen's Compensation Act 1897, brought before the County Court Judge of Derbyshire, the widow of George Charles Sharpe claimed compensation from the Midland Railway Company for the death of her husband, a goods guard in the employment of the Railway Company, as the result of an accident in the course of his employment on the 9th September 1902.

The question at issue between the parties was whether there was to be included in the "earnings"—on which the compensation due under the Act was based—a sum of £23, 2s., consisting of various amounts which Sharpe had received as "lodging allowance" during the three years preceding his death.

The following facts were proved or admitted:—Railway guards having in the course of their employment sometimes to spend the night away from home, a lodging allowance was granted to such by the Railway Company in terms of the following provisions in the company's rules:—"When men are required to lodge away from home they are allowed one shilling a night in the provinces and one shilling and sixpence in London if the company's lodging-house is used; three shillings in London and two shillings elsewhere for private lodgings. In exceptionally long periods of rest for the company's convenience where men have to lodge for over fifteen hours an extra

shilling is allowed, and two shillings where over twenty hours' rest has to be taken, except in London, where the extra allowances are one shilling and one shilling and sixpence respectively. This extra allowance is not given unless the time occupied in the outward and return journeys together equals twenty hours." The amount of the lodging allowance was about equal to the reasonable cost of board and lodging. The guards were not required to account to the Railway Company for these allowances.

The County Court Judge held that the lodging allowance formed part of the "earnings" of Sharpe within the meaning of the Act and awarded compensation on that footing.

On appeal the Court of Appeal (COLLINS, M.R., STIRLING and MATHEW, L.JJ.) affirmed the award.

The Railway Company appealed.

At the conclusion of the appellants' argument their Lordships gave judgment.

LORD DAVEY—The appeal in this case is from a judgment of the Court of Appeal, which affirmed a judgment of the County Court Judge. We have therefore a concurrence of judicial opinion, and the appellants asked us to differ from what has been held by the courts below. The question before your Lordships is a short and simple one, and it is this—By the Workmen's Compensation Act 1897, if a death results from injury, which is the present case, the amount of the compensation under the Act shall be, if the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury. The question really is—what were the deceased's "earnings" at the time of his death? He was in the employment of the Midland Railway Company as a goods guard, and as your Lordships can easily understand, a person in that kind of employment has sometimes to sleep away from his ordinary residence, or to take his meals away from his home. Accordingly an arrangement is made by the railway company for the remuneration of their guards having regard to that fact. They have a scale, and by that scale the wages are of a certain amount, varying with the time during which the guard has been in the company's service. Sixty hours constitute a week's work, and then there is a heading called "lodging allowance," and under that heading we find the following allowances—"When men are required to lodge away from home they are allowed one shilling a night in the provinces and one shilling and sixpence in London if the company's lodging-house is used, three shillings in London and two shillings elsewhere for private lodgings. In exceptionably long periods of rest for the company's convenience, where men have to lodge for over fifteen hours an extra shilling is allowed, and two shillings where over twenty hours' rest has to be taken, except in London, where the extra allowances are one shilling and one shilling and sixpence respectively. This extra allowance is not given unless the time occupied on the outward and return journeys together equals twenty hours." The question is whether the allowances which were thus made, for the purpose which is pointed out in the rules which I have read, form an element in arriving at the amount of the "earnings" of the deceased man, or, in other words, whether his earnings are merely the mixed wage which he received, without taking into account those extra allowances which were made to him. I ought to add this, that I think that the evidence before the learned County Court Judge showed that those allowances were carefully adjusted and arrived at so that not much profit is to be made out of them. But it is of course perfectly conceivable that if a man had, for instance, a relative or friend living in one of the places away from his home where he had to pass the night he might very easily make a profit out of the allowance. The guards are not bound to account to the company for the allowance, and whether their actual expenditure is less or more their allowance remains exactly the same. Now, what are the man's "earnings?" The first answer which one would give would be "what he earns." But what does he earn? It appears to me that he earns whatever is the sum which is the fruit of his labour, whatever he receives by way of remuneration for the services which he gives, or, as Lord Macnaghten appears to have said in answer to the same question in the case of *Abram Coal Company* v. *Southern* [1903], A. C. 306, 41 S.L.R. 449, a man's "earnings" are the full sum for which he is engaged to work. Now, does it make any difference that, from the conditions of the employment, part of the remuneration which he receives, without accounting for the use of it to the company, is in consideration of peculiar conditions affecting his employment? I think not. For instance, if the wages were 3s. a-day, and the company, instead of making a time allowance, gave a fixed addition to the wages, so that, instead of their being 21s. a-week, the company said, "we will give 24s. and no time allowances," I think that nobody could doubt that in that case the earnings would be 24s. a-week, and none the less so because the conditions of the employment were such that the workman had to incur some expenses in order to enable him to perform the services for which he was to be remunerated. It appears to me that the converse case, which was before your Lordships in the case of *Abram Coal Company* v. *Southern*, *ubi sup.*, and before the Court of Appeal in *Houghton* v. *Sutton Heath Colliery Company* ([1901], 1 K.B. 93) is very illustrative. In these cases, like the present, the workman had to incur certain expenses—of which I will take lamp oil as one—for the purpose of earning his stipulated remuneration. His employers were willing to supply him with lamp oil, making a deduction from his wages in respect of it. If the defendants were right, that you are to look not at the wages but at the amount

of profit which the man makes out of his wages, as the test of the amount of compensation under this Act, one would have thought that those deductions, being deductions from his wages for the purpose of enabling him to earn his wages, ought not to be taken into account as against the employers for the purpose of ascertaining that compensation. But the contrary was the decision. It was held that what you must look at was the actual amount of the man's remuneration for his services, and that you could not take into account the expenses which he had to incur for the purpose of putting himself into a condition to earn that remuneration. I think that the only difficulty, and the apparent difference in this case, is the fact that the company, instead of making a fixed addition to the wages to cover those casual and incidental expenses to which guards may be put, give an allowance varying according to the time during which the man is obliged to be away from home at rest. But it does not seem to me to make the least difference in principle whether a man's wages have a fluctuating character based not merely upon the time during which he is actually employed, but including also the time during which he is at rest, as is the fact in this case. If the appellants are right you would in every case have to analyse the remuneration by way of wages or salary which has been paid to an injured or deceased employee, and to ascertain the conditions of his labour, and what expenses he was put to in order to earn that remuneration. It appears to me that it would be impossible to analyse that in every case, and I think that it cannot have been within the contemplation of the Legislature in framing the Act. For the purpose of assessing the compensation you must take the actual remuneration for his services which was received by the workman, quite irrespective of the question of what expenses he was put to for the purpose of earning that remuneration. I therefore move your Lordships that the present appeal be dismissed with costs.

Lord James of Hereford—I entertain no doubt in this case. I am clearly of opinion that the judgment of the Court of Appeal is correct. The question before your Lordships is the construction that is to be put on the word "earnings" in the schedule to the Workmen's Compensation Act 1897. The meaning of the word appears to me to be the amount received by the workman on account of and in return for his services. Now, in this case we must ask, What did the allowances received by the deceased man represent? They appear to me to represent a return for the services which he rendered, and if we were to go beyond the question of what was the amount which he received in return for those services we should be making the mistake of inquiring into profits instead of inquiring into receipts. In the argument at the bar the illustration was put before your Lordships of a case where a man received a certain sum of money for a specific object, to which he was bound to apply it, and if he did not so apply it he would be guilty of a breach of trust, and would probably have committed the crime of embezzlement. But that is not the case here. The deceased man and the other men are paid a certain sum of money weekly, a smaller sum if they remained within the neighbourhood of their own homes, and a larger sum if they are absent from those homes. In both cases the sums paid are wages; in both cases the workman is entitled to make as much profit as he can out of the sum so received, to be as abstemious as he will, to receive, as has been said, hospitality, and to obtain the advantages which a man who chooses not to afford himself comforts beyond the necessaries of life obtains over his fellow workman who is more luxurious in his habits. I cannot understand how it can be said that this is not an "earning." One could give many instances; for example, if a workman were told "You will receive so much wages if you are in uniform, and you will have to find your own uniform." Then it is a gross sum that he receives; the application of a certain part of it to a particular outgoing—namely, the payment for the uniform—does not render the money which he receives any the less "earnings." So in the same way here, if the man is told by the Railway Company "You will receive if you are away from home so much, and having received it do what you will with it; we do not ask you to account for it," it seems to me to be quite clear that the sum so received is an "earning," although no doubt at the time when the sum was fixed the object of fixing the higher rate was to meet a corresponding expense. That is not the question; the question is "earnings" as against "profits," and, looking at the application of the word in this case, it seems to me quite clear, as I have said, that the judgment of the Court of Appeal is correct.

Lord Robertson — The contract with this guard is that, plus what is called his wages, he is entitled to so much for each night that he is away from home, and no inquiry is made whether the sum has been spent on board and lodging or spent at all. This being so, it seems to me that, not the less because the purpose of these extra payments was to meet the cost of board and lodging has this man a right to the money, and not the less because they bear the name "allowances" does he earn them each time that he, in the service of his employers, has to spend the night away from home; and if he earns them they are "earnings."

Judgment appealed against affirmed, and appeal dismissed.

Counsel for the Claimant and Respondent—S. T. Evans, K.C.—Clement Edwards. Agent—A. Toovey, for Flint & Son, Derby.

Counsel for the Appellants—Cripps, K.C. —Hugo Young, K.C.—J. D. Crawford. Agents—Beale & Company.