accident arising out of or in the course of an employment, particularly dangerous to Williamson in consequence of his weak state of health. Its not being scheduled as an industrial disease in the Act of 1906 does not affect the question, for the Act expressly provides that "nothing shall affect the rights of a workman to recover compensation in respect of a disease to which the section does not apply if the disease is a personal injury by accident within the meaning of the Act." I do not at all say that all diseases arising out of or in the course of employment should be regarded as a personal injury by accident, but I am of opinion that under the circumstances of this case and its facts Williamson was killed by a personal injury by accident, and that the appellants are accordingly liable. In my opinion the appeal should be dismissed with costs.

LORD MACNAGHTEN—That the illness by which the deceased lost his life was one arising out of and in the course of his employment cannot be disputed. But I agree with Holmes, L.J., that it does not come under the description of "a personal injury by accident." That expression, as it seems to me, would be equally applicable or equally inapposite in the case of an attack of bronchitis or pneumonia brought on by a sudden and violent chill disregarded or neglected at the outset. The deceased, it appears, was a brass finisher by trade in this country. He went to the United States in the hope of bettering himself. He failed utterly. Destitute and half-starved he applied to the Seamen's Union in New York, and by their help obtained a passage home, shipping as a trimmer on board the steamship "Majestic." He seems to have been a miserable creature physically, undersized, underfed, and so emaciated that, as one of the witnesses says, "his bones projected." The work of a trimmer is not heavy in itself. It is, no doubt, trying work, owing to the heated atmosphere of the stokehold, where the trimmers work, raking out the ashes of the furnaces. The men work in shifts—four hours on and eight hours off. The deceased had no experience of such work. He got through two shifts. On his third turn, after about an hour's work, he had a "heat-stroke," as it is called. He went on until he dropped in a faint. He was carried to hospital, recovered partially, and then became violent and died from exhaustion two hours after leaving the stokehold. Was that an injury by accident in the ordinary sense of the expression? I think not. The death was due to the physical state of the workman and "the nature" of the employment, to use the language of sec. 6, sub-sec. 8. It was, I think, just what anybody would have expected who saw the man and knew what a trimmer has to do. Add the fact that the man was wholly inexperienced, ignorant of what ought to be done in cases of emergency, and the result would be a foregone conclusion. The heat in the stokehold was considerable, though the furnace doors were closed. But the evidence was that the conditions were normal, the ventilation in perfect order, and the heat where the man was standing not more than 96 degrees. It was also in evidence that heat-strokes are common enough in the stokehold and in the engine-room, which is hotter than the stokehold. One witness, an engineer who had been sixteen years at sea, said he never knew an engineer, a stoker, or a trimmer not affected by the heat in the same way. But in the case of a man not physically unfit, who knows what to do when he feels the attack coming on, the illness seldom, if ever, leads to any serious consequences. Though the attack is developed rapidly, the symptoms are sufficiently clear and sufficiently gradual to give the sufferer warning in time to enable him to obtain relief by going on deck for fresh air. I should be for allowing the appeal; but as your Lordships take a different view the appeal will, of course, be dismissed with costs.

Judgment appealed from affirmed.

Counsel for Appellants—Danckwerts, K.C.—Leslie Scott. Agents—Rawle, Johnstone, & Company, Solicitors, for Hill, Dickinson, & Company, Liverpool.

Counsel for Respondents—Abel Thomas, K.C.—Morgan Morgan. Agents—G. R. Thorne, Robinson, & Company, Solicitors, for North & Tughan, Dublin.

HOUSE OF LORDS.

Thursday, October 29, 1908.

(Before the Lord Chancellor (Loreburn), Lords Ashbourne, Macnaghten, and James of Hereford.)

REED *v.* GREAT WESTERN RAILWAY COMPANY.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1—*Accident "Arising out of and in the course of the Employment."*

An engine-driver left his engine and crossed a pair of rails on a private errand of his own not connected with his work. While returning to his engine he was struck by a waggon and killed.

Held that the accident did not arise "out of and in the course of" his employment under the Workmen's Compensation Act 1897, section 1.

The appellant's deceased husband was an engine-driver in the respondents' service. In March 1907, while his engine was at Landore, Swansea, he descended in order to turn a water-crane to his engine. He afterwards crossed another line of rails in order to get a book from a friend on another engine. This was a private purpose of the deceased's, unconnected with his work.

While returning to his own engine he was knocked down and killed by a waggon in course of shunting.

The County Court Judge awarded £300 compensation, but the Court of Appeal (COZENS-HARDY, M.R., FLETCHER MOULTON and FARWELL, L.JJ.) set the award aside on the ground stated *supra* in rubric.

The widow appealed.

The House took time for consideration.

LORD CHANCELLOR (LOREBURN)—In this case one Reed, an engine-driver in charge of his engine, got down from it while it was at rest and crossed a siding to receive from a friend a book unconnected with his duties. On returning he was knocked down by a waggon then being shunted and killed. The only question in dispute was whether or not the accident which killed him was one "arising out of and in the course of his employment." I cannot think that it was. I agree that labour is often intermittent. If a man is in the place of his employment and during its hours uses such intervals otherwise than in working, and while doing so is injured by one of the dangers to which the employment exposes him, that may be an accident within the statute. He may be in such case required to be in attendance and in that respect engaged on his duty, though not actually doing work. But here this man was where he was not entitled to be, and was not working but pleasing himself. It is not that he thereby violated a rule, but that the accident did not arise out of or take place in the course of the employment at all. It took place while for the moment he quitted his employment. No doubt allowance must be made for the habits of business, and the Act must be applied reasonably; but in this case I can see no ground for allowing compensation.

LORD ASHBOURNE concurred.

LORD MACNAGHTEN—I am of the same opinion. I think that the judgment of the Court of Appeal was right, for the reasons given by the Master of the Rolls. I agree with the Master of the Rolls in thinking that in all these cases it is incumbent upon the claimant to make out that the accident in respect of which compensation is claimed arose out of and in the course of the injured man's employment, not upon the employer to prove the contrary. But here the evidence shows that it was for a purpose of his own, and not in the execution of his duty or in the interest of his employers, that the injured man exposed himself to the risk which caused his death. He had been warned against doing the very thing which he ventured to do. He was, of course, wrong in disregarding the injunctions of his employers. But it is not on the ground of misconduct that his dependants are now without remedy. At the time when the accident happened the man was about his own business, not about the business of his employers. For the moment he had put himself outside the area of protection which the Legislature has carefully marked out. The case, in my opinion, is not within the scope of the enactment at all. I think that the appeal must be dismissed with costs.

LORD CHANCELLOR—Lord James of Hereford, who heard the arguments, but is not able to be present to-day, desires me to say that he agrees in the judgment proposed.

Judgment appealed against affirmed.

Counsel for Appellant—C. A. Russell, K.C. —Lleufer Thomas—John Plews. Agents—Metcalfe & Sharpe, Solicitors, for R. T. Leyson, Swansea.

Counsel for Respondents—M. Lush, K.C. —Douglas Bartley. Agent—R. R. Nelson, Solicitor.

HOUSE OF LORDS.

Monday, December 14, 1908.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Robertson and Collins.)

GENERAL BILLPOSTING COMPANY *v.* ATKINSON.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Master and Servant—Contract of Service—Stipulation by Servant in Restriction of Trade — Wrongful Dismissal — Servant Receiving Damages — Enforcement of Stipulation.

A company manager obtained damages for wrongful dismissal against the company. His contract of service had bound him not to carry on competing trade. *Held* that the company were no longer entitled to enforce this restriction in consequence of their breach of contract.

The appellants engaged the respondent as manager of their company for a year under a contract which bound him not to carry on a competing business at the expiry of the engagement. They dismissed him wrongfully and he recovered damages in an action against them. Afterwards he carried on a competing business and the appellants in turn sued for an injunction and damages.

The Court of Appeal (COZENS-HARDY, M.R., MOULTON and BUCKLEY, L.JJ.) gave judgment for the dismissed manager, the respondent, reversing an order of NEVILLE, J.

The company appealed.

The House took time for consideration.

EARL OF HALSBURY—I have had the advantage of reading the judgment which is about to be delivered by Lord Collins, and I concur in it.

LORD ROBERTSON—[Read by the Lord Chancellor]—If this case be considered for a moment on its own merits and substance (apart in the meantime from authority), it