them in preference to the other, and also likened to the case of a man who knowing that a forfeiture has been worked and that he has a legal right to take advantage of it, deliberately abandons that right—that is, waives the forfeiture. In these cases, however, to which "condonation" is compared, the burden of proving that the election had been made or the forfeiture waived would rest upon him who relied upon the one or the other, and so it is with condonation. The master must be fully aware that the servant has by his misconduct forfeited the right to be continued in his master's service, which is the correlative of the master's right to dismiss him, before he can be held to have waived that forfeiture. These authorities, however, lend no support to the theory that it is competent for a guilty servant to say to his master—"I admit that I have misconducted myself in such a way as to justify my dismissal from your service. I admit that when accused to you on suspicion or little more than suspicion of this misconduct, I lied lustily to you, denied the accusation, and vehemently protested my innocence, and that by that lying and deception I led you to believe that I was innocent and induced you to continue me in your service. But you were too credulous; you ought not to have believed me without inquiry into the facts of which you had notice. Had you made that inquiry you would have discovered how gross my misconduct was, and because you abstained from making it you must be deemed to have knowledge of everything to the discovery of which the inquiry would have led, must be taken to have condoned the offence, which in fact you never believed I had committed, and now, though you have discovered my wrongdoing, you are bound to continue me in your service." Notice or knowledge of a servant's misconduct cannot be imputed to a master in this fashion. If the master accepts the servant's denial of guilt, and honestly comes to the conclusion that the servant is innocent, then, whatever the master's credulity, the case does not come within these authorities, since no man can condone a wrong which he does not believe was committed upon him. Until Edward Nelson landed in South Africa on the 22nd October, less than a month before the dismissal of the respondents, nothing in the shape of proof of the respondents' misconduct touching the reduction of the overdrafts, as distinguished from suspicion, had come to his knowledge or to the knowledge of the London members of the board or their secretary. [*His Lordship discussed the evidence on this point, and continued*—] Mr Nelson seems after his arrival in South Africa to have, in the difficult position in which he was placed, transacted this business with the ordinary prudence and caution of a responsible business man, gathering information where he could, but waiting till he was sure of his ground before he took decisive action—that it amounts to, and, fairly considered, nothing more. There was no undue delay. On the contrary, he dismissed the respondents peremptorily within forty-eight hours of the discovery of the piece of evidence which alone made such action reasonably safe. Their Lordships are therefore of opinion that on this branch of the case, as well as upon the other, the respondents have failed to discharge the burden of proof which rested upon them—that is, they have failed to prove by satisfactory evidence that knowledge of the respondents' misconduct in this matter was brought home to Nelson or Nind before they reached Pretoria on the 19th November, or that even if it had been brought home to them the appellants or their agents have done anything which would amount to a waiver of their right to act upon this knowledge, or would disentitle them to act upon it. The appeals, their Lordships think, should therefore be allowed, and the decision of the Supreme Court in both cases reversed, and judgment entered for the appellants in both the original actions, and also in each action on the counter-claim for the sum of £1053, 15s. with interest at 6 per cent. from the 6th March 1905 until payment thereof, and for the costs of the actions in the Supreme Court. The respondent Angehrn must repay to the appellants the sum of £2428 with interest at 6 per cent. from the date at which the damages awarded to him were paid into court until payment thereof, together with the amount paid to him by the appellants in respect of costs, and the respondent Piel must repay to the appellants the sum of £2750 with interest from the same date at 6 per cent. until payment thereof, together with the sum paid to him by the appellants in respect of costs. Their Lordships will humbly advise His Majesty accordingly. The respondents must pay the costs of these consolidated appeals.

Judgment appealed from reversed.

Counsel for Appellants—Atkin, K.C.—Leslie Scott, K.C.—R. M. Parker. Agents—Collins & Collins, Solicitors.

Counsel for Respondents—Simon, K.C.—H. Greenwood—Horace Douglas. Agent—George Hamilton, Solicitor.

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## HOUSE OF LORDS.

*Monday, July* 18, 1910.

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

### MOORE *v.* MANCHESTER LINERS, LIMITED.

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

*Master and Servant—Workmen's Compensation Act* 1906 (6 *Edw. VII, cap.* 58), *sec.* 1—"*Accident Arising out of and in the Course of the Employment*"—*Seaman Returning to Ship—Lawful Absence for Pleasure.*

A seaman was lawfully absent from his ship for the purposes of buying clothing and of recreation. On returning, he fell from the ladder on the ship's side and was drowned.

*Held* that the accident arose out of and in the course of his employment, and that the shipowners were liable to pay compensation to his dependant under the Workmen's Compensation Act.

*Per* Lord Chancellor—"An accident befalls a man 'in the course of' his employment if it occurs while he is doing what a man so employed may reasonably do, within a time during which he is employed, and at a place where he may reasonably be during that time to do that thing."

A seaman was drowned under circumstances stated fully in their Lordships' judgments. His widow claimed compensation from his employers and was awarded £240 by the County Court Judge, who found, upon the facts, that the seaman had died from an accident "arising out of and in the course of his employment." This award was set aside by the Court of Appeal (COZENS-HARDY, M.R., and FARWELL, L.J., FLETCHER MOULTON, L.J., dissenting).

The widow appealed.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In this case a seaman, after being ashore with some of his comrades, in climbing from the quay to the ship on his return by a ladder which was not very firmly fixed, fell into the water and was drowned. How he came to be ashore is in dispute, whether on ship's business or without leave or with leave for his own purposes. Upon this question of fact I will not detain your Lordships, because Fletcher Moulton, L.J., has stated his reasons for thinking that the deceased was ashore with leave for his own purposes so clearly that I cannot do better than adopt what he says being myself of the same opinion. In these circumstances it was not, I think, contested that the accident which caused death arose out of the employment, the danger of falling from a ladder which gave the only access from quay to ship being in its nature incidental to the service of a seaman. The point on which there was a marked and emphatic difference of opinion in the Court of Appeal was whether or not in this case the accident occurred in the course of the employment, which is quite a different question. I agree with the conclusion at which Fletcher Moulton, L.J., arrived. When we speak of a workman being employed it means that he is engaged to do certain things at certain times and in certain places. If the question be whether an accident befell him "in the course" of that employment the first inquiry is,—was he doing any of the things which he might reasonably do while so employed? A seaman going ashore without leave is not doing what he might reasonably do. He simply quits his employment for the time. Otherwise, if he goes ashore with leave, for the employment is continuous and implies leisure as well as labour. The next inquiry is, Did the accident occur within the time covered by the employment? A man engaged for so many hours a day is in the employment only during those hours. If engaged for a month continuously day and night he is in the employment during the whole month, except, of course, during any time that he quits the employment. The last inquiry is, Did the accident occur at a place where he may reasonably be while in the employment? In some classes of work, especially where the engagement is intermittent, for so many hours a day, the place is the actual scene of his labour, a railway or quarry or factory. In other classes of work, where the engagement is continuous for day and night over a period of time, the place is wherever he may reasonably be during that time to do that thing. And so, to sum it up, I think that an accident befalls a man "in the course of" his employment if it occurs while he is doing what a man so employed may reasonably do within the time during which he is employed, and at a place where he may reasonably be during that time to do that thing. It may seem at first sight that this is a formidable interpretation. It is not so in reality, because in every case the accident, to be a ground for compensation, must also be one arising out of the employment. A seaman, for example, who is ashore on leave and is knocked down by a waggon, is not injured by an accident arising out of his employment. But if he is sent ashore on ship's business, he is during that errand in the same position as a messenger, and is protected against the same risks. I believe and hope that these conclusions, derived as they are after a study of the numerous cases decided in the Court of Appeal, stand in general harmony with those decisions. The case of *Robertson* v. *Allan Brothers & Co.* (1908, 98 L.T. Rep. 821) seems to me directly in favour of the appellant on the point, which to my mind is here crucial. The case of *Macdonald* v. *Owners of Steamship "Banana"* ([1908] 2 K.B. 926) was decided on insufficiency of evidence, and if any of the dicta in the course of the judgments be irreconcilable with *Robertson's* case, I ought to pay, and I do pay, the greater deference to the actual decision. Another decision was, with a curious persistency, claimed in argument as an authority in favour of the now respondents. I mean the decision of this House in *Jackson* v. *General Steam Fishing Company* (1909, 46 S.L.R. 901, 1909 S.C. 37, [1909] A.C. 523). It has no bearing on the appeal before your Lordships. The majority of the House thought that as the accident happened on a ladder between the quay and the ship, and both quay and ship were within the area of the duty of deceased, it arose in the course of his employment. The minority, including myself, thought that the deceased had quitted his duty altogether, and that in climbing the ladder to get into the ship he was merely in the act of returning from an unlawful excur-

sion undertaken for his own purposes. I am therefore of opinion that the award of the County Court Judge was valid and should be restored.

LORD ASHBOURNE—I concur in the conclusion arrived at by the Lord Chancellor. The case must be decided on its own facts, although in some points they may resemble the facts of other cases. On the findings of the Judge there is little dispute as to the facts, and the sole question is, Was death caused by an accident arising out of and in the course of the employment of the deceased? He and four of his shipmates left his ship with the knowledge and, I assume, with the sanction of his officers, for the purpose of making necessary purchases of soap and clothes. For this purpose he went to a dealer's selected by the steward—a shop where he was accorded a credit, measured, and paid by the same authority. After spending some time at a saloon he proceeded to return to the ship, as was his duty, to be ready to begin work early the next morning. The mode of access to the ship was by a ladder, which was not fixed, and swayed, and in the words of the Judge was an unsafe contrivance. But it was the only mode by which deceased could fulfil his necessary duty of returning. This ladder attached to the ship was a requisite part of it for the purposes of access, and practically for that purpose almost formed part of it. The deceased fell off the ladder whilst seeking to re-enter the ship. On the facts I arrive at the conclusion that the accident arose out of and in the course of his employment, and therefore I think that the appeal should be allowed.

LORD MACNAGHTEN—James Moore, the deceased, was a fireman on the steamship the "Manchester Express," belonging to the respondent company, when he met his death in the early morning of the 8th May 1908. His ship was then lying at the Bush Docks, South Brooklyn, New York. He and four of his shipmates had gone ashore on the evening of the 7th. Their work for the day was over, and in ordinary course they would not be wanted for active duty till the next morning. It is not proved that they had leave to go ashore. They seem to have thought they were at liberty to go, and the learned County Court Judge took the same view. They went to get some necessaries—tobacco, matches, underclothing, and soap—from a man named Sabbatt, who was as they had been told authorised to supply them with goods to the value of five dollars a man. It seems to me immaterial to consider whether they had leave of absence or not. The point of the case in my opinion is that they went ashore for their own purposes. They were about their own business, not the business of the ship. After leaving Sabbatt's shop they went to a public-house and spent the rest of the evening there drinking and singing. Then when closing time came they made their way to the docks. There was no proper gangway between the quay and the ship. The only means of communication was a ladder lashed to the ship's rails and hanging free, which according to the finding of the learned County Court Judge "was an unsafe contrivance and particularly dangerous at night to a man who had been drinking." By it they landed and by it they meant to return. Three of the men got on board safely. Then came the fourth man Brown and last of all Moore. Moore fell off the ladder into the water and was drowned. Brown, who was in front and uppermost, did not see what happened. They were talking on the ladder. The last thing Brown heard Moore say was this—"I have got the price of a drink for to-morrow night. I have got 20 cents." Then he was gone. He was never seen again, living or dead. He heard a splash and the man disappeared. Was that a personal accident arising out of and in the course of Moore's employment? I agree with Cozens-Hardy, M.R., and Farwell, L.J., in thinking that it was not. It was not, I think, in the course of the man's employment. The course of employment had been interrupted by the man going ashore for his own purposes, and although he was on the very point of resuming his employment he had not actually done so when the fatality occurred. Nor did the accident in my view arise out of the employment. In my view the man's employment had nothing to do with the accident except that it may be said that if the man had not been employed on the "Manchester Express" he would not, in all human probability, have lost his life on that particular night and in that particular way.

LORD JAMES OF HEREFORD—I agree in the view of this case taken by the Lord Chancellor and Lord Ashbourne. The question to be determined is whether the accident arose out of and in the course of the employment of the deceased. Much stress has been laid on the fact that he did not obtain the permission required by the American Government to be obtained by foreign sailors to entitle them to land. But that is a mere incident, and was alleged to be only material as showing that it was probable that he had no other permission to leave the ship. Let it be assumed that no such American permission was issued. Its absence may represent an infringement of the law of America. But this is an action between English subjects, and the issue now being tried between them is in no way affected by the alleged breach of American law by James Moore. I therefore concur in the view expressed by Fletcher Moulton, L.J., that the deceased man committed no breach of duty in visiting Sabbatt's shop. He did not conceal his leaving the ship, and his associates in such departure were not punished or reported. If the deceased man was rightfully away from the ship it would certainly be within his duty, and so within his employment, to return to the ship. He did so by the ladder from which

he fell, the only means of reaching the ship provided for him. From these facts thus construed, the answer to the question which I have stated above has to be framed. Of course, a man during his employment may meet with an accident which is not caused by and does not arise out of it. A servant engaged for a year may, for his own pleasure, go on a boating excursion and be drowned. Such an accident would not be caused by or arise out of the employment. But following the judgments given by the majority of this House in the case of *Jackson* v. *General Steam Shipping Company* (*cit.*), I submit that the death of the deceased man occurred not only in the course of the employment but also arose out of it. See also *Marshall* v. *Owners of the "Wild Rose"* [1910] A.C. 486). The words "arose out of" are vague and somewhat indefinite, and must, I think, be construed broadly. Moore left the ship for the purpose of obtaining goods which enabled him to carry out his employment; surely an accident occurring during the absence for such purpose arose out of the employment? But on the part of the respondents more stress was laid on the words "in the course of the employment." If the accident arose during the employment and arose out of it, I find it difficult to say on the facts of this case that this accident did not take place in the course of the employment. I accept the judgment of Fletcher Moulton, L.J., on the point. I therefore think that this appeal should prevail.

LORD MERSEY—The deceased man was a stoker employed upon the defendants' ship. On the 6th May 1908 the ship was lying in port. At 8 p.m. on that day the deceased went on shore with some of his shipmates to buy soap and clothing, of which he was in need. There is some conflict in the evidence as to whether he obtained leave to go ashore, but I think that the County Court Judge intended to find that he did obtain leave, and I therefore assume that he did. The man made his purchases, and afterwards, with his mates, he visited some drinking saloons. In this way he spent his time until midnight. He was then in a condition, which may be inferred from the finding of the County Court Judge, that "he seemed capable of walking back to the vessel." He was not, however, drunk, and he found his way to the quayside. There was a ladder reaching from the quay to the deck of the ship. This ladder had been placed there to enable people to get on board. It was not fixed, and it swayed about. To adopt again the finding of the County Court Judge, it was "an unsafe contrivance and particularly dangerous at night to a man who had been drinking." The deceased attempted to go up this ladder. He fell from it into the water and was drowned. On these facts I think that the view taken by the majority of the Court of Appeal was right, and for this reason. I think that when the man asked for leave to go ashore for his own business and pleasures and went, his employment for the time being was suspended; it ceased to run, and nothing that happened to him during the period that he was away can be said to have arisen either "out of or in the course of his employment." If the man had slipped and hurt himself in one of the drinking saloons, or if he had stumbled over a step at the door in coming out of the saloon, even though he was coming out with the intention of rejoining his ship, I think that the accident could neither be said to arise out of nor in the course of his employment. And I see no difference between such an accident and the falling from the ladder, for it cannot be contended that the ladder was any part of the ship. It might be different if the master of the ship, in the interests of cleanliness and decency, had ordered the man to go ashore to buy the soap and clothing. It might, perhaps, then have been said that the man was engaged in his employment while obeying such order, but even in such a case, if, after finishing the purchases, the man began a round of pleasure, the employment would, I think, temporarily come to an end. In the present case, however, no order was given to the man; he merely got leave to go, and then went away from the ship for his own exclusive purposes, and, unfortunately, he never succeeded in returning. Going out for personal purposes and for pleasure is no doubt (to use Fletcher Moulton, L.J.'s, expression), "a normal incident" in a man's life, but it is not a normal incident of a man's "employment," and, if so, no accident which arises in connection with it can reasonably be said to arise either out of or in the course of the employment. To hold otherwise would in my opinion be to stretch the Act of Parliament so as to cover cases to which it was never intended to apply—a misfortune alike to employers and employed.

Judgment appealed from reversed.

Counsel for Appellant—C. A. Russell, K.C.—T. C. P. Gibbons. Agents—Johnson, Weatherall, & Sturt, Solicitors.

Counsel for Respondents—Atkin, K.C.—R. M. Montgomery. Agents—Botterell & Roche, Solicitors.