HOUSE OF LORDS.

Friday, June 2, 1911.

(Before the Lord Chancellor (Loreburn), Lords Atkinson, Shaw, and Robson.)

KITCHENHAM *v.* OWNERS OF S.S. "JOHANNESBURG."

(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.*

A sailor who had gone on shore, with leave, upon his return reached the quay alongside of which his ship was lying. The gangway which was the access to his ship was properly lighted. There was no evidence whether he reached the gangway, but he fell into the water between the quay and the ship, where his drowned body was afterwards found.

Held that, although there was an accident in the course of the sailor's employment, there was no evidence that it arose out of this employment and his widow was not entitled to compensation.

A seaman was drowned under circumstances stated *supra in rubric.* His widow made a claim against his employers for compensation, which was sustained by the County Court Judge. The award of compensation was set aside by the Court of Appeal (COZENS-HARDY, M.R., FLETCHER-MOULTON, and FARWELL, L.J.)

The widow appealed.

At the conclusion of the argument for the appellant their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I think that this appeal fails. It is another of the very numerous cases in which the question is whether the accident arose out of and in the course of the workman's employment—words, it is admitted, of inexhaustible variety of application according to the nature of the employment and the character of the facts proved. The facts in each case are infinitely different, and if we are on each argument to discuss and differentiate them one from another, judgments in courts of law would be interminable and would lead rather to confusion than to enlightenment. I am only going to say that I agree with Fletcher-Moulton, L.J. In my view he states correctly the result of the decision in this House in the case of *Moore* v. *Manchester Liners, Limited*, 1910, 48 S.L.R. 709, [1910] A.C. 498. In the present case we are to say, first, whether this accident was in the course of the employment. I think that it was. The return of this man to his ship was in the course of his employment. We are next to say, Did the accident arise out of his employment? I think not. Upon the findings of fact which the County Court Judge states, while at the same time giving his view of the law, I think that it arose from a risk common to everyone —namely, falling from a quay into the water—and was not specially connected with the workman's employment.

LORDS ATKINSON, SHAW, and ROBSON concurred.

Appeal dismissed.

Counsel for Appellant—E. M. Pollock, K.C.—S. J. Duncan. Agents—John J. Hands & Lindo, Solicitors.

Counsel for Respondents—Atkin, K.C.—Alexander Neilson. Agents—Botterell & Roche, Solicitors.

HOUSE OF LORDS.

Tuesday, June 13, 1911.

(Before the Lord Chancellor (Loreburn), Lords Atkinson, Gorell, and Robson.)

TAMWORTH COLLIERY COMPANY *v.* HALL.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 13, *Sched. I,* 1 (*a*) (*ii*)—*Partial Dependency—Earnings—Cost of Maintenance of Workman by Dependant—Value of Workman's Services to Dependant.*

A boy employed at a colliery lived with his father, who received his earnings and supported him. The amount of his earnings at the colliery did not exceed the cost of his maintenance, but he also assisted his father in the evenings in the barbering trade. There was evidence that the value of the boy's services to his father in this trade was considerable. The boy was killed by a colliery accident, and the father claimed compensation from the colliery owners as partially dependent upon the boy's earnings.

Held that in such a case the arbitrator should take into account the value of the workman's services to the dependant, as well as the earnings and cost of maintenance, and upon that basis decide to what extent, if at all, the parent was dependent upon the workman's earnings.

A boy was killed by an accident while employed in a colliery, and his father claimed compensation from the colliery owners under the circumstances stated *supra in rubric.* The County Court Judge found that the father was not dependent upon the boy's earnings. The Court of Appeal (COZENS-HARDY, M.R., FLETCHER MOULTON and FARWELL, L.JJ.) remitted the case to the County Court subject to a direction (FLETCHER MOULTON, L.J., *dis-*

senting) that the value of the boy's services to his father were to be kept out of account.

The employers appealed.

At the conclusion of the arguments their Lordships gave judgment as follows :—

LORD CHANCELLOR (LOREBURN)—In this case there was a difference of opinion in the Court of Appeal, and a majority of that Court thought themselves bound by authority. The question is a question of fact—Was this father partially dependent upon his son? and it was for the County Court Judge to decide upon the evidence. The case of *Main Colliery Company* v. *Davies*, [1900] A.C. 358, was apparently regarded as though it decided that a father must be dependent upon his son in certain circumstances, but that case only decided that a father may be dependent upon his son's earnings.

Now in my opinion it is not right to say that the County Court Judge must exclude the cost of the maintenance of the son. He is quite entitled to say that the father is not dependent at all because he is not in a position to gain anything from the earnings of the son. The learned County Court Judge would be quite entitled to say, if he thought it were a fact, that the earnings of the son were 6s. 11d., and that he cost his father 6s. 11d. to keep. If the case of *Osmond* v. *Campbell and Harrison, Limited*, [1905] 2 K.B. 852, which was referred to, means anything contrary to this, then I dissent from it. Accordingly upon this point, if it were the only point, I should say that the County Court Judge was quite entitled to find that there was no dependency at all, inasmuch as the cost of the maintenance of the son was as much as the wages which he gave to his father.

But another point was referred to by Fletcher Moulton, L.J., and I think that it was argued fully on the part of the respondent in the Court of Appeal. The boy earned 6s. 11d. a week. Was the County Court Judge obliged to set against that sum the 6s. 11d. which his maintenance cost? That may depend upon the facts. If he was giving to his father services of value the County Court Judge was, in my opinion, entitled to take that into consideration, because that may have been the equivalent of the maintenance, and ought, perhaps, in his view to have been set against it. There is no rule of law that I know of to prevent the County Court Judge from saying—"I look at the whole of the facts," and there is no rule of law to say that the County Court Judge must so marshal the receipts and the outgoings as to set off the whole of the maintenance against the earnings, and so to negative the fact of dependency. He may if he thinks right, and thinks that it is the truth say that though the earnings were 6s. 11d., and the maintenance was 6s. 11d., yet in return for the maintenance the deceased did service of value, so that the earnings were a clear gain, and that the applicant was dependent upon the earnings to the full extent, or to any qualified extent. The proper course is to look at all the circumstances, and say to what extent, if at all, was the father dependent upon his son's earnings.

Accordingly I cannot agree with the form of the order made by the Court of Appeal, but I agree that the case ought to be remitted to the County Court Judge simply that he may hear and decide it, and I think that he ought to understand from this House that in determining the question of the dependency of the father on the earnings of his son, he is not precluded by law from making a deduction in respect of the cost of maintenance, nor from taking into account, as against the cost of the son's maintenance, the pecuniary value, if any, of the services rendered by the son to the father in the conduct of the latter's business as a barber.

LORDS ATKINSON, GORELL, and ROBSON concurred.

Judgment appealed from varied.

Counsel for Appellants—C. A. Russell, K.C.—E. W. Cave. Agents—Ullithorne, Currey, & Company, Solicitors.

Counsel for Respondent—Hugo Young, K.C. — H. H. Joy. Agents — Sharpe, Pritchard, & Company, Solicitors.

HOUSE OF LORDS.

Thursday, June 15, 1911.

(Before the Lord Chancellor (Loreburn), Lords Atkinson, Gorell, and Robson.)

HEWITT *v.* OWNERS OF S.S. "DUCHESS."

(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*"—*Return to Sphere of Duty—Seaman—Quay.*

A master mariner, while his ship was lying in Bangor Roads, went ashore to a pier, as he was entitled to do. It was not proved whether he went upon the ship's business or for his own purposes. On returning to the quay he hailed his ship for a boat to convey him on board. While waiting for the boat he fell off the quay and was drowned.

Held that there was no evidence that the accident arose out of and in the course of his employment, and that his dependants were not entitled to receive compensation.

A master mariner in the respondents' employment was drowned under circumstances stated *supra in rubric.* His dependants claimed compensation, which was awarded by the County Court Judge; this was reversed by the Court of Appeal