in law or in business to prevent a master from being liable to two wage-earners who work together and from paying an aggregate wage, which they are to divide between themselves as they may agree.

If bye-law 2 makes the colliery company employers of the filler at wages and debtors to him for wages, though for an amount to be fixed, so far as he is concerned, in a special way, the remaining question is whether bye-law 13 is adequate to negative this position.

On the evidence in the present case it is clear that if the filler has no contract with the Colliery Company for wages as such he has none with anybody. When the collier has received the money from the Colliery Company possibly the filler might recover his agreed share as money had and received to his use, and it may be that this has been found sufficient. At anyrate this circumstance is not conclusive.

In law, however, the matter turns on bye-law 13, and I do not think it adequate to abate the promise to pay wages contained in bye-law 2. Possibly a differently worded bye-law might achieve this object. Whether or not the collier is a "contractor" appears to depend on the question whether the filler is employed by him—a case contemplated by the Coal Mines (Weighing of Minerals) Act 1905, sec. 2 (2)—but in any case I think he is within "other persons," and that fillers are persons "working under and paid by" other persons. I am not prepared to make a distinction between "working under" and "working with." The filler is proved to be sufficiently "under" the collier for the purpose of this bye-law. The *ejusdem generis* rule does not apply. There is no genus of which "contractors" are one species and "other persons" another. When, however, the terms of the bye-law are examined I think the matter becomes clear. The first part is negative or restrictive and the second affirmative. Why should the owners of the colliery negative the possibility of their being bound to see to the payment of wages due to Churm not from themselves but from the collier? How could such a case arise? The expression is "see to the payment of," not simply "pay," and "after they have paid the other person for" (which includes "under") "whom such persons work."

Applied to this case and the proved practice this plainly means that after they have paid Fuller the owners have not to see to the payment of anything by Fuller to Churm—in other words, payment to Fuller of the sum due to Churm discharges the company from their debt to Churm, and it does so none the less if at the same time they pay Fuller what they owe him all in one payment. If upon this the company were to raise a plea of payment they would fail to prove any discharge of their debt to Churm. They made a gross payment, but they leave it in doubt whether it was payment in full of the wages legally due to Churm, and a short payment to Fuller (which we may be sure that in fact it was not), or whether the wages short paid were Churm's. On the facts as they leave them they are not shown to have ever paid to anyone the full amount to which Churm is entitled under the Act, and accordingly bye-law 13 has never come into operation and does not avail them.

Even if this interpretation were doubtful, which I think it is not, bye-laws 2 and 13 seem to me to be ambiguous and to fall precisely within the words of Lord Macnaghten in *Elderslie Steamship Company* v. *Borthwick*, 1905 A.C., at p. 96—"I am unable to reconcile the two clauses. In such a case as this an ambiguous document is no protection." The Colliery Company have prepared their own by-laws and incorporate them by reference into the contract which is signed. By one by-law they promise wages; by another they try to stipulate that in certain cases they are to be deemed to have promised none, but they do this in a halting fashion, which, if it does not bear the above interpretation, bears no clear interpretation at all. I think therefore that the appeal succeeds, and I concur in the motion proposed by the Lord Chancellor.

Appeal allowed.

Counsel for the Appellants—Hewart, K.C.—Waddy. Agents—Corbin, Greener, & Cook, for Raley & Sons, Barnsley, Solicitors.

Counsel for the Respondents—Sir R. Finlay, K.C. — Scott, K.C. — Ellison. Agents—Johnson, Weatherall, & Sturt, for Parker, Rhodes, & Company, Rotherham, Solicitors.

HOUSE OF LORDS.

Monday, January 31, 1916.

(Before the Lord Chancellor (Buckmaster), Lords Atkinson, Parker, Sumner, and Parmoor.)

OWNERS OF STEAMSHIP "SERBINO" *v.* PROCTOR.

(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*"—*Unexplained Disappearance of Seaman from Ship during Voyage—Inference of Fact from Circumstantial Evidence.*

The applicant, as the dependent of the chief engineer of the steamship "S.," who mysteriously disappeared from the vessel while she was on a voyage, tendered evidence in proceedings under the Workmen's Compensation Act 1906 to show that—The chief engineer, the deceased man, was responsible for all the machinery of the ship. He had evinced much concern because there was something wrong with the propeller. On the evening before the morning of his disappearance from the ship he had given orders to be called two hours earlier than usual. He was

called, rose, put on his working clothes, and went on deck. He was seen walking aft, after which he was not seen again. With difficulty, and at considerable risk, it would be possible for the deceased to observe the behaviour of the propeller by getting through or leaning far over the stern rail. The County Court Judge held on this evidence that it was reasonable to draw the inference of fact that while trying to discover what was wrong with the propeller the deceased man in the course of his duties as chief engineer had fallen over the stern rail, and he awarded compensation on the ground that the accident to the deceased arose out of and in the course of his employment.

Held that there was sufficient evidence to support the award.

Decision of the Court of Appeal (1915, 3 K.B. 344) *affirmed.*

The *facts* fully appear from the judgment.

LORD CHANCELLOR (BUCKMASTER)—This case does not involve the construction of obscure or doubtful phrases in an Act of Parliament. It depends entirely upon a question of evidence, and that question is whether or not there was material before the learned County Court Judge upon which he as a reasonable man could come to the conclusion that the deceased met his death by an accident in the course of and arising out of his employment.

Something has been said in the course of this case as to the character of the evidence upon which the learned County Court Judge's judgment was based. It is said—and it is true—that the evidence is evidence of circumstance, but evidence of circumstance may be, and in many instances is, more trustworthy than oral evidence and frequently is more expressive. But in either case, whether it be so regarded or not, no advantage is gained in attempting to classify and catalogue different classes of evidence. Provided that the matter has been properly admitted before the learned County Court Judge at the trial, the only question is, was there evidence before him which would support the conclusion which he reached?

Now in this case there are certain facts, which I think can be shortly stated, which will show why it is I think the learned County Court Judge's judgment was perfectly right. The deceased was chief engineer on board the steamship "Serbino," which was making a homeward voyage from Petrograd to Hull at the time when he met his death. When the boat had been in dock before starting it was found that the propeller was bent, and in the course of the voyage from time to time difficulties arose which caused him considerable uneasiness about the condition of the propeller. There is no doubt that this was a matter about which he was very greatly concerned, and indeed on the 14th June, two days before his death, he had a conversation with another officer on board the vessel about the cause of the difficulties the ship was encountering and expressed his firm conviction that the tip of one of the blades of the propeller was broken; he referred to it two or three times on that day. Now, on the 15th June, the following day, after his watch, he went downstairs and gave directions to the steward that he should be called early the following morning. At 12·50 on the following morning he was still up and had gone to the engine-room once more for the purpose of seeing if all was right with the engine about which again there had been some difficulty, but a difficulty entirely unassociated with that in connection with the propellers. He told the man in charge that if anything happened in the night he was to be called. He went to bed, I suppose, between 12·50 and 1 o'clock. The next thing we know is that he was called at 5·40 a.m. He got up at once; he was seen by the steward to go behind the wheel-house, and he was never seen again.

So far as the facts of the voyage are connected with this man's death I believe those are the whole of the material circumstances, but there is one thing more that should be stated, and that is this—it is plain from the letters which are set out in the appendix to this case that the deceased was on terms of close and intimate affection with his wife, that his domestic relations were peculiarly happy, and that the man was looking forward to coming home. In these circumstances what is the inference that is to be drawn from the facts as to the way in which he met his death? There are three hypotheses, and I can see no more. One is that he met his death by foul play, another is that he met his death by suicide, and the third is that he met it by accident. The question of foul play may be wholly disregarded, and also, to my mind, the question of suicide. It is not merely that the evidence does not support the view that this man took his own life, but to my mind it affords convincing proof that he did nothing whatever of the kind. And I desire that this matter should be emphasised, because with the infant plaintiff bound to start life under the dark shadow of the calamity that has already overtaken her mother I think it is of the utmost importance that nothing should be said or suggested that would darken that shadow by throwing any slight upon her father's memory. Suicide, therefore, being out of the question, the only third possibility is that of accident.

Now it is quite true that accident by itself would not be sufficient to support the applicant's case. The accident must be an accident in the course of and arising out of the employment of the deceased. Now the deceased was the chief engineer on board this vessel, and his employment as chief engineer necessarily involved his control of the whole of the machinery of the ship. Further, there was, in my view, arising out of that control the duty of taking all necessary steps from time to time to ascertain the cause of any defects in the running of the machinery. Now he had formed a strong opinion that the propeller was wrong; that the defect which had happened when it was in port had been increased while the

ship was at sea, with the result that the tips of the blades had been broken. It is urged by the appellants that if he wanted to ascertain whether that was true or not, the proper place for doing so would be in the engine-room; but the facts in this case prove conclusively that the engine-room would not have given him the information that he sought, because the man, who was a skilled engineer, had been in the engine-room and had failed to discover that in fact the tips of the propellers had not been broken as he thought they had. There was only one other way by which that investigation could take place, and that was by attempting to see the blades of the propellers in the water. To my mind it is not important that in fact his attempt to see them might have been accompanied by risk, or that it might have been difficult for him to obtain exact information from such inspection. It was clearly in the course of his employment to examine what was the matter with these propellers, and I cannot help thinking that there was nothing unusual in the method he may be assumed to have taken as to take it outside the sphere of his work.

From the facts as I have stated them the County Court Judge came to the conclusion that the true inference to be drawn was that the deceased got up early in the morning of the 16th June with the purpose of going to see the working of the propellers at the stern of the vessel. With that inference I am in entire agreement. That his getting up on the 16th June was not for any casual whim or fancy is I, think, sufficiently shown by what has occurred. It was not his habit to get up early for the purpose of enjoying the morning on deck. He got up on this morning with an object. It was suggested that the object might have been to take away his life. As I have already said, that impulse cannot be attributed to him. Then what was the impulse that made him purposely get up this morning two hours before his usual time? The fair inference is that it was in order that he might have a further opportunity of investigating this difficulty, which had no doubt caused him some anxiety on the homeward voyage. He was seen going behind the wheel-house towards the stern, in the direction of the spot where he would be able to ascertain by investigation what had occurred, and I think there is evidence to support the inference that the said County Court Judge drew that in the course of making that investigation and inspection he met his death.

It is then urged on behalf of the appellants that if he did he met his end because he was taking a risk so unusual and so grave that, even upon the hypothesis that has been assumed, that made his act one that was outside the sphere of his employment altogether. I am quite unable to accept that view. I entirely agree with what the County Court Judge says when he states that it is very difficult indeed to place a limit upon the risks that a man may fairly run in the course of his employment for the purpose of discharging his master's work. If this man did go for the purpose of inspecting the propellers, he did it in the course of his employment and for his master's benefit, and I am wholly unable to see that there is any evidence to satisfy your Lordships that when he did that he went outside the duty that he was reasonably bound to discharge as chief engineer of the ship.

For these reasons I think the appeal should be dismissed.

LORD ATKINSON—I concur. I have nothing to add.

LORD PARKER—I agree.

LORD SUMNER—I agree.

LORD PARMOOR—I concur.

Appeal dismissed.

Counsel for the Appellants—Neilson—Owen. Agents—Botterell & Roche, for J. & T. W. Hearfield & Lambert, Hull, Solicitors.

Counsel for the Respondent—Hewart, K.C.—Stone. Agents—C. J. Smith & Hudson, for Locking, Holdich, & Locking, Hull, Solicitors.

HOUSE OF LORDS.

Thursday, March 23, 1916.

(Before the Lord Chancellor (Buckmaster), Earl Loreburn, Viscount Haldane, Lords Atkinson and Parker.)

EYDMANN *v.* PREMIER ACCUMULATOR COMPANY, LIMITED.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 2 (1) (*a*)—*Notice of Injury Delayed.*

A workman in the course of his employment received an injury apparently of a trifling character. About a month later, as a result of the injury, serious symptoms ensued, and the workman took to bed after giving his employers a doctor's certificate that he was suffering from septic poisoning. No notice of a formal character was given to the employers for another ten days. The Court of Appeal held, reversing the award of the arbitrator, that the appellant had not discharged the *onus* which was on him of showing that his employers were not prejudiced by his omission to serve a notice on them as soon as practicable.

Held, allowing the appeal, that the mere fact of failure to give notice did not raise a presumption of prejudice.

Per Lord Chancellor—"If, when the facts are all before the learned County Court Judge, they are facts from which he might reasonably assume that no prejudice had in fact been suffered by the respondents, that is sufficient."