than three years not less than six months before the expiration of the lease. The 19 years of the original lease in the present case expired at Martinmas 1913, and due notice had been given in accordance with the Agricultural Holdings Act, section 18, for that date. On the 13th June 1913 there were exchanged between the landlord and the tenant the missives set out in the second paragraph of the award which I have already stated. By these missives it was agreed that the notice for Martinmas 1913 should take effect at Martinmas 1914, when the tenancy should determine without further notice. It was contended for the respondents that this last provision amounted to a notice for Martinmas 1914 within the meaning of the Statute of 1908, but this contention does not appear to me to be sustainable and the parties themselves acted upon the view that notice would be necessary. Accordingly in February 1914, in answer to an inquiry by the claimant whether the landlord proposed to give notice under the Agricultural Holdings Act terminating his tenancy under the missive of 13th June 1913 (which would have been six months' notice to quit at Martinmas 1914), the factor stated that the landlord had no desire to part with the claimant and would give no such notice. Accordingly no notice was given, and the effect of section 18 was that the tenancy did not come to an end at Martinmas 1914, and there was therefore tacit relocation to Martinmas 1915.

It follows that the claimant was tenant for the year 1914–15, and there is no reason why he should not receive compensation in respect of the loss of his profits for that year. I am unable to read the findings in the 4th paragraph of the award in the sense attributed to them by the Lord Justice-Clerk when he says—"So far as the arbiter's findings are concerned—and we are bound to take his findings as conclusively established—they only amount to this that in the event of the Board of Agriculture not taking possession of the farm at Martinmas 1914 then the landlord and tenant were willing that the occupancy of the farm by the tenant should continue for another year, but I do not think that circumstance in the least affects the validity of the notice which was given originally for Martinmas 1913, and validly extended to take effect at Martinmas 1914, or necessitated a further notice to take effect at Martinmas 1914." The landlord and tenant intended, in my opinion, on the findings of the award, that the tenancy should continue for another year to avoid the risk of the farm being derelict. The suggested agreement that the occupancy should continue conditionally on the Board of Agriculture not taking possession seems to me improbable in itself and not to be borne out by the facts stated in the award. I think the tenant acquired as between himself and his landlord an absolute and not merely a conditional right of tenancy.

For these reasons I think that the judgment of the Second Division is erroneous, and that it should be reversed and judgment entered in favour of the pursuer for £1500, with costs here and below.

LORD DUNEDIN—My noble and learned friend Lord Haldane has authorised me to state that he concurs in the opinion which has just been delivered. I also concur.

LORD ATKINSON—I concur.

Their Lordships sustained the appeal, and remitted the case back, with direction to enter decree for the appellant for £1500 and expenses in both Courts below, and allowed expenses of the appeal.

Counsel for the Appellant—Sandeman, K.C.—Watson. Agents—Guild & Guild, W.S., Edinburgh—Thorne, Priest, & Company, London.

Counsel for the Respondents—Solicitor-General (Morison, K.C.) — W. Mitchell. Agents—Sir Henry Cook, W.S., Edinburgh —John Kennedy, W.S., Westminster.

Monday, January 28.

(Before the Lord Chancellor (Finlay), Viscount Haldane, Lord Dunedin, Lord Atkinson, and Lord Parmoor.)

OFFICER *v.* CHARLES R. DAVIDSON & COMPANY.

(In the Court of Session, March 17, 1917, 54 S.L.R. 362, and 1917 S.C. 485.)

Workmen's Compensation—"Out of and in the Course of the Employment"—Sailor—Ship's Engineer, Returning after Leave, Drowned in Harbour under Admiralty Control — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1).

A ship's engineer was given leave to go ashore for his own purposes. His ship was lying at a quay in a public harbour, which, however, was now controlled by the naval and military authorities, a pass being required for ingress to and egress from the harbour. Passes were only issued to persons having business at the harbour. On his way back the engineer fell into the harbour and was drowned while still some distance from the gangway to his ship.

Held (*dis.* the Lord Chancellor, *rev.* judgment of the First Division) that the accident was not one "arising out of and in the course of the employment."

Longhurst v. *John Stewart & Son, Limited*, [1917] A.C. 249, *distinguished.*

Authorities considered.

This case is reported *ante ut supra.*

The employers, Charles R. Davidson & Company, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—This is an appeal from a judgment of the First Division of the Court of Session allowing the claim of the respondent on behalf of herself and her children to compensation under the Workmen's Compensation Act in respect of the death of her late husband Charles Officer. The deceased was in the employment of the appellants as chief engineer on board the

ss. "Ferryhill" which on the 25th February 1916 was moored in the inner basin of Ramsgate Harbour. On the evening of that day he went ashore by leave for his own purposes, and about 10·30 p.m. was returning to his vessel, but fell into the water of the dock and was drowned. The night was extremely dark, stringent restrictions as to lighting being enforced by the naval and military authorities. The deceased had made his way through the gate at the point marked A on the plan and along the Cross Wall Quay which separates the harbour from the inner basin as far as the corner near a bridge over a cut which he had to cross to reach the "Ferryhill." In the darkness he missed the bridge and fell from the pier into the water about the point marked E on the plan. The widow's claim under the Workmen's Compensation Act came before the Sheriff, who stated the facts as to the harbour as follows:—"(12) That the harbour of Ramsgate is a public harbour, and access to its quays has been ordinarily open to the public, but since the outbreak of war parts of the harbour have been subject to the control of the naval and military authorities, and used conform to their regulations; (13) That since the war began these authorities have taken control of the pier-yard, the east pier and west pier, and the Cross Wall Quay from the fish market to the powder magazine, and have also had under their control the quays of the inner basin, except the military road quay and the quay at the west end running from the ice-house to the powder magazine; (14) That to the parts of the harbour under the control of the said authorities there are two landward accesses, one at the point A, which at the time of the accident was in the charge of a sergeant of police, and the other at the point E, which was looked after by the military; (15) That under the said regulations only persons wearing naval or military uniform, and persons known to have business at the harbour, are allowed to enter by these accesses the places under the control of the authorities, and all persons not wearing naval or military uniform are required to produce passes in order to be allowed entry; (16) That passes for men in the service of the Admiralty are issued direct from the naval officer at the harbour, signed by a naval officer, and other persons receive printed passes from the harbour office, signed by the harbour-master, and countersigned by a naval officer; (17) That the deceased, prior to leaving the harbour on the night of the accident, received a pass duly signed entitling him to return, and was in possession of the pass when later on he re-entered the harbour area at A."

The Sheriff held that the accident to the deceased happened in the course of his employment, but that it had not been shown to arise out of his employment, and therefore found that the steamship owners were not liable. He stated a case, the question of law for the opinion of the Court being whether he was entitled to hold that the accident to the deceased did not arise out of his employment. In a note appended to the case the Sheriff stated that he proceeded on the ground that the absence of the deceased from the ship had not been in pursuance of any duty owed to his employer but on an errand of his own, and that the quay was common to all who had access to it, and did not form the specific means of access appropriate to the "Ferryhill."

On appeal the Court (the Lord President, Lord Mackenzie and Lord Skerrington) held that on the facts the accident arose out of the employment, and accordingly answered the question put in the case in the negative. From that decision the present appeal has been brought by the shipowners, asking that the decision of the Sheriff in their favour should be restored.

If the question were one of fact merely there would be no appeal from the arbitrator's finding. But it appears to be quite clear from the Stated Case and the note appended to it that there is no dispute as to the facts, and that the question is whether in point of law upon these facts the arbitrator was correct in holding that the accident did not arise out of the employment.

There is a long series of cases in which the question has been discussed at what point employment for the purposes of the Workmen's Compensation Act begins and ends. In *Gilmour* v. *Dorman*, 4 B. 279 (1911), the Master of the Rolls said at p. 280—"It has been repeatedly held that a man is not entitled to protection when on his way from his home to the works. There may be some difficulty in ascertaining precisely when a man's employment begins. Generally speaking the factory gate or yard indicates the boundary." The authorities bearing on this point came under review in this House in the case of *Stewart* v. *Longhurst*, ([1917] A.C. 249), and their effect was thus summarised by me at pages 252 and 253 of the report. After a reference to the unreported case of *Cross Tetley & Company* v. *Catterall*, the judgment proceeds—"The decision in that case established that the employment may begin as soon as the workman has reached his employer's premises or the means of access thereto. And in the same way the employment may be considered as continuing until the workman has left his employer's premises. The case would be different if the workman was at the time of the accident on the public highway on his way to or from his work. His employment cannot be considered as having begun if he is merely in transit in the public street or road or to or from his employer's premises. Of course if his employment were of a kind which is pursued on the highway he might be in the course of his employment while there, but I am speaking of cases in which he is in the public way merely in exercise of the public right of passage there on his way to or from his employer's. The present case belongs to a class of cases where the thing on which the workman is employed is lying in a dock or other open space to which he obtains access only for the purposes of his work. Actual ownership or control by the employer of the spot where the accident occurred is not essential. The workman comes there on his way to and from his

work, and he may be regarded as in the course of his employment while passing through the dock or other open space to and from the spot where his work actually lies. Such passage is within the contemplation of both parties to the contract as necessarily incidental to it." This passage appears to me correctly to state the effect of the decisions.

The question has often arisen with regard to sailors leaving and returning to their ships when they have been permitted to be absent on leave. If the ship is lying at a quay which forms part of a public highway by a river or estuary the sailor's employment for this purpose ceases when he has got off the gangway connecting the ship with the quay, and it begins again on his return when he reaches the shore end of the gangway. The employer will be liable if the accident happens after the sailor on his way back has got on to the gangway, and also if he was close to the shore end of the gangway, but in the darkness or fog failed to get upon it and fell into the water. On the other hand if the ship is lying in a dock to which the public have not access as a right, and to which only persons coming on business are admitted, liability begins when the sailor enters the dock. The same principle is applied as regards the cessor of liability, and it was decided by this House in *Stewart* v. *Longhurst* (*ubi supra*) as regards a workman who was drowned by falling into the dock on his way home at the end of his day's work on a barge lying in the dock, that his representatives were entitled to compensation under the Act. The Court of Appeal in that case ([1916] 2 K.B. 803) decided that as the man had no right to be upon the dock premises except by virtue of his employment the accident arose out of and in the course of his employment. In the report in the House of Lords it is stated that it was not disputed that the accident arose out of the employment, but this merely means that in argument it was admitted that if the man was in the course of his employment going home through the dock it could not be disputed that the accident arose out of it, which was obvious upon the facts of that case. Lord Justice Pickford says (at p. 806 of the report) —"The public had no right to enter these premises by virtue of the general rights of the public, and were not exposed to the dangers which this workman by reason of his employment had to encounter. It seems to me on principle that any accident occurring to him on these premises to which he was taken only by his employment and on which he had no right to be but for his employment was an accident arising out of his employment, and that the relationship of employer and workman did not cease till he left these premises and his position became again that of an ordinary member of the public." The same view was taken in your Lordships' House, and it was pointed out that the employment must be regarded as commencing as soon as the workman employed on a ship in such a dock has entered the dock and is continuing until he has left. It was pointed out especially by Lord Dunedin, at pp. 256-7, that the actual ownership of the premises by the employer is for this purpose immaterial.

The appellants seek to distinguish *Longhurst's* case on two grounds. The first is that the dock in *Longhurst's* case was a private dock, to which access could be obtained only by leave of the proprietors, while in the present case the harbour was a public harbour, and any restraint on access was due to precautions taken by the military and naval authorities in consequence of the war. It is not clear how far before the war members of the public not having business there had access to the Cross Wall Quay where the accident happened, and for the purposes of the present case it must be taken that the restriction was due entirely to the regulations of the naval and military authorities. The arbiter states that since the war the naval and military authorities had taken possession of a great part of the harbour, including the Cross Wall Quay, that the two accesses to the shore at positions A and E on the plan were guarded by them, and that passes were required by all persons not in uniform in order to get in and out, these passes being issued to those who had business at the harbour. A pass was issued from the Harbour Office to the deceased before he left the harbour. It was signed by the harbour-master and countersigned by a naval officer, and entitled the deceased to return to the harbour. The deceased received this pass only by virtue of his employment on board the "Ferryhill," and but for that employment he could not have been on the quay at all, nor could he have passed through the entrance at point A.

It is in my opinion immaterial that the control of the harbour was in this case exercised by the naval and military authorities, while it was exercised in *Longhurst's* case by the owners of the dock. The result is the same. The deceased got his pass only by reason of his employment, and but for his employment he would have had no access to the quay. The Court of Session held *Longhurst's* case, which at that time had been decided only by the Court of Appeal, as decisive of the present case, and in my opinion they were right. There is no real difference between the two cases on this point. In each case the servant had to go to a place which had special dangers, and got access to this place solely by reason of his employment.

The second ground on which the appellants seek to distinguish *Longhurst's* case was that there the deceased was going through the docks on his way home from the barge on which he was employed, while here he had to return by the dock basin because he had been on shore for his own purposes. I cannot regard this as making for this purpose any real difference. The question is, when does the servant return to his employment for the purposes of the Workmen's Compensation Act so that the accident may arise out of the employment? He returns to it in either case at the same point at which he would have left it if he had been going away from the ship. If effect were given to this argument it would

deprive the sailor of the right to compensation in case of an accident after he had actually got upon the gangway on his return to the vessel, as he had to make the passage solely because he had been away for his own pleasure. After the decision in *Longhurst's* case it cannot be disputed that the entrance into the dock or portion of the harbour from which the public are excluded except on business marks the beginning or resumption of the employment in the case of a servant who lives in the adjoining town. How can it be otherwise when he is returning after a few hours spent in the town upon leave? In the nature of things the employment is resumed at the same point. In *Longhurst's* case the respondent lived on shore and met with the accident when he was going home, and the same rule would apply if while the vessel was in port a sailor had leave to go ashore for the night. Whether the man was on his own business or his master's would be very material for determining whether an accident on the public streets arose out of the employment, but it has no bearing on the question at what point the service is in contemplation of law resumed.

A great many cases were cited to us in the course of the argument. It is only necessary to refer to a few of them.

In *Moore* v. *Manchester Liners, Limited*, [1910] A.C. 498, 48 S.L.R. 709, a sailor who had been on shore on leave, on returning had gone on to a ladder which formed the access from the quay to the ship, and fell from the ladder and was drowned. It was held that this accident arose out of and in the course of the employment. As Lord Ashbourne put it—The ladder "was the only mode by which deceased could fulfil his necessary duty of returning. This ladder attached to the ship was a requisite of it for the purpose 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 the appeal should be allowed."

In *Kitchenham* v. *Owners of the Steamship "Johannesburg,"* [1911] A.C. 417, 49 S.L.R. 626, the sailor had been on shore with leave. On his return he fell from the quay before reaching the gangway which gave access to the ship. It was held that the claim failed, as it was not shown that the accident arose out of the employment.

In *Kitchenham's* case in the Court of Appeal Lord Justice Moulton says (p. 526 of the report in [1911], 1 K.B.) that he considers it to be settled by the decision of the House of Lords in *Moore* v. *The Manchester Liners* that "when a ship is in port and a sailor goes on shore with leave his employment is not interrupted thereby." I do not think that this is involved in the decision of the House of Lords in either *Moore* v. *The Manchester Liners* or *Kitchenham's* case, as distinguished from observations made in the course of the judgments. The view expressed by Lord Justice Moulton is apparently that on which the arbitrator acted in holding that the accident happened in the course of the employment while holding that it did not arise out of his employment.

In *Webber* v. *Wansbrough Paper Company*, [1915] A.C. 51, 52 S.L.R. 859, all that was decided was that the vertical ladder on the side of the quay might be considered as part of the means of access to the ship, and that for this reason liability attached to the employer.

In *Parker* v. *Owners of the "Black Rock" Steamship*, [1915] A.C. 725, 53 S.L.R. 500, the sailor had been on shore with leave on his own business. He fell from the pier before reaching the gangway, the ship having been moved, and it was held that the accident did not arise out of the employment. If he had been on the ship's business the owners would have been liable for any accident happening to him in the streets or on the quay, or at any other place to which the business took him.

I have already dealt fully with *Longhurst's* case, and have given my reasons for agreeing with the Court of Session in thinking that there is no substantial distinction between that case and the present.

For the reasons given above I think that the accident arose out of the employment. In order that the claimant may succeed, it is, however, necessary that the accident should arise not only out of but also in the course of the employment. In my opinion the accident arose in the course of the employment in the present case substantially for the reasons which I have given when discussing the question whether it arose out of the employment. The deceased returned to his employment when he entered the harbour gates through which he got access only by reason of his employment. The word "employment" must mean the same thing when in apposition with "in the course of" as it means when in apposition with "out of." "Arising out of the employment" obviously means arising out of the work which the man is employed to do and what is incident to it—in other words, out of his service. "In the course of the employment" must mean, similarly, in the course of the work which the man is employed to do, and what is incident to it—in other words, in the course of his service. In the case of a domestic servant who sleeps and takes his meals in his master's house he is in the course of his service all the time—his service is interrupted if he goes out on his own business or pleasure. A workman who by the terms of his employment takes his meals on his employer's premises is in the course of his service in being there at meal-times. In either case the master or employer would be liable for damage caused by such an accident as happened in *Thom* (*Simpson*) v. *Sinclair*, [1917] A.C. 127, 55 S.L.R. 267, as it would arise out of the employment, an incident of which is the presence of the servant or workman upon the premises when partaking of his meals, but different considerations might apply if the injury proceeded from choking over a morsel of food, as the act of eating may be no part of the service.

The words "and in the course of" were

probably added for this reason. If the nerve or agility of a workman were impaired by the conditions of his work, and in consequence he met with an accident in the street which he would have avoided but for the impairment of his health occasioned by his work, the accident might be said to arise "out of the employment." The same thing might be said in the case of an accident which he would have escaped but for fatigue induced by working overtime. The introduction of such claims is prevented by the words "in the course of the employment." Such an accident as above suggested, though it might arise out of the work, would not be in the course of the work.

"In the course of the employment" does not mean during the currency of the time of the engagement. If the words meant this they would be useless, and would add nothing to the words "arising out of the employment," while to interpret them in this sense would let in the possibility of a number of claims of the nature above indicated which the words "in the course of the employment," rightly read as meaning in the course of the work or service, would exclude.

If "in the course of the employment" meant during the currency of the engagement a sailor engaged for a round voyage would be in the course of his employment while in a public-house in any port where he had leave to go on shore. "Course" is more applicable to work or service than to the currency of the engagement. Leave on shore on the sailor's own business or pleasure is an interruption of his employment, not in the course of it.

I have thought it necessary to state the grounds on which I hold that the accident arose in the course of the employment as the grounds on which the Sheriff came to this conclusion appear to me to be erroneous in point of law.

The views which I have expressed as to the meaning of the words "in the course of the employment" may not be in agreement with some expressions in some judgments but are not in my opinion in conflict with any decision of this House.

For these reasons I think this appeal should be dismissed.

VISCOUNT HALDANE — [*Read by Lord Atkinson*]—The Workmen's Compensation Act 1906 appears on the face of it intended to afford a simple and speedy method of claiming compensation in the cases to which it relates. These are cases of personal injury by accident arising out of and in the course of the employment. But around the principle which Parliament laid down in this language there is already spreading itself in courts of justice an atmosphere of legal subtlety which bids fair to defeat the obvious purpose of the Legislature. Your Lordships have already made efforts to restrain the growth of obscurity and doubt by resolutely declining to interfere with the decisions of arbitrators, unless either on the face of them they disclose error in law or conclusions of fact have been arrived at without any evidence to warrant them. But as the law grows more and more in the refinements which are being developed in the course of the numerous judgments about the meaning of the double condition which the statute imposes—of the accident having to arise both out of and in the course of the employment—the liability to error in law of the arbitrators tends to become greater and greater and their tasks become more difficult and anxious. The courts have, of course, to interpret and apply the language used by the Legislature and nothing besides, and to face any difficulties that arise in doing so. But I feel that while in the interpretations we who are the Judges put on the words used we are bound to follow our previous decisions when they form really binding precedents, we ought in applying the statute to particular facts to direct our efforts rather to giving effect to broad principles with freedom in applying them to individual circumstances than to searching for guidance from mere apparent analogies with the particular facts of previous cases —analogies which rarely embody the full truth. This task is not easy to accomplish in practice, and it is a matter of the spirit rather than of the letter. But speaking for myself I feel that the effort must be made if the purpose which is plain on the face of this statute is not to be stultified; and I think that the only way to succeed is to regard with disfavour arguments which lay stress on the kind of analogy which I have endeavoured to indicate as distinguished from analogous illustrations of broad principle.

The appeal before us illustrates the difficulty we have increasingly to face, for there have been previous cases which, resembling this one pretty closely so far as some of their particular circumstances are concerned, yet in others of their circumstances, while still presenting a considerable degree of resemblance, they have been held to differ from each other in legal result and have been decided in different senses. For features which in one aspect were the same have turned out on scrutiny to be in another aspect in reality different. That this can so readily prove to be so in cases of this class shows how essential it is to ask in the first place what is the underlying principle.

In order to come within the statute an accident must occur not only "in the course of" — that is to say, during actual employment — but in addition must arise "out of" it. In other words, there is required to be shown something in the nature of a causal relation between the accident and an order, expressed or implied, given by the employer. As to how this causal relation is to be sought for and ascertained I ventured to make some observations in *Thom* v. *Sinclair*, 1917 A.C. 135, 55 S.L.R. 267, about the meaning of the expressions involving causality used in the Act. To these it is not necessary for me to add anything on this occasion. Now was there anything said or done by the employers in the present case that was a cause or reason of the accident? Through their agent they on the evening in question allowed the dead man leave to go ashore "for," as the Sheriff-Substitute

found, "his own purposes and not on ship's business." He returned about 10·30 p.m. along a quay in order to get to the ship, and at a point some 60 yards from the berth where the ship lay he met with the accident. I do not, after considering the facts, think that they fall within any principle which can make this journey one for mishap in which the employers were responsible. If the employee had reached the ship or the ladders by which the ship was to be boarded he might properly be taken to have been directed to use them as being part of the vessel on which he was living as a term of his employment. But was the quay by which he was actually approaching when the accident happened a place where he was directed to be, or a place for which the employers had any responsibility at all? It seems to me that this question ought on broad principles to be answered in the negative. Surely a street in Ramsgate would not have been such a place in the absence of special circumstances. That is clear from principles which have been firmly laid down. In order to make it such a place it would be necessary to prove as a special fact that the engineer was directed to use it for some object in which he was employed. Here there was no such direction. He was allowed leave for his own purposes. Was the quay then different in this respect from such a street? It is said that it was, inasmuch as it was the natural way of proceeding towards where the ship was berthed. But a street might also have been part of such a natural way. Does it make any difference that the quay was within a harbour controlled by the naval and military authorities, who had restricted its lighting and would allow no one to pass on to it unless in uniform or having business at the harbour? Did that circumstance make the quay any the more a place for going on which the employers were responsible? It might of course have been such a place if some particular business of theirs had imposed on the deceased the necessity of using it. But it was his business and not theirs which imposed any necessity there was on the occasion in question. Moreover there is nothing to show that he might not have approached the ship by a boat, or that there was any direction which precluded him from doing so. For the rest the access to the quays of the harbour was, according to the finding of the Sheriff-Substitute, in ordinary times open to the public.

I have, as I was bound to do, examined the previous decisions of this House on the type of question before us. But I have examined them, not with a view to finding mere analogy of circumstance, but in order to see whether they lay down anything which when properly applied to the facts found by the Sheriff-Substitute in this case prevents me from coming to the conclusion which appears to me to result from the application of a broad principle. As the result I think that we should hold that the Sheriff-Substitute was right in his conclusion that the accident was not shown to have arisen out of the employment, and that the appeal should be allowed.

It is not necessary in this view to consider whether the accident in the present case can properly be said to have arisen in the course of the employment, as required by the second branch of the condition which the statute imposes. If it were necessary to express an opinion on this point I should find difficulty in satisfying myself that when an employee is absent on his own business an accident which happens to him happens in the course of his employment merely because he is receiving wages and may be called on to return to work. A servant who has been allowed to go on a holiday to pay a visit to his own relatives, and while with them meets with an accident wholly unconnected with his employment can hardly be contemplated as meeting with it in the course of his employment. And if not, the circumstance that the leave of absence is only for a short time surely cannot alter the principle to be applied in deciding the question of liability. At some time this question will need consideration when it arises in a definite form. I doubt whether it was really disposed of in *Moore* v. *Manchester Liners*, [1910] A.C. 498, 48 S.L.R. 709.

I had the advantage of reading in advance the judgment which has just been delivered from the Woolsack in the present case, and I entirely concur with the observations on the meaning of the words "in the course of" made by the Lord Chancellor.

LORD DUNEDIN—In deciding this case the learned Judges of the First Division said that they were following the decision of the Court of Appeal in the case of *Stewart* v. *Longhurst*. Since the decision of this case the case of *Stewart* v. *Longhurst* has been affirmed by your Lordships' House. It seems to me therefore that the first matter to be determined is what was there decided. Now in *Stewart* v. *Longhurst* the man who was injured was not a sailor on board the barge, nor had he any contract of employment with the owners of the barge. He was the servant of an outside tradesman who had contracted to repair the barge. Accordingly when he was sent to do work on the barge he was clearly in the course of his employment. He was told to go there to do his work, and in going there he was doing his work just as much as the canvasser was doing his work when he was sent into the street to go to the customers. That was the first point. The second point was that the accident arose out of the employment, and this is involved in the judgment, although it was not argued but conceded by the losing party. Now to arise out of the employment it must be a risk incidental to the employment. In that case the place to which the workman was sent was necessarily the dock, because he had to traverse the dock to get to the barge. He could not on the facts have been at the dock but for the order to go to the barge, and the dock was a dangerous place, so that the danger which brought about the accident was a danger to which his employment on the occasion subjected him. The accident therefore arose out of the employment.

Now here the question is a different one. The engineer was not sent to the place where he met his death on his employer's order. That in my view completely distinguishes the case from the case of *Stewart*, but it does not, of course, solve the question in favour of the employer. Only a different class of cases come into view as illustrating decision in analogous circumstances. Expressed in terms of such cases the question would be, assuming that he was in the course of his employment, whether the case fell within the decision of *Kitchenham* or of *Moore* v. *Manchester Liners*.

I have said "assuming that he was in the course of his employment," but I must now ask myself the question, Am I justified in making such an assumption? It is indeed assumed, or perhaps I should say dogmatically stated, by Lord Skerrington, who says —"The employment was continuous in the capacity of a ship's engineer, and the man having gone on shore on leave, he perished in the course of his employment." I cannot say that I am surprised at his Lordship thus expressing himself, for he had authority to go on. He had the opinion of Moulton, then L.J., in *Kitchenham's* case, [1911] 1 K.B. 523, and that of Earl Loreburn in *Moore* v. *Manchester Liners*, [1910] A.C. 498. With the utmost deference I do not agree with those opinions, and I think their soundness is not involved in any judgment of your Lordships' House. I am glad to see that your Lordships who have preceded me share my view on this point.

I shall first consider the words of the Act apart from authority. It is obvious that the addition of the words "and in the course of" are meant in some way either to qualify or further explain the words "out of." My own view is that they do the latter. It is in one sense difficult to imagine that there could be any injury held as arising out of the employment which would not also be in the course of the employment. But it may well be that the determination of the question whether at the moment of the injury the workman was in the course of his employment may go to solve the question of whether the injury arose out of the employment. Let me instance the case of the domestic servant who is run over in the street. Given but the two facts that the man is, *e.g.*, a butler, and that he is run over in the street, you would not be able to decide whether the injury arose out of the employment or not. The facts are consistent with either supposition. But given the further fact that either (1) he has been sent by the master on a message, or (2) that he is enjoying an evening out, then you can determine whether he is in the course of his employment or not, and from that, if being run over is one of the inherent dangers of the street, you will be able to determine whether the injury arose out of the employment or not. Now I have taken the illustration of a domestic servant purposely, because domestic servants are not, as colliers and other workmen often are, engaged from day to day, but are engaged for a term, and the accident that happens is during the period of their engagement. In my view "in the course of employment" is a different thing from "during the period of employment." It connotes to my mind the idea that the workman or servant is doing something which is part of his service to his employer or master. No doubt it need not be actual work, but it must, I think, be work, or the natural incidents connected with the class of work —*e.g.*, in the workman's case the taking of meals during the hours of labour; in the servant's, not only the taking of meals, but resting and sleeping, which follow from the fact that domestic servants generally live and sleep under the master's roof.

Holding these views as to the meaning of the Act, I disagree with the dictum of Moulton, then L.J., who, speaking in *Kitchenham's* case of the judgment of this House in *Moore's* case, said—"I hold it to be settled that when a ship is in port and a sailor goes on shore with leave, his employment is not thereby interrupted." Nor do I agree with the dictum of Earl Loreburn in the case of *Moore*—"In the case of a continuous engagement a man is in the course of his employment if the accident happen at any place where he may reasonably be at that time."

I now turn to the point of whether I am bound to take the view which I personally do not hold in respect of decisions of this House.

I apprehend that the dicta of noble Lords in this House, while always of great weight, are not of binding authority and to be accepted against one's own individual opinion unless they can be shown to express a legal proposition which is a necessary step to the judgment which the House pronounces in the case. Now the dicta I have quoted were not as dicta agreed to by Lords Macnaghten and Mersey. They were pronounced in cases in which the sailor met with the accident in the course of his return to the ship.

I have had the advantage of reading the opinion which is about to be delivered by my noble friend Lord Atkinson. In that opinion he examines minutely all the cases decided as to sailors going from or returning to their ship. I concur in the view he takes of them, and it is unnecessary to duplicate such an examination. The upshot of it is that there is no case where liability has been found in which the accident has occurred at any place other than what may be termed the provided access to the ship. If an accident occurs there it may well be—and I agree it is involved in the decisions—that when a sailor is leaving his ship by the provided access, or has reached the provided access on his return, he has not left the course of his employment in the first case, in the second he has returned to it. And obviously if the provided access is defective, as was the case in *Moore's* case, it is easy to come to the conclusion that the accident arose out of the employment. I am therefore of opinion that the general proposition as to continuous employment enunciated by Lord Loreburn in *Moore's* case

was unnecessary to support the decision. In *Kitchenham's* case it could not be involved, inasmuch as liability was not found.

It follows that in my view the mere fact in the present case that the man was under engagement as an engineer at the time that the accident happened is not enough to entail the consequence that the accident happened in the course of his employment. None the less, it may be that he was in the course of his employment. As the course of his employment was interrupted when he left the ship for his own purposes, so it would be resumed when he returned to the ship. If, therefore, the place at which the accident happened was in any fair sense the access to the ship, then the accident would be in the course of his employment. Now admittedly it is not shown that he was on the gangway or on anything that served as a gangway. The only ground for holding that he was within what might be termed the access to the ship lies in the fact that he was in the harbour, and that the harbour on the occasion was not open to the public.

I cannot think that the action of the military authorities in drawing a cordon round certain places turns what is a public place into an access to the ship. In *Stewart's* case the dock was the theatre of the man's employment, because he was sent there and he had to traverse the place. The point of the dock being a private dock was that it prevented the presence of the man there being the presence of a man in a public street going to his work, but that work not yet begun. In the present case the fact that the man would not have been admitted unless he had been a privileged person, and that his privilege arose from the fact that he was sleeping on board a ship which was lying in the dock, was a matter entirely of the arrangement of the military authorities, and had nothing to do with the relations between his employers and him.

I am therefore of opinion that the result at which the arbitrator arrived was right, and ought not to have been interfered with by the learned Judges of the First Division. I think that the appeal should be allowed and the judgment of the arbitrator restored; the respondents to pay the costs of the appeal, and expenses in the Court below.

Lord Atkinson—I concur. It has been, as I understood, pressed in argument on behalf of the respondent in this case that the case of *Moore* v. *Manchester Liners*, [1910] A.C. 498, establishes two propositions —(1) that if a sailor bound to serve as such on a particular ship for a certain time lawfully goes ashore within that time without having been bidden so to do by one in authority over him whom he was bound to obey, but merely on his own business or for his own pleasure, he must be considered to continue to be in the course of his employment while he remains on shore; and (2) that if an accident should happen to him while on his return journey to his ship, that accident may be held to have arisen out of and in the course of his employment, no matter how lengthened that journey may be, or at what part of it he meets with the accident. When the facts of this case, as well as of those cases which have preceded and followed it dealing with the same subject, are examined, I think it will be found that they furnish no support whatever to this wide second proposition, if they do even to the first. In *Moore* v. *Manchester Liners* the deceased fireman went ashore lawfully without having been bidden to do so, on his own business or for his own pleasure. He was to return to his ship, and was attempting late at night to do so. The only means of access to the ship provided by her master or owner was a ladder, not fixed but swaying about. It was found to be an unsafe contrivance for getting on board. The deceased in attempting to go on board fell off this ladder and was drowned. The case is somewhat peculiar owing to the marked division of judicial opinion to which it gave rise. In the Court of Appeal L.JJ. Cozens-Hardy and Farwell held that the accident did not arise either out of or in the course of the employment of the deceased. Fletcher Moulton, L.J., as he then was, held that the deceased was in the course of his employment while he continued ashore, stating as one of his reasons that there was no moment, whether the sailor was on board or ashore, when he was not bound to obey the captain's order. I cannot find that this was found as a fact by the County Court Judge, or that any evidence was given in support of it, and in the absence of authority I confess I doubt it. On the question of the accident having arisen out of the employment he appears to me to have based his judgment on the defectiveness of the means of access provided. He dealt with the case of *M'Donald* v. *Owners of Steamship "Banana,"* [1908] 2 K.B. 926, and showed that the claimant there failed because all that was proved was that the returning seaman fell off the gangway leading from the quay to the ship, and there was no evidence that this provided mode of access was defective. He also cited *Robertson* v. *Allen Brothers & Company*, 98 L.T. 821. In that case the sailor, who was somewhat under the influence of drink, on returning on board, in order to avoid observation, crossed from the quay on a certain skid, a forbidden mode of access, and not by the usual mode of access. In stepping from this skid to the deck he slipped on the deck and fell down an open hatchway and was killed. He was held entitled to recover. The learned L.J., referring to the case then before him, at p. 426, said—"The ladder was for the purpose of the employment the proper and provided access to the ship, and falling from it appears to me to be in every respect identical from a legal point of view with falling from the end of the cargo skid in the case quoted." In each of these three cases the decision was based on the defective state of the means of access from the shore to the ship. In *Kitchenham* v. *The Owners of s.s. "Johannesburg,"* [1911], 1 K.B. 523, [1911] A.C. 417, Moulton, L.J., had occasion to consider the question of the liability of

employers for an injury sustained by two sailors who had been absent on leave and were returning to their respective ships. In the first case the means of access to the ship was a gangway which was properly lighted; there was no evidence, however, whether the sailor had or had not reached the gangway before he fell into the water and was drowned. It was held that it was not proved that the accident arose out of the sailor's employment, and that the owners were therefore not liable. If the argument put forward in the present case were sound, the result must have been the opposite, for undoubtedly the sailor fell from the quay on his way back to his ship, and it would have been immaterial whether he had reached the gangway or not. In the second case there was another ship lying between the quay and the sailor's own ship, and to get to the latter he had to cross a gangway between the two ships. He reached the gangway, fell off, and was drowned. It was held that the owners were liable. Before this case came to be decided in the Court of Appeal the case of *Moore* v. *Manchester Liners* had been brought on appeal to this House. The judgment of Fletcher Moulton, L.J., in it was expressly approved of by one, possibly by two, of the noble Lords who took part in the hearing, and expressly disapproved of by two others, especially on the point of the continuous employment of the sailor while on shore. Lord Ashbourne, who concurred with the conclusion at which the Lord Chancellor arrived, based his judgment apparently on the defective nature of the means of access to the ship. He said—"The mode of access to the ship was by a ladder, which was not fixed and which swayed, and in the words of the Judge was an unsafe contrivance. But it was the only mode by which the deceased could fulfil his necessary duty of returning. The ladder attached to the ship was a requisite of it for the purpose of access, and practically for that purpose almost formed part of it." He said nothing whatever upon the point whether the sailor in that case should be held to have been in the course of his employment all the time he was ashore. It was, I think, quite unnecessary for the decision of the case so to hold. It was enough for the purposes of that decision if the sailor was, while using the provided means of access to the ship, held to be in the course of his employment. It may well be that when a sailor returning to his ship uses the only means of access to her provided for him—means which he is obliged to use in order to get on board his ship as he may be bound to do—he should be held while using those means for that purpose to be doing something in the course of his employment; but that is a wholly different thing from holding that a sailor who with the leave of his master goes ashore for the purposes of his own business or his own amusement continues all the time he remains ashore to be in the course of his employment. To hold so appears to me, with all respect, to confound the continuity of the contract of service with the continuity of the course of employment. Lord James of Hereford, the third member of the majority of the House, concurred in the conclusion at which the Lord Chancellor had arrived, and at p. 504 of the report said—"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 by which he fell, the only means of reaching the ship provided for him." At p. 505 he said—"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." If the judgment stopped there it would be quite consistent with it that the sailor only re-entered on his employment when he attempted to traverse the ladder, and that therefore when the accident occurred he was in the course of the employment, which was all that was needed, but the noble Lord added—"I accept the judgment of Fletcher Moulton, L.J., on the point." It may well be that Lord James by this last sentence intended to state that in his view a sailor rightfully ashore for his own business or his own pleasure was during all the time he remained on shore, whatever he might be doing while there, still in the course of his employment; but I do not think that even by his express adherence to that view the decision of the case can be treated as a clear and unequivocal decision of this House upon this point in favour of the claimant. In my view the words "arising out of" suggest the idea of cause and effect. The words "in course of his employment" mean, I think, while the workman is doing something he is employed to do. In the case of a sailor who lives on board his ship or an indoor servant who lives in his master's house these words would, of course, cover and include things necessarily incidental to his service there, such as taking his meals, sleeping, resting, &c. In satisfying these demands of nature the sailor is as truly doing something within the course of his employment as he would be in keeping a look-out or going aloft.

Fletcher Moulton, L.J., in his judgment in the *Kitchenham* case, deals with his judgment in *Moore* v. *Manchester Liners*, in a passage which, though somewhat long, it is well to quote. It runs thus—"In the cases before us the accident occurred on the return of the seaman to the ship immediately prior to his actually getting on board. This is the critical moment when the dangers to which he is exposed change from being of the one class to being of the other class.' By this, as appears from the context, the Lord Justice means the dangers to which he would be exposed as a member of the public as distinguished from those to which he would be exposed as one of the crew of the ship. He then proceeds—"And it will frequently be a difficult task to draw the line between the two. But I do not think it is difficult to lay down the general principle by which our decisions ought to be guided. The return to the ship is in the course of his employment, but the risks do not become risks arising out of his employment until he

has to do something specifically connected with his employment on the ship. Thus if the risk is one due to the means of access to the ship, as in *Moore* v. *Manchester Liners, Limited*, the accident is rightly said to arise out of his employment, but if the accident is shown to arise from something not specifically connected with the ship it cannot be said to arise out of his employment. I do not think that the dividing line is when he actually touches the ship or the special means of access thereto. For instance, if it was shown that when the sailor returned to the ship there was a dense fog, and that in trying to find the gangway, which I will suppose was not lighted, he fell in the water and was drowned, I think that the accident would arise out of the employment. But if all that is shown is that it occurred during his return to the ship, but while he was still on the shore and before he had taken any specific step to get on board the vessel, I think that it would not thereby be established that the accident arose out of his employment." This case is not only an authority upon the question as to where the risk to which a returning sailor is exposed becomes a risk so arising out of his employment that if he meets with an accident caused by it his employer may be liable. It is also an authority upon the point that an applicant or his representative must in such cases as this prove his or her case. The evidence showed that the sailor returning after being absent on leave came upon the wharf and walked towards the ship's gangway. It was not shown that he ever reached the gangway. The watchman proved that he had not heard anyone on the gangway—a splash was heard a little abaft the inboard end of the gangway and there was a cry from some person unknown "Man overboard!"

Fletcher Moulton, L.J., dealing with this evidence, said—"In my opinion this is not sufficient to negative the possibility that the accident was due to an accidental slip on the wharf or to the sailor having gone to the edge of the wharf for his own purposes, perhaps to look over to see the state of the tide, and fallen over."

The decision in the case of *Marshall* v. *The "Wild Rose,"* [1910] A.C. 486, 48 S.L.R. 701, is precisely on the same lines on this latter point as indeed is *Wakelin* v. *London and South-Western Railway Company*, [1912] A.C. 41. Reverting to the first point, I think I am safe in saying that we have not been referred to any case where a sailor returning to his ship recovered compensation for an injury by accident which he sustained unless he met with that accident by reason of the defective or insufficient character of the physical means provided by the owner for access to or egress from the ship to the quay or dock wall. In *Cook* v. *Owners of s.s. "Montreal,"* 6 B.C.C. 220, Buckley, L.J., as he then was, laid it down that "in the obligations contractually existing between master and servant it is part of the duty of the master to afford the workman when he is dismissed reasonable facilities for leaving the place of employment, and if the servant is injured while availing himself of these facilities the master may be liable." That statement of the law, and also the decision in *Kitchenham* v. *Owners of s.s. "Johannesburg,"* were approved of in *Webber* v. *Wasborough Paper Company, Limited*, [1915] A.C. 51. In this last-mentioned case the means of egress from the ship provided by the master was a plank with one end resting on the vessel and the other resting on the rung of an upright iron ladder fixed to the quay wall. The seaman on going ashore, his day's work being done, walked along the plank in safety, but after he had gone a step or two up the ladder he slipped, fell into the harbour and got injured. Lord Moulton said the County Court Judge appeared to him to have been of opinion that the ladder on which the plank landed the workman was not such a safe portion of the quay that the responsibility of the employer ceased when he had put the workman there. This in other words means that the mode of egress provided for those going from the ship to a safe place upon the quay was defective and the accident was caused by reason of the defect. Thus the risk to which the workman was exposed and from which he suffered was due to the defective means of egress from the ship, and therefore arose out of the employment which obliged him to avail himself of those means and encounter that risk.

In the face of these authorities it is, I think, impossible to hold that the risk to which the deceased in the present case was exposed as he walked along these quays had, before the accident, changed from that to which an ordinary wayfarer on the pier was exposed to that to which the deceased became exposed by virtue of his being a member of the crew of his ship. The risks to which he was exposed therefore did not arise out of his employment since he had not up to the time of the accident done or attempted to do anything specially connected with his employment on the ship. His employment was not, I think, to any extent the cause of the accident, proximate or remote.

The principles contended for on behalf of the respondent would lead to the most astonishing and, I think, unjust results. If it were sound, then a master who allowed his domestic servant to go on a visit to his friends in the country on the condition that he should return on a certain day if not sooner recalled, would be liable for an injury sustained by the servant in a railway accident when on his return journey to his master's house on the day named.

I am well aware that it has been decided by the cases of the *Caledonian Railway* v. *Walker's Trustees*, 7 A.C. 259-275, 9 R. (H.L.) 19, 19 S.L.R. 578, and in *London Street Tramways Company* v. *London County Council*, [1898] A.C. 375, that a decision of this House on a point of law is conclusive and binds the House in subsequent cases, but the decision itself with everything necessary involved in it is the thing which binds. For the reasons I have already given I do not think it can be taken that this House in *Moore* v. *Manchester Liners* did decide as a point of law arising on construction of the Work-

men's Compensation Acts that a sailor while and so long as he is lawfully on shore solely for the purposes of his own business or his own pleasure must be held to continue to be in "the course of his employment." Your Lordships have not been referred to any other decision of this House so ruling. I cannot find any such myself. I do not think such a decision exists—and unless constrained by some decision of this House I am very unwilling to decide as a matter of law that under these Acts a servant absent from his master's house or premises, no matter for what purpose of his own, must, while his contract of service lasts, be taken to continue in the course of his employment with that master though he should not be engaged in doing anything or preparing to do anything which the master employed or commanded him to do.

It was contended on the part of the respondent that the present case is governed by the case recently decided of *Stewart and Son, Limited* v. *Longhurst*. I cannot bring myself to think so, though of course I must feel my confidence in my own opinion somewhat shaken by the fact that my noble friend on the Woolsack has come to a different conclusion. *Stewart* v. *Longhurst* was one of those cases of which several have been decided recently, in which an employer who expressly or impliedly orders his workman to do a particular thing has been held to be responsible for an accident caused to the servant by a risk ordinarily attending the doing of that thing. For instance, if a master should send his servant into the street to post a letter, and the servant while on that errand gets run over in the streets, the master is held responsible, running over being one of the ordinary street risks. In *Longhurst's* case the owner of a barge got liberty from the owner of a private docks to place his barge in these docks for the purpose of having her repaired. He employed the deceased mechanic to repair her. He therefore necessarily hired him and impliedly ordered him to traverse the docks from the dock gates to the place where the barge lay by the route provided by the dock owners, and on knocking off work to re-traverse the docks by this same route. As between the workman and the employer the relative rights and obligations of the parties were the same as if the docks were the private close of the employer. The conditions under which the work was done must be taken to have been known to the employer. There was no allegation of neglect by the workman. He was on these premises, using this way of approach to his work, and from his work to get to the dock gates under his master's implied orders by virtue of his employment and in no other character or by virtue of no other right, he, without any negligence, strayed off his route when leaving his work and fell into the docks. The risk of doing so was, under the condition, I think, a risk incidental to the doing of the work he was by his master hired and commanded to do. Had the workman been walking about the private docks for his own pleasure, not by his master's orders, there might be some analogy between that case and the present, but in fact it was entirely otherwise.

The harbour of Ramsgate was at one time a public harbour. The Admiralty have since the war assumed control over it and its quays and piers. The respondents contend that this control turned the docks into such a private close as were the docks in *Longhurst's* case.

Under the regulations made by the naval authorities, persons wearing naval or military uniform and having business within the harbour are allowed by the authorities to enter it by certain places of access, and in order to entitle them to enter they must possess passes signed in the manner prescribed. It is scarcely necessary to say that no authority was produced to show that where the military, for the purposes of the war, draw a cordon around a certain area and only permit certain persons, duly authorised, to pass in or out of that area, that circumstance turns the area within the cordon into the private property of any person, certainly not the private property of such a person as was the employer of the deceased in the present case by whom or for whom the control was not imposed. Moreover, the authorities might give passes to whomsoever they pleased—might even allow the general public to pass through the entrances if they thought fit. The deceased obtained a pass on his way out in order that he might return again, but he was not ordered by his employer to go out. He was not sent to do any business for his employer. He owed no duty whatever to his employer to go out or to stay in the harbour. The only duty he owed to him was to be back in his ship that night. He might have never obtained a pass, never gone out of the harbour, have spent the evening in some ship within the harbour amongst his friends and walked about upon the quay or pier from which he subsequently fell, according as he desired, irrespective altogether of the wishes of his employer. Everything he did, with the exception above mentioned, he did, not by the orders express or implied of his master or to discharge any duty he owed to his master, but on his own initiative, for his own purposes, and according to his own desire, so that even if the harbour of Ramsgate could be considered to stand as between the employer and his workman in this case in the same relation as did the private docks stand in the *Longhurst* case, which I hardly think it did, I should still be of opinion that this case is as different from the *Longhurst* case as would be the case of a servant who was run over in the street while he was walking there for his own business or pleasure, from the case of such a servant who was run over in the street while walking there on some errand on which he was sent by his master. I think the authorities establish that in the former case the servant would fail to recover. For these reasons I am of opinion that the claimant on whom the burden of proof lies has failed to establish that the accident by which the deceased met his death arose either out of or in the course of his employ-

ment, and that the order appealed from was therefore erroneous, should be reversed, and the appeal be allowed with costs.

LORD PARMOOR—[*Read by Lord Dunedin*]—The question in this appeal is whether the Sheriff-Substitute has made an error in law in holding that the accident to the deceased did not arise out of the employment with the appellants. In my opinion no error in law arises in the case and there is no ground in law for interfering with the finding of the Sheriff-Substitute. I desire to add that there is no necessity in this case to become involved in a multiplicity of decisions.

On the evening of February 25, 1916, the deceased man left his ship "Ferryhill" and went ashore for his own purposes and not on ship's business. He returned to the harbour about 10·30 p.m., and passing through an entrance by means of a pass duly signed and entitling him to do so, went on the quay with the object of making his way to his ship. No one witnessed the accident to the deceased, but the Sheriff-Substitute drew the inference that as the deceased was proceeding towards his ship he missed his way owing to the darkness prevailing, and falling into the harbour, was drowned. The body was found about 20 yards from the point of access to the ship from the quay, and was probably near the place of the accident. In ordinary times the harbour is a public harbour, and access to its quays has been ordinarily open to the public, but since the outbreak of the war the quay where the accident happened has been subject to the control of the naval and military authorities, and used conform to their regulations. The deceased prior to leaving the harbour on the night of the accident received a signed pass entitling him to return, and was in possession of the pass when he re-entered the harbour area.

On these facts the Sheriff-Substitute found in effect that it was not proved that the accident to the deceased arose out of his employment. In my opinion the Sheriff-Substitute drew the inference that at the time when the accident happened the deceased was on the quay for his own purposes and not on ship's business. There is evidence from which in reason this inference could be made, and if this is so the decision is, under this head of the case, wholly within the competence of the Sheriff-Substitute. The only other way in which an error in law could arise would be, that the Sheriff-Substitute did not apply the statutory directions in testing the question of liability, or, in other words, that he misdirected himself as to the meaning of the Legislature as expressed in the statute. I can find no indication that he made any such error. On the contrary, I think that he applied the right direction, viz., whether at the time of the accident the deceased was engaged in the duty or business of his employment, and whether, if he was so engaged, there was some form of causal relationship between such duty or business and the accident. No doubt the place where the accident happened is an important factor, but it is not a conclusive factor. For instance, in the present case, it is in my opinion very material to draw a clear distinction between a workman on his way to or on his return from his work, and a workman who is absent from his work for his own purposes. The proper inference in any particular case is one of fact, and not of law, subject always to two conditions, that the inference can, in reason, be made from the evidence, and that the statutory directions of the Act have been properly observed. With all respect to the opinion of the Lord President, I am unable to accept the view that it is immaterial whether the deceased went ashore on his own business or the ship's business, or that the question in debate in the appeal is governed by the case of *Longhurst* v. *John Stewart & Company*, [1916] 2 K.B. 803, and [1917] A.C. 249.

That case comes within the category of cases which determine that if a workman meets with an accident when using an access, or means of access, provided by his employer, and where the workman had no right to be except by virtue of his employment, such accident in the absence of special circumstances is incurred in the course of and arises out of the employment so as to make the employer liable to pay compensation. In some cases if an accident is incurred in the course of employment the only possible inference is that it also arose out of the employment, but this is not necessarily the case, and to entitle a claimant to compensation the two conditions must be fulfilled in any particular case. In the Court of Appeal L.J. Warrington refers to the view expressed by L.J. Farwell in *Gane* v. *Norton Hill Colliery Company*, [1909] 2 K.B. 539. Speaking of a collier, L.J. Farwell says —"He is employed not only to work in the pit, but also to do other things that he is entitled to do by virtue of his contract of employment; for example, he is entitled to do, and therefore employed to do, such acts as coming on the employer's premises, passing and repassing for all legitimate purposes connected with his work on the premises . . . All these things that he is entitled to do by virtue of his contract he is for the purpose of the Act employed to do, and they are therefore within the contract of his employment." I desire to express my entire concurrence in the view expressed by L.J. Farwell, but it does not appear to me to have any application to a case in which a man employed on a ship is at the time of the accident away on his own account and not on the ship's business. I agree with what was said by Lord Dunedin when the case came on appeal to your Lordships' House. "Control was sought to be raised to the position of affording an absolute test whether employment had begun or ceased. I venture to go so far as to say that control of the place where an accident happens so far from being conclusive is neither here nor there except in so far as it may represent a fact tending to show that the accident arose in the course of the employment. The cases of *Gilmour* v. *Dorman, Long, & Company*, 1911, 4 B.W.C.C. 279, in England, and *Hendry* v. *United Collieries*, 1910 S.C. 709, 47 S.L.R. 635, are both illustra-

tions of positions where there was control on the part of the employer of the *locus* of the accident and yet no liability. These cases were in my opinion rightly decided."

In my opinion the appeal should be allowed with costs here and below.

Their Lordships reversed the judgment of the First Division, restoring the decision of the Sheriff-Substitute, with expenses.

Counsel for the Appellants—Sandeman, K.C.—Macmillan, K.C.—Neilson. Agents L. M'Kinnon & Son, Aberdeen—Boyd, Jameson, & Young, W.S., Leith—Botterell & Roche, London.

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COURT OF SESSION.

Thursday, December 13, 1917.

FIRST DIVISION.

[Lord Cullen, Ordinary.

MACDONALD *v.* INVERNESS BURGH.

Servitude—Water Supply—Renunciation—Conditions Attached to Right to Take Water in Favour of Granter of Right—Effect of Renunciation of Right to Take upon the Conditions.

The owner of lands through which a burn flowed feued a part of the lands to a burgh as a site for a reservoir, and in the same deed gave the burgh "an heritable and irredeemable servitude, right, and tolerance" over other lands of his, of laying down and maintaining a line of pipes from the burn, and right and tolerance of conveying water through the pipes from the burn to the burgh, which right of servitude was subject to the condition of providing to the grantor, his heirs and successors, a constant supply of water to his house and certain farms by a branch pipe to be laid by the burgh. The burgh, after having used this means of water supply for some years, renounced the rights conferred upon them. *Held* (*dis.* Lord Johnston), in an action by a singular successor of the owner of the lands against the burgh, that upon renunciation by the burgh of the right conferred upon it and restoration of the subjects, the conditions attached to the right renounced ceased to be prestable by the pursuer.

James Huntly Macdonald of Torbreck, *pursuer*, brought an action against the Provost, Magistrates, and Town Council of Inverness, *defenders*, concluding for decree (*Primo*) ". . . That under and in terms of feu-charter and deed of servitude granted by the late John Baillie Baillie, Esquire of Leys, in the county of Inverness, in favour of the Commissioners of Police of the burgh of Inverness, acting under and for the purpose of 'The General Police and Improvement (Scotland) Act 1862,' and 'The Inverness Water and Gas Act 1875,' dated the 18th and recorded in the Division of the General Register of Sasines applicable to the county of Inverness on the 29th, both days of August 1883, the pursuer and his tenants on the estate of Torbreck, and in particular of the farms of Knocknageal, Balrobert, and Torbreck thereon, are entitled to be supplied with water by means of the works therein set forth, and in particular by means of the works specified in the subsequent conclusions of the summons: And (*Secundo*) the defenders ought and should be decerned and ordained by decree foresaid—(*First*) To maintain a line of main iron or fireclay pipes not exceeding 12 inches in diameter in and through the said lands of Knocknageal, from the point on the Holm Burn marked A on the plan herewith produced, to the pressure tank belonging to the defenders on the lands of Oldtown of Culduthel, in or about the line delineated in red on the plan herewith produced; (*Second*) To maintain a branch pipe not less than 6 inches in diameter, with its head 18 inches at least under the water in a tank at the point marked R on the said plan, on the line of the said Commissioners' foresaid main pipe, and to maintain a sluice valve at the lower end of the said 6-inch pipe near the mill-dam of the said farm of Knocknageal; and (*Third*) To maintain a flow of water in the said main pipe which shall afford the 18 inches of head stipulated for at the tank at the point R, and carry away surplus water from the lands of the pursuer; and also to maintain a constant supply of water either out of the said 6-inch pipe or out of the main pipe for the cistern which feeds the service pipe of the farmhouse of Knocknageal, and for the cistern of the pursuer's mansion-house of Torbreck or any other building that may hereafter be erected on the said farm lands, and that preferably to the supply of water taken by the defenders: And (*Tertio*) the defenders ought and should be decerned and ordained by decree foresaid to lay down and maintain a 6-inch pipe, with a sluice valve thereon, through the embankment of Loch Ashie, in the parish of Dores and county of Inverness, and laid at such a depth as will always secure a supply of water for the pursuer's farms of Balrobert and Torbreck, in the said parish and county, or otherwise to lay a 6-inch branch pipe, with a sluice valve at the compensation well referred to in said feu-charter and deed of servitude, with a fall-out of the bottom of the main pipe leading to the town of Inverness, and to maintain a supply of water therein for the pursuer's said farms. . . ."

The *feu-charter and deed of servitude* granted by John Baillie Baillie of Leys provided—"I, John Baillie Baillie, . . . in consideration of the sum of Five hundred pounds sterling paid to me by the Commissioners of Police of the burgh of Inverness,