

not appear to me by any means to exhaust the cases in which a master may be held liable for slander uttered by his servant. But in the sentence which follows I think the Lord Ordinary has placed his ground of judgment upon the proper basis. "It was," he says, "the duty of the inspector to investigate and obtain information, and that duty did not, in my opinion, involve the making of the statement complained of." I add that it was also the duty of the ticket collector merely to investigate and obtain information, and that both are therefore exactly in the same position.

I am therefore for adhering to the interlocutor of the Lord Ordinary.

LORD MACKENZIE—I am of the same opinion. It was pointed out in the case of *Finburgh v. Moss' Empires*, 1908 S.C. 928, 45 S.L.R. 792, that in a case such as the present it was necessary to scrutinise very closely the averments of the pursuer. The duty on the pursuer is to set forth a *prima facie* case that the act complained of was the act of the company. In the present case I am unable to hold that the averments are of that character. They are in marked contrast to the averments in *Finburgh (cit.)* which were very strong. For my own part I should be slow to extend the doctrine of vicarious responsibility of a company for verbal slanders said to have been uttered by an employee. The duty of a person whose instructions are to make investigations and to obtain information appears to me to be limited to ascertaining facts and reporting to his superior. It is not within the scope of his employment to venture opinions reflecting upon the conduct or character of the person whom he is interrogating, and upon that ground I am unable to hold that the defenders are responsible for what the police inspector is alleged to have said on 26th May 1915, which is the subject of the first issue. For the same reason I am unable to hold the company responsible for what is complained of as regards the second issue. There is the further point that it seems to me impossible to extract from what was said on 7th June the innuendo which the pursuer seeks to draw.

LORD SKERRINGTON—I agree, and for the reasons explained by your Lordships.

LORD JOHNSTON was absent.

The Court adhered.

Counsel for the Pursuer—D. Anderson, K.C.—Burnet. Agent—A. W. Lowe, Solicitor.

Counsel for the Defenders—Sandeman, K.C.—Macmillan, K.C.—E. O. Inglis. Agent—James Watson, S.S.C.

Saturday, March 17.

FIRST DIVISION.

[Sheriff Court at Aberdeen.]

OFFICER v. CHARLES R. DAVIDSON & COMPANY.

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (1)—"Arising Out of the Employment"—Ship's Engineer Returning from Shore Drowned in Dock under Admiralty Control where his Ship was.

A ship was lying beside a quay in docks which were under the control of the naval and military authorities. The docks though normally open to the public were during the war closed to all except, *inter alios*, those who had business in the docks and held a pass which enabled them to pass the guard at the gates. The ship was chartered to the Admiralty. Her engineer, who held a pass, having gone ashore with leave for purposes of his own, on his return passed the guard about 10:30 p.m. on a very dark night in February. Stringent lighting restrictions prevailed. To reach the ship the engineer had to traverse the quay. He did not return, and his body was subsequently found in the water about seventy yards from the actual place of access to the ship from the quay. Held that the accident rose out of the employment, in respect that but for his employment the workman could not have been upon the quay.

Mrs Marjory M'Robb or Officer, widow of Charles Officer, *appellant*, being dissatisfied with an award of the Sheriff-Substitute (YOUNG) at Aberdeen in an arbitration by her for herself and as tutrix of her pupil children, against Charles R. Davidson & Company, shipowners, Aberdeen. *respondents*, craving decree against the respondents of £300 as compensation under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) in respect of the death of her husband, appealed by Stated Case.

The Case stated—"The following are the facts admitted or proved:—(1) That the appellant is the widow of the deceased, and she and her pupil children were wholly dependent on his earnings; (2) that at the time of the accident in question, and for some time previously, the deceased was in the employment of the respondents as chief engineer of their steamship 'Ferryhill'; (3) that on or about Friday, 25th February 1916, the 'Ferryhill,' then under charter to the Admiralty, and engaged for the coaling of patrol boats, was moored in the inner basin of Ramsgate Harbour alongside a hulk which was berthed between the 'Ferryhill' and what is known as the Cross Wall Quay, as shown on the plan produced; (4) that access from the quay to the 'Ferryhill' was obtained in the first place by a rope ladder on the hulk at the point marked C on the plan, and next by an ordinary ladder from the hulk to the 'Ferryhill' at the point marked D; (5) that on the evening of the

said 25th February the deceased Charles Officer left the ship and went ashore with leave, though for his own purposes and not on ship's business, and that about 10.30 p.m. he returned to the harbour, and passing through the entrance at the point marked A on the plan, went on with the object of making his way along the Cross Wall Quay to his ship; (6) that when he so returned to the harbour the deceased was sober and fit to take care of himself; (7) that John Barron, first officer of the 'Ferryhill,' who also went ashore the same evening, returned to his ship about 10.50 p.m., and found that the deceased had not then come back; (8) that the night was exceptionally dark, stringent lighting restrictions imposed by the naval and military authorities were in force at the harbour, and though the edges of the quay walls had been painted white, this precaution was of little if any assistance for the guidance of persons going on the quay; (9) that no one witnessed an accident to the deceased at the quayside on the night in question, but from the facts it may be reasonably inferred that when the deceased was proceeding towards the berth occupied by the hulk, he missed his way owing to the darkness prevailing and fell into the harbour at or near the point arrow-head on the plan, and was drowned; (10) that on the following day about mid-day his body was found at the point marked B on the plan, a distance of 70 yards or thereby from C, the place of access to the hulk from the quay; (11) that there was very little tidal movement in the harbour, and a body falling from the quay into the water would naturally be carried only a short distance from the spot where it fell; (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; (18) that at the time of the accident vessels other than Admiralty vessels and vessels working for the Admiralty were allowed into the inner basin, but excepting vessels laid up since the commencement of the War, such as fishing and small craft, all vessels other than Admiralty vessels and vessels working for the Admiralty did not enter the outer or inner harbour without special permission from the senior naval officer in charge; (19) that vessels other than Admiralty vessels and vessels working for the Admiralty were not at that time permitted to be berthed in the inner basin alongside the Cross Wall Quay, that is from A to E, but only at the quay at the west end of the basin, that is from E to F, and at the quays from F to G and G to A on the plan; (20) that at the time of the accident, besides the hulk and the 'Ferryhill,' a number of steam drifters in the service of the Admiralty were also berthed to the east of them, and right up to the pier-yard quay at the east end of the basin.

"On the foregoing facts I held that the accident to the deceased happened in the course of his employment, but that it had not been shown that it arose out of his employment. I therefore found that the respondents were not liable in compensation."

The question of law was—"Whether I was entitled to hold that the accident to the deceased did not arise out of his employment with the respondents?"

To his award the arbitrator appended the following

Note.—"Compensation in respect of the death of the deceased Charles Officer is here claimed by his widow for herself and her pupil children. There has been no proof in the case, but parties have agreed on a joint minute of admissions, and in producing a plan showing the area of the Ramsgate Harbour and various points particularly mentioned in their minute.

"On the facts it seems to me that the deceased could not be said to have returned to the sphere of his employment at the time of the accident. It did not happen at the place where his duties required to be done, and it had no specific connection with what in the usual phrase might be called the scene of his labour. The object which he had in view was to reach his ship. He was on his way to it no doubt. But the accident did not occur to him when he had reached it or was endeavouring to get on board. He had not indeed come near the spot at which the hulk could be boarded from the quay, so that he might pass on to his ship moored outside.

"In my opinion, then, the case is within the authority of the decision in *Craig v. The Owners of s.s. 'Calabria,'* 1914 S.C. 765, 51 S.L.R. 657. There a seaman having legitimately left his ship was returning to it

after dark along the quayside, the footway on which was narrowed by a row of barrels, and he fell over the side in the water when about a distance of 12 feet from the gangway leading from the quay to the ship. There it was held that the accident did not arise out of the seaman's employment, the Court resting their judgment on the view that he had not taken any specific step towards getting on board his ship, and was not doing anything specifically connected with his employment on the ship. The judgment in that case was in accordance with the rule explained by Fletcher Moulton (L.J.) in *Kitchenham v. The Owners of s.s. 'Johannesburg,'* [1911] 1 K.B. 523, and subsequently approved of by the House of Lords (49 S.L.R. 626). Dealing with an accident which happened to a ship's steward in returning to the ship at night after being on shore with leave, he said—"The return to the ship is in the course of his employment, but the risks do not become risks 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,* [1910] A.C. 498, 48 S.L.R. 709, an accident is rightly said to arise out of his employment; but if the accident is shown to have arisen from something not specifically connected with the ship, it cannot be said to have arisen out of his employment."

"On behalf of the pursuer some significance has been ascribed to the circumstances attending the control of the harbour by the naval and military authorities; and the exclusion of the public from free access to the quays has been founded on as indicating that there was here a special risk pertaining or incidental to the deceased's employment, but in my opinion the conditions existing in consequence of the regulations enforced by the authorities do not make any difference as to the rule to be applied in the present case. On the night when the deceased was drowned he had gone on shore with leave and was therefore lawfully absent from his ship, but he was indubitably off duty. He was not away from his ship in order to carry out any job entrusted to him, or in obedience to any order received. There was not a little danger in finding a way along the quay from his ship to the public road outside the harbour premises, and in finding his way back again by the quay to his ship. But the going to and from the town was not necessary for or connected with the performance of any duties he had to discharge in his employment. He was ashore not on ship's business but on his own. This would appear to be a fact of prime importance in view of leading decisions, and particularly of the ruling in the case of *Parker v. The Owners of s.s. 'Blackrock,'* [1915] A.C. 725, 53 S.L.R. 500. In that case a seaman was accidentally drowned by falling from a pier into the water when returning to his ship, and with special regard to the reason for his absence from the ship it was laid down that to make the accident one arising out of the employment it is not sufficient that it should happen

during a period when the seaman was lawfully absent from his vessel; the absence from the vessel must be not merely lawful but in pursuance of a duty owed to the employer.

"The fact that here the deceased had gone out to town and returned by the quay on an errand of his own serves also, in my opinion, to distinguish the present case from that of *Longhurst v. John Stewart & Son, Ltd.,* [1916] 2 K.B. 803, a case referred to at the hearing of parties.

"I do not think there is any room for the suggestion that the quay itself was the access to the ship. Its moorage certainly was reached by the quay just like the berths of other ships which lay in the harbour or inner basin. But the quay was common to all who had business there, and did not form the specific means of access appropriate to the 'Ferryhill.'"

Argued for the appellant—The accident arose in the course of the workman's employment, for he went ashore with leave. It also arose out of his employment, for his employment not only compelled him to traverse an unlighted quay on a dark night, but also exposed him to a risk it was impossible for a member of the public to run, for it was only as a result of his employment that the workman could and did get access to the quay. The following cases were referred to—*Moore v. Manchester Liners, Ltd.,* [1910] A.C. 498, 48 S.L.R. 709; *Kitchenham v. Owners of s.s. 'Johannesburg,'* [1911] A.C. 417, 49 S.L.R. 626, [1911] 1 K.B. 523; *Craig v. Owners of s.s. 'Calabria,'* 1914 S.C. 765, 51 S.L.R. 657; *Parker v. Owners of s.s. 'Blackrock,'* [1915] A.C. 725, 53 S.L.R. 500, [1914] 2 K.B. 39; *Nicol v. Young's Paraffin Light Co., Ltd.,* 1915 S.C. 439, 52 S.L.R. 354; *Longhurst v. John Stewart & Son, Ltd.,* [1916] 2 K.B. 803. [LORD MACKENZIE referred to *Simpson v. Sinclair,* 1917, 54 S.L.R. 287.]

Argued for the respondents—The accident arose in the course of the employment but did not arise out of it. The workman went ashore on business of his own and until he returned to his duty no accident to him could arise out of his employment. He returned to his duty when he returned to the ship or the access to it. In *Moore's case (cit.)* the man had reached a ladder leading to the ship. In *Craig's case (cit.)*, which was decided against the workman, he had not reached the gangway leading to the ship. In *Longhurst's case (cit.)* the facts were special, for the dock was a private dock belonging to the employer, so that so long as the workman was in the dock he was on his employer's business. The authorities did not warrant a finding that the quay in the present case was an access to the ship. The workman's presence on the quay was as a member of the public whose right to be there had not been interfered with, and there was no finding that he was there solely as a member of the ship's crew. *Parker's case (cit.)* was referred to.

Senior counsel were not called upon.

LORD PRESIDENT—The chief engineer of the steamship "Ferryhill" went ashore by leave on 25th February 1916, not on ship's

business but on his own business, which I think immaterial in the case we have now to decide. He was returning to his ship and to his employment on a singularly dark night, and groping his way along the pier he stumbled and fell into the water and was drowned.

Undeniably at the place where he fell in he would have been on the occasion in question trespassing had it not been for his employment, for, although the harbour of Ramsgate and the quay at which the steamship was lying at this time were closed and no one who was not either in uniform or armed with a pass was entitled to be there, the chief engineer of the "Ferry-hill" was armed with a pass because he was in the employment of the ship, and for that reason and for that reason only, he was entitled to be in the place where he was. In other words it was the access selected by his employers by which to secure his return to the ship, and it was an access which was not available to the public but was available to him because of his employment as chief engineer. In this respect the case is similar to *Longhurst v. John Stewart & Son*, [1916] 2 K.B. 803, where Lord Justice Warrington says at p. 809—"I think it is equally clear that if the quay had been a public place the employment would have ceased when he reached it, for his right to be there would have been derived not from his contract but from his position as one of the public." So it would have been here in the time of peace but on the occasion in question it was quite otherwise.

Accordingly, for the reasons given by the learned Judges in the case of *Longhurst*, and more particularly those expressed in the opening passages of Lord Justice Pickford's opinion, which in my opinion are directly applicable to the present case, I think the representatives of the deceased here are entitled to claim compensation, because (first) it is common ground that the accident happened in the course of the man's employment, and (second), since he was in a position where he could only be by virtue of his employment when the accident happened, it arose out of his employment.

The decision which I propose seems to me to be in strict accordance with all the authorities, and especially the case of *Nicol v. Young's Paraffin Light Company*, 1915 S.C. 439, 52 S.L.R. 354, in this Division of the Court, a decision which, I think is *a fortiori* of the present.

I move your Lordships that we answer the question put to us in the negative.

LORD MACKENZIE—I am of the same opinion.

In this case the learned arbitrator has held that the accident to the deceased happened in the course of his employment, and no argument was adduced to the contrary, or could be, because he was on shore with leave, and the fact that he was on shore for his own purpose and not on ship's business does not interrupt the course of his employment.

The argument which was maintained in support of the finding of the arbitrator is

that the accident did not arise out of his employment. The deceased missed his way owing to the darkness prevailing at that part of the pier indicated by the point B on the plan which has been made part of the case. The darkness at that point was due to the night being exceptionally dark, and to the stringent lighting restrictions imposed by the naval and military authorities, who had taken over control of the pier since the outbreak of war. To the portion of the pier between the point A on the plan and the gangway of the ship to which the deceased was making his way no one was entitled to have access except naval or military officers in naval or military uniform, or persons with a pass issued by the proper authorities. In this case the deceased had a pass, and was in possession of the pass when he re-entered the area at the point A.

It appears to me that in those circumstances the risk to which he was exposed when passing along the pier from the point A to where his vessel was moored was a risk which arose out of his employment. This is not a case where a seaman meets with an accident at a point where he is merely as a member of the public although proceeding towards his ship, and the law applicable to cases of that kind does not apply. In my opinion the opening passage in Lord Justice Pickford's opinion in the case of *Longhurst*, [1916] 2 K.B. 803, applies to the facts in the present case.

LORD SKERRINGTON—I agree with your Lordships. I think that this case falls within the principle which was applied by the Court of Appeal in the case of *Longhurst v. John Stewart & Son*, [1916] 2 K.B. 803. In one aspect the present case is a simpler one in favour of the claim for compensation, because no question here arises as to whether the employment was terminated at the time when the accident took place. The employment was continuous in the capacity of a ship's engineer, and the man having gone ashore on leave he perished in the course of his employment. But the question of difficulty is whether the accident arose out of the employment.

In the case of *Longhurst* it so happened that the place of the accident was a dock which was private property, and in that state of the facts the Court of Appeal came to the conclusion that the danger from which the man had perished was a danger specially incidental to the employment, and not a danger which would equally have affected any member of the public. In the present case we have not to do with a private dock but with a public dock, which, however, was temporarily taken possession of by the Admiralty, and subjected to rules and regulations that put it in very much the same position as a private dock. And we have a finding in fact to the effect that the deceased was present that night at the place of the accident simply because he was a member of the crew of this particular ship, and that if he had not been in that position he would not have had the pass which authorised him to be present there.

In these circumstances I think that the

proper inference from the proved facts is that the deceased did meet his death by an accident not merely in the course of the employment but arising out of the employment.

LORD JOHNSTON was absent.

The Court answered the question in the negative.

Counsel for the Appellant—Christie, K.C.—A. M. Mackay. Agents—Murray & Brydon, S.S.C.

Counsel for the Respondents—Sandeman, K.C.—Lippe. Agents—Boyd, Jameson, & Young, W.S.

Saturday, March 17.

FIRST DIVISION.

[Scottish Land Court.

ROGERSON v. VISCOUNT CHILSTON.

Landlord and Tenant—Smallholder—Succession—Improvements—Qualifications of Landholder—Residence on or within Two Miles of the Holding—Crofters Holdings (Scotland) Act 1886 (49 and 50 Vict. cap. 29), sec. 8—Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), sec. 2 (1) (i) and (2).

The Crofters Holdings (Scotland) Act 1886, as amended by the Small Landholders (Scotland) Act 1911, section 1, enacts—Section 8—“When a [landholder] renounces his tenancy . . . he shall be entitled to compensation for any permanent improvements. . . .”

The Small Landholders (Scotland) Act 1911 enacts—Section 2 (1)—“In the Crofters Acts and in this Act . . . the word ‘holding’ means and includes (ii) As from the commencement of this Act . . . every holding which at the commencement of this Act is held by a tenant from year to year who resides on or within two miles from the holding and by himself or his family cultivates the holding with or without skilled labour (hereinafter referred to as an existing yearly tenant). . . .” (2)—“In the Landholders Acts the word ‘landholder’ means and includes . . . every existing yearly tenant . . . and the successors of every such person in the holding being his heirs or legatees.”

The heir of an existing yearly tenant of a small holding, who died on 12th August 1912, possessed and cultivated the holding after the yearly tenant’s death, although he did not reside on or within two miles of the holding, and on 10th October renounced, by intimation to the landlord, the tenancy as from Whitsunday 1913 and separation of the crop of 1913. He vacated the holding at Whitsunday 1913 except as regarded the arable land, and a new tenant entered. The heir claimed compensation for the improvements on the hold-

ing. *Held* (per the Lord President, Lord Mackenzie, and Lord Skerrington) that residence on or within two miles of the holding was not a continuing condition of the status of landholder, that the heir was a landholder, and as such was entitled to claim compensation. *Dis.* Lord Johnston, who held that the heir was not entitled to compensation under the Small Landholders Acts as his notice of renunciation and his actings had been under the Agricultural Holdings (Scotland) Act 1908.

John Rogerson, *applicant* and *appellant*, brought a Special Case in an application by him to the Scottish Land Court against Viscount Chilston, *respondent*, to fix the compensation due to the appellant as a landholder in respect of the improvements on the holding of Mill-lands of Shieldhill executed or paid for by his immediately elder brother William Rogerson junior and his father William Rogerson senior.

The Case stated—“1. At the commencement of the Small Landholders (Scotland) Act 1911, on 1st April 1912, the late William Rogerson junior was resident and cultivating tenant from year to year of the holding of Mill-lands of Shieldhill, consisting of a cottage, outhouses, and seventeen acres or thereby of land situated on the estate of Baads and Craigs, and at a yearly rent of £15. The said William Rogerson junior had succeeded his father William Rogerson senior as tenant of the holding on the death of the latter in June 1886 during the currency of a lease of the holding for nineteen years from Whitsunday 1868 granted by the then proprietor to the said William Rogerson senior.

“2. The said William Rogerson junior continued to be tenant of the said holding until his death on 12th August 1912.

“3. The said William Rogerson junior left a settlement by which he bequeathed the holding to the applicant John Rogerson.

“4. William Rogerson junior was predeceased by his wife without issue. John Rogerson was the immediately younger brother and the nearest heir-at-law of the said William Rogerson junior. No intimation of the said bequest was made to the landlord or his known agent by the applicant.

“5. No notice was given by or on behalf of the proprietor in terms of section 22 of the Act of 1911 either to the applicant or to the next heir of the said William Rogerson junior.

“6. In reply to an inquiry by the proprietor’s factor on 7th October 1912, the applicant on 10th October 1912 gave notice of renunciation by him of the tenancy of the said holding to take effect at Whitsunday and separation of crop 1913, which was accepted by the proprietor’s factor. He also intimated a claim for compensation. Negotiations between parties as to this claim followed, which did not result in agreement. At Whitsunday 1913 the applicant vacated the holding, except as regards possession of the arable lands under crop, and another person entered on the tenancy of the holding under a lease concluded in or before March 1913.