

been ordered to pay the costs of the two appeals in the Courts below. These costs must be repaid to them by the respondent, and they will also have their costs of this appeal.

Judgment appealed from reversed.

Counsel for Appellants—D. McCarthy, K.C.—S. F. Spence. Agents—Batten, Proffit, & Scott, Solicitors.

Counsel for Respondent—Foulds—P. H. Bartlett. Agents—Poole & Robinson, Solicitors.

HOUSE OF LORDS.

Friday, May 5, 1911.

(Before the Lord Chancellor (Loreburn), Lords Ashbourne, Alverstone, and Shaw.)

OWNERS OF THE SHIP "SWANSEA VALE" v. RICE.

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

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), sec. 1—“Arising out of and in the Course of the Employment”—Evidence—Seaman—Unexplained Drowning—Inference of Fact by Arbitrator.

A ship's officer was on duty upon deck on a ship at sea on a fine calm day. He disappeared. Earlier upon the same day he had complained of being sick and giddy. There was no further evidence to explain the disappearance. The County Court Judge held that his death had occurred by accident arising out of and in the course of the employment.

Held that the facts warranted the conclusion of the County Court Judge.

Marshall v. Owners of s.s. "Wild Rose" [1910] A.C. 486, 48 S.L.R. 701, distinguished.

A ship's officer disappeared at sea under circumstances stated in rubric and in the judgment of the Lord Chancellor. His dependants claimed compensation from his employers, and the County Court Judge found that the deceased was drowned through an accident arising out of and in the course of his employment. His award of compensation was affirmed by the Court of Appeal (COZENS-HARDY, M.R., FLETCHER MOUTON, L.J., *diss.* BUCKLEY, L.J.). The employers appealed.

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

LORD CHANCELLOR (LOREBURN)—I am glad that the learned counsel who addressed to your Lordships such a concise and admirable argument recognised the true value of decided cases in connection with an argument like this. Cases are valuable in so far as they contain principles of law. They are also of use to show the

way in which Judges regard facts. In that case they are only used as illustrations. Judges are not laying down law when they are explaining their reasons for coming to a conclusion of fact. It seems to me that you have to decide each case upon its own facts, the question here being whether there is any evidence to justify the County Court Judge arriving at the conclusion at which he did arrive. I must point out that what is evidence and what is merely guessing is a matter which cannot be defined. What you want is to weigh probabilities, if there be proof of facts sufficient to enable you to have some foothold or ground for comparing and balancing probabilities at their respective value, the one against the other. In the present case employment on board ship necessarily exposed this unfortunate man to the danger of falling overboard. We have knowledge of certain things. He was on board this ship in the course of his employment, and therefore the accident, if it were one, happened in the course of his employment. Unquestionably he fell overboard in one way or another. That is obvious. Under these circumstances, if you exclude the possibility of suicide or murder, it must have been an accidental falling overboard, and there was an injury arising out of an accident arising out of his employment. Was it an injury or accident arising out of his employment? We know that this man at an early hour complained of being sick and giddy. He was on deck discharging a most responsible office at the very time when he disappeared from the ship. It is natural to suppose that he might be at the side of the ship for the exact purpose of his duty. It was possible also that he might have been there because he was seized with a feeling of sickness. If he fell overboard, as undoubtedly he did, by slipping or losing his balance while at the side discharging some duty, that would be an accident arising out of and in the course of his employment—looking out, for example, or anything of that kind, then unquestionably the accident arose out of his employment. If he was taken giddy while at the side, of course the accident arose out of his employment. I think that it would be the same if, taken by nausea, he went to the side to vomit. That also would be an accident arising out of his employment. He might have been going to examine the lifeboat. All these things were possible and not an improbable explanation of what happened. The other alternatives were suicide or murder. If you weigh the probabilities one way or the other, the probabilities are distinctly greater that this man perished through an accident arising out of and in the course of his employment. I am quite certain that the County Court Judge was entitled to come to this conclusion. Under the circumstances I agree with the opinion of the Court of Appeal. I think that this appeal ought to be dismissed with costs.

LORD ASHBOURNE—I agree. I think on the facts that there was ample warrant for the County Court Judge to arrive at the

conclusion at which he did arrive. This man met with his death by accident arising out of and in the course of his employment. Here was a man of experience, of good character, with everything to make him careful, in charge of a new ship, the principal officer beginning his watch and requiring to have his eyes about him. He was there without any suggestion of suicide or any criminal act on the part of others which could have led him into danger or difficulty. He went on his watch not feeling well, but with an attack of giddiness. Is it a strong presumption to reach the conclusion that it must have been by some accident that a man of this character met his death by falling into the sea? It is impossible to measure the facts of one case by the facts of another, but I have no difficulty in arriving at the conclusion that this appeal should be dismissed with costs.

LORD ALVERSTONE—I concur.

LORD SHAW—This case appears to me to raise no difficulty with regard to the distinction between inference in the ordinary case and conjecture. The facts are simple. A man engaged in a variety of duties is

sent in a sick and giddy condition to perform those duties. In such a position his duty takes him into a position of danger. He has to pace to and fro upon the deck. I tender my assent to the proposition that it is impossible in all cases of precedent or alleged precedent to go by analogy of facts. Few cases arise in ordinary life, or in the law courts, in which such analogy is complete, and unless it is complete it must lead to dangerous conclusions. In the case of *Marshall v. Owners of the Wild Rose* (48 S.L.R. 701, [1910] A.C. 486), I specially reserved the case of a sailor whose life is sacrificed under circumstances of mystery. I see no occasion to differ from, but much to incline me to agree with, the judgment in the case of *Mackinnon v. Miller* (46 S.L.R. 299, 1909 S.C. 372), and in particular with the judgment of Lord Dunedin.

Appeal dismissed.

Counsel for Appellants—Atkin, K.C.—L. M. Richards. Agents—Botterell & Roche, Solicitors.

Counsel for Respondents—D. Villiers Meager—R. C. Ollivant. Agent—John T. Lewis, Solicitors.