

HOUSE OF LORDS.

Thursday, June 1, 1911.

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

OWNERS OF S.S. "RAPHAEL"

v. BRANDY.

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

*Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), sec. 9, Sched. I, 2 (b)—Compensation—Amount—Concurrent Contracts of Service—Service in Royal Naval Reserve.*

The Workmen's Compensation Act 1906, section 9 (1), enacts—"This Act shall not apply to persons in the naval or military service of the Crown."

A stoker was injured by accident while in the appellants' employment. At the same time he was a member of the Royal Naval Reserve and in receipt of an annual retainer of £6. In consequence of the accident he was discharged from that service and lost the retainer.

Held that in assessing the amount of the weekly compensation payable by the appellants, the amount of the stoker's earnings from the Royal Naval Reserve must be taken into account, and that section 9 of the Act only operated to prevent liability upon the Crown in respect of persons in its naval or military service.

A stoker was injured by accident in an employment while concurrently employed in the Royal Naval Reserve as stated in rubric *supra*. In assessing the amount of compensation the County Court Judge took into account the amount of the stoker's retainer paid to him by the Royal Naval Reserve. This finding was affirmed by the Court of Appeal (COZENS-HARDY, M.R., and FLETCHER MOULTON, L.J., *diss.* FARWELL, L.J.).

The employers appealed.

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

LORD CHANCELLOR (LOREBURN)—In my opinion the judgment appealed from is right, and the appeal should be dismissed. I agree with the Master of the Rolls. The Workmen's Compensation Act applies and the object and effect of section 9 are only to exempt the Crown from being rendered liable under the Act. The rights and liabilities created by the Act apply to cases between the Crown and persons not in the naval and military services. The point was made that there was no contract with the Crown at all here. But the authorities cited went no further than to say that when there was an engagement between the Crown and military or naval officers the Crown was always entitled to determine it at pleasure, and that no obligation

contrary to that would be recognised as valid in law. It was then said that there were no concurrent contracts here. I cannot accept that view, and I agree with Fletcher Moulton, L.J., that this is almost a typical case of concurrent contracts, because the claimant was being paid wages for his services on board a merchant ship and at the same time he was earning about £6 a-year by virtue of his engagement with the Crown, and he was giving an equivalent for it, because he was keeping himself fit for doing the work which he had stipulated to do. With regard to the contention that the Crown was not an employer, that is only another way of putting the point, which I think cannot be sustained on the construction of section 9 of the Act. It is manifest that the Act contemplated that the Crown might be an employer, and it was, I think, so intended in the schedule to the Act.

LORD ATKINSON—I agree.

LORD SHAW—In the case of the naval and military service it is clear there is a peril to life and limb, and in such circumstances it is not unnatural that the Crown as an employer should not be liable for consequences imposed upon ordinary employers. Therefore section 9 was inserted. It appears to me in this case there was service under the Crown, and that the Crown was an employer, and that this was a case of concurrent contract. If the view of Farwell, L.J., were to prevail it would deprive this unfortunate man of every benefit conferred upon persons in his position. In calculating the scale of compensation to be paid to the respondent it appears to me a sound construction of the Act to include the £6 allowance, and I think that the judgment of the Master of the Rolls and Fletcher Moulton, L.J., was sound.

LORD ROBSON—I concur.

Appeal dismissed.

Counsel for Appellants—Atkin, K.C.—Segar. Agents—Botterell & Roche, Solicitors.

Counsel for Respondents—Stewart Brown—H. Harding. Agents—Windybark, Samuelli & Lawrence, Solicitors.

## HOUSE OF LORDS.

Friday, June 2, 1911.

(Before the Lord Chancellor (Loreburn),  
Lords Atkinson, Shaw, and Robson.)KITCHENHAM v. OWNERS OF S.S.  
"JOHANNESBURG."(ON APPEAL FROM THE COURT OF APPEAL  
IN ENGLAND.)*Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1—“Accident Arising Out of and in the Course of the Employment”—Seaman Returning to Ship—Lawful Absence.*

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

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

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

The widow appealed.

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

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

ings of fact which the County Court Judge states, while at the same time giving his view of the law, I think that it arose from a risk common to everyone—namely, falling from a quay into the water—and was not specially connected with the workman's employment.

LORDS ATKINSON, SHAW, and ROBSON concurred.

Appeal dismissed.

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

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

## HOUSE OF LORDS.

Tuesday, June 13, 1911.

(Before the Lord Chancellor (Loreburn),  
Lords Atkinson, Gorell, and Robson.)TAMWORTH COLLIERY COMPANY  
v. HALL.(ON APPEAL FROM THE COURT OF APPEAL  
IN ENGLAND.)*Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 13, Sched. I, 1 (a) (ii)—Partial Dependence—Earnings—Cost of Maintenance of Workman by Dependand—Value of Workman's Services to Dependand.*

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

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

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