

result than that which the evidence for the applicant gave. I think therefore that although it is competent to the employer to suggest in argument by his counsel, without necessarily calling witnesses to prove it, that this, that, or the other might have been done, when one comes to examine the things which are suggested here they have very little substance in them, and certainly do not so far balance the substantial evidence which was given by the applicant to the effect that no prejudice in the defence was caused as to make it possible to interfere with the learned County Court Judge's finding that in fact no prejudice in the defence was caused.

LORD PARMOOR—I concur. I propose to say a few words only on the second point, that is, the question of notice. I should gather from the judgment of the learned County Court Judge that he found that the notice was not given in fact as soon as practicable, and it is for that reason that importance is attached to the proviso to section 2 of the Act which raises the question as to what is the character of the defect or inaccuracy which would be a bar to the maintenance of proceedings under the Workmen's Compensation Act. In my opinion it is very necessary to regard the words themselves, and the words are these—"The want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not and would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy." Now it has been found in this case in the proceedings for settling the claim that the employer has not been prejudiced in his defence by want or defect or inaccuracy. Therefore I apprehend the only question to be whether in coming to that conclusion there is any error in law on which the learned County Court Judge can be put right in the Court of Appeal or in this House. In my opinion there is no error in law of that kind. I think there is evidence upon which it was competent for him to come to the conclusion which he did, and so long as there is competent evidence the weight of that evidence is wholly for him and not for any other court at all.

I only wish to say in addition that I think some difficulties in these cases have arisen from giving too much weight to theoretical consideration; that each case must be determined on its own facts; and having regard to the form which the case took in its hearing before the learned County Court Judge, as soon as we put theoretical considerations on one side I think there was ample evidence on which in this case the learned County Court Judge was entitled to come to the conclusion at which he did.

Appeal allowed, and the award of the County Court Judge restored, with expenses.

Counsel for the Appellants—Compton, K.C.—C. Atkinson, K.C.—Stuart Bevan.

Agent—J. Woodhouse, for T. Dootson, Solicitor, Leigh.

Counsel for the Respondents—Rigby Swift, K.C.—Singleton. Agent—W. Pen-gree Ellen, for Peace & Darling, Solicitors, Liverpool.

## HOUSE OF LORDS.

Monday, March 1, 1915.

(Before Earl Loreburn, Lords Atkinson, Parker, Sumner, and Parmoor.)

WOODS v. THOMAS WILSON, SONS,  
& COMPANY, LIMITED.

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

*Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), Sched. 1 (1) (a)—Injury by Accident—Question whether Death Resulted from the Accident or from the Deceased's Diseased Condition.*

A coalheaver was struck in the abdomen by a fall of coal while coaling a ship. He died from peritonitis, and the medical evidence showed him to have been suffering from chronic appendicitis. The question arose whether his death was the result of the blow or of the disease. The arbitrator found his widow entitled to compensation on the ground that the blow was the immediate cause of death though it would not have killed a healthy man. *Held (diss. Lords Parker and Sumner and rev. decision of Court of Appeal, 6 B.W.C.C. 750), that the award proceeded on sufficient evidence.*

The facts appear from their Lordships' considered judgment, delivered as follows:—

EARL LOREBURN—This is a workman's compensation case, tried before His Honour Judge Fossett Lock with a medical assessor. He found that the workman died from an injury by accident arising out of and in the course of his employment, and that the death was caused in the sense of being accelerated by the injury in question. In the Court of Appeal two judges said that there had been an accident, but a majority also held that there was no evidence to support the finding that it caused or accelerated the death. In the argument before your Lordships the employers' counsel maintained that there was no evidence of accident, and no evidence of its having either caused or hastened death.

I know from experience that there is nothing upon which judicial opinion is more apt to be divided than the question whether or not there is evidence that will support a County Court Judge's decision in cases of this kind. The test is simple enough—what a reasonable man could find. But who is to find the standard reasonable man? I desire therefore to speak with reserve, but I must say what I think myself, with all respect to those who take a different view.

The deceased was a coalheaver at the respondents' colliery. On the 12th March he had started work between midnight and 1 a.m., had worked all night, and came home for breakfast after 8 a.m. He was a man of "fairly good health." The man who worked by him, and had known him twenty years, never knew him ill at work before. He returned to work after breakfast on this morning a little before 9 a.m., and a little later met with what is alleged by the applicant to have been an injury by accident. He was bunkering the ship "Calypso" with baskets in dock at Hull, scooping the coal into the basket. His mate, who was next him, saw what happened, and I will quote his words from the judge's note—"The coals came down, the basket was against his stomach. They (the coals) came running down on it, and he walked away saying, 'I have heard something crack,' pointing to his stomach." And the witness adds that the man could not scoop any more, and seemed in pain and went away early.

The same witness in cross-examination says—"Way to fill baskets. Bottom of basket is on floor of lighter. Basket between us and the coal. With your shovel you pull the heap of coal and let it run down into the basket. Each has one. I was busy at my work. His exclamation 'something cracked' the first I heard of it. I saw the coal come rushing down. I dodged away, otherwise I should have had my knee struck." Re-examined he said—"The coal came down that much of a rush it knocked the basket against him." After this happened the man went home "in great pain, and sick—he laid down on couch and could not rest." And then the doctor came and the unfortunate man was sent to the infirmary on the 16th, was operated upon the same day, and died on the 19th March, one week after what happened to him while scooping the coal for the "Calypso." In my opinion there was direct and ample evidence that this man sustained an injury by accident.

I now turn to the medical evidence. I have no medical knowledge of my own, and the learned County Court Judge had a medical assessor. I think he had a right to act upon the opinion of the assessor, not of course as to events but as to matters of opinion, such as medical inferences from proved facts, and this whether there was or was not any corresponding opinion on the part of professional witnesses. I do not know what is the use of assessors except to furnish a court with the means of checking, and if need be of either supplementing or superseding, the opinions of witnesses so far as they rest on medical inferences. If it is not so, then the court would be at the mercy of skilled witnesses.

Looking at the evidence given by the three doctors as to fact, by which I mean physical fact—what was seen and found in the physical condition of this patient—there was little if any contradiction. Dr Tideman as well as the wife say that he vomited. Dr Tideman says that when the man was stripped there was nothing to correspond with his account of what had happened to

him, which account is not before us. This means, I suppose, that there were no external marks of bruising. The patient's bowels did not act during this last illness, and there was obstruction. Then there was an operation at which Dr Norbury was present. At the operation appendicitis was found some weeks old and a perforation of the bowel about 12 inches from the appendix. At the post-mortem examination, at which Dr Robinson was present, another perforation was found, 6 inches from the first, which two of the doctors who gave evidence thought was the cause of death. There was no bruise either externally or internally.

This is all the evidence of fact that we have from the doctors put compendiously and separating fact from opinion.

When the doctors' opinions are compared, that is to say their medical inferences, there is some difference but not much dogmatism. Dr Tideman, when he first saw him on the day of the accident, thought the patient "had a bruised bowel and was vomiting from the shock, consistent with recent injury by blow on abdomen." He heard the account of the accident given in court and says "his condition was consistent with that story." He thought it might be hernia. He "did not put it down to appendicitis. 'I should not say that obstruction of bowel or vomiting were consistent with appendicitis, unless very acute.'"

Dr Norbury saw the patient on the 16th March. "He seemed to be in pain in the abdomen. An opinion for operation was formed by physician on the diagnosis that he was suffering from malignant disease." At the operation appendicitis and a perforation were discovered. "Perforation," says Dr Norbury, "must have been very recent, not more than an hour I should think." He proceeds—"My opinion that ulcer had formed from stercoraceous matter. Suffering from appendicitis. Ulcer in the bowel. It might have been weeks. It was certainly more than days. A blow on intestines in the state in which they were would probably have had a great deal of effect and would bruise and bring about perforation sooner than otherwise." He adds that he "conducted the post-mortem and found same conditions as at operation, and in addition another perforation 6 inches above the first. I think that must have been not more than twelve hours" after the operation or before death. (Counsel agreed that this was what he meant to say.) "It is possible that they (the perforations) might have been brought on by blow, but if I had not heard of it I should not have guessed it. Condition of appendicitis would make bowels more susceptible to blow. Death due to peritonitis following second perforation." Then he says that the perforation was the sign of an ulcer, and in his opinion was due to an ulcer which had existed and disappeared, that it was possible a blow might have done it, that appendicitis might cause perforation, that possibly bruising of the bowel might have caused the second perforation, but that there was no sign of bruising in the vicinity of the perforation,

and he thinks there would have been if there had been a heavy blow within three or four days. He says that appendicitis had caused partial obstruction of the bowel and distention of the small intestine—before perforation. "Perforation may occur from appendicitis. To bruise the bowel there would have to be crushing of the body. Appendicitis is not usually followed by perforation. If I found perforation with appendicitis I should consider whether there was some other cause. Bowel suffering from appendicitis more susceptible to blow, and blow might start an ulcer." In answer to the learned Judge he says—"Appendicitis might have existed for a month, might have been in a chronic state."

Dr Robinson thought that the patient was suffering from chronic appendicitis, perhaps for four or six weeks, which would cause partial or possibly complete obstruction of the lower bowel, which would tend to obstruction of small intestines. In his opinion "caused by distension due to appendicitis. A weakened bowel giving way. It may have been ulcer. It was possible for it to have occurred without a blow. Most perforations do occur without any blow. I do not think an accident four days before would have produced those perforations. Found no bruise on bowel. Would have expected it." He found the deceased had been eating apples and thought that quite a possible cause of death. He said the lower bowel was in a disordered state before his death—"I am sure it was due to appendicitis." Finally he says that an unhealthy bowel would be much more likely to be damaged by a blow than a healthy one.

I have referred to all the material evidence of medical opinion, and it is quite manifest that each of the doctors thought that more than one cause and more than one combination of sequences of causes may have led to this man's death, and each rather preferred one combination or sequence to others. Dr Robinson decidedly so. Medicine is a science in which there often is a difference of opinion among most able men, and will always be because the causes of disease and death may be very difficult to determine. In this case among possible contributory or originating causes two of the doctors mention a blow. The learned Judge thought so after consulting his medical assessor. He had to choose between a variety of possible explanations, and he found that "the physical condition of the man at his age would be likely to produce and did produce a weakened bowel, and that an accident of this sort is just the sort of thing to have caused and did cause acute injury to the weakened bowel, which otherwise might have lasted for a considerable time and not interfered with his efficient work, and that the injury so caused gradually produced perforation and so accelerated his death." In choosing between the view that this blow accelerated death and the view that it did not he looked at events as well as opinions—"The evidence appears to me to be overwhelming that before the accident he was an efficient workman though old, and that immediately after it he was

completely ineffective and thrown into such a condition that he first collapsed and then died within a few days. I come to the conclusion, therefore, that his death was accelerated—that is to say, caused—by the injury resulting from the accident." In my opinion that ends this case.

To my mind this reasoning was quite legitimate. The blow was instantly followed by disablement from work and by pain in the region struck and almost immediately by vomiting. Pain in the same region and vomiting continued to some extent at all events, and in a week the man died. If there were nothing else I should say that these facts were evidence of an injury by accident and a resulting death. It is conceivable, as counsel argued, that the commencement of the illness though simultaneous with the blow may have been due simply to appendicitis seizing him at that precise moment. It would be a curious coincidence. It seems infinitely more probable that the commencement of the illness was due to the blow. But there is something else, namely, the medical evidence both of physical fact and of opinion. The doctors somewhat differ as to the inference they draw from those physical facts, but two of them think that the condition which led to death might have been brought about by a blow. This does not displace or contradict, but in some degree confirms, the conclusion which would be warranted from the story of what happened to the man and how it affected him on the instant and soon after. The learned Judge thought so and the medical assessor agreed, for it is clear when his judgment is read that he took the opinion of the assessor on the medical effect of the evidence in the light of his medical experience and knowledge, and judged of the legal effect for himself. It is quite true that every case must be proved, and something more is needed than a state of facts which is consistent with one view or the other. That something more is supplied if there is a probability one way or other. No one can frame a formula by which you can measure probabilities. We must judge in each case as we would in other affairs of life.

Questions arising under this Act are apt to introduce what Lord Macnaghten once called "the endless perplexities of causation," which I wish to avoid. But certain propositions are, I think, now settled. A court of law has no jurisdiction to set aside an award upon a finding of fact if there is any evidence to support the finding, however much the court may disagree with the finding; and it is enough to bring the case within the Act if injury by accident in any material degree accelerated the death. That, I think, results from the case of *Clover, Clayton, & Company v. Hughes*, 1910 A.C. 242, decided in this House. I think also that an arbitrator under this Act is entitled to act upon the advice of his medical assessor, not of course on events or actual facts, but upon matters of medical opinion and upon medical inferences.

I should have been content simply to accept the judgments of the learned County Court Judge and of Kennedy, L.J., but have

thought it due to the learned Judges in the Court of Appeal and those of your Lordships who differ from me that I should explain my own reasons at greater length.

LORD ATKINSON—I concur. In this case the County Court Judge of Yorkshire has found that Thomas Woods, the husband of the plaintiff, on whom she was solely dependent, on the 12th March 1913, while in the defendants' employment as a coalheaver, sustained an injury by accident arising out of and in the course of his employment which resulted in his death on that day week, the 19th March 1913.

The question for decision is whether there was evidence before the learned Judge upon which he could reasonably have found as he did find. The Court of Appeal (Kennedy, L.J., dissenting) decided that this question should be answered in the negative, and from that decision this appeal has been brought.

Thomas Woods was a man seventy-one years of age. His wife stated that he had fairly good health, and had fairly regular employment as a coalheaver; that she did not know the amount of his wages, but that from the date of their marriage on the 31st August 1910 up to his death he gave her £1 per week for the food for both of them and paid beside the rent of their house. He also paid for his clothes. No evidence was given as to whether he had any resources other than his wages. The wife stated that on the 11th March he went out to work at midnight, came back to breakfast somewhat after eight o'clock on the morning of the 12th, and went out again to work at twenty minutes to nine o'clock on that day.

Bradshaw, a coalheaver and fellow-workman, then takes up the story. He states that he was working with the deceased on the 12th till 10 a.m. in the lighter "Derwent" bunkering with baskets the ship "Calypso," which lay alongside; that there were no shifts, from which it may be taken, I think, that the deceased was engaged at this same work all the night of the 11th; that until the happening of what is styled the accident everything went on as usual; that he knew the deceased for twenty years; that he worked with him for many years, and that he never knew him to be ill at work.

From this evidence the conclusion might, I think, most reasonably be drawn that the deceased was in fairly constant work, that he was a fairly efficient workman of his kind, and that the internal disease (if any) with which he was afflicted was not in such an advanced or acute stage as to cause him much pain, or to incapacitate him in any way from bearing the strains and undergoing the somewhat heavy labour involved in coalheaving. This conclusion is fortified by the medical evidence, for notwithstanding all the pain the deceased endured, and the vomiting with which he was afflicted during the week before his death, the post-mortem examination revealed that the appendicitis which he suffered from was according to Dr Robinson not acute but chronic in character and of considerable standing. He fixed its duration at from

four to six weeks, while Dr Tireman stated that vomiting was not consistent with appendicitis unless that disease was in an acute stage.

Well, about ten o'clock on the morning of the 12th March something happened to Woods. He had placed his basket on the floor of the lighter. The upper part of it was against his stomach. It must have been a large basket, as it holds when full 20 stone. He was in the act of scooping the coals down into this basket with his shovel when they came down on the basket with such a run or rush that Bradshaw had to dodge them to prevent his knees being struck. Two or three stone of coals fell apparently into this basket. There were lumps in it, one, the largest, being 1 foot 6 inches by 1 foot in size.

Now Bradshaw distinctly states "that the coal came down with that much of a rush that it knocked the basket against him" (Woods), which, having regard to the earlier portion of this witness's evidence, must mean against Woods' stomach, which was against the basket. Immediately—instantaneously it would appear—Woods was incapacitated from work. He could not scoop any more coals. He could not fill his basket. He said he heard something crack, pointing as he said so to his stomach. He sat down on the "kelson" and seemed to be in pain. He left for home at 11:45, arriving there a little after twelve o'clock. He was in great pain and sick, which having regard to the other evidence must mean, I think, he was vomiting. He lay down upon the bed but could not rest. Dr Tireman saw him between 9:30 and 10 that night. He (Woods) complained of pains in the abdomen and said he had been vomiting. This doctor stated that vomiting from shock was consistent with a recent injury by a blow on the abdomen, and that he was of opinion that Woods had a bruised bowel, and that his condition was consistent with the story, which must mean the story told by the two witnesses James Bradshaw and Florence Woods, his wife, in addition to what the deceased might have himself told the doctor, if anything.

Well, things went on in the same way until he was operated upon on the 16th March. It was then found that in addition to chronic appendicitis his bowel was perforated at a point about 12 inches distant from the appendix. The perforation was very recent in the doctor's opinion, existing for not more than an hour before the operation.

Now this change in the condition of things in the abdomen of the deceased, the symptoms of which were pain and inability to work, followed in a couple of hours by vomiting and culminating in perforation of the bowel, must have been caused (including in that word accelerated or materially contributed to) by the basket, to use Bradshaw's words, having knocked against the stomach of the deceased, or, as nothing else appears to have happened to him, been brought about spontaneously by the action of the deceased's diseased condition and independently of this blow. But the pain and inability to work, and the expression

that the deceased heard something crack, followed instantly on the blow.

It would be strange indeed if these symptoms, then appearing for the very first time, and appearing most suddenly, should synchronise so precisely as this with the infliction of this blow if they had no connection directly or indirectly with it. In my view the County Court Judge would have been fully justified in regarding this latter as a most improbable coincidence; the more especially since it is stated by Dr Robinson that Woods' lower bowel was in a disordered state before his death, that this was due to appendicitis, and that an unhealthy bowel would be much more likely to be damaged by a blow than a healthy one. Dr Tireman, too, stated that a bowel suffering from appendicitis became more susceptible to a blow, that a blow in such a case might start an ulcer, and that a blow on intestines in such a state as those of the deceased were found to be "would probably have a great effect, and would cause and bring about perforation sooner than otherwise."

Though there was no proof of any obstruction in the bowels of the deceased before this accident, his bowels were not moved during his last illness, and Dr Norbury was of opinion that appendicitis had caused partial obstruction of the bowel and distension of the small intestine before perforation.

The puzzle therefore remains, what, on the reasonable probabilities of the case, brought about the instantaneous pain and weakness and the quickly-ensuing vomiting unless it was the so-called blow? None of the medical men say that this blow could not owing to the condition of the deceased have been the cause of these symptoms. Their appearance is in my view much more consistent with the theory that they resulted from the blow than that they arose spontaneously and were unconnected with it. Indeed if the first perforation had been the cause of death it would, I think, have been quite possible to hold that there was not ample evidence to support a finding that the death of the deceased had been caused by the blow, using that word in the sense I have mentioned.

But if that be so the theory that no blow not causing external or internal marks of violence could cause perforation must be put aside as unsound and misleading. Well, if this alleged blow or bruise or push, whichever it was, though leaving no external or internal traces of violence, was sufficient to set up a state of things which culminated in perforation on the 16th, what is there improbable in the supposition that the state of things so set up culminated in causing, two or three days later, another perforation 6 inches below the first in a bowel disordered "right away up," as Dr Robinson described it.

It would appear to me that the same cause, the blow, might well produce perforations at two points separated by only 6 inches in an intestine so diseased as was that of the deceased, even though the second might not appear for three days after the

first. Dr Norbury says it is possible that both perforations might have been brought on by a blow.

Their theories in reference to this second perforation do not agree. This gentleman says he had difficulty in giving an opinion upon it, but that bruising of the bowels might cause it; and Dr Robinson, that it was caused by distension due to appendicitis, or it may have been by an ulcer. No ulcer was found at the seat of either perforation, either at the time of the operation or at the post-mortem examination.

The ulcers, if they ever existed, had in their opinion disappeared, but if they existed at any time they could scarcely, one would think, have existed before the blow and yet have left the deceased so free of pain and so able to work as he is proved to have been; while if they only came into existence after the blow it certainly appears to me that, having regard to the nature of the symptoms instantly following the blow, the much more reasonable conclusion is that they were but the culmination of the injuries caused by the blow.

The suddenness with which these symptoms followed the blow, coupled with the condition and action of the deceased before he received it, and the medical evidence as to the state of his intestines both when the operation was performed and subsequently at the post-mortem examination, lead reasonably, I think, to that conclusion. Demonstration in such case is impossible.

One must be content, looking at the substance of the thing, to accept what, having regard to the evidence taken as a whole, appears to be the most probable solution. It is quite true that evidence equally consistent with two conflicting propositions is not proof of either, but that principle has no application to two theories or conclusions of fact one of which is more probable than the other. Again, the County Court Judge was aided by a medical assessor. The very object of having such an assessor is that he may advise the Judge as to the pathological conclusions to be drawn as to the causes or effects of proved morbid conditions. It must be assumed that he did this. In my view therefore there was evidence sufficient to justify the County Court Judge so advised in coming to the conclusion that the second perforation—the cause of death—was the ultimate result of the diseased conditions set up by the blow the deceased received, and that the accident, the blow, caused death through the operation of these conditions, and that therefore the death of the deceased arose out of and in the course of his employment.

I accordingly think that the decision of the Court of Appeal was erroneous and should be reversed, the decision of the learned County Court Judge be restored, and this appeal be allowed, with costs here and below.

I confess I too have the same want of confidence in my own opinion as has been expressed by my noble and learned friend on the Woolsack, owing to the fact that so many of my colleagues have come to an opposite conclusion.

LORD PARKER—In my opinion the decision of the Court of Appeal was right and ought to be affirmed. The only question was and is whether there was any evidence from which the arbitrator could reasonably infer that the death of Thomas Woods, which occurred on the 19th March 1913, was due to or accelerated by a blow received by him in the course of his employment on the previous 12th March.

It appears that the deceased was a coal-heaver, and on the 12th March was engaged in coaling a vessel from a lighter. The method adopted was as follows:—On board the lighter there was a heap of coal, and each coalheaver engaged in the operation was supplied with a basket capable of holding about 20 stone of coal and with a shovel. In order to fill his basket with coal the coalheaver would place it on the floor of the lighter in close proximity with the heap, and leaning over it loosen coal from the heap in such a way that it would fall into the basket. When the basket was thus filled it would be swung mechanically on to the vessel to be coaled. On the 12th March Thomas Woods was leaning over his basket loosening coal from the heap in the usual way, his stomach being actually against the basket. There was a rush of coal down the slope of the heap, some of which entered the basket. After the rush there was 2 to 3 stone of coal in the basket, but there is no evidence how much of it consisted of coal carried down by the rush of coal in question or how much coal came down against the basket. The only witness of the incident says that the rush of coal was such that it knocked the basket against him. The blow, however, must have been in the nature of a push rather than a knock, for Woods' stomach was already against the basket. There is no suggestion that the blow was sufficient to push the basket, or Woods behind the basket, any distance along the floor of the lighter, nor of any physical object behind Woods between which and the basket he could have been crushed. The only other evidence of the force of the rush of coal is that it was sufficient to cause the coalheaver working next Woods to jump out of the way. This amounts to very little, and the force or violence of the blow may be taken as unproved.

Immediately after the rush of coal Woods dropped his shovel, pointed to his stomach, saying "I heard something crack," and walked away evidently in considerable pain. He did not resume work, but went home. Dr Tireman, a medical practitioner, saw him the same evening, and having heard his account of what had happened, and that he had vomited and had pain in the abdomen, thought he had a bruised bowel. Having, however, stripped and examined him, and finding nothing to correspond with his account, he ultimately diagnosed his complaint as hernia.

On the 13th and 14th March the patient's condition was much the same. On the 15th March he was worse, and Dr Tireman thought an operation for hernia advisable, and wrote to Dr Norbury, the house surgeon at the

infirmary. The patient was removed to the infirmary on the 16th March. His complaint having been there diagnosed as some malignant disease, an operation was determined on and performed the same day. The result was that the patient was found to be suffering from appendicitis of long standing and from a perforation of the bowel which had taken place shortly (not more than an hour) before the operation. The appendix was removed, the perforation repaired, and the bowel, which had not been moved at any rate from the 12th and was obstructed, was presumably evacuated.

The patient died on the 19th March, and the post-mortem examination showed that the death was due to peritonitis following a second perforation of the bowel which must have occurred after the operation.

What must be looked for therefore is evidence connecting the second perforation with the blow received on the 12th March. If there be such evidence it must be found in what was deposed to by the three surgeons called at the hearing. Now evidently Dr Tireman did not after examining the patient believe in the theory that the bowel had been bruised by a blow. After examining the patient he diagnosed the complaint as hernia. At the trial, after hearing the evidence as to what had happened on the 12th March, the most he could say was that the condition of the patient was consistent with that story. This might well be so even if such condition was in no way due to the blow thus received. He was not asked to give and did not give any opinion on the facts as revealed by the operation or post-mortem. Passing to Dr Norbury's evidence, it seems to me equally clear that he did not believe that either of the perforations was due to a blow. He admitted that both perforations might have been brought on by a blow, or by an ulcer caused by a blow, and that appendicitis would make the bowel more susceptible to a blow, but the idea would never have occurred to him if it had not been suggested. It should be noticed that his attention was not called to the evidence of the blow in fact received. Indeed this would have been useless, for the nature of this particular blow was not proved. The first perforation was, he thought, due to an ulcer of long standing formed from stercoraceous matter. He thought the second perforation was also due to an ulcer which had existed and disappeared, but appendicitis might cause perforation, and a blow bruising the bowel might do it, but there was no trace of a bruise, and a heavy blow within three or four days would leave traces of a bruise, and to bruise the bowel there would have to be crushing of the body. Lastly, Dr Henry Robinson deposed that the appendicitis was of long standing and would cause partial or possible complete obstruction of the lower bowel, and would tend to the obstruction of the small intestines above. He thought the second perforation due to obstruction caused by the appendicitis, a weakened bowel giving way, but it might have been caused by ulcer. The perforation was consistent with there hav-

ing been no blow. If it had been due to a blow four days before, he would have expected to find traces of a bruise, and there was no such trace. He therefore clearly thought that the second perforation was not due to a blow.

There is nothing therefore in the medical evidence to show that the second perforation and subsequent death was in any way connected with what happened on the 12th March. The medical evidence, indeed, points strongly the other way.

Where then is it suggested that the necessary evidence is to be found? Merely, as I understood the arguments addressed to your Lordships, in the fact that the series of events I have related immediately followed what happened on the 12th March. It must, of course, be admitted that if there had been evidence that the blow was of such a nature as naturally to lead to this series of events, the fact that this series of events followed might legitimately lead to the inference that it was due to the blow, more especially if no other cause could be suggested, but where the question at issue is whether the series of events which followed the blow is due to the blow, it cannot legitimately be argued, first, that the violence of the blow is manifest from the series of events which followed, and secondly, that the blow being thus established as violent, it will naturally account for the series of events in question. Such method of argument is in my judgment fallacious. It was suggested that it would be remarkable if the series of events which followed the blow were not due to the blow but to some other cause. This would, no doubt, be so if the blow were proved to be such as to lead to the series of events in question. But where there is no evidence as to the nature of the blow there is really nothing remarkable at all, especially where the series of events in question is otherwise adequately accounted for.

I therefore think the appeal should be dismissed.

**LORD SUMNER**—With diffidence I think that the judgment appealed from was right. It is important to remember that there were two perforations, and that Woods died of the second one. For some reason this was not sufficiently borne in mind during the examination of the witnesses. Nearly all the evidence was directed upon the first. After the first perforation there was hope that the operation might save his life; the second was hopeless. Whatever violence, if any, was done to Woods on the 12th March by the fall of the coals, it is only connected with the perforation of the bowel by the following steps—first, an internal bruise affecting a bowel already rendered more susceptible by chronic appendicitis, and partially obstructed with stercoraceous matter from the same cause; second, as the result, the formation of an ulcer; third, as the effect of the ulcer, perforation in the bowel, occurring shortly before the operation took place and probably on the way to the hospital.

I will assume that there was evidence on which it could be held that the incident of

the 12th March was a contributing cause of the first perforation on the 16th March. I can find none to connect it with the second perforation, of which Woods died on the 19th March. The surgeon who performed the operation thought that he might have recovered as the result of it; so far the operation had gone well. Owing to an admitted error in His Honour's note we do not know whether the second perforation occurred not more than twelve hours after the operation, or not more than twelve hours before the death. I do not doubt that it really is the latter, but it does not matter. Now no sign of any bruise was found at the post-mortem. Nothing was seen which was a distinctive indication of the effect of a bruise at all.

No doubt the second perforation, like the first, was the immediate result of ulceration, but no doctor says that the second ulceration might not well have occurred otherwise than as the consequence of the supposed bruise. No doctor suggests that the bowel was left in a state of stercoraceous obstruction after the operation, or that the dietary treatment was such as might cause renewed obstruction. The chain of events which may possibly have led to the first perforation stops short there, and is neither observed nor suggested with regard to the second. No one speaks of further vomiting after the operation or of further intestinal pain. There is uncontradicted evidence that a bowel affected by chronic appendicitis might be weakened and perforated without any extraneous occurrence at all. When there is a proved cause adequate to produce what happened, namely, death, it is not logical to resort to some other or additional cause unless its operation can be traced. I think there is no evidence of it. Those who purported to give such evidence were really speaking of the cause of the first perforation and passed the second by.

I think this is fatal to the unfortunate applicant's case, but I would further observe that in the absence of any positive sign of connection between the fall of the coal and the man's internal condition, this is only established if it is shown that such an extraneous causation is required to account for the observed internal condition or its consequence. The fall of coal is only shown to have been violent enough to cause injurious physical change if such causation be treated as already proved. Nothing else shows it. Thus, first, the contact with the basket might cause internal bruising if that contact was violent, and second, if that contact was violent it might cause internal bruising. This process proves nothing; it only goes round and round. I think the appeal should be dismissed.

**LORD PARMOOR**—I too give my opinion with some hesitation owing to the difference in judicial opinion.

The question in this appeal is whether there is any evidence on which within reason His Honour Judge Fossett Lock was justified in holding that the death of Thomas Woods was accelerated by an accident arising out of and in the course of his employ-

ment by the respondents. I agree in the exhaustive judgment of Kennedy, L.J., that there was evidence such as a court of law would recognise and on which it was competent to make the award outside the region of mere surmise, conjecture, or guess.

Woods was a coal heaver in the employ of the respondents. He enjoyed fairly good health, and appeared to be in good health when he went to his work on the morning of the 12th March. On that day he was engaged in filling a coal basket from coal coming down a slide. The basket was against his stomach when there was a sudden rush of coal on the basket. There is no evidence of the weight of the blow or push, but immediately after Woods seemed to be in pain and could not do his work. He went home and was in great pain and sick. He was attended by Dr Tireman, and was taken to the infirmary on the 16th March. An abdominal operation was performed. He was found to be suffering from appendicitis with perforation of the bowel. This perforation was recent, and was attributed by Dr Norbury to an ulcer in the bowel which had formed from stercoraceous matter. The perforation was repaired, but Woods died on the 19th March. A post-mortem examination disclosed a second perforation which had occurred after the operation, and death was due to peritonitis following the second perforation.

There is no doubt that Woods did meet with an accident on the 12th March arising out of and in the course of his employment. There is, further, no question that whatever might be the nature of the blow or push on the stomach of Woods, Woods was at once forced to discontinue his work, and on his return home suffered from severe pain and vomiting. I have formed no opinion whether this accident accelerated the injury which caused the death of Woods, and if this was a matter for the determination of the House, should hold that the materials are insufficient on which to come to a conclusion. On the other hand there was, in my opinion, undoubtedly evidence on which within reason it was competent for His Honour to award in favour of the claimant.

The evidence of Dr Tireman is directed to show that the symptoms which he saw were consistent with recent injury by a blow on the abdomen. Dr Tireman did not make a true diagnosis of the case. He wrote to the house surgeon of the infirmary suggesting hernia. If this was the only evidence it would do nothing more than show a state of facts consistent either with the view that the death of Woods was accelerated by the accident or was independent of it, and the award in favour of the appellant could not be maintained.

The evidence of Dr Norbury is far more specific. Dr Norbury assisted at the operation in the infirmary. He states that Woods was suffering from appendicitis, and that in his opinion an ulcer in the bowel had formed from stercoraceous matter which might have been present for weeks and certainly for more than days. I give the opinion he formed in his own words—"A blow on intestines in the state in which they

were would probably have had a great deal of effect, and would bruise and bring about perforation sooner than otherwise." Dr Norbury further conducted the post-mortem, and says—"Condition of appendicitis would make bowels more susceptible to blow. Death due to peritonitis following second perforation." It was said that this evidence was unsatisfactory on the ground that the blow, which in the opinion of Dr Norbury was calculated to bring about perforation sooner than otherwise would have happened, was not shown to be such a blow as Woods received from the accident, and that in any case there was no proof that the second perforation was in any way attributable to the blow.

In my opinion the character of the blow or push is sufficiently denoted by the effects which immediately followed. If in accordance with the evidence of Dr Norbury a blow would probably have had a great deal of effect in bringing about perforation sooner than otherwise, I cannot hold that it was not within the competence of His Honour to find that the accident, which undoubtedly affected Woods so as to incapacitate him from work and to produce pain and vomiting, did accelerate the injury from which death resulted. The second perforation appears to have followed on the operation to repair the first perforation, but Dr Norbury's evidence does not draw any distinction between the two perforations, and if the accident accelerated the conditions which rendered an operation necessary, it does not appear to me to be material which perforation was the more immediate cause of death.

Dr Henry Robinson, the medical officer of the infirmary, was called on behalf of the respondent. He states, what no one would deny, that it was possible for the perforation to occur without a blow. His evidence does not assist the case of the claimant, but what weight should be attached to this evidence, and whether it is sufficient to displace the evidence of Dr Norbury, are matters within the jurisdiction of the arbitrator and for him to decide.

In my opinion the function of a mutual assessor is not to supply evidence but to help the judge or arbitrator to understand the mutual evidence. His presence does not affect the question whether the judge or arbitrator has made a mistake in law in awarding in favour of the claimant. I am authorised to say that Lord Parker agrees in this view.

The appeal succeeds and the appellant is entitled to costs.

Appeal sustained with expenses.

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