

ship was at sea, with the result that the tips of the blades had been broken. It is urged by the appellants that if he wanted to ascertain whether that was true or not, the proper place for doing so would be in the engine-room; but the facts in this case prove conclusively that the engine-room would not have given him the information that he sought, because the man, who was a skilled engineer, had been in the engine-room and had failed to discover that in fact the tips of the propellers had not been broken as he thought they had. There was only one other way by which that investigation could take place, and that was by attempting to see the blades of the propellers in the water. To my mind it is not important that in fact his attempt to see them might have been accompanied by risk, or that it might have been difficult for him to obtain exact information from such inspection. It was clearly in the course of his employment to examine what was the matter with these propellers, and I cannot help thinking that there was nothing unusual in the method he may be assumed to have taken as to take it outside the sphere of his work.

From the facts as I have stated them the County Court Judge came to the conclusion that the true inference to be drawn was that the deceased got up early in the morning of the 18th June with the purpose of going to see the working of the propellers at the stern of the vessel. With that inference I am in entire agreement. That his getting up on the 18th June was not for any casual whim or fancy is I, think, sufficiently shown by what has occurred. It was not his habit to get up early for the purpose of enjoying the morning on deck. He got up on this morning with an object. It was suggested that the object might have been to take away his life. As I have already said, that impulse cannot be attributed to him. Then what was the impulse that made him purposely get up this morning two hours before his usual time? The fair inference is that it was in order that he might have a further opportunity of investigating this difficulty, which had no doubt caused him some anxiety on the homeward voyage. He was seen going behind the wheel-house towards the stern, in the direction of the spot where he would be able to ascertain by investigation what had occurred, and I think there is evidence to support the inference that the said County Court Judge drew that in the course of making that investigation and inspection he met his death.

It is then urged on behalf of the appellants that if he did he met his end because he was taking a risk so unusual and so grave that, even upon the hypothesis that has been assumed, that made his act one that was outside the sphere of his employment altogether. I am quite unable to accept that view. I entirely agree with what the County Court Judge says when he states that it is very difficult indeed to place a limit upon the risks that a man may fairly run in the course of his employment for the purpose of discharging his master's work. If this

man did go for the purpose of inspecting the propellers, he did it in the course of his employment and for his master's benefit, and I am wholly unable to see that there is any evidence to satisfy your Lordships that when he did that he went outside the duty that he was reasonably bound to discharge as chief engineer of the ship.

For these reasons I think the appeal should be dismissed.

LORD ATKINSON—I concur. I have nothing to add.

LORD PARKER—I agree.

LORD SUMNER—I agree.

LORD PARMOOR—I concur.

Appeal dismissed.

Counsel for the Appellants—Neilson—Owen. Agents—Botterell & Roche, for J. & T. W. Hearfield & Lambert, Hull, Solicitors.

Counsel for the Respondent—Hewart, K.C.—Stone. Agents—C. J. Smith & Hudson, for Locking, Holdich, & Locking, Hull, Solicitors.

HOUSE OF LORDS.

Thursday, March 23, 1916.

(Before the Lord Chancellor (Buckmaster), Earl Loreburn, Viscount Haldane, Lords Atkinson and Parker.)

EYDMANN v. PREMIER ACCUMULATOR COMPANY, LIMITED.

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

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 2 (1) (a)—Notice of Injury Delayed.

A workman in the course of his employment received an injury apparently of a trifling character. About a month later, as a result of the injury, serious symptoms ensued, and the workman took to bed after giving his employers a doctor's certificate that he was suffering from septic poisoning. No notice of a formal character was given to the employers for another ten days. The Court of Appeal held, reversing the award of the arbitrator, that the appellant had not discharged the *onus* which was on him of showing that his employers were not prejudiced by his omission to serve a notice on them as soon as practicable.

Held, allowing the appeal, that the mere fact of failure to give notice did not raise a presumption of prejudice.

Per Lord Chancellor—"If, when the facts are all before the learned County Court Judge, they are facts from which he might reasonably assume that no prejudice had in fact been suffered by the respondents, that is sufficient."

The facts appear from their Lordships' judgment.

LORD CHANCELLOR (BUCKMASTER)—In this case counsel for the respondents have said all that is possible in support of the judgment of the Court of Appeal, with the conclusions of which I am quite unable to agree. The only question for decision here is whether or no the respondents were prejudiced by reason of the fact that a workman in their service did not give them notice of an accident that he had incurred in the course of and arising out of his employment as soon as practicable after the accident had happened.

I think it is desirable to state what the facts were that have given rise to this case in order to show why I think that the County Court Judge was right in holding that as the evidence stood no prejudice was suffered by lack of that notice. The applicants are the representatives of a dead man who was employed by the respondents as an ignition hand in their works of mechanical engineers. On the 7th April, while engaged in his work, he cut his thumb with either a piece of lead or a piece of wood, it is not quite clear which. The fact that he had injured himself was known that afternoon to the manager of the works, but neither the man nor the manager attributed any serious consequences to the injury, which appeared to be slight. The man continued at work up till the 4th May, the wound during that time having healed. On the 4th May he consulted a doctor, as his arm was then swelling and the glands had become affected. The doctor gave him a certificate that he was suffering from septic poisoning, and it appears that the man himself gave that certificate to his employers and then went to bed. It is not contended that up to the 4th May this man was under any obligation to serve notice upon his employers of the accident which had occurred, because it was not then believed to be of so serious a character as to give rise to any claim for compensation. But it is said, and said quite truly, that on the 4th May, when the true mischief was revealed, there was imposed upon him an obligation to serve notice as soon as practicable, calling his employers' attention to the fact of the injury, the date when it occurred, and all the necessary matters specified by the statute. That notice he omitted to send; but the omission to send the notice is not fatal to the proceedings for recovery of compensation if while the claim is being settled by the County Court Judge it appears that by want of such notice the employer was not prejudiced.

On the 9th May, after the man had gone to bed, his wife went down to the respondents' factory and an important interview took place. She had attempted to get payment from the National Insurance Society, who had repudiated their liability upon the ground that this was a case where the man had been injured in the course of his employment, and that the proper people to compensate him were his employers, such cases being outside the provisions of the

National Insurance Act. She told the man whom she saw on that occasion—a Mr Slatter—that the National Insurance Society would not pay, for the reasons I have stated, and she at least made it plain to Mr Slatter that in those circumstances it was suggested that her husband was suffering from an illness which had occurred in the course of his employment. Mr Slatter obviously took that view, for he said that he would write to the insurance company about the matter, and I think there can be no doubt that the insurance company to whom he was going to write was the company with whom the respondents were insured against accidents, and he expressed regret that her husband was ill. She called again on the following Thursday, which was the 14th May, five days after the first interview, and she saw Slatter again, who told her they had not heard from the insurance company, and she was told to come again later on. On the 16th May, after these two interviews, a doctor came to visit and examine the injured man, who must have been sent either by the employers or by the insurance company; there was no other person who could have sent a doctor for that purpose; and indeed counsel for the respondents at the hearing of the case referred to this man as "our doctor." He examined the man, and it is admitted that as from that day the employers had full knowledge of the accident and its results, and that no prejudice was suffered by omission to give notice after that date; therefore what is complained of is the delay that occurred between the 4th May and the 16th May. Proper notice was in fact given on the 29th May, after two more interviews between the man's wife and Mr Slatter, and the man died on the 31st of May from the results of the accident.

It is said the fact that between the 4th May and the 16th May the employers had not received notice is a fact which, without explanation, might reasonably be assumed to have caused prejudice to the employers. If that were the true conclusion to be drawn I should think the respondents' argument here was well justified. But upon the facts as found by the learned County Court Judge, fully supported by the evidence, there is nothing in my opinion to justify that inference, and I find it difficult to follow the reasoning by which the learned Judges in the Court of Appeal came to the conclusion that the applicants must fail. They appear to have been led to that result by assuming that there was cast upon the applicant the burden of discharging some definite *onus* of establishing the negative proposition that the respondents were not prejudiced. I cannot think that that is the true view of the statute. It is of course true that at the date of the decision of the Court of Appeal in this case they had not before them the decision of this House in the case of *Hayward v. Westleigh Colliery Company, Limited*, 1915 A.C. 540, 53 S.L.R. 513, which showed that such a view was erroneous.

In particular, I refer to the opinion of my noble and learned friend Lord Atkinson, which expressed all that I desire to say as

to what is the true burden cast upon the applicant in such a case as this. If when the facts are all before the learned County Court Judge they are facts from which he might reasonably assume that no prejudice had in fact been suffered by the respondents, that is sufficient. In this case I think the applicants fully discharged all the necessary burden of proof, and that the judgment of the Court of Appeal is wrong and should be reversed.

EARL LOREBURN—I agree in the view already expressed by the Lord Chancellor, and I will not say anything about the facts of this case, because I concur in his observations.

Upon the law of the case, notwithstanding the remarkably able argument of the leading counsel for the respondents, to which I listened with great pleasure, I cannot doubt that in this case the appeal ought to be allowed. When an issue arises as to whether the employer was prejudiced or was not prejudiced by want of notice it is just like any other issue of fact. The words of the Act of Parliament, which I need not read, themselves express the real view. In my opinion the applicant has to prove his case, as everyone has to prove his case who brings it forward in a court of justice; but he is not required to exhaust the possibilities of prejudice and displace them, nor is he bound to demonstrate the negative—that is an erroneous point of view. And in my view, supposing he gives no evidence at all about prejudice, but simply tells his story and says, "It is not the natural inference from this story that the employer was prejudiced, if he is prejudiced let him show how," then, in case the employer does not show how, the inference to be drawn is that there was no prejudice. It would, to my mind, be deplorable if by exacting from an applicant a too rigorous proof of the negative (which is often incapable of proof altogether) the employer or the insurance company were encouraged to give no evidence upon a point essentially within their own knowledge. In these cases the safe and right course is that those who best know whether there is prejudice or not, if they maintain that there is prejudice, should show it and submit the proof that they offer of it to cross-examination.

VISCOUNT HALDANE—I agree.

LORD ATKINSON—I concur.

LORD PARKER—I agree.

Appeal allowed.

Counsel for the Appellants—Campion—Emery. Agents—Samuel Price & Sons, Solicitors.

Counsel for the Respondents—Doughty—Eddy. Agents—Clifford Turner & Hopton, Solicitors.

PRIVY COUNCIL.

Friday, April 7, 1916.

(Before the Right Hons. Lords Parker of Waddington, Sumner, Parmoor, Wrenbury, and Sir Samuel Evans.)

THE "ACHAIA."

(ON APPEAL FROM H.B.M. SUPREME COURT FOR EGYPT.)

War—Ship—Prize—Ship in Enemy Port at Outbreak of Hostilities—Refusal of Offer of Pass—Liability to Confiscation—Hague Conference 1907, Convention VI, Articles 1, 2.

If a merchant ship in an enemy port at the outbreak of hostilities rejects the offer of a pass and elects to remain in that port she is not protected by articles 1 and 2 of the Hague Conference 1907, Convention VI, from condemnation and confiscation as prize.

Appeal by the owners of the German steamship "Achaia" from a judgment of H.B.M. Supreme Court for Egypt ordering the condemnation and confiscation of the ship as prize.

The considered judgment of their Lordships was delivered by

LORD PARKER—The "Achaia" was a German steamship of 2732 tons, belonging to the Deutsche Devante Linie, of Hamburg. She arrived at the port of Alexandria on the 31st July 1914 in the course of a voyage from Bremen to Alexandria, and thence to certain Syrian ports. She carried a general cargo, part of which was consigned to Alexandria. She had discharged this part of her cargo by 4 p.m. on the 4th August. Upon the outbreak of war between Germany and this country she was, under the Egyptian decision of the 5th August, allowed till sunset on the 14th August to leave the port of Alexandria. On the 12th August she was offered a pass for the Piræus available till sunset on the 14th August, signed by Lieutenant Grogan Bey, Inspector of Marine of the Egyptian Ports and Lights Administration. According to the evidence of Max Stross, the ship's agent, she made all arrangements to leave, but at the last moment came to the conclusion that it would be too dangerous unless the pass were viséd by the French Consul. Moreover, she believed that all Egyptian ports were neutral. She accordingly elected to remain where she was. The port authorities thereupon seized the ship and disabled her engines. Subsequently on the 19th October 1914 the captain and crew were made prisoners of war, and the ship placed in the custody of the Marshal of the Prize Court. There can be no doubt that what happened amounted to a seizure as prize.

Their Lordships have already decided in the case of the "Gutenfels" that Egyptian ports must be treated as enemy ports within the meaning of the Sixth Hague Convention. Under the circumstances, however, they are of opinion that the recommenda-