REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL, WHICH, THOUGH NOT ORIGINATING IN SCOTLAND, DEAL WITH QUESTIONS OF INTEREST IN SCOTS LAW.

HOUSE OF LORDS.

Friday, March 23, 1917.

(Before the Lord Chancellor (Finlay), Earl Loreburn, Lords Dunedin, Atkinson, and Buckmaster.)

JOHN STEWART & SON (1912), LIMITED *v.* LONGHURST.

(On Appeal from the Court of Appeal in England.)

Master and Servant—Workmen's Compensation—"In Course of" Employment—Point at which Employment Ceases—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1.

A carpenter returning from work on a barge in the London docks fell into the dock basin and was drowned.

Held that he only had access to the docks in the course of his employment, and that he did not therefore leave his employment till he reached the public street. The accident therefore arose in the course of his employment.

Holness v. *M'Kay*, 1899, 2 Q.B. 319, *overruled.*

Observed that there is no absolute test whether employment has begun or ceased.

At delivering judgment—

Lord Chancellor (Finlay)—This is an appeal against the decision of the Court of Appeal allowing the claim for compensation under the Workmen's Compensation Act 1906 in respect of the death of the respondent's husband Herbert Longhurst.

The appellants are engineers and ship repairers, and were engaged in effecting repairs to the barge "Forward," which was lying in the South-West India Docks, and the deceased, who was a carpenter, was in their employment on this work. The docks are under the control of the Port of London Authority. They are not open to the public for traffic, but the appellants and their workmen had the permission of the authority to pass through the docks on their way to and from the barge on which they were at work. The deceased left the barge on the 9th November 1915 a few minutes before 8 p.m. In the darkness he missed his way while passing along the quay, fell into the lock, and was drowned. The County Court Judge disallowed the claim, holding that when the deceased got off the barge on to the quay the relationship of master and servant ceased as completely as if he had got off the barge on to the high road. On appeal by the respondent to the Court of Appeal the judgment of the County Court Judge was reversed, and it was directed that there should be an award of £300, to be apportioned among the dependants of the deceased.

The employers appeal to this House, and ask that the decision of the County Court Judge in their favour should be restored.

It was contended in support of the appeal that the finding of the County Court Judge in a case of this nature should not be interfered with. It is, however, quite plain that the finding of the County Court Judge was not on fact but on law. He considered that as a matter of law the accident did not occur in the course of the employment, on the ground that in his view the employment ceased when the deceased reached the quay. In my opinion this view is erroneous. It has been established by a series of decisions that employment for the purposes of the Workmen's Compensation Act may in many cases be regarded as existing before the actual operations of the workman have begun, and that it may continue to exist after the actual work has ceased. For instance, if a workman is employed in a factory, the employment normally would begin as soon as the workman has entered the premises for the purpose of his work, and continue until he leaves them after the actual work is done.

There was a decision in your Lordships' House on the 16th March 1905 in the case of *Cross, Tetley, & Company, Limited* v. *Catterall* which has been repeatedly cited but has not yet been reported. The case and appendix and the transcript of the judgments are in the library of your Lordships' House. In that case (referred to in *Sharp* v. *Johnston & Company*, (1905) 2 K.B. 139) the colliery in which the man was engaged was approached by a bridge built by the employers over a canal for the convenience of their workmen, and the workman fell into the canal from the bridge while going to his work. Lord Halsbury said in giving his opinion—"I do not agree that his employment only begins at the

moment he strikes the coal with his pick. I think the man was really in the employment the moment he reached the bridge. He was doing something on his master's behalf—that is to say, he was on his way to the colliery for the purpose of working."

The decision in that case established that the employment *may* begin as soon as the workman has reached his employer's premises or the means of access thereto; and in the same way the employment may be considered as continuing until the workman has left his employer's premises.

The case would be different if the workman was at the time of the accident on the public highway on his way to or from his work. His employment cannot be considered as having begun if he is merely in transit in the public street or road to or from his employer's premises. Of course, if his employment were of a kind which is pursued on the highway he might be in the course of his employment while there, but I am speaking of cases in which he is in the public way merely in exercise of the public right of passage there on his way to or from his employer's.

The present case belongs to a class of cases where the thing on which the workman is employed is lying in a dock or other open space to which he obtains access only for the purposes of his work. Actual ownership or control by the employer of the spot where the accident occurred is not essential. The workman comes there on his way to and from his work, and he may be regarded as in the course of his employment while passing through the dock or other open space to and from the spot where his work actually lies. Such passage is within the contemplation of both parties to the contract as necessarily incidental to it.

The case of *Cook* v. *Owners of Steamship "Montreal,"* 6 B.W.C.C. 220, was much relied on by the appellants, but seems to me to have no application. That was the case of a sailor who had been paid off on board his ship at the end of the voyage, and from the ship got on to a "dolphin" or floating stage connected with the quay by fixed steps, and fell into the water between the "dolphin" and the quay. According to the view taken of the facts in that case he had reached the shore before the accident took place, and on that view of the facts it was held that his employment had terminated. It may be that a different view might have been taken of the facts as regards the termination of the workman's transit from the ship to the shore, but that is immaterial. On the view taken of the facts the case has no bearing on the present one. In the subsequent case of *Webber* v. *Wansbrough Paper Company, Limited*, 1915, A.C. 51, the Court of Appeal, apparently in deference to *Cook* v. *Owners of Steamship "Montreal,"* decided against the claim, but their decision was reversed in the House of Lords on the ground that the ladder from which the accident took place formed the ordinary means of access to the ship, so that the accident was held to take place in the course of the employment.

There is, however, a decision in the Court of Appeal in *Holness* v. *M'Kay*, 1899, 2 Q.B. 319, which appears to me to be in conflict with the view which I have above indicated. In that case contractors were ballasting a siding which could be reached only by going for some distance through the premises of the railway company. On a foggy morning a workman while proceeding to his work got on to the main line and was run over and killed. A. L. Smith, L.J., and Vaughan Williams, L.J., held that the accident did not arise in the course of the employment, the former pointing out that there was an entire absence of control by the employer over the premises where the accident occurred. Romer, L.J., differed from his colleagues, and in the course of his judgment made the following observations (pp. 328-9)—"The deceased man was in the employment of the appellants, who had contracted with the railway company to do certain work at a spot substantially surrounded by lines of railway, and the access to which was not unattended with danger. By their contract with the railway company the appellants had to provide access for their workmen at their own cost, and accordingly they directed the men that they must cross the line to get to their work. The men were bound by the necessities of their employment and as part of its duties and dangers to cross the lines and to have, through the appellants, a special right or licence from the railway company to cross them, that special right or licence being given by implication. When the workmen began to cross the lines they were acting under this right or licence obtained for them by the appellants; they were doing something which they were specially bound to do under their contract of employment, and which they could not lawfully do but for that contract. Under these circumstances I think that the employment in this case substantially began when the deceased began to act upon the implied right or licence to cross the lines. I am of opinion, therefore, that the County Court Judge was justified in holding that the accident occurred in the course of the deceased's employment. I think also that his finding was correct as to the circumstances under which the accident occurred. The deceased had been told to go to the Waterloo gate; it was his nearer and more convenient way to get to his work, and it was in evidence that he was never known to use the other gate. On the facts I should come to the conclusion that he did go by the Waterloo gate, and that he lost his way owing to the fog, and that the accident arose directly by reason of his being obliged to cross the dangerous zone of lines in order to get to his work. I think therefore that the deceased man was at the time of the accident acting in the course of his employment, and that the accident arose out of his employment. The cases show that the Court is not bound by a hard and fast line to consider that a workman is not acting in the course of his employment until he actually begins the work which he has to do. To my mind the present case is like that of a workman

whose work lies in a particular part of a large factory, and who in order to get to it has to go through the rest of the factory and meets with an accident while so going. It is said that there is a distinction because all the parts of the factory are under the control of the same employer, but I consider that case analogous to the present, for the railway company had given the contractor the right to bring his men to their work across the lines, and the contractor had in a sense a right of control over the lines by virtue of which alone the men used the lines. In principle therefore I think that this case cannot be distinguished from that of the factory. This case is not like that of an injury received on the public highway by a man while going to work, when of course the employer, having nothing directly to do with the highway or its user by the men, would not be liable. Looking at the facts, I think that the very able judgment of the County Court Judge was correct, and that this appeal ought to be dismissed."

If the judgment of the majority of the Court of Appeal in that case were right, it would seem to me to follow that the appeal in the present case should succeed. In my opinion, however, the judgment of the majority was erroneous, and Romer, L.J., in the passage which I have quoted correctly states the principles of law upon the subject. The principles as stated by him are in my judgment as applicable to the present case as they were to that with which he was dealing, and in my opinion this appeal should be dismissed with costs.

EARL LOREBURN—I agree, and will only add that in every case the question for the arbitrator is whether the facts come within the words of the Act, and that most of the decisions are instances of the application of those words. They do not qualify the Act itself, and there is always a danger of arguing from analogy from the facts of one case to the facts of another, or of treating the opinions of judges which are true in regard to the case before them as though they were placing a gloss on the statute. Judicial opinions on such a matter illuminate the statute but do not displace it.

LORD DUNEDIN—I think the judgment of the Court of Appeal was right.

The question is, Did the accident occur to the deceased man in the course of his employment? It is obvious that the word "employment" does not postulate that the workmen must be actually working. No general rule can be laid down as to when employment begins and ceases, for the simple reason that each case arises in accordance with its own circumstances. Sometimes it will be easy to decide either for or against the workman. No one, for instance, would doubt if a collier was injured in the cage on his way to the face at which he was to work that the injury arose in the course of his employment, though the face might be a mile away from the pit bottom; nor would anyone doubt that if the same man were starting from his house in the village, and was injured while in the street before he approached the precincts of the colliery the opposite result would be arrived at. There are, however, many cases which are so to speak near the line, and the decisions in such cases can only be used as more or less illuminating examples of the application of the phrase "course of the employment" to divers circumstances—they can never be held as laying down absolute rules. I have thought it necessary to say this because of the stress that was laid in the argument upon the question of "control" of the premises where the accident occurred. "Control" was sought to be raised to the position of affording an absolute test whether employment had begun or ceased. I venture to go so far as to say that control of the place where an accident happens, so far from being conclusive is neither here nor there except in so far as it may represent a fact tending to show that the accident arose in the course of the employment. The cases of *Gilmour* v. *Dorman, Long, & Company, Limited*, in England (4 B.W.C.C. 279), and *Hendry* v. *United Collieries, Limited*, in Scotland (1910 S.C. 709, 47 S.L.R. 635, 3 B.W.C.C. 567) are both illustrations of positions where there was control on the part of the employer of the *locus* of the accident and yet no liability. These cases were in my opinion rightly decided. I am therefore bound to say, as I do with great deference to a most learned Judge who has specially illumined this branch of the law, that I think that proposition B in the judgment of the Master of the Rolls is too absolutely put. It is not a universal rule, though the authorities he refers to are cases where the control of the premises afforded with the other circumstances of the case the necessary evidence.

As regards the facts of this case I cannot do better than borrow the words of Pickford, L.J.—"The workman in this case in order to get to the actual place of work had to enter and leave premises where he had no right to be and no reason for being except by the conditions of his employment, and in crossing them to encounter dangers which he would not have encountered but for that employment."

I ought perhaps to mention the case of *Cook* v. *Owners of Steamship "Montreal,"* 6 B.W.C.C. 220, as great reliance was placed on it by the appellants. To my mind it presents no difficulty. It was explained by Lord Haldane in *Webber* v. *Wansbrough Paper Company, Limited*, 1915 A.C. 51. In a word, the seaman had been paid and his service was entirely finished when he got away from his ship and got to land, and the "dolphin" was held equivalent to land.

My only difficulty in the case has arisen from the fact that we are arriving at a different result from that arrived at by the learned arbitrator, and had he arrived at it by determining a pure question of fact I do not think his judgment could have been disturbed. But on reading his judgment I feel that he misdirected himself in law, for I read his judgment as turning on the point that employment must cease when actual work has ceased and the workman has

passed on to premises which do not belong to his employer.

LORD ATKINSON—I concur. I think this is a perfectly plain and simple case. The only question for decision is whether the workman was in the course of his employment when he fell into the docks. To answer that question one must find out from his contract of employment what he was employed to do—what rights this contract conferred upon him, what obligations it imposed. It unquestionably conferred upon him the right if permitted by the Dock Company to traverse the premises of that company from the dock gate to the place where the barge he was working on lay. It imposed upon him the obligation to do so. He had no right or obligation to do this save under and by reason of his contract of employment. In my view he was as much employed by his employer to get to the barge as he was to work upon it. Everyone of these remarks applies equally to the return journey from the barge to the dock gate when he knocked off work upon the barge. In argument some distinction was attempted to be drawn between the case where the workman has to traverse the private property of his employer to get to his work and that where to do so he has to traverse the private property of another with the consent of that other. I do not think that is a sound distinction. When a man walks along the public street to get to his work he is doing something which he has a perfect right to do irrespective altogether of his employment. The right does not spring from his employment at all. It belongs to him as a member of the public. I am clearly of opinion that this unfortunate accident happened to the workman in the course of his employment, and I do not think that any of the authorities cited are inconsistent with this conclusion. I am therefore of opinion that the decision appealed from was right and should be affirmed and this appeal dismissed with costs.

LORD BUCKMASTER—In this case there is no dispute as to the facts; indeed there was no conflict of testimony before the County Court Judge calling for decision. Had it been otherwise his determination of the result of rival evidence would, in the absence of extreme and unusual circumstances, be accepted as final. In my opinion, however, the learned County Court Judge has fallen into error in his endeavour to obtain from decided cases a fixed standard of measurement by which to test the meaning of the words in the statute "in the course of" and "arising out of" employment. Some of the reported cases, which have been fully referred to by the Lord Chancellor, appear to me to have made the same mistake and to have attempted to define a fixed boundary dividing the cases that are within the statute from those that are without. This it is almost impossible to achieve. No authority can with certainty do more than decide whether a particular case upon particular facts is or is not within the meaning of the phrase.

In the present instance the respondent was employed by the appellants to do work upon a barge which they had contracted to repair. The barge was situated on certain premises, namely, the South-West India Dock, under the exclusive control of the Port of London Authority. Access to and egress from these premises could only be obtained by the dock gates. In the circumstances of this case it was only as a workman employed to work upon the barge that the deceased was entitled to enter or remain upon the premises.

The accident that cost him his life occurred on his leaving the barge and while he was lawfully on the dock premises on his way out.

These circumstances are in my opinion sufficient to show that it was in the course of his employment that he met with his death. That the accident arose out of the employment has not been disputed.

I think therefore that the Court of Appeal was right, and that this appeal should be dismissed.

Their Lordships dismissed the appeal.

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HOUSE OF LORDS.

Friday, March 23, 1917.

(Before the Lord Chancellor (Finlay), Viscount Haldane, Lords Dunedin, Atkinson, and Sumner.)

LANCASHIRE AND YORKSHIRE RAILWAY COMPANY *v.* HIGHLEY.

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

Master and Servant—Workmen's Compensation—Arising out of and in the Course of Employment—Added Peril—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1.

An employee of a railway company in crossing the line to a messroom to which he had a right to go, chose to walk over the metals and under a goods train standing in a siding. The train started and he was killed. *Held* that the accident did not arise out of the man's employment, but occurred in consequence of his having run an additional and quite unnecessary risk.

Gane v. *Norton Hill Colliery Company*, 1909, 2 K.B. 539, *distinguished.*

Observed (*per* Lord Dunedin) that though a decision of a Court of higher or equal authority binds another Court as to propositions of law, it cannot bind it as to the findings in fact.

At delivering judgment—

LORD CHANCELLOR (FINLAY)—This case arises upon a claim for compensation under