

LORD WRENBURY—I concur.

Their Lordships ordered that the interlocutors appealed from be affirmed and the appeal dismissed with costs.

Counsel for Appellant—Macphail, K.C.—Mackay, K.C.—W. H. Stevenson. Agents—John C. Brodie & Sons, W.S., Edinburgh—Grahames & Company, Westminster.

Counsel for Respondents—Stevenson, K.C.—Leadbetter, K.C.—Carnegie. Agents—Mackenzie & Black, W.S., Edinburgh—Williams & James, London.

Tuesday, December 13.

(Before Viscount Haldane, Viscount Finlay, Lord Dunedin, Lord Shaw, and Lord Sumner.)

MOHAD v. ANCHOR LINE
(HENDERSON BROTHERS), LIMITED.

(In the Court of Session, May 20, 1920,
58 S.L.R. 465.)

Workmen's Compensation Act—Seaman—Injury during Voyage—Desertion—Liability of Employer under Merchant Shipping Acts—Emergence of Right to Compensation—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 7 (1) (e)—Merchant Shipping Act 1906 (6 Edw. VII, cap. 48), sec. 34 (1).

A seaman who was engaged for a round voyage from Bombay to the United Kingdom and back to Bombay met with an accident during the voyage which partially incapacitated him. He was thereafter maintained by his employers in accordance with the provisions of the Merchant Shipping Act 1906, and brought in one of their vessels to Liverpool and thence by train to Glasgow, where he rejoined his ship. Before the expiry of his contract of service he deserted, and thereafter claimed compensation under the Workmen's Compensation Act. *Held (diss. Lord Sumner, aff. the judgment of the Second Division)* that as the liability of the shipowners under the Merchant Shipping Act had been terminated by the seaman's desertion the latter was entitled to claim compensation under the Workmen's Compensation Act, and that the shipowners could not postpone their liability therefor until the termination of the voyage.

The case is reported *ante ut supra*.

The shipowners appealed.

At delivering judgment—

VISCOUNT HALDANE—The point in this appeal is a very short one, and it turns, in the view which I shall venture to submit to your Lordships, on the construction of two sections in the Merchant Shipping Act 1906 and the Workmen's Compensation Act of the same year.

The way in which the question arose was this—It was a question tried under the

Workmen's Compensation Act, the arbitrator being the Sheriff-Substitute of Lanarkshire, and he has made a statement of his findings in the usual form, which is somewhat meagre but which raises the point. The respondent, who was a Mohammedan seaman, was engaged by the appellants, apparently at Bombay, for a round voyage from that city to the United Kingdom and back to Bombay within a year, and in the course of the voyage he met with an accident to his right hand, which appears to have been of a somewhat severe character. After the accident the respondent was treated in hospital at Marseilles, where the steamer appears to have stopped, and then he was brought after treatment by the appellants in one of their steamers to Liverpool and thence by train to Glasgow, where he rejoined the steamer the "Circassia." Just after this, in September 1920, he left the "Circassia" without leave and deserted the service.

Now these are the facts as found, and on these facts the arbitrator raises this question, which went to the Second Division—"On the facts as stated, and in view of the provisions of the Merchant Shipping Act 1906, section 34, and the Workmen's Compensation Act 1906, section 7 (1) (e), was I as arbitrator entitled to refuse an award of compensation?" The view he took was this, that the two statutes must be read together, and that the right given by the Workmen's Compensation Act was a right which could not be put into operation because of a provision as to liability in the other Act, to which I will in a moment call your Lordships' attention. The provision in the Merchant Shipping Act is the one which comes first in the order of date. The two Acts were passed in the same year, but the Merchant Shipping Act was passed, I think, first. It is section 34, sub-section (1)—"If the master of, or a seaman belonging to, a ship receives any hurt or injury in the service of the ship, or suffers from any illness" (with certain exceptions) "the expense of providing the necessary surgical and medical advice and attendance and medicine, and also the expenses of the maintenance of the master or seaman until he is cured or dies, or is returned to a proper return port, and of his conveyance to the port, and in the case of death the expense (if any) of his burial, shall be defrayed by the owner of the ship, without any deduction on that account from his wages." Now that is a right given to the seaman in the present case. The Workmen's Compensation Act, sec. 7, sub-sec. (1) (e), says this—"The weekly payment" (that is, in the case of compensation being recovered under the Workmen's Compensation Act) "shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act 1894, as amended by any subsequent enactment or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice."

Now the real question seems to me on those sections to be whether there was liability under the Merchant Shipping Act to defray the expenses of maintenance. The

case, as I have said, went to the Second Division, and in the Second Division their Lordships answered the question adversely to the shipowner, adopting the construction that this was a case in which there was a right to an operative award of compensation immediately. They held that there was under the circumstances a supersession of the right which was given by the Merchant Shipping Act because of the desertion of the seaman, and his repudiation of the right given by the Merchant Shipping Act for his own benefit. The Lord Justice-Clerk, Lord Dundas, Lord Salvesen, and Lord Ormidale took that view, and in the result they sent back the case to the arbitrator to proceed in the awarding of compensation at once under the Workmen's Compensation Act, taking all circumstances into account and following the usual procedure. They evidently thought that what the Sheriff-Substitute ought to do was to award compensation and determine its amount, all the circumstances relating to benefits actually already received under the Merchant Shipping Act being taken into account. Turning back for a moment to the Workmen's Compensation Act, the words are that the weekly payment is not to be payable "in respect of the period during which the owner of the ship is . . . liable to defray the expenses of maintenance." Now the seaman deserted, and he abandoned thereby his right to claim under the section of the Merchant Shipping Act, and consequently there was no liability on the part of the shipowner. That is the interpretation I put on the two sections. If I am right, then the view taken in the Second Division was the true one.

For these reasons I move your Lordships that the judgment of the Court below be affirmed and the appeal dismissed with costs.

VISCOUNT FINLAY—I am of the same opinion. I concur with the judgments delivered in the Second Division of the Court of Session. If I may respectfully say so, I think there is a fallacy in the judgment of the Sheriff-Substitute, and that is this, that he regards the provisions of section 34 of the Merchant Shipping Act of 1906 as being to prolong the contract of employment. What he says is this—"Under the contract both parties were bound for the period of a voyage from Bombay to the United Kingdom and back to Bombay, and it appears to me that the effect of section 34 of the Merchant Shipping Act 1906" (that is, the section which provides for the expense of medical attendance in case of injury or illness) "is to prevent an earlier termination of the contract through the inability of the workman to continue in the performance of the duties of his service. The defenders, under the contract and the provision of the statute, are under an obligation to maintain the pursuer till they return him to Bombay, and the pursuer is under a reciprocal obligation to remain on the ship and perform the duties of his employment if and when and to the extent he is able. The defenders may have, and I expect do have, an interest to require the pursuer to return

to Bombay, where he will be among his own people and have the best chance of obtaining such employment as his diminished capacity must in future restrict him to. In my opinion the pursuer is not entitled to desert his employment and have his rights under the Workmen's Compensation Act determined in advance." That judgment proceeds on the assumption that the contract of employment was continued by virtue of the section in question, and that the case turns on the point whether he can take advantage of his own breach of contract by deserting his service in the ship. It appears to me that the effect of this section is not at all what the learned Sheriff-Substitute has said. The effect of the provisions of the Merchant Shipping Act is to engraft on the contract of service certain statutory provisions for the benefit of the sailor. It does not prolong the contract of service. The provisions made by the Merchant Shipping Act for the benefit of the sailor are absolutely independent of the question whether the contract of service continues or whether it does not. It may continue or it may not continue, but the statutory provisions for the benefit of the sailor do not in the least imply that it does continue, and they do not depend upon its continuance. That seems to me to be the view that underlies the decision of the Sheriff-Substitute, in which he treats the case as resolving itself into the question of whether the sailor can take advantage of his own wrong in breaking the contract of service and deserting his employment. The question seems to me not to be of that sort at all. The question is whether the sailor is entitled to say—"I do not want the benefits which are conferred upon me by the Merchant Shipping Act; I prefer to go at once for the benefits of the Workmen's Compensation Act." In plain words it comes to this, whether the owners are entitled to say that the man must be repatriated to get compensation, and whether the owners have the right to say that the provisions of the Merchant Shipping Act, which seem to me to be intended in favour of the workmen, must be carried out for their benefit. I do not stop to inquire—it would be mere speculation—what the reason of the owners may be. The Sheriff-Substitute suggests that it may be because there would be more chance of the man's getting employment in Bombay among his own people, so that the workman's compensation would be reduced. It may possibly be that, or it may be some other reason, but to seek for the reasons is to enter into the field of speculation. What we have to do is simply to determine what is the effect of the statutes.

Now it appears to me that it is not a question of a part of the contract of service. There is no clause in the contract of service to affect the section of the Merchant Shipping Act for the benefit of the sailor. It is a mere statutory right given to the sailor for his benefit in the events which are contemplated by these sections, and of course it is obviously in the highest degree desirable that there should be such provision, for

very cruel cases might indeed arise if a sailor were left in a foreign port. Under these circumstances I am of opinion that there was no consent of the owner wanted to a renunciation by the sailor of the benefits conferred upon him. It is not in the least material whether he deserted or whether he did not. What he did unequivocally desire was that he did not want to be taken back to Bombay. The owner's case is that he is entitled to require him to go back to Bombay, not in the sense that he could have him arrested and put on board and taken back, but that unless he goes back to Bombay he could not get the benefit of the workman's compensation. I cannot find that anywhere in the provisions to which we have been referred. After all, the question comes back to be that of the construction of section 7 (1) (e) of the Workmen's Compensation Act 1906—"The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act 1894, as amended by any subsequent enactment or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice." The reading contended for by the appellants is that that denotes the period during which liability under the Merchant Shipping Act might exist. I think it denotes the period during which liability actually exists, and if the workman has done something which will afford a complete defence to any claim by the workman against the owner under the provisions of the Merchant Shipping Act for repatriation, maintenance, and all the rest of it, there is an end of the liability under the Merchant Shipping Act in respect of these provisions. The owner is no longer liable, and what the heading to sub-section (1) of section 7 of the Workmen's Compensation Act 1906 means is that so long as the owner of the ship is in fact, on the facts of the case, liable under that section the provisions of the Workmen's Compensation Act shall not come into play. As was said by several members of your Lordships' House in *M'Dermott's* case ([1911] A.C. 35), I think the object is to prevent the overlapping of benefits, and it appears to me that it would be a very strange reading of the section to say that you are to take some period during which the right to the benefits under the Merchant Shipping Act would continue if the sailor had not renounced them. Inasmuch as the sailor has most effectually renounced them, and there is no possibility of the owners being made liable under the Merchant Shipping Act, I think all question of overlapping is out of the question, and on the plain meaning of the Act the defence fails.

LORD DUNEDIN—I have found this case one of considerable difficulty, but in the end I have come to be of the same opinion as those of your Lordships who have already addressed the House.

The effect of the 7th section of the Workmen's Compensation Act 1906 is to apply it to seamen, and the immediate effect of that is that if there is an accident a seaman,

like other workmen, will be entitled to compensation in terms of the First Schedule, and the terms of the First Schedule provide for a weekly payment in respect of a "total or partial incapacity." But then section 7, while it applies the Act, does so under certain modifications, and one modification is that under section 7 (1) (e) there is cut out from the payments that the seaman would naturally receive all payments during a certain period, and that period is thus defined—"The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act 1894, as amended by any subsequent enactment or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice."

Now the whole point, I think, is whether that expression in the Act "liable" refers to the period under which there may be what I may call potential liability under the terms of the Merchant Shipping Act, or whether it means the period during which under the exact circumstances of the case there is *de facto* liability. I have come to be of opinion that the more natural way of taking the two Acts together is to take the latter reading. My great difficulty has arisen from this, that undoubtedly that does allow a person to take advantage of his own default in this sense, that he may default in order to get the more ample provision under Act 2 than he would have got under Act 1. If the Act gives it him it may be bad policy, but still he gets it. I say that because Mr Mackay made an effort to show that here such benefits as the seaman was entitled to get were benefits outside the contract and after the termination of the contract. I do not go on that at all, because I do not think we have got in this case sufficient facts found to know whether this particular man's contract of service had been terminated or not. That the man's contract could be terminated by being landed at a foreign port I have no doubt. I have equally little doubt that it could not be terminated if he were landed only a few hours even though a certificate were given. Therefore I have gone, I think, upon the natural meaning of the finding of the Sheriff-Substitute when he speaks of his deserting his service. Notwithstanding that I think, taking the two Acts of Parliament as they stand, they lead to the result to which I have eventually come, and I therefore also agree that the appeal should be dismissed.

LORD SHAW—I agree. When seamen were included under the benefits of the Workmen's Compensation Act it was necessary, of course, to provide that there should be, if possible, no clash with the already existing beneficial provisions applicable to seamen under the Merchant Shipping Acts.

In the case of *M'Dermott* in this House we found that the principle to be applied was not to refuse the benefits under either Act except in the sense that there should be no conflicting or overlapping provisions, but that instead of that the beneficial provisions of both sections should be applicable.

In the present case I confess that I have two difficulties on the matter of the statement of the case. I do not know to this hour now—nor does any of your Lordships—when this contract was made; accordingly none of us know when the period of twelve months from the making of the contract would have expired. In the second place, I do not know, nor has this House been informed, when this round voyage on which this seaman was employed came to an end. I find it slow to accept the view that a voyage which began anterior to June—one of the incidents of which was the accident to this workman in the month of June 1920—was the round voyage contracted for which was only in course of completion in the subsequent month of September. The vessel was then in Glasgow, and presumably would reach Bombay in, shall we say, six or eight weeks' time thereafter. That is not in accordance with the usual despatch of vessels of that class, but it may be so. Your Lordships will observe the difficulty in which everybody is placed by the lack of the knowledge definitely of that fact. For if the round voyage had been definitely concluded, then it appears to me humbly that this seaman's contract was at an end. It was not a contract for a period of twelve months' service with these owners; it was a contract for one round voyage—not a contract of service on a snippet of portions of a round voyage which counted up together would make one, but one continuous round voyage. Fortunately the absence of knowledge of these facts does not, on further consideration, prevent us from settling how the law of this case stands. I agree with the noble and learned Viscount on my left that the view taken by the learned Sheriff-Substitute, which he embodies in a phrase in his note, as to the reciprocal obligations on the part of this seaman to remain and perform his duty cannot be applied to this case. The seaman was an injured man. It seems out of the question to suggest that there were reciprocal obligations in September—when he came back injured and unable to perform, as the learned Sheriff-Substitute finds, anything other than exceptional duties—that he was able to continue as an AB seaman in the service of these employers.

The whole matter appears to me to be settled, as my noble and learned friend Lord Dunedin has said, by the construction of the word "liable" in section 7 (1) (e) of the Workmen's Compensation Act of 1906. What happened was this. In June the workman sustained his accident; he was put ashore in Marseilles; he remained in hospital for some weeks there; and afterwards he arrived in Glasgow under very proper arrangements, I am certain, made by the owners of the "Circassia." He went on board the ship, which was then going to sail for Bombay, and he left the ship. If the learned Sheriff-Substitute is of opinion that that was a continuing service, he is justified in using the word "deserting"; but whether the seaman deserted the ship, or whether he left it as of right, matters nothing in the construction of this section,

because I am clearly of opinion that when the owners made this seaman the offer to convey him from Glasgow to Bombay to his own home port, and when the seaman declined to accept that offer, the obligation of the owners was completely at an end, and it is mere finesse, without any sense or reason, to argue that they still remained liable to perform that obligation. There is no such liability; it is at an end. And if there be no such liability I have to construe now these words—"The weekly payment"—such a payment as is asked in this case—"shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act 1894, as amended by any subsequent enactment or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice." There is no such liability; there are no such expenses to pay; they have been all paid except the return journey, and the return journey is not asked. It is a mere conjectural or imaginative liability that is set up, and I cannot construe the statute in any sense than that it applies to the actual fact of liability, not to an imaginative situation.

For these reasons I concur.

LORD SUMNER—It is my misfortune to think that the judgment of the Second Division was wrong. It is my very much greater misfortune to be unable to agree with the opinions of your Lordships. With all humility, but without any doubt, I will ask your Lordships to bear with me for a few minutes while I say why.

There is no sounder principle in workmen's compensation cases than to abide literally and loyally by the findings of the arbitrator, and to my mind it is perfectly clear that the arbitrator in this case found as a fact that the seaman in question was still in the service of the appellants at the time when he deserted. He says that after the man had been treated in hospital at Marseilles, and brought by one of the appellants' steamers to Liverpool and thence by train to Glasgow, he rejoined the "Circassia," and that while there, and while the appellants were in process of returning the respondent to the port of Bombay in terms of their contract—that is, their contract of employment—and of the provisions of the Merchant Shipping Act 1906, "he left the said s.s. 'Circassia' without leave and deserted his service." Those terms are perfectly appropriate in describing the conduct of a seaman who after a temporary absence in hospital resumed his service on his former ship, did not like it, absented himself without leave, and committed the offence of desertion. They are absolutely inappropriate in describing what has been suggested at the bar—that is to say, the position of a person whose contract of employment has terminated, who has been brought without any great amount of acquiescence on his part back to his ship, and has been invited to proceed in her as a passenger to Bombay, and has then said that he does not like it, and would prefer to remain in Glasgow.

I wish to remind your Lordships that if he deserted, as it is found that he did, he was not only liable for an offence punishable by summary conviction, but under section 222 of the Merchant Shipping Act 1894 the master and owners were entitled to the services of the police, and were also entitled to use their own force in order to bring the man back to his ship and make him resume his service and proceed with the ship to sea. The Sheriff-Substitute misused language strangely if he said this man had "deserted"—that is to say, had committed an offence of that kind—if all that he had really done was to decline to take his passage by the ship that was tendered to him. It was also plainly assumed in the judgments below that his service continued, and that he was deserting in the true sense of the word, and the point argued and decided there was whether, in spite of his having broken his contract of service and not having brought it to an end, he could claim at his own hand to apply section 7 (1)(e) of the Workmen's Compensation Act 1906 to his own advantage even although it conflicted with the corresponding section of the Merchant Shipping Act 1906.

I think probably the most important thing is to look at these two sections together. It is to be borne in mind that the two Acts of 1906 received the royal assent at the same time and on the same day, and that one was complementary to the other. The Workmen's Compensation Act provided for the terms on which seamen should be brought within the benefit of the Workmen's Compensation Act. The Merchant Shipping Act provided among other things for limitations upon that benefit which arose out of the special treatment systematically extended to seamen under all the Merchant Shipping Acts. Now here is a man whose service has not been brought to an end in the manner provided by the Merchant Shipping Acts with the formalities strictly prescribed under them. He has never received his discharge. He was not in fact left at Marseilles under circumstances that terminated his employment, or at any rate it is not so found, and, on the contrary, it is found in my view that he was still in the employment of the ship. Under these circumstances he has sustained an accident. Now the weekly payment which in respect of that accident may be payable "shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act 1894, as amended by any subsequent enactment or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice." Considering that those two pieces of legislation are absolutely coterminous, it seems to me that the natural construction is to treat the reference to the Merchant Shipping Act as amended as being a short way of inserting in the Workmen's Compensation Act the relevant provision, namely, section 34, sub-section (1), of the Merchant Shipping Act 1906, for I will assume (as it has been assumed throughout) that it is section 34, sub-section (1), and not section 34, sub-section (2), which

governs this case. I think the natural mode of reading that is to say that the weekly payment shall not be payable in respect of the period during which the owner of a ship, under the Merchant Shipping Act, whenever a seaman receives any hurt or injury in the service of the ship, is liable to defray the expense of attendance and medicine and the expenses of maintenance until he has returned to a proper return port without any deduction on that account from his wages. Although in the case of *M'Dermott* your Lordships' House was dealing with another question, I would quote the language of Lord Loreburn on page 39 of the report as expressing what I take to be the construction of these two sections read together—"Before 1906 the seaman was not within the Act. In 1906 the right to compensation for accidental injury was extended to seamen, and begins when the injured seaman ceases to be entitled to maintenance. It is clear that compensation is to begin exactly where the right to maintenance ends." On that ground I think that this question does not depend upon what in particular circumstances a seaman might be able to sue for, or what might constitute a defence to a shipowner if he chose to set it up when sued. The reference to the Merchant Shipping Act is a mode of reading the two sections together. In view of the fact that the man was still in the service of the ship, in view of the fact that being in the service of the ship he was bound to render such service as he could in return for his wages, in view of the fact that the finding is that he was partially incapacitated, and as anybody can see who knows the sea there were many things he might have been employed to do, I think it is plain that on the one hand the owner was bound to pay wages and to defray all these various expenses, but on the other hand the seaman was bound to render services suitable to his state and capacity so far as he could. That being so, the Workmen's Compensation Act period had not begun, because the Merchant Shipping Act period had not terminated.

Suppose the right way to look at it is as your Lordships are minded to do, and to say that the word "liable" means liable in the particular circumstances of the case, I regret to see—doubtless it may be by inadvertence—that in more than one passage in the judgment in the Court below it has been assumed that it is possible for a seaman by breaking his contract and deserting his service to bring the contract to an end at his own hand either in whole or in part. I do not understand it to have been contended before your Lordships that that doctrine is really true. I understand the two propositions presented here to be, first of all, that the benefit, whether it arose under the contract or arose under the statute, the contract having terminated, was a benefit of a unilateral character which the seaman could waive at any time that he chose, or secondly, that the word "liable" in the Workmen's Compensation Act may have the effect of meaning that in this particular case the statute enacted that one party to a contract can at his own hand terminate reciprocal obligations in that contract without the

assent of the other party. I cannot believe that such an invasion of the law of contract was intended by the Workmen's Compensation Act 1906; and as to the other point I think it is quite clear that under the circumstances the benefit of maintenance did not constitute a purely unilateral advantage which it was competent to the seaman simply to waive. Under the contract as regulated by this statute the shipowner has an interest in his obligation to maintain the seaman—that is one way of putting it—or he has a right dependent upon the continuance of the period of maintenance which is of advantage to him, namely, to postpone in his favour the Workmen's Compensation Act period until the termination of the Merchant Shipping Act period. It follows, that to say that by deserting the workman got rid of any obligation as to his maintenance, for he discharged it, is to overlook the circumstances that the existence of that obligation was a thing beneficial to the shipowner, and being a thing which arose out of the contract could only be discharged either by mutual consent, which was not given, or by a repudiation of the obligations of the contract on the one hand, assented to, expressly or by implication, on the other. Neither of these things is found to have occurred. Surely it is not a fair statement of the argument for the appellant to say, as I think the learned judges below did say, that the shipowner claims the right to repatriate a seaman, or to declare that his return to Bombay is a condition-precursor to any obligation on their part under the Workmen's Compensation Act. The real point—at least I should have thought so—is that to permit a workman by refusing to proceed and be maintained on the voyage and to perform such services for his wages as he is fit to perform, and to receive his ultimate discharge in due statutory form when he is returned to Bombay—to say that he, being under these obligations, is entitled to declare by committing the crime of desertion that he will not perform them any longer, and thereupon entitle himself to bring into operation for his own advantage and for the disadvantage of the shipowner the Workmen's Compensation Act earlier than it would otherwise come into operation, is to deprive the shipowner of his rights under the contract, namely, to hold the man to his service, to require that being only partially incapacitated he shall render any services he can of a seamanlike character, and above all by maintaining in force the obligations of the service and of the Merchant Shipping Act to postpone the application of the Workmen's Compensation Act. It appears to me to be quite clear that even if you read the words "liable to defray" as meaning "liable under the particular circumstances to defray," or "de facto liable to defray," or "possessed of no defence that he could plead to an action for not defraying"—even if you read the words in that sense, you cannot do so without affirming that this contract has been made by this harmless-looking sub-section different from all other contracts, and is a contract which one party

can break and thereupon dissolve to his own advantage without the consent of the other party. That, as I have already said, I do not think the statute provides. I therefore should have thought that the appeal should have been allowed.

Their Lordships ordered that the judgment of the Court below be affirmed and the appeal dismissed with costs.

Counsel for the Appellants—Moncrieff, K.C.—Bernard Sandeman (the latter of the English Bar). Agents—Macpherson & Mackay, W.S., Edinburgh—John Kennedy & Company, W.S., Westminster.

Counsel for Respondent—Mackay, K.C.—Aitchison—Gillies. Agents—W. G. Leechman & Company, Glasgow and Edinburgh—D. Graham Pole, S.S.C., London.

Monday, December 19.

(Before Viscount Haldane, Viscount Finlay, Lord Dunedin, Lord Shaw, and Lord Sumner.)

SCRIMGEOUR v. WILLIAM THOMSON & COMPANY.

(In the Court of Session, March 19, 1921, S.C. 588, 58 S.L.R. 398.)

Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (1)—"Out of and in the Course of the Employment"—*Seaman under the Influence of Drink Falling from Ladder whilst Going on Board Ship.*

A seaman who had been allowed ashore for his own purposes was returning to his ship by means of a ladder leading from the quay to the ship's bulwark, when owing to his dazed condition, due to the liquor he had consumed when on shore, he fell from the ladder and was drowned. *Held (diss. Viscount Finlay, rev. judgment of the First Division)* that the findings of the arbiter as to the cause of the accident amounted to an absolute finding that the sole cause of the accident was the drunken condition of the seaman; that that was a finding of fact which ought not to be disturbed; and that, accordingly, the accident did not arise out of the employment.

The case is reported *ante ut supra*.

William Thomson & Company appealed to the House of Lords.

At delivering judgment—

VISCOUNT HALDANE—If I were at liberty to speculate on the circumstances of this case, and if I had to act as arbitrator or as a judge of fact, I am not sure that I should not have come to the same conclusion as the First Division of the Court of Session. There is a great deal that is plausible in the view taken in the judgment of the learned Lord President, and a great deal that commends itself to my own sense of what the circumstances in this case really were. But I am not at liberty so to speculate. The statute under which we are proceeding is one which says that the question of fact