his note. He admits candidly that it was added afterwards; but what he says in effect is this—"I have used an ambiguous word, and I wish it to be understood that when I used that word I did not use it in the technical sense of the law." I think that we are bound not only by the original finding of fact, but by what he says that he intended to convey by his words. It is not, as counsel for the respondent suggested, that the learned Judge had changed his mind afterwards, which I quite agree would be quite inconsistent with the Act of Parliament; but what he does say is, "I have used a word which I think upon reflection is capable of being misunderstood, and I now want to explain in what sense I have used the word." I think that he was entitled to do that, just as anyone of us here, in looking over a judgment afterwards, may think that we have used an inappropriate word and may substitute one which is more appropriate to the occasion. As to the other question which counsel for the respondent intended to argue, and I am afraid that he is disappointed because the view which we take prevents that question from being raised, I will only say that I myself would absolutely decline to give any judgment upon that subject, because in this case I am of opinion that what the learned Judge has done has prevented that question from being raised. In his finding he has given upon very familiar questions the real proposition with which we are dealing—namely, whether or not a person who knows that the public are going over his ground, and going over it habitually, is entitled without warning or notice, or any other precaution whatsoever, to put a dangerous beast where he knows it may be probable—and almost certain if the thing continues—that the beast will sooner or later do some injury to persons crossing this ground, and crossing it in one sense with his permission—not that he has given direct permission, but that he has declined to interfere and so acquiesced in their crossing it. If he has acquiesced in their doing so, he is bound to take the ordinary precautions to prevent persons going into a dangerous place where he knows that they are going, and going by his acquiescence without notice or warning or any form of security to prevent the injury from happening which did happen. Under those circumstances I am of opinion that the judgment appealed from ought to be reversed.

LORD ATKINSON—I concur. On the interpretation which I think is most rightly and properly put upon the findings of the learned County Court Judge, it is clear that the plaintiff was lawfully in the place where the injury happened to him. That being so, it is clear, I think, upon authority that the respondent owed a duty to him to take care of this dangerous animal which the respondent put there, which injured the plaintiff by the very vices of which the respondent was well aware.

LORD SHAW—I should think it strange if a learned County Court Judge should not be permitted to explain deliberately in writing what he has said in giving judgment, so as to avoid any possible misconception or misconstruction of the language which he has employed. I am glad to know from your Lordships that there is no rule of procedure which forbids that by the law of England. In the present case, accordingly, looking at the findings of the learned Judge, I observe that they are threefold—first, that the place where this unfortunate attack took place was habitually used by passengers on foot, and this to the knowledge of the defendant; secondly, that the horse was, and was known by the defendant to be, a dangerous animal with savage propensities; and thirdly, that the horse with these known vices was put by the defendant in that place so habitually traversed. In those circumstances I have no doubt that liability attaches to a defendant so acting. I specially desire to reserve any opinion as to the further doctrine applicable to the case of a mere trespasser as such, and further to add that I must not be held as in any respect assenting to the pronouncements by Darling, J., and Vaughan Williams, L.J., on that larger topic.

Judgment appealed from reversed.

Counsel for Appellant—Holman Gregory, K.C.—W. A. Jowitt. Agents—Blyth, Dutton, Hartley, & Blyth, Solicitors.

Counsel for Respondent—Leslie Scott, K.C.—H. Beazley. Agents—Harrison & Powell, Solicitors.

HOUSE OF LORDS.

Wednesday, November 9, 1910.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Atkinson and Shaw.)

BARNABAS *v.* BERSHAM COLLIERY COMPANY.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *sec.* 1—*Accident—Diseased State of Workman.*

A workman suffered from a diseased condition of the arteries, and he died of an apoplectic seizure while engaged at work. There was no evidence to show that the apoplexy resulted from a strain or any other incident of labour.

Held that there was no evidence that the death had occurred from accident arising out of the employment (*cf. Hughes* v. *Clover, Clayton, & Company*, 47 S.L.R. 885, [1910] A.C. 242).

The appellants were the dependants of a workman who died while employed in the respondents' colliery. The workman was

engaged in building a "pack" or erection of earth and stones. The pack was built up nearly to the roof when the workman died from the cause stated *supra* in rubric. A stone weighing 2 lbs. lay at the foot of the "pack," but there was no further evidence as to the immediate cause of the seizure. The County Court Judge found that the deceased died "from apoplexy brought on by the strain while engaged in the heavy work of building the pack," and he made an award in favour of the dependants. This was set aside by the Court of Appeal (COZENS-HARDY, M.R., FLETCHER MOULTON and BUCKLEY, L.JJ.).

The dependants appealed, and at the conclusion of the argument for them their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In cases under this Act, in the same way as in cases under any other Act or at common law, the plaintiff must prove his case; and although he may establish a state of facts which leads one to think that his version is quite a possible version of what took place, he must do something more than show a state of facts which is consistent either with one view or with another view. I should myself greatly regret that we should come to this form of argument—that we should attempt to infer a conclusion of fact in one case from a comparison with other findings in other cases and upon other evidence; but that, I am sorry to say, is really the way in which the appellants here have been driven to eke out their contention. Findings of fact in one case are really no help in finding the facts in another, unless it be that they may illustrate the way in which learned judges are accustomed to look at evidence. Is there here any evidence in support of the finding of the learned County Court Judge? He says that the deceased man died "from apoplexy brought on by the strain while engaged in the heavy work of building the pack." Was there any evidence to support the finding that the apoplexy was brought on by the strain? The only piece of evidence that has been referred to is this, that the doctor says that "the man's arteries, especially the arteries of the brain, had degenerated, and great effort in doing anything might cause them to rupture. On the other hand, they might have ruptured while he was asleep in bed. The arteries were in such a state that they might rupture with slight exertion or with no exertion at all." It seems to me that in this state of facts, unfortunate as it may be for the deceased man and for those whom he has left behind him, we, as a court of justice, are bound to say that this state of facts is equally consistent with the one conclusion or with the other, and therefore the appellants have not made out their contention that this was a death from an accident arising out of and in the course of the employment. It is, of course, a commonplace to say that one must be very sorry for people who suffer and get no redress, but we are bound to administer the law, and I think that we should be wanting in our duty if we did not do in cases of this kind what we are compelled to do in cases of another kind.

EARL OF HALSBURY—I am of the same opinion. Propositions must be proved in a court of law by proof of evidence, and that is not satisfied by surmise, conjecture, or guess.

LORD ATKINSON concurred.

LORD SHAW—I am of opinion that this unfortunate man died of apoplexy. I do not think that it is proved in this case that there was any accident at all, or that there was any strain, ordinary or extraordinary, which caused the apoplexy to which he succumbed. I therefore say nothing with regard to the previous cases; but I hold, as the Earl of Halsbury has said, and as I expressed in the recent case of *Marshall* v. *Owners of the Wild Rose*, *supra*, p. 701, ([1910] A.C. 486), that in the region of proof it is not legitimate to hold as sufficient what is mere conjecture.

Appeal dismissed.

Counsel for Appellants—Atkin, K.C.—A. Clement Edwards. Agents—Griffiths & Roberts, Solicitors.

Counsel for Respondents—C. A. Russell, K.C.—Adshead Elliott. Agents—Rawle, Johnstone, & Company, Solicitors.

HOUSE OF LORDS.

Tuesday, December 13, 1910.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Atkinson and Shaw.)

M'DERMOTT *v.* OWNERS OF THE "TINTORETTO."

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

Ship — Master and Servant — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 7 (1) (*e*), *and Sched. I*, 3—*Merchant Shipping Act* 1906 (6 *Edw. VII, cap.* 48), *Part IV—Maintenance and Relief of Seaman left behind Abroad—Commencement of Liability to Pay Compensation—Diminution of Compensation by Outlay on Maintenance.*

Where employers become liable in respect of a seaman employed by them, both under the Merchant Shipping Act 1906 to pay, relieve, and maintain him while disabled abroad, and also, under the Workmen's Compensation Act 1906, to pay compensation to him, the right to compensation commences at the expiry of the duties of maintenance, and the cost of maintenance does not fall to be taken into account.

A seaman while on a foreign voyage was totally incapacitated by accidental injury. Under the Merchant Shipping Acts his