general financial arrangements are dealt with and controlled at meetings held from time to time at the offices of the company in England. The Commissioners further found that the head and seat and controlling power of the company remained in England with the board of directors of the company. How far in any particular case the power over finance gives controlling power is a question for the Commissioners, but I find it difficult to appreciate how any trade or business can be exclusively carried on outside the United Kingdom by a company which has its offices in England and whose directors are empowered to and do deal with all the general financial arrangements of the company. I agree with Horridge, J., that it is not possible to serve the business of the respondents in such a way as to hold that there is a cleaving line between general questions of finance and the local management in Egypt.

It was said in argument that although the directors in England had general controlling powers in matters of finance there was no evidence that they exercised this power in relation to the Egyptian business. For the reasons already stated I think that there was evidence on which the Commissioners could find that the directors of the respondents had not only the power to deal with all general financial arrangements of the company, but also exercised this power. It becomes therefore unnecessary to decide how far the reservation of a power of control which has not been exercised is in itself sufficient to negative a claim to be treated under case 5, but I do not desire to be understood as throwing any doubt on the decision in *Ogilvie* v. *Kitton* (5 Tax Cas. 338).

In my view the appeal should be allowed.

Order of Court of Appeal affirmed and appeal dismissed.

Counsel for the Appellant—Sir J. Simon, A.-G.—Sir S. Buckmaster, S.-G.—W. Finlay, K.C. Agents—H. Bertram Cox, Solicitor of Inland Revenue.

Counsel for the Respondents—Sir R. Finlay, K.C.—A. M. Bremner. Agents—Board & Company, Solicitors.

## HOUSE OF LORDS.

*Tuesday, May* 11, 1915.

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

### PARKER *v.* OWNERS OF SHIP "BLACK ROCK."

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

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

A seaman, with leave, went on shore to buy provisions, his contract of service being "Crew to supply their own provisions." On the seaman's return he fell into the water and was drowned, somewhere in the length of the pier at the end of which his ship had been moored, but from which she had been moved to another berth.

*Held* that the accident did not arise "out of and in the course of his employment."

Appeal by the widow of a fireman from an order of the majority of the Court of Appeal (LORD COZENS-HARDY, M.R., and EVE, J., EVANS, P., *diss.*) affirming an award of His Hon., Judge A. P. THOMAS sitting as arbitrator under the Workmen's Compensation Act 1906, at the County Court, Liverpool.

The appellant, who was the widow of Christopher Parker, a fireman on board the respondents' coasting steamer "Black Rock," claimed compensation in respect of her husband's death.

On the 7th January 1913 Parker signed an agreement for a round coasting voyage in the "Black Rock." The contract of service was contained in a printed document issued by the Board of Trade, but before Parker signed it the scale of provisions required by section 25 of the Merchant Shipping Act 1906 to be served out to the crew during the voyage (where the crew do not furnish their own provisions) was struck out and in lieu thereof were inserted in writing the words—"Crew to provide their own provisions."

On the 14th January 1913 the "Black Rock" was moored alongside the North Pier at Newlyn. Parker went ashore in the afternoon with another man for the purpose of buying provisions for himself for the ensuing voyage. His going ashore for this purpose was with the knowledge and tacit consent of his employers. There was an entry in the ship's log-book that Parker and his companion had gone ashore to buy provisions, and the evidence was that they had purchased articles to the value of 7s. after having drinks together. The night of the 14th January 1913 was dark and rainy, and a gale was blowing. The wind and rain would have been almost directly in the face of anyone walking down to the pierhead, which was badly lighted.

During the time that Parker was ashore the vessel had been moved from the north to the south pier, but this fact could not have been known to him. After parting with his companion nothing more was known about Parker's movements until the next day, when his body was found on the shore at a place where it was likely to have been washed up had the man fallen off the pierhead into the water.

The widow in these circumstances claimed compensation on the ground that at the time of the accident the deceased was fulfilling the duty he owed his employers to go ashore for the purchase of provisions, and therefore was on ship's business when the accident happened to him.

The County Court Judge inferred from such facts as could be proved that Parker

met with an accident while endeavouring to return to the ship after buying provisions, but thought that he was precluded by *Mitchell* v. *Owners of Steamship "Saxon"* (1912, 5 B.W.C.C. 623) from holding that the accident arose out of the deceased's employment, and therefore made his award in favour of the employers.

The Court of Appeal (EVANS, P., dissenting) affirmed the award.

The widow appealed *in forma pauperis.*

EARL LOREBURN—I think your Lordships will all agree that this case has been presented to us with great ability and with singular fairness, and that the argument which we have heard has assisted us in coming to our conclusion, but I do not think we need to call upon learned counsel for the respondents. We cannot say in this case that this unfortunate man promised his employers that he would feed himself. If that is the case, and if we cannot so construe the contract between them, what did it matter whether he went ashore to buy his provisions because he had contracted that his employers should not be obliged to feed him, or because he was obliged to go or to starve? In either case the necessity was there to get food, but that is not, I think, enough to entitle the appellant to succeed. In either case the question seems to me to be the same—namely, do those circumstances make the accident one that arises out of the employment? Did this injury arise out of this man's employment as a seaman on board this ship; did his employment involve as one of the things belonging to the employment that he should come ashore to get food and then return the same evening? I cannot think that the case can be regarded as one in which it was his duty for that purpose to come ashore and to be ashore and return to the ship. However much one may have sympathy—and we all must have sympathy with the widow—we ought not to allow our feelings to lead us beyond our duty. I have read the judgment of the learned County Court Judge, and I take his facts as found and his inferences from the facts as found, and I cannot see that upon those facts the accident arose out of the employment. It arose from this man needing to have food, which, of course, is a necessity common to all mankind.

LORD PARKER—The accident in this case took place during the absence of the employee from the vessel upon which he was engaged. He came on shore, and I think that under the circumstances it must be presumed that he came on shore with the leave of his employer, and it was during that absence from the ship that the accident occurred.

It is not sufficient in order to make this an accident arising out of the employment that the accident happened during a period when the man was lawfully absent from the vessel. In order to make it an accident arising out of the employment, the absence from the vessel must be in pursuance of a duty owed to the employer. It appears to me that that is, shortly stated, the result of the decided cases. It is a line of decisions which lays down a distinctly workable rule upon the construction of an Act the obscurity of which is exceedingly great, and I should be unwilling in any way to interfere with it.

It is desired in the present case to show that the absence from the ship was pursuant to a duty owed to the employer, but I think that the effort to do so breaks down. It is said that the man was on shore to purchase provisions, that he was under a contractual obligation to his employer to purchase provisions and to feed himself, and that consequently he was absent from the ship pursuant to a duty owed to the employer. Now the facts of the case are, shortly, these — Under the statutes the employer, if the workman does not provide his own provisions (as he did in this case), is bound to supply them, and the statutory form is a form whereby the employer contracts to supply provisions to seamen in accordance with a scale specified in a schedule. As a matter of fact when they came to contract, the employer and the seaman in this case agreed that the statutory provision should not apply, and, of course, the consequence was that the workman had to supply his own provisions so far as he required them, and he would require them in the normal course of nature. It was proved before the County Court Judge that the form which that contract took was "Crew to supply their own provisions," and I have no doubt whatever on the point that according to the proper construction of those words the seaman did not come under any contractual obligation which the master could enforce. It merely means that the master is freed from an obligation which he might otherwise be subject to.

That being the case, I do not think that I need enter in any way into the question as to whether the Court of Appeal were justified or otherwise in looking at the original contract, the contract before the County Court Judge having been proved by secondary evidence.

That appears to me entirely to dispose of the case. I cannot in the state of the authorities assent to the further proposition that was made to the effect that if a man goes on shore lawfully for a purpose which must have been contemplated as one of the purposes for which he would go on shore, that makes him on shore upon the ship's business or pursuant to any duty owed to his employer. The only possible way, as it appears to me, of putting the facts of the case in a light favourable to the seaman is that which has been suggested in the course of the argument—namely, that it being an extraordinarily dark stormy night, and the proper and usual method of regaining the ship being by way of the North Pier, and the accident having evidently happened during transit from the land along the North Pier to the place where the ship was supposed to be, that may be considered as the access to the ship, and that an accident happening during the course of using that access might be, within the cases, an accident in the course of the employment.

But after all that was a matter for the County Court Judge, and there is no finding in the judgment of the County Court Judge from which I think we in this House are justified in drawing any inference.

I conclude therefore by saying that the appeal fails.

LORD SUMNER—I agree. It is enough I think to take the evidence that was before His Honour and his own findings upon that evidence, and thereupon the only question becomes one of construction. He signed the articles, says the master, the only witness on the point. The Board of Trade scale of provisions was crossed out and "Crew to provide their own provisions" was inserted, and His Honour Judge Thomas accepts that. Instead of provisioning the ship themselves, in which case they would have had to provide for the crew according to a scale as set up by the Board of Trade, the owners of the "Black Rock" struck this scale out of the articles and inserted a term whereby the members of the crew were to find their own provisions. Upon the secondary evidence of the written agreement it becomes a question of construction to decide what is meant by the erasure and the insertion of "Crew to provide their own provisions." I think it is quite clear that that does not constitute any promise by the seamen severally to the master of the vessel that they would as a duty towards him provide themselves with their own provisions. Testing it by the remedy, could he have recovered damages if any one of them had provided no provisions or not enough? Could he have dismissed one of them because for reasons of his own he preferred to be unduly abstemious instead of providing himself amply with food? The answer in each case must be no.

That being so, there is no contractual obligation which made the deceased's errand on shore part of his employment in itself. It is suggested that as in fact he fed himself on board, his going ashore at a convenient port to get provisions constituted such a moral necessity to do so, not arising generally but arising specially from the terms upon which he was on board, that that places him on his errand on the same footing as though he had gone to discharge a duty to the ship—either to buy provisions, to perform an errand, or otherwise. No authority is stated for that proposition, and I do not think it can be accepted.

That being so, little need be said about what was suggested as the admission of a new fact in the Court of Appeal. I am unable to appreciate why it is that it would be a new fact—that is to say, an attempt to decide the case upon materials other than those which were before His Honour Judge Thomas—when the Court of Appeal looks at the best evidence of a written agreement, namely, the agreement itself, which by that time had come back from sea, and was forthcoming, instead of simply looking at the secondary evidence which was given in the County Court, especially as the two together seem to amount to precisely the same thing. The copy has been produced to us. There is a statutory provision that an erasure must be attested by the superintendent, and on the face of the copy produced it seems to me to be quite consistent with its appearance that it has been so attested, and I do not think we need go behind its appearance.

The remaining point that was made—and I am sure that no other point could have been made—was that under the circumstances the accident could be brought within those cases in which a man, having gone on shore for his own lawful purposes, but still his own purposes, is returning to his ship in order to take up again the active discharge of his employment, which has never ceased as an employment, and although he has not actually regained the ship he has been held to be so far approaching it and so far within the ambit of the means of access to the ship as to make it reasonable to hold that he has returned to that sphere in which his employment operates, and therefore that the accident arises out of the employment. I do not think that that has ever been physically extended for any great distance. All that we know of this man's death is that it took place by his falling off the North Pier somewhere between the grocer's shop and the end of the pier where the ship was not, though he thought that she was there. The pier is a quarter of a mile long, and whether or not under those circumstances, on the finding of fact by the County Court Judge, that long pier was all one means of access to an absent ship I will not say, but I think it is quite clear, as the County Court Judge has found nothing about it, that the argument is unsustainable before your Lordships.

I agree that the appeal fails.

LORD PARMOOR—I concur. I think that there was no such contractual obligation as was contended for by the learned counsel for the appellant, and for my own part I do not see any difference between the evidence of the contract which was before the learned County Court Judge and the actual document when it was produced before the Court of Appeal. I think it is clear that Christopher Parker, on whose behalf the claim is made, was not absent from the ship in pursuance of any duty owed to the employer, and in the absence of such duty no liability would arise under the provisions of the Workmen's Compensation Act.

As regards the second point, I think that that is concluded by the finding of the learned County Court Judge. There are only a few words which I wish to read, because I think that the facts are conclusive against any claim under this second heading —"The facts of the case do not bring the applicant within the Act, because, beyond drawing the inference that he met with an accident while endeavouring to return to the ship after buying the provisions, I am unable to draw any further inference as to the point of the accident except that it was somewhere on the North Pier."

I agree that the appeal should be dismissed.

LORD WRENBURY—The question in this

case is whether the accident was one arising out of the employment. The accident in question was that the man in returning from a lawful outing upon shore to his ship unfortunately fell into the water and was drowned. In order to succeed it is not sufficient that he should show that but for his employment he would not have been at the scene of the accident. He must do more than that; he must show that it was the employment which took him to the place of accident. Now he has sought to do that in either one of two ways. In the first place his counsel has said that he was contractually bound towards his employer to do the act for the purpose of doing which he went on shore, that he was contractually bound to supply himself with provisions, that he went on shore to get provisions, that he was discharging his duty to his employer when he fell into the sea, and therefore he is entitled to recover. If the premises were granted I agree that the conclusion would follow, but the premises seem to me to be wrong. Under the Board of Trade form, in the absence of anything to the contrary, it would be for the master to supply the crew with provisions. The only effect of that which was put into the agreement —namely, "Crew to provide their own provisions"—was, I think, this, that the clause having been struck out which threw the obligation upon the master to supply the provisions by reason of the fact that the crew were going to provide their own, there was no contractual obligation on the part of the man to supply his own provisions, and the effect was only to discharge the master from the obligation which otherwise would have rested upon him. It appears to me therefore that there was no such contract.

But then it was said that, contract or no contract, at anyrate under the circumstances the man was bound to get provisions in order to sustain himself during the next journey of the vessel, that that was a duty which he owed, and he was performing that duty. It seems to me that from the stipulation that he was to get his own provisions this consequence ensued, that the master was bound to give him reasonable facilities from time to time for going to buy them, but it does not follow that when he was buying them he was discharging any duty towards his employer. The man was doing an act which under the circumstances he had to do, but he was not doing an act which he owed to his employer the duty to do, and between those two things it appears to me rests the ground upon which this case is to be decided. It appears to me that this accident did not arise out of his employment—that it did not result from any contingency which had to be satisfied in order for him satisfactorily to perform the duties of his employment.

I agree that the appeal fails and should be dismissed.

Appeal dismissed.

Counsel for the Appellant—Howard Jones —Elliot Gorst. Agents—Griffiths & Roberts, for R. E. Warburton, Liverpool, Solicitors.

Counsel for the Respondents — Neilson— Lord. Agents—Holman, Birdwood, & Company, Solicitors.

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## HOUSE OF LORDS.

*Tuesday, May* 11, 1915.

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

### BLAIR & COMPANY, LIMITED *v.* CHILTON.

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

*Master and Servant—Workmen's Compensation Act* 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Accident Arising Out of and in the Course of the Employment*"—*Disobedience to Orders.*

Contrary to orders, a boy employed on a machine sat on the guard of the machine, and in consequence caught his foot in the machinery. Had he been standing the accident could not have happened.

*Held* that he was entitled to compensation.

Appeal by the employers from a judgment of the Court of Appeal (Lord Cozens-Hardy, M.R., Swinfen Eady and Pickford, L.JJ.), reported 7 B.W.C.C. 607, 30 T.L.R. 623, which reversed a decision of His Honour Judge Templar of the County Court, Stockton-on-Tees.

The learned Judge held on the facts that the case came within the decision of this House in *Plumb* v. *Cobden Flour Mills Company*, 51 S.L.R. 861, [1914] A.C. 62, and gave judgment for the employers.

The *facts* were as follows: — The appellants were engineers, boilermakers, and ironfounders carrying on business in Stockton-on-Tees, and the respondent Robert Chilton was a lad employed by them as an apprentice riveter at a wage of 7s. a-week.

On the 14th August 1913, in the course of his employment, Chilton was engaged on a rolling machine making ventilator tiers. At each end of the machine there was a guard or platform and a wheel for adjusting the rollers. The guard or platform was 2 feet 9 inches from the ground. The respondent's duty was to turn the wheel at one end of the rollers as he stood by the guard. In so doing there was no risk of injury to his feet. He was forbidden to sit during working hours in any part of the shop.

On the day of the accident he sat upon the platform or guard, and while so seated continued to turn the wheel. He sat down solely for his own convenience, and while seated a boy touched him on the back, and he turned half-round and stretched in so doing his left leg out, and his left foot was caught between the rollers and so crushed that it became permanently disabled.

After hearing counsel for the appellants—

Earl Loreburn—This is an appeal in a case under the Workmen's Compensation