than a century ago in the *Lamington* case, 1869, 7 Macph. 565, 6 S.L.R. 371; 1873, 11 Macph. 292, 10 S.L.R. 195. It has never since been questioned. On principle I cannot see how it ever could be. If the heritor gives up, and the minister takes, the whole teind, what need is there for further or other procedure so far as the heritor is concerned. None that I can see. But the question although never debated, was authoritatively and finally settled by a unanimous judgment of this Division in the case of the *Earl of Minto*, 1873, 1 R. 156, 11 S.L.R. 66. There the heritor had for forty years made overpayments of stipend under a final decree of locality. The heritor, holding a valuation of his teinds, surrendered. The minister objected to the surrender on the ground that it was too late to reduce the decree of locality. The Court, however, held that it was quite unnecessary to reduce the decree in order to give due effect to the surrender. The Lord President (Inglis) there said—"I think the counsel for the minister . . . proceeded always on the assumption that in order to get rid of the payments in excess, and the effect of the decree of locality under which they were made, it was necessary for the heritor to reduce the final decree of locality. Now that, I apprehend, is a mistake. I do not think it is at all necessary for the heritor to reduce the final decree of locality." Lord Deas expressly lays it down that "no action of reduction of a decree of locality is required in order to enable a heritor to surrender his teinds." And Lord Ardmillan amplifies the doctrine thus—"I am further of opinion that a reduction by the heritor of the decree of the locality under which he has been paying stipend is not necessary. The right to surrender on the valuation is an outstanding privilege of which the heritor may avail himself whenever he finds it necessary to put a stop to surplus payment. Every decree of locality authorising and directing the payment of stipend out of teind is, I think, granted on the footing that if there is a valuation by the High Commissioners it may be founded on, and a surrender in terms thereof may be made by the heritor at any time. The heritor's act of surrender is not a challenge of the decree of locality, but the exercise of a right which does not imply an objection to the locality to be enforced by reduction, but rather a satisfaction of the decree by surrender." There can therefore, I think, be no doubt that on the main question raised in this case the minister's position is clearly untenable. No doubt he might be able to show that there were special circumstances present which would warrant this Court in attaching some condition to the heritor's surrender, as was done in the case of *Cameron*, 7 Macph. 565, 6 S.L.R. 371, and 11 Macph. 292, 10 S.L.R. 195. But the minister here avers no circumstances which can raise a plea for conditional surrender. Indeed he does not, as I understand, dispute the very specific averments made by the pursuer to the effect that "a reduction and rectification of the locality as the defender suggested would not be beneficial to the defender but detrimental to him, as he would therefore receive less from the other heritors of the parish whose teinds have not been surrendered than he does at present." Counsel for the pursuer satisfied me that this would be so. But it is needless to dwell upon the matter, for if any condition were to be imposed on the heritor qualifying his right to surrender it was for the minister to aver and establish the existence of circumstances which would warrant that course being taken.

On the two subordinate questions raised in this case I agree with the view expressed and the conclusion reached by Lord Cullen. I am therefore for affirming the Lord Ordinary's interlocutor with the variation suggested by Lord Cullen.

The Court repelled the pleas-in-law stated for the defender, found that the pursuer had made a valid surrender of his teinds as at 12th March 1917, being the date of the deed of surrender of teinds subscribed by him, and with that variation adhered to the interlocutor of the Lord Ordinary.

Counsel for the Pursuer—Wilson, K.C.—J. A. Christie. Agents—Steedman, Ramage, & Company, W.S.

Counsel for the Defender — Constable, K.C.—A. M. Mackay. Agents—Menzies & Thomson, W.S.

COURT OF SESSION.

Saturday, November 23.

SECOND DIVISION.

[Sheriff Court at Glasgow.

WRIGHT & GREIG, LIMITED *v.* M'KENDRY.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Arising out of*"—*Death from Fall Caused by Fit.*

A workman in the course of his employment in a bonded store, the floor of which was concrete, was seized by a fit and fell, fracturing his skull and thereby sustaining injuries which caused his death. *Held* (*dis.* Lord Salvesen) that the death was caused by accident arising out of his employment.

Wright & Greig, Limited, whisky distillers, Glasgow, *appellants*, presented a Stated Case under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) against a decision of the Sheriff-Substitute (MACKENZIE) at Glasgow granting an application by Mary M'Kendry, Bedlay Street, Springburn, Glasgow, *respondent*, for compensation for the death of her brother Alexander M'Kendry by an accident arising out of and in the course of his employment.

The Case stated—"The case was heard before me and proof led, at which one of the referees appointed under said Act sat with me as medical assessor on this date,

when the following *facts* were established:—1. That the respondent, who resides at 16 Bedlay Street, Springburn, Glasgow, is the sister of the deceased Alexander M'Kendry, who resided there, and that the appellants are whisky distillers and blenders with stores at 14 Stockwell Place, Glasgow. 2. That said deceased Alexander M'Kendry, who was thirty-four years of age at the time of his death, was and had been for about two years before his death a labourer in the employment of the appellants at their stores aforesaid; that his wages in that employment amounted to about 32s. per week. 3. That on 23rd August 1917 the said Alexander M'Kendry commenced to work in the bonded store of the appellants; that his work consisted of lifting spirit casks and tilting them over a tub for the purpose of draining off their contents; that the floor of his working-place was formed of concrete and was on a slight slope; that about 9·30 on said morning he was found in said store by a female worker lying on the floor of the store about three feet from said tub; that his skull had been fractured by the fall; that he was apparently suffering from a fit, and that although he partially recovered he was again seized with convulsions and was conveyed to Glasgow Royal Infirmary, where he died a few hours later; that the cause of death was certified to be 'fractured skull.' 4. That the said deceased had been feeling unwell that morning, and had suffered from sickness and trembling; that a post-mortem examination was held and showed that the skull had been fractured, which was the immediate cause of death, and also that both kidneys were adherent and showed nephritic changes. . . .

"I found in law that from the above facts it is to be inferred that the death of the said Alexander M'Kendry was caused by an accident arising out of and in the course of his employment with the appellants, the fall which he sustained having caused fracture of the skull from which he died, and the cause of the fall having been a uræmic fit arising from the state of his kidneys. I found the appellants liable in compensation to the respondent in respect of said death, and assessed said compensation at the sum of £113, and awarded said sum accordingly with expenses."

The arbitrator appended the following note to his award of 31st July 1918:—"The medical evidence shows that this man died from fracture of the skull caused by a fall on the concrete floor of the place in which he was engaged in the defenders' (appellants) employment. There is a complete absence of direct evidence as to the cause of the fall, but the medical investigations, including a post-mortem examination, showed that he suffered from a diseased condition of the kidneys. This might produce what is termed a uræmic fit, the symptoms of which agree with those which he displayed.

"If this be so it is argued for the defenders that there is no liability on them. I do not, however, agree that this is so. The immediate cause of death was fracture of the skull caused by his fall. Although the uræmic fit may have caused the fall it did not necessarily cause the fracture of the skull. That arose from his falling on the hard floor of his working-place, where he was actively employed on his employers' business. Had he taken the fit in bed or in many other circumstances there might have been no fracture and no death. It is not, I apprehend, necessary or competent to consider more than the proximate cause of death. . . ."

The *question of law* was—"Was there evidence upon which the arbitrator could competently find that the death of the said Alexander M'Kendry was caused by accident arising out of and in the course of his employment with the appellants?"

Argued for the appellants—The question should be answered in the negative. To entitle the respondent to recover, the employment must be found to be the *causa causans* of death. In other words, death must have been due to a risk incidental to the employment, and a hard floor could not be termed such a risk—*Wicks* v. *Dowell & Company, Limited*, [1905] 2 K.B. 225; *Thomson* v. *Sinclair*, 1917 S.C. (H.L.) 35, [1917] A.C. 127, 54 S.L.R. 267; *Dennis* v. *A. J. White & Company*, [1917] A.C. 479, *per* Lord Finlay, L.C., at p. 482, and Earl Loreburn at p. 489, 55 S.L.R. 517; *Craske* v. *Wigan*, [1909] 2 K.B. 635, *per* Cozens-Hardy, M.R., at p. 638; *Blakey* v. *Robson, Eckford & Company, Limited*, 1912 S.C. 334, 49 S.L.R. 254; *Rodger* v. *Paisley School Board*, 1912 S.C. 584, 49 S.L.R. 413. The last case was exactly in point. The risk in the present case was one common to all mankind, and not accentuated by the incidents of the employment—*Plumb* v. *Cobden Flour Mills Company, Limited*, [1914] A.C. 62, *per* Lord Dunedin at p. 68, 51 S.L.R. 861; *Macfarlane* v. *Shaw (Glasgow), Limited*, 1915 S.C. 273, *per* Lord Dundas at pp. 276-7, 52 S.L.R. 236. It was not the condition of the premises or the abnormal state of the floor, but the illness that caused the accident. In the present case all the conditions were normal except one, viz., the man's health. In the case of *Wicks* v. *Dowell & Company, Limited* (*cit. sup.*) there was a distinct peril to which the workman was exposed by his work. *Macfarlane* v. *Shaw (Glasgow), Limited* (*cit. sup.*) was of the same character, as was also *Simpson* v. *Sinclair* (*cit. sup.*).

Argued for the respondent—The accident arose out of the employment. The idiopathic condition of the man caused him to fall, but the nature of the floor on which his employment compelled him to stand caused the accident. In such cases it was enough if the conditions of the accident were found in the proximate cause without proceeding to the ultimate or more remote cause—*Wicks* v. *Dowell & Company, Limited* (*cit. sup.*); *Marsh* v. *Pope & Pearson, Limited*, 1917, 10 B.W.C.C. 566, [1917] W.C. & Insce. Rep. 267; *Wales* v. *Lambton and Hetton Collieries, Limited*, 1917, 10 B.W.C.C. 527, [1917] W.C. & Insce. Rep. 289; *Fearnley* v. *Bates & Northcliffe, Limited*, 1917, 10 B.W.C.C. 308, [1917] W.C. & Insce. Rep. 207; *Arkell* v. *Gudgeon*, 1917, 10 B.W.C.C. 660; *Dennis* v. *A. J. White & Company* (*cit. sup.*), *per* Lord Parker of

Waddington at p. 492; *White* v. *Avery*, 1916 S.C. 209, 53 S.L.R. 122. The case of *Rodger* v. *Paisley School Board* (*cit. sup.*) was not reconcilable with these cases.

At advising—

LORD JUSTICE-CLERK—The question we have to decide in this case is whether the workman M'Kendry's death was due to an accident arising out of his employment.

It was contended that there had not been an accident in the sense of the statute, but on the authorities and the facts found proved I am of opinion that M'Kendry's death was due to an accident. He had a fit, but that in itself was not an accident, nor was it the proximate cause of M'Kendry's death, which was directly due to his head coming violently in contact with the concrete floor whereby his skull was fractured. The arbiter finds that the deceased's "skull had been fractured by the fall; that he was apparently suffering from a fit."

If there was an accident it was not disputed that it occurred in the course of M'Kendry's employment.

In my opinion the accident also arose out of his employment. He had to work in an apartment with a sloping concrete floor. He fell, his head striking on the concrete floor with such violence that his skull was fractured and so his death was caused.

A number of cases were cited to us, but I only think it necessary to deal with two of them — *Thom or Simpson* v. *Sinclair*, 1917 S.C. (H.L.) 35, [1917] A.C. 127, 54 S.L.R. 267, and *Rodger* v. *Paisley School Board*, 1912 S.C. 584, 49 S.L.R. 413.

The decision in the case of *Thom or Simpson*, and the judgments pronounced in the House of Lords in that case, it seems to me, mark a further development in the interpretation of the statute beyond anything that had been explicitly determined in previous cases—as I think has been quite distinctly recognised in cases which have followed.

The following are some of the more significant passages in the House of Lords judgments. Lord Haldane said that one of the conditions required to bring a case within the words "arising out of the employment" is that the injury should "have arisen, not merely by reason of presence in a particular spot at a particular time, but because of some special circumstances attending the employment of the workman there. His duty may have occasioned his being near a tree which attracted the lightning or being under a roof which for some reason fell." He refers to an accident "which might have happened to him [the workman] *as readily* in some other spot as in the one where he was employed." Later on he puts the question thus—"Has the accident arisen because the claimant was employed in the particular spot on which the roof fell? If so, the accident has arisen out of the employment." Referring to *Craske* v. *Wigan*, [1909] 2 K.B. 635, he puts the justification of the judgment there on the ground that the risk "was common to humanity," and he refers to the opinion of Lord Kinnear in *Millar* v. *Refuge Assurance Company*, 1912 S.C. 37, 49 S.L.R. 67, "that a risk was specially connected with a man's employment if it was due to the particular place where his employment required him to be at the time."

In the present case there was in my opinion "a special circumstance attending the employment" of the deceased, viz., that he had to work standing on a concrete floor; the accident would not have happened as readily "in other places" and the risk was not "common to humanity" but was "specially connected" with his employment because it was "due to a condition of the particular place where his employment required him to be at the time."

M'Kendry was constantly while at his work standing on the concrete floor, and so was constantly associated with the floor, falling on which fractured his skull and caused his death.

Lord Shaw said—"The expression 'arising out of the employment' is not confined to the mere 'nature of the employment.' The expression, in my opinion, applies to the employment as such—to its nature, its conditions, its obligations, and its incidents. If by reason of any of these the workman is brought within the zone of special danger and so injured or killed it appears to me that the broad words of the statute 'arising out of the employment' apply." He refers to a place of work "which turned out to be a place of special danger." He puts the test at another place thus—"That it was part of the obligations of the service that the workman was placed within the zone of special danger."

In this case I think the workman was by the conditions and incidents of his employment engaged at the time of the accident at a place which turned out to be a place of special danger, because but for the hard concrete floor the fatality would not or might not have occurred.

Lord Parmoor says—"Apart from authority, it appears to me to be reasonably clear, and in accordance with the ordinary natural meaning of the language of the statute, to hold that if the conditions of his employment oblige a workman to work in a particular building or position which exposes him at the time and on the occasion of the accident to the injury for which compensation is claimed, then although the accident is not consequent on and has no causal relation to the work on which the workman is employed, such accident arises out of his employment, as incident, not to the character of the work, but to the dangers and risks of the particular building or position in which by the conditions of his employment he is obliged to work"; and he adds—"In my opinion if the conditions of the workman's employment oblige him to work in a particular building and thereby expose him to the risk of the accident which has happened, this may be described as a peculiar danger to which from the nature of the employment the workman is exposed." And he adds—"A risk may be accentuated by the incidents of the employment when the conditions of the employment oblige the work to be carried on in a particular building which exposes the workman to

the risk of the accident which in fact has occurred."

In my opinion these observations apply to the circumstances of the case we are now considering, and justify the conclusion that the accident arose out of the employment. But for the concrete floor the fracture of the skull would not or at least was not as likely to have happened, and the man's employment compelled him to work on that floor.

The circumstances of *Rodger's* case in my opinion essentially distinguish it from the present. The fall happened on the public street. The janitor there differed in no material respect from any other passenger on the King's highway. The fact that he was on a message for his employers in no sense distinguished him, so far as risk or danger was concerned, from any other passenger or added to his risk.

The Lord President distinguished the case of the railway passenger from that of the railway guard, because "the railway servant travels every day and all the day and we do not." Here M'Kendry had to work every day and all the day on the floor, the hardness of which did the mischief.

To use Lord Kinnear's expression, M'Kendry was "specially exposed" by his employment to the risk which in the event proved fatal. He was exposed "to a greater risk" of getting his skull fractured by falling on the concrete floor just because he was always working on that floor.

As Lord Johnston put it, the "danger was peculiarly incident" to his employment, because it was always present while he was at work. He was thus "exposed to a peculiar risk," as Lord Mackenzie puts it.

In arriving at the conclusion therefore which I have reached I do not think it is necessary in any way to differ from the reasoning of the judges who decided *Rodger's* case, and believing as I do that the arbiter has followed the same principles as were given effect to in *Thom or Simpson's* case in the House of Lords, I am of opinion that the question submitted to us should be answered in the affirmative.

LORD DUNDAS—The deceased Alexander M'Kendry, while working in the employment of the appellants in the place assigned to him for his work, viz., their bonded store, the floor of which was formed of concrete and was on a slight slope, was found lying on the floor apparently suffering from a fit, and died a few hours later. He had fallen on the floor, and his skull had been fractured by the fall. A post-mortem examination disclosed that the fracture was the immediate cause of death, and also that his kidneys were diseased. The learned arbitrator "found in law that from the above facts it is to be inferred that the death of the said Alexander M'Kendry was caused by an accident arising out of and in the course of his employment with the appellants, the fall which he sustained having caused fracture of the skull, from which he died, and the cause of the fall having been a uræmic fit arising from the state of his kidneys," and he awarded compensation to the respondent, sister of the deceased man. We are asked to determine whether there was evidence upon which the arbitrator could competently find that the death was caused by accident arising out of and in the course of the employment.

Our answer must, in my judgment, be in the affirmative. I do not think I should have reached this conclusion unaided by authority, but it seems to me to follow from the cases which have been decided.

It is, I think, well settled that where an injury by accident arises out of the employment it is immaterial and irrelevant to investigate its prior cause or causes. The learned Sheriff refers to *Fenton* v. *Thorley*, [1903] A.C. 443; *Macfarlane* v. *Shaw*, 1915 S.C. 273, 52 S.L.R. 236; *Wicks* v. *Dowell*, [1905] 2 K.B. 225. In *Macfarlane's* case, decided in this Division, the employee was working in a stooping position close to some boxes of molten metal. An intoxicated stranger struck him, and he fell into the metal and was severely injured. Compensation was awarded. We held in accordance with *Wicks* and other cases that the fall was the accident, that the man's duty was to be in the place where he was, that the accident arose out of the employment none the less that it was occasioned by the stranger's blow, and that it was irrelevant to look beyond the immediate cause. In *Wicks* a man subject to epileptic fits was engaged in unloading coal from a ship, where his duty caused him to stand in close proximity to the open hatchway of the hold. He was seized with a fit, fell into the hold, and was injured. The Court of Appeal held that regard must be had to the proximate cause of the accident, viz., the fall, and not to its remoter cause, viz., the fit, and that the accident arose out of the employment. Collins, M.R., proceeded upon the authority of decisions in cases arising out of policies of insurance against accident, which he declared to be directly in point. After dealing with certain observations by noble and learned Lords in *Fenton* v. *Thorley* he observed—"If injury is caused by an accident under the narrow standard of construction applied to insurance policies, *a fortiori* it is so caused within the meaning of the Workmen's Compensation Act." He pointed out that the proximate cause of the accident was obviously the fall, not the fit, and observed—"At that point the authorities come in to the effect that although the cause of the fall was a fit, the cause of the injuries was the fall itself, and they are direct authorities that the injury in the present case was caused by an accident." The Master of the Rolls then gave his reasons for holding that the accident arose out of the employment. He said—"When we get rid of the confusion caused by the fact that the fall was originally caused by the fit, and the confusion involved in not dissociating the injury and its actual physical cause from the more remote cause—that is to say, from the fit—the difficulty arising from the words 'out of the employment' is removed." Matthew, L.J., said—"The case affords an illustration of the rule that one should look to the immediate, and not to the remote cause. . . . In my opinion we ought not to go

back along the train of circumstances and trace the accident to some remote source when it is plain that the man was in fact injured by falling from the place where he was standing, and where it was his duty to stand, in discharge of his duty to his employer." Cozens-Hardy, L.J., agreed, and added—"I think the truer view is that a man always brings some disability with him; it may be a disability arising from age; it may be of some other nature. A workman who is put in a dangerous position in order to do his work is more liable to an accident by reason of the disability which he brings with him than he would otherwise be. Again, an old man is inherently more likely to meet with an accident than a young one, but an employer could not excuse himself on the ground of the man's age. The same consideration applies to a tendency to illness or to a fit, and if a man with such a tendency is told to go to work in a dangerous position and there meets with an accident, the accident none the less arises out of his employment, because its remote cause is to be found in his own physical condition." In the recent case of *Thom or Simpson* v. *Sinclair*, 1917 S.C. (H.L.) 35, [1917] A.C. 127, 54 S.L.R. 267, Lord Haldane said—"Has the accident arisen because the claimant was employed in the particular spot on which the roof fell? If so, the accident has arisen out of the employment, and there is no necessity to go back in the search for causes to anything more remote than the immediate event, the mere fall of the roof, and there need be no other connection between what happened and the nature of the work in which the injured person was engaged. . . . I think that the Court is directed to look at what has happened proximately, and not to search for causes or conditions lying behind, as would be the case if negligence on the part of the employer had to be established. For the reasons which I assigned in this House in *Trim Joint-District School Board of Management* v. *Kelly*, [1914] A.C. 667, 52 S.L.R. 612, reasons which I abstain from repeating, I am of opinion that the governing purpose of the statute makes it as irrelevant to look beyond the immediate cause of the accident for explanations or for remoter causes as it would be in a case arising on a policy of marine insurance, provided that the circumstances bring the immediate cause within the definition."

In the case before us the immediate cause of this man's fatal injury was the fall. If the fall was an accident arising out of the employment, then it is irrelevant to consider that the cause of the fall was a fit. I think upon the authorities that there was here an accident arising out of the employment.

The important case of *Simpson* v. *Sinclair*, already referred to, makes it clear that, as pointed out by Lord Shaw, the expression "arising out of the employment" is not confined to the mere "nature of the employment." The expression applies to the employment as such—to its nature, its conditions, its obligations, and its incidents. If by reason of any of these the workman is brought within the zone of special danger, and so injured or killed, the broad words of the statute, "arising out of the employment," apply. The conditions of the statutory words are satisfied if injury by accident arises to an employee where as part of the conditions of his labour he has to occupy at the time of the accident a particular place of work which turns out to be a place of special danger. Lord Parmoor observed—and his words were repeated with approval by Lord Finlay, L.C., in *Dennis*, [1917] A.C. at p. 482, 55 S.L.R. 517—that "The fact that the risk may be common to all mankind does not disentitle a workman to compensation if in the particular case it arises out of the employment." And it appears from *Sinclair's* case that it is not necessary, in order to satisfy the words "arising out of the employment" that the working-place should be in itself a dangerous one, or the peril of an obvious character, or one likely to arise. It is enough if the place turns out to be one of special danger—if it exposes him to the risk of the accident which in fact occurs. The risk may have been far from obvious, the chance of danger quite improbable, but the fact that accident happens discloses that the place was on this occasion one of danger. In illustration of this view I may cite, without quoting from them, a number of cases decided after, and following the doctrine of, *Sinclair's* case, in all of which the accident was held to arise out of the employment, and in each of which the "peril" which actually emerged was neither obvious nor probable, arising in a place and under conditions not in themselves suggestive of special or indeed of any ordinary risk or danger. In *Fearnley*, 10 B.W.C.C. 308, a woman slipped, while crossing a yard, on a loose piece of wood, which, as Bankes, L.J., pointed out, was "the peril . . . a peril attached to the particular location in which, by obligation of service, the appellant was placed"; in *Wales*, 10 B.W.C.C. 527, a man slipped in crossing some rails rendered slippery by ice on a frosty morning; in *Marsh*, 10 B.W.C.C. 566, the workman slipped on some lines in a place adequately lighted and not in itself in any way dangerous; in *Arkell*, 10 B.W.C.C. 660, a woman slipped on a greasy street pavement; in *White*, 1916 S.C. 209, 53 S.L.R. 122—decided before *Sinclair's* case but approved there, and in *Dennis*, [1917] A.C. at p. 486—a man fell on a slippery road.

It seems to be clear—I think it was conceded in argument—that if the deceased M'Kendry had slipped and fallen and fractured his skull while working in this store, there would have been an accident arising out of his employment. But it is said the case is different; he did not slip, he merely fell, and the fall was caused by a fit. The distinction is, I think, too fine. The appellant's argument seems closely to resemble that which was unsuccessfully presented in *Wicks'* case (p. 228, top), viz., "that as the original cause of the applicant's fall was the fit with which he was seized, the cause was one which the man himself carried about with him, and that the damage which he sustained did not arise out of and in the course of his employment, but arose

out of the idiopathic condition of the workman at the time." Collins, M.R., said—"I am of opinion that we are precluded by authority from giving effect to this argument," and I have already cited the reasons stated by his Lordship and the other members of the Court as leading them to that conclusion. It was urged that in *Wicks'* case the workman had to stand, as one of the judges put it, on the edge of a precipice, whereas here the man was on *terra firma.* I do not think that the height of the fall was the decisive factor in *Wicks'* case. The very point now taken was urged in argument (see p. 227)—"The principle must be the same as if he had fallen on the adjoining quay"; but the argument was unsuccessful. In one of the cases upon which the Master of the Rolls expressly proceeded—*Winspear*, 1880, 6 Q.B.D. 42—the deceased was fording a stream when the fit seized him and he was drowned; the Court considered only the immediate cause of death, viz., drowning, and ignored the fit. Nor do I think it material, in view of the decisions I have referred to, that in *Wicks'* case, as in *Macfarlane* v. *Shaw*, the risk of danger was more or less obvious, while in the present case it was not. M'Kendry's duty was to be at the place where he was, and where he fell; it turned out to be a place of danger and the sloping concrete floor a peril. It was because he was engaged in this particular working place that he encountered the peril. The risk of M'Kendry fracturing his skull by falling on the hard sloping floor of his working-place was not apparent; but the danger was there as the accident which happened has demonstrated; and the accident arose none the less out of his employment because its remote cause lay in his own physical condition. I think the case is within the scope and principles of previous decisions which we are bound to follow. I notice that in *Simpson* v. *Sinclair*, *Wicks* v. *Dowell* was cited and was referred to with approval by Lord Haldane (at p. 138). On the other hand the Scots case of *Rodger*, 1912 S.C. 584, 49 S.L.R. 413, which in some respects resembles the present case, does not appear to have been cited or referred to. Assuming that that case can still be regarded as one of absolute authority after the judgment in *Simpson* v. *Sinclair*, it does not seem to me to rule the case before us. For the above reasons we ought, in my judgment, to answer the question put to us in the affirmative and refuse the appeal.

Lord Salvesen—The facts in this case are very simple. The late Alexander M'Kendry, while standing on the floor of his employer's premises, fell down in a fit and fractured his skull, the injury resulting in his death. The question we have to determine is whether the man's death was due to an accident arising out of his employment. But for the authorities I should have thought this admitted of only one answer, namely, that there can in such circumstances be no claim under the Workmen's Compensation Act, and as I read the authorities I do not think they make it imperative upon us that a different answer should be returned here. Two of the four pre-requisites for a successful claim of this kind are admittedly satisfied. The man sustained an injury which caused his death in the course of his employment. The third of these requisites is that the injury should be caused by an accident. Now when a man falls down in a fit due entirely to the state of his health, and not in any way accelerated by the nature of his employment or by the environment in which he works, I have some difficulty in understanding how that can be regarded as an accident. It is the inevitable result of his diseased condition. No doubt it cannot be predicated with accuracy at what particular time the fit will seize him, but a medical man who had correctly diagnosed his symptoms would have been able to state with some confidence that such a thing was certain to occur at some stage of his illness. The precise nature of the injury occasioned depended entirely on the manner in which he collapsed, the part of his body which first came in contact with the floor on which he was standing, and the hardness of the floor itself. It might, however, have occurred just as readily if he were ascending the stair of his own house or within his own house if in course of the fall his head had come in contact with a hard substance. It is true that under conditions such as the Sheriff-Substitute figures there might have been no fracture resulting in death, but the same might be predicated of a fall on the floor of his employers' premises. All that can be said is that the mere fact that a man falls down in a fit need not occasion serious injury or indeed any injury at all although it may also, as in this case, have fatal results.

I venture to doubt accordingly whether this man met with an accident as that word is popularly understood. I do not think the man in the street would so describe it. I think he would say that the man fell in a fit and that the injury which he sustained was the direct, although not necessary, result of his fall.

But assuming that the occurrence can be described as an accident, there remains the other question whether it arose out of his employment. On this matter I am clearly of opinion that it did not. On the facts found by the Sheriff there is nothing to suggest that the nature of his employment or the conditions in which he worked would conduce to bringing on a fit. The case is in this respect entirely distinguishable from one where a man with a weak constitution may have his condition aggravated by the heated air in his working-place or the strain produced by severe bodily exertion. In such cases the nature of the employment is a contributing cause to the accident, assuming it to be one. This was the kind of case which occurred in *Ismay* v. *Williamson*, [1908] A.C. 437, 46 S.L.R. 699, and *Clover, Clayton, & Company*, [1901] A.C. 242. Here there are no findings from which such a conclusion could be arrived at.

It is said, however, that the fall was the accident and that this was the proximate

cause of the injury, and that it is unnecessary and irrelevant to inquire further. I humbly think that if this were enough the words "arising out of the employment" might as well be erased from the Act. A fall of course even on what appears to be an absolutely safe spot within the employers' premises may of course be accidental, and if it occurs through a workman slipping on a greasy floor or tripping over rails or on a loose bit of wood on the employers' premises, I think it may be said with perfect truth that such a fall does arise out of the employment. I have no difficulty therefore in accepting the soundness of the three English decisions which were quoted to us where these were the *species facti*. A workman has occasion to move about his employers' premises, and if in doing so he accidentally falls and meets with an injury, there is I think a clear case for compensation under the Act. I should be of the same opinion although he had fallen on a perfectly level floor through tripping over his own foot. Such an accident no doubt seldom leads to serious injury. None the less, when it does occur, it gives a claim for compensation under the Act if it occurred while the man was moving about his employers' premises in the course of performing his duty, and is therefore a risk incident to his employment. But in each of the cases figured the cause of the fall is ascertained to be one which may be said to arise from his employment. If, on the other hand, the fall was occasioned by the workman larking with others instead of doing his proper work, or attempting acrobatic feats, such an accident could not be said to arise out of the employment. Still less if it arose through the workman taking an overdose of alcohol or other stupefying drug. The same I think applies to an accident wholly due to a man's state of health. Such an accident has no relation to the employment, except that it occurs in the course of the employment. I do not see how by any stretch of the imagination it can be said to arise out of the employment.

It is unnecessary for me to go over all the cases which Lord Dundas has summarised. None of them in my opinion applies to the present case. The only two which have any resemblance to it are those of *Wicks*, [1905] 2 K.B. 225, and *Macfarlane*, 1915 S.C. 273, 52 S.L.R. 236, but in my opinion they are easily distinguishable, although I do not think I could have reached the same result as the learned judges who decided these cases. I confess I do not see how a fall resulting from an unwarranted assault upon a workman, as in the latter case, or one which was occasioned by an epileptic fit, was an accident arising out of the employment. It is true that the injury was more serious because of the place at which the workman at the particular moment of his fall was stationed, but I cannot understand how the fall itself, which was the accident, arose out of the employment. The decision in the case of *Wicks* has, however, been expressly approved by at least one noble and learned lord, and must apparently now be regarded as authoritative. On this assumption it probably falls within the principles laid down in the last authoritative decision on the point—*Thom or Simpson* v. *Sinclair*, 1917 S.C. (H.L.) 35, [1917] A.C. 127, 54 S.L.R. 267. I refer especially to the dictum of Lord Shaw of Dunfermline where he says —"The expression (arising out of the employment) in my opinion applies to the employment as such—to its nature, its conditions, its obligations, and its incidents. If by reason of any of these the workman is brought within the zone of special danger and so injured or killed, it appears to me that the broad words of the statute 'arising out of the employment' apply." It is not said that there was any zone of special danger in this case. On the contrary, the man was as safe on the concrete floor of his masters' premises as he would have been on the stone floor of his own kitchen or on the street, or in most of the situations in which a man has occasion to stand. In short, the peril, to use the same learned Judge's language, was not one "attached to the particular location in which by the obligation of service the [workman] was placed." The case of *Simpson* therefore, so far from being an authority in support of the Sheriff-Substitute's award, appears to me to be to the contrary effect.

The decision in the case of *Rodger*, 1912 S.C. 584, 49 S.L.R. 413, is precisely in point. There a school janitor conveying a message on school business through the streets of Paisley about noon on a hot July day was overcome by giddiness or faintness brought on by the heat, and fell, striking his head against the pavement, and sustained injuries from which he died. The First Division unanimously held that the accident did not arise out of the employment. Unfortunately this case was not referred to in *Thom or Simpson* v. *Sinclair*, although Lord Kinnear was a party to both judgments. So far as this Court is concerned it appears to me to be authoritative and decisive of the case here, for I cannot see that it makes any difference whether he fell in the street or on the concrete floor of the school playground. Indeed, the present case is *a fortiori*, for it is not said that the heated atmosphere in the employers' premises had anything to do with the seizure which caused the fall. I think we ought to follow that decision, which I regard as a binding authority not overruled even by implication in the Court of last resort.

LORD GUTHRIE was absent.

The Court answered the question of law in the affirmative, affirmed the determination of the Sheriff-Substitute and arbitrator, and dismissed the appeal.

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