its own head off. The present is the time, or one of the times in the year, when heritable property of this class has a reasonable chance of a good market. It appears in these circumstances to be proper in the interests of everybody concerned that in order to prevent loss we should lend our assistance to enable the property to be disposed of and the proceeds put in safe keeping.

Accordingly upon the petition being amended in the two particulars to which I have referred—(first) the specification, either by description or by reference to some document in process, of suitable conditions of sale; and (secondly) a crave in the prayer of the petition that the proceeds are to be lodged in the hands of the Accountant of Court — we should grant the authority craved.

LORD MACKENZIE—I concur. The only matter that I would refer to in addition to those mentioned by your Lordship is that I understand this Court to be moved to introduce as a condition that the sale is not to affect the character of the succession.

LORD SKERRINGTON—The regularity of the appointment by the Chilian Courts of an Official Receiver upon the estate of the deceased bankrupt has not been challenged. It must therefore be regarded as conferring upon the Official Receiver a universal title to the moveable or personal assets of the deceased bankrupt wheresoever situated, including the policies of life assurance referred to in the present proceedings. It follows that the petitioners' proposal to amend the petition by asking for authority to uplift the policy moneys should be refused as unnecessary. If the heir has a claim against the Official Receiver in respect of property wrongfully taken possession of by the latter he can make it good in the ordinary way. All that we have to consider is the application by the Official Receiver's attorney in Scotland for authority to sell a villa in Peebles. That is a course expedient for all concerned, and their interests will be conserved by the clauses and conditions specified by your Lordship. When the estate has been sold and the price consigned, the attorney of the Official Receiver will no doubt apply for authority to deal with the money. I express no opinion as to whether the heir-at-law will be able to prevent the money from being remitted to Chile until he has received certain information, to which he considers that he is entitled, in regard to the validity of the debts which the Official Receiver has ranked or proposes to rank in the Chilian bankruptcy, Nor do I express any opinion as to the procedure by which the heir's right, if it exists, should be enforced. I approve of Lord Mackenzie's suggestion that there should be an express declaration that the sale shall not operate conversion.

LORD PRESIDENT—I intended myself to have added the condition as to conversion to which your Lordships have referred.

LORD CULLEN did not hear the case.

The Court refused the crave of the note so far as regards the policies of insurance as being unnecessary, and *quoad ultra* allowed the prayer of the petition to be amended in the terms suggested at the bar, and said amendments being made, *ad interim* authorised the sale of the heritable property upon such terms and conditions as might be agreed between the parties, or failing agreement as might be fixed by the Court, declaring that such sale should not operate as a conversion of the heritage left by the deceased William Coghill. Further, authorised and directed the petitioner James Walter Buchan, as attorney for the petitioner Jorje Araya, out of the proceeds of the sale to repay the loan of £1500 affecting the heritable subjects together with interest due thereon and the expenses of the sale, and to consign the balance of the proceeds in name of the Accountant of Court to abide the orders of the Court.

Counsel for Petitioners—Graham Robertson. Agents—Buchan & Buchan, S.S.C.

Counsel for Respondent—Dean of Faculty (Constable, K.C.) — Wilson. Agents — Menzies, Bruce-Low, & Thomson, W.S.

Saturday, March 19.

FIRST DIVISION.

[Sheriff Court at Edinburgh.

SCRIMGEOUR *v.* WILLIAM THOMSON & COMPANY.

Master and Servant— Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Arising out of the Employment*"—*Seaman under the Influence of Drink Drowned whilst Going on Board Ship.*

A seaman was given leave to go ashore for his own purposes. Whilst returning on board he, as the result of his dazed condition due to the liquor he had consumed while ashore, fell from the ladder, which was the only means of access from the quay to the ship, and was drowned. *Held* that the accident was one "arising out of the employment."

Fraser v. *Riddell & Company*, 1914 S.C. 125, 51 S.L.R. 110, and *Williams* v. *Llandudno Coaching and Carriage Company, Limited*, [1915] 2 K.B. 101, *followed; Nash* v. *Owners of S.S.* "*Rangatira*," [1914] 3 K.B. 978, *and Frith* v. *Owners of S.S.* "*Louisianian*," [1912] 2 K.B. 155, *distinguished.*

Mrs Annie Anderson or Scrimgeour, widow of the deceased Donald Watson Scrimgeour, seaman, 37 Gellatly Street, Dundee, *appellant*, being dissatisfied with an award of the Sheriff-Substitute at Edinburgh (ORR) in an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between her and William Thomson & Company, shipowners, 28 Bernard Street, Leith, managers for the owners of the s.s. "War Carp," *respondents*, appealed by Stated Case.

The Case stated—"This is an arbitration in which the appellant claims compensation from the respondents in respect of the death of her husband Donald Watson Scrimgeour, seaman.

"The *facts* admitted or proved were as follows:—1. That the appellant is the widow of the late Donald Watson Scrimgeour, who in December 1918 was a seaman on the s.s. "War Carp," and that respondents are managers of said vessel, and represent its owners for the purposes of the present action. 2. That the said D. W. Scrimgeour was in the employment of respondents while said vessel lay at Philadelphia in December 1918. 3. That on the evening of the second day or thereby after said vessel arrived at Philadelphia from Genoa in ballast the said D. W. Scrimgeour and six or seven other members of the crew were allowed to go ashore to make purchases for themselves. 4. That Scrimgeour went ashore between six and seven o'clock at night, and remained on shore till between eleven and twelve o'clock. 5. That at the time of the accident the only means of access to the quay from the ship and from the quay to the ship was an ordinary wooden ladder about 40 feet long and about 18 inches wide. 6. That said ladder was properly secured at its upper end to the ship by ropes, and at the lower end it rested against a shed on the quay eight or ten feet back from the edge of the quay. 7. That said ladder was well and sufficiently lit by two lamps, one on the top and the other at the bottom, and by the light issuing from said open shed or warehouse, which also lit up the lower end of the ladder. 8. That the top part of said ladder projected at the time of the accident to Scrimgeour about four or five feet above the bulwark. 9. That there was a small ladder with three rungs inside the ship leading from the bulwark down to the deck, and men going on board stepped from the said long ladder on to or across the rail of the bulwark on to the small ladder, holding on to the former until they had a footing on the small ladder. 10. That said long ladder had been put up and secured as soon as said ship came into Philadelphia, and had been in constant use by stevedores' men, who were fitting up the ship for grain, as well as by members of the crew. 11. That on the night of the accident to Scrimgeour said ladder was used by other members of the crew to go ashore and aboard, and that both on said night and previously said ladder was used for leaving and entering the ship without difficulty and with perfect safety. 12. That said access to the ship was at the time of the accident to Scrimgeour sufficient and quite secure. 13. That Scrimgeour while on shore visited some public-houses where he was supplied with liquor. 14. That he was found by two other members of the crew who were returning aboard about 100 to 150 yards from the ship sitting on a post on the quay in a dazed condition under the influence of drink, and that they thought it necessary to assist him, and did assist him, by each taking an arm until they reached the foot of the ladder. 15. That Scrimgeour caught hold of the sides of the ladder and went up, but in stepping from the ladder on to the rail of the bulwark he let go his grip of the ladder with both hands and fell back, and falling into the water was drowned. 16. That the night was dark and showery, and that before the accident frost had set in. 17. That said accident arose entirely out of Scrimgeour's dazed condition due to the liquor he had consumed. 18. That said accident did not arise out of his said employment.

"On 22nd June 1920 I issued my award, by which I found that the respondents were not liable to pay compensation to the appellant in respect of the death of the said D. W. Scrimgeour, and I accordingly assoilzied the respondents and found the appellant liable to them in expenses."

The *question of law* for the opinion of the Court was—"Whether upon the facts stated I was entitled to find that the said accident did not arise out of the employment of the deceased within the meaning of the Workmen's Compensation Act 1906?"

The Sheriff-Substitute's note was—"This case appears to me to belong to the class of cases of which *Nash* (1914, 3 K.B. 978) is an example. The facts of the two cases bear a strong resemblance to one another. I think this accident had nothing to do with Scrimgeour's employment except that it occurred more or less in the place of his employment—that is, as he was going on board the ship. Though it may therefore be said to have occurred in the course of his employment, it did not arise out of it. It arose entirely out of the man's state of drunkenness—a dazed and semi-drunken state which was sufficient to prevent him stepping on board with safety—a thing which other men in a more sober condition found no difficulty whatever in doing that night."

On 17th and 18th November 1920 counsel were partly heard on the case, and on 23rd November 1920 the Court remitted to the Sheriff-Substitute to delete findings 17 and 18, and after hearing parties to add to or amend the findings in fact in so far as might be necessary to bring out the question of law in the case, and also to make a finding as to the dependency of the appellant upon the deceased at the date of his death, and to report.

In obedience to the above remit the arbiter deleted findings 17 and 18, made additions to findings 6 and 15, and added a new finding 17, all as follows:—"6. That said ladder was properly secured at its upper end to the ship by ropes and at the lower end it rested against a shed on the quay 8 or 10 feet back from the edge of the quay, the lashing being so arranged at the top that it could slide up and down the ladder as the ship rose and fell with the tide. A watchman employed by the ship watched the shore-end of the ladder. 15. That Scrimgeour caught hold of the sides of the ladder and went up without help, but in stepping from the ladder on to the rail of the bulwark he, as the result of his dazed condition due to the liquor he had consumed, let go his grip of the ladder with both hands, lost his footing and fell back, struck the quay, and falling into the water was drowned. 17. That the appellant

was wholly dependent upon Scrimgeour at the time of his death."

The case was further heard on 9th March 1921.

The appellant argued that the accident arose out of the employment, and cited the following cases:—*Fraser* v. *Riddell & Company*, 1914 S.C. 125, 51 S.L.R. 110; *Moore* v. *Manchester Liners*, [1910] A.C. 498; *Officer* v. *Davidson & Company*, 1918 S.C. (H.L.) 66, 55 S.L.R. 185; *Wicks* v. *Dowell & Company, Limited*, [1905], 2 K.B. 225; *M'Kendry* v. *Wright & Greig*, 1919 S.C. 98, 56 S.L.R. 39; *Dennis* v. *A. J. White & Company*, [1917] A.C. 479; *Robertson* v. *Allen Brothers & Company*, 1908, 1 B.W.C.C. 172, 77 L.J. K.B. 1072, 98 L.T. 821. The case of *Nash* v. *Owners of s.s.* "*Rangatira*," [1914] 3 K.B. 978 (which the Sheriff-Substitute relied upon), and the cases of *Frith* v. *Owners of s.s.* "*Louisianian*," [1912] 2 K.B. 155, and *Murphy and Landwith* v. *Cooney*, [1914] 2 I.R. 76, 7 B.W.C.C. 962, were distinguished in *Williams* v. *Llandudno Coaching and Carriage Company, Limited*, [1915] 2 K.B. 101, and should be so distinguished here.

The respondents argued that the accident did not arise out of the employment, and cited the following cases:—*Robertson* v. *Woodilee Coal and Coke Company*, 1919 S.C. 539, *per* Lord Mackenzie at 544, 56 S.L.R. 498; *Halvorsen* v. *Salvesen*, 1912 S.C. 99, 49 S.L.R. 27; *Nash*, *cit. sup.* The cases of *Fraser* and *Williams* were to be distinguished in view of the recent decisions of the House of Lords in the group of cases of which *A. G. Moore & Company* v. *Donnelly*, 1920, 58 S.L.R. 85, was one. It was an inference from these latter decisions that in using appliances where safety was at stake the workman was bound to do so in a condition of sobriety.

At advising—

LORD PRESIDENT—The workman in this case, a seaman, met his death by a fall while getting over the ship's side by means of a ladder. He had to climb the ladder to a height of about 35 feet and step from thence on to the ship's rail. He was in the act of stepping from the ladder on to the rail when he let go his grip of the ladder, lost his footing, and fell back over the ship's side. The learned arbitrator finds that the letting go of the ladder, the slipping of the workman's foot, and his consequent fall were the result of his dazed condition due to the liquor he had consumed. From this finding he draws the conclusion that the accident did not arise out of the workman's employment.

That the consumption of the liquor by the workman was a circumstance conducive to the accident is clear. But the accident consisted in the fall from a high ladder, and falls from high ladders and the like are among the risks to which his employment peculiarly exposed him, drunk or sober. It is true that the risks arising out of any employment are enhanced by circumstances in the workman's condition which impair his control of his own movements; and a workman who comes to his work so much the worse of drink as to be unfit to perform it may properly be held guilty of serious and wilful misconduct if he suffers from an accident to which his unfitness has conduced. But this provides no reason for concluding that the accident does not arise out of the employment, and if (as happened here) the accident results in his death his misconduct, even though serious and wilful, is of no account.

The present case is indistinguishable in principle from that of *Fraser* v. *Riddell & Company* (1914 S.C. 125), decided in this Court, and *Williams* v. *Llandudno Coaching Company* ([1915], 2 K.B. 101), decided in the Court of Appeal in England.

As was pointed out in the former of these cases, the fact that the workman's power of protecting himself against the risks to which his employment exposed him is impaired by indisposition or by excess, does not constitute what is known as an "added peril" of the employment. At the time the workman in the present case met his accident he was doing just what he was employed to do, and he was doing it by means of the proper appliances provided by his employers for the purpose, and in the manner authorised by them. He did no more to add to the perils with which the use of these appliances in the authorised manner is attended than any other workman who defaults in diligence for his own safety does.

Nothing that I say is intended to prejudge a case in which the circumstances establish that the workman's state of intoxication is the sole cause of a misadventure which befalls him in the course of his employment. This was held to be the situation in *Frith* v. *Owners of s.s.* "*Louisianian*," [1912], 2 K.B. 155. There the workman's state of intoxication was so far advanced as to amount to complete physical incapacity, and although the accident might be held to have arisen in the course of his employment, the decision was that it did not arise out of it. The learned arbitrator founds on *Nash* v. *Owners of s.s.* "*Rangatira*" ([1914], 3 K.B. 978), which was decided subsequently to *Fraser* v. *Riddell & Company*, but previously to *Williams* v. *Llandudno Coaching Company*. This case is not a binding authority on this Court, and I respectfully refer to the opinion delivered in it by the present Master of the Rolls, and to the comments made upon it by the learned judges in *Williams* v. *Llandudno Coaching Company*.

I think the question submitted in the Stated Case should be answered in the negative.

LORDS MACKENZIE, SKERRINGTON, and CULLEN concurred.

The Court answered the question of law in the negative.

Counsel for Appellant—MacRobert, K.C.—Scott. Agents—Ross & Ross, S.S.C.

Counsel for Respondents—Moncrieff, K.C.—J. R. Dickson. Agents—Philp & Ross, Solicitors.