HOUSE OF LORDS.

Friday, July 31, 1908.

(Before the Lord Chancellor (Loreburn), Lords Ashbourne and Macnaghten.)

ISMAY, IMRIE, & COMPANY *v.* WILLIAMSON.

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

Master and Servant — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1—*Accident—Heat-stroke.*

A workman in poor physical condition was engaged in a steamer's stokehold raking ashes from the furnace; he received a heat-stroke from the radiation of the boiler and died in a few hours.

Held (*diss.* Lord Macnaghten) that the death was caused by accident within the meaning of the Workmen's Compensation Act 1906.

The respondent's husband died while in the appellant's employment as a "trimmer" in their steamship. He died a few hours after a heat-stroke received by him while in the stokehold raking ashes from the furnace. The result of medical evidence as to his poor physical condition is given in the judgment of Lord Ashbourne. The County Court Judge held that death was caused by accident within the meaning of the statute, and this was affirmed by the Court of Appeal (Sir Samuel Walker, L.C., and Fitzgibbon, L.J.; Holmes, L.J., *diss.*).

The employers appealed.

At delivering judgment—

Lord Chancellor (Loreburn)—I agree with the judgment of the Court of Appeal. The County Court judge has found that this man died from an accident. There does not seem to me reason for dissenting from that view. To my mind the weakness of the deceased which predisposed him to this form of attack is immaterial. The fact that a man who has died from a heat-stroke was by physical debility more likely than others so to suffer can have nothing to do with the question whether what befell him is to be regarded as an accident or not. In the case of *Fenton* v. *Thorley*, (1903) A.C. 443, the meaning of the word accident was very closely scrutinised. That case stands as a conclusive authority, and I would not depart from it if I could, nor need I repeat what was there said. The only question is of applying the law there laid down to the particular facts of this case. In my view this man died from an accident. What killed him was a heat-stroke coming suddenly and unexpectedly upon him while at work. Such a stroke is an unusual effect of a known cause, often, no doubt, threatened, but generally averted by precautions which experience in this instance had not taught. It was an unlooked for mishap in the course of his employment. In common language it was a case of accidental death. I feel that in construing this Act of Parliament, as in other cases, there is a risk of frustrating it by excess of subtlety which I am anxious to avoid.

Lord Ashbourne—In this case I think that the decision of the Court of Appeal in Ireland was correct and that the appeal should be dismissed. This is a claim by a widow for compensation under the Workmen's Compensation Act for the death of her husband, which she says was caused by an injury received through an accident arising out of and in the course of his employment. There is no dispute as to the facts of the case. He was employed as a trimmer on board the "Majestic." At the time of the accident he was working in a stokehold opposite the boiler; he received a heat-stroke from the rays of heat from the boiler impinging on his body; he became exhausted, and died in a few hours. Was this an accident arising out of and in the course of his employment? With great deference to those who hold a contrary opinion I can myself see no room for doubt on the subject. Everything was in the course of Williamson's employment and arising out of it. But for the boiler and the heat-stroke and the speedy exhaustion it caused there would have been no accident. If the Act is to be interpreted according to its "ordinary and popular meaning," as Lord Halsbury, L.C., said was right in *Brintons* v. *Turvey*, (1905) A.C. 230, 42 S.L.R. 862, would not the generality of mankind say that what occurred was an injury caused by an accident? The authorities support this view. In *Fenton* v. *Thorley* (*ubi sup.*), where a man ruptured himself in an exertion during his employment, Lord Macnaghten laid down that an "accident is used in the popular and ordinary sense of the word as denoting an unlooked for mischief, or an untoward event which is not expected or designed." Lord Lindley in the same case said that "in the Act the word was used in a loose way, that it meant any unintended and unexpected occurrence which produces hurt or loss." The Scotch case of *Stewart* v. *Wilsons and Clyde Coal Company*, 5 F. 120, referred to with approval by Lord Macnaghten and Lord Lindley, is a valuable authority. In that case Lord M'Laren said—"If a workman in the reasonable performance of his duties sustains a physiological injury as the result of the work he is engaged on, this is an accidental injury in the sense of the statute." The case of *Brintons* v. *Turvey*, (1905) A.C. 230, 42 S.L.R. 862, the anthrax case, went, if possible, further, and there Lord Macnaghten reaffirmed his definition of "accident." In my opinion every word of that definition applies to the facts of this case, which are in many ways more simple and direct than those in the case of *Brintons* v. *Turvey*. Although a heat-stroke may be called a disease, it is in this case, in my opinion, a disease directly caused by an

accident arising out of or in the course of an employment, particularly dangerous to Williamson in consequence of his weak state of health. Its not being scheduled as an industrial disease in the Act of 1906 does not affect the question, for the Act expressly provides that "nothing shall affect the rights of a workman to recover compensation in respect of a disease to which the section does not apply if the disease is a personal injury by accident within the meaning of the Act." I do not at all say that all diseases arising out of or in the course of employment should be regarded as a personal injury by accident, but I am of opinion that under the circumstances of this case and its facts Williamson was killed by a personal injury by accident, and that the appellants are accordingly liable. In my opinion the appeal should be dismissed with costs.

LORD MACNAGHTEN—That the illness by which the deceased lost his life was one arising out of and in the course of his employment cannot be disputed. But I agree with Holmes, L.J., that it does not come under the description of "a personal injury by accident." That expression, as it seems to me, would be equally applicable or equally inapposite in the case of an attack of bronchitis or pneumonia brought on by a sudden and violent chill disregarded or neglected at the outset. The deceased, it appears, was a brass finisher by trade in this country. He went to the United States in the hope of bettering himself. He failed utterly. Destitute and half-starved he applied to the Seamen's Union in New York, and by their help obtained a passage home, shipping as a trimmer on board the steamship "Majestic." He seems to have been a miserable creature physically, undersized, underfed, and so emaciated that, as one of the witnesses says, "his bones projected." The work of a trimmer is not heavy in itself. It is, no doubt, trying work, owing to the heated atmosphere of the stokehold, where the trimmers work, raking out the ashes of the furnaces. The men work in shifts—four hours on and eight hours off. The deceased had no experience of such work. He got through two shifts. On his third turn, after about an hour's work, he had a "heat-stroke," as it is called. He went on until he dropped in a faint. He was carried to hospital, recovered partially, and then became violent and died from exhaustion two hours after leaving the stokehold. Was that an injury by accident in the ordinary sense of the expression? I think not. The death was due to the physical state of the workman and "the nature" of the employment, to use the language of sec. 6, sub-sec. 8. It was, I think, just what anybody would have expected who saw the man and knew what a trimmer has to do. Add the fact that the man was wholly inexperienced, ignorant of what ought to be done in cases of emergency, and the result would be a foregone conclusion. The heat in the stokehold was considerable, though the furnace doors were closed. But the evidence was that the conditions were normal, the ventilation in perfect order, and the heat where the man was standing not more than 96 degrees. It was also in evidence that heat-strokes are common enough in the stokehold and in the engine-room, which is hotter than the stokehold. One witness, an engineer who had been sixteen years at sea, said he never knew an engineer, a stoker, or a trimmer not affected by the heat in the same way. But in the case of a man not physically unfit, who knows what to do when he feels the attack coming on, the illness seldom, if ever, leads to any serious consequences. Though the attack is developed rapidly, the symptoms are sufficiently clear and sufficiently gradual to give the sufferer warning in time to enable him to obtain relief by going on deck for fresh air. I should be for allowing the appeal; but as your Lordships take a different view the appeal will, of course, be dismissed with costs.

Judgment appealed from affirmed.

Counsel for Appellants—Danckwerts, K.C.—Leslie Scott. Agents—Rawle, Johnstone, & Company, Solicitors, for Hill, Dickinson, & Company, Liverpool.

Counsel for Respondents—Abel Thomas, K.C.—Morgan Morgan. Agents—G. R. Thorne, Robinson, & Company, Solicitors, for North & Tughan, Dublin.

HOUSE OF LORDS.

Thursday, October 29, 1908.

(Before the Lord Chancellor (Loreburn), Lords Ashbourne, Macnaghten, and James of Hereford.)

REED *v.* GREAT WESTERN RAILWAY COMPANY.

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

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1—*Accident "Arising out of and in the course of the Employment."*

An engine-driver left his engine and crossed a pair of rails on a private errand of his own not connected with his work. While returning to his engine he was struck by a waggon and killed.

Held that the accident did not arise "out of and in the course of" his employment under the Workmen's Compensation Act 1897, section 1.

The appellant's deceased husband was an engine-driver in the respondents' service. In March 1907, while his engine was at Landore, Swansea, he descended in order to turn a water-crane to his engine. He afterwards crossed another line of rails in order to get a book from a friend on another engine. This was a private purpose of the deceased's, unconnected with his work.