Whether in any particular case an injury in the shape of disease is caused by an accident or by some other cause depends on the circumstances of that case and on the meaning to be attributed to the word "accident." The meaning of the word as used in the Workmen's Compensation Act was settled by this house in *Fenton* v. *Thorley* (*ubi sup.*), and having regard to that authority, and to the facts of this case as stated by the learned County Court Judge, his decision, and the decision of the Court of Appeal, were, in my opinion, quite right, and this appeal ought to be dismissed.

Judgment appealed from affirmed, and appeal dismissed.

Counsel for Appellants—Ruegg, K.C.—A. Parsons. Agents—Helder, Roberts, & Company, Solicitors.

Counsel for Respondent—J. S. Pritchett—H. Norton. Agents—Robbins, Billing, & Company, Solicitors.

HOUSE OF LORDS.

Friday, April 14.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, James of Hereford, and Lindley.)

HOULDER LINE, LIMITED *v.* GRIFFIN.

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

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *secs.* 1 *and* 7—*Seaman Injured while Doing Ordinary Work on Vessel Moored to Buoys in Dock.*

A seaman was accidentally injured while engaged in his ordinary work as a sailor on board his ship. At the time she had completed coaling and was lying in the middle of the dock basin moored to buoys and waiting to proceed to sea on the following day.

Held (*diss.* Lord James of Hereford) that the employment in which the injured man was engaged was not one to which the Workmen's Compensation Act applied.

The applicant for compensation was the widow of E. L. Griffin, deceased, who was a seaman.

He met his death in the following circumstances:—In November 1902 he signed articles at Liverpool to serve on board a vessel belonging to the appellants, the Houlder Line, Limited, as an able seaman, upon a voyage from Liverpool to the River Plate and back to this country. He joined the ship and sailed in her to Newport, Monmouthshire, where the vessel called to take in coal for the voyage. The vessel took her coal on board at the Alexandra Dock, Newport, and having filled her bunkers, was moved out to the buoys in the docks preparatory to proceeding to sea. While she was at a buoy in the dock, and while the deceased was engaged in clearing up one of her holds, a heavy piece of wood was knocked over by a fellow-servant of the deceased, and inflicted upon him injuries which resulted in his death.

The County Court Judge refused compensation. The Court of Appeal (Collins, M.R., and Cozens-Hardy, L.J., Mathew, L.J., dissenting) reversed his decision.

At delivering judgment—

Lord Chancellor (Halsbury)—An accident causing death happened to a sailor on board his ship while he was engaged in his ordinary work as a sailor, and the shipowner is sought to be made liable as an "undertaker" because the ship was afloat in a dock waiting to go to sea. The employment of a sailor is not one of the employments to which the Act applies, but it is argued that because the injured man was on board a ship which was floating in a dock the shipowner was the occupier of a dock, and as such was undertaker within section 7 of the Workmen's Compensation Act. I do not think that the shipowner was in any intelligible sense the occupier of the dock because his vessel was in the water surrounded by the structure of the dock. Although the extraordinary jumble whereby a ship becomes a factory and becomes a dock because it is a factory, and so the shipowner becomes an undertaker, seems to me to be a *reductio ad absurdum*, it appears to have prevailed, and induced the Court of Appeal to reverse the judgment of the County Court Judge. I cannot agree with that judgment. I entirely agree with Mathew, L.J., who dissented. It appears to me that the Court was misled by the case of *Raine* v. *Jobson* (85 L. T. Rep. 141; (1901) A.C. 404), but in that case the persons sought to be made responsible and held to be responsible were persons who had hired the dock for the purpose of repairing a vessel, and whether there was a vessel in it or not, they were liable if a workman met with an accident in that dock while engaged in working there. The Court there proceeded upon the assumption that the then defendants were in the use and occupation of a dock which they had hired, and the fact that there was the wooden structure of a ship in it being repaired did not prevent the application of the section which made the occupiers of a dock the occupiers of a factory within the meaning of the Act. If in that case the then defendants had the actual use and occupation of the dock, as they clearly had, it was impossible to deny that they were "the undertakers." This is a totally different case, and does not come within the meaning of that decision. I move your Lordships that the judgment be reversed and the decision of the County Court Judge restored.

Lord Macnaghten—The question in this case is whether, under the Workmen's Compensation Act 1897 an employer is

liable to pay compensation in the case of a seaman who meets with personal injury by accident arising out of and in the course of his employment while serving afloat and engaged in the ordinary duties of his calling if at the time when the accident occurs his ship happens to be in a dock. The majority of the Court of Appeal (Mathew, L.J., dissenting) have held that in such a case the liability of the employer is to be found in the Act. The facts which have given rise to the present question and the ground of the decision of the Court of Appeal are stated concisely by Collins, M.R., in the case of *Owens* v. *Campbell Limited* (90 L. T. Rep. 811, [1904] 2 K. B. 60). "The ship," said his Lordship, "was in a dock, and a seaman belonging to her was employed, as part of his ordinary duty, in clearing out a hold for the reception of cargo, and he met with an accident while so employed, which resulted in his death. A majority of this Court decided, on the authority of *Raine* v. *Jobson* (*ubi sup.*), that the fact that the deceased was a seaman did not exclude him from the operation of the Act, and that the case fell within its provisions." With all deference to the Court of Appeal, I cannot help thinking that they have somewhat misapprehended the decision of this House in *Raine* v. *Jobson*, and so have been led to misconstrue the Act of 1897. The question is not, I think, whether seaman are excluded from the Act—whether, as the Master of the Rolls puts it in this case, there is "a special exclusion of sailors"—but rather whether seamen are within the contemplation of the Act at all. Nobody ever supposed that the Act was intended to apply to seamen as seamen. Seamen belong to a wholly different class from the class of men intended to be protected by the Act. They work under different conditions—they are the care of a different department — they are the subject of special legislation. A ship has so little in common with the places to which the Act of 1897 extends that one cannot doubt that ships and sailors would have been specially mentioned if the Act had been intended to include or affect them. The case before your Lordships really depends on the question whether the employment in which the injured man was engaged was an "employment to which" the "Act applies." The Act applies "only to employment by the undertakers as . . . defined, on, in, or about" certain specified places, among which is included "a factory." "Factory" includes "any dock . . . to which any provision of the Factory Acts is applied by the Factory and Workshop Act 1895." As defined in the Act "undertakers . . . means . . . in the case of a factory . . . the occupier thereof within the meaning of the Factory and Workshop Acts 1878 to 1895." The Factory Act 1895 declares that "the person having the actual use or occupation of a dock . . . or of any premises within the same or forming part thereof . . . shall be deemed to be the occupier of a factory." Now, it seems to me to be pretty clear upon the true construction of these somewhat singular provisions so curiously pieced together that the shipowner in the present case was not the occupier of the dock where his ship was lying afloat or of any premises within the same or forming part thereof. It is, I think, plain that by the expression "dock" in the Factory Act 1895 is meant the solid structure and body of the dock, not the water space within its limits. A corresponding meaning must be given to the word "premises." I do not think that a ship lying in a dock, whether afloat or not, can be included in the description of "premises within the same or forming part thereof." It follows, therefore, in my opinion, that the employment in which the injured person was engaged at the time of the accident was not an employment to which the Act of 1897 applies. The case of *Raine* v. *Jobson* seems to me to be a different case altogether. There the vessel was not lying in the water space of the dock. It had been removed to and placed in a dry dock, in a berth in a dock—of which the persons sought to be made liable had the actual use and occupation. I am therefore of opinion that the decision of the Court of Appeal must be reversed, and the judgment of the County Court Judge restored.

Lord James of Hereford—In this case a seaman serving on board a merchant ship was, whilst discharging his ordinary duty as a seaman, so injured that his death ensued. The ship was lying afloat in a dock, but the work in which the respondent was engaged was ship's work and not dock work. The widow of the injured man seeks in this action to make the shipowners liable for the injury so sustained. Now, as the Workmen's Compensation Act of 1897 does not include sailors on ships by name within its provisions the liability has to be found by virtue of other words. The plaintiff's case is that the seaman was employed on or in or about "a factory" within the meaning of sub-section 4 of section 7 of the Workmen's Compensation Act, and that contention is thus worked out. By the operation of section 7, sub-section 2, of the Workmen's Compensation Act every dock to which any provision of the Factory Acts is applied by the Factory and Workshop Act of 1895 is a factory. By section 23, sub-section 1, of the Factory and Workshop Act of 1895 certain provisions of the Factory Acts are to have effect as if every dock, wharf, &c., were included in the word "factory," and so for the purposes of the Act of 1897 every dock becomes a factory. It is also contended that the ship being in the dock, the owners of the ship employing the deceased man were occupiers of a portion of the dock, and being so they became undertakers within the Act. The case of *Raine* v. *Jobson* (*ubi sup.*) goes far to establish these propositions. That case seems to differ from the one under consideration in one respect only. In *Raine* v. *Jobson* the dock used was a dry dock, wherein a ship was being repaired. In the present case the vessel was moored in an open part of the

dock. But the vessels in both cases were occupying a portion of a dock, for the use of which payment was made. Doubtless it appears a somewhat strange result to find that by owning a vessel lying in a dock the shipowner becomes the occupier of a factory. But it is the peculiarity of method employed in the legislative enactments with which we are dealing that has produced so startling a result. But finding the law as it is laid down by Lord Halsbury, L.C., in *Raine* v. *Jobson*, and also in the case of *Merrill* v. *Wilson, Sons, & Company* (83 L. T. Rep. 490; (1901) 1 K.B. 25), I feel constrained to find that whilst the deceased man was in fact working on board a ship moored in a dock, he was by legal construction employed in a factory, of which the shipowner was at the time a part occupier, who thus becomes liable as "an undertaker." I therefore think that the decision of the majority of the Court of Appeal was correct.

LORD LINDLEY—The seaman whose death has given rise to this action was doing ordinary seaman's work in a steamship. The ship had come into a wet dock for coal; she had loaded it, and had cast off to go out of dock to sea. Owing to the state of the tide she had to wait afloat in the dock, and she was moored to a buoy for convenience until the dock gates should open and she could get out. The accident happened whilst she was so moored. The seaman was cleaning out the hold, and a heavy piece of wood fell upon him and injured him so severely that he died. It is contended that the Workmen's Compensation Act 1897 renders the shipowners liable to make compensation for this accident. The County Court Judge held that the Act did not apply to the case. The Court of Appeal differed from him, Matthew, L.J., dissenting. Hence this appeal. The sections of the Act which are material are sections 1 and 7, and the question on which the case turns is, Was the seaman engaged in any employment to which the Act applies? The employments to which it applies are enumerated in section 7, and the words are—"This Act shall apply only to the employment by undertakers as hereafter defined, on, in, or about a railway, factory, mine, quarry, or engineering work," and certain buildings. If this were all it would be plain that the employment in which the seaman was engaged was not within the Act. But the section goes on to give a statutory meaning to the words "factory," "undertaker," and "workman." The definition of "workman" has reference to an employment to which the Act applies and is of very little assistance. "Factory" has the same meaning as in the Factory and Workshop Acts 1878 and 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant to which any provision of the Factory Acts is applied by the Factory and Workshop Act 1895. "Undertakers" is defined not generally but with reference to railways, factories, quarries, laundries, mines, engineering works, and buildings. With reference to a factory, "undertaker" means the occupier thereof within the meaning of the Factory and Workshop Acts 1878-1895. The Factory and Workshop Acts 1878-1891 do not mention docks; but by section 7 of the Workmen's Compensation Act a factory, as defined by the Act of 1878 (41 Vict. c. 16), sec. 93, is to include any dock to which any of the provisions of the Acts 1878-1891 is applied by the Act of 1895. The only section of this Act which mentions docks is section 23. This section makes some of the provisions of the earlier Acts applicable to docks as if they were included in the word "factory." It is in this way only that docks are brought within the operation of the Workmen's Compensation Act. It is contended that section 7 of the Workmen's Compensation Act in effect enacts that for the purposes of that Act a dock is under all circumstances to be treated as a factory, that a ship in a dock is a factory, and that the owner of a ship in a dock is the occupier of a factory. I cannot adopt this view of the section. This House has already decided in *Wrigley* v. *Whittaker* (86 L. T. Rep. 775; (1902) A. C. 299) that "factory" in section 7 means the factory of the employer. So far as a dock is concerned, the meaning of section 7 appears to be that employment in a dock is an employment to which the Act applies, provided that the employer is an undertaker within the meaning of the Act. But who is the undertaker when the employment is that of a seaman doing his ordinary work in a ship afloat in a dock and waiting to go to sea? The Act does not appear to me to make the shipowner an undertaker in such a case. If this is the result, the employment of the seaman in this case is not within the Act; and this I am of opinion is the true effect of sections 1 and 7 when applied to ships and seamen employed by shipowners to do ordinary seamen's work. It is to be noticed that ships and seamen are nowhere mentioned in the Act, and it is well known that the Act was never intended to apply to them when at sea. It is only in consequence of the definition of factory and of undertaker that ships and seamen can be brought within the provisions of the Act. To treat the owner of a ship afloat in a dock and waiting to get out to sea as the occupier of a factory, and therefore an undertaker within the meaning of the Act, appears to me opposed to all good sense, and not to be rendered obligatory by section 7. In *Raine* v. *Jobson* (*ubi sup.*) the Act was held to apply to a workman employed to clean and repair a ship in a dry dock which had been hired by ship-repairers for the purpose of repairing her. The undertakers there were the repairers, and the dry dock was held to be a factory within the meaning of the Act, and it was occupied and used as such by the undertakers. But neither that decision nor any other goes anything like the length to which the Court of Appeal has gone on the present occasion. *Stuart* v. *Nixon* (84 L. T. Rep. 65; (1901) A. C. 79) was a case between stevedores and a casual labourer employed by them in a dock. In *Merrill* v.

Wilson, Sons, & Company (*ubi sup.*) shipowners were held liable for injury to a workman (*i.e.*, a landsman) employed by them to unload their ship at a wharf in a dock. In *Owens* v. *Campbell, Limited* (*ubi sup.*) owners of a steamship were held not liable for an accident to a fireman when attending to the boilers. The ship was moored to a pontoon outside a dock, and was taking passengers on board previous to starting on her voyage. This is the most recent case on the subject, and was decided by the Court of Appeal after it had decided the case now before the House. I confess that I have great difficulty in reconciling the two decisions. Taking section 1 and section 7 together, both locality and nature of employment are important. To bring the present case within the Act, the plaintiff must prove (1) employment by the defendant, (2) that the defendant is an undertaker, *i.e.*, that the employment was on, in, or about a factory (in the statutory sense) of the defendant. The defendant here was not an undertaker; he was not employing the plaintiff in a factory of which he was the occupier within the meaning of the Act. In my opinion the appeal ought to be allowed.

Judgment appealed from reversed.

Counsel for the Appellants—Carver, K.C. —Dawson Miller. Agents—W. A. Crump & Son, Solicitors.

Counsel for the Respondent—Robson, K.C.—G. A. Scott. Agents—Burn & Berridge, Solicitors.

HOUSE OF LORDS.

Friday, April 14.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, Davey, James of Hereford, Robertson, and Lindley.)

YORKSHIRE MINERS' ASSOCIATION AND OTHERS *v.* HOWDEN AND OTHERS.

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

Trade Union—Misapplication of Funds—Action for Injunction by Individual Member of Union—Trade Union Act 1871 (34 *and* 35 *Vict. c.* 31), *sec.* 4, *sub-sec.* 3.

A miners' association, registered under the Trade Union Act 1871, made certain payments from its funds to its members, who were out of employment, in circumstances which involved a direct contravention of the rules of the association. *Held* (Lords Davey and James of Hereford *diss.*) that an action was maintainable by an individual member of the association against the association and its officers for an injunction to restrain such a misapplication of the funds, inasmuch as the action was not a legal proceeding instituted with the object of directly enforcing an agreement for the application of the funds of a trade union to provide benefits to members, within the meaning of the Trade Union Act 1871, section 4, sub-section 3.

The Trade Union Act 1871 provides as follows:—Section 4—"Nothing in this Act shall enable any Court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely— . . . (sub-section 3) any agreement for the application of the funds of a trade union (*a*) to provide benefits to members."

Disputes having arisen between the miners employed in the Denaby and Cadeby Collieries Company's pits and their employers, which resulted in a strike or lock out, the Yorkshire Miners' Association, registered under the Trade Union Act of 1871, made certain payments of "strike pay" to those of its members who had been thrown out of employment. Howden, a member of the Yorkshire Miners' Association, brought an action against the association and their general treasurer and branch treasurers for an injunction to restrain the defendants from misapplying the funds of the association or dealing with them in a manner contrary to the rules of the association and the provisions contained therein. While the case was before the Court of Appeal, the trustees of the association were added as defendants. It was clear from a consideration of the rules of the association and the special facts and circumstances in which the strike had occurred that the payment of strike pay was a direct violation of the rules of the association, and the real point at issue in the case was whether the action was excluded by section 4, sub-section 3, of the Trade Union Act of 1871.

The Court of Appeal (Williams, Stirling, and Mathew, L.JJ.), upon an application by the Yorkshire Miners' Association for a judgment or for a new trial in an action tried by Grantham, J., with a jury, held that the action was not excluded and granted an injunction, and the Yorkshire Miners' Association appealed to the House of Lords.

At delivering judgment—

Lord Chancellor (Halsbury)—In this case the plaintiff, a member of the Yorkshire Miners' Association, a trade union registered under the Act of 1871, complains that the funds of that society are being diverted from their proper object, and seeks by injunction to prevent that misapplication. It appears to me that the sole question in this case is whether the plaintiff is at liberty to bring the action, or whether the action is one which is prohibited by the provision in the Act of 1871, which provides that nothing in the Act shall enable any court to entertain any legal proceedings with the object of directly enforcing or recovering damages for the breach of any of the following agreements,