senting) that the value of the boy's services to his father were to be kept out of account.

The employers appealed.

At the conclusion of the arguments their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In this case there was a difference of opinion in the Court of Appeal, and a majority of that Court thought themselves bound by authority. The question is a question of fact—Was this father partially dependent upon his son? and it was for the County Court Judge to decide upon the evidence. The case of *Main Colliery Company* v. *Davies*, [1900] A.C. 358, was apparently regarded as though it decided that a father must be dependent upon his son in certain circumstances, but that case only decided that a father may be dependent upon his son's earnings.

Now in my opinion it is not right to say that the County Court Judge must exclude the cost of the maintenance of the son. He is quite entitled to say that the father is not dependent at all because he is not in a position to gain anything from the earnings of the son. The learned County Court Judge would be quite entitled to say, if he thought it were a fact, that the earnings of the son were 6s. 11d., and that he cost his father 6s. 11d. to keep. If the case of *Osmond* v. *Campbell and Harrison, Limited*, [1905] 2 K.B. 852, which was referred to, means anything contrary to this, then I dissent from it. Accordingly upon this point, if it were the only point, I should say that the County Court Judge was quite entitled to find that there was no dependency at all, inasmuch as the cost of the maintenance of the son was as much as the wages which he gave to his father.

But another point was referred to by Fletcher Moulton, L.J., and I think that it was argued fully on the part of the respondent in the Court of Appeal. The boy earned 6s. 11d. a week. Was the County Court Judge obliged to set against that sum the 6s. 11d. which his maintenance cost? That may depend upon the facts. If he was giving to his father services of value the County Court Judge was, in my opinion, entitled to take that into consideration, because that may have been the equivalent of the maintenance, and ought, perhaps, in his view to have been set against it. There is no rule of law that I know of to prevent the County Court Judge from saying—"I look at the whole of the facts," and there is no rule of law to say that the County Court Judge must so marshal the receipts and the outgoings as to set off the whole of the maintenance against the earnings, and so to negative the fact of dependency. He may if he thinks right, and thinks that it is the truth say that though the earnings were 6s. 11d., and the maintenance was 6s. 11d., yet in return for the maintenance the deceased did service of value, so that the earnings were a clear gain, and that the applicant was dependent upon the earnings to the full extent, or to any qualified extent. The proper course is to look at all the circumstances, and say to what extent, if at all, was the father dependent upon his son's earnings.

Accordingly I cannot agree with the form of the order made by the Court of Appeal, but I agree that the case ought to be remitted to the County Court Judge simply that he may hear and decide it, and I think that he ought to understand from this House that in determining the question of the dependency of the father on the earnings of his son, he is not precluded by law from making a deduction in respect of the cost of maintenance, nor from taking into account, as against the cost of the son's maintenance, the pecuniary value, if any, of the services rendered by the son to the father in the conduct of the latter's business as a barber.

LORDS ATKINSON, GORELL, and ROBSON concurred.

Judgment appealed from varied.

Counsel for Appellants—C. A. Russell, K.C.—E. W. Cave. Agents—Ullithorne, Currey, & Company, Solicitors.

Counsel for Respondent—Hugo Young, K.C. — H. H. Joy. Agents — Sharpe, Pritchard, & Company, Solicitors.

HOUSE OF LORDS.

Thursday, June 15, 1911.

(Before the Lord Chancellor (Loreburn), Lords Atkinson, Gorell, and Robson.)

HEWITT *v.* OWNERS OF S.S. "DUCHESS."

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

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

A master mariner, while his ship was lying in Bangor Roads, went ashore to a pier, as he was entitled to do. It was not proved whether he went upon the ship's business or for his own purposes. On returning to the quay he hailed his ship for a boat to convey him on board. While waiting for the boat he fell off the quay and was drowned.

Held that there was no evidence that the accident arose out of and in the course of his employment, and that his dependants were not entitled to receive compensation.

A master mariner in the respondents' employment was drowned under circumstances stated *supra in rubric*. His dependants claimed compensation, which was awarded by the County Court Judge; this was reversed by the Court of Appeal

(COZENS-HARDY, M.R., FLETCHER-MOULTON and BUCKLEY, L.JJ.).

The dependants appealed.

At the conclusion of the argument for the appellants their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I think that this appeal should be dismissed. The question which was argued before us was that this accident, which proved fatal to the unfortunate master of the vessel, arose out of his employment. He fell off the pier into the water while waiting to return to his ship. It was not established by the evidence that he had to go ashore on the ship's business, and I think that the risk from which he perished was not one specially connected with his employment, such as crossing a plank or a gangway leading to the ship or going in a boat to the ship might be. Under these circumstances I think that the conclusion at which the Court of Appeal arrived was right, and that this appeal should be dismissed.

LORDS ATKINSON, GORELL, and ROBSON concurred.

Appeal dismissed.

Counsel for Appellants—Greer, K.C.—Clement Davis. Agents—Bower, Cotton, & Bower, Solicitors.

Counsel for Respondents—Atkin, K.C.—Alexander Neilson. Agents—Botterell & Roche, Solicitors.

HOUSE OF LORDS.

Friday, June 16, 1911.

(Before the Lord Chancellor (Loreburn), Lords Atkinson, Gorell, and Robson.)

T. W. THOMAS & COMPANY, LIMITED *v.* PORTSEA STEAMSHIP COMPANY, LIMITED.

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

Ship—Bill of Lading—Incorporation of Terms of Charter-Party—Arbitration Clause.

A bill of lading provided that goods should be delivered to the shipper or his assigns, "he or they paying freight for the said goods with other conditions as per charter-party with average accustomed."... "Deck load at shipper's risk, and all other terms and conditions and exceptions of charter to be as per charter-party, including negligence clause." The charter-party contained an arbitration clause.

Held that the terms of the bill of lading were insufficient to incorporate therewith the arbitration clause of the charter-party, which could only be done by clear and explicit language.

A company of shipowners (*respondents*) brought an action for demurrage against the holders of a bill of lading, the material terms of which are stated *supra in rubric*. The holders of the bill (*appellants*) relied upon an arbitration clause in the charter-party. The County Court Judge and the Admiralty Divisional Court held that this clause had been incorporated in the bill of lading and granted a stay. This judgment was reversed by the Court of Appeal (VAUGHAN WILLIAMS, BUCKLEY, and KENNEDY, L.JJ.).

The holders of the bill appealed.

At the conclusion of the arguments their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN) — The question in this case seems to me to be whether an arbitration clause found in the charter-party is applicable to the contract evidenced by the bill of lading, and to disputes arising between the shipowners and the holders of the bill of lading under that document. The bill of lading itself is the primary document to be considered. It acknowledges the shipment of the goods in the usual way and the terms upon which they are to be delivered. There are two paragraphs in it which refer to the charter-party. One of them is in the body of the bill of lading, and provides that the goods shall be delivered to "William Malcolm Mackay or his assigns, he or they paying freight for the said goods with other conditions as per charter-party with average accustomed." Now it is well settled that under words of that kind you cannot say that the arbitration clause in the charter-party is incorporated or made applicable. Then there is another paragraph in the bill of lading relating to the charter-party. It is as follows—"Deck load at shipper's risk, and all other terms and conditions and exceptions of charter to be as per charter-party, including negligence clause." I do not think that this paragraph brings into the bill of lading the arbitration clause any more than the other one does. The arbitration clause is not one that concerns shipment or carriage or delivery, or the terms upon which delivery is to be made or taken. It only governs the way of settling disputes between the parties to the charter-party and disputes arising out of the conditions of the charter-party, not disputes arising out of the bill of lading. In my opinion the Court of Appeal relied rightly upon the decision in *Hamilton* v. *Mackie*, 1889, 5 Times L.R. 677, and if it is desired to put upon the holders of a bill of lading an obligation to arbitrate because that obligation is stated in the charter-party it must be done explicitly.

LORD ATKINSON—I concur with the judgment of the Lord Chancellor. I think that it is a sound rule of construction that when it is sought to introduce into a document like a bill of lading a negotiable instrument, a clause such as this arbitration clause, not germane to the receipt, carriage, or delivery of the cargo or to the payment of the freight, the proper subject-matters