minded, although it was occasionally obstructed by a line of waggons drawn across it.

The reasons which the learned County Court Judge gives for his award in the present case show sufficiently that he found the deceased and his companions to have been making a route for themselves in circumstances not only of additional but of obvious and unnecessary peril, rather than following a recognised route, which, by being tolerated in spite of the printed regulations, had come within the ambit of the employment. I do not therefore think it necessary to consider whether his reasoning was in all respects right, though as it seems to me he pressed the observations quoted from the case of the steamship "*Blackrock*" to purposes for which they were not intended.

With great respect to the judgments of the Court of Appeal in a matter where opposite opinions may well be entertained, I think that on the uncontradicted evidence, accepted as I take it to have been by the Judge, of fact, the present is a case of an accident arising not out of but outside of the employment, since at the time of his death the workman was in no sense doing that which was part of or fell within his employment (whether he was or was not acting with care therein), but was for his own purpose, namely, the convenience of the moment, thoughtlessly pursuing a course which fell outside of his employment. In that act unhappily he met his death. The proposition before the Court of Appeal was that the learned County Court Judge had arrived at his award on the facts either in a manner which showed that his conclusion had been controlled by some error of law or on a supposition of the existence of evidence of which in fact there was none that a judicial tribunal could reasonably give effect to. I do not think this proposition was made out, and therefore the appeal should succeed.

Their Lordships sustained the appeal.

Counsel for the Appellants—H. Gregory, K.C.—T. P. Perks. Agents—Woodcock, Ryland, & Parker, for A. de C. Parmiter (Solicitor to the Company), Solicitors, Manchester.

Counsel for the Respondent—Shakespeare—E. Dale—Lawn. Agents—Burton, Yeates, & Hart, for Hart, Jackson, & Sons, Solicitors, Barrow-in-Furness.

HOUSE OF LORDS.

Thursday, June 14, 1917.

(Before the Lord Chancellor (Finlay), Earl Loreburn, Lords Shaw, Parker, and Parmoor.)

DENNIS *v.* WHITE & COMPANY.

(APPEAL UNDER THE WORKMEN'S COMPENSATION ACT 1906.)

Master and Servant—Workmen's Compensation—"Arising out of" Employment—Collision whilst Riding a Bicycle—Risk Run by the General Public—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1).

The appellant was sent a message by his employer on a bicycle. While riding the bicycle he collided with a motor car and was injured.

Held that the accident arose out of the employment, the fact that the risk was one common to any cyclist being immaterial.

Authorities reviewed.

At delivering judgment—

LORD CHANCELLOR (FINLAY)—This is a claim for compensation under the Workmen's Compensation Act. The appellant was in the employment of the respondents, who are builders, and on the day of the accident was by the orders of the respondents riding a bicycle through the public streets, having been directed to go on the bicycle to get some plaster. He came into collision with a motor car and his leg was broken.

The County Court Judge found that the respondents were not liable, and his decision was affirmed by the Court of Appeal, Sargant, J., dissenting. The County Court Judge gave no reasons for his decision. The majority of the Court of Appeal decided against the claim on the grounds that the risk which had resulted in the accident was not special to the employment but was an ordinary street risk shared by the claimant with the ordinary members of the public, and that the question was one of fact. Sargant, J, dissented on the grounds that he thought that riding a bicycle in the streets of London on an average once a day involved an appreciable extra danger, and that the inferences to be drawn were of mixed law and fact.

In my opinion the decisions below were erroneous and should be reversed.

The only question is whether the accident arose out of the employment. It is not disputed that the appellant was riding the bicycle in the course of his employment and by the orders of his employer. The risk of collision under such circumstances is incidental to the use of a bicycle. It is a risk inherent in the nature of the employment, and it was the cause of the accident. It follows that the accident arose out of the employment. It is quite immaterial that the risk was one which was shared by all members of the public who use bicycles for such a purpose. Such as it was it was a

risk to which the appellant was exposed in carrying out the orders of his employer.

If a servant in the course of his master's business has to pass along the public street, whether it be on foot or on a bicycle or on an omnibus or car, and he sustains an accident by reason of the risks incidental to the streets, the accident arises out of as well as in the course of his employment. The frequency or infrequency of the occasions on which the risk is incurred has nothing to do with the question whether an accident resulting from that risk arose out of the employment. The use of the streets by the workman merely to get to or from his work of course stands on a different footing altogether, but as soon as it is established that the work itself involves exposure to the perils of the street the workman can recover for any injury so occasioned. As it was put by Lord Parmoor in his judgment in *Thom* v. *Sinclair*, 1917 A.C. 127, 54 S.L.R. 267, in this House — "The fact that the risk may be common to all mankind does not disentitle the workman to compensation if in the particular case it arises out of the employment."

There are, of course, cases in which it is necessary to inquire whether the nature of the employment specially exposes the workman to a risk of a general nature. In the case of injury by lightning it is very material to inquire whether the work involves special exposure to the danger of being so struck, as in the case of employment upon a steeple or elevated scaffolding. In the case of injury by a bomb thrown from hostile aircraft the fact that the workman was engaged on work in a building brilliantly lighted so as to attract the notice of the enemy crews might be most material as showing that the injury by the bomb was one which arises out of the employment. In the case of sunstroke or frostbite it is material to show that the work involves special exposure to the heat or the cold. If the injury is the result of an assault it is material to show that the employment is such as to involve liability to such mishaps, as in the case of a gamekeeper or watchman—see *Mitchinson* v. *Day Brothers*, 1913, 1 K.B. 603; *Weekes* v. *Stead*, 111 L.T.R. 693. Where the risk is one shared by all men, whether in or out of employment, in order to show that the accident arose out of the employment it must be established that special exposure to it is involved. But when a workman is sent into the street on his master's business, whether it be occasionally or habitually, his employment necessarily involves exposure to the risks of the street, and injury from such a cause arises out of his employment. There is nothing in the Act about any necessity for showing that the employment involves an extra or special risk, and once it is clear, as it is in the present case, that the accident was the result of a risk necessarily incidental to the performance of the servant's work, all inquiry as to the frequency or magnitude of the risk is irrelevant. It is quite immaterial whether the nature of the employment involves continuous or only occasional exposure to the dangers of the streets. The frequency of the exposure to a risk increases the chance of the occurrence of an accident, but it has no bearing on the question whether it arose out of the employment, which is settled by the fact that such exposure was one of its terms whether on many occasions or on one.

This subject has been a good deal discussed in the Scottish Courts. In the case of *M'Neice* v. *Singer Sewing Machine Company, Limited*, 1911 S.C. 12, 4 B.W.C.C. 351, 48 S.L.R. 15, a salesman and collector while riding a bicycle in the streets in the course of his employment was kicked on the knee by a passing horse, and claimed compensation from his employers under the Workmen's Compensation Act 1906. The Lord President (Lord Dunedin) in giving judgment made the following observations — "The accident must, of course, arise both in the course of and out of the man's employment. Well, now, it is admitted that this accident arose in the course of the appellant's employment. He was doing his ordinary business as a canvasser when the accident occurred. The only question to be determined that has been argued before us is whether it arose out of his employment. Now I think it did. I think that it was one of the ordinary dangers to which his employment exposed him, because it is quite clear from the statements before us that his employment as collector forced him to traverse the streets. And I think therefore that a danger which is an ordinary danger in the street—and I think we are entitled of our own knowledge to know that the behaviour of a passing horse is one of the ordinary dangers of the street—is therefore a danger arising out of his employment. It is quite true that many members of the public are exposed to the same danger, but that does not seem to me to be the criterion. These many members of the public might be either parties who are in employment or who are not; but even if they were parties in employment they might well be in the street not in the course of their employment, and then there would be no liability. I refer to the ordinary case of a workman who is leaving the factory. After he has once got clear of the factory and is going to his own home in another part of the town he would not then be injured in the course of his employment."

In the case of *Hughes* v. *Bett*, 1915 S.C. 150, 8 B.W.C.C. 362, 52 S.L.R. 93, the claimant had occasionally to fetch his employer's letters from the post office in the country town, and generally rode a bicycle on such errands. He was injured through a man lurching against him and knocking him over. The Lord President (Lord Strathclyde) expressed himself as follows :—"But it was argued to us that the risk here was not incidental to the respondent's employment, because the employment was not one in which the workman was exceptionally exposed to the danger which caused the accident. It was said that the same accident might have befallen any member of the public who chanced to be riding a bicycle on that road at that time. That is true but irrelevant. The statute recognises no such distinction. If the distinction were sound

then the vast majority of workmen would be deprived of the benefits of this Act, because they in the course of and arising out of their daily employment encounter the very same risks which are faced every day by members of the public. Members of the public do not recover compensation, because either they are not employed or the accident happened when they were not in the course of their employment. The argument that was advanced to us was that a risk was never incidental to the employment if it was a risk which might befall any member of the public. That argument was advanced, as will be seen from an examination of the report, in *M'Neice's* case, and was there negatived, as will be seen by an examination of Lord President Dunedin's opinion in the case. Therefore *M'Neice's* case is an authority precisely in point. The fallacy was admirably exposed in the opinion of Buckley, L.J., in the case of *Pierce* v. *Provident Clothing and Supply Company*, 1911, 1 K.B. 997, where he says—'The question whether the accident is the result of a risk to which all mankind are more or less exposed is, in my judgment, not an exhaustive test of the question whether or not the accident arises out of the employment. The words "out of" necessarily involve the idea that the accident arises out of a risk incidental to the employment. An accident arises out of an employment where it results from a risk incidental to the employment, as distintinguished from a risk common to all mankind, although the risk incidental to the employment may include a risk common to all mankind.' But it was argued to us that there was a distinction between the case we have before us and these two decisions to which I have referred in respect of the frequency with which the workmen in these two cases were compelled by the nature of their employments to traverse the streets, and the infrequency of the respondent's visits to Milnathort Post Office. If, it was argued, the respondent had gone oftener to the post office (how much oftener no man can tell), then the risk would have been incidental to his employment and his right to recover clear. But if he went seldom to the post office (how much more seldom no man can tell), then the risk would have been one to which all the world was liable and his right to recover would be barred. That argument is obviously unsound for this reason, that it makes the character and quality of the risk depend upon the number of times which the workman is called upon to face it. The unsoundness, or rather the absurdity, of the criterion is, I think, well exemplified in the case before us. For it was conceded that if the respondent had harnessed his horses and driven to the post office for his employer's letters, then an accident which had chanced to befall him on the road would have been an accident arising out of and in the course of his employment, and yet it is found as one of the facts in this case that it was just as much part of the man's employment to go to and fro on the road between his mistress's house and the post office on his bicycle as it would have been to have gone in the carriage, and the carriage accident would have warranted a claim for compensation under the statute even although he had visited the post office only once in a way in the carriage instead of going regularly when he was bidden to do so on his bicycle. Traces of what I may call the heresy in this case are to be found in the opinions of the Master of the Rolls and of Buckley, L.J., in the case of *Pierce*, where the Master of the Rolls said—'I think that this man was more exposed than other people. His employment exposed him to the risks of the streets practically all day long, allowing only for the intervals of going inside the houses of the people he was visiting;' and in Buckley, L.J.'s, opinion where he says—'In the case before us the man was a collector and canvasser, and for the purposes of his employment it was his duty throughout the day to be continually passing from place to place through the streets. He was thus exceptionally exposed to street accidents.' Now if in that case the learned Master of the Rolls and Buckley, L.J., would have denied the man compensation if he had only gone upon the streets on his bicycle on rare occasions and not often, then I respectfully dissent from that view, for I do not think that the right to compensation can depend upon the number of times upon which a man performs his duty. A risk may be incidental to an employment even though the workman has to face it only at wide intervals of time. If the Irish case which was cited to us, *Greene* v. *Shaw*, 1912, 2 Ir. R. 430, 5 B.W.C.C. 573, and the recent case in the English Court of Appeal, *Sheldon* v. *Needham*, 30 T.L.R. 590, really turned upon the doctrine that a risk is not incidental to a workman's employment when it is a risk which any member of the public may be called upon to face, then I very respectfully dissent, because it appears to me that such a doctrine is antagonistic to the terms of the statute which we are here administering."

Similar views as to the effect of the Act are expressed in the judgments of the majority of the Court of Session in *White* v. *Avery*, 1916 S.C. 209, 53 S.L.R. 122. The Lord President there deals with the point as follows:—"It is common ground that the accident arose in the course of the appellant's employment. The question for our decision is whether it arose out of his employment. Now the learned arbitrator came to the conclusion that it did not, because the risk which the appellant ran in walking upon the slippery road was not a risk to which he was exposed by the nature of his occupation, but was simply an ordinary risk to which every pedestrian was exposed. In my view that is an unsound statement of the law, for the risk on that road at that particular time appears to me to have been a risk incidental to the man's employment. And it was none the less a risk incidental to the man's employment because every pedestrian on that road at that time would have required to face it, or because the appellant was facing it for the first and, it may be, the only time."

The views so expressed in the Scottish courts appear to me to be in accordance

with the plain meaning of the Act. In the English Courts, on the other hand, the view has been taken that in order to make an employer liable in such a case the employment in the streets must be continuous. In *Pierce* v. *Provident Clothing and Supply Company, Limited* the claimant was a canvasser who used a bicycle in calling upon customers, and one of the reasons given for holding that the accident arose out of the employment was that his employment exposed him to the risks of the streets practically all day long. The Master of the Rolls says—"This work of course necessarily involved spending a great part of the day in the streets in this triangular area, and in the course of his duties he was beyond all doubt much more exposed to the risks of the streets than ordinary members of the public."

In *Sheldon* v. *Needham* the claimant was a charwoman in regular employment who had been sent by her employer to post a letter at the post box about 100 yards from the house. She slipped on a banana skin in the street and broke her leg. It was held that the accident did not arise out of the employment, on the ground that it was due to a risk no greater that is run by all members of the public. The Master of the Rolls in the course of his judgment referred to his dictum in *M'Donald* v. *Owners of Steamship "Banana,"* 1908, 2 K.B. 926, at p. 929, where he said—"To give an illustration which possibly appeals to most of us: If I send my domestic servant in the evening with a letter to a friend, and he is knocked down by a motor omnibus on his way to or from my friend's house, I should be liable," and stated that this was an illustration and not intended to lay down any principle such as was contended for on behalf of the claimant, and, with the concurrence of the other members of the Court Swinfen Eady and Pickford, L.JJ., laid it down that the claimant could not recover on the ground that there was no continuous exposure to the risks of the streets, and that the danger was no greater than that run by all members of the public. The law was laid down to the same effect by the Master of the Rolls and Swinfen Eady, L.J., in *Slade* v. *Taylor*, 1915, 8 B.W.C.C. 65—a case in which it was held that the claimant who used a bicycle once a week on his master's business was not entitled to recover, but Phillimore, L.J., concurred only because in his opinion the matter was concluded by authority.

In the case now before your Lordships' House the Court of Appeal consisted of Lord Cozens-Hardy, M.R., Phillimore, L.J., and Sargant, J. The Master of the Rolls and Phillimore, L.J., disallowed the appeal on the ground of the decision in *Slade* v. *Taylor*, and also on the ground that the County Court Judge's decision on a question of fact was final. Sargant, J., differed, and held that the appeal should be allowed on the ground that riding a bicycle in the streets of London once a day on an average involved appreciable extra danger as incidental to the employment, while as regards the second ground given by the majority of the Court for their decision he said—"On the second point, as to whether it is a question of fact for the learned County Court Judge, or a question of law, or a question of mixed fact and law, I feel the greatest difficulty. No doubt there is the view of Lord Loreburn which has been mentioned by the Master of the Rolls; but there is also the view of Lord Dunedin in the recent case of *Trim Joint-District School Board* v. *Kelly*, 1914 A.C. 667, 52 S.L.R. 612, that where all the facts are undisputed the inferences to be drawn are probably inferences of law, or at anyrate inferences of mixed law and fact; and of the two views the latter is the one which would commend itself to me. However, having regard to the view taken by the other members of the Court, my opinion becomes of no importance."

In my opinion both grounds for the decision of the Court of Appeal fail. For the reasons I have already given I am of opinion that the accident arose out of the employment, being due to a risk of the streets which the employment required the claimant to face. As regards the second ground, I think that the decision of the County Court Judge was in no sense a decision on a question of fact. No fact was in dispute, and the case did not depend on any inference of fact to be drawn from the facts admitted. The only question in the case was whether on the admitted facts the accident arose out of the employment. This is not a question of fact but of law. The judgment of the majority of the Court of Appeal appears to me to be erroneous, and I agree with the conclusion reached by Sargant, J., although for somewhat different reasons. In my opinion the decision of the Courts below should be reversed and judgment entered for the appellant with costs here and below, and a direction that the amount of compensation if not agreed should be assessed in the County Court.

EARL LOREBURN — With the greatest respect I cannot agree with the order appealed from. When a man runs a risk incidental to his employment and is thereby injured, then the injury arises out of his employment. This is what happened here. I can see no other possible conclusion from this evidence.

There may be and have been cases in which the risk which resulted in the injury would not at first sight appear to be incidental to the employment, but apparently had no relation to the employment, and was common to all who might be at or near the spot at the time. Even then it may be possible to show that the employment exposed a man in a special way to that common danger, and so to establish that it was incidental to the employment. Such was the lightning case and the Zeppelin bomb case.

Some of the learned Judges seem to be of opinion that a risk is incidental to an employment only if it be one that is peculiar to the employment or one which other people do not share. I cannot assent to that view. It would enormously restrict the language of the Act. Many risks may be incidental to an employment which are

common to almost everyone, such, for example, as the dangers of the street, which last is this very case. It is one thing to say that if an employment peculiarly exposes a man to a risk that risk is incidental to the employment. It is quite a different thing to say that if other people are also exposed to the risk, then the risk is not incidental to the employment.

I should not have thought it possible that the process of perverting an Act of Parliament by divorcing judicial expressions from their context and from the *subjecta materies* could have been carried so far as it has been in some of the arguments I have heard on this statute.

I believe that a conclusion from evidence is a conclusion of fact. But, of course, the award may be wrong in law, as, for example, because the Act has been wrongly interpreted, or because there is no evidence to support the conclusion of fact. It is an old rule that when there is no evidence reasonably to support a conclusion of fact or a verdict the Court has jurisdiction as on a matter of law. If there is conflicting evidence the award under this Act is final on the conclusion of fact.

LORD SHAW—In the present case there has been an award that the respondents are not liable to pay compensation under the Act of Parliament. But there are no statements nor findings of fact. We are not told by any finding whether the learned arbitrator held that there was any accident or any injury, or whether what occurred, if anything, arose in the course of the workman's employment or whether it arose out of it. Neither an affirmative nor a negative on any of these propositions is found. My doubt in such a situation is whether the duty of a court of law should not be to send the case back to the arbitrator, so that the Court may be in possession of precise findings in fact before proceeding to determine the question of law, if any, which they raise.

I venture to think that it is the duty of the learned arbitrator to make such precise and definite findings, and I understand that your Lordships are all of the opinion that this is the correct as well as plainly the advantageous course.

The parties, however, came before the Court of Appeal and before this House asking acceptance of these propositions of fact, namely, that this workman was sent by his employer's orders out into the traffic of the streets of London on his master's business and instructed to use a bicycle in the necessary perambulations. Accident and injury were admitted, and it was also admitted that these occurred in the course of the workman's employment just described. The arbitrator and the Court of Appeal, however, held that the accident did not arise "out of" the employment.

Is this correct in law? Upon that question I do not propose to add anything to the judgment which I delivered in the House a short time ago in the case of *Thom*. The whole mass of authority was there considered by this House, including I think every one of the cases mentioned in the Court below, and said to have influenced the arbitrator's mind. Unfortunately *Thom* v. *Sinclair*, 1917 A.C. 127, 54 S.L.R. 267, was only recently decided—later by a year than the pronouncements in the present case. I feel sure that had the principle of *Thom's* case been before the courts below the result would have been a finding of liability.

For this case is even much clearer than *Thom's*. In that case I ventured to say that the statutory expression "arising out of the employment" applied "to the employment as such—to its nature, its conditions, its obligations, and its incidents." The present case is thus clearly covered. It is so plain as this—that the workman while obeying an express order, and that in the express manner which had been prescribed for doing so, met with his accident. That is to say, while performing the obligations of his employment under the conditions of his employment he incurred the danger which his employment made him confront. I think that it would be to stultify the statute, or at least very largely to sterilise its benefits, if such an accident were held not to arise out of the employment.

I respectfully agree with the judgment of the noble and learned Lord on the Woolsack.

LORD PARKER—In my humble judgment this is a plain case. It requires no direct evidence to prove that a boy employed to ride a bicycle through London traffic runs the risk of injury by collision with other vehicles. The risk is inherent in the nature of the employment, or, to put it in another way, if a collision occurs a causal relationship between the employment and the collision can be properly inferred, and, in default of further evidence, in my opinion ought to be inferred by a judge of fact. Most employments have peculiar risks inherent in their nature. A person employed to break stones runs the risk of being injured by a flying splinter. A person employed to climb a ladder runs the risk of injury from a fall. In neither case would positive evidence be necessary to prove that the injury by accident arose out of the employment. That it did so arise would be a legitimate inference from the nature of the employment coupled with the occurrence of the accident causing the injury. There may, of course, be risks so general that without further evidence no such inference would arise. Everyone is liable to be struck by lightning, to be frostbitten, or to be injured by bombs dropped from hostile aircraft. In such cases it may be necessary to establish the causal relationship implied in the expression "injury by accident arising out of the employment" by positive evidence, such, for example, as proving that the circumstances of the employment exposed the employee to a greater risk than that run by persons not so employed or not so employed under the same conditions. But these can have, in my opinion, no application to the accident with which this appeal is concerned. The learned arbitrator gave no reason for his decision, but he appears to have been

influenced by the fact that in riding a bicycle through the London traffic the boy ran no greater risk of collision than anyone else riding a bicycle through the same traffic. This, though true, is *nihil ad rem.* A person employed to break stones or climb a ladder runs no greater risk than any other person who breaks stones or climbs a ladder, but this is no reason for holding that when he is injured by a flying splinter or a fall, the injury by accident does not arise out of his employment. If it were, the Act would in very many cases be a dead letter. In those cases where it is necessary to consider whether a particulur employment by its circumstances involve special liability to a risk which is in its nature general, the contrast is between persons engaged in the particular employment or under the particular circumstances and persons not so employed or not so employed under the same circumstances. It is not between the injured workman and others doing the same thing under the same circumstances or the same conditions. When once it is manifest that what the workman is employed to do involves a particular risk, it almost necessarily follows that all who do what the workman is employed to do run the same risk, but this cannot, in my opinion, deprive the workman of his right to compensation under the Act.

In my opinion, therefore, the appeal ought to be allowed. I see no difficulty in overruling the decision of the arbitrator, first, because he did not draw from the facts proved before him the inference which, in my opinion, he ought to have drawn, and, secondly, because he was I think under a misconception of law.

Inasmuch as expressions used by judges in deciding cases under the Act have so often been used in a way their authors never intended, I desire to add a word of caution. I am dealing only with cases where the particular risk is involved in the particular thing which the workman is employed to do. I am not dealing with cases where the particular thing in which the risk is involved is not the particular thing which the workman is employed to do, but is one which, so far as his duties are concerned, he may or may not do at his own choice, though it be in fact done in furtherance of those duties. If, for, example a person employed as a lamplighter chose, in order to save time, to ride a bicycle between the various lamp posts on his round, and in so doing met with injury by collision, I doubt whether it could be inferred without more that the injury by accident arose out of his employment. The case for such an inference would, no doubt, be strengthened by proof that this was the well-known practice of persons employed as lamplighters, and must therefore have been contemplated by both employer and employed as a probable, or at least possible, mode of the employed fulfilling his duties, just as it is both possible and probable that factory hands will walk or go by 'bus, tram, or bicycle to the scene of their labours, though no one would at present contemplate their arrival by aeroplane. With such cases your Lordships are not now concerned, and I desire to make it clear that nothing I have said has any reference to them. What I have said relates only to a risk involved in doing the particular thing which a workman is employed to do.

LORD PARMOOR — The appellant was a plumber's mate in the employ of the respondents, who had works in Westminster. In the course of his employment he was directed to go on a bicycle for a distance of a mile from the premises of the respondents in order to get some plaster. While riding his bicycle in Sloan Square the appellant's left leg was broken in a collision with a motor car. The only question for debate in the appeal is whether the accident from which the injury resulted arose out of the employment of the appellant by the respondents. The County Court Judge found that the respondents were not liable. This decision is not open to review unless there has been error in law. The Court of Appeal have by a majority upheld the award.

There is no dispute as to the material facts, and no evidence was called on behalf of the respondents at the hearing in the County Court. It is not questioned that the accident arose in the performance of a duty which his employment imposed upon the appellant, namely, in the riding of a bicycle through the streets of London. If the learned County Court Judge has based his decision on an inference of fact drawn adversely to the appellant there is no evidence which in reason could justify such a finding, and there is error in law on which his decision is open to review. In my opinion the decision of the County Court Judge is not based on any inference of fact drawn adversely to the appellant but on a construction of the Act similar to that which has been adopted by the majority of the Court of Appeal, but which with all respect to that Court appears to me to be untenable.

If an accident has arisen because of something which it was the duty of the appellant to do in the course of his employment it is not an answer to say that the same accident might have happened to any other member of the public who was doing the same thing under the same conditions. I am unable to agree with the Master of the Rolls that the accident did not arise out of the employment because it was something which might happen to any member of the public who was riding a bicycle in that way. This test appears to me not to be material. If rigorously applied it would tend to defeat the purpose of the Act, since in numerous cases a member of the public doing the same thing under the same conditions as an injured workman might suffer injury in the same manner. There is no trace of any such test in the language of the Act.

I agree in the conclusion of Sargant, J., and do not think it necessary to repeat an opinion lately expressed in the case of *Thom* v. *Sinclair*, 1917, A.C. 127, 54 S.L.R. 267. In my opinion the appeal should be allowed.

Their Lordships allowed the appeal.

Counsel for the Appellant—C. T. Williams —G. L. Davies. Agents—Berry Tompkins & Company, Solicitors.

Counsel for the Respondents—R. Swift, K.C. — Shakespeare. Agents — William Hurd & Son, Solicitors.

HOUSE OF LORDS.

Thursday, June 21, 1917.

(Before the Lord Chancellor (Finlay), Earl Loreburn, Viscount Haldane, Lords Dunedin, Atkinson, Shaw, and Wrenbury.)

TENNANTS (LANCASHIRE) LIMITED *v.* C. S. WILSON & COMPANY, LIMITED.

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

Contract — War — Conditions — Delivery of Goods open to being Suspended — "Contingencies Preventing or Hindering Delivery"—"Short Supply."

Contracts for delivery of chemicals by monthly instalments during 1914 contained the condition "delivery may be suspended pending any contingencies beyond the control of the sellers or buyers (such as . . . war . . .) causing a short supply of labour, fuel, raw material, or manufactured produce, or otherwise preventing or hindering the manufacture or delivery of the article."

As a result of the outbreak of war in August 1914 the sources of supply of the chemical were greatly reduced, and the appellants claimed that the above quoted condition had become operative, and intimated to the parties in the different contracts that the contracts were suspended. The parties to the contracts all acquiesced save the respondent. The appellants did obtain subsequently, and at a considerably increased price, small supplies of the chemicals which would have been sufficient to complete the amount in the respondent's contract, leaving all the others unsupplied. The respondent claimed damages.

Held that while the rise in price was not a hindrance to delivery, in fact there was an actual shortage sufficient to hinder delivery (*dis.* Lord Finlay, L.C.) and to justify suspension of the contract.

At delivering judgment—

Lord Chancellor (Finlay)—This action was brought by the respondents to recover damages from the appellants for failure to deliver 240 tons of magnesium chloride contracted to be sold and delivered to the respondents under a contract dated the 12th December 1913.

The appellants pleaded that they were entitled to suspend the deliveries in virtue of the first of the conditions of sale, as delivery had been prevented or hindered by the war. There was also an allegation that there was a submission with an award in favour of the defendants which concluded the plaintiffs, but nothing need be said of this, as it was not established in point of fact.

By the contract in question the appellants sold to the respondents magnesium chloride according to their requirements over the year 1914, estimated at from 400 to 600 tons, to be delivered by equal monthly quantities over 1914 at the price of 63s. per ton delivered to the respondents' works. The first of the conditions of sale was as follows—"Deliveries may be suspended pending any contingencies beyond the control of the sellers or buyers (such as fire, accidents, war, strikes, lock-outs, or the like), causing a short supply of labour, fuel, raw material, or manufactured produce, or otherwise preventing or hindering the manufacture or delivery of the article." It is upon this condition that the decision of the case depends.

The magnesium chloride required in this country was derived from two sources, namely, from the works of the United Alkali Company, Limited, whose manufacture was carried on in this country, and from the works of German manufacturers in Germany. The second of these sources of supply was the more important, and ceased to be available as soon as war had broken out between this country and Germany on the 4th August 1914. The appellants and Messrs Schneider & Company of Glasgow had entered into a contract on the 28th October 1911 with the United Alkali Company, Limited, by which the latter sold to the appellants and Messrs Schneider the whole production by the United Alkali Company of chloride of magnesium, which was not to exceed 5000 tons, deliverable in equal monthly quantities from January to December 1913. The purchasers had the option of extending the contract over the years 1914 and 1915, and this option was exercised as regards the year 1914, but on the 12th August 1914 the United Alkali Company cancelled the contract on the ground that the purchasers were agents for a German convention.

The appellants had at the time of the outbreak of war a number of contracts running for the delivery by them of magnesium chloride on terms similar to those of the contract with the respondents. The purchasers under all these contracts other than the respondents (sixteen in number) accepted the appellants' claim to suspend deliveries under the first condition.

On the 15th August 1914 the appellants sent to the respondents the following letter:—"Messrs. C. S. Wilson & Co., Liverpool.—Dear Sirs,—Owing to the war our principals have cancelled their contract with us for magnesium chloride, and we have therefore no option but to advise you that our contract with you of the 12th Dec. 1913 is also cancelled. The works are continuing and will continue to make magnesium chloride as long as possible, but they are unable to say how long this may be. They have advanced their price for the present by 10s. per ton, and have instructed us to do the same and not to accept any orders without