are in accordance with the opinions expressed by the judges in *M'Naghten's* case (1843, 4 St. Trials, N.S. 849, 10 C. & F. 200); and in combination with the question whether the prisoner knew what he was doing, the very ambiguous illustration given by Bailhache, J., of the meaning that should be attributed to these questions would remove all doubt, if any existed, of the point at which his mind went astray. It is an illustration of a delusion assailing the mind of an insane person, and it is arguable that the impression conveyed to the jury may have been that they could only find a verdict of manslaughter if they found that Beard was the victim of such delusions. As this suggestion had never been made, the effect of such a direction may be made the subject of infinite conjecture. In *Meade's* case the Court of Criminal Appeal approved Lord Coleridge's direction because he had sufficiently warned the jury that there was no plea of insanity, and that it was not the defence raised. This warning is absent from Bailhache, J.'s, direction, and the questions as framed might conceivably (so it is argued) have led the jury to think that insanity was the test.

Neither should the learned Judge in my opinion have introduced the question whether "the prisoner knew that he was doing wrong" in a defence of drunkenness where insanity was not pleaded. It is a dangerous and confusing question to put to a jury, for a drunken man's judgment upon such a question is very likely to be impaired, and it might well be perplexing to a jury to determine whether, if he knew what he was doing he knew also that he was doing wrong. The general proposition that drunkenness is no excuse for crime may be seriously affected in its operation if such a question is to be a test by which the jury may determine whether the verdict should be murder or manslaughter. It is noteworthy that notwithstanding that the judges ever since *M'Naghten's* case in 1843 have had these questions in mind as the test of insanity, there is no single case known to me where drunkenness has been the defence in which the judge has directed the jury to consider whether the prisoner knew that he was doing wrong. Whenever this question has been put the defence has been that there existed insanity caused by drink. I look upon the direction of Bailhache, J., as an innovation which is not supported by authority and which should not be repeated or imitated. But while I think that the summing up was in some respects unhappily conceived, I am not prepared, reading it as a whole, to hold in this case that it amounted to or should be treated as a misdirection. The defence which is founded upon insanity is one thing. The defence which is founded upon drunkenness is another. The relevant considerations are not identical. It is inconvenient to use the same language in charging juries in relation to different defences. But the portions of the summing-up which I have criticised were in fact unduly favourable to the prisoner. He cannot complain of them unless they so confused the jury as to prevent it from properly appreciating the true issue, and I am not prepared to lay it down—though I have felt some doubt upon the point—that the actual direction given to the jury by Bailhache, J., disabled them from reaching a true conclusion upon the matters which required decision. On the contrary, I think that upon the whole the matter was so presented to them, though unscientifically, that they have in fact formulated the answer which is decisive even in a case where the defence is founded upon drunkenness.

In the present case I doubt, without reaching a conclusion, whether there was any sufficient evidence to go to the jury that the prisoner was, in the only relevant sense, drunk at all. There was certainly no evidence that he was too drunk to form the intent of committing rape. Under these circumstances it was proved that death was caused by an act of violence done in furtherance of the felony of rape. Such a killing is by the law of England murder. I am therefore of opinion that the appeal should be allowed and the conviction of murder restored, and I move your Lordships accordingly.

Appeal allowed.

Counsel for the Crown—Sir G. Hewart (Attorney-General)—Sir E. Pollock (Solicitor-General)—Sir E. Griffiths, K.C.—Sir R. Muir—Branson—R. Sutton. Agent—Treasury Solicitor.

Counsel for the Respondent—A. Jones, K.C.—A. Jones—D. Waters. Agents—Haslam and Sanders, for Henry Bostock, Hyde, Cheshire, Solicitors.

Friday, March 26, 1920.

(Before Lords Finlay, Dunedin, Sumner, Parmoor, and Wrenbury.)

SIR W. G. ARMSTRONG, WHITWORTH, & COMPANY, LIMITED *v.* REDFORD.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1—"*In the Course of*"—*Accident Occurring during the Dinner Hour in a Canteen Provided by the Employer.*

By a rule of certain works all employees had to leave the works for an hour at 1 p.m. They might, however, go to a canteen run by the employers at which no profits were made, and which was entered from the street though contained in the same block of buildings as the works. A girl machinist employed in the works fell on the stairs of the canteen when returning to her work after the dinner hour. The arbitrator held that the accident arose out of and in the course of the respondent's employment and awarded her compensation.

The Court of Appeal affirmed his award.

Held (*diss.* Lords Finlay and Dunedin) that on the evidence the respondent had proved such a case of an accident arising "in the course of" her employment as could not be disturbed on grounds of law.

Decision of the Court of Appeal, 121 L.T.R. 293, *affirmed.*

The *facts* and *cases* cited appear from their Lordships' considered judgment.

LORD FINLAY—This is a claim for compensation under the Workmen's Compensation Act 1906. It came before the Judge of the County Court at Manchester. He found that the accident arose out of and in the course of the employment, and his decision was affirmed in the Court of Appeal by Swinfen Eady, M.R., and Warrington and Duke, L.JJ. The employers, Armstrong, Whitworth, & Company, have appealed to your Lordships' House.

The facts are few and not in dispute. The respondent is a machinist and was in the employ of the appellants at their works in North Street, Manchester. As stated by the arbitrator in the course of his judgment "It is a rule at the works that all employees should leave the premises at 1 p.m. for an hour. They leave by the exit from the works in North Street. The employees then are free to go where they like, either to obtain dinner or for any other purpose. They all have to return and 'clock on' at 2 p.m. when the hooter sounds. It sounds for some few minutes, and anyone who is late loses half an hour's pay."

On the 2nd October 1918 the respondent was at the appellants' works in the course of her employment. At 1 p.m. she left the premises by the entrance to the works in North Street. She then walked a few yards along the pavement till she came to the outer door leading upstairs to the canteen, into which she went.

This canteen is situate over the office of the appellants, and is provided by them for their workpeople. The building in which are the office and the canteen is situate some little distance from the works, but within the same outer wall as shown in the plan. There is a doorway giving access to the passage at the foot of the canteen stairs from the other passage by which the workpeople obtain access to the street from the works and *vice versa*, but this door is open only at night for the use of the employees on the night-shifts. The building in which is the canteen belongs to the employers and the canteen is kept up by them for the benefit of their workpeople and is under the control of the employers. The employees are entitled to use the canteen, and they may either bring their food and eat it there or obtain food in the canteen. If there is any surplus from the takings at the canteen after paying expenses it is devoted to charitable purposes, and the employers derive no profit from it. No persons other than employees of the appellants are permitted to use the canteen.

The respondent on the day of the accident took her mid-day meal at the canteen, and when the hooter sounded for return to work at 2 p.m., in going down the stairs leading from the canteen itself to the exit into North Street she slipped and broke her ankle.

The question is whether the personal injury was "by accident arising out of and in the course of the employment."

The meaning of these words was very fully considered by your Lordships' House in the case of *Davidson* v. *M'Robb*, [1918] A.C. 304; 1918 S.C. (H.L.) 66; 55 S.L.R. 185. The conclusion arrived at in that case is thus stated in the head-note in the Law Reports —"'In the course of the employment' does not mean during the currency of the engagement, but means 'in the course of the work which the workman is employed to do and what is incident to it,' and absence on leave for the workman's own purposes is an interruption of the employment."

This expresses the considered opinion of four out of the five peers present at the hearing (the Lord Chancellor, and Lords Haldane, Dunedin and Atkinson), and the fifth (Lord Parmoor) while confining his judgment to the question whether the accident arose out of the employment in no way dissented from the views of his colleagues as to the meaning of the words "in the course of the employment." The views expressed on this point form an integral part of the reasoning on which the judgments of three of their Lordships rested. By some inadvertence the word "semble" has been prefixed to this paragraph in the head-note in the Law Reports.

It is therefore now settled that for the purposes of the Act the accident must be in the course of the work or what is incident to it.

Before *Davidson* v. *M'Robb* there was an impression that the words "course of the employment" denoted merely the currency of the engagement, and on this reading they added practically nothing to the requirement that the accident must arise "out of" the employment. In one case, to which I shall refer later on—*Blovelt* v. *Sawyer* ([1904], 1 K.B. 271), it was held that the accident arose out of the employment where it was caused by the fall of a wall on the employer's premises on which the workman was permitted to remain during the dinner hour to eat his dinner. This decision was explained by Farwell, L.J., in *Gilbert* v. *Steamship Nizam* (*Owners of*) ([1910], 2 K.B. 555) as proceeding on the principle that the workman was permitted to be there by virtue of his contract of employment. In a sense such a case is one of accident arising out of the employment because it is as an employee that the man was allowed to remain there. It certainly is not "in the course of the employment" as all work was stopped during the dinner hour, but it would have been so if "course of the employment" meant merely the currency of the engagement, as was formerly supposed.

In my view the present case is determined by the interpretation of the Act adopted in *M'Robb's* case. The accident did not take place in the course of the work or what is incident to it.

The accident happened between one and

two in the afternoon. As the employees must leave the works at 1 p.m., returning at two, this interval is for all purposes on the same footing as the interval between the cessation of work in the afternoon and the resumption of work next morning. It is shorter, but so long as it lasts the service is entirely suspended. There is no work during that hour. The claimant was bound to leave, and did leave, the work premises, she came out into the street and ceased to be engaged on her master's business when she came into the street, just as much as she would when leaving at the end of the working day. Till two o'clock she was absolutely her own mistress, and there was no obligation upon her to go to the canteen for her dinner — she might have gone to any restaurant or to her own home.

The question may be illustrated by considering what would have been the result if the accident had happened in the street during her short passage from the exit to the canteen by coming into collision with a passing vehicle or by slipping on the pavement. Could she in such a case have claimed under the Workmen's Compensation Act? I think it is clear that she could not, but this would result not from the fact that the accident would have been due to dangers incident to traffic in the street, but from the fact that her work had for the time ceased when she passed out into the street from the works. If she had been still "in the course of her employment" she could have recovered under the Act in respect of a street accident. This was settled by the decision of your Lordships' House in *Dennis* v. *White* ([1917] A.C. 479, 55 S.L.R. 517). To say that the employer would not be liable for dangers of the street encountered by the workman if he was still in the course of his employment would be to relapse into the fallacy which influenced a series of decisions in the Court of Appeal (differing on this point from the Scottish Courts) that a workman cannot recover under the Act in respect of a danger of the street which is shared by all members of the public using the streets under the like conditions. If the workman was in the street in the course of his employment he can recover in respect of injury from such ordinary street risks. The only question is whether he was there in the course of his employment. This is well illustrated by the very recent decision of the Court of Appeal in *Bell* v. *Armstrong* (121 L.T.R. 258, 12 B.W.C.C. 138). In that case a woman munition worker upon a night shift, having been released for an hour's interval for supper at 10 p.m., was "clocked out" of the works, and while crossing a public road outside in order to reach a canteen provided by the employers in their own premises a short distance away for the exclusive use of their staff of workers, was knocked down in the dark by a motor lorry and killed. She was under no obligation to go to the canteen, but might have stayed in the works if she had brought her own food with her and consumed it there, as many others did. It was held that as the deceased had left the works and gone into the street for her own purposes and not in pursuance of any duty which she owed to her employers the accident did not arise out of or in the course of the employment. That case was decided on the 7th May 1919 by Swinfen Eady, M.R., and Warrington and Duke, L.JJ., a few days before the case now under appeal.

The distance in that case between the works and the canteen was 120 yards. The Master of the Rolls rested his decision entirely on the ground that the employee was not in the street on her master's business, and said—"If, on the other hand, the servant is in the street either for his own pleasure or for some necessary purpose of his own, some purpose of business, even the business of obtaining food, then the servant is there on his own business, and is not there in respect of any duty which he owes to the master."

The Master of the Rolls went on to quote the decision of the House of Lords in *Parker* v. *Steamship "Blackrock" (Owners of)* ([1915] A.C. 725, 53 S.L.R. 500). The other members of the Court concurred, and a passage from Lord Atkinson's judgment in *Davidson* v. *M'Robb* was quoted as an accurate statement of the law—"The words 'in the course of the employment' mean, I think, 'while the workman is doing something which he is employed to do.'"

Everything that was said in the Court of Appeal in *Bell* v. *Armstrong* would be directly applicable to the present case if the accident had happened in the street between the exit from the works and the entrance to the canteen. There, as here, the canteen was the property of the employer and was kept up for the benefit of the workmen. The fact that the distance was there 120 yards from the works, while here it was three yards or so, cannot make any difference in the legal principle applicable.

The course of employment had ceased when the claimant got into the street. Did it begin again when she entered the canteen? Such a conclusion seems to me impossible if cases under the Workmen's Compensation Act are to be governed by any legal principle. It was not in pursuance of any duty to her employers that the claimant went into the canteen, and the accident did not result from any obligation which had to be satisfied in order to perform the duties of her employment.

It is necessary to consider carefully the precise grounds on which the Court of Appeal held that this accident happened in the course of the employment, and distinguished the present case from *Bell's* case in which the same Judges had decided that the accident did not happen in the course of the employment.

The Master of the Rolls said that the employees of the class of the applicant were entitled as a term of their employment, either expressed or implied, to use the canteen. He went on to point out that this is a case in which the accident happened upon the employers' premises and upon the part

of the premises which was set apart for the use of the employees during their meals, a part of the premises, therefore, upon which the employees were entitled to be at the time when the accident happened. He distinguished *Bell's* case by saying—"In my judgment this case is wholly different from that case. In *Bell's* case the accident occurred in the public street. It was an ordinary street accident. This was an accident that occurred within the employers' works, within the employers' premises, though not upon the part of the premises where the machinery shop in which the applicant was usually engaged was situate, but still upon a part of the premises and works where the employee was entitled to be as a term of the contract with her employer. Now in the ordinary way for a street accident the employer is not liable unless it can be shown that the employee was in the street on the business of, or as a duty that she owed to, the employer. The present case is one of a different character. It is where the accident happened whilst the workman is actually on the employers' premises and during the course of the employment because the course of the employment is not interrupted by the workman having to take adequate food."

The decision of the County Court Judge, which was affirmed by the Court of Appeal, proceeded mainly on the ground that the works and canteen were part of the premises of the appellants, but he added another ground—"I am also of opinion that in hurrying down the stairs in order to get into the works while the hooter was sounding the applicant was doing something equally for her own benefit and for that of the employers. It was for her own interest to 'clock on' while the hooter was still sounding, and it was in the interest of the employers that their workpeople should be punctual. Even if there had been a break in the employment, the employment had re-started as she was in the act of 'clocking on.'"

I shall say nothing about this second ground except that if it were valid it would apply just as much to the case of an accident to the employee while hurrying down the steps of her own house on her way to work in the morning.

The decision of the Court of Appeal rests entirely on the fact that the accident took place upon the employers' premises. This is quite true, but it was not on any part of the premises in which work was carried on, and the claimant was not in the canteen in pursuance of any duty to her employer. On what legal principle can it be held that the fact that the canteen is within the same outer wall as the workshop shows that the claimant was there in the course of her employment.

The counsel for the appellants did not rest his argument upon the fact that the canteen was within the enclosure in which the works were. He contended that the same result would have followed if the canteen provided by the employers had been at some distance from the works. In my opinion it is indeed impossible to distinguish between the two cases, and if the respondent is in the right here it would follow that the employer by providing a canteen where his employees may have their meals comfortably, extends the operation of the Workmen's Compensation Act to any premises on which the employer has made provision for the comfort of his employees at any distance from the works.

Such a principle could not be confined to the case of a canteen. It would be just as applicable to any provision made by the employer for the recreation of his workpeople. It would apply to a bathing place in the river, to a football or cricket field, and to a library. It is very common, I believe, in large towns to have bedroom accommodation over the shops and other business premises for the use of the employees. Would the employer be liable for an accident which occurred to an employee by a fall whilst going upstairs or in his bedroom? Surely not. Such an accident would not be in the course of the employment and does not arise out of it. It arises out of the provisions made for the welfare of the servant when off duty, which have nothing to do with the service itself.

The question may be illustrated by reference to *Parker* v. *Steamship "Blackrock"* (*Owners of*). A fireman had contracted by articles which provided that the crew were to find their own provisions. He went ashore with leave to buy provisions and when returning fell from the pier and was drowned. The House of Lords held that as the deceased was on shore for his own purposes and not in fulfilment of any obligation imposed upon him by the contract of service the accident did not arise out of his employment. Lord Parker of Waddington said, at p. 729, that the struggle had been to show that the absence from the ship was in pursuance of a duty owed to the employer, but that this contention failed. So here it was not in pursuance of a duty to the employer that the respondent went to the canteen. We are always driven back to the point upon which the Court of Appeal's judgment rested, that the accident happened in the course of the employment because the canteen was on the employers' premises. What bearing can this have on the course "of the employment," particularly when the canteen was in a building separate from that in which the work was carried on, and specially appropriated to the taking of meals? If there is anything in the contention it must equally apply, as indeed was argued by the respondent's counsel, to canteens provided by the employer for his workpeople at a distance from the works, and if so it would seem to follow that the workman would be in the course of the employment while going to this canteen through the streets and that the employer would be liable for any street accident that befell him during the transit to or from the canteen.

Philbin v. *Hayes* (119 L.T.R. 133, 11 B.W.C.C. 85) brings out very clearly the irrelevancy for this purpose of the employer's ownership of the premises where the accident happened. In that

case huts were erected by a contractor on the premises, and the workmen were allowed to live in these huts at a small charge. An accident happened to a workman by the fall of the roof while he was sleeping in one of the huts on the premises. It was held by the Court of Appeal that the employer was not liable. The huts there were used for residence and repose; the canteen here is used for taking meals. It appears to me that no distinction can be drawn between *Philbin* v. *Hayes* and the present case. "The necessity for food," as was said by Farwell, L.J., "no more arises out of his employment than the necessity for sleep"—*Gilbert* v. *Steamship Nizam* (*Owners of*), [1910] 2 K.B. 558.

Anything which is incident to the work is covered by the course of employment, but to say that taking meals or taking sleep is incident to the work is surely a most unjustifiable extension of the scope of "incidents." In the case of a night watchman who has to be on the premises all night both meals and sleep are in the course of his employment. He is discharging his duty by being on the premises and guarding them, and while doing this he is entitled to take some repose and some refreshment. The same thing applies to domestic servants. But a job of that sort differs for the present purpose absolutely from the case of a workman who takes his food and sleep when off work. The night watchman is at work while he is taking his food or sleeping; the workman who takes his food during the dinner hour is off work. The two decisions of the Court of Appeal in the present case and in *Philbin* v. *Hayes* cannot stand together. They are mutually destructive unless all attempt to decide cases of this kind on principle is to be abandoned as hopeless. In my opinion *Philbin* v. *Hayes* was rightly decided, and the decision in the present case was wrong.

Some other cases have been referred to. In *Rowland* v. *Wright* ([1909] 1 K.B. 963) a teamster was in the stable in the course of his duty with his horses. While there he ate his dinner and was bitten by the stable cat. It was naturally held that eating his dinner did not put an end to the course of his employment. In such a case the workman recovers compensation not because he is eating his dinner but because he was on the spot in the course of his employment.

In *Blovelt* v. *Sawyer*, to which I have already referred, the accident to the workman was during the dinner hour while he was eating his dinner on the premises. There was no rule as to the workman going or staying during the dinner hour, and he was at liberty to do either. While he was eating a wall fell upon him. It was held that during the dinner hour there had been no break in the employment of the workman, and that he was entitled to compensation under the Act. With reference to this case Farwell, L.J., said in *Gilbert* v. *Steamship Nizam* (*Owners of*)—"The workman has to prove that the accident arose out of as well as in the course of his employment. The necessity for food no more arises out of his employment than the necessity for sleep. The man who is crushed by a falling wall on his employer's premises, while he is eating his dinner recovers compensation because he is entitled to be on the spot by virtue of his contract of employment (as I have explained in *Gane* v. *Norton Hill Colliery Company*, [1909] 2 K.B. 539) notwithstanding that, and not because, he was eating his dinner. But it is no part of his contract of employment that he should go home or eat or drink or sleep at home or anywhere else."

In *Blovelt's* case the workman was upon the working premises, while in the present case the respondent was in the canteen, which was devoted to the taking of meals. But I cannot think that *Blovelt's* case would have been so decided if it had been subsequent to *M'Robb's* case in this House. If a workman when eating his dinner is not doing anything for his master, how can it be that the mere permission to remain on the premises while he takes his meals renders the master liable? The permission to be there during an hour when work is entirely suspended does not constitute a continuance of the course of employment. It would be another case if there were no dinner hour with its suspension of all work and the workman merely snatched a hasty meal at the place of his work. There might be said in such a case to be uninterrupted continuance of the employment. There is a short suspension of actual work during a short absence for any necessary purpose, going to a lavatory for instance, but there is no suspension of the course of employment. But as soon as you have an hour during which work necessarily ceases, the workman, whether he is permitted to remain on the premises or not, cannot by remaining there be said to be continuing the course of his employment. The test is not whether the workman was on the employer's premises by his permission, but whether he was there on his employer's business. If he is there merely because the employer permits him to remain there, whether such permission is an implied term of the employment or not, he is not during the dinner hour engaged on his master's business any more than if he went out for his dinner.

Farwell, L.J., was right in saying that the taking of meals is rather against its being in the course of employment, but I think he was not right in saying that the right to be at the place decides that it is. The question must remain whether what he was doing can be considered as part of the service. In the present case the taking of the meal was not part of the service, as Farwell, L.J., pointed out in emphatic terms in the passage which I have just quoted.

It is not necessary in this case to consider what the result would have been if it had been a term of the engagement that the workman should take his meals at the canteen. It might be made a term of the employment that the workman should join the cadet corps of the factory and should attend the drills. The employer might build a chapel on his premises and make it a term of engaging a workman that he should attend the services there. It might be a term of the employment that the work-

man should sleep in the building. Some such case may come before your Lordships on some other occasion. Much might depend on the question whether such a term were in its nature purely collateral or might be considered as relating to the "employment" itself.

In my opinion the decision in this case was erroneous and should be reversed with costs here and below.

LORD DUNEDIN—If the respondent here was in the course of her employment, then I do not think it could be said that there was no evidence on which the County Court Judge as arbitrator could find that the accident arose out of her employment. The slippery steps were a danger of the employment. The more difficult question is, Was she in the course of her employment? I said what I had to say on that matter in the recent case of *Davidson* v. *M'Robb* ([1918] A.C. 304, 1918 S.C. (H.L.) 66, 55 S.L.R. 185), and I do not propose to repeat myself. But I will venture to quote one sentence—"The words 'course of employment' connote the idea that the workman or servant is doing something which is part of his service to his employer or master. No doubt it need not be actual work, but it must, I think, be work or the natural incidents connected with work, *e.g.*, in the workman's case the taking of meals during the hours of labour." Had the girl been allowed an interval for her meals in the works, then although the accident happened during her meal time, according to what I said there she would have been in the course of her employment, for it might be held to be during her hours of labour. The judgment in this case proceeds on the view that that was the case here. I cannot reconcile that with the distinct finding on the part of the arbitrator as to what happened at one o'clock.

He says—"It is a rule at the works that all employees should leave the premises at 1 p.m. for an hour. They leave by the exit from the works in North Street. The employees then are free to go where they like, either to obtain dinner or for any other purpose. They have all to return and 'clock on' at 2 p.m. when the hooter sounds." That finding seems to me to make it impossible to say that she was in the works during that hour or occupied at a meal during her hours of labour.

Why "clock on" if labour was not interrupted? The mere fact that the canteen is on the same plot of ground as the works does not so far as I can see alter the position. The ownership of premises as I said in *Stewart's* case (*John Stewart & Son, Limited* v. *Longhurst*, [1917] A.C. 249, 55 S.L.R. 506), *per se* settles nothing. The canteen here might just as well have been in another place altogether, separate from the plot on which the works stood. If so, it would have been, I think, quite impossible to say that a girl going there instead of going to her own home was doing something so connected with her employer's work as to be in the course of her employment. The test seems to me to be not the situation of the premises but whether resort to the premises is a part of the duty owed to the employer.

The finding I have quoted seems to me to negative that, nor can I myself take the view of the situation which is taken by others that the canteen is practically in the position of an access to the works, and that an accident there is really an accident within the works happening to a workman hurrying to his work.

I am therefore of opinion that the appeal should be allowed.

LORD SUMNER—The controversy in this case turns on the words "in the course of." As the respondent was hurt by slipping on her employers' slippery stairs the accident arose "out of" her employment if she was then "in the course of" it at all.

These words have been discussed in many cases. In *M'Robb's* a decision was given upon them which is I hope final, and it only remains to apply it. There is some difference in the exact language used by the different noble Lords who took part in that case in paraphrasing or explaining the words of the statute, but for the present purposes it is not necessary to inquire what difference in meaning, if any, there may be between these varying expressions.

It is clear now that the question is not merely one of the determination of discontinuity of the relation of employer and employee. The currency of the engagement is not the test. There cannot be employment where one party no longer employs and the other is no longer employed, but there may be a break in "the course of the employment" in the sense of the statute, though the currency of the contract is unbroken and the legal nexus is subsisting. At the appellants' works the respondent's contract of employment seems to have been by the week. It did not break off at one o'clock and begin again at two, but apart from the fact that the respondent had to come back to her work she had nothing to do for her employer that she was employed to do after she reached the canteen.

This case is one of the very large class in which the "dinner hour" is emphatically the employee's own time. It is not one where the employee is bound to stand by during meal times, being liable to be called on and to have the continuity of his meal broken by the intervention of some immediate summons or duty. Here the works stopped and were cleared for an hour. This however is not conclusive.

I cannot accept the argument that a workman gets his dinner "in the course of" his employment merely because he must get his dinner some time or other, because we must all eat to live. Dining is "ancillary" and "incidental" to his continued utility no doubt, but that in itself does not make him dine in the course of his service, nor is dining for that reason part of his service.

This however is not all, nor is it conclusive to say that all work was suspended for an hour. The "dinner hour" is not a mere question of sixty minutes by the clock, nor

does a cessation of work at the machine from one o'clock to two preclude the possibility that during those sixty minutes and while doing something else than work at the machine the respondent was "in the course of" her employment for the purposes of the Act. The pinch of this case arises from the fact that she had finished her dinner and had left the canteen and was coming down the stairs, which were the provided means of access from part of her employer's premises to the particular part where the machines were, when she slipped and fell. I think there was evidence on which the arbitrator might find, as he did, that the stairs were part of the premises where the respondent was employed.

Accordingly this case need not be decided one way or the other on the ground that the canteen was part of a "welfare" undertaking to which under the terms of their employment the workpeople had a right but no duty to resort, or on the ground that the canteen, though premises of the appellants, was not part of the premises where the workpeople were employed on the machinery. I by no means wish to decide that when the respondent availed herself of the option of using the canteen, which her contract of employment gave her, it might not be said of her, to quote *M'Robb's* case ([1918] A.C. 304, at p. 314, 55 S.L.R. 185), that "a workman who by the terms of his employment takes his meals on his employer's premises is in the course of his service in being there at meal times." Be that as it may, I do not see how the case can be any worse for the respondent because in the exercise of a contractual right she resorted to the canteen instead of availing herself of the cessation of regular work to go somewhere else. Equally in either case she has to come back, and in the dinner hour, just as at the beginning and end of the day, the course of the employment may extend to traversing the means of egress or regress provided by the employer for that purpose. Had the accident happened in the street the case might well have been different.

The respondent was returning from the place where she had dined, down the stairs provided for her return, the use of which exposed her to risk, to which members of the public were not exposed just because they had no right to be there, not being the appellants' employees, for the purpose of regaining the place where she worked *via* the place where she "clocked on." It is a question of fact for the arbitrator to determine where the area begins, over which it is an incident of her employment to go, an "incident naturally connected with the class of work she had to do" and which in fact she was just going to do. This was said to be so with regard to the dock in *Davidson* v *M'Robb*. It is no less so in the present case. The steps were close to the place for "clocking on" and were part of the same structure, nor were they separated from the workshop so far as appears except by an inconsiderable intervening space. As a question of fact the arbitrator decided this in the respondent's favour, finding that the canteen and the rest of the works formed one entire premises, and there was evidence on which he could do so. That it is a question of law seems to me to be suggested only on the ground that the stairs were not part of the works but of the canteen. They were in fact the means of communication between the two. While an internal door at the bottom of the stairs was kept locked, as it was, a few steps down the street from one door to the next had to be interposed, but I do not see that this constitutes a legal chasm or insulation between one part of the same building and another. At night the internal door is open, and access to the works from the canteen *via* the stairs is all within the curtilage of the appellants' establishment. Surely we cannot hold as a matter of law that returning to work by the stairs is in the course of the employment by night but not by day. I cannot agree with the proposition that "she came out into the street, and she ceased to be engaged on her masters' business when she came into the street," if this is a proposition of law.

If it is one partly of law and partly of fact, I think that, unless based on a finding by the arbitrator, it is inapplicable where the street is the passage between door and door close together. There is no such magic about a highway in such a connection. Again, in a sense the employers carried on two businesses, one of catering and the other of manufacturing, but the whole object of the first was the welfare of those employed in the second, and no principle of law is involved in the distinction. After all, welfare work in a mill is, let us hope, for the benefit of all parties in the long run, and if an employer does extend the area of his liability under the Act by providing for the comfort of his workpeople, that cannot affect the construction of the section. If the canteen had been at a distance, or if it had been carried on for profit, the case might be different, but no opinion need be expressed about it now.

It seems to me that the arbitrator was entitled to put to himself the question whether the respondent might not be regarded as "in the course of" her employment while passing down the stairs to the spot where her actual work lay, and whether such passage was not within "the contemplation of both parties to the contract as necessarily incidental to it," whenever she availed herself of the canteen as she was invited and entitled to do. If he did so, there was evidence on which he could find in her favour.

The arbitrator did not actually put this question to himself, nor are his findings of fact, in terms, an answer to it. I think they are such in substance, but I have been obliged to consider carefully whether he ever directed his mind as it was his duty to do. He begins his judgment by remarking that "it must be remembered that this Act was passed for the purpose of enabling injured workpeople to obtain compensation, and not for the benefit of insurance companies, and I do not think that it is any part of the duty of County Court Judges at

any rate to exercise their brains in trying to draw fine distinctions to prevent the attainment of that object."

I refrain from saying all that might justly be said of this regrettable and unfounded observation. It reduces the value of any conclusions arrived at in accordance with it almost to a negligible quantity. Still we have the evidence, and in any case the respondent at least ought not to be deprived of the benefit of the findings so far as they rest on the evidence, and not merely on the arbitrator's own conclusions.

I think that on the evidence she proved such a case of an accident arising "in the course of" her employment as cannot now be disturbed on grounds of law, and that the appeal fails.

Lord Parmoor — In my opinion this appeal should be dismissed. It is not clear on what exact terms the respondent was employed, but it is clear that the employment did not terminate at the dinner hour to start afresh in the afternoon.

The meaning of the words "in the course of the employment" has been determined in this House in the case of *Davidson* v. *M'Robb* ([1918] A.C. 304, 1918 S.C. (H.L.) 66, 55 S.L.R. 185). "'In the course of the employment' does not mean during the currency of the engagement, but means in the course of the work which the workman is employed to do, and what is incident to it." I think that a mid-day meal may be incidental to an employment such as that of the respondent, which commenced at six in the morning, and that the taking of such a meal does not in itself, and apart from special circumstances, create an interruption in the course of her employment. There are no special circumstances in the present case, such as, for instance, arise when an employee is away from his work, not in the course of employment but for his own pleasure or business.

In the case of *Davidson* v. *M'Robb* Lord Dunedin said, referring to course of employment—"It connotes to my mind the idea that the workman or servant is doing something which is part of his service to his employer or master. No doubt it need not be actual work, but it must, I think, be work or the natural incidents connected with the class of work, *e.g.*, in the workman's case, the taking of meals during the hours of labour."

This passage supports the view that it cannot be said as a matter of law that the taking of meals within the dinner hour cannot come within the course of employment of a workman. The respondent took her midday meal in a room provided by the employers, to which she only had the right of access as an employee under the contract of employment. It was further established in my opinion that the room was within the curtilage of and formed part of the premises on which the respondent was employed. These facts are in no sense conclusive in favour of the respondent, but they tend to show that the accident did arise in the course of the employment. They are directly relevant to the consideration whether there was any evidence on which the County Court Judge could come to the conclusion which he formed. In the same way it is a relevant factor that the respondent when the accident occurred was using the stairs, as she was entitled to use them, for the purpose of returning to her work.

This case in my opinion comes within the category of cases which determine that if a workman during the hours of labour, and while engaged on a matter ancillary or incidental to the work on which he is employed, meets with an accident in a place provided by his employer and where he has no right to be except by virtue of his employment, such accident, in the absence of special circumstances, is incurred in the course of his employment. I agree with the finding of fact in the present case that the accident did arise out of his employment so as to make the employer liable to pay compensation. In some cases, if an accident is incurred in the course of employment, the only possible inference is that it arises out of the employment, but this is not necessarily the case, and to entitle a claimant to compensation the two conditions must be established by the applicant in any particular case.

It is in this connection that the dock cases and street accident cases are of importance. In the dock cases the general test is whether in going from or returning to his ship the claimant was using an access provided for his use by the employer. In the present case the respondent in returning to her work was using an access provided for her use by the appellants. In the street accident cases it has been held that a street accident of an ordinary character, such as all persons using the street might be liable to, does not arise out of employment, or in other words that there is no causal relationship between the accident and the employment which would support a claim for compensation. If, however, as in the bicycle case, the workman is engaged at the time of the accident in the actual work for which he is employed, it will not defeat his claim that the accident was in its character an ordinary street accident.

In the present case there is a causal relationship between the employment and the accident, and the claim is not defeated because any person using the stairs in the ordinary way might have slipped with the same consequential injury.

The County Court Judge has found in the present case that the respondent has discharged the burden of proof which rests upon her. I think that there was evidence before him on which such a conclusion could within reason be found, and that he has not in so finding made an error in law.

The appeal should be dismissed, with costs.

Lord Wrenbury—The language of the Act of Parliament and the decisions upon it are such as that I have long since abandoned the hope of deciding any case upon the words "out of and in the course of" upon grounds satisfactory to myself or convincing to others. In the present case I say no more than that I think that the girl was

in course of her employment when in hurrying down the stairs to achieve punctuality in "clocking on" she was endeavouring to comply with the duty of punctuality which she owed to the employer, and that the stairs being very "slippery" she was exposed to the danger which resulted in the accident by the fact that it was incidental to her employment that she was allowed to be and was in that place.

On these grounds I think the appeal should be dismissed.

Appeal dismissed.

Counsel for the Appellants—R. Swift, K.C.—E. Meynell. Agents—Collyer, Bristow, Curtis, Booth, Birks, & Langley, and R. Sheriton Holmes, Newcastle-upon-Tyne, Solicitors.

Counsel for the Respondent—H. Gregory, K.C.—T. Eastham. Agents—A. E. Pratt, for Brooks, Marshall, & Moon, Manchester, Solicitors.

HOUSE OF LORDS.

Monday, May 10, 1920.

(Before Lords Dunedin, Atkinson, Moulton, Sumner, and Parmoor.)

ATTORNEY-GENERAL (ON BEHALF OF HIS MAJESTY) *v.* DE KEYSER'S ROYAL HOTEL, LIMITED.

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

War—Crown—Royal Prerogative—Right to Commandeer Buildings without Compensation—Defence Act 1842 (5 *and* 6 *Vict. cap.* 94), *secs.* 9, 16, 19, *and* 23—*Defence of the Realm* (*Consolidation*) *Act* 1914 (5 *Geo.* V, *cap.* 8), *sec.* 1, *sub-secs.* 1 *and* 2—*Defence of the Realm Regulations* 1914.

In virtue of its powers under the Defence of the Realm Regulations the Army Council requisitioned the respondents' hotel for administrative offices, and referred the respondents' claim for compensation to the Defence of the Realm Losses Commission. The respondents claimed compensation as of right under the provisions of the Defence Act 1842. The appellant claimed that in virtue of the Royal Prerogative the premises could be requisitioned without compensation, since the Defence of the Realm (Consolidation) Act 1914 and the Regulations issued thereunder provided for the abolition of the restrictions on the acquisition of land imposed by the Defence Act 1842.

Held that compensation is not a restriction, and therefore the respondents were entitled as of right to compensation under the Defence Act 1842, and it was incompetent on the part of the appellant to tender an *ex gratia* payment at the hands of the Defence of the Realm Losses Commission.

The effect of legislation upon the Royal Prerogative *discussed.*

Decision of the Court of Appeal ([1919] 2 Ch. 197) *affirmed.*

Appeal by the Crown for an order of the Court of Appeal (LORD SWINFEN EADY, M.R., and WARRINGTON, L.J., DUKE, L.J., *diss.*), reversing a decision of PETERSON, J. ([1919] 2 Ch. 197).

The *facts* fully appear from the judgment of Lord Dunedin.

After consideration the following judgments were read dismissing the appeal:—

LORD DUNEDIN—It will be well that I should first set forth succinctly the facts which give rise to the present petition, all the more as regarding them there is no real controversy between the parties.

In April 1916 the Army Council, finding it necessary to have accommodation in London for the headquarters *personnel* of the Royal Flying Corps and for the design section of the same, communicated with the Board of Works with a view to finding a suitable building. The department, which had previously had some tentative offers from the receiver and manager in possession of the premises belonging to the De Keyser's Royal Hotel, Limited, came to the conclusion that the building known as De Keyser's Hotel would suit. They communicated with the War Office to that effect on the 18th April 1916, and on the same date applied to the receiver to see on what terms he would let. After a short period of ineffectual negotiation the Board of Works on the 29th April informed the receiver that "after full consideration of the matter the Board are of the opinion that it will be to the advantage of all concerned to refer the question of the amount to be paid by the Government for the use of such of the hotel premises as will be required to the Defence of the Realm Losses Commission. In these circumstances the Board have no option but to communicate with the War Office with a view to the hotel premises, excluding the shops, being requisitioned under the Defence of the Realm Acts in the usual manner." Following on this communication, the War Office on the 1st May wrote as follows to the receiver—"De Keyser's Royal Hotel, E.C.—I am instructed by the Army Council to take possession of the above property under the Defence of the Realm Regulations, excluding the shops, the other portions sub-let, and the wine cellars. . . . I enclose forms of claim for submission to the Defence of the Realm Losses Commission. Compensation, as you are probably aware, is made *ex gratia*, and is strictly limited to the actual monetary loss sustained."

On receipt of this letter the receiver expressed his willingness to facilitate the taking possession, but at the same time he safeguarded his position by the following letter on the 3rd May—"I write to inform you that I have instructed Messrs John Barker & Son, Limited, to represent me at the making of the inventory of the contents of this hotel, and also to meet your representative there to-morrow, and to render every facility in order that the necessary work may be done with the utmost expedi-