than that which is urged on the pursuer's behalf. In large undertakings, as, for example, the construction of bridges, and of tunnels, of ships, of prisons, of railway stations, and other public buildings, economy, rapidity, and thoroughness of workmanship alike recommend the distribution of the work amongst many contractors; and if any one of these was to be liable for injury by one of his workmen to any of the numerous persons who come to the same work daily, not as strangers, but as workmen for a common object, and whose natural interest and duty are to aid one another, and to work into one another's hands as much as possible, I doubt if the result would be either fair or in the end beneficial.

"The greater the piece of work, the more reluctant a contractor would be to run the risks to which he would then be exposed. And so far from the work being carried on mutually and simultaneously, either each contractor would want that he should be the only employer whose workmen were engaged at the time, or else the undertaking would be split up into separate and almost hostile camps, in which each workman would, for his master's sake, be averse to giving any aid, or doing any work which might possibly result, even with the best care, in injury to the workmen of some other contractor. I cannot think that with such a question common control has anything to do; and, as I read the opinions of most of the Judges who decided the cases of *Woodhead* and *Wingate*, this element, though it may strengthen an employer's case, is not essential to the soundness of his defence. I therefore answer in the negative the question which is raised by this case."

The pursuer appealed, and argued—The case did not fall to be decided by *Wingate* v. *The Monkland Iron Company*, November 8, 1884, 12 R. 91, inasmuch as there was here no common organisation embracing the injurer and injured. It rather fell to be decided in accordance with *Wyllie* v. *Caledonian Railway Company*, January 27, 1871, 9 Macph. 463, in which, as here, there was only a casual relation between the injured man and the man in fault.

The defender in reply relied on the case of *Wingate* as following *Woodhead* v. *The Gartness Mineral Company*, February 10, 1877, 4 R. 469, in support of his contention that the averments disclosed a case of common employment, and that the action was therefore irrelevant.

At advising—

LORD JUSTICE-CLERK — I have on previous occasions taken the opportunity of expressing my opinion on the matter at issue in this case. But the whole current of decision has been in a direction opposite to the views I held. It is now too late to reopen the question, whether, when two persons contract for different parts of a work under construction, the workmen employed by them are to be held to be engaged in a common employment? The case of *Woodhead* v. *The Gartness Mineral Company*, February 10, 1877, 4 R. 469, settled that point. These workmen though directly employed by different masters were fellow-workmen, or at least were engaged in a common employment.

LORD CRAIGHILL—It is not possible to distinguish this case from that of *Woodhead*

LORD KINNEAR—I cannot do so.

LORDS YOUNG and RUTHERFURD CLARK were absent.

The Court dismissed the appeal, affirmed the judgment, and of new assoilzied the defenders from the conclusions of the action.

Counsel for Pursuer (Appellant) — Rhind — A. S. D. Thomson. Agent—W. Officer, S.S.C.

Counsel for Defender (Respondent)—Guthrie. Agents—Webster, Will, & Ritchie, S.S.C.

Wednesday, June 10.

SECOND DIVISION.

[Sheriff of Lanarkshire.

GORMAN *v.* MORRISON & SON.

Reparation—Master and Servant—Common Employment.

A labourer employed by a railway company in packing sleepers in a goods-sheds brought an action of damages against a firm of slaters who had contracted to roof the shed, in respect of injuries through the alleged negligence of the slaters' servant in letting a number of slates fall upon him. *Held* that these allegations did not disclose a case of common employment, and that the action was therefore relevant.

James Gorman, a labourer in the employment of the Caledonian Railway Company, was engaged in packing sleepers at a goods-shed at Springburn, and John Morrison & Son were at the same time roofing the shed under a contract with the railway company. The slates for the roof were pulled up by means of a rope and laid on a plank, and thence taken to the slaters by a labourer in the employment of the contractors. Gorman was injured by the fall on him of some slates which were being raised. He raised this action against Morrison & Son, alleging that the fall was owing to the carelessness of their men. He concluded for £250.

The defenders pleaded, *inter alia*—"The pursuer having been injured through the fault of a person or persons in a common employment with him, is not entitled to damages."

The Sheriff-Substitute (LEES) pronounced this interlocutor—"Finds that the averments of the pursuer do not disclose a case under which the defender is liable to him for injuries alleged by him: Therefore assoilzies the defender from the conclusions of the action as laid.

"*Note.*—The case for the pursuer is that while he was working as a labourer in the service of the Caledonian Railway Company, at their goods-shed in Springburn, on 14th October last, he was injured by the fault of a person who was working in execution of a contract that the defenders had for the roofing of shed. The case is in principle so similar to that of *Maguire* v. *Russell* [reported *supra*], presently pending in this Court, that I ordered the two cases to be argued together; and if the decision I have given in that case be correct, the reasoning is sufficient for exonerating the defenders in

the present case. But I may further point out that if the argument for the pursuer be sound, it would lead to this anomalous result—that if he had injured the slater, as well as the slater injured him, he would have a remedy against the slater's master, while the slater would have none against his. That, it seems to me, would not be a rational result; and I therefore think that in this case, even more conclusively than in that of *Maguire*, the principles to be deduced from the decision in *Woodhead's* case are adverse to the contention urged for the pursuer."

The pursuer appealed, and argued that this case fell to be distinguished from the case of *Woodhead* v. *The Gartness Mineral Co.*, 10th Feb. 1877, 4 R. 469. The injurer and injured were here strangers. There was no common organisation between them. The Sheriff-Substitute's judgment, then, must be recalled.

At advising—

LORD CRAIGHILL—I have listened to the arguments adduced for both parties in this case, and I am not inclined to adhere to the judgment which the Sheriff-Substitute has pronounced. While pursuer was engaged in packing sleepers at a goods-shed belonging to the Caledonian Railway Company he was severely injured by the falling on him of a number of slates which were being carried to the roof of the shed by the defenders, who had a contract with the railway company to roof the shed. The question then under these facts is—Is the pursuer to be considered as connected with the organisation which was engaged in the roofing of the shed? If he is, then the Sheriff-Substitute is right in holding that the case falls to be ruled by the case of *Woodhead*. His views are thus stated in the note to the previous case—(*Maguire* v. *Russell*)—"Now, the principle to be deduced from *Woodhead's* case is that the maxim *respondeat superior* does not obtain, not merely where persons are *collaborateurs*, but also where the injuries received are from risks naturally incident in the common organisation for the common object for which the injured person was working." Now, it appears to me that there was no common organisation at all between the contractor's servants engaged in roofing the shed, and the pursuer, who was engaged in his ordinary employment of the railway company. I am of opinion, then, that the case of *Woodhead* does not apply. I think when the facts become known that there will be found some similarity between this case and the case of *Wyllie* v. *Caledonian Railway Co.*, 9 Macph. 413. But without saying more as to what may be seen when the proof is held, it is sufficient, I think, to say that the Sheriff-Substitute's interlocutor finding that there is no relevancy in the pursuer's averments should be recalled.

LORD KINNEAR—I agree. The pursuer's case does not disclose any common employment.

The LORD JUSTICE-CLERK concurred.

LORD YOUNG and LORD RUTHERFURD CLARK were absent.

The Court sustained the appeal, recalled the judgment of the Sheriff-Substitute, and appointed the pursuer within eight days to lodge issues for the trial of the cause.

Counsel for Pursuer (Appellant) — Rhind — A. S. D. Thomson. Agent—William Officer, S.S.C.

Counsel for Defenders (Respondents)—Guthrie. Agents—Webster, Will, & Ritchie, S.S.C.

Thursday, June 11.

SECOND DIVISION.

[Sheriff of Lanarkshire.

HAMILTON *v.* THE HYDE PARK FOUNDRY COMPANY.

Reparation — Master and Servant — Employers Liability Act 1880 (43 *and* 44 *Vict. cap.* 42)—*Misadventure.*

Labourers were engaged in filling with sand a pit intended to be used for making iron castings. They were under the charge of A, who worked with them as foreman of the "shift," and was under the orders of the general foreman. They proceeded to dig sand from the neighbourhood of a heavy log which rested on pillars supported in the sand. This was the nearest sand, but there was other sand which they could have used. The result was that the log, which had been placed in position twelve days before, fell and killed A. *Held*, in an action by his representatives (1) that A was a "workman" entitled to the benefit of the Employers Liability Act 1880, notwithstanding his being foreman of the shift; and (2) that no negligence on the part of the employers, or those for whom they were responsible, had been proved.

This was an action of damages brought at common law, and under the Employers Liability Act 1880, by the widow and children of Moses Hamilton, who was killed while in the employment of the defenders under the following circumstances:—Hamilton was foreman over a night-shift of labourers, who were set to ram up with sand a pit to be used for castings. The general foreman, Thomas Campbell, left him in charge of the men, giving him the usual general directions. At a little distance from the pit there was a large log of wood used for attaching heavy castings to in lifting them out of the pit. This log rested on a boiler at one end, and at the other on two stools which were set on a foundation of sand, which the pursuers alleged to have been loose. At about two o'clock in the morning the men for the first time began to dig the sand close to the foundations of the stools in order to carry it to the casting-pit, and while they were doing so the stools gave way and the log fell upon Hamilton and killed him. It was not made clear by the proof whether the digging had proceeded so far as to undermine the pillars, or had only removed the sand lying around them. The defenders sought to prove the former. The sand about these pillars was 30 yards nearer the pit at which the men were working than any other sand, but there was at that distance off sand which they might safely have used. The pillars had been placed by two men who were not examined. The foreman Campbell had given them orders to do so, but had not seen it done. They stood there for twelve days before the accident.