Wednesday, October 21.

FIRST DIVISION.

[Sheriff-Substitute at Lanark.

MACKENZIE *v.* COLTNESS IRON COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1—*Accident Arising out of and in the Course of Employment — Miner Injured while Proceeding to Work Along Rails Above Ground Leading to Mine Entrance.*

A miner while proceeding to his work along certain rails above ground leading to the doorway of a horizontal passage by which the mine was entered, and while distant between 9 and 13 feet from the doorway, fell and broke his leg.

Held that the accident arose "out of and in the course of his employment" within the meaning of the Workmen's Compensation Act 1897.

This was a case stated for appeal by the Sheriff-Substitute at Lanark in an arbitration under the Workmen's Compensation Act 1897, between James Mackenzie, miner, and the Coltness Iron Company, Limited.

The Sheriff (SCOTT MONCRIEFF) found the following facts to be proved:—"That upon 11th December 1902 the applicant, who was in the employment of the respondents, was upon the morning of that day proceeding above ground to his work in a mine entered by a horizontal passage; that extending from this passage there are iron rails laid with sleepers along the ground in the direction of the neighbouring shaft, and that applicant was walking along said rails; that before reaching the doorway of said passage, and while between 9 and 13 feet distant from it, the applicant slipped either upon the rails or sleepers, there being frost upon the ground, and fractured his leg, and that as a result of this accident he has since been unable to work."

The Sheriff found in point of law that "the accident caused to the applicant did not arise out of and in the course of his employment in the sense of the Workmen's Compensation Act 1897," and assoilzied the respondents.

The following question of law was stated:—"Whether the accident by which the applicant James M'Kenzie was injured, and which took place under the circumstances above set forth, 'arose out of and in the course of his employment' in the sense of section 1 (1) of the Workmen's Compensation Act 1897?"

The Workmen's Compensation Act 1897 enacts section 1 (1)—"If in any employment to which this Act applies personal injury by accident arising out of and in the course of his employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act."

Argued for the appellants—There was no doubt the accident took place within the mine. It was also clear that the miner was there in the course of his employment. The Act did not limit compensation to accidents arising while the workman was actually working. It applied to cases where an accident occurred when the workman was coming to or leaving his work—*Todd* v. *Caledonian Railway Co.*, June 29, 1899, 1 F. 1047, 36 S.L.R. 784.

Argued for the respondents—There were two conditions of the employers' liability in the case of a mine—(first) that the accident should have occurred on in or about the mine, and (secondly), that it should have arisen out of and in the course of the employment. Admitting that this accident took place in a mine, it did not arise out of and in the course of the employment. The workman at the time of the accident was not employed; he was coming to obtain employment. He was under no contract. He might not have obtained any work that day if anything had gone wrong with the arrangements of the mine. It was true that his presence there was due to his employment, but that argument would extend the liability of the employers from the moment the workman left home until he got back again. That was not the law—*Gibson* v. *Wilson*, March 12, 1901, 3 F. 661, 38 S.L.R. 450; *Caton* v. *Summerlee and Mossend Iron Co.*, July 11, 1902, 4 F. 989, 39 S.L.R. 762; *Todd* v. *Caledonian Railway Co.*, *cit. sup.*, was distinguishable; there the accident happened to a railway servant in his employers' time.

LORD PRESIDENT—This is undoubtedly a somewhat narrow case, especially in view of the decisions which have been referred to, some of which tend to support the contention of the applicant, while others are rather favourable to the contention of the respondents. When, however, regard is had to the actual facts of the case, and the provisions of the Workmen's Compensation Act of 1897, it appears to me that the proper conclusion is that the judgment of the learned Sheriff-Substitute is erroneous, and that the question whether the respondents are liable should be answered in the affirmative.

The following are the material facts:—On the morning in question the appellant, who was in the employment of the respondents, was proceeding above ground to his work in a mine entered by a horizontal passage. Outwards from this passage iron rails are laid on sleepers along the ground in the direction of a neighbouring shaft, and the appellant was walking along these rails towards the underground passage. Before reaching the doorway of the passage, and while between 9 and 13 feet distant from it, the appellant slipped either upon the rails or upon the sleepers, there being frost upon the ground, and fractured his leg. If the applicant had travelled the few yards further in the direction in which he was going, which would have led him into the

underground passage, it seems to me that it would have been impossible to maintain that the Workmen's Compensation Act did not apply, and the question therefore is, whether the fact of his not having actually entered the underground passage prevents the Act from applying to the case.

The place at which the accident occurred was, as already stated, laid with rails and sleepers in combination, and these rails belonged to the respondents, and were used in the course of their business. Apparently it was the case of an underground railway coming out into the open air, or *vice versa*. One of the dangers incident to rails or sleepers laid in the open air is that they become slippery from frost, and in consequence of that condition of things the applicant slipped and fell and broke his leg. If the respondent had actually got under the brow of this tunnel I am unable to see that any argument could have been stated against the respondents being liable, and I do not think that it makes any difference that the place where he slipped and fell was outside the tunnel.

Now, what was the relation of these rails to the applicant's work? They undoutedly were parts of the physical equipment provided and put there by the respondents for the purpose of carrying on their business of mining, and I think that the accident occurred "about" a mine in the sense of the Act.

I may add that it appears to me that the views which I have now expressed are in entire accordance with the doctrine laid down in the important case of *Todd* v. *The Caledonian Railway Company*, 1 F. 1047.

LORD ADAM—When a workman has been injured and claims compensation, he must, to recover it, be able to show that the accident arose out of and in course of his employment, and he must also be able to show that it arose in on or about a factory, or various other places—factories, mines, and so on—specified in the Act. He must satisfy both of these conditions. In this particular case I do not think there is any difficulty about the place where the accident happened. It happened in a mine as defined by the Act. The actual spot was mentioned; it was between 9 and 13 feet from a doorway which led into an ingoing eye to the mine. It happened there, or about 13 feet or less from that place. I did not understand counsel to dispute that if it had happened inside the gate and not outside the gate he could not have maintained the argument he did. Now, that being so, I am of opinion in this particular case that the accident on the mine was within the mine. There is a definition of "mine" given in the Act, and within that definition it is clear to me that this tramway leading up to the entrance to the mine is as much a part of the mine as the working face. Therefore in my humble opinion this man, when the accident happened, had arrived at the place to work in which he was employed. Now, I think also that it cannot be maintained that it is necessary that the accident should have occurred when the workman was actually engaged in the specific operation for which he was employed. I do not think that can be maintained, and I do not think it was maintained by Mr Horne, because he did not dispute, as I said, that had the man been in the mine and on his way to the working face, he would in these circumstances have been entitled to compensation, though the injury had not arisen when he was actually engaged in the specific work for which he was employed. The case of *Todd* is an example of that, because the workman in that case had actually left the work in which he was engaged and was on his way home, just as in this case the man was on his way to his work. Mr Horne said that in order to entitle a man to damages he must be in the place of his work, but what in that sense is the place of his work? Mr Horne says he was not in the place of his work until he was within the gate, because he was not till then in the mine, he being a miner. But the Act of Parliament says that this railway going into the mine is as much a part of the mine as the mine itself. And therefore he was in the actual place of his work when this accident happened. On the whole matter I agree with your Lordship.

LORD M'LAREN—There may be cases where a person in the employment of one of the undertakings defined by this Act meets with an injury in a place which is part of a large establishment where he has no business to be. In such a case, whether he has gone to see a fellow workman, or on his own business, or whether he is there merely to put off time, I should say that, *prima facie*, this would not be an injury arising out of and in the course of his employment. But I think it would be giving a very narrow and insufficient effect to the provisions of the Workmen's Compensation Act if we were to hold that it only covered a case of an accident arising when a man was at his bench if he were an engineer, or at his working face if he were a miner, or on the identical spot at which his work is being carried on whatever his trade might be. There is in the statute no such limitation as I have indicated, because I think the words "in the course of his employment" cover any part of the undertaking in which the man may legally be for the purposes of his employment, and in the pursuance of his employment. Indeed a very clear case, according to the construction which your Lordships put upon the Act, is the case of a man going to or returning from his individual piece of work, and going in a direct line—the nearest line or the proper line to the gate or outlet of the establishment. In the present case it might, on a first impression, appear that the workman had not entered the mine, because he fell and broke his leg upon a tramway leading to the mine, and about thirteen feet from the gate. But then when we look at the definition of a mine in the Workmen's Compensation Act we find it includes the case of a mine to

which the Coal Mines Act of 1887 applies, and we were referred to the definition clause of that statute—section 75 of the Coal Mines Act 1887—which says that mine includes tramways—being, I suppose, part of the undertaking—whether above ground or under ground. Nothing was said to invalidate the argument founded upon that section. I do not see how it is possible to take this tramway out of the definition of a mine because it is a tramway above ground leading to a horizontal passage used for the purposes of the mine, to which, it is admitted, the workmen were entitled to resort for the purpose of going to their employment. I am unable to find any distinction between a case of accident happening where it did and a case of accident happening in an underground passage, always assuming that the man was going by the proper road to his work or returning from his work. The Sheriff has found as matter of fact that the man was going to his work, and it seems to me that the true principle, and one which supports our interpretation of the Act, is that the execution of the contract of employment began at the time when the workman entered the premises of his employers in pursuit of his work, and it would be wrong to restrict it to the actual commencement of the effective work. I do not elaborate this further, because the grounds of my opinion are explained in the case of *Todd* v. *Caledonian Railway Company*, to which I firmly adhere.

A distinction was attempted to be taken between *Todd's* case and this case, on the ground that in *Todd's* case it was found that the man was walking along a railway on his way home, and had a duty to report himself at the office at the next station. It was not proved as matter of fact that he intended to report himself—the lateness of the hour rather suggested a reason for omitting that formal duty; and in any case, while we have not that element of evidence here, I am not disposed to limit the claim under this Act to the case of a workman who is travelling within the employer's premises in order to perform some duty. I think, on a fair construction, it includes the case where he is going to his work or returning from his work, but of course he must be on or about the premises, otherwise he is not within the scope of the Act of Parliament. In the present case I think he was on or in the mine, and therefore I agree with your Lordships. I think the decision of the Sheriff-Substitute was wrong, and that we must sustain the appeal.

LORD KINNEAR—I agree with your Lordships. There can be no question, and I do not think any question was made, that when this accident happened the injured man was in the mine. It was not a case in which we are to consider what is meant by the words "about a mine or factory" because the man was inside the mine according to the definition given of a mine by the Act itself. The only question therefore is whether the accident which happened to him arose "out of or in the course of his employment." I think for the reasons your Lordships have given that it did. The accident happened while he was making use of part of the mine-owners' plant situated within the mine, and making use of it for the purpose of his service. That appears to me to be sufficient reason for holding that the case falls within the words of the statutory definition, and I, like your Lordships, have been unable to distinguish the case from the case of *Todd* (1 F. 1047), which I think was rightly decided, and which I am prepared to follow.

I cannot at all assent to the view which in one part of his argument was maintained by Mr Horne, that the word "employment" as used in the Act means the actual performance of the specific operation for which the workman is to be paid. I do not think it possible to limit the meaning of the word "employment," which is a word of ordinary use, in the manner proposed by the argument. I agree with your Lordships that the word has a much wider signification, and I think we have ascribed to it that wider signification in several previous cases.

The Court answered the question of law in the affirmative, and remitted the case to the Sheriff-Substitute to proceed as might be just.

Counsel for the Workman (Appellant)—A. Moncrieff. Agents—Simpson & Marwick, W.S.

Counsel for the Employers (Respondents)—Horne. Agents—W. & J. Burness, W.S.

Friday, October 23.

FIRST DIVISION.

DUNLOP'S TRUSTEES *v.* DUNLOP.

Liferent and Fee—Casualties—Free Yearly Proceeds.

A testator directed his trustees to hold the residue of his estate for behoof of his widow in liferent, and to pay to her the "free yearly proceeds" thereof for her support and that of his children.

The trust estate consisted of heritable property which had been largely feued, and part of the revenue derived from it consisted of casualties, both taxed and untaxed, from feus granted before the Conveyancing Act 1874, and duplications of feu-duty from feus granted after that Act. From this source an annual revenue, varying in amount, was derived,

In a special case, *held* that the intention of the testator was that the casualties or duplications received in any year were to be paid to the widow as part of the "free yearly proceeds" of that year.

William Carstares Dunlop, of Gairbraid, Lanarkshire, died on 22nd June 1891, leaving a trust-disposition and settlement dated