Counsel for the Pursuer (Appellant)—Munro—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

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

Wednesday, July 14.

SECOND DIVISION.

[Sheriff Court at Glasgow.

SPIERS *v.* ELDERSLIE STEAMSHIP COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 4—*Execution by Contractor of Work Undertaken by Principal—"In the Course of or for the Purposes of his Trade or Business"—Shipowner—Cleaning of Boilers.*

A shipowner contracted with W. for the cleaning of the boilers in one of his vessels. W. engaged a number of boiler-scalers to do the work, and one of them, S., while so employed, was injured by an accident. The work of boiler-scaling is occasionally performed by shipowners themselves through their own employees without the intervention of a contractor. *Held* that the work of boiler-scaling was not work undertaken by the shipowner in the course of or for the purposes of his trade or business in the sense of section 4 of the Workmen's Compensation Act 1906, and that the shipowner was therefore not liable to S. in compensation under said section.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58)—*Contract of Employment.*

S. while engaged in the cleaning of the boilers of a ship was injured by an accident. S. was one of several boiler-scalers engaged to clean the boilers by W., who contracted with the shipowner to do the work. S. was subject to the orders of W. in the performance of the work, a certain supervision over him and the other workman being exercised by a foreman in the employment of the shipowner. S received his wages from W., who in turn received the money in instalments from the shipowner as desired for payment of wages. *Held* that S. was not in the employment of the shipowner, and therefore not entitled to receive compensation from him under the Workmen's Compensation Act 1906.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), section 4 (1), enacts—"Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him. . . ."

In an arbitration under the Workmen's Compensation Act 1906 between Charles Spiers and the Elderslie Steamship Company, Limited, the Sheriff-Substitute at Glasgow (DAVIDSON) refused compensation, and at the request of the claimant (Spiers) stated a case for appeal.

The *facts* stated were—"(1) That the appellant was injured while working in a ship belonging to the respondents on 6th April 1908. (2) That the said ship was in the harbour at Glasgow at the time. (3) That in consequence of his injury he was incapacitated for work, and was still so at the date of my judgment (23rd February 1909). (4) That no notice was given to the respondents of the accident till 2nd October 1908, but that the failure to give notice was due to excusable error. (5) That the appellant at the time of the accident above mentioned was one of several boiler-scalers engaged by Andrew Williamson to do cleaning work in the boilers of the ship, and he was in the act of cutting out a large piece of salt, which had accumulated owing to a leak in one of the boilers, when the accident happened. (6) That the said Andrew Williamson contracted with the respondents to do this work. (7) That the appellant was subject to the orders of the said Andrew Williamson, a certain supervision over him and the other workmen being exercised by a foreman, Charles Swettenham, in the employment of the respondents. (8) That the said Andrew Williamson had no place of business and no capital. (9) That the appellant had no contract with anyone except Williamson, and that the appellant received his wages from Williamson, who in turn received the money in instalments from the respondents as desired for payment of wages. (10) That the appellant's average wage was 25*s.* per week. (11) That shipowners on the river Clyde have occasionally had the work of boiler-scaling performed by their own men without the instrumentality of a contractor."

On these facts the Sheriff-Substitute found that the appellant was not at the time of the accident in the employment of the respondents within the meaning of the Workmen's Compensation Act 1906.

The *questions of law* were—"(1) Whether, on the facts stated, the appellant was a workman in the employment of the respondents at the time of said accident within the meaning of the Workmen's Compensation Act 1906? (2) Whether, on the facts stated, the work at which the appellant was engaged at the time of the said accident was work undertaken by the respondents as principals in the course of or for the purposes of their trade or business within the meaning of the Workmen's Compensation Act 1906."

Argued for the appellant—(1) The appellant was in the employment of the respondents in the sense of the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58)—*M'Cready* v. *Dunlop & Company*, June 16, 1900, 2 F. 1027, 37 S.L.R. 779. (2) Alternatively Williamson was a contractor, and the appellant being in his employment was entitled to compensation from the respondents under section 4 of the Act, provided the work on which he was engaged at the time of the accident was work undertaken by the respondents in the course of or for the purposes of their business. That condition was fulfilled. The work of scraping or cleaning the boilers of the ship was part of the ordinary routine work in the management of the ship, the business of the respondents. Without it they could not carry on their business, and it had to be performed in the course of their business. There was no question of repairs. The case therefore fell within section 4 of the Act—*Dittmar* v. *Owners of Ship*, V 593, [1909] 1 K.B. 389; *Burns* v. *North British Railway Company*, February 20, 1900, 2 F. 629, 37 S.L.R. 448; *Bee* v. *Ovens & Sons*, January 25, 1900, 2 F. 439, 37 S.L.R. 328; *M'Govern* v. *Cooper & Company*, November 30, 1901, 4 F. 249, 39 S.L.R. 102.

Counsel for the respondents were not called on.

LORD JUSTICE-CLERK — I can find no ground for differing from the decision of the Sheriff-Substitute in this case.

The respondents are shipowners, and it is of course their duty, as it is their interest, to see that their ships and their equipment, including the boilers, are in proper condition. We do not know the exact extent of the operations on the boilers in the present case, but they must at anyrate have been of considerable magnitude, and although the Sheriff-Substitute has found as a fact that the work of boiler-scaling is occasionally performed by shipowners themselves through their own employees without the intervention of a contractor, I cannot hold it to be one of the normal operations which form part of the ordinary business of a shipowner. Many shipowners have repairing staffs of their own and do extensive repairs by such a staff. But I think it is absurd to say that every operation which requires to be done on board a vessel, *e.g.*, the taking out of old boilers and the fitting of new ones or the repair of the old, is part of the trade or business of a shipowner as ordinarily understood. Such work is outside the ordinary business, although for reasons of their own some shipowners may do such work by persons employed by themselves. If that is so, what is the distinction in principle between these operations and the operation of boiler-scaling here in question? None that I can see. It was part of their business to have their boilers in good condition, but not to do the operations to put them into good condition. I accordingly think that on this branch of the case the Sheriff was right.

I think it is also abundantly clear that the injured workman was not in the employment of the shipowners. He was in the employment of Williamson and Williamson only, who had entered into a contract with the shipowners to perform the work. The only fact which might perhaps be suggested as pointing to his having been in the employment of the shipowners is the fact stated in finding 7 that a certain supervision over him and the other workmen was exercised by a foreman employed by the shipowners. But there is really nothing in this. Some supervision of some sort or other over the work which is going on is always exercised by anyone who contracts with a contractor for the carrying out of work, the object being to make certain that the work is carefully performed, and that no misconduct either in scamping work or in personal misbehaviour is committed, but this supervision does not affect the position of the workmen employed by the contractor or make them the employees of those who have made agreement with the contractor. I think, accordingly, that both questions in the case fall to be answered in the negative.

LORD LOW, LORD ARDWALL, and LORD DUNDAS concurred.

The Court answered both questions in the negative.

Counsel for the Appellant — Horne — J. H. Henderson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Respondent—Stevenson. Agent—Campbell Faill, S.S.C.

Thursday, July 15.

SECOND DIVISION.

[Lord Salvesen, Ordinary.

BRITANNIA STEAMSHIP INSURANCE ASSOCIATION, LIMITED *v.* DUFF AND ANOTHER.

Cautioner — Insurance — Liberation — Guarantee of Calls Due by Member of Mutual Marine Insurance Association— Guarantee Required from Mortgagee of Ship Insured—Guarantee Granted "for Mortgagees" — Discharge of Guarantee through (1) *Discharge of Existing Mortgage*, (2) *Negligent Actings of Creditor.*

By the rules of a mutual marine insurance association it was provided that the insurance of any vessel which was mortgaged should not be valid unless the mortgagee or other approved person should have given a written guarantee of calls which might become due in respect of the insurance of such vessel. In March 1902 the C. Steamship Company became a member of the insurance association, and the "S." a steamship belonging to them was entered for insurance. At that date