Thursday, June 12.

FIRST DIVISION.

[Sheriff Court at Hamilton.

M'LUCKIE *v.* JOHN WATSON LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Accident*"—*Deafness Following upon Chill—Chill Due to Workman Voluntarily Standing in Water at Pit Bottom.*

A miner, in order that he might be among the first to ascend the shaft, stood in an accumulation of water at the pit bottom for some thirty minutes instead of waiting on dry ground till his turn to ascend came. Had he waited he might have reached the cage comparatively dry. In consequence of standing in the water he contracted a chill, on which deafness followed, rendering him totally unfit for work.

Held that the workman's incapacity was not due to an "injury by accident" in the sense of the Workmen's Compensation Act 1906.

Drylie v. *Alloa Coal Company, Limited*, 1913 S.C. 549, 50 S.L.R. 350, *distinguished.*

In an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), between Alexander M'Luckie, miner, Bridgeton, *claimant*, and John Watson Limited, coalmasters, Glasgow, *defenders*, the Sheriff-Substitute (SHENNAN) refused compensation, and at the request of the claimant stated a Case for appeal.

The *facts* were as follows—"1. The appellant was a miner in the employment of the respondents in their Gilbertfield Colliery from 8th April 1912 onwards. His average weekly earnings prior to 9th September 1912 were £2 per week. 2. The pump of the pit was frequently out of order, so that the pit bottom was often flooded, and the men were often drenched by water coming down the shaft while they were being raised to the surface. The miners repeatedly complained of this to the checkweighman. 3. On each of the 9th and 10th September 1912 the pumping gear went wrong, and in consequence thereof water accumulated in the pit bottom to a depth of about 18 inches at the cage, gradually shallowing back from the cage for about 30 feet to where the ground was dry. 4. On each of these days only one cage carrying eight men was available for raising the men to the surface at the close of the shift, and there were about 200 men to be raised. As each was eager to get the first chance of ascending, all of them waded into the water at the pit bottom and stood in it, some from thirty to forty-five minutes. There was no necessity for this. The traffic near the pit bottom had ceased at the time, and the men could with safety have waited on the dry ground till their turn came to ascend. They could then have crawled over hutches which were shoved towards the cage, and could thus have reached the cage comparatively dry. 5. On both the 9th and 10th September the appellant was among those who were thus standing in the water at the pit bottom, and he stood thus waiting between thirty and forty-five minutes. He was sweating profusely when he came from his work to the pit bottom on 9th September. 6. On 9th and 10th September 1912 the appellant was also drenched by water in the shaft when he was ascending. 7. On 11th September 1912 the appellant was out at his work, but was suffering from chill. On the following day he was worse, but went out to work. On 13th September 1912 he was totally deaf, and was and still is unfit to work as a miner. 8. Before September 1912 the appellant suffered from chronic middle-ear disease, but this did not cause serious deafness and did not interfere with his capacity for work. The total deafness from which he has suffered since 13th September 1912 is due to an affection of both the internal ears. This total deafness is not connected with the previous middle-ear disease, but has almost certainly been caused by chill arising from exposure. 9. The evidence did not establish definitely any time, place, and circumstance under which appellant contracted the chill. He may even have contracted it before 9th September, but in all probability its inciting cause was some or all of the wet conditions which prevailed in the pit on 9th and 10th September. The proof does not disclose a definite event as the cause of the chill."

The Sheriff-Substitute further stated—"In those circumstances I held that the appellant had failed to prove that his incapacity was due to accident. I held, further, that if it could be held that standing voluntarily for thirty minutes in the pit bottom was an accident, it was one which did not arise out of the appellant's employment. Accordingly I refused the appellant's claim for compensation."

The *questions of law* were—"1. Was the arbiter wrong in holding that the appellant had failed to prove that his incapacity was due to accident arising out of and in the course of his employment with respondents? 2. On the facts found proved, was the arbiter wrong in refusing compensation to appellant?"

Argued for appellant—The appellant's incapacity was due to an accident arising out of and in the course of his employment. A chill might be an accident in the sense of the Act—*Alloa Coal Company, Limited* v. *Drylie*, 1913 S.C. 549, 50 S.L.R. 350. The present case fell under that authority and not under *John Watson, Limited* v. *Brown*, 1913 S.C. 593, 50 S.L.R. 415. It was immaterial that the appellant had stood in the water at the pit bottom, for even if he had waited till his turn to ascend the shaft came he would have got drenched in ascending. *Esto* that he had made his exit from the pit in the wrong way, and had thereby aggravated the risk of contracting a chill, that was not sufficient to exclude him from the benefit of the Act—*Conway*

v. *Pumpherston Oil Company, Limited*, 1911 S.C. 660, 48 S.L.R. 632; *Gane* v. *Norton Hill Colliery Company*, [1909] 2 K.B. 539.

Counsel for respondent were not called on.

LORD PRESIDENT—I do not think there is the slightest doubt that the learned Sheriff-Substitute has come to quite the right conclusion. I think it is very probable that if he had had an opportunity of reading the case of *Alloa Coal Company* v. *Drylie*—which he had not, because his judgment was given before that case was decided—he might very likely have expressed himself differently, because I think the way he has expressed himself is really an echo of what was said in the case of *Eke* v. *Hart Dyke* ([1910] 2 K.B. 677). But none the less I think that the result he has come to is obviously right, and I think we should be really casting the law completely adrift from the *ratio* of the *Alloa Coal Company* case if we came to any other conclusion.

In the *Alloa Coal Company* case the pit was flooded through an accident, and was flooded to such an extent that the men thought they were in danger of their lives, and rushed to the pit bottom in order to get up to the surface—not at the ordinary time and in the ordinary course of their business, but, as they thought, in order to escape from drowning. While there they were subjected to a severe wetting, and the learned Sheriff-Substitute, who acted as arbiter in the case, came to the conclusion that the disease of which the man died was contracted through the exposure to which he was then subjected. In that case it was held that there had been an accident, and that it occurred out of and in the course of the employment.

But what do we have here? We have, I agree, an accident in this way, that the pump broke down and there was water at the pit bottom; but there is no suggestion that there was the slightest danger to anybody owing to the amount of water at the bottom of the pit. The men were going up to the surface when their work was done, in the ordinary way, and if each man had waited his turn he would only have got his feet wet in getting to the cage—or, as the learned Sheriff-Substitute says, if they had been anxious not to get their feet wet they could have avoided even that to a large extent by crawling over some hutches which were pushed towards the cage. Instead of waiting their turn the workmen were all anxious to get to the cage at once, and this man walked into the water and stood there for at least thirty minutes, and in consequence of that the Sheriff-Substitute thinks it is probable that he got the chill which caused the infirmity from which he suffered.

It seems to me impossible to say that that was an accident which arose out of and in the course of the employment, and it is futile to say—as was pleaded by counsel—that the workman might have been just as ill if he had had an ordinary wetting of his feet instead of voluntarily staying in the water for thirty minutes. I think that the case is an exceedingly clear one, and that the questions should be answered in the negative.

LORD KINNEAR—I entirely concur. I only add, because I was not a party to the judgment in the case of *Drylie* v. *The Alloa Coal Company*, that I assent to all that was said by your Lordship and by Lord Mackenzie in that case. But I think the present case is to be distinguished for the reasons given by your Lordship.

LORD JOHNSTON—I agree.

LORD MACKENZIE—I concur.

The Court answered the two questions of law in the negative.

Counsel for Appellant—A. M. Mackay. Agent—J. Ferguson Reekie, S.S.C.

Counsel for Respondents — Carmont. Agents—W. & J. Burness, W.S.

Thursday, June 12.

FIRST DIVISION.

[Sheriff Court at Glasgow.

THE CLAN LINE STEAMERS, LIMITED *v.* EARL OF DOUGLAS STEAMSHIP COMPANY, LIMITED.

Diligence — Ship — Arrestment — Maritime Lien in respect of Collision—Execution—Process.

The owners of a steamer brought an action against the owners of another vessel for damages in respect of a collision, and on the dependence of the action arrested the vessel. A petition for recal of the arrestments having been presented, the respondents objected to their recal on the ground that they would thereby be prevented from working out their maritime lien over the ship.

Held that an arrestment on the dependence was not the appropriate form of diligence for working out a maritime lien against a ship and arrestments *recalled* on caution.

Observed (*per* Lord President) that while a ship might competently be arrested in order to make good a maritime lien, such a diligence would require a special application and citation of all parties interested.

On 30th April 1913 the Clan Line Steamers, Limited, *pursuers*, brought an action against the "Earl of Douglas" Steamship Company, Limited, *defenders*, for recal of arrestments.

On 24th April 1913 the Earl of Douglas Steamship Company, Limited, brought an action against the Clan Line Steamers, Limited, for £1400 damages in respect of their s.s. "Earl of Douglas" being, as they alleged, run into by the defenders' s.s. "Clan Ogilvy" while she, the "Earl of Douglas," was at anchor in the harbour of Newcastle N.S.W., and *separatim* for "declarator that the pursuers have a lien over