Counsel for the respondents were not called upon.

LORD YOUNG—We do not think it necessary to call for further argument here. The first and second questions have been given up, and in the third it was maintained for the appellants that the business relation of the Railway Company to beer going from Edinburgh to Manchester did not commence until the beer was put on board the train. Now, I cannot assent to that view. I think that the removal of the beer from the consignor's premises was part of the work undertaken by the Railway Company.

LORD ADAM—I agree. The result of our decision is to make the Caledonian Railway Company liable to this man, who was not their servant and stood in no contractual relationship towards them. This is a curious result, but the Workmen's Compensation Act clearly produces this result, for I think the Caledonian Railway Company were undertakers in the sense of the Act, and that this work in which this man was engaged was part of what they had undertaken, and therefore they were liable.

LORD TRAYNER—I am of the same opinion. I think that the respondent was engaged in a part of a business or trade carried on by the appellants, and that the third question must be answered in the negative.

The Court answered the third question in the negative.

Counsel for the Claimants and Respondents—Watt—Cook. Agents—Auld & Macdonald, W.S.

Counsel for the Appellants—Dundas, Q.C. —Deas. Agents—Hope, Todd, & Kirk, W.S.

Tuesday, March 13.

FIRST DIVISION.

[Sheriff Court of Perth.

M'QUIBBAN *v.* MENZIES.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7 (1) *—Accident "Arising out of and in the course of Employment."*

In a case stated under the Workmen's Compensation Act 1897 by the Sheriff on the requisition of the employer the following facts were set forth: A workman was engaged as a labourer in a steam-joinery, his duty being to carry wood from the machinemen to the joiners and to clean and sweep up the floor of the machine-room. A belt in connection with one of the machines became loose, and he went, without being asked to do so, to assist the machineman in replacing the belt upon the shaft. At the request of the machineman the workman ascended a ladder to try and replace the belt, and his arm being caught in the belt he was drawn up into the shaft and sustained fatal injuries. It was admitted that had a foreman been present he might have ordered the workman to do this act, but no other person had authority to order him to do so. *Held* that the accident was one arising out of and in course of employment in the sense of the Workmen's Compensation Act, and that, accordingly, compensation was recoverable in respect thereof.

This was a stated case under the Workmen's Compensation Act 1897, in the matter of a statutory arbitration between Mrs Menzies, widow of Archibald Menzies, and William M'Quibban, steam-joinery works, Perth. Mrs Menzies claimed compensation under the Act in respect of the death of her husband in consequence of injuries which he received in Mr M'Quibban's works on 20th March 1899.

The Sheriff-Substitute (NAPIER) held that the injuries sustained by Menzies were caused by an accident which arose out of and in the course of his employment as a workman by M'Quibban, and were not attributable to serious and wilful misconduct on his part, and awarded compensation accordingly.

A case was stated by the Sheriff-Substitute to the First Division on the appeal of M'Quibban.

The case contained the following statement—"I hold the following facts to be proved or admitted. The appellant carries on a steam-joinery work, in one of the rooms of which there are several machines used in connection with his work for sawing or otherwise preparing wood for the joiners in his employment. These machines are set in motion or worked by endless belts which connect them with the steam-gearing on the roof. If one of these belts gets loose it is dangerous for anyone, even for a skilled workman, to attempt to replace it while the shaft of the gearing is in motion. On the morning of 20th March 1899 the belt connecting one of the appellant's machines at which William Miller, a machineman, was working, and of which he was in charge, got loose. William Miller, without having the shaft stopped, tried to replace the belt. While he was endeavouring to do so, Archibald Menzies, who was close by, and was at that moment engaged in sweeping up the chips which were lying on the floor, went, without being asked by Miller, to his assistance. Archibald Menzies took hold of what was called the single belt, that is, one of the sides of the belt, which, being endless, is stretched double between the machine and the gearing near the roof. His assistance, however, did not enable Miller to put the belt right. In consequence Miller asked him to catch hold of the double belt. Menzies then got a ladder, climbed up it, and caught hold of the double belt as requested, somewhere below the shaft of the gearing near the roof. While there his arm got entangled or caught in the belt. He was then dragged by the belt which was in motion up to the shaft, carried round it four times, and

fatally injured. He died in Perth Infirmary shortly thereafter. Archibald Menzies who thus lost his life was on 20th March 1899, and had been since the second day of February preceding, in the employment of the appellant as a labourer at a wage of 20s. per week. The work he was engaged to perform was labourer's work. In particular, his duties were to carry wood from the machinemen to the joiners, and to clean up and sweep the floor of the machine room. On one occasion at least, however, he assisted at tailing, that is, pulling wood from a revolving saw. The only person who had authority to give orders to Menzies was the foreman Mr Soutar. He had never ordered Menzies to touch a machine or the belting, but he could have given such an order to Menzies if he desired. Without an order from the foreman Menzies had no right to interfere with the belting or the machines. In particular, Miller, though he had superior pay to Menzies, had no authority from the appellant to ask Menzies to assist him, nor had he any control over him."

The question of law for the opinion of the Court was—"Whether the deceased Archibald Menzies being employed as a labourer and not as a skilled workman was injured by an accident arising out of and in the course of his employment by the appellant as a workman within the meaning of section 7 (1) of the Workmen's Compensation Act 1897?"

Argued for appellant—There were three material facts which appeared in the case. The deceased was engaged as a labourer and not as a skilled workman, he had no right to interfere with the belting, and he was ultroneously doing a piece of dangerous work. Accordingly, he was not doing his usual work, nor was he acting under the orders of one entitled to order him to do this work. That being so, the claim was only competent if the act could be said to have been done on an emergency, when it was the duty of anyone to interfere to protect his master's property. That was the principle applied in *Reece* v. *Thomas* [1899], 1 Q.B. 1015. There could not here be said to have been anything in the nature of an emergency, and accordingly there was no claim under the Act—*Lowe* v. *Pearson* [1899], 1 Q.B. 261; *Smith* v. *Lancashire and Yorkshire Railway Company* [1899], 1 Q.B. 141; *Callaghan* v. *Maxwell*, January 23, 1900, 37 S.L.R. 313; *Martin* v. *Wards*, June 15, 1887, 14 R. 814.

Argued for respondent — The act was clearly performed for the interest of the employer and not to gratify any impulse or whim. There was no exclusion of this particular act from the duties of the deceased; it was not helping the other servant in his regular duties, but in correcting a defect. Even if it were held to be outside the scope of his regular work, he was engaged in furthering his employer's interests on the occurrence of an emergency. There was no allegation of serious and wilful misconduct, and accordingly the claim was not barred—*Durham* v. *Brown Brothers & Company*, December 13, 1898, 1 F. 279; *M'Nicol* v. *Speirs, Gibb, & Company*, February 24, 1889, 1 F. 604; *Reece* v. *Thomas* [1899], 1 Q.B. 1015.

LORD PRESIDENT—The question of law which we have to decide is whether the deceased workman was injured by an accident arising out of and in the course of his employment, and although that would appear primarily to be a question of fact, there is no doubt that in cases of this kind questions of fact and law sometimes run into one another. The "arising out of and in the course of the employment" appear to me to be sufficient to include something which occurs while the workman is in his master's employment and on his master's work, although he is doing something in the interest of his master beyond the scope of what he was employed to do. The Act does not say "when doing the work which he was employed to perform," and it is a fair inference that if it had been intended to limit the right to compensation to such accidents different language would have been used from that which occurs in the Act. It must be assumed, therefore, that the Legislature used language of wider scope to include cases where a workman intervenes to do something useful or helpful to his master, although outside the special duties which he is employed to perform. It is not easy to define the cases in which a workman so intervening would forfeit his right to compensation, but useful illustrations both ways are to be found in the case of *Reece* v. *Thomas*, L.R. [1899], 1 Q.B. 1015, and the case of *Low* v. *Pearson*, L.R. [1899], 1 Q.B. 261. In the latter case the workman, who was forbidden to clean certain machinery, proceeded to clean it in the absence of the person employed for that purpose. He intervened not only without but against orders, and it was held that in so doing he was not in the course of his employment. In the case of *Reece* on the other hand, the workman—a miner—was at the time of the accident performing the duty of taking a report from the pit to the office. A tramway ran from the pit to the office, and the workman got on to a tram which was running in that direction. In so acting he was not performing the duty for which he was employed, except that he was at the time engaged in taking the report to the office. The horse ran away, and the workman, as any workman while engaged in his master's service and desirous to serve his master's interests would have done, attempted to stop it, with the result that he fell and was killed. In these circumstances the Court held that the accident arose out of or in the course of the employment.

In the present case the deceased workman was employed in a steam-joinery work. There were various classes of employees, and the deceased was employed as a labourer to carry wood and sweep chips from the floor of the machine-room, and generally to do work ancillary to that of the skilled men whose time was of more value than his, but although his duties were

more humble, their performance was just as necessary to the employer's business as the duties of his skilled fellow-workman. On the occasion of the accident the deceased was in the machine-room performing his duties. One of the belts connecting a machine with the steam gearing got loose, and possibly might have been a source of danger, but the occurrence rendered the machine useless for the time. The machineman, thinking it better not to stop the whole machinery in the works, tried to replace the belt, but without success, and the deceased going to his assistance caught hold of one side of the belt. As this did not enable the machineman to put the belt right, the latter asked the deceased to catch hold of the double belt. He did so, and was caught by the belt and received fatal injuries. Now, it is true that this was not the special work which the deceased was employed to perform, but he did it to help a fellow-workman in furtherance of his employer's business. Moreover, it is stated in the case that the foreman to whose orders the deceased was bound to conform could have ordered him to assist in replacing the belting, which shows that such work was not truly outside the scope of his employment, and it is to be inferred that he might have been discharged if he, being ordered by the foreman to assist in replacing the belt, had refused to do so. Accordingly, it appears to me that the accident in a reasonable sense arose out of and in the course of the employment.

The appellant's counsel argued that there was a distinction between the present case and that of an emergency happening in the course of an employment. They did not dispute that in the latter case a workman might properly intervene in work which he was not employed to perform. I am unable to appreciate the distinction contended for. An emergency is just something which occurs unexpectedly. It does not necessarily mean an occurrence giving rise to great danger, and it would be very inconvenient and disadvantageous for the conduct of such work if workmen could not without an order from the foreman intervene in cases requiring their intervention except under the penalty of losing the benefits provided by the Act of 1897. The action of the workman in this case appears to me to have been a natural and helpful intervention in the conduct of his master's business, and accordingly I am of opinion that the question should be answered in the affirmative.

LORD M'LAREN—I think the Sheriff-Substitute was probably right in stating a case, but I also think that his judgment, which is appealed against, is well founded. I need hardly say that to establish a claim under the Workmen's Compensation Act it is not necessary for a workman to show that anyone was in fault, or that his injury arose from obedience to an order which he was bound to obey. But it is just as little necessary for the workman to show that he was engaged at the time of the accident in the performance of a contract obligation, which he was bound to perform whether he liked it or not. The words of the Act are—"Injuries arising out of and in the course of employment." Your Lordship called attention to the scope of the statutory exceptions as showing the breadth of the rule, because it appears that but for the excepting words every accident which occurred would fall within the statutory definition. Every cause short of serious and wilful misconduct gives a claim to compensation, though the employer and superior officials are entirely blameless. It is easier to figure cases excepted from than those falling within the rule. Thus, if a workman while working at his bench dies from natural disease, that is an eventuality occurring in the course of but not arising out of his employment, or if he meets with an accident while returning from his work by train, that arises out of but is not in the course of the employment. Any accident occurring to a workman while engaged in promoting his master's interests is *prima facie* within the category of cases considered by the statute as constituting a claim.

In this case there is no doubt that the workman was engaged in promoting his master's interests, because he went to assist a fellow workman (under his direction) in putting the driving-belt on to the pulley. We are familiar with the principle of common employment as used in the limitation of claims, and this principle may also be invoked to aid the interpretation of the statute, because impliedly each workman, besides having to perform the special work for which he is hired, owes something to the community of fellow workers, and must be helpful according to his experience where necessity arises. That was the nature of the intervention in this case, and I accordingly agree in the decision to which your Lordships have come.

LORD KINNEAR—I agree. It appears to me that when Mr Guthrie accepted the principle laid down in the case of *Reece*—and I do not see how he could avoid doing so—the case for the appellants was reduced to a very narrow point. The accident happened in consequence of a belt which connected one of the machines with the steam gearing in the roof becoming loose. Miller, the man in charge of the machine, attempted to replace it, and the deceased went to his assistance. He was asked by Miller to catch hold of the double belt, and on doing so was caught in the belt, dragged up to the shaft, and carried round it.

The question is, whether in acting as he did he was in the course of his employment. It is stated as part of the case that had the foreman ordered Menzies to help Miller with the belt he would have been bound to obey, and in that case it could not have been disputed that he was injured in the course of his employment. The only question therefore is, whether he was out of the course of his employment because instead of being asked by the foreman, who was not present, he was asked by Miller, who was, to do what he did. I agree that he

was just doing what any helpful man would have done in the circumstances, and that he was trying to further his master's business in circumstances which did not take him outside of the provisions of the statute.

LORD ADAM was absent.

The Court pronounced this interlocutor:—

"The Lords having considered the stated case on appeal in the arbitration under the Workmen's Compensation Act 1897 between William M'Quibban, appellant, and Mrs M. Fulton or Menzies, respondent, and heard counsel for the parties, Answer the question in the case in the affirmative: Find the appellant entitled to expenses," &c.

Counsel for the Appellant—Guthrie, Q.C. —Constable. Agents—Simpson & Marwick, W.S.

Counsel for the Respondent—Guy—W. J. Robertson. Agent — J. Campbell Irons, S.S.C.

Tuesday, March 13.

FIRST DIVISION.

[Sheriff Court of Lanarkshire.

KANE *v.* STEPHEN & SONS.

Process — Issue — Amendment of Issue — Action by Workman—Deletion from Issue of Reference to Employment—Court of Session Act 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 29.

In an action of damages for personal injury at the instance of a workman, the pursuer averred that at the time of the accident he was in the employment of the defenders. This was denied by them. An issue was approved by the Court, in which the question put to the jury was, whether the pursuer "while in the employment of the defenders" was injured through their fault.

After the issue had been approved the pursuer craved leave to amend the issue by striking out the reference to employment.

The Court *refused* the motion at that stage, indicating that it would be for the Judge presiding at the trial to decide whether a similar motion should be granted if the evidence disclosed that there had in fact been no such employment.

Motion by the pursuer to amend the issue in the manner set out above made before evidence had been led at the trial *refused* by the presiding Judge, and a similar motion made after the evidence had disclosed that the pursuer was in the employment not of the defenders but of a sub-contractor *granted.*

Process—Jury Trial—Verdict—Words of Surplusage in Verdict — General or Special Verdict.

In an action of damages at the instance of a workman an issue was approved in which the question submitted to the jury was whether the pursuer "while in the employment of the defenders" was injured through their fault. The evidence disclosed that the pursuer was not in the employment of the defenders when the accident happened, but in that of a sub-contractor. The presiding Judge accordingly allowed the pursuer to amend the issue by striking out the words quoted above. The jury returned a verdict by which they found "for the pursuer under the Employers Liability Act."

A motion at the defenders' instance for a new trial, on the ground that this verdict was contrary to the evidence, *refused*, the Court holding that the words "under the Employers Liability Act" were mere words of surplusage, importing the jury's mistaken idea as to the legal ground of the defenders' liability, but in no way affecting their decision upon the question of fact, which alone was before them, and had been properly answered by them.

An action was raised in the Sheriff Court of Lanarkshire by John Kane, Hamilton Street, Govan, against Alexander Stephen & Sons, shipbuilders, Glasgow, concluding for payment of £500 as damages in respect of personal injuries sustained by him through an accident on 19th June 1899.

The pursuer averred that on this date he was in the employment of the defenders; that he was engaged in working on a steam travelling-crane in the defenders' yard which was being used in loading a bogey with iron plates, the pursuer's duty being to stand on the platform of the crane and hold a wedge to keep the plates in position, and that while he was thus engaged the crane was suddenly and without warning reversed, the result being that it struck the pursuer and injured him severely.

The pursuer further averred that the men in charge of the crane were superintendents, not ordinarily engaged in manual labour but having the duty of superintendence over the defenders' works, material, and workmen, that he was subject to their orders, and that the accident was due to the fault of the defenders or their superintendents in culpably and negligently failing to take the usual precautions to prevent the crane from injuring those employed near it. The pursuer stated that he had given notice of the accident to the defenders in terms of the Employers Liability Act.

He pleaded—"The pursuer having been injured through the fault of the defenders, or their said superintendents for whom they are responsible, is entitled to reparation from the defenders, and decree should be granted, with interest and expenses as craved."

The defenders denied that the pursuer was in their employment, and pleaded—"(3) The pursuer's injuries not having been caused through the fault of the defenders, or those for whom they are responsible, the defenders should be assoilzied, with costs."

The Sheriff-Substitute (STRACHAN) on 8th November 1899 allowed the parties a proof.