Saturday, July 12.

FIRST DIVISION.

[Sheriff Court at Dundee.

GEORGE ANDERSON & COMPANY (1905), LIMITED *v.* ADAMSON.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—*Accident Arising "out of" the Employment — Workman Struck by a Falling Slate during a Violent Gale.*

A workman who during a violent gale was engaged in erecting a stone planing-machine in an open yard, was struck and injured by a slate blown off the roof of an adjoining wood-store. Owing to a stooping position, rendered necessary by his work, in which the workman was at the time of the accident, he did not see the slate coming and was thereby prevented from avoiding it.

Held that there was evidence on which the Sheriff-Substitute was entitled to find that the accident to the workman arose out of his employment in the sense of section 1 (1) of the Workmen's Compensation Act 1906.

William Adamson, engineer, Carnoustie, *respondent*, claimed compensation under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) from George Anderson & Company (1905), Limited, engineers and ironfounders, Carnoustie, *appellants*, in respect of personal injury by accident sustained by himself. The matter was referred to the arbitration of the Sheriff-Substitute at Dundee (NEISH), who found the pursuer entitled to compensation, and at the request of the defenders stated a Case for appeal.

The Case set forth—"By joint-minute of admissions the following *facts* . . . were admitted:—1. On 26th November 1912 the pursuer, in the course of his employment with defenders as a foreman fitter, was engaged in erecting a stone-planing machine in the yard of Messrs John Emery & Sons, masons, builders, and contractors, Polmadie, Glasgow. . . . 2. On the west of Messrs Emery & Sons' yard and next to it is the yard of Messrs Montgomery & Strachan, saw millers. . . . In the yard of Messrs Montgomery & Strachan is a building used as a wood-store, running . . . parallel with Messrs Emery's yard. This wood-store is a building about 76 feet in length, and is approximately 21 feet 10 inches in height to the wall-head from the ground level, and approximately 31 feet 6 inches in height to the ridge of the roof from the ground level. Between said wood-store and the western boundary of Messrs Emery & Sons' yard is a yard or open space about 50 feet in width, on the west of the yard being said wood-store, and on the east a wooden paling or fence about 6 feet in height, which divides it from the said yard of Messrs Emery & Sons. 3. On said 26th November 1912 a very violent gale from the south-west was raging. As a result of the gale, slates, chimney-cans, iron roofing, bricks, stones, and other parts of buildings were blown from the roofs of a number of houses and other buildings in Glasgow, and several passengers in the streets, a few persons inside buildings, and others received injuries. In particular, during the more violent gusts of wind a considerable number of slates were blown off the roof of said wood-store, some of them into Messrs Montgomery & Strachan's yard, and others into the yard of Messrs Emery & Sons. 4. During the gale, and between eleven and twelve o'clock on 26th November aforesaid, pursuer was engaged in the open air stooping over and placing in position a large spur wheel and tightening a nut, forming part of said stone-planing machine which he was erecting in Messrs Emery's said yard as aforesaid. There were a number of men in the employment of Messrs Emery & Sons and others also working in the open air in said yard. Said spur wheel had just been lowered into position by means of a hand-crane belonging to Messrs Emery & Sons. Said machine was being erected at a point in Messrs Emery's said yard about 127 feet 6 inches from the north-east corner, and about 172 feet from the south-east corner, of said wood-store belonging to Messrs Montgomery & Strachan. While so engaged pursuer was struck and injured on the head by one of said slates blown from off the roof of said wood-store. Owing to the pursuer's stooping position at his work at the time he did not see the slate coming and was thereby prevented from dodging it, as that and other slates were dodged by other workmen there at the time. Owing to the then incomplete state of Messrs Emery's yard—due to the fact that the fitting-up of same was not yet finished—the place where said machine was being erected was not enclosed and roofed in as it now is and was then intended to be (after erection of this and other machines) by a wooden shed which would, had it been there then, have protected the pursuer from the injuries he received as aforesaid. . . .

"I found in fact in terms of the minutes of admissions. . . . I found in fact and in law that the respondent was injured by accident arising out of and in the course of his employment, and awarded the respondent compensation. . . ."

The *question of law* for the opinion of the Court was—"Whether there was evidence upon which it could competently be found that the personal injury sustained by the pursuer and respondent was the result of an accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act 1906?"

Argued for the appellants—The injury in the present case was not caused by an accident "arising out of" the employment of the respondent. The risk to which the respondent was exposed on the day in question was not a risk incidental to his

employment. No special risk attached to the place where he was engaged in his work which was not shared by all other parts of Glasgow on the day of this accident—*Blakey* v. *Robson, Eckford, & Company, Limited*, 1912 S.C. 334, 49 S.L.R. 254; *Rodger* v. *School Board of Paisley*, 1912 S.C. 584, 49 S.L.R. 413; *Revie* v. *Cumming*, 1911 S.C. 1032, 48 S.L.R. 831; *Warner* v. *Couchman*, [1912] A.C. 35.

Argued for the respondent—The workman in this case was subjected to a special risk because of the position in which he was placed by his work. He was exposed to greater risk from falling slates than the ordinary individual on this particular day. He was even exposed to greater risk than his fellow workers because of the stooping position in which he was at the time of the accident in connection with his work; this was admitted by the appellants. It followed from that that the accident arose "out of" his employment—*Blakey* v. *Robson, Eckford, & Company, Limited* (*cit. sup.*); *M'Neice* v. *Singer Sewing Machine Company, Limited*, 1911 S.C. 12, 48 S.L.R. 15; *Millar* v. *Refuge Assurance Company*, 1912 S.C. 37, 49 S.L.R. 67; *Andrew* v. *Failsworth Industrial Society*, [1904] 2 K.B. 32; *Challis* v. *London and South-Western Railway*, [1905] 2 K.B. 154; *Ismay, Imrie, & Company* v. *Williamson*, [1908] A.C. 437; *Manson* v. *The Forth and Clyde Steamship Company, Limited*, May 23, 1913, 50 S.L.R. 687.

At advising—

LORD JOHNSTON—This case is lucidly stated by the learned Sheriff-Substitute by reference to a comprehensive minute of admissions.

The material facts are that a foreman fitter was engaged on 26th November 1912, in the employment of an engineering firm, in fitting up heavy stone-planing machinery in a builders' yard which at the time was not covered in. An exceptionally severe storm occurred on that day, sufficiently so to justify the admission that "as a result of the gale, slates, chimney-cans, iron roofing, bricks, stones, and other parts of buildings were blown from the roofs of a number of houses and other buildings in Glasgow, and several passengers in the streets, a few persons inside buildings, and others, rereceived injuries; in particular, during the more violent gusts of wind, a considerable number of slates were blown off the roof of" an adjoining wood store, some of them into the yard in which Adamson was working.

While engaged in his work Adamson was struck and injured on the head by one of the slates blown off from the roof of the above-mentioned wood store. At the moment Adamson "was engaged in the open air stooping over and placing in position a large spur wheel and tightening a nut, forming part of said stone-planing machine which he was erecting."

The Sheriff-Substitute has found that Adamson was injured by accident arising out of and in the course of his employment. I am of opinion that there is nothing to justify this Court in disturbing the Sheriff-Substitute's judgment. We are not concerned whether the accident arose in the course of the employment; the question is—Did it arise out of the employment?

No doubt the question whether an accident arises out of a man's employment is often a very difficult one, and this case is very near the border line; on which side it is to fall is, I think, a question of mixed law and fact. But I cannot find that the Sheriff's conclusion is affected by any wrong view of the law. Its soundness depends, I think, entirely upon whether the facts have been rightly estimated with reference to the law.

This case is one of the class where a workman is injured by accident arising out of a course or state of circumstances to which all persons are more or less exposed, such as street traffic, severe weather, etc. In these cases the risk is a common or normal risk, and the question, broadly put, is whether the workman's exposure to it was abnormal or excessive by reason of his employment. If it is the normal risk merely which causes the accident, the answer must be that the accident did not arise out of the employment. But if the position which the workman must necessarily occupy in connection with his work results in excessive exposure to the common risk (*cf. Ismay's* case, [1908] A.C. 437; *Rodger*, 1912 S.C. 584), or if the continuity or exceptional amount of exposure aggravates the common risk (*cf. M'Neice*, 1911 S.C. 12; *Warner*, [1912] A.C. 35), then it is open to conclude that the accident did not arise out of the common risk but out of the employment.

It was said by the County Court judge in *Andrews'* case ([1904] 2 K.B. at 35)—"In this case, therefore, if I come to the conclusion that as a matter of fact the position in which the man was working was dangerous, and that in consequence of the dangerous position the accident occurred, I could fairly hold that the accident arose out of the employment. Now was it a dangerous position? Was the man exposed to something more than the normal risk, which everybody, so to speak, incurs at any time and in any place during a thunderstorm? We know that lightning is erratic, and possibly no position or circumstances can afford absolute safety. But if there is under particular circumstances in a particular vocation something appreciably and substantially beyond the ordinary normal risk which ordinary people run, and which is a necessary concomitant of the occupation the man is engaged in, then I am entitled to say that the extra danger to which the man is exposed is something arising out of his employment; and if in consequence of that extra danger a fatality occurs, I am entitled to say that the section applies, and the applicant is entitled to recover"; and in quoting with approval this statement, Collins, M.R., added—"I should be unable, I think, to frame a more accurate direction than this if I had to direct a jury in such a case."

I think that on such a direction the

learned Sheriff-Substitute here was entitled to find for the workman in respect that though the results of a storm of such intensity as occurred on 26th November 1912 are a general risk, the fact that he was engaged in the open air bending over to adjust heavy machinery is a fact from which it may reasonably be deduced that under the circumstances of his particular vocation he was exposed to something apparently beyond the normal risk, and that to this abnormal exposure the accident was attributable. If so, we cannot disturb his verdict.

LORD PRESIDENT — I am of the same opinion. I think the case is a narrow one; but, after all, the point that we have to decide is whether there was evidence on which the learned Sheriff-Substitute as arbitrator was entitled to come to the conclusion he did. I think there was.

Upon the general law on the matter I do not think I need say any more, because I really said all I had to say in *Robson, Eckford, & Company* v. *Blakey* (1912 S.C. 334).

LORD KINNEAR—I agree with both your Lordships.

The Court answered the question of law in the case in the affirmative and dismissed the appeal.

Counsel for the Appellants—Constable, K.C.—MacRobert. Agents—Bonar, Hunter, & Johnstone, W.S.

Counsel for the Respondent — Cooper, K.C.—D. P. Fleming. Agents—Warden & Grant, S.S.C.

Tuesday, July 15.

FIRST DIVISION.

NORTH BRITISH RAILWAY COMPANY *v.* WINGATE.

Railway — Statute — Dividend — Ascertainment—Half-Yearly or Yearly Calculation —North British Railway Act 1888 (51 *and* 52 *Vict., cap.* clxiii), *sec.* 47 — *Railway Companies* (*Accounts and Returns*) *Act* 1911 (1 *and* 2 *Geo. V, cap.* 34), *sec.* 4 (1).

The North British Railway Act 1888, which, *inter alia*, authorised the directors to prepare a scheme for the consolidation of certain existing stocks, enacts—Section 47—"Any preference share or preference stock which may be issued in pursuance of such scheme shall be entitled to the preferential dividend or interest assigned thereto out of the profits of each half year in priority only to the ordinary stock of the company, but if in any half-year there are not profits available for the payment of the full amount of preferential dividend or interest for that half-year, no part of the deficiency shall be made good out of the profits of any subsequent half-year or out of any other funds of the company."

The Railway Companies (Accounts and Returns) Act 1911, section 4 (1), enacts—"A railway company shall not be under any obligation to prepare or to submit to their shareholders or auditors statements of accounts or balance-sheets, or to hold ordinary general meetings more than once a year, and anything which under any special Act is authorised or required to be done at a general meeting of a railway company to be held at any specified time may be done at the annual general meeting of the company at whatever time held."

Held that the holders of the deferred ordinary stock of the North British Railway Company were entitled to insist that the dividend upon the preferred ordinary stock should be paid only out of the profits of each separate half-year, and that if in any half-year there were not profits available for the payment in full of the preferential dividend for that half-year, no part of the deficiency should be made good out of the profit of the next or any subsequent half-year or out of any other funds of the company.

On 20th May 1913 the North British Railway Company, *first parties*, and George Wingate, C.A., Glasgow, *second party*, brought a Special Case for the determination of their respective rights in connection with the declaration of dividend on the preferred and deferred ordinary stock of the company.

The Case stated:—"1. The first parties are the North British Railway Company, incorporated by Act of Parliament, and are a railway company within the meaning of the Railway Companies (Accounts and Returns) Act 1911, hereinafter called the Act of 1911. The second party is a chartered accountant in Glasgow, and is the registered proprietor of £3100 of North British Deferred Ordinary Stock of the first parties, and a shareholder of the first parties within the meaning of the Act of 1911.

"2. At 31st July 1888 the capital of the first parties was—

"*Loan Capital* - - - -		£8,539,619
"*Share Capital*—		
Consolidated Lien Stock - - -	£4,623,883	
Preference Stocks -	15,487,521	
North British Ordinary Stock - -	4,625,868	
Edinburgh and Glasgow Ordinary Stock - -	2,422,485	
		27,159,757
		£35,699,376

"3. The North British Railway Act 1888 (51 and 52 Vict. cap. clxiii), hereinafter called the Act of 1888, which received the Royal Assent on 7th August, 1888, provided, by section 47, as follows:—'47. The directors may prepare a scheme for the consolidation, division, or conversion of North British