Friday, November 6.

SECOND DIVISION.

[Sheriff of Lanarkshire.

MITCHELL *v.* THE COATS IRON AND STEEL COMPANY.

Reparation — Master and Servant — Employers Liability—Defect in "Ways"—Order to which Workman Bound to Obey—Employers Liability Act 1880 (43 *and* 44 *Vict. c.* 42), *sec.* 1, *sub-secs.* 1 *and* 3.

A brakesman on a locomotive engine used to draw waggons in an ironwork, was ordered by the engine-driver, whose orders he was bound to obey, to get off the engine while it was in motion and replace on the rails one of the waggons which had got off. In course of obeying the order the brakesman had stepped on to the footboard of the engine in order to get off it, when one of his feet was struck and severely injured by a bar of iron projecting so as to overlap the footboard from a heap of puddled iron bars which were, according to a custom of the works, laid down near the rails waiting for removal to another part of the works. *Held* that the accident was the result of a defect in the "ways" used in the defenders' business, implying negligence on their part under sub-sec. 1 of sec. 1 of the Employers Liability Act 1880; and that they were also, through the driver, guilty of the negligence specified in sub-sec. 3 of sec. 1 of the Act, and were therefore on both grounds liable in reparation to the pursuer.

The proved or admitted facts of this case were as follows:—John Mitchell, the pursuer, was employed as a brakesman on a locomotive engine used in the works of the defenders, the Coats Iron and Steel Company at Coatbridge. On the 30th of May 1884, while the engine on which he was employed under the charge of an engine-driver whose orders he was bound to obey, was drawing a train of waggons from one part of the works to another at a rate of about two miles an hour, the pursuer was ordered by the engine-driver to get off the engine and "road" or replace on the rails one of the waggons which had gone off the line. In order to obey this order the pursuer stepped, the train being in motion, with both feet on to the footboard of the engine, which was about two feet from the ground. As soon as he had done so, his right foot was caught by a bar of iron, which penetrated to the bone, causing a severe injury. The bar of iron was one which projected so near to the line as to graze the buffer of the engine. It formed part of a heap of puddled bar iron in the rough state which lay by the side of the rails. It was the custom in the works to lay down this iron after it was puddled in heaps near the line of rails till it was removed to another part of the works to be finished. It was so laid under the superintendence of the gaffers of the squads of men, and with the knowledge of the manager of the works.

The pursuer sued the company alternatively at common law and under the Employers Liability Act 1880. Under the latter conclusion he pleaded that he had been injured through their fault or that of a person for whom the Act made them responsible. The defenders did not dispute the occurrence of the accident as above narrated, but denied negligence on their part, averring that the pursuer was aware of the place where the iron was lying, and that the accident was entirely owing to his own negligence. They pleaded (1) no responsibility for the accident from negligence on their own part or of those for whom they were responsible; (2) exclusion of the pursuer's claim by the accident being the result of his own negligence; (3) the absence of defect in the condition of the "ways," works, machinery, and plant in their works, and competence of the engine-driver for his duties.

The Sheriff-Substitute (MAIR) found that it was not proved that the injury sustained by the pursuer was caused through the fault or negligence of the defenders, and therefore assoilzied them.

The Sheriff (CLARK) on appeal pronounced this interlocutor:—"Finds that on or about 30th May 1884 the defenders, or those for whom they are responsible, allowed a bar of iron among a heap of others to lie in such proximity to the line of railway within their works that it would necessarily come in contact, and did, as the event showed, come in contact, with the engine working on the said line: Finds that this conduct on their part constituted a fault in terms of sec. 1, sub-sec. 1, of the Employers Liability Act: Finds that thereafter the driver of the engine, who represented the defenders, and whose orders the pursuer was bound to obey, ordered the pursuer to descend from the said engine in order to bring into its proper place a waggon that remained unattached to the train: Finds that in obeying the said order the pursuer's foot was caught by the projecting bar of iron before referred to, and that he received the injuries libelled: Finds that in this second respect the defenders were, through their driver, guilty of the negligence specified in sec. 1 of the aforesaid Act, sub-sec. 3, and that in respect of both such faults they are liable in reparation to the pursuer: Therefore recals the interlocutor appealed against: Finds the defenders liable in damages to the pursuer; assesses the same at £60 sterling, for which decerns against the defenders in pursuer's favour, &c.

"*Note.*—It seems to me very plain on the proof in this case that the defenders are liable to the pursuer on two grounds, which become all the stronger when they are taken in combination. In the first place, the defenders were bound to keep the ways, works, machinery, and plant in a proper state. It is plain that they did not do this, when they allowed to be laid down a quantity of bar iron in close proximity to their line of railway so that one of the said bars should come in contact with the engine as it passed. The next fault was, that while matters were in this state they, through their driver, for whom they are responsible, ordered the pursuer to descend from the engine at a point where he must in all probability have come in contact with the said piece of iron. It was strongly urged that the pursuer might himself have seen that the piece of iron unduly projected. Such an assumption is not to be made in the face of its denial, unless on some very clear grounds. Now, it is not credible that the pursuer would have gone into a

danger of this kind if he had known of its existence ; and it is very clear from the evidence that in obeying the order given him, and which he was bound to obey, his face was for the moment turned from the direction in which the engine was proceeding. Upon the whole it seems to me that liability is here established under the Employers Liability Act on the two grounds stated, unless that Act is to be read in entire discord with the obvious intentions of the Legislature. As regards the amount of damages, on due consideration of the whole case it seems to me that £60 is a fair amount of damages to be awarded. I may mention that I had the advantage of seeing the pursuer present in Court at the diet of appeal."

The defenders appealed to the Court of Session, and argued—No liability was shown under sub-sec. 1 of sec. 1; defect in "ways" must mean in the substance of the "ways," and none such was shown here either in the permanent way or in the rails or otherwise—*M'Giffin* v. *Palmer's Shipbuilding Company*, L.R., 10 Q.B.D. 5. Putting a bar of iron in the wrong place was not a defect in "ways." Nor was liability shown either under sub-sec. 3, for the pursuer was not bound to have obeyed an order in the presence of a known danger. He was bound to have waited till the engine had passed the iron. The accident was not the result of obedience to the order but of his own rashness.

Replied for the pursuer—The facts disclosed a dangerous system in this work in laying the iron so near the line of rail, and that produced a defect in the "ways" by rendering them unsafe—*Grant* v. *Drysdale*, June 12, 1883, 10 R. 1159. There could not be said to have been a seen danger, because the accident happened while the pursuer was on the engine—he had not reached the ground. He was obeying the order in the only way he could, and had only begun to do so when the accident happened.

At advising—

Lord Justice-Clerk—This is an action arising out of an accident causing personal injury to an employee of the Coats Iron and Steel Company. He alleges that it occurred through their negligence or that of those for whom they are responsible. The nature of the occurrence was that there had been left in the vicinity of the railway on which the engine of which the pursuer was brakesman was running, a heap of pig iron, a bar of which caught the foot of the pursuer as the engine passed. The Sheriff has found that the driver, who represented the defenders, ordered the pursuer to descend from the engine. He has further found that the defenders were, through the driver, guilty of the negligence specified in sec. 1, sub-sec. 3, of the Employers Liability Act 1880. In all these cases the line between liability and non-liability is not very clearly defined. We have had difficulty and some difference of opinion in arriving at a decision in the present case. But on the whole matter we are not inclined to disturb the judgment of the Sheriff, and accordingly we shall pronounce an interlocutor affirming that judgment.

Lords Young, Craighill, and Rutherfurd Clark concurred.

The Court pronounced this interlocutor :—

"Find that the injuries sustained by the pursuer were caused by the fault of the defenders in placing or allowing to be placed a bar of iron so near to the line of railway as to come in contact with the pursuer's foot when leaping from an engine belonging to the defenders in compliance with the order of the driver, for whom they were responsible, and whom the pursuer was bound to obey, to adjust a waggon on the line: Find that the defenders are liable to the pursuer in damages accordingly: Therefore dismiss the appeal; affirm the judgment of the Sheriff appealed against; of new ordain the defenders to make payment to the pursuer of the sum of £60 sterling, with interest thereon at the rate of 5 per centum per annum from 7th February last: Find the pursuer entitled to expenses in the Inferior Court and in this Court," &c.

Counsel for Pursuer (Respondent)—Shaw—Craigie. Agents—Ker & Smith, W.S.

Counsel for Defenders (Appellants)—Young—Orr. Agents—W. Adam & Winchester, S.S.C.

REGISTRATION APPEAL COURT.

Friday, November 6.

(Before Lords Mure, Craighill, and Fraser.)

[Sheriff-Substitute of Lanarkshire.

BROWN *v.* MARTINS.

Election Law—County Franchise—Joint-Lodgers. Two sons had in their father's house a bedroom each and the joint use of a parlour. They paid him a rent therefor, and also paid separately for their board. *Held* (the rooms being of the requisite value) that they were entitled to be registered as joint-lodgers.

At a Registration Court for the North-West Division of Lanark, Thomas Bow Martin and Henry Robertson Martin claimed to be entered on the roll of voters for the North-Western Division of the county of Lanark, as being joint-lodgers occupying jointly a parlour and bedrooms in Caledonia Villa, Baillieston, the rent for which was paid to their father, Peter Martin, Caledonia Villa, Baillieston.

It was objected by Richard Brown, a voter on the roll, that (1) The claimants were not lodgers or joint-lodgers in the sense of The Representation of the People Acts; (2) That they did not occupy the parlour claimed for "separately and as sole tenants;" and (3) Assuming the claimants to be lodgers or joint-lodgers, the premises alleged to be occupied by them were not of sufficient value to qualify for enrolment.

The Sheriff-Substitute (Mair) sustained the claims and enrolled the claimants as joint-lodgers.

Brown took a Case.

The facts were:—"The claimants live in family with their father, the said Peter Martin, in a house consisting of eight apartments, viz., Dining-room, drawing-room, parlour, four bedrooms, and kitchen—the rent of the house being