party signing receiving value, and with the view of assisting or accommodating his co-signatory. If there is no presumption of fact as to the liability *inter se* of the joint obligants, the question of liability must be investigated by proof at large if, as I assume, there is no limitation to writ or oath. In this case the proof is clear that Robert Crosbie received the whole proceeds of the bill, and in a question with his mother, who has paid the bill, is liable in total relief.

2. In regard to the bill for £250 I should only say this, that Mrs Crosbie is holder as indorsee, and *prima facie* is entitled to enforce it against the bankrupt, who is the acceptor, and the proof, so far from displacing this assumption, appears to me to support it.

LORD KINNEAR—By their joint acceptance of the bill for £100 Mrs Crosbie and her son Robert are placed in the position of joint obligants in a question with the drawer, but their reciprocal obligations *inter se* are not determined by anything on the face of the bill. If, then, reciprocal obligations are to be ascertained at all, and they are not constituted by written instrument, they must be ascertained by parole proof. There is no question of the rule of law that if one of two joint obligants pays more than his share of the debt he is entitled to relief against the other obligant, and the fact of payment, as well as the facts which go to show that the actual payment has exceeded the obligant's share, are proper subjects for judicial inquiry. In this case it is proved that Robert Crosbie received the contents of the bill and that the bill has been met by Mrs Crosbie, and if he got the money for his own purposes, and she has paid the whole amount, the consequence is that she has paid his debt, and is entitled to be reimbursed by him. I know of no rule of law which should prevent the mother from making good this claim, and it does not appear to me to be necessary to consider any question as to the application of section 100 of the Bills of Exchange Act 1882. As to the claim upon this bill for £250, I have nothing to add to what your Lordships have said.

The Court pronounced this interlocutor—

"Sustain the appeal: Recal the interlocutor of the Sheriff-Substitute dated 15th June 1900, together with the deliverance of the trustee dated 4th April 1900: Remit to the trustee to rank and prefer the claimant appellant, in terms of her claims as stated in her affidavit and claim, with the exception that the interest found due on the bill for £250 is restricted to interest on £200; and decern: Find the respondent liable to the appellant in expenses, and remit the accounts thereof to the Auditor to tax and to report."

Counsel for the Appellant—Dove Wilson. Agent—Arthur B. Paterson, W.S.

Counsel for the Respondent — Cook. Agents—E. A. & F. Hunter & Company, W.S.

Tuesday, November 27.

FIRST DIVISION.

[Sheriff Court of Lanarkshire.

MONAGHAN *v.* THE UNITED COLLIERIES, LIMITED.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *secs.* 1 (1) *and* 7 (1) *and* (2)—*Mine—Coal Mines Regulation Act* 1887 (50 *and* 51 *Vict. c.* 58), *sec.* 75—*Employment on, in, or about Mine—Colliery Siding—Junction with Main Line—Employment on Colliery Engine — Engine Used for Work Unconnected with Mining.*

By section 7 (1) of the Workmen's Compensation Act it is enacted that the Act "shall apply only to employment by the undertakers . . . on or in or about," *inter alia*, "a mine." By section 7 (2) it is declared that "mine means a mine to which the Coal Mines Regulation Act 1887 . . . applies." By section 75 of that Act it is declared that "mine" includes every shaft in the "course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground, in and adjacent to and belonging to the mine."

A workman in the employment of the proprietors of a colliery as brakesman of a pug-engine used in connection therewith, proceeded with his engine along a siding belonging to the colliery, and was directed by the engine-driver to detach two empty waggons from a train on the line of the Caledonian Railway in order that the engine might take them to a sand-hole three or four hundred yards distant on the Caledonian line. The length of the siding from the colliery to the line was about 80 yards; it was not used in connection with any other pit. The colliery proprietors had contracted with the tenant of the sand-hole to remove the sand for him by means of the colliery engine, but in the railway company's waggons, the practice being that the waggons were taken to the sand-hole by the engine, loaded there, brought back to the colliery siding where they were weighed, and finally removed by the railway company. The sand-hole traffic had no connection with the working of the mine as such. While engaged in uncoupling the waggons as directed the workman was killed.

Held (*diss.* Lord Adam) that the accident arose out of and in the course of the deceased's employment on or in or about a mine within the meaning of the Coal Mines Regulation Act 1887, section 75, and the Workmen's Compensation Act 1897, and that his employers were liable in compensation.

In a claim under the Workmen's Compensation Act 1897, at the instance of

Mrs Bevis Slamin or Monaghan, mother of the late James Slamin, against the United Collieries, Limited, the following facts were found proved by the Sheriff-Substitute of Lanarkshire (GUTHRIE): — "1. That the appellant's son James Slamin was employed by the respondents as brakesman of a pug-engine used in connection with their collieries at Victoria Pit, near Motherwell. 2. That the said James Slamin on 5th March 1900 proceeded with said engine along the siding belonging to the colliery, and was directed by the engine-driver to detach two empty waggons from a train on the line of the Caledonian Railway in order that the respondents' said engine might take them to a sand-hole 300 or 400 yards distant on the said Caledonian line towards Motherwell. 3. That while the said James Slamin was engaged in uncoupling said waggons he was caught between the buffers of these waggons and of the waggons still remaining on the line, and so injured that he died within a few minutes thereafter. 4. That the respondents had contracted with the tenant of the sand-hole—a Mr Fleck—to remove the sand for him from said sand-hole by their said engine in the Railway Company's waggons. 5. That the two waggons in question were to be taken to the sand-hole by said pug-engine, loaded there, brought back to the defenders' siding, weighed there, and thereafter removed by the Railway Company. The sand-hole traffic had to do with the collieries only in so far as the colliery engine was used by agreement to carry the sand to Caledonian Railway trains, which were made up at or near the colliery siding."

On these facts the Sheriff-Substitute found in law that the work which the said James Slamin was doing at the time of his death was not employment on, in, or about a mine. He accordingly assoilzied the respondents and found them entitled to expenses.

At the instance of the claimant the Sheriff-Substitute stated a case for appeal.

The question of law was as follows:— "Whether in the circumstances the death of James Slamin, the appellant's son, was caused by accident arising out of and in the course of his employment as a workman with the respondents on or in or about a mine?"

It was admitted by the parties that the length of the siding from the pit to the Caledonian Railway line was about 80 yards.

The following cases were cited by the parties—*Chambers* v. *Whitehaven Harbour Commissioners* [1899], 2 Q.B. 132; *Bell & Sime, Limited* v. *Whitton*, June 16, 1899, 1 F. 942; *Lowth* v. *Ibbotson* [1899], 1 Q.B. 1003; *Turnbull* v. *Lambton Collieries, Limited*, May 7, 1900, 16 T.L.R. 369; *Francis* v. *Turner Brothers* [1900], 1 Q.B. 478; *Fenn* v. *Miller*, March 10, 1900, 16 T.L.R. 265; *Lysons* v. *A. Knowles & Sons* [1900], 1 Q.B. 780.

At advising—

LORD PRESIDENT—The question submitted for our opinion is, whether the death of James Slamin, the appellant's son, was caused by accident arising out of and in the course of his employment as a workman with the respondents on or in or about a mine.

The material facts are that James Slamin was employed by the respondents as brakesman of a pug engine in connection with their collieries at Victoria Pit near Motherwell; that on 5th March 1900 he proceeded with that engine along the siding belonging to the colliery, and was directed by the engine-driver to detach two empty waggons from a train on the Caledonian Railway line in order that the pug engine might take them to a sand-hole 300 or 400 yards distant on the Caledonian Railway line towards Motherwell; that while he was engaged in uncoupling these waggons he was caught between the buffers of these waggons and of the waggons still remaining on the line, and so injured that he died within a few minutes thereafter; that the respondents had contracted with the tenant of the sand-hole to remove the sand for him from the sand-hole by the pug engine in the railway company's waggons; that the two waggons in question were to be taken to the sand-hole by the pug-engine, loaded there, brought back to the respondents' siding, weighed there, and afterwards removed by the railway company. The sand-hole traffic had to do with the collieries only in so far as the colliery engine was used by agreement to haul the sand to Caledonian Railway trains, which were made up at or near the colliery siding.

By section 7 (1) of the Workmen's Compensation Act 1897 it is declared that the Act shall apply only to employment by the undertakers as therein defined on or in or about (*inter alia*) a mine, and by sub-section (2) it is declared that "mine" means a mine to which the Coal Mines Regulation Act 1887 or the Metalliferous Mines Act 1872 applies.

By section 75 of the Coal Mines Regulation Act 1887 it is declared that "mine" includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground, and adjacent to and belonging to the mine. The last "and" in this definition appears to be used as equivalent to "or."

From the statements made at the bar I understood the parties to be agreed that the length of the siding from the Victoria Pit to the Caledonian Railway line is about 80 yards, and that the siding has no connection with and serves no other pit.

If such an accident had happened to Slamin at the place where it did happen, when waggons used in the ordinary colliery business of the respondents were being uncoupled or moved into or out of the siding in pursuance of that business, I should not have thought it doubtful that the accident arose out of and in the course of Slamin's employment by the respondents on, in, or about a mine within the meaning of section 7 of the Act of 1897, and what actually did happen was different only in

respect that the waggons were not at the time being used in the proper business of the colliery. Slamin was however working in the employment of the respondents, with their pug engine, under the orders of their servant the driver, in a matter outside of the proper business of the colliery, but incidental to that business in the sense that the sand-haulage provided employment for the pug engine when it was not fully employed with proper colliery work. The proximity of the *locus* to the siding was such that I think it was "about" the colliery in the sense of the statute in so far as local situation is concerned, and I cannot say that the character of the work which was being done could not be reasonably described as incidental to the colliery business, and in that sense also "about" a mine. I suppose the profits of the sand haulage would be treated as profits of the colliery, though we are not informed as to this.

For these reasons I consider that the question put in the case should be answered in the affirmative.

LORD ADAM—It appears, from the facts stated in this case, that the appellant's son James Slamin, on 5th March 1900, met with an accident, from the effects of which he died in a few minutes. The present claim is made in respect of his death. Slamin, when the accident occurred, was in the employment of the respondents, who are owners of the collieries at the Victoria Pit near Motherwell. He was brakesman of a pug engine used in connection with their collieries. On the occasion in question he had proceeded with his engine along a siding belonging to the colliery, in the direction of the Caledonian Railway. We are not told whether the engine had quitted the siding and was on the line of the Caledonian Railway, but however that may be, he was directed by the engine-driver to detach two empty waggons from a train on the line of the Caledonian Railway. While he was so engaged he was caught between the buffers of these waggons and of the waggons still remaining on the line, and so injured that he died. We are not told how the accident occurred—whether through the fault of Slamin himself, or of the Caledonian Company's servants, or how otherwise, but probably that is not material.

It further appears that the reason why Slamin was so employed at the time of the accident was that the respondents, not having apparently full occupation for the pug engine at their collieries, had contracted with a Mr Fleck, the tenant of a sand-hole on the Caledonian line, some 300 or 400 yards distant from the place of the accident, to remove the sand for him in the Caledonian Company's waggons by their pug engine. On the occasion in question the two waggons, which Slamin was uncoupling, were to have been taken to the sand-hole, loaded there, brought back to the respondents' siding, weighed there, and thereafter removed by the Caledonian Company.

It is in these circumstances that we are asked whether Slamin's death was caused by accident arising out of and in the course of his employment, as a workman with the respondents, on, in, or about a mine.

I think that it is clear that at the time of the accident Slamin was on the line of the Caledonian Railway, and was not on the respondents' siding, or in any part of their collieries; but I think that it is equally clear that he was in the immediate vicinity of the siding, which, admittedly, is a part of their pit or mine.

I think it is also clear that he was not at the time employed in any work in connection with the mines. The work he was employed on was Mr Fleck's work—the removal of sand from the sand-pit.

I think, therefore, that the question in this case comes to be, whether because Slamin was injured in the immediate vicinity of the mine, and in that service "about" the mine, a claim for compensation arises, although he was not at the time engaged in work connected with the mine.

The clauses of the Workmen's Compensation Act which deal with this matter are sections 1 (1) and 7 (1).

Section 1 (1) declares that "if in any employment to which this Act applies, personal injury by accident arising out of and in the course of the employment is caused to a workmen," his employer shall be liable to pay compensation. Section 7 (1) defines the employments to which the Act applies. It enacts that the Act shall apply only to employments by the undertakers on, in, or about a railway, factory, mine, and so on.

Now, it appears to me that the word "employment" as used in the Act refers to the nature or character of the work at which the workman is actually employed at the time of the accident, and that the accident must have arisen out of and in the course of that employment. The Act, it appears to me, does not concern itself with the contract between the employer and the workman. Nor do I think it material that the respondents were in this case both owners of the mine and contractors for the removal of the sand. The material fact is that on the occasion in question Slamin was being employed by them in their character of contractors.

The question therefore appears to me to be, whether or not the employment at which Slamin was engaged at the time, and in the course of which he was injured, was one to which the Act applies. Now, the employment at which Slamin was engaged at the time was that of removing sand from Mr Fleck's sand-pit, an employment to which it is not said that the Act applies, and with regard to which it is found in fact that "it had to do with the collieries only in so far as the colliery engine was used by agreement to carry the sand to Caledonian Railway trains, which were made up at the colliery siding."

Does, then, an employment to which *per se* this Act does not apply, become an

employment to which the Act does apply because the place where the accident occurs happens to be "about" the mine, in the sense only that it occurred near or in the immediate vicinity of it? I cannot accept that construction of the Act, which seems to me to lead to the conclusion that any accident to a workman in the course of his employment, no matter what the nature of that employment may be, will give rise to a claim for compensation under the Act, provided only the accident occurs near or in the vicinity of a railway, factory, or mine.

When the Act declares that it shall apply to employment on, in, or about a railway, factory, or mine, I think it has reference to the nature and character of the work carried on at such undertakings, and that by the introduction of the word "about" a railway, factory, or mine, no more is intended than that a workman who is employed in or on a railway, factory, or mine shall not be excluded from the benefit of the Act, which otherwise he would have had, merely because the accident has occurred outside the area of the railway, factory, or mine.

For these reasons I think the question should be answered in the negative.

LORD M'LAREN concurred with the Lord President.

LORD KINNEAR—The question is one of some difficulty. But I have come to the same conclusion as the Lord President and Lord M'Laren, and for the same reasons.

By the first section of the statute an employer is liable in compensation to his workman only in cases where the workman has been personally injured by accident arising out of and in the course of employment to which the Act applies; and the employments to which the Act applies are enumerated in the seventh section. Reading these two sections together, it seems to be clear that to establish the claim for compensation three conditions must be satisfied—(1) The injured workman must have been in the employment of persons who answer the statutory description of undertakers. (2) The employment must have been in or about a railway, mine, factory, or engineering work, or on, in, or about buildings in the course of construction under certain conditions. (3) The accident must have arisen out of and in the course of the employment.

(1) The first point creates no difficulty. The deceased was employed by the respondents as a brakesman on a colliery siding belonging to them; the word "mine," as used in the statute, by the definition includes the siding; and the respondents as owners are beyond question undertakers within the meaning of the statute in respect of the mine and its siding.

(2) The second point also is, I think, satisfactorily established. In all the cases, so far as I know, in which we have had occasion to construe the words "on, in, or about," they have been held to define the locality at which the injured man must be employed in order to found his claim for compensation. It may be, as the respondents maintain, that the mere presence of a servant of the undertakers in a mine or factory when an accident happens will not bring him within the scope of the Act if he is not employed to work in such mine or factory. But in applying that doctrine to the present case it must be kept in view that it is not necessary that the deceased should have been employed in the mine proper. It is enough that he was employed on the siding, which for the purpose of the statute is just as much part of the mine as the underground workings. Accordingly it is not disputed that if the accident by which the deceased man was injured had happened to him while at work on the siding this condition would have been satisfied, because what the Act calls a mine includes, according to the definition, a siding. On the other hand, it is clear enough that the Caledonian Railway is not on or in either the mine proper or the siding. The question then is, whether the particular part of the line where the accident happened is or is not "about" the siding. I think it is. In *Powell* v. *Brown* it was held that "about" was an enlarging word, and that the Legislature had not confined the Act to employment on or in a factory, or on or in the other places specified; the language of the section would be satisfied if the employment were in close proximity to one or other of such places. Was the injury, then, sustained at a place near enough to the siding to come within the scope of the Act? The Sheriff's statement as to this is not perhaps so distinct and specific as it might have been. But he says enough to make it plain to my mind that the uncoupling of waggons, which is the operation out of which the accident arose, took place at a point on the line so close to the siding as to come within the words "on or about" if any force is to be given to these words. The case seems to me in this respect to be very similar to *Powell* v. *Brown*, where a man loading timber into a cart on the street outside the entrance to his master's factory was held to have received an injury "in or about" the factory. On the other hand, it is plainly distinguishable from such cases as the case cited in which a carter was hurt on the high road more than a mile from his employer's factory, or in *Francis* v. *Turner*, where a workman employed in a factory was sent on his employer's business to another factory belonging to a different person, and was injured there by the fall of an engine shed. In each of these cases the locality of the accident was remote from the place at which the employer carried on his business, and persons frequenting it were exposed to other risks than those for which the statute makes the employer responsible.

(3) The remaining question is, whether the accident arose out of and in the course of the employment of the injured man? This is perhaps more troublesome than either of the others, but in my opinion the reasons for the appellant must prevail. There would have been no difficulty if the

waggons which the deceased was ordered to uncouple had been intended to carry coals from the pit-mouth to the Caledonian Railway, or materials for the use of the colliery from the railway to the pit. But they were intended to be taken to a sand-hole 300 or 400 yards off and there to be loaded with sand, brought back to the respondents' siding and weighed, and thereafter removed by the Caledonian Railway Company; and it is stated that the said traffic had to do with the collieries only in so far as the colliery engine was used by agreement to carry the sand to Caledonian trains which were made up at or near the siding. This makes it clear enough that the carrying of sand for hire was not part of the proper business of the respondents as a colliery company. But that seems to me to be nothing to the purpose. They are not undertakers in respect of their mercantile business, but in respect of their ownership of the mine and siding, and their employment of workmen in these dangerous places. The question therefore is, not what load the waggons were to carry, but whether the making up of the train of waggons in the manner described was work which the injured man was employed by the respondents to do on the siding in respect of which they are undertakers in the sense of the statute? I think that on the statement before us the answer must be in the affirmative. The injured man's employment was not to carry any particular load. What we are told is that he was employed as brakesman of a pug-engine. It must be assumed—for there is no suggestion to the contrary—that the order to detach waggons from a train on the Caledonian line and to attach them to his own engine was a lawful order which the man was bound to obey. In other words, when the accident happened he was acting in obedience to orders, in the discharge of his duty, and in the course of the work he was employed to do. It appears to me irrelevant to inquire what was the contract under which the respondents engaged to carry sand to their siding, or what their reason was for using their engine in that way. They were still undertakers in respect of the siding, they employed the injured man to work upon it, and while he was working on or about it in the ordinary course of his employment he met with the injury which caused his death.

The Court answered the question in the affirmative.

Counsel for the Appellant—Glegg—W. Thomson. Agent—Charles George, S.S.C.

Counsel for the Respondents—W. Campbell, Q.C.—J. C. Watt. Agents—Anderson & Chisholm, Solicitors.

Friday, November 30.

FIRST DIVISION.

[Lord Low, Ordinary.

JAMIESON *v.* WELSH.

Sale—Sale of Moveables—Sale of Moveable "Fittings" along with Heritable Subjects—Missives—Disposition—Missives quoad "Fittings" not Superseded by Disposition—Sale of Heritage.

By missives of sale it was agreed that the proprietor of certain heritable subjects should sell them "with the fixtures and fittings therein." By a disposition following thereon granted by the seller in favour of the purchaser, and accepted by him, the seller disponed merely the heritable subjects in question, no mention being made of either fixtures or fittings. The disposition did not bear to be granted or accepted in implement of the contract as embodied in the missives, nor did it contain any reference to them. The sum in consideration of which the disposition bore to be granted was the same as the price stipulated in the missives.

In an action at the instance of the purchaser against the seller, for the value or cost of replacing or repairing certain articles described as "fixtures and fittings" which were alleged to have been removed or damaged by the defender, the defender maintained that the disposition granted to the pursuer was the sole measure of his right, and that he was not entitled to claim any articles which were not in law fixtures as between seller and purchaser.

Held that, as the missives gave the purchaser right not only to the heritable subjects and their accessories, which were capable of being conveyed by a disposition, but also to "fittings," which were corporeal moveables, and as the disposition did not purport to be granted in implement of any contract, the missives, *quoad* the "fittings," were not superseded by the disposition, and the purchaser's acceptance of the disposition did not prejudice his right to the "fittings" under the missives.

By letter dated 29th March 1899, addressed by Mr Campbell, S.S.C., on behalf of Mr James Jamieson, contractor, Musselburgh, to Messrs Welsh & Forbes, S.S.C., agents for Mr John Welsh, Mr Campbell offered the sum of £1475 "for the subjects known as Greenhall, Musselburgh, as advertised . . . with the fixtures and fittings therein so far as belonging to the proprietor."

On the same date Messrs Welsh & Forbes appended to this offer an acceptance in these terms, "We hereby accept the foregoing offer."

By disposition dated 16th May 1899 Mr Welsh as "heritable proprietor of the subjects and others hereinafter disponed," in consideration of the sum of £475 instantly paid to him by Mr Jamieson, and in consideration of the pursuer freeing and