charge, and in particular for a seven days' charge. If the diligence is otherwise maintainable, I see no objection to the length of the *inducice*, which is in accordance with practice and is warranted by the statutes. The objection really is, that there is no warrant in the Sheriff's decree for any charge. The warrant for the charge, however, is to be sought for not in the decree but in the extract; and that is in order. If the complainers go behind the extract they must challenge the decree itself, and for that purpose it is not sufficient to bring a mere suspension of the charge and its grounds and warrants.

"Then the complainers say that the charge is given under pain of imprisonment, and that imprisonment is not competent, this not being a decree *ad factum præstandum*. I think it is clearly *ad factum præstandum;* and this being so, the complainers' objection, as stated, is rather this, that the Sheriff was not in the circumstances warranted in pronouncing such a decree, seeing that the complainers, who were defenders in the action, made no admission that any such sum was in their hands, and were not in fact able to pay it. These matters seem to me altogether outside the scope of this suspension.

"On the arguments addressed to me I should therefore be prepared to refuse the note. But it appears that while the prayer of the note mentions a single charge, two charges were in fact given, one against the firm of M'Farlane & Company, and the other against Thomas M'Lintock, sole partner of the company, as such partner and as an individual. The first-mentioned charge is clearly bad. The case was, however, fully argued by the complainers without this point being taken; and I think the proper course is to refuse the note as regards the personal charge, and to pass it so far as regards the charge against the firm."

The complainer Thomas Bryce M'Lintock reclaimed, and argued—The charge against him was bad in respect, *interalia*, that it was not conform to the interlocutor. It limited the time within which consignation was to be made to seven days. The question depended on the Sheriff Courts (Scotland) Extracts Act 1892 (55 and 56 Vict. c. 17), section 7, subsection 2, which authorises the Sheriff Clerk, if the decree is one for performance, to insert in the extract a warrant to charge with the "appropriate days of charge." That meant the days mentioned in the interlocutor. He cited the following cases:—*Hendry* v. *Marshall*, February 27, 1878, 5 R. 687, 15 S.L.R. 391; *Middleton* v. *Leslie*, May 19, 1892, 19 R. 801, 29 S.L.R. 657.

Counsel for the respondent referred to the 12th schedule of the Act cited by the complainers and also to section 4 of the Act.

LORD YOUNG—I should have appreciated the point taken by the suspender here if no time had been specified for consignation, and if he desired a time to be specified.

But the time is sufficiently specified—in terms of the Act of Parliament—in the extract decree. The order of the Sheriff-Substitute is to consign a sum of money, and the extract decree says within seven days. I think that is in conformity with the schedule of the statute to which we have been referred, and that the interlocutor of the Lord Ordinary ought to be affirmed.

LORD TRAYNER — I am of the same opinion.

The suspender here has stated three objections to the validity of the charge in question . . .

The second objection — viz., that the charge was not conform to the decree—appears at first sight to be more serious. The Sheriff-Substitute ordered the complainer to consign £600 in the hands of the Clerk of Court, but fixed no time within which that order was to be implemented. I think that was a defect in his interlocutor, which should have stated the time within which consignation was to be made. But the charge now complained of required the complainer to make the consignation within seven days, for which in the Sheriff-Substitute's interlocutor there was no warrant, and but for the provisions of the Act of 1892 (55 and 56 Vict. c. 17) I should have been of opinion that this was a bad charge. But the Act of 1892 provides that the extract of a decree or order for performance of an act (other than the payment of money) may contain a warrant to charge within "the appropriate days" of charge. And the "appropriate days" appear from the 12th schedule to be "seven free days." What, therefore, was wanting in the Sheriff-Substitute's interlocutor is supplied by the statute. Taking the Sheriff-Substitute's interlocutor along with the statutory provision I think the charge complained of was warranted and is not open to challenge on the ground stated by the complainer.

The LORD JUSTICE-CLERK concurred.

The Court adhered.

Counsel for the Complainer and Reclaimer — Crabb Watt. Agents — Clark & Macdonald, S.S.C.

Counsel for the Respondents—Graham Stewart — J. D. Robertson. Agents — Dove, Lockhart, & Smart, S.S.C.

Friday, July 11.

SECOND DIVISION.

[Sheriff-Substitute at Haddington.

CATON *v.* THE SUMMERLEE AND MOSSEND IRON AND STEEL COMPANY, LIMITED.

Reparation—Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1 (1)—"*Arising out of and in the Course of the Employment*"—*Workman Going Home from Work—Mine*—"*On or in or about a Mine.*"

A workman who was employed as a cinder washer at a colliery, after

having finished his day's work was going home along a private branch of railway in the occupation of the colliery company, and leading from the colliery to the main line of the North British Railway. At a point on the private branch line about 230 yards distant from the place where he worked he was killed by an engine belonging to his employers.

Held (*diss.* Lord Young) that the accident was not an accident "arising out of and in the course of his employment," in the sense of the Workmen's Compensation Act 1897, sec. 1 (1), and that his representatives were not entitled to compensation under the Act.

Opinion per the Lord Justice-Clerk, that at the time of the accident the workman was not "on or in or about a mine" within the meaning of the Act.

Opinion per Lord Young *contra*.

This was an appeal in an arbitration under the Workmen's Compensation Act 1897, before the Sheriff-Substitute of the Lothians and Peebles at Haddington (SHIRREFF), between Mrs Elizabeth M'Nicol or Caton, widow of Joseph Caton, labourer there, claimant and respondent, and the Summerlee and Mossend Iron and Steel Company, Limited, appellants.

The facts found proved were as follows:—"1. That the deceased Joseph Caton, labourer, Musselburgh, entered the employment of the appellants at Prestongrange Colliery on 24th December 1901, and with the exception of the Sunday following, worked continuously there until the date of his death on 31st December 1901. 2. That he was employed as a cinder washer at the end of the colliery boilers, about 100 yards distant from the main entrance gate of the colliery opening on the Musselburgh and Prestonpans road. 3. That on 31st December 1901, after the said Joseph Caton had finished his day's work, and while proceeding home along the private branch railway line, in the occupation of the appellants, and leading from their colliery and brickwork to the main line of the North British Railway Company, and when at a point on said private branch line about 230 yards distant from the place where he worked, he was knocked down and killed by an engine and five coal waggons belonging to the appellants. 4. That many of the men employed at the said colliery, particularly those residing at Drummore and Musselburgh, were in the habit of using the said private branch line both in going to and returning from the colliery, to which ingress and egress was had by a gate opening from the appellant's premises on to the public road leading to Musselburgh, and that this route through the appellants' premises to said public road was known as the back road. 5. That the deceased occasionally went home along the private branch line and through the gate on to the said public road, but generally he proceeded home by crossing eight lines of railway or tramway leading to the pit-head and the brickwork belonging to the appellants, and through the main entrance gate on the Musselburgh and Prestonpans public road, known as the front road."

In these circumstances the Sheriff-Substitute found the appellants—the Summerlee and Mossend Iron and Steel Company, Limited—liable to pay compensation to the respondent, which he assessed at £150.

The following questions of law were stated for the opinion of the Court:—"(1) Whether the accident to deceased having admittedly happened after his day's work was done was one 'arising out of and in the course of the employment' within the meaning of said Act? (2) Whether the accident happened (within the meaning of said Act) 'on or in or about a mine,' the deceased having at the time of its occurrence reached a point on his way home 230 yards distant from the place of his employment?"

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) enacts, sec. 1 (1) as follows:—"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 workman, his employer shall, subject as aftermentioned, be liable to pay compensation in accordance with the First Schedule to this Act."

Argued for the appellants—The workman had completed his day's work. The place where the accident happened was 230 yards away from the mine. The Sheriff-Substitute had proceeded on a misinterpretation of the case of *Tod* v. *Caledonian Railway Company*, June 29, 1899, 1 F. 1047, 36 S.L.R. 784. The questions had been settled by authority. *First Question—Holness* v. *Mackay & Davis* [1899], 2 Q.B. 319; *Gibson* v. *Wilson*, March 12, 1901, 3 F. 661, 38 S.L.R. 450. *Second Question—Barclay, Curle, & Company*, v. *M'Kinnon*, February 1, 1901, 3 F. 436, 38 S.L.R. 321; *Brodie* v. *North British Railway Company*, November 6, 1900, 3 F. 75, 38 S.L.R. 38; *Caledonian Railway Company* v. *Bathgate*, December 10, 1901, 39 S.L.R. 246; *Turnbull* v. *Lambton Collieries, Limited*, May 7, 1900, 16 T.L.R. 369.

Argued for the respondent—The Workmen's Compensation Act 1897 incorporates the definition of "mine" in the Coal Mines Regulation Act 1887, under which the term "mine" includes any siding "adjacent to and belonging to the mine"—*Monaghan* v. *United Collieries, Limited*, November 27, 1900, 3 F. 149, 38 S.L.R. 92. The Act of 1897 was intended to cover all risks connected with the employment in question, and the risk continued so long as the employee remained upon the premises of his employer. The cases cited by the appellants supported the respondent's contention.

At advising—

LORD JUSTICE-CLERK—The circumstances of fact out of which this case arose are very clearly stated by the Sheriff, and I do not think that it is necessary to recapitulate them. They apply to a case of a mine,

and the questions are two. (1) Whether the respondent's husband's accident was one "arising out of and in the course of the employment," and (2) whether it happened "on or in or about" a mine in the sense of the statute. I have found myself unable to agree with the Sheriff in the answers he has given to these questions. The deceased at the time of the accident had ceased his work, had left the place where he did it, and was on his way home. He had at the time no duty to fulfil to his master, and his master had no duty to fulfil towards him. The relation of master and servant had ended for the day, he having fulfilled his work and left the place where his work was being done. I am unable to see that had he been coming to his work in the morning, and had met with an accident at the same place, it could have been held that the accident occurred in the course of his employment. That point was ruled by the case of *Gibson* v. *Wilson*, which was referred to in the debate. I am equally unable to hold that he was in the course of his employment when he had left his work and was on his way home from it. A case was quoted in debate where it was held that compensation was properly awarded where a servant of a railway company was killed on the line after his work was done. But while it was true that the work he had to do was finished, it was the fact that, in terms of his employment, he still had a duty to his master to go to a certain place to report himself, and it was while on his way to that place, and at a time when his masters were still chargeable with payment for his time, that the accident occurred. In this case his time of work was over, he was not at his work but had left it, and was 230 yards away from its place. I feel quite unable to hold that the accident which occurred arose out of and was in the course of his employment, or that it happened "on or in or about a mine," in the sense of the statute. It is true that it happened on a railroad used for conveying things to and from the mine in connection with a main line of public railway. But if such a private railroad were a mile or a mile and a-half long, as is often the case, could it be said that an accident occurring at any point on that line occurred "on or in or about" the mine. I am of opinion that it could not. But it cannot, as I think, make any difference that the point on the line was only 230 yards from the mine. If this had been a private road for horse haulage only, could it be said that if a workman were run over by a horse on it that the Act would apply to such an accident? I should say not. And I cannot see that it makes any difference that it was worked by power traction. I hold that the pursuer was not employed in his masters' service at that place, and was not employed "on or in or about" a mine at that place.

I am therefore of opinion that the decision of the Sheriff was wrong, and that the questions in the special case should be answered in the negative.

LORD YOUNG—I think the case is not without difficulty; no case of this kind is. Cases like the present depend very largely on the facts and circumstances of each case. Now, here the Sheriff is of opinion that the workman was employed as the statute requires, on or in or about the premises.

It is true that the deceased had laid down his tools, but before going out of the premises he met with this accident. He was on a private line of railroad by which the employees went to and returned from their work. When he was killed he was 230 yards from the spot where he had been working, but he was nevertheless within the premises where he had been working. If 230 yards is too much, would 20 yards be too much? What would you specify as the distance? I am not prepared to specify any distance. That is to say, it is a question in each case, was he in, on, or about the premises where he was employed. Here I am disposed to agree with the Sheriff that in the circumstances of this particular case the deceased was in the course of his employment when he met with this accident, and therefore I am not disposed to interfere with what the Sheriff has done.

LORD TRAYNER—According to the statement of fact presented in this case, the respondent's husband "had finished his day's work, and while proceeding home" met with the accident which caused his death. The accident occurred "about 230 yards distant from the place where he worked." On these facts I think it clear that the accident which caused the death of the respondent's husband did not arise out of and in the course of the deceased's employment. We were unanimously of opinion in the case of *Gibson* v. *Wilson*, 3 F. 661, that an injury caused to a workman going to his work, and before his day's work began, was not one which could give rise to a claim for compensation under this Act. I think a man going home after his day's work is finished at the time of the injury is in the same position. In neither case is the man engaged in his employment at the time of his injury, and therefore cannot be said to be then injured by an accident arising out of and in the course of his employment. I think the first question put to us should be answered in the negative, and the case remitted back to the Sheriff with instructions to dismiss the application. It is unnecessary to give any answer to the second question.

LORD MONCREIFF was absent.

The Court answered the first question in the negative, and found it unnecessary to answer the second question.

Counsel for the Claimant and Respondent—Campbell, K.C.—Wilton. Agents—Gray & Handyside, S.S.C.

Counsel for the Appellants—Salvesen, K. C.—Hunter. Agents—W. & J. Burness, W.S.