risen faster, but it never could have risen higher than it did. If there had been no fouling of the rope the speed at which the winch was started might have contributed to the force of the blow with which the man was struck. But his injuries cannot be explained except on the view that there was a foul, and in that case I am clearly of opinion that the speed could not have contributed to the accident in any way.

Therefore, upon the whole matter, I think the interlocutor of the Sheriff-Substitute must be altered to some extent. Some of his views, I think, require comment. He says that Markam was to blame because "either he saw the men, in which case he should have warned them before putting on steam, or he did not see the fore deck of the 'Nettle' on account of the height of his own vessel's stem, in which case he ought to have had a man on the forecastle head to see what he himself could not see, to receive the harbour-master's orders and transmit them to him at the winch." These observations I do not think are right. It was not his duty to see to that at all. He knew that Captain Wyness was taking charge of the operation, he knew Captain Wyness had been on board the "Nettle" and he had nothing to do but to obey orders. As to his having some person on the forcastle head to see what he could not see and to receive the harbour-master's orders, I see no ground for that at all. The whole distance between the harbour-master and the winch could not be much more than 30 or 40 feet. Even supposing it had been 50 or 60 feet, there was no need in sending orders from the quay to a man on the deck for another person to pass them on. Then he says he thinks the winch was not started as slowly as it ought to have been. I have already made my observations upon that. It seems to me not proved by the evidence, and further, it cannot have contributed to the accident. If your Lordships agree with me, the result will be to recal the interlocutor in so far as it finds those on board the "Edinburgh" liable and to find the Harbour Commissioners liable.

Lord Low—I concur.

Lord Ardwall—I confess I had some doubts as to whether the owners of the "Edinburgh" are not also liable along with the Aberdeen Harbour Commissioners through their servants for the occurrence of this accident; but having heard the opinion delivered by your Lordship I am not disposed to dissent from the judgment proposed.

Lord Dundas was absent.

The Court sustained the appeal; found in fact that the accident was due to the fault of the servants of the defenders the Aberdeen Harbour Commissioners, that no fault was proved against the other defenders the Caledonian Steam Trawling Company, Limited, and that there was no contributory fault on the part of the pursuer; found in law that the defenders the Harbour Commissioners were liable in damages to the pursuer; decerned against them accordingly for payment to him of the sum of £100, and assoilzied the other defenders.

Counsel for the pursuer moved that the Aberdeen Harbour Commissioners should be found liable for the expenses both of the pursuer and the successful defenders, and argued—The pursuer knew before the action was raised that both defenders were going to maintain counter defences against each other. He was therefore bound to convene them both—*Thomson* v. *Edinburgh and District Tramways Company, Limited*, January 15, 1901, 3 F. 355, 38 S.L.R. 263; *Morrison* v. *Waters & Company*, June 5, 1906, 8 F. 867, 43 S.L.R. 646.

The defenders the Aberdeen Harbour Commissioners opposed the motion, and argued—The pursuer should have selected the party against whom his claim really lay. He was not entitled to convene two defenders and say that liability lay on one or other of them. That being so, he was liable in expenses to the defenders, against whom he had no cause of action—*Mackintosh* v. *Galbraith & Arthur*, November 6, 1900, 3 F. 66, 38 S.L.R. 53.

The Court found the defenders the Harbour Commissioners liable in expenses both to the pursuers and to the defenders the Caledonian Steam Trawling Company, Limited, in both Courts.

Counsel for the Pursuer (Respondent)—Morison, K.C.—A. R. Brown. Agents—Mackay & Young, W.S.

Counsel for the Defenders (Appellants) the Aberdeen Harbour Commissioners—Cooper, K.C.—Sandeman. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Defenders (Appellants) the Caledonian Steam Trawling Company, Limited — Murray — Lippe. Agents — Beveridge, Sutherland, & Smith, S.S.C.

Thursday, March 4.

FIRST DIVISION.

[Sheriff Court at Glasgow.

HAY'S TRUSTEES AND OTHERS *v.* LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Jurisdiction—Sheriff—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *sec.* 6 (*b*)—*Defender having Office within the Sheriffdom—"Place of Business."*

The Sheriff Courts (Scotland) Act 1907 enacts—section 6—"Any action competent in the Sheriff Court may be brought within the jurisdiction of the Sheriff . . . (*b*) When the defender carries on business, and has a place of business within the sheriffdom, and is cited either personally or at such place of business."

An action was raised in the Sheriff Court at Glasgow against an English railway company having their principal place of business in London. The defenders were cited at an office rented by them in Glasgow. At this office the ordinary terminal duties were not performed. Tickets were not issued at it, nor were parcels or goods received for transmission or delivery, but the clerks canvassed for traffic, quoted rates to inquirers, distributed time-tables and advertisements, and collected certain accounts.

Held that the Sheriff had jurisdiction.

The Sheriff Courts (Scotland) Act 1907, section 6 (*b*), so far as material is quoted *supra*, in rubric.

John Hay and others, trustees of the deceased Dr Hay of the Grange, Maryhill, and others, registered owners of the s.s. "The Duke" raised an action in the Sheriff Court of Lanarkshire at Glasgow against the London and North-Western Railway Company, incorporated by Act of Parliament and "carrying on business at 29a Gordon Street, Glasgow," registered owners of the s.s. "Connemara," concluding for £500 damages for injuries sustained by "The Duke" in a collision with the "Connemara" in Carlingford Lough, Ireland.

The defenders averred—"(Ans. 1) Explained that the defenders are a railway company . . . and have their principal place of business at Euston Station, London. England; that they have not a principal place of business within the Sheriffdom of Lanarkshire, and are not subject to its jurisdiction; and that their said steamer is registered at the port of Dublin, her registered number being 104,973."

After the case had been partly heard in the Inner House, the defenders presented a note for leave (which was subsequently given) to amend the record by adding to answer 1 the following:—"The place at which the defenders were cited for the purposes of the present action is an office at 29 Gordon Street, Glasgow, which is rented by the defenders. The chief duty performed by the clerks employed at said office is to wait on traders in order to canvass for traffic to go by the Caledonian Railway or the other Scottish railways and the defenders' line from Carlisle to all parts of England. The office expenses are paid partly by the Caledonian Railway Company. No tickets are issued at said office, nor are parcels or goods received there for purpose of transmission, nor delivered from there. No terminal duties are performed by any of the persons employed at said office. In addition to convassing for traffic, the only other duties performed at said office are the quotation of rates to inquirers; the distribution of time tables and advertisements of defenders' railway; and the occasional collection of special accounts due to the defenders on instructions from the company's head office at Euston. Money received at said office is at once remitted to the defenders' principal place of business at Euston Station, and no bank account is kept at Glasgow for purposes of defenders' business. The said office at Glasgow is in no sense one of the defenders' principal offices nor a principal place of business, and the defenders have not a place of business at Gordon Street, Glasgow, within the meaning of the Sheriff Courts (Scotland) Act 1907."

The defenders pleaded, *inter alia*—"(2) No jurisdiction. (3) *Forum non conveniens*."

On 4th June 1908 the Sheriff-Substitute (FYFE) repelled the defenders' 2nd and 3rd pleas, and allowed a proof.

Note.—" . . . The important plea is the second, and, shortly stated, the question which the defenders there raise is whether section 6 (*b*) of the Sheriff Court Act 1907, and Rule 11 of its first schedule, apply to an English company with a Scotch office. Defenders' agent made a special argument applicable to a railway company, but if the argument has any force at all it must apply on principle to all companies who have a place of business within the jurisdiction of a Sheriff Court in Scotland.

"Section 6 (*b*) of the 1907 Act creates jurisdiction 'where the defender carries on business, *and* has a place of business within the sheriffdom, *and* is cited either personally or *at such* place of business.'

"For the purposes of the relevancy debate it is agreed (1) that the defenders' head office is at Euston Square, London; (2) that they rent business premises at 29 Gordon Street, Glasgow, where they keep a staff of six clerks, and where they transact railway business; (3) that defenders were duly cited at 29 Gordon Street by an officer of Court. *Ex facie*, therefore, the requirements of section 6 (*b*) of the Sheriff Courts Act 1907 have all been met. But the defenders' contention in effect is that the Act does not warrant a defender being sued in the *forum* of his place of business unless that is an important place of business, which although not the head office of the business may reasonably be regarded as a 'principal' place of business.

"This argument is found upon *obiter dicta* of Lord President Inglis in *Jack* v. *North British Railway Company* (1885), 12 R. 1029. There the widow of a man who had been killed at Balloch, in the sheriffdom of Dumbarton, sued the railway company in the Sheriff Court of Lanarkshire at Glasgow. It was conceded that the *locus* of the casualty was not within the jurisdiction of the Glasgow Court, and also that the company's principal domicile was not within the sheriffdom of Lanarkshire. But because the railway company had an office in Glasgow, the Court unanimously held that the action was competently laid at Glasgow, in virtue of section 46 of the Sheriff Court Act 1876. The Court, however, did not, as the defenders' agent seems to think, also decide that had the place of business, which was held to fall within section 46 of the 1876 Act, been situated at some less important place than Glasgow, the action would not have been competently brought there. The competency of bringing that action at some place other than Glasgow was not before the Court at all and was not argued. In indicating an

incidental opinion that as regards a railway company the Legislature probably meant by 'place of business' in the 1876 Act a principal place of business, the Lord President was influenced obviously by the fact that the Companies Clauses and the Railways Clauses Acts of 1845 had recognised that a railway company may have more than one principal office where legal writs might be competently served, and that the provisions of these Acts had not been abrogated by the Sheriff Court Act of 1876.

"I may remark in passing that even were the question in the present case simply whether defenders' place of business in Glasgow is sufficiently important to be regarded as a principal place of business in the sense of these Railway Acts, I should have no hesitation in holding that it is. But upon that I need not dwell.

"The observation of the learned Judge referred to, although entitled to the highest respect, is not binding authority, for it was that most dangerous of all forms of legal pronouncement, *obiter dicta* upon a question not argued before the Court, and not raised directly in the case. Moreover, none of the other Judges indicated that they assented, and one was careful in his opinion to guard himself against being committed to any view. Had the question been argued, I do not doubt that much force would have been laid upon the practical impossibility of deciding at the initial stage of a process which of many branches of a trading concern is a principal place of business, and the inconvenience of having a preliminary proof upon that question. It would also, no doubt, have been argued that if the Legislature had meant either in the 1876 Act or in the recent Act that only a principal place of business was to ground jurisdiction, they would have said so, and been careful to define 'principal place of business'; and that when they used the broad expression 'place of business' the Legislature must be assumed to have meant what they said.

"The 1876 provision was certainly expressed in a somewhat involved fashion, and that Act does not contain any repeal clause, even in general terms, abrogating inconsistent provisions of other statutes. Under the 1876 Act there might possibly have been room to argue various views, even the extreme one that what the 1876 Act alone contemplated was the case of a defender within Scotland who had his domicile of residence in one sheriffdom and his business premises in another sheriffdom, and that it did not apply to an English railway company at all.

"But the 1876 proviso is now dead, for it is specifically repealed in the second schedule of the 1907 Act, and whatever might have been argued under it, there can be no possible room for argument under the unambiguous provisions of the 1907 Act, in virtue of which the present action is laid. That is not complicated by any comparative question of domicile jurisdiction as against place of business jurisdiction, nor is there any dubiety about or limitation of the expression 'place of business.' Moreover, the 1907 Act expressly repeals all inconsistent prior statutory enactments, and even assuming that the Railway Acts and the Sheriff Court Acts read together might, prior to 1907, have been construed to mean that only a railway company's *principal* place of business was a business domicile of citation, there is no room now for such an argument. Under the Act of 1907, if any defender carries on business within any sheriffdom in Scotland, and has any place of business within that sheriffdom, and is there cited in any competent form, or is personally cited elsewhere, that defender is clearly made amenable to the jurisdiction of the Court of that sheriffdom whether the cause of action arose within the sheriffdom or not, and quite irrespective of where the defenders' dwelling domicile or other business domiciles may be. In the present case the defenders do carry on business in Glasgow; there they have a place of business, and there they have been duly cited. There are, therefore, in my opinion no grounds for the defenders' preliminary pleas, and I therefore repel them all."

The defenders appealed to the Sheriff (MILLAR), who on 12th November 1908 affirmed his Substitute's interlocutor.

Note.—". . . . With regard to the question of jurisdiction, section 6 of the Sheriff Courts (Scotland) Act 1907 says—[*The Sheriff read the section quoted supra*]. Defender is interpreted to mean 'any person who is required to be called in any action,' and 'person' is further interpreted to include company, corporation, &c. The *prima facie* interpretation of these sections leads one to the conclusion that the defenders are amenable to the jurisdiction of this Court, because they are a company who admittedly have an office in Glasgow where part of their business is carried on; but the defenders rely upon the judgment of the Lord President in the case of *Jack* v. *North British Railway Company*, 12 R. 1029, where the words 'carrying on business' are interpreted in the case of a railway company. That was an action of damages for an accident which occurred in Dumbartonshire, raised in the Sheriff Court of Lanarkshire against a railway company whose principal office was in Edinburgh, and it was maintained there by the defenders that to allow an action to be brought in any Sheriff Court except in that of the *locus delicti*, or of the principal office of the company, would mean that the defenders would be amenable to the jurisdiction of every Sheriff Court in which they happen to have a side station; that could not be the intention of the statute; and accordingly the Sheriff of Lanarkshire had no jurisdiction. The Lord President, in dealing with this case, pointed out that according to the provisions of the Sheriff Court Act of 1876 the defenders did carry on business in Glasgow, and were therefore amenable to the jurisdiction of the Sheriff Court there. In answer, however, to the argument with regard to the side stations of the railway company, he laid down that

the words 'place of business' in the statute must receive a fair interpretation, and that to find what that is it was legitimate to look at other statutes dealing with the citation of companies, and especially of railway companies, to discover it. He then turns to the Companies Clauses Act 1845, section 137, and also the Railway Clauses Act 1845, section 130, and he deduces from them that the proper meaning of a place of business is a place where an important part of the whole business is carried on, *i.e.*, one of their principal places of business. I do not think that he refers to these statutes as governing the interpretation of the Sheriff Court Act of 1876, but as merely illustrative of what a fair interpretation of the words would be. Now, the argument for the defenders in the present action is that, although they have an office in Gordon Street, Glasgow, in which there are six clerks, which they share with other companies, that it is not a principal office in the meaning of the case of *Jack*, which would make them amenable to the jurisdiction of the Scottish Courts. I do not think that the fair interpretation of the Lord President's judgment is that one was to find the proportion of the work done at the office of citation and the whole work of the company, and if the proportion was small, then the office was not to be held a principal place of business which was to found jurisdiction. It would be enough if it was the principal place of business of a special department of the Company's work. Now, I have no doubt, if the question were put to the manager of the Company, Have you a place of business in Scotland? he would answer, Yes, we have an office in Glasgow with six clerks, where our Scottish work is done. If that is so, I think it falls within the dictum laid down by the Lord President. The case of *Brown* v. *London and North-Western Railway Co.*, 4 B. & S. 326, was differently decided from the case of *Jack*, but I think I am bound to follow the latter decision. In connection with this point, it is interesting to note that in the case of *M'Lauchlin* v. *London and North-Western Railway Co.* (the present defenders), 7 S.L.T. 244, for damages for the death of a son through an accident on a journey in England, brought by a widow residing in Ireland, in the Court of Session, Lord Stormonth Darling says:—'The defenders did not dispute the jurisdiction of this Court in respect of their occupancy of heritable property in Glasgow, but they state the plea of *forum non conveniens*.' I think, therefore, that the learned Sheriff-Substitute was right in repelling the pleas founded upon no jurisdiction."

The defenders appealed.

The appeal was partly heard on 17th December 1908, when the Court continued the cause to allow the defenders an opportunity of amending their record by specifying more exactly the position of their office in Gordon Street. On 18th January 1909 a note was lodged for the defenders and appellants craving leave to amend the record by adding to answer 1 the averment quoted above. The appeal was further heard on 29th January 1909.

Argued for appellants—The defenders did not carry on business, in the sense of the Sheriff Courts (Scotland) Act 1907, at Gordon Street. The opinion indicated by Lord President Inglis in *Jack* v. *The North British Railway Company*, June 2, 1885, 12 R. 1029, 22 S.L.R. 677, that a "place of business," as used in the Sheriff Courts Act, 1876, section 46, meant a principal place of business, was equally applicable to "a place of business," as used in the Sheriff Courts Act, 1907, section 6 (*b*). The office at Gordon Street could not be said to be a principal place of business. Something more was required to make it a place of business in the sense of the Act, such as contracting for the carriage of passengers or goods. Reference was also made to *Laidlaw* v. *The Provident Glass Insurance Company, Limited*, February 27, 1890, 17 R. 544, 27 S.L.R. 354; *in re Brown* v. *The London and North-Western Railway Company*, 1863, 4 B. & S. 326; and *Shiels* v. *The Great Northern Railway Company*, 1861, 30 L.J., Q.B. 331.

Argued for respondents—The Sheriff was right in holding that the defenders carried on business and had a place of business at Gordon Street. They had an office there, and transacted certain business there, and that was sufficient to fulfil the requirements of the Act. It was not necessary there should be a principal place of business. Lord President Inglis' dicta on this matter in *Jack* (*cit. sup.*) were *obiter*, and were, moreover, made with reference to another statute.

LORD PRESIDENT—The question here is raised upon the terms of the recent Sheriff Court Act. By section 6 of that Act it is provided that any action competent in the Sheriff Court may be brought within the jurisdiction of the Sheriff, and then come a number of provisions; and sub-section (*b*) is where the defender carries on business and has a place of business within the sheriffdom and is cited either personally or at his place of business. Now, the defender here is the London and North-Western Railway, and the citation was made upon them at an office at 29a Gordon Street, Glasgow; and the whole question we have to determine is whether the provisions of that sub-section which I have just read apply.

We thought that a little more might be put upon record than had been done as to the exact position of this office in Gordon Street, because one could not help feeling that the learned Sheriff-Substitute, particularly, had rather imported his own knowledge of the place and circumstances into the judgment. But that was done, and your Lordships have now before you a full statement as to what precisely the position is. The position seems to come to this, that undoubtedly the office is there used for the purposes of the London and North-Western Railway Company and for them alone. They do not transact nearly every class of business, which as a railway company they

do transact, at that office; but, on the other hand, it seems to me that they do, in any ordinary commonplace sense of the word, transact business, and, that being so, I have come to the conclusion that the decision of the learned Sheriffs is right.

I do not hesitate to say that I am very much influenced in coming to this conclusion by finding that in another subsection of the section which I have read it is possible to make a defender not otherwise subject to the jurisdiction of the Courts of Scotland subject to the jurisdiction of the Sheriff Court by arrestments *ad fundandam jurisdictionem*. The result of that is to turn this particular plea into an absolutely technical plea. If there was nothing of that sort I think it would be very much for consideration whether it could have been the intention of the Legislature to subject foreigners—because this company is a foreigner—to the jurisdiction of the local Court unless they really had what might be called a considerable—I will not say a principal place of business, but, at any rate, a very considerable—place of business within the jurisdiction. But any such general considerations of what the Legislature must have meant seem to me put out of the question by this other section. We, of course, have nothing to do with the policy of the matter. We have only got to take it as we find it. And, accordingly, I think that, reading the words acccording to their ordinary meaning, there was here a place of business. The defenders were undoubtedly cited at that place of business and therefore there was jurisdiction.

LORD M'LAREN—I concur.

LORD PEARSON—I also concur.

LORD KINNEAR was absent.

The Court pronounced this interlocutor—

"The Lords . . . of new allow the parties a proof of their averments on record as now amended, affirm the interlocutors of the Sheriff and Sheriff-Substitute, dated 12th November 1908 and 4th June 1908, and remit the cause to the Sheriff-Substitute to proceed as accords. . . ."

Counsel for Pursuers (Respondents) — Cooper, K.C. — Blackburn, K.C. — Spens. Agents—J. & J. Ross, W.S.

Counsel for Defenders (Appellants) — Hunter, K.C. — Horne. Agents — Drummond & Reid, W.S.

Thursday March 11.

FIRST DIVISION.

[Lord Guthrie and a Jury.

MITCHELL *v.* CALEDONIAN RAILWAY COMPANY.

STRACHAN *v.* CALEDONIAN RAILWAY COMPANY.

Reparation — Negligence — Contributory Negligence—New Trial.

A, while going diagonally across a double line of rails in a dockyard, was knocked down and injured by a train approaching from behind on the first or nearer set of rails. At the time of the accident another train was passing on the further set of rails, and it was in order to avoid it that A was crossing diagonally. From the evidence it appeared that A was in such a position that had he looked he must have seen the approaching train in time to get off the line. In an action by A against the company the defenders pleaded contributory negligence. The jury found for the pursuer.

Held that the verdict must be set aside as contrary to evidence, in respect that it failed to affirm contributory negligence.

Radley v *London and North-Western Railway Company* (1876), L.R., 1 A.C. 754, *distinguished* and *commented on.*

John Mitchell, measurer, Greenfield Street, Alloa, brought an action against the Caledonian Railway Company for £1000 damages in respect of personal injury sustained through his having been knocked down and run over while crossing a line of rails in Grangemouth Docks, the property of the defenders, owing, as he alleged, to the fault of the defenders' servants. A similar action at the instance of Nathan Strachan, mill-hand, who was also run over and injured on the same occasion, was tried along with Mitchell's action, the evidence in the latter case being held as the evidence in the former.

The pursuer (Mitchell) averred—"(Cond. 2) Between five and six o'clock in the morning of Friday, 15th May 1908, the pursuer along with other workmen was proceeding to his work at the pit prop mill of his employers Messrs Gibb & Austin, which is situated at Grange Dock, Grangemouth, and within the foresaid dockyard. One of the regular and recognised means of access to the mill is by a pathway which runs alongside a double line of railway on the south side of the yard, and which pathway is in the knowledge of the defenders regularly used by the public as a passage or road, not only to Messrs Gibb & Austin's premises, but to several dwelling-houses and other places in the neighbourhood of said premises which are likewise within the dockyard. On the morning in question the pursuer entered the dockyard by the main entrance thereto from the highway, crossed an overhead bridge, and descended by a