"In the second place, the reporter cannot concur in the view that the bequest has become so practically unworkable as to justify the intervention of the Court (*Grigor Medical Bursary Fund Trustees*, 5 F. 1143, 40 S.L.R. 818).

"It is true that petitioners state that in fifteen years only three young men have enjoyed its benefits, but as the bursary is tenable for three years, the result is that during nine years out of the fifteen the funds have been fully employed as directed. The present accumulation amounts to only three years income, and the benefit of this will accrue to any suitable applicant when he presents himself. On the assumption that the testator desired to benefit 'young men' only, the extension would, if the failure of a male applicant in any given year permitted the introduction of a young woman to the bequest, result in the exclusion for the two following years of such male applicant as might emerge after the bursary had been given to a female. The reporter can see no reason why, although admittedly there may be years in which the income is for the moment derelict, the favoured parishes should not from time to time furnish male bursars in such numbers as to render the bequest practically useful."

In the Summar Roll the petitioners moved that the prayer of the petition be granted, and argued that in the circumstances the alteration craved was necessary —*Clark Bursary Fund Trustees*, February 5, 1903, 5 F. 433, 40 S.L.R. 352. There was more than mere difficulty in getting suitable candidates, which of course would not be sufficient — *Grigor Medical Bursary Fund Trustees*, July 15, 1903, 5 F. 1143, 40 S.L.R. 818.

LORD JUSTICE-CLERK—The Court think that the reporter has well stated the grounds on which the petition ought not to be granted at present. Our decision will not prevent the trustees from coming forward with another application if the circumstances change.

The Court dismissed the petition.

Counsel for the Petitioners — Kemp. Agents—W. & W. Finlay, W.S.

Saturday, October 22.

FIRST DIVISION.

[Sheriff Court at Glasgow.

M'NEICE *v.* SINGER SEWING MACHINE COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—*Accident "Arising out of" Employment.*

A salesman and collector, while riding in a street upon a bicycle, in the course of his employment, was kicked on the knee by a passing horse and injured.

Held that the injury was caused by an accident "arising out of" his employment within the meaning of the Workmen's Compensation Act 1906.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Sec. 1 (1)—"If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall . . . be liable to pay compensation. . . ."

Samuel M'Neice, salesman and collector, Cathcart, having claimed compensation under the Workmen's Compensation Act 1906 from his employers the Singer Sewing Machine Company, Limited, Bothwell Street, Glasgow, the matter was referred to the arbitration of the Sheriff-Substitute at Glasgow [Scott Moncrieff], who assoilzied the respondents and at the request of the applicant stated a case for appeal.

The *facts* stated were as follows—"(1) That the appellant was a salesman and collector in the employment of the respondents. (2) That upon 3rd September 1909 he was riding in Holmlea Road, Cathcart, upon a bicycle in the course of his employment, when he was kicked upon the knee by a passing horse and incapacitated from work."

The Sheriff-Substitute further stated—"I found in point of law that as the accident did not arise out of his employment the appellant was not entitled to compensation in terms of the Workmen's Compensation Act 1906. I therefore assoilzied the respondents with expenses."

The *question of law* was—"In view of the findings in fact, was the arbitrator right in holding that the accident to the appellant did not arise out of his employment with the respondents?"

Argued for appellant — *Esto* that the accident arose "in the course of" the appellant's employment, it also arose "out of" it, for he was in the street not as an ordinary pedestrian but in pursuance of his employment. He was therefore entitled to compensation — *Mackinnon* v. *Miller*, 1909 S.C. 373, at p. 379 foot, 46 S.L.R. 299; *M'Donald* v. *Owners of the Steamship "Banana,"* [1908] 2 K.B. 926, at p. 929; *Andrew* v. *Failsworth Industrial Society*, [1904] 2 K.B. 32; *Challis* v. *London & South-Western Railway*, [1905] 2 K.B. 154;

Moore v. *Manchester Liners (Limited)*, July 18, 1910, 26 T.L.R. 618.

Argued for respondents—*Esto* that the accident arose "in the course of" the appellant's employment, it did not arise "out of" it. The Act was not meant to be an insurance against all risks, but only against such as were incidental to the employment. The accident in question was too remote to fall within the Act—*Falconer* v. *London and Glasgow Engineering and Iron Shipbuilding Co., Limited*, February 23, 1901, 3 F. 564, 38 S.L.R. 381; *Armitage* v. *Lancashire and Yorkshire Railway*, [1902] 2 K.B. 178; *Fitzgerald* v. *W. G. Clarke & Son*, [1908] 2 K.B. 796; *Craske* v. *Wigan*, [1909] 2 K.B. 635.

LORD PRESIDENT—I cannot say that I have any doubt in this case, because I think that the matter has really been practically settled by many cases that have already been decided by Judges in this Court, in the Court of Appeal in England, and in the House of Lords.

The accident must, of course, arise both in the course of and out of the man's employment. Well, now, it is admitted that this accident arose in the course of the appellant's employment. He was doing his ordinary business as a canvasser when the accident occurred. The only question to be determined that has been argued before us is whether it arose out of his employment. Now I think it did. I think that it was one of the ordinary dangers to which his employment exposed him, because it is quite clear from the statements before us that his employment as collector forced him to traverse the streets. And I think therefore that a danger which is an ordinary danger in the street—and I think we are entitled of our own knowledge to know that the behaviour of a passing horse is one of the ordinary dangers of the street—is therefore a danger arising out of his employment.

It is quite true that many members of the public are exposed to the same danger, but that does not seem to me to be the criterion. These many members of the public might be either parties who are in employment or who are not, but even if they were parties in employment, they might well be in the street not in the course of their employment, and then there would be no liability. I refer to the ordinary case of a workman who is leaving the factory. After he has once got clear of the factory and is going to his own home in another part of the town, he would not be injured in the course of his employment.

But here the man, in the course of his employment, is compelled to go into the streets. I cannot myself distinguish between this case and the case of a coachman who has to drive about the streets for his master's benefit and not for his own, and is injured. I think the appellant was injured by a danger arising out of his employment.

The precise point is stated most clearly by the Master of the Rolls in the case of *Macdonald* v. *The Owners of the s.s. "Banana,"* [1908] 2 K.B. 926, in the passage to which I alluded in my judgment in *M'Kinnon* v. *Miller* (1909 S.C. 373).

I think therefore that the answer to the question of law must be that the arbitrator was not right, and that the case must be remitted to him to find the proper sum due as compensation.

LORD KINNEAR—I agree with your Lordship. The question before the Court is confined to the soundness of the Sheriff-Substitute's proposition in point of law, that the accident which happened to this man did not arise out of his employment. That is clearly a decision on a point of law, because the Sheriff-Substitute finds as a matter of fact that he was riding upon a certain road upon a bicycle in the course of his employment, and that when he was thus on the road in the course of his employment he was kicked on the knee by a passing horse. And the only question that the Sheriff-Substitute puts for the Court of Appeal is whether that is in the sense of the statute an accident arising out of the employment. I agree with your Lordship for the reasons you have given. According to the statement the man had certainly in the course of his employment to traverse this particular road for his employers' purposes, and therefore the dangers and risks of that particular road at the time and on the occasion in question are to my mind incidental to the employment.

I quite agree also that the judgment your Lordship has quoted is directly in point.

LORD JOHNSTON—I agree that I am bound by the course of previous decisions, and the dicta of those eminent Judges to which your Lordship has referred, to acquiesce in the judgment your Lordship proposes.

LORD SALVESEN was sitting in the Second Division.

The Court answered the question of law in the case in the negative, recalled the determination of the Sheriff-Substitute as arbiter, and remitted to him to proceed as accords.

Counsel for Appellant—Morison, K.C.—T. G. Robertson. Agents—Gardiner & Macfie, S.S.C.

Counsel for Respondents—D.-F. Scott Dickson, K.C.—Mitchell. Agents—Adamson, Gulland, & Stewart, S.S.C.