whether this mark of 17 F was placed upon this timber before a certain date, or the other mark "B. of S." was placed on the remaining portions before a certain date, those matters were not pursued to the end, so that a satisfactory conclusion might have been arrived at on each of those issues of fact. I am far from saying that many of the things which Mr Buckmaster in his very able argument called attention to did not furnish ample ground for a severe and searching cross-examination of Mr Campbell; but the misfortune is that he was never cross-examined upon them. So far from that, it would appear to me, reading the evidence, that his evidence upon that point was more or less accepted during the course of the trial, because I find that all the cross-examination is simply directed to this. He is asked at what particular date he placed these marks upon the timber, and he says he does not remember the date, and there the thing ends. If it were desired to apply for an adjournment, or to get an opportunity of producing witnesses to confute him, or to draw his attention to the documents that were subsequently discovered, I cannot understand why that course was not taken, except upon the basis which I have already indicated, namely, that his evidence was practically accepted as the truth.

Now that being so, despite the able argument which Mr Buckmaster has addressed to your Lordships, how is it possible for us here to say: "Oh, his evidence is not worthy of credit; it is unreliable, owing to his faulty recollection of what took place two years before the action came to proof." Therefore I think your Lordships are driven back to accept the findings of the man who saw the witnesses, and before whom the trial was conducted.

The same remark applies to the second point. It is quite obvious that the witness when cross-examined referred to a number of books which I suppose were on the Bench. We are engaged in a speculation now as to which of the books he meant to refer to, and we, who are sitting here and who have got none of the books, are asked to come to a conclusion different from what the learned Judge came to who had all the books before him, and an opportunity of deciding to which of them the witness referred. I think it is impossible to ask a Court of final appeal, or indeed any court of appeal, to do anything of the kind; and therefore much as I respect the Judges of the Court of Session, I think that they had no, as it appears to me, conclusive reason for rejecting the conclusion to which the Lord Ordinary had come on this second point also. Therefore it appears to me that the only really plain course for your Lordships to take is that indicated by my noble and learned friend on the Woolsack, namely, to accept the findings of fact of the man who saw the witnesses and had these things before him, and to act upon those findings of fact.

LORD SHAW—I have no doubt as to the judgment to be pronounced with regard to the 1166 logs in this case. I had at one time considerable doubt as to the other parcels of 200 and the 100 logs respectively, but my doubt has been resolved on the lines referred to by my noble and learned friend who has just spoken.

As the argument developed, the point came to be so narrow as this, that when one witness is in the box and makes reference to a certain book, and when the Lord Ordinary forms a conclusion as to whether his evidence is upon the whole satisfactory in proving an issue of fact, then at the Bar of this House a question is to be raised as to what was really the book to which that witness referred. I find myself totally disabled from conceiving the idea that at least in the mind of the Lord Ordinary it was not quite plain to which book both counsel and Judge, as well as the witness, were referring. The books were referred to by the witness in the presence of the Judge, and the documents were there also.

I cannot under those circumstances see any justification, so far as my own mind is concerned, for accepting the view of the Inner House in preference to that of the Lord Ordinary, whose judgment of date 20th July 1909 appears to me to be upon all points correct.

Their Lordships varied the interlocutor appealed against, so far as regarded the 200 and 100 logs, by restoring that of the Lord Ordinary.

Counsel for Appellants — Buckmaster, K.C., M.P.—MacRobert. Agents—Cowan & Stewart, W.S., Edinburgh—Lawrance, Webster, Messer, & Nicholls, London.

Counsel for the Respondents, the Bank of Scotland — Clyde, K.C. — Hon. Wm. Watson. Agents—Tods, Murray, & Jamieson, W.S., Edinburgh — Ashurst, Morris, Crisp, & Company, London.

Counsel for the Respondent, G. L. Fraser — Sandeman. Agents — Maclay, Murray, & Spens, Glasgow — J. & J. Ross, W.S., Edinburgh—Thomas Cooper & Company, London.

Tuesday, December 12.

(Before the Lord Chancellor (Loreburn), Lord Atkinson, Lord Gorell, and Lord Shaw.)

LAWRIE *v.* BANKNOCK COAL COMPANY, LIMITED.

(In the Court of Session, March 17, 1911, 48 S.L.R. 629, and 1911 S.C. 817.)

Process — Sheriff — Removal to Court of Session for Jury Trial—Competency—Action of Damages by Father of Deceased Workman against Son's Employers — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *secs.* 13 *and* 14 — *Sheriff Courts (Scotland) Act* 1907 (7 *Edw. VII, cap.* 51), *secs.* 30 *and* 52.

A father, averring that his deceased son had given his earnings for the maintenance of the household, brought in the Sheriff Court against his son's employers an action for damages under the Employers' Liability Act 1880, or alternatively at common law, and had the cause remitted to the Court of Session for jury trial under section 30 of the Sheriff Courts (Scotland) Act 1907. The defenders maintained that, looking to sections 13 and 14 of the Workmen's Compensation Act 1906, the remission was incompetent.

Held that even if the right of one in the position of the pursuer to have his cause remitted had been taken away by the Workmen's Compensation Act 1906, such right had been restored by sections 30 and 52 of the Sheriff Courts (Scotland) Act 1907.

This case is reported *ante ut supra.*

The defenders the Banknock Coal Company, Limited, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—It is our duty, as I understand it, to construe Acts of Parliament so as to give effect to what we are satisfied was the intention of Parliament, if the language used admits of that construction. But we are not at liberty to amplify an enactment so as to include within its ambit matters which upon the plain meaning of the language are not included, even if convinced that the omission was inadvertent and undesigned.

In the present case the question raised is whether or not the pursuer was entitled to have the cause remitted for trial by jury to the Court of Session. I cannot help thinking that it was probably intended in 1906 to preclude the remittal of a cause like this. Possibly it was not intended in 1907 to undo what was thought to have been done in 1906. But I also think that it was undone in 1907.

Upon this subject I agree with the reasoning of Lord Johnston. Taking sections 13 and 14 together of the Workmen's Compensation Act 1906, it seems to me that removal and appeal to the Court of Session are barred (save on a question of law) not only where the action is raised by the workman himself, but also where it is raised by his legal personal representative or his dependants or other persons to whom or for whose benefit compensation is payable. No doubt this is expressed awkwardly by a mere definition clause; and in view of the contrary opinion expressed by the Lord President I cannot say it is free from doubt. I feel that this view leaves anomalies and may make the right to appeal turn upon the dependency of a father upon a deceased son, which may be a disputed fact and may be irrelevant to the action, as pointed out by the Lord President. But I think upon the whole that these sections have the effect described by Lord Johnston, though I do not desire to rest my conclusion upon that ground.

I agree with the Lord President and the other Lords of Session that the right, if taken away by the Act of 1906, was restored by the Sheriff Courts Act of 1907, sec. 30. That section expressly gives the right to remit, as was done here, "in cases originating in the Sheriff Court other than claims by employees against employers in respect of injury caused by accident arising out of and in the course of their employment, and concluding for damages under the Employers' Liability Act 1880, or alternatively at common law or under the Employers' Liability Act 1880."

Here we have in this case an action by the father of a deceased workman, claiming damages for the death by accident of his son against the employers of the son, resting upon common law, or alternatively upon the Employers' Liability Act 1880. How am I to say that this is a claim by an "employee"? There is no definition clause which can be invoked to enlarge the meaning of the word "employee." I do not know whether or not Parliament intended that the employee's father should be in the same position as the employee himself, but it certainly has not said so. I feel that so to hold, as we are asked by the appellants to hold, would be to usurp the function of the Legislature.

I am therefore of opinion that the appeal should be dismissed.

LORD ATKINSON—I concur, and I have only this to add, that though it is not necessary for the decision of this case, as I understand it, to decide what exactly is the meaning of the word "workman" as it occurs in the fourteenth section of the Workmen's Compensation Act 1906, still undoubtedly the present inclination of my opinion is that that section was meant to deal with all actions under the Workmen's Compensation Act which could be raised in Scotland, and that therefore the word "workman" must get the extended meaning put upon it by the definition clause. That certainly is the inclination of my opinion at present, but I hold myself quite free to reconsider the point should it again come before your Lordships' House for decision.

LORD GORELL — The question in this appeal is whether the respondent, who brought an action for damages in the Sheriff Court, alternatively at common law or under the Employers' Liability Act 1880, has the right to remove the cause for trial to the Court of Session, or whether the action must be tried in the court where it was brought. The respondent is the father of a workman who was killed in the appellants' mine on 21st September 1910. The respondent brought an action against the appellants as employers, concluding for damages. £500 at common law or alternatively £179, 8s., in the name of compensation under the Employers' Liability Act 1880, and, *inter alia*, averred that deceased was his only unforisfamiliated son, and contributed all his earnings to his parents for the maintenance of the house. The appellants in their answer admitted the

respondent's right as a dependant to compensation under the Workmen's Compensation Act 1906.

The respondent removed the cause to the Court of Session, relying on section thirty of the Sheriff Courts (Scotland) Act 1907, which provides for such a remit except in certain specified cases. The appellants contended that the present case was one of those specifically barred not only by the Sheriff Courts (Scotland) Act 1907 but also by the Workmen's Compensation Act 1906, but the First Division of the Court of Session, on the 17th March 1911, held that the cause had been competently remitted, and allowed issues for the trial of the cause in the Court of Session.

Leave to appeal to your Lordships' House was granted on 13th May 1911.

The contention on behalf of the appellants is that the remit was incompetent and contrary to law. Whether this contention is correct or not depends upon the construction of the two Acts last mentioned.

I preface the consideration of those two Acts by referring to two earlier Acts, viz., the Employers and Workmen's Act 1875, and the Employers' Liability Act 1880.

The Act of 1875 was an Act the object of which was to enlarge the power of County Courts in England, the Sheriff Courts in Scotland, and the Civil Bill Court in Ireland in respect of disputes between employers and workmen, and to give courts of summary jurisdiction a limited jurisdiction in respect of such disputes. The expression "workman" in the Act was defined as not including a domestic or menial servant, but included other persons as therein expressed engaged in manual labour under a contract with an employer.

The Act of 1880 was entitled thus, "An Act to extend and regulate the liability of employers and to make compensation for personal injuries suffered by workmen in their service," and section 1 provided that where, after the commencement of this Act, personal injury is caused to a workman in the five cases mentioned therein, "the workman, or in case the injury results in death the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor employed in his work." Section 2 dealt with exceptions to amendment of the law, and section 3 limited the amount of compensation recoverable under the Act to an amount of three years' earnings estimated as provided.

Under section 6 every action for recovery of compensation under the Act is to be brought in a County Court in England, a Sheriff Court in Scotland, and a Civil Bill Court in Ireland, but might, on the application of either party, be removed into a superior court in like manner and upon the same conditions as an action commenced in a County Court may by law be removed. This would be by *certiorari* or otherwise if the High Court or a Judge thereof should deem it desirable that the action should be tried in the High Court. In Scotland the action might be removed to the Court of Session at the instance of either party in the manner provided by and subject to the conditions prescribed by section nine of the Sheriff Courts (Scotland) Act 1877.

By section 8 of the Act of 1880 the expression "workman" means a railway servant and any person to whom the said Act of 1875 applies. The Act of 1880 has been continued from time to time and remains in force as amended by section 14 of the Workmen's Compensation Act 1906.

In the Workmen's Compensation Act 1906, section 13 gives, "unless the context otherwise requires," certain definitions. A fresh definition of "workman" is given among a number of other definitions, and "any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable." Section 14 contains the special provision as to Scotland which is set out in the appendix. According to it, in Scotland where a workman raises an action against his employer independently of the Act, in respect of any injury caused by accident arising out of or in the course of the employment, the action, if raised in the Sheriff Court and concluding for damages under the Act of 1880, or alternatively at common law or under the Act of 1880, shall, notwithstanding anything contained in the Act, not be removed under the Act or otherwise to the Court of Session, nor shall it be appealed to that Court otherwise than by appeal on a question of law.

The last Act to refer to is the Sheriff Courts (Scotland) Act 1907, clauses 30 and 31. Section 30 allowed of the removal by either party to the Court of Session of cases originating in the Sheriff Court (other than claims by employees against employers in respect of injury caused by accident arising out of and in the course of their employment and concluding for damages under the said Act of 1880, or alternatively at common law or under the said Act of 1880) where the claim is in amount or value above £50. Certain powers in the Court of Session to remit were given. Section 31 gave a right to either party to have a jury trial before the Sheriff in any action in the Sheriff Court of the kind excepted in the 30th section where the claim exceeds £50, and section 52 repealed the enactments mentioned in Second Schedule to the Act to the extent therein mentioned, and all laws, statutes, Acts of Sederunt, orders, and usages then in force so far as the same are inconsistent with the provisions of the Act.

If the question depended solely on the Sheriff Courts Act of 1907, I think that it would be free from any doubt, because the action is not an action by an employee against an employer in any ordinary sense.

But it it said that employee and employer must be read in a sense different from the ordinary because of the earlier legislation, especially sections 13 and 14 of the Act of 1906.

I think, however, though with considerable doubt, that it would be straining language to hold that "where a workman raises an action against his employer" in section 14 of the Act of 1906 the words used include an action such as the present, and although the term "workman" may, according to the 13th section, include other persons where the context does not otherwise require, I am unable to read the 14th section as using the term in its wider signification. It looks to me as if the interpretation clause, section 13, had not been introduced with reference to the special provisions as to Scotland in clause 14.

However this may be, I think that the express provisions of the Act of 1907 remove any difficulty or doubt, and I agree with the views on this point expressed by the Lord President.

It seems to me that when the 14th section of the Act of 1906 and the Act of 1907 were passed, it must have escaped attention that claims could be made otherwise than by an employee, but whatever may have been the intention I do not see how the express terms of the Act of 1907 can be overcome.

In my opinion the decision of the First Division should be affirmed.

LORD SHAW—I agree with the Lord Chancellor, and I largely share the views just expressed by my noble and learned friend Lord Atkinson.

If the range of vision be narrowed to the meaning of the word "employee," the conclusion is inevitable; and I agree that in the interpretation of this Act it must be so narrowed. The words of the Legislature not being ambiguous, the duty of the judiciary is not doubtful.

The results may be unfortunate, unexpected; it may be, as was argued, that a scandal continues. If so, Parliament will note these things. But with regard to them it is beyond the function of a court of interpretation to give relief, and perhaps even beyond its province to express views or to proffer opinions.

Their Lordships dismissed the appeal with expenses.

Counsel for the Pursuer (Respondent)—Munro, K.C.—Mackenzie Stuart. Agents—Fleming & Buchanan, Stirling—Macpherson & Mackay, S.S.C., Edinburgh—R. S. Taylor, Son, & Humbert, London.

Counsel for Defenders (Appellants)—D.-F. Scott Dickson, K.C.—Beveridge. Agents—W. T. Craig, Glasgow—W. & J. Furness, W.S., Edinburgh—Beveridge, Greig, & Company, London.

COURT OF SESSION.

Thursday, November 23.

FIRST DIVISION.

[Lord Cullen, Ordinary.

HENDERSON *v.* D. & W. HENDERSON, *et e contra.*

Process—Reclaiming Note—Competency—Omission to Box Record—The Court of Session Act 1825 (*Judicature Act*) (6 *Geo. IV, cap.* 120), *sec.* 18—*Act of Sederunt, 11th July* 1828, *sec.* 77.

A raised an action against B & C, and B & C raised an action against A. The Lord Ordinary conjoined the actions, and thereafter pronounced an interlocutor whereby in the action at the instance of A he assoilzied B & C, and in the action at the instance of B & C granted decree against A. A reclaimed, but when boxing the reclaiming note failed to append copies of the record in the action against him, though he did append the record in the action at his instance.

The Court (after consultation with the Second Division) *repelled* an objection to the competency of the reclaiming note, *holding* that it was within their power to permit prints to be lodged if they thought, as they did here, that there was an excusable cause for not lodging them at the proper time.

Authorities reconsidered.

The Court of Session Act (Judicature Act) 1825 (6 Geo. IV, cap. 120), sec. 18, enacts—"When any interlocutor shall have been pronounced by the Lord Ordinary either of the parties dissatisfied therewith shall be entitled to apply for a review of it to the Inner House . . ., provided that such party shall, within twenty-one days from the date of the interlocutor, print and put into the boxes . . . a note reciting the Lord Ordinary's interlocutor . . ., and if the interlocutor has been pronounced without cases the party so applying shall, along with his note as above directed, put into the boxes printed copies of the record authenticated as before."

The Act of Sederunt of 11th July 1828 provides—section 77—"That reclaiming notes . . . shall at first be moved merely as Single Bills, and immediately ordered to the roll . . .: Provided always that such notes, if reclaiming against an Outer House interlocutor, shall not be received unless there be appended thereto copies of the mutual cases, if any, and of the papers authenticated as the record, in terms of the statute, if the record has been closed. . . ."

Lawrence David Henderson raised an action against the then dissolved firm of D. & W. Henderson, merchants and shipowners, Glasgow, and the individual partners of the firm, and D. & W. Henderson raised an action against Lawrence David Henderson.