bridge at Queen Street station, and that no one was in the compartment, how do you account for that?—(A) I would say it was not right, because that is a very well-filled train coming from Bowling, and there is not a compartment that is not used. (Q) You never on any occasion have an unoccupied compartment?—(A) Not one? (Q) And there never are such?—(A) No. (Q) Assuming there was a vacant compartment, and that as the train came out of the tunnel or from under the bridge at the signal cabin the door was swinging open, must that not have been due to it not having been closed at Bowling?—(A) No. I would say that was impossible." That evidence on the face of it is not reliable, because it makes two obviously incorrect assertions—first, that Mackie had never seen an unoccupied compartment on the journey between Bowling and Queen Street, and second, that it was "impossible" that the door was not fastened at Bowling. It may be the misfortune of the defenders that, looking to the day of the week (Monday) and the season of the year (February), no presumption of heavy traffic arises in their favour, and it may also be their misfortune that, owing to information of the accident not being lodged on the spot they were unable to produce evidence of the compartment being occupied between Bowling and Charing Cross. But the result is that in my opinion there is no reliable evidence on which to found the defenders' suggestion that the door may have been opened and not re-fastened *en route* before leaving Charing Cross by a passenger, mischievously or by mistake. If so, it seems to me that the reasonable inference is the one maintained by the pursuer, namely, that the door, owing to the defenders' negligence, was not fastened at Bowling. The defenders only suggest a possibility, without any evidence to raise it to a probability. The pursuer founds on a proved fact as to the state of the train when it reached Queen Street station, which, unless effaced by evidence as to the position of the door at an earlier part of the journey, leads in my opinion to reasonable proof of fault. Mackie's statement as to the doors being fastened at Bowling is merely a statement of practice and not from recollection of this particular train.

As to contributory negligence, it appears that there was a clear space of some four feet between the edge of the platform and the barrows on the platform, and that the pursuer must have been walking some two feet from the edge of the platform. In the absence of any warning from the defenders' servants, I do not think the defenders have proved contributory negligence. The pursuer was not bound to assume that the defenders might work their line in disobedience to their own rules. It is said that she should have anticipated that passengers might be opening doors in preparation for alighting. But when this takes place the door is not usually flung fully open, but is held in the passenger's hand. It was also suggested that she might just as well have been struck by a passenger looking out of the window. But in that case, if it were possible for such a passenger to have leaned out far enough to have come against the pursuer, he would have been looking the way the train was going and would have avoided the pursuer.

On the whole matter I think the verdict ought to stand.

LORD DUNDAS was absent.

The Court discharged the rule.

Counsel for the Pursuer—G. Watt, K.C. —D. P. Fleming. Agents—Purves & Simpson, S.S.C.

Counsel for the Defenders — Solicitor-General (Morison, K.C.) — E. O. Inglis. Agent—James Watson, S.S.C.

Saturday, June 6.

SECOND DIVISION.

[Sheriff Court at Paisley.

AITKEN *v.* FINLAYSON, BOUSFIELD, & COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Accident*"—"*Arising Out of and in the Course of the Employment*"—*Death from Apoplexy Brought on by Exertion of Running.*

A workman was employed at a flax-mill as a gateman to attend to the gate, telephone, and ambulance appliances, and to attend personally to minor accidents. On being informed of a scaffold accident to some workmen who were not in the employment of the mill-owners, but were engaged in doing work for them on the premises, he ran from the gate to the scene of the accident and back to the gate in order to telephone for a doctor and an ambulance. Whilst telephoning he was seized with an apoplectic shock from which he died. The Sheriff found in fact, *inter alia*, "that the deceased's death was due to apoplexy brought on by the exertion of running as quickly as he could and the excitement caused by the scaffold accident," and "that he had no instructions not to attend to accidents to workmen who might not be in the employment of the respondents, who were engaged to do certain repairs on the respondents' premises and were in the course of carrying out those repairs."

Held (*rev.* the decision of the Sheriff) that the death of the deceased was due to an accident within the meaning of the Act, and that the accident arose out of and in the course of the employment.

In an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between Mrs Agnes Adam or Aitken, Johnstone, and others, *appellants*, and Finlayson, Bousfield, & Company, Limited, flax-spinners, &c., Johnstone, *respondents*, the Sheriff-Substitute (BLAIR) refused compensation and stated a Case for appeal.

The Case stated—"This is an arbitration

under the Workmen's Compensation Act 1906, at the instance of the appellants against the respondents, and the question in dispute between the parties is whether the deceased Alexander Aitken, who was the husband of the appellant Mrs Agnes Adam or Aitken, and the father by his marriage with her of the other appellants, met his death by accident arising out of and in the course of his employment as a gateman and general helper with the respondents at their flax-mills in Johnstone, in the county of Renfrew.

"Proof was led before me on 14th January 1914. The *facts* which were admitted or proved are as follows:—(1) That the appellants are the sole dependants of the deceased Alexander Aitken, a workman in the employment of the respondents, who died on 13th August 1913, aged about thirty-eight; (2) that the deceased had been in the respondents' employment as aforesaid for over twenty years; (3) that his wages for the three years previous to his death amounted in all to the sum of £250, 15s. 3d.; (4) that the deceased's duties were to attend to the gate and to take charge of the ambulance appliances, &c., for use in cases of accidents occurring in the works, to telephone for the doctor or ambulance should necessity arise, to attend personally to any minor accidents, and generally to attend to the telephone in the morning before the office staff arrived; (5) that he had no instructions not to attend to accidents to workmen who might not be in the employment of the respondents, who were engaged to do certain repairs on the respondents' premises and were in the course of carrying out those repairs; (6) that about 7·30 a.m. in the morning of 13th August 1913, and before the office staff had arrived, the deceased was on duty at the respondents' works, and was informed of a scaffold accident in another part of the works which happened to some slaters who were not in the respondents' employment, but who were at the time engaged in doing work for the respondents in their premises; (7) on being so informed of the accident he ran from the gate to the scene of the accident, a distance of 100 yards or thereby, and ran back to the gate in order to telephone for the services of a doctor and an ambulance; (8) that while engaged in telephoning for the doctor and the ambulance he was seized with an apoplectic shock, which terminated fatally about 1·30 on the same day; (9) that the cause of the said shock was the exertion caused by running as quickly as he could to and from the gate and the scene of the accident, and the resultant excitement arising from the scaffold accident; (10) that the deceased had been about ten years ago a professional football player; (11) that athleticism of a strenuous kind tends to produce a hypertrophied heart and also arterial degeneration; (12) that apoplexy is a disease due to arterial degeneration; (13) that the deceased did not exhibit or complain of any of the antecedent symptoms sometimes discernible in or suggestive of arterial degeneration, such as Bright's disease or syphilis, nor had he any illness of any kind indicative of arterial disorder; (14) that the deceased was of somewhat short stature, stout, with a thick neck and a florid complexion, and that apoplexy occurs more frequently amongst persons of that description than amongst thin, spare, wiry men; (15) that the deceased's death was due to apoplexy brought on by the exertion of running as quickly as he could and the excitement caused by the scaffold accident.

"On the foregoing facts I held in law (1) that the death of the deceased was not due to injury by accident within the meaning of the Workmen's Compensation Act 1906, in respect that the act of running as described in the foregoing findings was not an accident of such a kind as entitles to compensation, and (2) that even if it was an accident within the meaning of the Act, it did not occur in the course of the deceased's employment or arise out of it, in respect that he had no special instructions to attend to or not to attend to workmen, not in his master's employment, who might happen to be injured within the works; and therefore I held that the appellants were not entitled to compensation."

The *questions of law* for the opinion of the Court were—"(1) Whether the death of Alexander Aitken was due to an injury by accident within the meaning of the Workmen's Compensation Act 1906? and (2) if the foregoing question be answered in the affirmative, whether his death was due to any injury by accident arising out of and in the course of his employment within the meaning of the said Act?"

Argued for the appellants—(1) The deceased had suffered an injury by accident within the meaning of the Act. An accident might be an internally fortuitous occurrence. In the present case the accident consisted of a break down in the arteries—*Ritchie* v. *Kerr*, 1913 S.C. 613, 50 S.L.R. 434; *Stewart* v. *Wilsons and Clyde Coal Company, Limited*, November 14, 1902, 5 F. 120, 40 S.L.R. 80; *Clover, Clayton, & Company, Limited* v. *Hughes*, [1910] A.C. 242, 47 S.L.R. 885; *Fenton* v. *Thorley & Company, Limited*, [1903] A.C. 443. (2) The accident arose out of and in the course of his employment — *Moore* v. *Manchester Liners, Limited*, [1910] A.C. 498, *per* Lord Loreburn, L.C., at 500, 48 S.L.R. 709, at 710. The proximate cause must be looked to—*Wicks* v. *Dowell & Company, Limited*, [1905] 2 K.B. 225.

Argued for the respondents—(1) The deceased had not suffered an injury by accident within the meaning of the Act. The twelfth finding by the Sheriff was conclusive that apoplexy was a disease, and disease was not an accident — *Drylie* v. *Alloa Coal Company, Limited*, 1913 S.C. 549, *per* Lord President (Dunedin) at 561, 50 S.L.R. 350 at 357. The scaffold accident having happened, something voluntary and independent of it remained; it was that, not the accident, which produced the consequences—*Ritchie* v. *Kerr, cit.; Blakey* v. *Robson, Eckford, & Company, Limited*, 1912 S.C. 334, 49 S.L.R. 254; *O'Hara* v. *Hayes*, February 14, 1910, 3 B.W.C.C. 586; *Coe* v. *Fife Coal Company, Limited*, 1909 S.C. 393, 46 S.L.R. 328; *Brintons Limited*

v. *Turvey*, [1905] A.C. 230. *John Watson, Limited* v. *Brown*, April 28, 1914, 51 S.L.R. 492, was also referred to. (2) The accident, if there were one, did not arise out of and in the course of his employment. The fourth finding by the Sheriff showed that the deceased was acting outwith the sphere of his employment, and it was not proved that he had any duty to do what he did—*Blakey* v. *Robson, Eckford, & Company, Limited, cit.; Mullen* v. *Stewart & Company, Ltd.*, 1908 S.C. 991, 45 S.L.R. 729; *Rodger* v. *Paisley School Board*, 1912 S.C. 584, 49 S.L.R. 413. *Guthrie* v. *Kinghorn*, 1913 S.C. 1155, 50 S.L.R. 863, was also referred to.

At advising—

LORD DUNDAS—The appellants in this case are the sole dependants of Alexander Aitken, who at the date of his death on 13th August 1913 was a workman in the employment of the respondents at their flax mills in Johnstone. The deceased's position was that of gateman at the works. His duties were, as found by the learned arbitrator, "to attend to the gate, and to take charge of the ambulance appliances, &c., for use in cases of accidents occurring in the works; to telephone for the doctor or ambulance should necessity arise; to attend personally to any minor accidents; and generally to attend to the telephone in the morning before the office staff arrived." On the day of his death, about 7·30 a.m., and before the office staff arrived, Aitken was on duty, and was informed of a scaffold accident in another part of the works which had happened to some slaters, not employees of the respondents, but engaged in doing work for them on the premises. On being so informed he ran from the gate to the scene of the accident, a distance of about 100 yards, and ran back to the gate in order to telephone for a doctor and an ambulance, and while engaged in telephoning "he was seized with an apoplectic shock, which terminated fatally about 1·30 on the same day." The arbitrator found in fact, *inter alia* — "(9) that the cause of the said shock was the exertion caused by running as quickly as he could to and from the gate to the scene of the accident, and the resultant excitement arising from the scaffold accident"; and "(15) that the deceased's death was due to apoplexy brought on by the exertion of running as quickly as he could, and by the excitement caused by the scaffold accident." Upon the foregoing facts the learned arbitrator held (1) that the death was not due to injury by accident within the meaning of the Act of 1906; and (2) that even on the contrary assumption it did not arise out of or in the course of the employment, and he therefore decided that the appellants were not entitled to compensation.

I regret that I find myself compelled to differ from the arbitrator upon both of these heads; but holding, as I do, a clear opinion that there was here a "personal injury by accident arising out of and in the course of the employment," and that, upon the facts proved, it was not competent for him to refuse compensation, I am bound to answer the questions put to us in the affirmative.

I think that there was here, upon the facts found in the Stated Case, a definite accident from which this man's death directly resulted. An accident occurred in the works; Aitken, in consequence, ran to the scene of it, and back to the gate; the exertion caused by his running, and the excitement resulting from the accident, caused him to have an apoplectic seizure, and the seizure caused his death. That we are entitled, and indeed bound, to take the scaffold accident into account seems clear from the recent decisions in *John Watson, Limited* v. *Brown*, April 28, 1914, 51 S.L.R. 492 (in the House of Lords), and *Drylie* v. *Alloa Coal Company, Limited*, 1913 S.C. 549, 50 S.L.R. 350 (decided by a majority of Seven Judges, and approved by the House of Lords in *Brown's* case). But even apart from that extraneous circumstance, I should hold that the proved facts disclose an "accident" within the meaning of the statute and the purport of decided cases. The apoplectic seizure which caused Aitken's death is, by the findings in fact, shown to have been the direct effect of his abnormal effort in running to the scene of the slater's mishap and back to the gate. It is not, I think, of any use to refer in detail to the numerous decisions bearing upon this point, but I may say that the facts in, *e.g.*, the well-known case of *Clover, Clayton, & Company*, [1910] A.C. 242—the aneurism case—appear to me to be less (rather than more) favourable to the theory of injury by accident than those here present.

That the accident arose in the course of Aitken's employment appears to me to be clear. I think the only suggestion to the contrary was based upon the view that, as the slaters were not employees of the respondents, Aitken put himself out of the course of his employment in going to their aid. The arbitrator finds that Aitken "had no instructions not to attend to accidents to workmen who might not be in the employment of the respondents, who were engaged to do certain repairs on the respondents' premises, and were in the course of carrying out these repairs." The view suggested, but not I think very seriously pressed by counsel, is, in my judgment, too narrow to compel or to justify our acceptance of it.

Lastly, I am of opinion that the accident arose out of Aitken's employment. The man's duties, as described in the fourth finding, seem to me clearly to include his prompt attendance in case of any accident occurring in the works, either personally or by telephonic communication with the doctor. The apoplectic seizure resulted from Aitken's perhaps too zealous effort at speed in the performance of his duty. Upon the whole matter, therefore, I am for answering the questions in the affirmative, and remitting to the learned arbitrator to assess compensation.

LORD SALVESEN—The first question in this case is whether the death of Alexander Aitken was due to an injury by accident within the meaning of the Workmen's Compensation Act 1906. Apart from authority I should not myself have differed from the view at which the arbitrator arrived, but I

am unable to distinguish this case from that of *Clover, Clayton, & Company, Limited*, [1910] A.C. 242. There a man was suffering from a serious aneurism, who suddenly fell down dead from rupture of the aneurism while tightening a nut by means of a spanner. The man at the time was engaged at his ordinary work, and according to the evidence might have died in his sleep from the same cause, although the slight strain which he experienced when screwing the nut probably accelerated the rupture. Here the deceased's death was due to apoplexy brought on by the unusual exertion of running as quickly as he could to the scene of an accident which had occurred within the works in which he was employed, and of running back at the same pace to summon assistance by telephone. It is immaterial whether this exertion caused a shock, as the arbitrator describes it, or, as I think is more likely, that it resulted in the bursting of one or more small blood-vessels in the brain. As in *Clover's* case, the man fell down dead suddenly as the result of part of his vital organism giving way, and this, according to Lord Macnaghten, constitutes an accident in the popular sense of the word. It is all in favour of this theory, according to later decisions, that the inducing cause of the unusual exertion to which he exposed himself was an abnormal occurrence in the works in which he was engaged.

That this accident occurred in the course of his employment, I think, almost goes without saying on the facts which are here found. It happened while the workman was on his employer's premises, which he never for a moment left, and during his ordinary working hours. All this is, however, not conclusive as to whether it arose out of his employment. If the accident to the scene of which the deceased man ran had happened on the street I should have held him to have been a mere volunteer, and however meritorious his intervention might have been, it would not have been within his duty to his employers. But here we are expressly told "that the deceased's duties were to attend to the gate and to take charge of the ambulance appliances, &c., for use in the case of accidents occurring in the works; to telephone for the doctor or ambulance should necessity arise; to attend personally to any minor accidents; and generally to attend to the telephone in the morning before the office staff arrived." Now it so happened that the workmen who met with the accident in question were not in the direct employment of the respondents, but were the servants of a contractor whom they had employed to do certain repairs on their premises; but the deceased had no instructions not to attend to such accidents, and in the absence of such instructions I cannot see that he was doing anything but his duty in informing himself as to whether any of the persons injured could be properly treated by himself or required more highly skilled assistance. The zeal with which he discharged his duty cannot be made a point against him, although but for that probably he would not have suffered any injury. It was ingeniously argued on the construction of the findings in fact that the deceased's duty was at the gate alone, and that he ought not to have left the gate under any circumstances, but should have awaited the arrival of any injured persons who might meet with accidents in his employers' works, and treat them with the ambulance appliances he had there at hand, or if the cases were too serious to telephone for the doctor and the ambulance. I do not think this is a fair interpretation of the findings in fact. It would be an odd limitation to put upon a man whose duty it was to attend personally to minor accidents that he should not himself go to ascertain the nature of an accident and bring his appliances to the spot where the injured man was, and I cannot conceive that it makes any difference that the injured persons happened, as it turned out to be, not directly employed by the respondents. I am therefore of opinion that this accident arose out of the employment of the deceased.

LORD GUTHRIE—It seems to me that the findings of the arbitrator necessarily lead to the result arrived at by your Lordships. The respondents founded on the 12th finding, which is "that apoplexy is a disease due to arterial degeneration." That finding is not, as I understand, expressed with scientific accuracy. But in any case the 12th finding must be taken along with the 9th finding, that the apoplexy—that is to say, the bursting of a blood-vessel or blood-vessels in the brain—was directly caused, and not merely accelerated, by the exertion and excitement which were the natural, although not the inevitable, consequences of the deceased's efficient performance of duties cast upon him by the occurrence of the accident detailed in the 6th finding. The respondents founded strongly on the Scotch case of *Ritchie* v. *Kerr*, 1913 S.C. 613, 50 S.L.R. 434, and the Irish case of *O'Hara* v. *Hayes*, February 14, 1910, 3 B.W.C.C. 586. These cases are not applicable to the present case. In both these cases it was held that the workman was engaged in the ordinary performance of his normal duties. The present case was clearly a case of emergency.

The LORD JUSTICE-CLERK was absent.

The Court answered the questions of law in the affirmative, recalled the decision of the arbiter, and remitted to him to assess the compensation due.

Counsel for the Appellants—Lippe—Crawford. Agent—John Baird, Solicitor.

Counsel for the Respondents—Moncreiff, K.C. — Fenton. Agents — Macpherson & Mackay, S.S.C.