Counsel for the Pursuer—Mackenzie, K.C. —Maconochie. Agents—Fraser, Stodart, & Ballingall, W.S.

Counsel for the Defenders—M. P. Fraser. Agents—Campbell & Smith, S.S.C.

Wednesday, February 21.

SECOND DIVISION.

(SINGLE BILLS.)

[Sheriff Court of Aberdeen.

CAMPBELL *v.* FARQUHAR.

Poor—Poor's Roll—Process—Printing—Dispensing with Printing—Reporters on probabilis causa Equally Divided in Opinion.

An appellant from the Sheriff Court, who had against him a judgment of the Sheriff-Substitute and Sheriff, applied for admission to the poor's roll of the Court of Session in order to prosecute the appeal. Opinion of the reporters as to whether the pursuer had a *probabilis causa litigandi* was equally divided. *Held* that, notwithstanding this, the fact that the case turned upon the question of contributory negligence justified the Court in dispensing with printing.

George Campbell, *pursuer*, aged fifteen, residing with his mother Mrs Helen Fraser or Campbell, Aberdeen, brought an action in the Sheriff Court at Aberdeen against Arthur W. Farquhar, *defender*, to recover damages for personal injuries sustained in consequence of his being knocked down by a motor car belonging to the defender. The Sheriff-Substitute (LOUTTIT LAING) having assoilzied the defenders, and the Sheriff (LORIMER) having adhered, the pursuer appealed to the Court of Session.

Both the Sheriff-Substitute and the Sheriff found that there was negligence on the part of the defender, but that negligence on the part of the pursuer had contributed to the accident, the Sheriff intimating that on the question of contributory negligence the case was a narrow one.

On 30th November 1916 the pursuer applied for admission to the poor's roll of the Court of Session in order to be enabled to prosecute the appeal. The reporters on the *probabilis causa litigandi* reported that they were equally divided in opinion on the question whether the pursuer had a *probabilis causa litigandi*.

The defender enrolled the cause and moved the Court, in view of the reporters' report, to refuse the application and to order prints to be lodged within fourteen days.

The pursuer moved the Court to dispense with printing, and argued—Where as in the present case there were averments of serious injury, and the question turned on a fine point of law, the pursuer should be given an opportunity of laying his case before the Court. The fact that the reporters were equally divided in opinion strengthened this pursuer's position. Under the circumstances printing therefore should be dispensed with, and for this purpose a dispensation was necessary. In the case of *Walker* v. *Smith*, 1912 S.C. 1149, 49 S.L.R. 863, the pursuer was, no doubt, refused admission to the poor's roll, and was ordered to print where he had an adverse judgment of the Sheriff-Substitute and Sheriff to meet. In this case, however, serious injuries had undoubtedly been sustained and the question of law was narrow. Because of that a dispensation of printing was asked for.

LORD SALVESEN delivered the opinion of the Court:—I think this is a special case. If the reporters had been of opinion that there was no probable cause I should not have been for granting this request. But where the reporters are equally divided in opinion, and where the Sheriffs have indicated that there is proof of fault, and the matter turns on the question of contributory negligence, I think we have such special circumstances as would justify us in granting the request to dispense with printing.

The Court granted the request to dispense with printing.

Counsel for the Pursuer—R. Macgregor Mitchell. Agent—T. M. Pole, S.S.C.

Counsel for the Defender—D. R. Scott. Agents—Lindsay, Cook, & Dickson, W.S.

HOUSE OF LORDS.

Thursday, March 8.

(Before Viscount Haldane, Lord Kinnear, Lord Shaw, and Lord Parmoor.)

SIMPSON *v.* SINCLAIR.

(In the Court of Session, November 10, 1915, 53 S.L.R. 94, and 1916 S.C. 85.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Arising out of*"—*Fall of Wall on Adjoining Property upon Roof of Building where Workman Employed.*

A brick wall in course of erection on an adjoining property fell on to a building where fishcurers were employed at work. It brought down the roof of the building, the fishcurers were buried in the wreckage, and they suffered serious injuries. *Held* (*rev.* judgment of the Second Division) that the accident did arise out of the employment.

Per Lord Haldane—". . . if injury has been inflicted on the workman by any accident, such as something falling on him, which would not have happened to him if his employment had not caused him to be in the place at which the accident occurred at the time of its occurrence, the place and time having thus been conditions of the result brought into existence by the employment . . ., is too vague. It would cover the case of a farm labourer struck by lightning while walking across a field in the farm on which he was employed. Yet he

might just as readily have been struck while walking elsewhere off the farm. A further condition is required — the condition that the injury should have arisen, not merely by reason of presence in a particular spot at a particular time, but because of some special circumstances attending the employment of the workman there. His duty may have occasioned his being near a tree which attracted the lightning, or being under a roof which for some reason fell in."

Authorities reviewed.

The case is reported *ante ut supra.*

The employee, Mrs Margaret Thom or Simpson (respondent in the Court of Session), appealed to the House of Lords.

At delivering judgment (Lord Haldane, Lord Dunedin, and Lord Atkinson being present)—

VISCOUNT HALDANE—Lord Kinnear requests me to say that he concurs in the judgment which I am about to read.

In this case the question is whether the appellant, who was employed in packing herrings by the respondent, a fishcurer in Aberdeen, is entitled to recover compensation from him under the Workmen's Compensation Act 1906 for injury caused by accident. What happened was that a brick wall about 20 feet high, in course of erection on ground belonging to some-one else, but contiguous to the curing-shed of the respondent in which the appellant was employed, fell by reason of its instability on the shed. The consequence was that the roof of the shed and part of its wall tumbled in, and the appellant and other workers were buried under fallen material composed mainly of corrugated iron and rafters which belonged to the roof of the shed, and of bricks from the wall on the adjoining property. The Sheriff-Substitute of Aberdeen decided that the accident to the appellant arose "out of and in the course of the employment" within the meaning of the statute and awarded compensation for her injuries. But he stated a case so as to raise a question of law for the opinion of the Court. The Second Division, differing from his view of the law, reversed his decision, and hence this appeal.

It will, I think, be convenient in considering the question of law raised, which is one of construction of the words of the Act, to examine it in the first instance apart from authority, and then to see whether the decided cases, looked at in the light so obtained, admit of freedom in interpretation. This is the more expedient because the decided cases, as was established in the course of the able and elaborate arguments which were addressed to your Lordships from both sides of the bar, are not altogether in harmony. Under these circumstances I turn to the words in the statute on which the question depends. It will be observed that the Legislature has imposed a double condition for the liability of the employer for injury from accident—a condition that the injury must arise not only in the course of the employment but out of it. It is easy in a case like the present to determine the satisfaction of one of these conditions. The appellant was actually employed when the accident occurred, and she was obviously injured by an accident in the course of the employment. But did the accident arise out of the employment? As to the meaning of these words two contentions have been put forward.

According to one of them the language used is satisfied if injury has been inflicted on the workman by any accident, such as something falling on him, which would not have happened to him if his employment had not caused him to be in the place at which the accident occurred at the time of its occurrence, the place and time having thus been conditions of the result brought into existence by the employment. Once establish this, and it is said that no further causal connection need be sought.

I think that this interpretation is too vague. It would cover the case of a farm labourer struck by lightning while walking across a field in the farm on which he was employed. Yet he might just as readily have been struck while walking elsewhere off the farm. A further condition seems to be required—the condition that the injury should have arisen, not merely by reason of presence in a particular spot at a particular time, but because of some special circumstance attending the employment of the workman there. His duty may have occasioned his being near a tree which attracted the lightning, or being under a roof which for some reason fell in.

According to the other contention a still fuller and more definite causal relation than this is essential. Unless, it is argued, the accident was due to something the man was doing in the course of his employment, or was exposed to as a peculiar danger by the nature of his employment, the conditions required by the statute are not fulfilled. This view of its requirements was adopted in the judgments of the Second Division in the present case, who thought that it derived countenance from expressions used by the Master of the Rolls in *Craske* v. *Wigan*, 1909, 2 K.B. 635, to which I will refer later on. The foundation of the argument is that the mere fact of a man being, by reason of the locality of his employment, in the place where an accident happens to him does not distinguish his case from that of mankind generally if the accident is one, such as a stroke by lightning, which might have happened to him as readily in some other spot as in the one where he was employed. In order that the accident may be truly said to have arisen out of the employment it is argued that the character of the employment must be shown to have actively contributed to its occurrence.

There are, no doubt, many kinds of accident which do not in any sense arise out of the employment. There may be no reason why such accidents should happen to a man in one situation rather than to a man in another, and it may therefore be impossible to pronounce truly that they are so connected with the employment as to have arisen out of it. But where a man is ordered to work under a particular roof, and that