Saturday, November 25.

FIRST DIVISION.

SMITH & WILSONS *v.* CLYDE COAL COMPANY, LIMITED.

Process — Reparation—Intimation to Possible Pursuers.

In an action of damages at the instance of a widow and her four minor children for the death of the husband and father, the defenders moved that intimation should be made of the dependence of the action to other children who were of full age and not parties to the action, under certification that if they did not appear and crave to be sisted as pursuers to this action within such time as might be fixed, they should be held to have departed for ever from any claim competent to them in respect of their father's death. The pursuers expressed their consent to intimation being made.

The Court pronounced the following interlocutor:—"Having heard counsel for the parties upon the minute for the defenders, . . . Appoint the same to be intimated to the children of the deceased . . . other than those who are pursuers in the action, in order that they may crave themselves to be sisted in the action within eight days as pursuers, if so advised."

Counsel for the Pursuers—Ure—Deas. Agents—Simpson & Marwick, W.S.

Counsel for the Defenders — Comrie Thomson—Salvesen. Agents—Winchester & Ferguson, W.S.

Saturday, November 25.

SECOND DIVISION.

[Sheriff of Aberdeenshire.

BAXTER *v.* ABERNETHY & COMPANY.

Reparation — Master and Servant — Personal Injury — Dangerous Operation — Fault of Fellow-Workman—Action Irrelevant at Common Law.

A boilermaker raised an action of damages against his employers for injuries sustained while in their employment. The action was laid only at common law. The pursuer averred that a small crane in the works which ran on rails 15 feet above the ground, to the defenders' knowledge was defective, and frequently got displaced during work, that on one occasion he was ordered by his foreman to climb up to assist in replacing it in its proper position, that in order to do so he had to hang on by his hands to a beam about 5 feet higher, on which another and larger crane travelled, and that while in that position the larger crane was moved along its rails and passed over the pursuer's hand and severely injured it.

The Court *dismissed* the action as irrelevant at common law.

Andrew Baxter raised an action in the Sheriff Court at Aberdeen against James Abernethy & Company, engineers and boilermakers there, for £200 in name of damages for injuries received by him while in their employment.

He averred—"(Cond. 2) On Friday 11th December 1891 pursuer was engaged as a boilermaker in the defenders' service at their works at Ferryhill, Aberdeen. He was subject to the orders of George Andrews, the foreman of the defenders' boilermaking department. (Cond. 3) The defenders use a small travelling crane for the purposes of their work, and on the afternoon of said 11th December 1891 this crane had got displaced from the rails upon which it travels. The pursuer was ordered by the said George Andrews, his foreman, to assist in placing this crane in proper position on its rails by means of a sling. In order to do so the pursuer had to climb up to the rails, which run upon beams about 15 feet from the ground. The pursuer had to stand on one of these beams and hang on by his hands to a beam about 5 feet higher, on which another and larger crane travels. While in that position the larger crane was moved along its rails and passed over the pursuer's left hand and severely injured same. . . . Explained that the smaller crane was, to the defenders' knowledge, defective and unfit for the use to which the defenders put it. In consequence of its insufficiency the strain placed upon it in the raising and carrying of plates, &c., almost invariably caused it to be displaced from the rails. The defenders' took no means to remedy such defect, and in consequence the workmen employed at the job for which such small crane had to be used necessarily had to replace same on the rails. The defenders, however, although they were well aware that this was matter of daily occurrence, provided no proper means or appliance for the work of replacing the crane, and in consequence of the want thereof the workmen, such as pursuer, were compelled to adopt the means before narrated, which involved risk and danger that would have been entirely obviated had the defenders either remedied the original defect in the said crane or provided proper appliances for replacing same when displaced. (Cond. 4) The said accident, and the injuries thereby caused to the pursuer were due to the negligence of the defenders, or of their said foreman, or of other of their servants for whom they are responsible. In obeying the said foreman's orders the pursuer relied, and was entitled to rely, that proper arrangements would be made by the defenders for insuring his safety while engaged in the dangerous work he was ordered to do, and in particular that the upper crane should not be used. The defenders, however, took no precautions whatever for the pursuer's safety, and gave no warning or

intimation to the man in charge of the upper crane that the pursuer was to be engaged in the position he was put; and they further gave no warning or intimation to the pursuer that the upper crane would be used."

The defenders lodged defences and pleaded, *inter alia*—"(2) The pursuer's averments being insufficient to support the action at common law, it should be dismissed with expenses."

On 19th April 1893 the Sheriff-Substitute (BROWN) pronounced the following interlocutor:—"Sustains the second plea-in-law for the defenders: Dismisses the action."

The pursuer appealed to the Sheriff (GUTHRIE SMITH), who on 18th October recalled the interlocutor of the Sheriff-Substitute and allowed a proof.

The defenders appealed to the Second Division of the Court of Session, and argued that there was no relevant case against them stated by the pursuer on record.

Argued for the pursuer—The case was relevant. The employers had neglected to take reasonable precautions for the safety of their workmen, and were therefore liable. The machine was notoriously defective, and when the workmen were sent up to replace the crane on the rails no warning was given when the upper crane was moved—*Murdoch* v. *Mackinnon*, March 7, 1885, 12 R. 810; *M'Guire* v. *Cairns & Company*, February 28, 1890, 17 R. 540.

At advising—

LORD JUSTICE-CLERK—The pursuer makes certain averments in regard to two things in the works of the defenders—First, that the small travelling crane which ran below the rails of the larger crane sometimes became displaced, that this happened from time to time; and second, that when it did so it was necessary to replace it by means of a sling, that he was engaged in replacing, and that while so engaged he had in order to steady himself to put up his hand on the beam on which the larger crane ran. He avers that while in that position the larger crane was moved forward and injured his hand. He further avers that the accident happened through the fault of the defenders. This case is one at common law only. Therefore unless he makes such statements as show that the defenders were to blame as regards the proximate cause of the accident he cannot succeed.

Now, the proximate cause of the accident was the moving of the larger crane. That must have been done by a fellow-workman or the foreman, who at common law is a fellow-workman. I therefore am of opinion that the pursuer has stated no relevant case at common law. In any workyard there may be part of the machinery not in perfect working order, and if anything does go wrong someone may require to re-adjust it, and if someone does something carelessly an accident may happen. But if there was carelessness here, it was that of a fellow-servant for whom the master is not responsible, the pursuer having no claim under the Employers Liability Act.

LORD YOUNG concurred.

LORD RUTHERFURD CLARK—I am very clearly of opinion the case is irrelevant.

LORD TRAYNER concurred.

The Court sustained the appeal, recalled the interlocutor of the Sheriff, dismissed the action, and decerned.

Counsel for Pursuer—Comrie Thomson—Crabb Watt. Agents—Wishart & M'Naughton, S.S.C.

Counsel for Defenders—Glegg. Agents—J. & A. F. Adam, W.S.

REGISTRATION APPEAL COURT.

Monday, November 27.

(Before Lord Kinnear, Lord Trayner, and Lord Kincairney.)

WAINWRIGHTS *v.* AIKEN.

Election Law—Joint Occupancy Franchise—Representation of the People (Scotland) Act 1868 (31 *and* 32 *Vict. c.* 48), *sec.* 14—*Reform Act* 1884 (48 *and* 49 *Vict. c.* 3), *secs.* 5 *and* 12.

It was provided by section 14 of the Representation of the People Act 1868 that each joint-tenant of lands and heritages occupied jointly should be entitled to be enrolled as a voter, "provided the annual value of the said lands . . . shall be sufficient, when divided by the number of such joint-tenants and joint-occupants to give to each of them a sum of not less than fourteen pounds, but not otherwise."

Held that the qualifying value there laid down for joint-tenants in counties had not been altered by the Reform Act of 1884.

At a Registration Court for the Western Division of the county of Renfrew, held at Paisley on the 6th October 1893, Charles William Wainwright, law-clerk, Glenpatrick, claimed to be enrolled on the register of voters for the said division as joint tenant and occupant of a house situated at Glenpatrick, in the Abbey Parish of Paisley (Elderslie Electoral Division).

It was admitted (1) that the claimant and his brother William Herbert Wainwright had been joint-tenants and occupants of the premises for the qualifying period, and (2) that the rent of the premises was £20.

William Aiken, bank accountant, Morton Terrace, Bridge-of-Weir, a voter on the roll, objected to the claim being admitted, on the ground that the claimant's interest in the subjects was of less annual value than £14.

The Sheriff (CHEYNE) rejected the claim. A case was stated for the Court of Appeal, the question of law being:—"Is one of two joint-tenants of subjects situated in a