the wear and tear during the year in question on account of any interest which may be earned by the appellants on the sums allowed."

Counsel for the Appellants — Balfour, Q.C. — Salvesen. Agents — Beveridge, Sutherland, & Smith, S.S.C.

Counsel for the Respondents—Sol.-Gen. Dickson, Q.C.—Young. Agent—Solicitor of Inland Revenue.

Saturday, June 17.

FIRST DIVISION.

[Sheriff Court of Dundee.

WHITTON *v.* BELL & SIME, LIMITED.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 31), *sec.* 75, *sub-sec.* 1—*Employment "about a Factory."*

Section 7 (1) of the Workmen's Compensation Act 1897 provides that the Act "shall apply only to employment . . . on or in or about a factory, mine, quarry, or engineering work."

A cart belonging to the owners of a timber-finishing factory was being driven along the high road by a carter in their employment, who was taking a load of timber from the factory to a house in course of erection. At a spot two miles distant from the factory the carter met with an accident which caused his death.

Held that the employment was not "about" a factory in the sense of sec. 7, sub-sec. (1) of the Workmen's Compensation Act 1897, and that accordingly the employers were not liable in compensation.

This was a stated case under the Workmen's Compensation Act 1897, in a statutory arbitration in which the respondent Mrs Whitton, 16 Lyon Street, Dundee, widow of the deceased Adam Whitton, carter, sued Messrs Bell & Sime, Limited, timber merchants, Dundee, for compensation for the death of her husband.

The following case was stated by the Sheriff-Substitute (CAMPBELL SMITH):—"(1) That the appellants' business, which is a business for sawing, polishing, and distributing timber for building and other domestic purposes falls under the provisions of the Workmen's Compensation Act. (2) That Adam Whitton, the husband of the respondent (Mrs Arnot Bonthron or Whitton) and the father of the other pursuers, was one of the staff of carters employed by them to distribute to their customers the finished material of their works by means of a horse and cart belonging to them, and loaded by other men in their timber-finishing factory, as also to assist in unloading said timber when it arrived at its destination, and generally to do what he might be ordered to do with the aid of a horse and cart in the way of bringing rough timber into the works, and shifting it about therein for the convenience of the men, who cut it up and finished it for various architectural and domestic purposes. (3) That on the morning of 4th November 1898, before it was daylight, the deceased was directed by the appellants' 'delivery-clerk' to yoke the horse which he had brought from the appellants' stable to one of their carts for carrying long wood, standing loaded and ready to be yoked, and to deliver it at 'Nairn's job, Rockfield Street, *via* Blackness Avenue,' which job was a villa in the course of erection on ground feued from Hunter of Blackness. (4) That the delivery-clerk, in consequence of information from the contractor's joiners, who were to place the wood in the building, told the deceased to go by Blackness Avenue and take 'the old farm road,' which was the only practicable road at that time, as Rockfield Street was only in the course of construction. (5) That he, as directed, passed along this old farm road, which is estimated to be about two miles from the appellants' sawmill and other works, and runs by the side of a field 3 or 4 feet below the level of the road, and separated from it by a dry-stone retaining-wall of a frail character, never rising more than a few inches above the level of the road. (6) That when so passing along this old road, and the deceased on the cart guiding the horse with the reins, the left wheel of the cart came to a spot, guessed as being about 15 inches away from the retaining-wall, when the road and wall suddenly gave way, and the cart, load, and horse toppled over into the field, with the result that the driver was crushed to death beneath the load. And the Sheriff-Substitute also found '(7) It is not proved that the death of the deceased was caused by his serious and wilful default.'

"On the facts found as above the questions of law for the opinion of the Court are—(1) Were the appellants rightly held liable to make compensation under the Workmen's Compensation Act 1897? (2) Did the said accident arise out of and in the course of an employment 'on or in or about' a factory in the sense of the Workmen's Compensation Act 1897? (3) Was the deceased's employment one to which the Workmen's Compensation Act applies?"

The appellants referred to the cases of *Lowth* v. *Ibbotson*, March 11, 1899, 15 T.L.R. 264; and *Powell* v. *Brown and Another*, L.R. [1899], 1 Q.B. 157.

LORD PRESIDENT—The material finding in this case is that the accident in question occurred when this carter was at a place two miles from the works, driving a horse and cart with material belonging to the appellant. Accordingly, for the distance of two miles the carter was simply upon the high road, having departed from the factory, and passing along the road just like any other wayfarer, and exposed to the same risks.

The Sheriff has stated no circumstances

connecting the place of the accident with the factory, so as to get over what seems to me to be *prima facie* the insuperable difficulty which his finding has created. I observe in the illustrations which have been given by Judges in the English cases that their Lordships have dealt with or figured cases where the cart was loaded, not within the works, but outside them, at a place separate from but near them. I quite understand that if it were the practice to load at a place no considerable distance from the factory, no one would say that it was not a place "about" the factory. But in the present case there is nothing of that kind, for the place is not specially connected with the factory by use or in any way, the carter having been on the road as a wayfarer for two miles. The case has been somewhat peculiarly stated by the Sheriff, but I think his finding amounts to this, that he decided that the accident occurred "on, in, or about" the factory, otherwise he could not have arrived at the result which he has reached.

I think therefore that we should negative the first two questions. I confess that I do not understand the third, but it seems unnecessary to answer it.

Lord M'Laren—I agree, and I think that our decision is perfectly consistent with the recent English case referred to in argument, where the existence of the element of proximity was admitted, and it was held to be a question for the decision of the arbiter whether as a matter of fact the place was "about" the factory. In the present case, as has been clearly stated by the Sheriff, there is no element of proximity, and the only question is, whether we should give a remote and analogical meaning to the word "about," or its ordinary and plain meaning.

Lord Adam and Lord Kinnear concurred.

The Court answered the first and second questions in the negative, found it unnecessary to answer the third question, and found the appellant entitled to expenses.

Counsel for the Appellants—J. Wilson. Agents—Anderson & Chisholm, Solicitors,

Counsel for the Respondent—A. Duncan Smith. Agent—William Alston, Solicitor.

Saturday, June 17.

FIRST DIVISION.

[Bill Chamber—Lord Pearson.

WILLIAMS & SON *v.* FAIRBAIRN.

Interdict—Interim Interdict—Agreement not to Practise or Start Business—Practising as Servant of Another for Weekly Wage.

F. sold to W. the goodwill of his business as a veterinary surgeon, binding himself "not to practise or start business in E." for a certain period from the date of the sale. Within that period F. entered the service of a firm of veterinary surgeons in E. at a weekly wage. While in their service he granted certificates and otherwise acted as a qualified veterinary surgeon. In a note of suspension and interdict at the instance of W., *interim* interdict *granted.*

William Douglas Fairbairn, veterinary surgeon, sold to W. Williams & Son, New Veterinary College, Edinburgh, the goodwill of the business of veterinary surgeon and farrier carried on by him in Edinburgh, by disposition and assignation of 27th June 1895, and at the same time bound himself "not to practise or start business in Edinburgh as a veterinary surgeon or farrier for at least the space of five years from and after the 29th June 1895."

In May 1899 W. Williams & Son presented in the Bill Chamber a note of suspension and interdict against Fairbairn, in which, founding on the obligation quoted above, they averred—"(Stat. 3). In breach of the said obligation the respondent has recently commenced to practise as a veterinary surgeon in Edinburgh in the employment of Messrs Colin C. Baird & Son, veterinary surgeons there. The complainers believe and aver that his remuneration in Messrs Baird & Son's employment consists in whole or in part of a share of the profits of their business of veterinary surgeons in which he is employed by them. The respondent has recently canvassed a number of his old customers who were in the habit of employing him before he sold his business to the complainers, and who thereafter employed the complainers, with a view to inducing, and has thereby induced, them to transfer their employment from the complainers to Messrs Baird & Son."

The complainers pleaded—"(1) The proceedings complained of being in breach of the respondent's obligation not to practise or start business in Edinburgh as a veterinary surgeon or farrier, the complainers are entitled to suspension and interdict as craved. (2) The complainers are entitled to interim interdict."

The respondent's answer to Statement 3 was in these terms—"Denied respondent has commenced to practise, and that he gets remuneration by a share of profits. Explained that he is simply a servant in receipt of a weekly wage and board.