Tuesday, July 10.

FIRST DIVISION

CALEDONIAN RAILWAY COMPANY *v.* BRESLIN.

Reparation — Workmen's Compensation Act (60 *and* 61 *Vict. cap.* 37), *sec.* 7—*Employment "on or in or about a Railway"—Shoeing Smith in Stables at Station—Regulation of Railways Act* 1873 (36 *and* 37 *Vict. cap.* 48), *sec.* 3.

A railway company kept a large number of horses at a stable situated within their premises at one of their stations, and had a smithy there at which these horses were shod. They were used partly in lorries, partly in drawing trucks on the line. A workman in the employment of the railway company, whose duty it was to shoe these horses, was accidentally injured by the kick of a horse while so engaged in the station smithy. *Held* that the accident occurred in the course of his employment "on or in or about a railway," within the meaning of section 7 of the Workmen's Compensation Act 1897, and that the railway company were therefore liable in compensation.

Milner v. *Great Northern Railway Company* [1900], 1 Q.B. 795, *distinguished.*

In a case stated for appeal under the Workmen's Compensation Act 1897, at the instance of the Caledonian Railway Company, in a claim against them by Daniel Breslin, horse-shoer, 26 North Street, Glasgow, the Sheriff-Substitute (BALFOUR) stated the following facts as admitted or proved:—"(1) That the respondent was employed as a blacksmith and horse-shoer with the appellants at their General Terminus Station, Paisley Road, Glasgow.

"(2) That on 19th May 1899, while the respondent was, in the course of his employment, shoeing a horse belonging to the appellants, the horse kicked him and caused serious injuries, which resulted in a rupture.

"(3) That in May 1898 the respondent, while in the employment of the appellants, met with an accident from a horse, from the consequence of which he contracted kidney disease and attended the infirmary for three or four weeks, but that he returned to his work with the appellants in June 1898, and from that date to 19th May 1899 he never missed a day at his work.

"(4) That the rupture caused to the respondent by the accident on 19th May 1898 incapacitates him from carrying on his work as a horse-shoer, and at present he is not in a fit condition to resume such work.

"(5) That the accident to the respondent on 19th May 1899 took place in a smithy situated in a yard within the appellants' premises at the General Terminus, Paisley Road, Glasgow, and that the premises in question are shown on the Ordnance Survey map.

"(6) That the area within the lines marked blue on said map, and the buildings and railway lines and sheds thereon, are the property of the appellants, and are used by them in the prosecution of their business.

"(7) That the whole block of buildings, of which the smithy is a portion, is within the said station, and the wall of the stable and the gate of entrance are 37 feet distant from the actual line of railway, as shown on sketch No. 3 of process.

"(8) That the yard in which the said smithy is situated is entered from the Paisley Road by a lane, and at the end of the lane there are two gates, one giving entrance to the general yard, and the other giving entrance to the right into the yard in which the said smithy is situated, and that at a distance of about 200 feet from the general gate there is a large notice posted up—'Caledonian Railway—General Terminus Station.'

"(9) That said yard also communicates with the general yard by a large gate to the north, and is separated from the general yard by a sleeper fence, and at another part by the walls of the stables, and that the separation from the general yard was made for the convenience of the appellants' business, in order to keep the shipping traffic out of the stable yard.

"(10) That at the said General Terminus there are 74 horses kept by and belonging to the appellants, some of which are used in their lorries and carts, others in drawing railway trucks on the appellants' lines of railway, and a large number of them are used generally about said station, and that the respondent was in the habit of shoeing all these horses.

"(11) That the average weekly wage earned by the respondent while in the employment of the appellants from June 1898 was 36s."

In these circumstances the Sheriff-Substitute found (1) that Breslin was employed by the appellants on or in or about their railway; and (2) that the accident in question arose out of and in the course of his employment with them.

The Workmen's Compensation Act 1897, section 7, enacts as follows—"This Act shall apply only to employment by the undertakers, as hereinafter defined, on or in or about," *inter alia*, "a railway; (2) In this Act 'railway' means the railway of any railway company to which the Regulation of Railways Act 1873 applies, and includes a light railway made under the Light Railways Act 1896; and 'railway' and 'railway company' have the same meaning as in the said Acts of 1873 and 1896."

By the Regulation of Railways Act 1873 it is provided (section 3), "The term 'railway' includes every station, siding, wharf, or dock of or belonging to such railway, and used for the purposes of public traffic."

The question of law for the opinion of the Court was as follows:—"Whether, in view of the facts proved, the respondent having been engaged shoeing the appellants' horses used in connection with and for the purposes of the railway in a smithy situated in a yard

within the appellants' premises at the General Terminus, Paisley Road, Glasgow, was employed on or in or about a railway in the meaning of the Workmen's Compensation Act 1897?"

Argued for the appellants—The respondent was not injured on or in or about a railway within the restricted meaning of that word given to it by the definition in the Regulation of Railways Act 1873 (quoted *supra*). That definition limited the word railway to those parts of the undertaking which were actually used for "purposes of public traffic," not those incidental offices such as the stable here, which might no doubt facilitate traffic but were not actually used for it—*Milner* v. *Great Northern Railway Company* [1900], 1 Q.B. 795. There a barmaid was injured by an accident in the refreshment room of a station, and it was held that the Act did not apply because the refreshment room was not a part of the railway used for the purposes of public traffic. That case was exactly in point.

Argued for the respondent—The respondent was entitled to compensation. When the accident occurred he was engaged in shoeing a horse which was used for the purpose of drawing a lorry or hauling trucks to facilitate the railway traffic, and the smithy where he was working was a part of the station premises. That was employment "on or in or about a railway" within the meaning of section 7 of the Act —*Devine* v. *Caledonian Railway Company*, July 11, 1899, 1 F. 1105. The definition in section 3 of the Regulation of Railways Act 1873 was not meant to be an exhaustive or exclusive definition of a railway—if it were so read it would exclude the line—but to include under a word of well-known import certain things not usually supposed to fall within it. The case of *Milner*, *cit. supra*, was not in point. A refreshment room might quite well be held not to be used for purposes of public traffic, because the traffic could go on all the same if it were closed, but if the horses which were used to haul trucks were not shod the public traffic would be disorganised.

LORD PRESIDENT—The question shortly stated is, whether the respondent, who was engaged in shoeing one of the appellants' horses when the accident occurred, was employed "on or in or about a railway" so as to come within the terms of the Workmen's Compensation Act 1897. By section 7 of that Act "railway" is declared to mean "the railway of any railway company to which the Regulation of Railways Act 1873 applies," and it is further declared, *inter alia*, that "railway" has the same meaning as in that Act. Turning to the Act of 1873, we find the definition is in section 3, which declares that "railway includes every station, siding, wharf, or dock of or belonging to such railway, and used for the purposes of public traffic." The definition does not enumerate all the things falling under the term "railway," but states certain things which the term "railway" is to be taken to include, somewhat extending its literal signification. It is not a restrictive definition, but leaves standing all that properly falls within the term "railway" in its ordinary acceptation, and adds some things which might otherwise not have plainly fallen within its scope.

Now, in this case the place where the accident happened was locally situated within a station belonging to the appellants, namely, their General Terminus Station at Paisley Road, Glasgow. They have there upwards of 74 horses, and part of the station is dedicated to stabling for these horses, and there is a smithy, which is necessary for keeping these horses in a serviceable condition. The accident happened in this smithy, which is described as "situated in a yard within the appellant's premises at the General Terminus, Paisley Road, Glasgow." The whole of this yard appears to be used for the business of the Railway Company, although it is separated by fencing into different sections for the convenient conduct of that business, and the whole is territorially within the precincts of the General Terminus Station. The horses are employed either within the station for marshalling the traffic and the like, or for work outside the station, such as collecting and delivering goods; but in either case they are clearly employed in the business of the company as carriers, or in the language of the Act of 1873, "for the purposes of public traffic." The respondent therefore was injured within the railway yard in fitting a horse for work on what was essentially a part of the railway, and it appears to me that he was as much an employee of the railway in its proper business of carrier as porters, guards, or others actually engaged in the transit of goods or passengers along the line. He was fitting a part of the railway plant for the purpose of conducting the traffic, as much as an engine-fitter or an engine-cleaner preparing an engine to haul a train. The appellants relied upon the case of *Milner* v. *Great Northern Railway Company*, L.R. [1900], 1 Q.B. 795, where compensation was refused to a barmaid who was injured by the fall of a framed signboard in the station refreshment room at Peterborough. It appears from the report that the refreshment room was kept by the company in their own hands, and not let to third parties, as is often done both in the case of refreshment rooms and book-stalls. Whether such places are let or not they are in no degree similar to a smithy used for shoeing the horses kept and used for carrying on the proper business of the company. For these reasons I think that the question should be answered in the affirmative.

LORD ADAM—It appears that the appellants keep seventy-four horses at their terminus at Paisley Road, Glasgow, and that the respondent was kicked by one of these horses while engaged in shoeing it. Now, these horses are kept in stables within the area of the station, and the smithy is close to and indeed a part of the station buildings, and the question is, whether the

accident took place "on or in or about the railway." A railway is defined by section 3 of the Regulation of Railways Act 1873 (36 and 37 Vict. c. 48) as including "every station, siding, wharf, or dock of or belonging to such railway, and used for the purposes of public traffic," and this definition is adopted in the Workmen's Compensation Act. Now, it seems to me beyond doubt that these horses were used for the purposes of public traffic. We are told that they are used for drawing the company's lorries and carts, or in drawing railway trucks, and I do not think it can be denied that while so employed they are used in facilitating the public traffic. Then if we come to the stables, it is impossible to say that they are not part of the station, and the same thing may be said of the smithy. Mr Dundas seemed to say that the stables and smithy were not places used for public traffic because the public had not access to them. But I do not think that is the proper test. The test is whether they were used for facilitating public traffic, not whether the public had access to them.

I have nothing to say, one way or another, about the English case of *Milner*, except that the present case does not raise the same question. I quite understand that it might be held that a refreshment room was not a part of the railway used for the purposes of public traffic, but I do not think that bears on the present question. I therefore agree with your Lordship that the question should be answered in the affirmative.

LORD M'LAREN—The interpretation of the Workmen's Compensation Act has been made more difficult by the system which has been adopted of referring to other Acts of Parliament for the definition of the terms used instead of framing a definition clause adapted to the circumstances contemplated by the Act itself. We have had several questions before us in determining what is a "factory," and we have had to consider them with reference to the scope of the Factory Acts, which deal with entirely different subjects. So here we have to consider the question what is a "railway" with reference to a definition drawn from the Regulation of Railways Act 1873—an Act which did not deal with the subject of the railway system as a whole, but with those parts of it which were deemed suitable for the jurisdiction of the Railway Commissioners. But as it happens, this definition when fairly read, answers the purpose in nine cases out of ten. There may be difficult cases, but I do not think this is one of them. If we take the case of an accident occurring in connection with a train which is used solely for the purpose of carrying locomotive coal or rails, or material for the permanent way, this is a case which cannot be said to be connected with public traffic, and yet we can hardly suppose that it would be dealt with on different principles from an accident occurring to a goods or passenger train. In the present case the horses kept at the terminus were, on a fair and reasonable construction of the words, kept for the purposes of public traffic, and the stables, forge, and stores necessary for keeping the establishment of horses in working order fall within the same category as the horses themselves. I think therefore that this was an accident to which the Workmen's Compensation Act applies.

LORD KINNEAR concurred.

The Court answered the question in the affirmative.

Counsel for the Appellants — Dundas, Q.C. — King. Agents — Hope, Todd, & Kirk, W.S.

Counsel for the Respondent — Munro. Agents—Sibbald & Mackenzie, W.S.

Wednesday, July 11.

FIRST DIVISION.

[Sheriff-Substitute of Roxburgh, &c.

PURVES *v.* GROAT.

Bankruptcy — Sequestration — Procedure — Review — Appeal — Competency—Deliverance of Sheriff Prior to Award of Sequestration—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 16 *and* 170.

Held that it was competent to appeal against a deliverance of a Sheriff in a petition for sequestration, pronounced before sequestration had been awarded, allowing a proof of an alleged verbal agreement between the petitioner and the debtor to the effect that the bond, upon which the petitioner founded as his document of debt, was not to be called up for a period of five years.

Opinions (*per* Lord Adam and Lord Kinnear) that while there was nothing in the Bankruptcy Act 1856 to exclude appeals from a deliverance of the Sheriff prior to an award of sequestration, there might be cases in which the Court ought not to entertain such an appeal.

Alexander Purves, residing at Hawick, presented a petition in the Sheriff Court of Roxburgh, Berwick, and Selkirk, at Hawick, for the sequestration of the estates of Donald Groat, spirit merchant, Burgh Arms, Hawick.

In support of his petition, Purves stated that he was a creditor of Groat to the extent of £1003, 10s. 9d., under a bond of corroboration in his favour, and that Groat had been rendered notour bankrupt within the last four months, and still remained in a state of notour bankruptcy.

Groat lodged answers, in which he stated that by a verbal agreement Purves had arranged not to call up the bond for five years.

On 27th June 1900 the Sheriff-Substitute (BAILLIE) pronounced the following inter-