Wednesday, March 20.

SECOND DIVISION.

[Sheriff-Substitute at Cupar.

GUTHRIE *v.* THE BOASE SPINNING COMPANY, LIMITED.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1, *sub-sec.* (2) — "*Serious and Wilful Misconduct*"—*Breach of Factory Rule.*

A worker in a spinning mill was injured in attempting to clean a teaser card machine at which she was working while the machine was in motion. It was the strict rule and practice of the mill, known to the worker, that no cleaning should be done unless the machinery was stopped.

Held that the accident was attributable to the serious and wilful misconduct of the worker within the meaning of sec. 1 (2) of the Workmen's Compensation Act 1897, and that her employers were consequently not liable in compensation.

This was an appeal in an arbitration under the Workmen's Compensation Act 1897, before the Sheriff-Substitute of Fife at Cupar (ARMOUR), between Susan Guthrie, millworker, Leven, claimant and appellant, and The Boase Spinning Company, Limited, Leven, respondents.

The facts stated by the Sheriff-Substitute in the case for appeal to be admitted or proved were as follows: — "That on 18th August 1900, about 7·30 o'clock a.m., the appellant received injuries at a teaser card machine, wrought in the hand-hackling shop of the respondents' factory, whereby she lost her right arm. That said injuries were sustained by the appellant starting the machine contrary to the rule aftermentioned, and immediately thereafter removing the guard, viz., the lid of the stour-box, and proceeding to clean out the stour-box with her hand, although a brush was provided for the purpose. The stour-box was underneath the machine and inside the frame thereof. In doing so her hand was caught between the large cylinder and the stripper cylinder underneath the machine and her arm drawn in. That said cylinders were well fenced and guarded, and the working of the machine simple. That, while it was the duty of the appellant to clean her machine, it is the rule and practice of the factory that the machine should only be cleaned three times a day, when the machinery is stopped for that purpose, and further it is a strict rule and practice that no cleaning of machinery is to be done unless the machinery is stopped. Of this rule and practice the appellant was aware. Copies of the rule were posted in the machine room but not in the hand-hackling shop where the appellant was working on the day of the accident. The machine room and the hand-hackling shop form one department under the same foreman. The appellant had been employed in the machine room for a period of nearly five years. That at the time of the accident there was no occasion for the appellant cleaning the machine, or the stour-box which was a part thereof, and in any case she could have stopped the machine with little or no trouble. The ordinary time for cleaning the machine, viz., before the next meal hour or 9 a.m., had not arrived."

On these facts the Sheriff-Substitute held that the accident, although arising out of and in the course of the appellant's employment, was occasioned by the appellant, contrary to the above rule and without necessity, having removed the guard, viz., the lid of the stour-box, and attempted to clean the machine or the stour-box while the machine was in motion, and that the appellant's injuries were attributable to her serious and wilful misconduct in the sense of the Act. The Sheriff-Substitute therefore disallowed her claim.

The question of law for the opinion of the Court was—"Upon the facts stated, was the injury to the appellant attributable to serious and wilful misconduct within the meaning of the said Act?"

The Workmen's Compensation Act 1897 enacts (section 1) (1)—"If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act." (2) "Provided that . . . (*c*) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman any compensation claimed in respect of that injury shall be disallowed."

Argued for the appellant—The Sheriff-Substitute was wrong in holding that the appellant's breach of the rule that the machinery must be stopped before cleaning amounted to "serious and wilful misconduct." Breach of a rule was not *per se* serious and wilful misconduct—*M'Nicol* v. *Speirs, Gibb, & Co.*, February 24, 1899, 1 F. 604, and the facts stated by the Sheriff did not exclude the idea that the appellant might have thought, although mistakenly, that this was a proper thing to do. The fact that the rule was not posted in the room where the appellant worked supported that view. The Court would reverse the finding of the Sheriff if they thought that on the facts stated the appellant had not been guilty of serious and wilful misconduct—*Callaghan* v. *Maxwell*, January 23, 1900, 2 F. 420.

Counsel for the respondents were not called upon.

LORD JUSTICE-CLERK—It appears from the case that there is a strict rule and practice in this factory that no cleaning of machinery is to be done unless the machinery is stopped. Of this rule and practice the appellant was aware. She had been employed in the machine room for a period of nearly five years. The way in which the accident occurred was this. The appel-

lant, having started the machinery, immediately removed the guard, and although a brush was provided for the purpose she proceeded to clean out the machinery with her hand. In doing so, her hand was caught in the machinery, and she received the injuries on account of which she claims compensation. That in these circumstances her injuries were attributable to serious and wilful misconduct on her part I can have no doubt whatever. I therefore think the Sheriff-Substitute was right in disallowing her claim.

LORD YOUNG, LORD TRAYNER, and LORD MONCREIFF concurred.

The Court answered the question of law in the affirmative and dismissed the appeal.

Counsel for the Claimant and Appellant—Wilson, K.C.—Wilton. Agent—David R. M'Cann, S.S.C.

Counsel for the Respondents—Watt, K.C.—Cook. Agents—Cuthbert & Marchbank, S.S.C.

TEIND COURT.

Tuesday, December 4, 1900.

OUTER HOUSE.

OLIPHANT *v.* PRESBYTERY OF ST ANDREWS.

Church—Rebuilding and Repair—Appeal from Presbytery to Sheriff—Effect of Appeal—Sheriff—Process—Ecclesiastical Buildings and Glebes (Scotland) Act 1868 (31 *and* 32 *Vict. cap.* 96), *secs.* 3 *and* 4.

The Ecclesiastical Buildings and Glebes (Scotland) Act 1868 (31 and 32 Vict. cap. 96), enacts as follows, sec. 3:—"If in the course of any proceedings before any presbytery of the Church of Scotland relating to the building, rebuilding, repairing, adding to, or other alteration of churches . . . any heritor . . . shall be dissatisfied with any order, finding, judgment, interlocutor, or decree, pronounced by such presbytery, it shall be competent for such heritor . . . within twenty-one days of the date of such order, finding, judgment, interlocutor, or decree, to stay such proceedings by appealing the whole cause as hereinafter provided; and such appeal, on being duly intimated to the clerk of the said presbytery, shall have the effect of staying the presbytery from taking any further steps in connection with said proceedings." Section 4 enacts:—"The appeal under this Act shall be taken by the appellant or his agent presenting a summary petition to the sheriff of the county in which the parish concerned is situated, praying him to stay the proceedings before the presbytery and to dispose of the same himself."

Held that the effect of an appeal by petition to the sheriff, under sections 3 and 4 of the Ecclesiastical Buildings and Glebes (Scotland) Act 1868, is to transfer the whole cause and proceedings from the presbytery to the sheriff, and not merely the particular matter dealt with in the order appealed against.

Sheriff—Process—Appeal from Presbytery to Sheriff—Rebuilding and Repair of Churches—Minute of New Proposal Lodged by Petitioning Heritors—Competency—Church—Ecclesiastical Buildings and Glebes (Scotland) Act 1868 (31 *and* 32 *Vict. cap.* 96), *secs.* 3 *and* 4.

A presbytery pronounced an interlocutor finding that none of the plans laid before them by the heritors—these plans being for the restoration of the old church on the old site—embodied an adequate fulfilment of the obligation resting on the heritors to provide a sufficient church, and ordaining the heritors to take immediate steps to provide a suitable church. The heritors appealed against this decision by a petition to the Sheriff. In the Sheriff Court process the petitioning heritors lodged a minute proposing to provide a sufficient church by taking in additional ground adjoining the old church.

Held in an appeal taken by the proprietors of the additional ground in question, that the lodging of this minute did not have the effect of bringing the proceedings in the appeal by petition in the Sheriff Court to an end, or of rendering the further proceedings in the Sheriff Court petition new proceedings, and accordingly that it was competent for the Sheriff, instead of dismissing the petition on the minute being lodged, to proceed with the case and deal with the proposal contained in the minute.

This was an appeal to the Lord Ordinary in Teind Causes (LOW), taken by Thomas Truman Oliphant and Mrs Clementina Heddle or Thoms, against an interlocutor pronounced by the Sheriff-Substitute (ARMOUR) in the Sheriff Court of Fife at Cupar.

The church of the parish of St Leonards, St Andrews, having become dilapidated, an arrangement was made in 1759 under which the United College of St Salvator and St Leonards, then the sole heritor of the parish, accommodated the congregation in the College Church of St Andrews. This arrangement continued till the year 1898, when the University Court intimated that it must terminate on 1st September 1899.

The heritors of St Leonards thereupon proposed to have the parish of St Leonards amalgamated with the parish of St Andrews, and appointed a committee of their number to wait upon the Presbytery and the heritors of St Andrews with the view of obtaining their concurrence in a process in the Court of Teinds for the suppression of the parish of St Leonards and its annexation to the parish of St Andrews.