Counsel for the Pursuer and Appellant—Baxter—Cullen. Agent—W. Kinniburgh Morton, S.S.C.

Counsel for the Defenders and Respondents—Salvesen, K.C.—Younger. Agents—Webster, Will, & Company, S.S.C.

Wednesday, March 20.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

KENT *v.* PORTER.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7, *sub-sec.* (1)—*Employment "on or in or about a Factory"—Carter injured through Horse bolting* 800 *yards from Factory.*

A carter, in the employment of a grain merchant whose premises were a factory within the meaning of the Workmen's Compensation Act 1897, was driving a horse and cart belonging to his employer, when at a distance of 800 yards from the employer's premises the horse bolted, with the result that the carter was injured.

Held that the accident did not occur in the course of employment "about" a factory within the meaning of the Workmen's Compensation Act 1897, and that the employer was not liable in compensation.

This was an appeal in an arbitration under the Workmen's Compensation Act 1897 before the Sheriff-Substitute (BOYD) at Glasgow, between John Kent, grain merchant, Glasgow, appellant, and David Porter, carter, Parkhead, claimant and respondent.

The facts stated by the Sheriff-Substitute were as follows:—"That the respondent, who is twenty years old, was a carter with the appellant, a grain merchant in Glasgow. That the appellant's premises were a factory in terms of the Workmen's Compensation Act 1897: . . . That on Monday morning, 13th February, the appellant's brother and foreman harnessed a horse which the appellant had got on trial, and ordered Forsyth, a carter with the appellant, to help the respondent to yoke the horse to a lorry to fetch a load of coal, and thus to try the horse. The horse was fresh and restive, but showed no signs of vice. By the orders of the foreman Forsyth accompanied the respondent for some part of the way, and for about 800 yards the horse went quietly, but when passing under a railway bridge in Great Eastern Road, Parkhead, Glasgow, over which a train was passing, the horse reared and bolted, shaking off Forsyth. The respondent remained on the lorry, and as he was constantly threatened with a collision he with much effort guided the galloping horse into Croft Street on his right, but as the force of the turn was violent, and the ground slippery with frost, the lorry skidded towards the left, jamming the respondent between the lorry and the adjacent houses: That the respondent was so injured by this accident that it was found necessary to amputate his right leg above the knee."

In these circumstances, the Sheriff-Substitute awarded the respondent compensation.

The question of law for the opinion of the Court was, "Whether the appellant was rightly held liable to make compensation under the Workmen's Compensation Act 1897?"

The Workmen's Compensation Act 1897, sec. 7, sub-sec. (1), enacts—"This Act shall apply only to employment by the undertakers . . . on or in or about (*inter alia*) a factory."

LORD JUSTICE-CLERK—In this case I think the Sheriff-Substitute is wrong. The respondent is a lorryman in the employment of the appellant, who is a grain merchant in Glasgow, and whose premises the Sheriff-Substitute has found to be a factory in terms of the Workmen's Compensation Act 1897. When the respondent with his lorry was about 800 yards from the premises the horse bolted, with the result that the respondent was so injured as to make it necessary to amputate his right leg. The question is, whether the accident took place on in or about the factory. I am very clearly of opinion that it did not.

LORD TRAYNER—I think this case is very badly stated. It would have been better if the Sheriff-Substitute had given some reason for his finding in fact that the premises in question are a factory within the meaning of the Act; for it does not occur to me how the premises of a grain merchant in Glasgow can be a factory. But I take the fact as the Sheriff-Substitute has stated it. Nor is the question which has been argued to us specifically stated in the case. But if the question which we have to determine is whether an accident which took place on the public street 800 yards from the factory took place on or in or about the factory, I have no hesitation in answering that question in the negative.

LORD MONCREIFF concurred.

LORD YOUNG was absent.

The Court answered the question of law in the negative and remitted to the Sheriff-Substitute to dismiss the application.

Counsel for the Appellant — Salvesen, K.C. — Glegg. Agents — Macpherson & Mackay, S.S.C.

Counsel for the Claimant and Respondent —A. S. D. Thomson. Agent—John Veitch, Solicitor.

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-