that it was not intended that the power of appointing a local auditor should be taken away by implication, it is said that "nothing herein contained shall supersede" the provisions of the local Act. Now, it seems to me that if we were to hold that the Secretary for Scotland could appoint an auditor for Irvine ,we should just be superseding the local Act, for we must see that no sensible administrators of a corporation would go on appointing an auditor to do at additional expense work that was already done for them under official employment. Therefore I agree with your Lordship in saying that, on a true interpretation of the clause, the application of the auditor appointed by the Secretary for Scotland cannot be sustained.

LORD KINNEAR concurred.

The Court adhered.

Counsel for the Petitioner and Reclaimer —C. N. Johnston, K.C.—Pitman. Agent—George Inglis, S.S.C.

Counsel for the Respondents—H. Johnston, K.C.—Constable. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Friday, November 14.

FIRST DIVISION.

[Sheriff-Substitute at Hamilton.

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

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1—*Accident—Injury by Accident.*

A workman in a coal mine, while replacing a derailed hutch on the rails, sustained an injury by straining the muscles of his back. In an arbitration under the Workmen's Compensation Act 1897 the Sheriff found in fact that the operation in question, although not a part of his ordinary work, was one which the workman might at any time be expected to perform, and that, on the occasion on which he was injured, he "worked harder than usual to hasten his recovery from the effects" of a bout of drinking. The Sheriff refused compensation. In a case stated for appeal, *held* that the workman was injured by an accident within the meaning of section 1 of the Act, and was accordingly entitled to compensation.

This was a case stated for appeal by the Sheriff-Substitute of Lanarkshire at Hamilton (Davidson), in an arbitration under the Workmen's Compensation Act 1897, between Walter Stewart, miner, Hamilton, and Wilsons & Clyde Coal Company, Limited.

In the stated case the Sheriff set forth the facts admitted or proved in the following terms:—"This claim was made by the appellant, in respect, as is alleged, that on the 17th April last the appellant while in the course of his employment with the respondents in the Pyotshaw seam, in No. 2 pit, had occasion to go out to the main-heading (a distance of 15 fathoms) for hutches, and on reaching there he found that the driver on the road had carelessly thrown one of the hutches off the rails, and before he could get said hutch into his working place to fill it he had to replace it on the rails, and while doing so he severely strained his back."

The case was before me on the 9th day of June last, when the following facts were admitted or proved:—That the appellant was injured as above stated; he was replacing a derailed empty hutch on the rails, which, although not a part of his regular and ordinary work, was an operation which he might at any time be expected to perform; that the claimant, who had been off work and drinking during two or three days immediately prior to 13th April last, worked harder than usual to hasten his recovery from the effects of the drink; that while replacing said empty hutch on the rails he strained the muscles of his back, and was unable to work. His average earnings were 16s. 11d. per week."

In these circumstances the Sheriff-Substitute found that the claimant was not entitled to compensation and therefore assoilzied the respondents (the employers).

The following question of law was stated:—"Is the injury to the appellant as above described an accident entitling him to compensation in terms of the Workmen's Compensation Act 1897?"

The Workmen's Compensation Act 1897 enacts:—Section 1—"If . . . personal injury by accident resulting out of and in the course of his employment is caused to a workman, his employer shall. . . be liable to pay compensation."

Argued for the claimant and appellant—There was here an accident. Injury by accident meant injury by something fortuitous and unexpected, as opposed to injury inevitably arising from the nature of the employment, *e.g.*, lead poisoning — *Roper* v. *Greenwood & Sons*, 1900, 83 L.T.R. 471; *Thompson* v. *Ashington Coal Co.*, 1901, 84 L.T.R. 412; *Boardman* v. *Scott & Whitworth* [1902], 1 K.B. 43.

Argued for the respondents—This was not a case of accidental injury. Accident might be difficult to define, but it implied the idea either of some external cause or of something happening that could not reasonably have been anticipated—*Roper* v. *Greenwood & Sons, cit. supra; Hensey* v. *White* [1900], 1 K.B. 481. Here the workman was doing his work in the ordinary way with ordinary materials, and the Sheriff found in effect that he was injured by over-exerting himself. It might have been different had the hutch offered exceptional resistance; if, for instance, it had fallen into a hole. But where there was no exceptional element it was really a question of fact for the Sheriff whether there had been an accident or not.

At advising—

LORD PRESIDENT—The question in this case is whether a severe strain of the muscles of his back suffered by the appellant while replacing a derailed hutch on a drawing road in a coal pit belonging to the respondents, in whose employment he was at the time, was an accident entitling him to compensation under the Workmen's Compensation Act 1897.

It is stated in the case that on 17th April last the appellant, while in the course of his employment with the respondents in the Pyotshaw Seam in No. 2 pit, had occasion to go out to the main heading for hutches, and that on arriving there he found that the driver on the road had carelessly thrown one of the hutches off the rails; that before he could get the hutch into his working place to enable him to fill it he had to replace it on the rails, and that while doing so he severely strained his back.

It is further stated in the case that although the replacing of the derailed empty hutch was not a part of the appellant's regular and ordinary work, it was an operation which he might be at any time expected to perform, and it is not stated that there was anyone else at the place at the time whom he could have got to replace the hutch. It thus appears that the operation of replacing the hutch was, in a reasonable sense, within the scope of the appellant's employment, and I consider that such a strain as he suffered in performing the work was an accident which occurred in the course of or arose out of his employment.

As to the character of the injury, I think, upon the statements contained in the case, that it was fortuitous and unexpected, and was thus, so far as I have already stated the facts, an occurrence which would in my judgment entitle the appellant to compensation under the Act.

The Sheriff-Substitute, however, states parenthetically that the appellant had been off work and drinking during two or three days prior to the 13th April, and that he worked harder than usual to hasten his recovery from the effects of the drink. The Sheriff-Substitute, however, does not state that the appellant's drinking four or five days previously had in any way incapacitated him from working or disturbed his powers of observation or judgment, and I therefore consider that this statement does not in any way exclude his right to compensation.

For these reasons I am of opinion that the question put in the case should be answered in the affirmative.

LORD ADAM—The appellant while replacing a hutch on the rails severely strained his back, and the question put to us is whether this injury is the result of accident.

I am not going to attempt to define the term accident, but it humbly appears to me perfectly clear that the appellant's injuries were in the circumstances stated the result of an accident. These injuries were not such as would occur in the ordinary course of work, but were fortuitous and unexpected.

Suppose, for instance, that instead of straining his back he had broken his leg, would anyone say that that was not an accident. I am unable to see any difference between the two cases, and why an injury by strain should not fall within the same category as an injury by the fracture of a bone.

LORD M'LAREN—I agree, and my observations will be confined to one point. It seems to me that the question is whether the word "accident" presupposes some external and visible or palpable cause (*e.g.*, the breakdown of machinery) from which injury results to a workman, or whether there may be an accident where there is no derangement of the machinery or plant or of the organisation of labour, and where the injury is entirely personal to the sufferer. To limit the application of the statute to the first class of cases would be to exclude a very large number of occurrences which are usually known as accidents. In the course of the argument I instanced the case of a railway servant engaged in shunting operations and crushed between two carriages without detriment to the carriages. Another illustration is the case of a man whose hand is crushed between wheels or rollers without any damage resulting to the machinery.

I think it is impossible so to limit the scope of the statute, and if a workman in the reasonable performance of his duties sustains a physiological injury as the result of the work he is engaged in, I consider that this is accidental injury in the sense of the statute.

LORD KINNEAR—I quite agree. I cannot see any reason to doubt that the injury in this case may quite properly be described as the result of an accident. It was not part of the design or scheme of operation in which the man was engaged; it was not intentional, and it was unforeseen. It arose from some causes which are not definitely ascertained, except that the appellant was lifting hutches which were too heavy for him. If such an occurrence as this cannot be described in ordinary language as an accident, I do not know how otherwise to describe it. It has all the elements which in previous cases have been held to distinguish an accident from an intentional or contemplated injury. As to the facts stated in the case as to the previous conduct of the workman, which are supposed to indicate some possible ground for holding that the accident might have been avoided, I think they are altogether irrelevant to the question before us. The only question we have to deal with is, whether the man was in fact injured by a cause which falls within the statutory description of an accident arising out of and in the course of his employment, and on the Sheriff's statement of the facts I have no doubt that he was.

The Court answered the question in the case in the affirmative, and remitted to the Sheriff to award compensation.

Counsel for the Appellant—Watt, K.C.—A. Moncrieff. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents—Salvesen, K.C.—W. Thomson. Agents—W. & J. Burness, W.S.

Thursday, October 30.

SECOND DIVISION.

BILL CHAMBER.

[Junior Lord Ordinary.

EARL OF GALLOWAY, PETITIONER.

Entail—Provisions—Widow—Free Yearly Rental—Deductions—Upkeep—Management—Restriction of Widow's Annuity—Entail Provisions Act 1824 (*Aberdeen Act*) (5 *Geo. IV. c.* 87), *sec.* 1.

In a petition presented by an heir of entail in possession for the restriction of a liferent annuity granted by his predecessor to his widow under the Entail Provisions Act 1824 (Aberdeen Act), *held* (*diss.* Lord Young) that the petitioner was not entitled, for the purpose of calculating the amount of the annuity as allowed by the Act, to deduct from the gross rental the expenses of (1) upkeep of estate buildings and fences, and (2) management and superintendence of the estate.

This was a petition at the instance of the Right Honourable Randolph Henry Earl of Galloway, &c., heir of entail in possession of the entailed estates of Galloway, Baldoon, and Newton-Stewart, for restriction of an annuity affecting said entailed estates.

The Entail Provisions Act 1824 (Aberdeen Act) (5 Geo. IV. c. 87), enacts, sec. 1—"It shall and may be lawful to every heir of entail in possession of an entailed estate under any entail already made or hereafter to be made in that part of Great Britain called Scotland, under the limitations and conditions after mentioned, to provide and infeft his wife in a liferent provision out of his entailed lands and estates by way of annuity, provided always that such annuity shall not exceed one-third part of the free yearly rent of the said lands and estates, where the same shall be let, or of the free yearly value thereof where the same shall not be let, after deducting the public burdens, liferent provisions, the yearly interest of debts and provisions, including the interest of provisions to children hereinafter specified, and the yearly amount of other burdens of what nature soever affecting and burdening the said lands and estates, or the yearly rents or proceeds thereof, and diminishing the clear yearly rent or value thereof to such heir of entail in possession, all as the same may happen to be at the death of the granter."

By bond of annuity dated 27th December 1873 and duly recorded the late Earl of Galloway granted to his wife the Right Honourable Mary Countess of Galloway a free yearly annuity of £3000 payable out of the entailed estates of Galloway, Baldoon, and Newton-Stewart, subject to all the conditions and limitations contained in the Aberdeen Act.

The late Earl of Galloway died on 7th February 1901 survived by his wife, and was succeeded in the entailed estates by the present petitioner.

The petitioner prayed the Court to find that the utmost amount with which the late Earl could competently burden the said entailed estates as an annuity to his widow under the Aberdeen Act was £2113, 4s. 6d., and that the annuity of £3000 granted by the late Earl should be restricted to £2113, 4s. 6d, and to order, declare, and restrict accordingly.

The gross rental of the entailed estates, exclusive of the mansion-house and policies, for the year current at the date of the late Earl's death, was stated in the petition to be £26,594, 1s. 6d., and the free rental, as alleged by the petitioner (after deducting assessments, public burdens, interest on heritable debts, and certain other items, including certain deductions for upkeep of estate buildings and fences, and for management and superintendence of the estate) £6339, 13s. 5d., one-third whereof, viz., £2113, 4s. 6d., was the sum to which the petitioner maintained that the annuity fell to be restricted.

Answers were lodged for the Countess of Galloway, the annuitant, objecting to the deductions sought to be made by the petitioner in estimating the free yearly rent out of which the annuity was payable. In particular she objected to the deduction of (1) a sum of £1796, 7s. 9d. for upkeep of estate buildings and fences, and (2) a sum of £1013, 5s. 10d. for management and superintendence of the estate.

On 31st March 1902 the Lord Ordinary (PEARSON) pronounced this interlocutor—"Finds that the petitioner is not entitled in the calculations for fixing the widow's annuity to make the deductions claimed for upkeep of estate buildings and fences, or for management and superintendence of the estate, and on the motion of the petitioner grants leave to reclaim."

Opinion.—"This is a petition by an heir of entail in possession to restrict the amount of an annuity of £3000 payable to the widow of the preceding heir. It is said that the free rental, calculated in terms of the Aberdeen Act under which the annuity was granted, will only warrant an annuity of £2113, 4s. 6d. The questions in dispute have regard to the deductions which fall to be made from the rent or value in the course of ascertaining the rental available for the annuity. To a certain extent the parties are agreed as to these deductions. Public burdens, feu-duties, annual rents, interest of heritable debts, and children's provisions are all admitted to be proper