Counsel for the Pursuers (Appellants)—Hunter, K.C.—Fleming. Agents—Graham, Johnston, & Fleming, W.S.

Counsel for the Defender (Respondent)—Hon. Wm. Watson. Agents—Simpson & Marwick, W.S.

Tuesday, June 22.

SECOND DIVISION.

[Sheriff Court at Edinburgh.

WILSON *v.* LAING.

Master and Servant — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Accident Arising out of the Employment.*"

A domestic servant while engaged in the performance of her duties was struck on the eye by a child's ball playfully thrown at her by a fellow-servant, the child's nurse, with the result that she almost completely lost the sight of the eye.

Held that the accident was not an accident arising out of the employment within the meaning of section 1 (1) of the Workmen's Compensation Act 1906.

In an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), in the Sheriff Court at Edinburgh, in which Helen Wilson claimed compensation from the Rev. George Laing, the Sheriff-Substitute (Guy) refused compensation, and at the request of the claimant stated a case for appeal.

The *facts* set forth were:—"The appellant was on 4th July 1908 in the employment of the respondent as housemaid at 17 Buckingham Terrace, Edinburgh. Prior to her employment with the respondent the appellant had suffered from defective eyes, and had had to undergo several surgical operations connected with them, the result of these operations being that the left eye had become practically blind, while the right eye, though weak, was a serviceable eye, and on said date enabled the appellant to perform her duties efficiently. On said date the appellant, in the course of her duties, was just leaving the drawing-room flat to ascend the stair to the nursery flat, preceded by her fellow-servant Nurse Emelie Fairlie, when she was struck on her right eye by an india-rubber toy air-ball. Said ball had been playfully thrown by the said Emelie Fairlie over her left shoulder in the direction of the appellant, whom she knew to be following her upon the stair. She threw the ball with the intention of striking the appellant on the back. She threw it for fun and did not think it would harm the appellant. The said ball was not accidentally dropped or let fall. As the result of the blow from said ball the appellant's right eye was so injured that she has almost completely lost her eyesight, and is wholly incapacitated for her work as a domestic servant."

On these facts the Sheriff-Substitute found that the accident to the appellant, though arising in the course of her employment, did not arise out of her employment.

The *question of law* for the opinion of the Court was—"Whether the accident to the appellant arose out of her employment within the meaning of the Workmen's Compensation Act 1906?"

Argued for the appellant—The accident occurred in the course of the employment. It occurred while the appellant was engaged in the performance of her duties, and was thus properly described as arising out of her employment—*Challis* v. *London and South-Western Railway*, [1905] 2 K.B. 154; *M'Intyre* v. *Rodger & Company*, December 1, 1903, 6 F. 176, 41 S.L.R. 107, *distinguishing Falconer* v. *London and Glasgow Engineering and Iron Shipbuilding Company, Limited*, February 23, 1901, 3 F. 564, 38 S.L.R. 381.

Counsel for the respondent were not called on.

Lord Justice-Clerk—I have no doubt whatever that the Sheriff has come to a right decision. Whatever may be the effect of the cases quoted to us, I do not see how it could be said that the Sheriff was wrong in holding that the accident did not arise out of the appellant's employment. It is a very far-fetched idea that because this happened in a house where there were children and children's toys, therefore the risk of accidents happening through a toy being thrown by one servant at another was one of the risks incident to the appellant's employment. The girl who threw the ball with the intention of striking the appellant was certainly acting outside the scope of her employment when she did so, and the accident certainly did not arise out of the appellant's employment.

Lord Ardwall—I think this case is expressly governed by the decision in *Burley* v. *Baird & Company, Limited*, 1908, S.C. 545, 45 S.L.R. 416, and I do not think it necessary to add anything to what was there said.

Lord Dundas—I agree. I do not think that we require the aid of any authorities to enable us to decide this case in the manner your Lordships propose.

Lord Low concurred.

The Court answered the question of law in the negative.

Counsel for the Appellant — Morison, K.C. — A. A. Fraser. Agent — George F. Welsh, Solicitor.

Counsel for the Respondent—Macphail—W. A. Fleming. Agents — Melville & Lindesay, W.S.