The Court answered the second question of law in the case in the negative, and in respect thereof answered the first question in the affirmative, and remitted to the Sheriff to proceed as accords.

Counsel for Appellants—Constable, K.C. —Spens. Agent—J. A. Kessen, S.S.C.

Counsel for Respondent—Cooper, K.C.—Forbes. Agent—John Forgan, S.S.C.

Thursday, May 19.

SECOND DIVISION.

[Sheriff Court at Glasgow.

BURNHAM & COMPANY *v.* TAYLOR.

(*Ante*, March 2, 1909, 46 S.L.R. 482, 1909 S.C. 704.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 13—*Workman or Contractor.*

A, a letter fixer, claimed compensation under the Workmen's Compensation Act 1906 from a firm of enamel letter makers from whom he frequently obtained work, and at whose place of business he was in the habit of calling regularly for at least twelve months prior to his disablement, with a view to obtaining employment. A was in no way precluded from accepting work from others, and might refuse any particular job offered him. He occasionally canvassed among shopkeepers to fix letters on behalf of the firm, and where he did so was paid only in respect of the orders he received. He was paid by the piece, and had to pay his own expenses. The arbiter found that the claimant was a "workman" within the meaning of section 13 of the Act, and not an independent contractor.

In an appeal the Court *refused* to interfere with the determination of the arbiter, in respect that the facts entitled him to draw the inference that A was a workman.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 8, *sub-sec.* (1) (*c*)—*Industrial Disease—Names and Addresses of Former Employers—False Statement—Bar.*

In an arbitration under the Workmen's Compensation Act 1906 A claimed compensation from B (his last employer) on the ground that he was suffering from the industrial disease of lead poisoning. He produced in process a list of the names and addresses of former employers as required by section 8, sub-section (1) (*c*) (*i*), of the Act. In the condescendence annexed to his claim he falsely stated that he had not used white lead when employed by these persons. It did not appear that B was prejudiced by this false statement.

Held that A was not barred thereby from claiming compensation under the Act.

This case is reported *ante ut supra.*

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 13, enacts—. . . "'Workman' does not include any person employed otherwise than by manual labour whose remuneration exceeds £250 a-year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an outworker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing."

Section 8 confers a right to compensation on workmen who are suffering from "industrial diseases," and enacts—sub-section (1) (*c*)—"The compensation shall be recoverable from the employer who last employed the workman during the . . . twelve months" [previous to the date of disablement] "in the employment to the nature of which the disease was due: Provided that (*i*) the workman . . . if so required, shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during the said twelve months as he . . . may possess, and if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer, upon proving that the disease was not contracted whilst the workman was in his employment, shall not be liable to pay compensation; and (*ii*) if that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved, that other employer shall be the employer from whom the compensation is to be recoverable; and (*iii*) if the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as in default of agreement may be determined in the arbitration under this Act for settling the amount of the compensation."

In an arbitration between Burnham & Company, 83 Jamaica Street, Glasgow, and John Taylor, letter fixer, 13 Mount Street there, the Sheriff-Substitute at Glasgow (DAVIDSON) awarded compensation, and at the request of Burnham & Company stated a case for appeal.

The Case stated—"The case was heard before me, and proof led on this date, when the following facts were established—(1) That for at least twelve months prior to 27th April 1908 the respondent was in the habit of calling regularly at

the appellants' place of business with a view to obtaining work from them. (2) That he very frequently obtained such employment. (3) That the nature of the employment was the fixing of enamel letters, and that the respondent frequently obtained orders for such work for the appellants, which he subsequently executed. (4) That he was in no way precluded from accepting offers of work independent of the appellants, and that he, in point of fact, did during the said twelve months accept such work, but only on rare occasions; that he was not under obligation to take any particular job from the appellants if for any reason he thought it unsuitable. (5) That he was paid by the piece and had to pay his own travelling expenses. (6) That respondent on occasions canvassed among shopkeepers to fix letters on behalf of appellants, and where he did so was paid only in respect of the orders he received. (7) That the average weekly wage he earned from the appellants was £1, 4s. 8d. (8) That on the said 27th April 1908 he left their employment. (9) That he was at that time suffering from the disease of lead poisoning, which is a disease that the nature of his employment by the appellants made him liable to acquire, and that this disease is contracted by a gradual process. (10) That he had on two occasions suffered from lead poisoning previously, and had continued to act as a letter fixer, although such an employment rendered a recurrence of the said malady probable. (11) That he had not wholly recovered as at 15th April 1909, but that he had been earning full wages from that date. (12) That the respondent produced in process a list of the names and addresses of the persons other than the appellants by whom he was employed during the twelve months prior to 1st March 1908. (13) That he added the statement that he did not use white lead when employed by these people, but that this statement has turned out to be false, and that the respondent must have known it to be false when he made it; that the use of white lead is a factor in the respondent's employment which conduces to the contracting of the disease in question. (14) That the said employers were not made parties to the arbitration. I found that in the above circumstances the respondent was a workman in the employment of the appellants in the sense of the Workmen's Compensation Act 1906, that the list of former employers furnished by the respondent fully complied with the requirements of section 8 (1) (*c*) (*i*) of the Act, and that the defective information supplied by him as to the use of white lead while employed by these people did not bar his claim for compensation. I therefore found that the appellants were liable to pay the respondent compensation in terms of said Act, and fixed the amount of compensation at 12s. 4d. per week, payable from 30th April 1908, the certified date of disablement, till said 15th April 1909, and I found the respondent entitled to expenses."

The *questions of law* for the opinion of the Court were—"1. Whether the respondent is a workman to whom the Workmen's Compensation Act applies? 2. Was the list produced by the respondent of the names and addresses of the persons other than the appellants by whom he was employed during the twelve months prior to 1st March 1908, coupled with the erroneous statement that he did not use white lead when employed by these people, sufficient compliance with the provisions of the Workmen's Compensation Act 1906, section 8 (1) (*c*) (*i*)?"

Argued for appellants—(1) The respondent was not a workman but an independent contractor. Apart from the fact that he was paid by the appellants for any work he did for them, there were here no *indicia* of service. There was no personal control or supervision on the part of the appellants, and the respondent had no duty to account to them for the work he did. He was free to accept work from others and to refuse any particular job if he thought it unsuitable. The clear inference from these facts was that the respondent was an independent contractor—*Hayden* v. *Dick*, November 26, 1902, 5 F. 150, 40 S.L.R. 95; *Doharty* v. *Boyd*, 1909 S.C. 87, 46 S.L.R. 71; *Chisholm* v. *Walker & Company*, 1909 S.C. 31, 46 S.L.R. 24; *Simmonds* v. *Faulds*, 1901, 17 T.L.R. 352; *Squire* v. *Midland Lace Company*, [1905] 2 K.B. 448. This was a pure question of law, not one of mixed fact and law, as in the case of *Mackinnon* v. *Millar*, 1909 S.C. 373, 46 S.L.R. 299. The question therefore was one for the Court and not for the arbiter. (2) Recovery of compensation was conditional upon the workman supplying the information required by sub-section 1 (c) (i) of section 8 of the Act. The respondent had failed to satisfy this condition. He was bound to furnish true and accurate information, and not having done so he was barred from recovering compensation.

Argued for respondent—(1) The question whether a man was a workman was a question of fact on which the decision of the arbiter was final unless it was clearly inconsistent with the facts. That was not so here, and the Court therefore would not interfere with what he had done—*Hayden* v. *Dick* (*sup. cit.*); *Doharty* v. *Boyd* (*sup. cit.*); *Chisholm* v. *Walker & Company* (*sup. cit.*); *Paterson* v. *Lockhart*, July 13, 1905, 7 F. 954, 42 S.L.R. 755; *M'Cready* v. *Dunlop & Company*, June 16, 1900, 2 F. 1027, 37 S.L.R. 779; *Evans* v. *The Penwyllt Dinas Silica Brick Company*, 1901, 18 T.L.R. 58; *Dewhurst* v. *Mather*, [1908] 2 K.B. 754; *Vamplew* v. *Parkgate Iron and Steel Company*, [1903] 1 K.B. 851. (2) The respondent was not barred from claiming compensation. The obligation imposed upon him by the statute was to furnish a list of names and addresses and he had done so. The false statement complained of was made in the course of the proceedings and had in no way prejudiced the appellants.

LORD LOW—In this case it is plain that Burnham & Company, the appellants, are not only makers of enamel letters, but

contract with shopkeepers and others to affix to their windows advertisements or names composed of enamel letters, and the leading fact in the present case is that they were in the habit of employing the respondent to do for them the work of fixing the letters. *Prima facie* that was a contract of service. No doubt there are circumstances in the case which are suggestive of the idea that the respondent acted not under a contract of service but as an independent contractor. But I can find no facts which are necessarily inconsistent with the idea that he was employed on a contract of service. It is therefore impossible to say that the Sheriff was wrong in coming to the conclusion that the respondent was a workman in the sense of the Workmen's Compensation Act, and accordingly we cannot interfere with the determination at which he has arrived.

The second question seemed at first sight to be one of considerable difficulty, but now, having had the whole circumstances explained, I do not think we can say that the Sheriff-Substitute was wrong. It appears that the respondent had furnished the names and addresses of the persons who had formerly employed him, as required by section 8, sub-section 1 (*c*), of the Act. It appears, however, that in the condescendence annexed to his application he falsely stated that he had not used white lead when employed by these people, the inference being that he could not have contracted the disease while in their service. Why he should have made that false statement it is not easy to say, because he had no interest to do so. If he was suffering from white lead poisoning he would get his compensation whether he contracted the disease while in the appellants' service or not. If, however, the appellants had been prejudiced by this false statement, there might have been a question whether the respondent had not disentitled himself to claim compensation. But I do not think that the appellants were prejudiced, because a proof was allowed in the case, and it was proved that the statement was not true, and if, by reason of that false statement, the appellants had refrained from taking steps to obtain contributions from the earlier employers, under the third proviso of sub-section 1 (*c*), there was still time for them to do so after the proof had been taken. I am therefore of opinion that the Sheriff-Substitute was right in holding that the respondent was not barred from claiming compensation, and that accordingly both questions of law should be answered in the affirmative.

LORD ARDWALL and LORD DUNDAS concurred.

The LORD JUSTICE-CLERK was absent.

The Court answered both questions of law in the affirmative.

Counsel for Appellants—Constable, K.C. — Moncrieff. Agents — Simpson & Marwick, W.S.

Counsel for Respondents—Johnston, K.C. —Cochran-Patrick. Agents—Oliphant & Murray, W.S.

HIGH COURT OF JUSTICIARY.

Saturday, May 21.

(Before Lord Low, Lord Ardwall, and Lord Dundas.)

MARTIN *v.* M'INTYRE.

Justiciary Cases — Police — Complaint — Relevancy—"Found" in any "Street" with Intent to Commit Crime—Accused on Board Tramway Car Passing along Street—Apprehended in Different Street —Glasgow Police (Further Powers) Act 1892 (55 *and* 56 *Vict. cap. clxv*), *sec.* 25.

The Glasgow Police (Further Powers) Act 1892 (55 and 56 Vict. cap. clxv), sec. 25, enacts—"Every known or reputed thief, or associate of known or reputed thieves, who is found in or on any house or building or enclosed space, or in any street or place adjacent, with intent to commit any crime . . . may be apprehended, and on conviction be imprisoned. . . ."

Held (1) that a person found on a tramway car passing along a street was found in a "street" in the sense of the Act; and (2) that "found" in a street did not mean apprehended therein, and that accordingly it was sufficient if the accused were seen there in such circumstances as to infer an intention to commit crime.

Daniel Martin and five others were charged in the Police Court, Glasgow, at the instance of John James M'Intyre, writer, Procurator-Fiscal of Court, with a complaint which set forth that the accused, being known thieves, "were on the 30th day of April 1910 found in Paisley Road (West), near Great Wellington Street, both in Glasgow, and in or upon two Glasgow Corporation tramway cars in Paisley Road (West) as aforesaid, with intent to commit the crime of theft by pocket-picking, contrary to the Glasgow Police (Further Powers) Act 1892, section 25."

On 6th May 1910 the accused were tried in the Police Court at Glasgow, and were found guilty and sentenced accordingly. They thereafter brought a bill of suspension and liberation, in which they, *inter alia*, stated—"(2) Before the accused were called upon to plead, Mr Cook (their agent) objected to the relevancy of the complaint in respect that a tramcar was not a *locus* within the meaning of section 25 of the Glasgow Police (Further Powers) Act 1892. The Magistrate repelled the objection. (4) The complainers . . . were arrested about 6·30 on the evening of 30th April 1910 in Norfolk Street, Glasgow. . . . The police officers who gave evidence against the complainers deponed that they watched the accused at or about 5·30 in the