Friday, June 5.

SECOND DIVISION.

[Lord Cullen and a Jury.

BURNS *v.* NORTH BRITISH RAILWAY COMPANY.

Reparation—Negligence—Railway—Open Door of Train in Motion Injuring Passenger Walking on Platform.

A passenger while walking on a railway platform was struck and injured by the open door of a passenger train which came into the station from behind her. In a trial by jury for damages at the instance of the injured person evidence was led to show that the door was open as the train entered the station, that the compartment was empty, that the door was on the off side of the train at all the stations between the departure station and the station where the accident happened, and that there was no inside handle by which it could be opened inadvertently from within the compartment. The pursuer having obtained a verdict, *held* (1) (*diss.* Lord Salvesen) that the jury was entitled to infer negligence on the part of the railway company, and (2) that the jury was not bound to infer contributory negligence on the part of the pursuer.

Mrs Bridget Reynolds or Burns, wife of Michael Burns, cinematograph proprietor, Armadale, with his consent and concurrence as her curator and administrator-in-law, *pursuer*, brought an action of damages against the North British Railway Company, *defenders*, in which she claimed £1000 damages for personal injury sustained through the fault of the defenders. She averred that while walking along the platform of the Queen Street Low Level station, Glasgow, she had been struck and injured by the open door of a compartment of a train which was entering the station from behind her.

The case was tried before Lord Cullen and a jury on 6th and 7th November 1913, when the jury returned an unanimous verdict for the pursuer and assessed the damages at £250.

The train came from Bowling, and from there to Queen Street, though it stopped at many stations, none of these had the platform on the off side of the train.

The defenders thereafter obtained a rule, and at the hearing on the rule the pursuer argued—The jury was entitled on the evidence to infer that the door was not properly shut at Bowling, and that the defenders were therefore guilty of negligence. It was the defenders' duty to see that the doors were closed on both sides at every station, and the fact that the door was open gave rise to a presumption of negligence—*Gee* v. *Metropolitan Railway Company*, 1873, L.R., 8 Q.B. 161. Pursuer had not been guilty of contributory negligence in being so near the train—*Wilson* v. *North British Railway Company*, November 8, 1873, 1 R. 172, 11 S.L.R. 155.

Argued for the defenders—There was no evidence justifying an inference of fault on the part of the defenders. There was a material difference between a door opening on the working and on the non-working side of the train. There was no evidence that the door had not been interfered with by a passenger, and in that case the defenders would not be liable. In the case of *Gee* v. *Metropolitan Railway Company* (*cit. sup.*) the railway company did not lead evidence. There must be reasonable evidence of negligence before defenders could be held liable—*Metropolitan Railway Company* v. *Jackson*, 1877, 3 A.C. 193; *Murray* v. *Metropolitan District Railway Company*, 1873, 27 L.T. 762; *Drury* v. *North Eastern Railway Company*, [1901] 2 K.B. 322. (2) In any event the pursuer had been guilty of contributory negligence. A passenger waiting at a station had a duty to keep clear of trains in motion. In this respect the present case differed from the case of *Tough* v. *North British Railway Company*, 1914 S.C. 291, 51 S.L.R. 225, where the train was at rest. The pursuer in the present case voluntarily took the risk—*Adams* v. *Lancashire and Yorkshire Railway Company*, 1869, L.R., 4 C.P. 739; *Siner* v. *Great Western Railway Company*, 1869, L.R., 4 Ex. 117; *Bridges* v. *North London Railway Company*, 1871, L.R., 6 Q.B. 377 (*rev.* L.R., 7 (H.L.) 213).

At advising—

LORD CULLEN—The pursuer alleges that while she was walking along the platform of the defenders' Low Level station at Queen Street, Glasgow, she was struck and injured by an open door on a passenger train which came into the station from behind her. The defenders do not dispute that there was evidence on which the jury were entitled to hold that the pursuer was so struck and injured.

The pursuer ascribes the fact of the open door to the fault of the defenders. The defenders deny fault. The jury have found in the pursuer's favour. Two questions have been argued. First, whether there was evidence on which the jury could reasonably hold the defenders at fault. Second, whether, if so, the pursuer is chargeable with contributory fault.

The train in question was a local one which had come from Bowling to Queen Street, and had stopped at a number of intervening stations. There was evidence to show (1) that the door which struck the pursuer was seen swinging open as the train came towards Queen Street platform from the tunnel adjoining the station; (2) that the compartment in question was then empty; and (3) that the door had been on the platform side of the train at Bowling as it was again at Queen Street, but that during the journey the door was on the off side of the train, so that there was no occasion for any passenger to open it. Further, it is common ground that the door opened only by an outside handle, without any inside loop capable of being turned by a passenger inadvertently handling it. On this evidence the pursuer maintains that

she presented a *prima facie* case against the defenders, and I think she is right. The case of *Gee* v. *Metropolitan Railway Company*, 8 Q.B. 161, appears to me to support this view.

It is, no doubt, possible that the door may have been opened by a passenger in the course of the journey. This possibility, however, is a remote one, seeing that no passenger had any occasion to open the door, and that it could not have been opened inadvertently from the inside. I do not think that the pursuer was called on to lead evidence to negative this possibility.

If I am right in thinking that the pursuer presented a *prima facie* case against the defenders, the *onus* lay on the defenders to satisfy the jury by evidence that the fact of the open door was due to the action of some person for whom they are not responsible. The defenders led no evidence to show directly that the door had in fact been opened by a passenger or anyone for whom they are not responsible. They adduced the guard of the train, who, acknowledging it to be his duty to see all the carriage doors secured at Bowling, deponed that he always performed this duty, and in particular that he performed it on the occasion of the journey in question. It was, I think, for the jury, who saw and heard this witness, to weigh the reliability of his testimony. The defenders further adduced the fireman on the engine of the train and employees at signal cabins *en route*, who said that it was their duty to note such a thing as an open door, and that they did not observe any open door on the train in question. These witnesses include the signalman at the cabin just adjoining the Queen Street platform. But if the evidence for the pursuer was believed by the jury, the door in question was swinging open as the train came in from the said signal cabin to the platform. It was for the jury to judge what weight they attach to the testimony of these witnesses. And it has to be kept in view that, as common experience has shown, a railway carriage door which is only partially fastened at the start of the train journey may remain closed for a considerable time before it yields to the jolting of the train and swings patently open.

On the whole matter, holding as I do that the pursuer presented a *prima facie* case against the defenders, I think that it was for the jury to say whether the rebutting evidence adduced by the defenders displaced to their satisfaction the pursuer's case. The question is not whether the jury came to the best conclusion. The question is whether there was evidence before them on which they could, by a reasonable exercise of the power of judgment on the facts reposed in them, return the verdict they did. And in my opinion that question should be answered in the affirmative.

The second question raised is whether, if the defenders were at fault, the pursuer is chargeable with contributory fault, in respect of her having walked along the open platform near enough to the edge of it to be struck by the open door which projected only 1 foot 8 inches over the platform. This question does not seem to me to be attended with difficulty. The short answer to it is, I think, that in a question with the defenders, the pursuer in using the platform was entitled to regulate her actions on the assumption that the defenders would do their duty, and that there would not, by their fault, be an open door capable of injuring persons legitimately frequenting their platform.

Following the views which I have expressed, I am of opinion that the rule should be discharged.

LORD JUSTICE-CLERK—This case is one which is undoubtedly narrow upon the evidence, but I have come to the conclusion that there is no ground for holding that the jury have given a verdict which was unjustifiable, as being contrary to the evidence. It appears to me that there was evidence on which it might be held that there was fault attributable to the company, and that the attempt to make out a case of contributory negligence has failed. It is settled by the case of *Gee*, 8 Q.B. 161, that the fact that a carriage door is swinging open when a train is running on the line affords *prima facie* evidence that due attention has not been paid to seeing that the door was securely fastened when the train left a previous station. In the present case I am of opinion that the jury could hold that when the carriage, the door of which struck the pursuer, emerged from the tunnel, which is at the end of the station, that door was swinging open. It is suggested that this might have been done by someone inside the carriage with a view to alighting. But this suggestion cannot, I think, be accepted. A passenger who intends to alight at a station and eases the lock of the door on entering the station, does not allow the door to swing open, but keeps his hand upon it. Such a passenger is also looking forward, and would see anyone near the edge of the platform, and it is to be presumed would not keep it open so as to strike any person he saw. And there is no evidence of any passenger alighting from the carriage in question. On the contrary, the evidence is that there was no one in the compartment as the carriage passed along the platform to the spot where the pursuer was standing. No doubt there is only one witness who speaks to this, but an incident of this kind does not require to be proved by more than one witness, and the jury were quite entitled to accept the evidence of the witness who spoke to having observed the fact. To this there is no satisfactory counter evidence; and the jury were quite entitled to disregard the evidence of the guard of the train, by which he endeavoured to prove that there were passengers in the compartment. He did not say that he observed that the compartment was empty, but merely made the round assertion that there must have been passengers in the compartment, because he thought himself justified in saying that there never was such a thing as an empty compartment on his train. I think the

jury rightly rejected that evidence. I should unhesitatingly have rejected it myself. Then it is said that the railway servants stated that all the doors on that side of the train had been securely fastened when the train started from the station of departure, and that at all the intervening stations this door was not opposite the arrival platform, and came alongside a platform only on arriving at Queen Street, where there is an island platform, so that the off side of the train becomes the entering and alighting side. All this is true, but one knows quite well that railway officials can always say quite positively that everything was secure, basing their statement on practice, and being sure that they have always carried out their duty efficiently. But it is quite well known that at times when it is believed that all the doors are fast when a train leaves a station, yet in fact cases frequently occur in which a door is not properly fast. *Gee's* case is an instance of this, and it is common knowledge that every now and again a person leaning against a door without first testing it, falls out because it has not been made secure. And such accidents do happen notwithstanding the fact that for long stretches of a journey the door though not fast, had been apparently fast, until something happened which moved it.

Again, it is said that if the door had been open, it would have been observed by the driver looking along the train, or by a signalman, or some other company servant. But it does not appear to me that this is in any way certain. If a door appears to be closed, from its lying up to the carriage frame, it may go forward without swinging open, but at some point of the journey, where the train rounds a short radius curve, or receives a jerk in crossing points, it may swing open, and this may happen after many stations have been passed. Here I think the jury were entitled to hold that the door swinging open was attributable to want of care in seeing that it was properly made fast.

It only remains to consider whether there is any ground for attributing such negligence to the pursuer as would debar her claim for damages. It was strenuously maintained that it is a fault for anyone to be on the platform of a station when a train that is to stop is entering it, at such a distance that an open door may strike him. I cannot assent to that. I hold that the jury were entitled to judge of the question of contributory negligence, whatever may be the danger of being near the edge of the platform when an express train is rushing through at a high speed, and is therefore making a violent draught of air, especially in the case of a person who is proposing to enter the train as a traveller. And in this case there is the additional element that the servants of the company had, by placing loaded luggage barrows between the station's seat and the edge of the platform, narrowed the available platform in a considerable degree.

On the whole matter I am satisfied that sufficient ground has not been shown for making this rule absolute, and that it ought to be discharged.

LORD SALVESEN—The facts in this case are unusual. The pursuer was on the platform of the defenders' Queen Street Low Level station waiting for a train which was due at 2·45 p.m. there and by which she intended to proceed to Armadale. The platform is what is known as an "island platform," and along the centre line there were several fixed seats for the convenience of passengers. Some barrows had been placed outside one of the seats and so narrowed the space available for foot traffic opposite the place where the barrows were standing. To get past the barrows the pursuer had to approach nearer the edge of the platform than she would otherwise have required to do. While she was walking along this comparatively narrow space she was struck on the left shoulder by an open carriage door of a passenger train which had approached from behind, and received certain injuries which it is unnecessary to detail. The only other fact which has a bearing on the liability of the defenders is that the compartment the door of which had swung open was empty; but the proof of this depends upon the evidence of a single witness—Mrs Spiers. Evidence was led for the defenders which I shall afterwards refer to, and at the conclusion of the trial the jury brought in a verdict in favour of the pursuer, thereby affirming that the accident with which she met was due to the fault of the defenders' servants and impliedly negativing the plea of contributory negligence.

As regards the implied finding, I do not think any exception can be taken. It was strenuously urged, indeed, that no person is entitled to be so near the edge of a railway platform when a train is approaching that he may be injured by a door which has been negligently left open by the servants of the railway company or has been negligently opened by a passenger proposing to alight. No doubt a person who is more than usually careful of his safety will avoid running any risk at all by standing well back, but I cannot hold that it is the duty of an intending passenger to contemplate a carriage door being open before the train has stopped, so as to relieve the person by whose negligence that has happened from all liability for the consequences. Still less do I think that the Railway Company can in this case support such a plea seeing that the space available for passengers moving along the platform had been considerably narrowed by the barrows I have already referred to. It is common ground that if the train had been in its normal state with all the doors securely fastened the pursuer would not have suffered any injury. When an express train is passing through a station and the travelling public on the platform are warned of its approach, it may well be that it is their duty to keep so far from the edge of the platform that the suction produced by the rapidly moving engine and carriages will not tend to draw them into a position of danger; but this does not apply to a train which is slowing up at a

station preparatory to stopping and allowing passengers to alight.

The true point of the case (which seems to have been lost sight of in the multitude of issues raised by the defence) is whether negligence may legally be inferred from this carriage door having been open in the circumstances disclosed in the evidence. That it may do so in some cases is plain from the decision in *Gee*, 8 Q.B. 161. In that case the only evidence led was that of the plaintiff and his brother, who had entered an empty compartment at Victoria station which had come from Westminster and was about to start for the Aldersgate Street station. The plaintiff seated himself on the off side of the carriage nearest the six-foot-way. During the journey he stood up and leant his hand on a bar across the window of the off side of the carriage. It immediately flew open and the plaintiff fell out and was injured. These facts were held to justify a verdict in favour of the plaintiff. It is, however, very significant to notice that no evidence of any kind was led for the defenders; and the only point which was really argued was not whether there had been negligence on the part of the defenders' servants in not securely fastening the door, but whether that negligence alone had caused the accident, the proximate cause of which was the plaintiff pressing against the door. In the argument submitted in support of the rule negligence of the defenders' servants was assumed, and indeed on any other assumption it is difficult to understand why the Railway Company offered no evidence. For aught that appears the off side of the carriage was the working side at the station which immediately preceded that at which the plaintiff entered the compartment. If so, as the evidence showed that the plaintiff and his brother had not in any way tampered with the fastenings of the door, the inference was clear that it had not been properly fastened as it ought to have been before it left the previous station; and as the compartment was empty when they entered it, the notion of the fastenings having been tampered with by any passenger was excluded.

In the present case the facts are very different. The witness Mackie, who was the passenger guard of the train the open door of which injured the pursuer, gave evidence to the effect that at Bowling he had properly shut the doors of all the carriages on the right-hand side of the train in the direction in which it was going—the then working side—which was the same side which the train presented when it entered Queen Street Low Level station; that thereafter there were ten stations at which the train stopped, but at all of these the working side was the left-hand side of the train; and that Queen Street was the first station at which the train stopped at which people had to get out on the right-hand side of the train. Between Bowling and Queen Street stations, therefore, no passenger had occasion to use the side in which the door was that swung open as the train approached Queen Street platform. The same witness depones that at Charing Cross station he saw the non-working side of the train and that there were no doors open upon it when it left the station. The engine-driver of the train who stood at the non-working side of the engine also deponed that no doors were open on that side when the train left Charing Cross. There was other evidence to the same effect. Accepting the evidence for the pursuer the cause of the accident must have been either (1) that the door had been closed but insufficiently fastened at Bowling and had sprung open of its own accord just before the train reached that station, or (2) that it had been originally properly fastened at Bowling, but that the fastening had been tampered with at some intermediate point by a passenger so that it was apt to open when the train passed round a curve, or that it had been gradually loosened by the vibration of the train until it had actually swung open. If either alternative infers negligence against the defenders, then the verdict must stand; but if, on the other hand, the latter alternative is one which is consistent with the defenders' servants not being in any way to blame, it humbly appears to me that the verdict cannot be supported.

The fact that the carriage was empty as it approached Queen Street station demonstrates only that the door had not been properly fastened when it left Charing Cross station. It does not exclude the view that some passenger at an earlier point may have tampered with the fastening and perhaps opened the door and afterwards pulled it to without locking the handle. There is no direct evidence as to whether the carriage in question had been occupied after the train left Bowling, but there is general evidence to the effect that this particular train was well patronised, and therefore that it was extremely unlikely that this carriage should have been empty all the time that the train took to travel past the ten stations to Queen Street. It was said on behalf of the pursuer that it was extremely improbable that any person would have touched the handle of what was the off-side door between any of these previous stations. I see no improbability of the kind. It is familiar enough that some people open a carriage door some little time before they are approaching a station, and if they are not acquainted with the line they may open the wrong door, in which case when they discover their mistake they would be very likely merely to pull it to without locking the handle. At all events this hypothesis appears to me to be just as probable as that this particular door should have remained closed all the way from Bowling to Charing Cross, and should have swung open only just before the train entered Queen Street station. There is evidence to exclude the pursuer's theory if Mackie's statement is accepted, and there was no counter evidence. On the other hand there was no evidence at all to exclude the possibility of an intermediate passenger having tampered with the fastening. There is no evidence which enables the Court any more than the jury to decide in favour

of the one hypothesis rather than the other. Each appears to me equally probable; both are certainly possible explanations.

All this, however, would not avail the defenders if they have a duty to examine the off carriage doors of a train similar to that which is imposed upon them of examining and closing all the doors on the working side. The rules of the Railway Company do not provide for any such inspection, nor is there any evidence of other railway companies doing so. It is difficult to see how in the ordinary working of a train such an inspection could be carried out without causing very great delay and consequent inconvenience to passengers. To do the work efficiently some person would have to travel along the footboard adjoining the six-foot-way and see that every fastening was in position. From the near side of the train this cannot be seen where the fastening is one which opens only from the outside, as was the case with the fastening here. The duty of the Railway Company's servants under the rules is to close the windows on the off side of the train in empty compartments, but that duty is not prescribed for the safety of passengers, but for the protection of the Railway Company's own property. If a carriage door on the off side were seen to be open, it would certainly be negligence on the part of the guard who observed it if he did not close it, and perhaps it would be negligence if he failed to observe a carriage door that was in fact open on the off side and so failed to close it. But I cannot affirm on the evidence that it constitutes fault on the part of a railway company not to provide for a system of inspection of the handles of carriages on the off side of a train, and indeed I do not recollect that this was maintained on behalf of the pursuer.

I am accordingly of opinion that the mere fact of the door in question having swung open before it reached the platform on which the pursuer was walking is not a sufficient ground for inferring that it had not been properly fastened through the fault of the defenders' servants, and that therefore there was no evidence on which the jury could base a finding of fault.

LORD GUTHRIE—The defenders deny fault and allege contributory negligence. I think fault leading to the accident has been proved against them, and that they have failed to establish contributory negligence.

At the trial the defenders endeavoured to show that there had not and could not have been any accident. This attitude was abandoned in the argument before us, when the case was taken on the footing (1) that the train in question came alongside the platform with a door of a compartment swinging open, (2) that the pursuer was struck by that door.

The pursuer contended that these facts were sufficient to raise a presumption of fault on the part of the Railway Company, and therefore to shift the *onus* which she admitted lay on her, in the first instance, to prove fault. She founded on *Gee* v. *Metropolitan Railway Company*, 8 Q.B. 161. In that case the plaintiff entered at Victoria a train which had come from Westminster. When the train was approaching Sloane Square he stood up and took hold of and leaned on the small brass rod across the window of the off-side door of the compartment, intending to put his head out to see the signal lights. The door flew open; he fell out and was injured. There was no further evidence as to the construction of the door and its fastenings. The Railway Company led no evidence. The jury found for the plaintiff, and the Queen's Bench and Exchequer Chamber held that there was evidence and that the verdict ought to stand. The Judges (who all gave opinions) were Cockburn, C.J., Blackburn, J., Mellor, J., Quain, J., Kelly, C.B., Martin, B., Keating, J., Brett, J., Cleasby, B., and Grove, J. If that decision, pronounced by an exceptionally strong bench, be sound, it is an authority in the pursuer's favour. There was no evidence that the compartment was unoccupied between Westminster and Victoria, and the Railway Company argued that the door might have been unlocked and left unfastened by a passenger travelling between these stations. Similarly in the present case the defenders argue that the door which was swinging open when the train came into Queen Street station may have been unlocked by a passenger travelling between any of the nine stations stopped at in the journey from Bowling to Queen Street. This argument failed in *Gee's* case. Should it prevail in the present case?

If it was held in *Gee's* case that the mere fact of a railway carriage door flying open while the train was in motion raised a presumption of fault on the part of the company, it is not necessary to affirm that proposition in this case. I accept the view put forward by the Solicitor-General that it is a question of circumstances whether any such presumption of fault arises. For instance, if it had been proved that the compartment of which the door was swinging open had contained a passenger or passengers when it arrived at Queen Street, I should have doubted, looking to the known custom of people to open the doors of carriages before the stoppage of trains, despite the endeavours and warnings of railway companies to prevent the practice, whether any such presumption arose. But in this case it is proved that when the train came in sight at Queen Street out of the tunnel and beyond the signal bridge there was no person in the compartment. That seems to me a circumstance which, taken in connection with the open door, is sufficient to throw the *onus* on the defenders of clearing themselves from the fault which otherwise is the reasonable inference. They might perhaps have done so by evidence that the compartment was occupied during some part of the journey between Bowling and Queen Street. They say they have done so, and they rely on the cross-examination of Mackie, the guard. The passage in his evidence is as follows:—"Assuming that a carriage door was swinging open as it came out of the tunnel or through the signal

bridge at Queen Street station, and that no one was in the compartment, how do you account for that?—(A) I would say it was not right, because that is a very well-filled train coming from Bowling, and there is not a compartment that is not used. (Q) You never on any occasion have an unoccupied compartment?—(A) Not one? (Q) And there never are such?—(A) No. (Q) Assuming there was a vacant compartment, and that as the train came out of the tunnel or from under the bridge at the signal cabin the door was swinging open, must that not have been due to it not having been closed at Bowling?—(A) No. I would say that was impossible." That evidence on the face of it is not reliable, because it makes two obviously incorrect assertions—first, that Mackie had never seen an unoccupied compartment on the journey between Bowling and Queen Street, and second, that it was "impossible" that the door was not fastened at Bowling. It may be the misfortune of the defenders that, looking to the day of the week (Monday) and the season of the year (February), no presumption of heavy traffic arises in their favour, and it may also be their misfortune that, owing to information of the accident not being lodged on the spot they were unable to produce evidence of the compartment being occupied between Bowling and Charing Cross. But the result is that in my opinion there is no reliable evidence on which to found the defenders' suggestion that the door may have been opened and not re-fastened *en route* before leaving Charing Cross by a passenger, mischievously or by mistake. If so, it seems to me that the reasonable inference is the one maintained by the pursuer, namely, that the door, owing to the defenders' negligence, was not fastened at Bowling. The defenders only suggest a possibility, without any evidence to raise it to a probability. The pursuer founds on a proved fact as to the state of the train when it reached Queen Street station, which, unless effaced by evidence as to the position of the door at an earlier part of the journey, leads in my opinion to reasonable proof of fault. Mackie's statement as to the doors being fastened at Bowling is merely a statement of practice and not from recollection of this particular train.

As to contributory negligence, it appears that there was a clear space of some four feet between the edge of the platform and the barrows on the platform, and that the pursuer must have been walking some two feet from the edge of the platform. In the absence of any warning from the defenders' servants, I do not think the defenders have proved contributory negligence. The pursuer was not bound to assume that the defenders might work their line in disobedience to their own rules. It is said that she should have anticipated that passengers might be opening doors in preparation for alighting. But when this takes place the door is not usually flung fully open, but is held in the passenger's hand. It was also suggested that she might just as well have been struck by a passenger looking out of the window. But in that case, if it were possible for such a passenger to have leaned out far enough to have come against the pursuer, he would have been looking the way the train was going and would have avoided the pursuer.

On the whole matter I think the verdict ought to stand.

LORD DUNDAS was absent.

The Court discharged the rule.

Counsel for the Pursuer—G. Watt, K.C. —D. P. Fleming. Agents—Purves & Simpson, S.S.C.

Counsel for the Defenders — Solicitor-General (Morison, K.C.) — E. O. Inglis. Agent—James Watson, S.S.C.

Saturday, June 6.

SECOND DIVISION.

[Sheriff Court at Paisley.

AITKEN *v.* FINLAYSON, BOUSFIELD, & COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Accident*"—"*Arising Out of and in the Course of the Employment*"—*Death from Apoplexy Brought on by Exertion of Running.*

A workman was employed at a flax-mill as a gateman to attend to the gate, telephone, and ambulance appliances, and to attend personally to minor accidents. On being informed of a scaffold accident to some workmen who were not in the employment of the mill-owners, but were engaged in doing work for them on the premises, he ran from the gate to the scene of the accident and back to the gate in order to telephone for a doctor and an ambulance. Whilst telephoning he was seized with an apoplectic shock from which he died. The Sheriff found in fact, *inter alia*, "that the deceased's death was due to apoplexy brought on by the exertion of running as quickly as he could and the excitement caused by the scaffold accident," and "that he had no instructions not to attend to accidents to workmen who might not be in the employment of the respondents, who were engaged to do certain repairs on the respondents' premises and were in the course of carrying out those repairs."

Held (*rev.* the decision of the Sheriff) that the death of the deceased was due to an accident within the meaning of the Act, and that the accident arose out of and in the course of the employment.

In an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between Mrs Agnes Adam or Aitken, Johnstone, and others, *appellants*, and Finlayson, Bousfield, & Company, Limited, flax-spinners, &c., Johnstone, *respondents*, the Sheriff-Substitute (BLAIR) refused compensation and stated a Case for appeal.

The Case stated—"This is an arbitration