REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL, WHICH, THOUGH NOT ORIGINATING IN SCOTLAND, DEAL WITH QUESTIONS OF INTEREST IN SCOTS LAW.

HOUSE OF LORDS.

Friday, March 6, 1908.

(Before the Lord Chancellor (Loreburn), Lords Ashbourne, Macnaghten, James of Hereford, Robertson, and Atkinson.)

MORGAN *v.* TYDVIL ENGINEERING AND SHIP REPAIRING COMPANY.

(On Appeal from the Court of Appeal in England.)

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7, *sub.-secs.* (1) (2)—*Undertaker—Occupation of Dock.*

A foreman engineer was sent by his employers on board of a ship lying in a wet dock to take notes of repairs that they were to execute. While on board he accidentally fell and was injured.

Held that the employers were not in actual occupation of the dock and were not "undertakers," and that therefore the Workmen's Compensation Act 1897 did not apply.

Houlder Line, Limited v. *Griffin*, [1905] A.C. 220, 42 S.L.R. 865, *followed.*

The applicant for compensation was a foreman engineer in the employment of the respondents, who were engineers and ship repairers at Cardiff. He was sent by the respondents on board of a ship lying in a wet dock in order to take notes of certain repairs which were to be executed by them. While upon the ship he fell accidentally and was injured.

The County Court Judge refused compensation. The Court of Appeal (Collins, M.R., Cozens-Hardy and Farwell, L.JJ.) sustained his judgment.

At the conclusion of the appellant's argument—

Lord Chancellor (Loreburn)—This is a short case, and it has been put very shortly. The appellant was a foreman engineer, sent on board a steamship then in dock to take notes of repairs that were to be executed by his employers. He fell and injured himself. The only point is whether the Workmen's Compensation Act applies. It cannot apply unless the employers of the foreman engineer, who sent him on board the ship, are "undertakers" within the meaning of the Act. They cannot be undertakers within the meaning of the Act unless they were persons "having actual use or occupation of a dock or of any premises within the same or forming part thereof." I cannot understand myself how it could be held that if a tradesman sends a servant on board a ship then lying in dock in order to take notes of repairs to be executed the tradesman is using or occupying the dock. It would be equally just to say that if a tradesman sends materials to a private house to be delivered he is in use or occupation of the house. But the point has, I think, been in substance decided in the case of the *Houlder Line, Limited* v. *Griffin* in this House. Therefore I think this appeal ought to be dismissed, and I move your Lordships accordingly.

Lord Ashbourne—I concur, but I feel bound to add that but for the previous decision in this House I should have entertained considerable doubt.

Lord Macnaghten—I agree.

Lord James of Hereford—I agree in the judgment of the Lord Chancellor, and I should like to add a few words in explanation of the view which I take of the subject. When *Houlder's* case was before your Lordships the arguments addressed to us were very similar to those which have been addressed to your Lordships to-day by the learned counsel, and every one of the members of the House who heard that case, with the exception of myself, came to the conclusion that the shipowner, the defendant, was not liable. I differed then, feeling as I did the force of very much the same arguments as those which have been addressed to us to-day, but of course that decision must prevail, and I accept the judgment of my colleagues most implicitly. But this appears to me to be a stronger case in favour of the non-liability of the defendant than that was. In that case the shipowner, if I recollect rightly, was paying dock dues; he therefore, when his ship was lying in the dock for the purpose of coaling, was "occupying" in a sense only, in the

sense, as it were, that he was the renter of a right to lie in the dock, but he was held not to be liable. But in this case the occupation does not go so far as that of the shipowner. In that case the ship was there in the dock by right of a contract which had been made, which certainly was some evidence, as I thought, of occupation. But here the person whom it is sought to make liable is a person who sent the appellant on board the shipowner's ship. How that person could for a moment be supposed to be an "occupier" of the dock I cannot myself realise. It was not his ship, he had nothing there that caused any occupation. He simply employed a person to take notes of work to be done on board that ship. That seems to me to make the case much weaker than *Houlder's* case, but in any event the decision in that case must apply to this.

LORD ROBERTSON—I am clearly of opinion, apart from authority, that the Act does not apply to the present case.

LORD ATKINSON—I concur with Lord Robertson in thinking that in this case there was no use or occupation of the dock or of any premises therein, and I should have come to the same conclusion if *Houlder's* case had never been decided.

Judgment appealed from affirmed, and appeal dismissed.

Counsel for Appellant—C. A. Russell, K.C. —Raymond Allen—A. Parsons. Agents—Smith, Rundell, & Dods, Solicitors, for Lewis Morgan & Box, Solicitors, Cardiff.

Counsel for Respondents—Atherley Jones, K.C.—J. Sankey—G. Beyfus. Agents—Beyfus & Beyfus, Solicitors.

HOUSE OF LORDS.

Friday, April 3, 1908.

(Before the Lord Chancellor (Loreburn), Lords Ashbourne, Macnaghten, James of Hereford, Robertson, Atkinson, and Collins.)

GREAT NORTHERN, PICCADILLY, &c., RAILWAY COMPANY *v.* ATTORNEY-GENERAL.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue—Stamp Act 1891 (54 *and* 55 *Vict. cap.* 39), *sec.* 113—*Company Limited not under Companies Acts — Increase of Capital — Private Act Authorising Increase.*

The Stamp Act 1891, section 113, provides with regard to companies the liability of whose members is limited otherwise than by virtue of the Companies Acts, that a statement of the capital or of any increase in the amount of nominal share capital shall be delivered by the company to the Commissioners within a month of the company's formation or of the increase. Stamp-duty is exigible on the amount of the capital or increase. The A and B companies were created in 1897 and 1899 under private Acts which conferred limited liability. Each company then complied with the provisions of section 113. In 1902 the two companies were amalgamated by another private Act which vested the capital of the B company in the A company.

Held that there had been an increase of the nominal amount of the share capital of the A company and that stamp-duty was exigible under section 113, notwithstanding that the increase was the result of an Act of Parliament.

The Attorney-General claimed £13,200 from the appellant company under section 113 of the Stamp Act 1891, for failure to deliver a statement of an increase in the nominal amount of their share capital as provided by that section.

The Brompton and Piccadilly Circus Railway Act 1897 (60 and 61 Vict. cap. cxcii) incorporated the railway company of that name with £600,000 capital. The Great Northern and Strand Railway Act 1899 (62 and 63 Vict. cap. cciii) incorporated that railway company with £2,400,000 capital, but none of this had been issued in 1902. Each company complied at the time of its formation with section 113 of the Stamp Act 1891.

The Great Northern and Strand Railway Act 1902 (2 Edw. VII, cap. ccxxxv) vested the whole powers and liabilities of that railway under its Act of 1899 in the Brompton, &c., Railway, the name of which was by the same authority altered to the Great Northern, Piccadilly, and Brompton Railway Company. This latter company made no statutory statement of increased nominal share capital.

On an information by the Attorney-General, WALTON, J., gave judgment for the company. In an appeal on a stated case the Court of Appeal (COZENS-HARDY, M.R., MOULTON and FARWELL, L.JJ.) reversed this decision.

The Railway Company appealed.

At the conclusion of the arguments their Lordships gave judgment—

LORD CHANCELLOR (LOREBURN)—I must say that I think this a very plain case. The question is, Has there been an increase of the amount of the nominal share capital of the appellant company? Now, what is the appellant company? It is the Brompton and Piccadilly Circus Railway Company under a different name imposed upon it by section 64 of the Act of 1902. The Brompton Company had, before the Great Northern Act of 1902, power to raise capital to the amount, as we were told, of £600,000. After that Act was passed it had power to raise £2,400,000 more. Surely that was an increase of the amount of the nominal capital. Why, then, ought it not to be made subject to this duty? The real reason suggested is that the Great Northern