

Saturday, November 25.

FIRST DIVISION.

SMITH & WILSONS v. CLYDE COAL COMPANY, LIMITED.

Process—Reparation—Intimation to Possible Pursuers.

In an action of damages at the instance of a widow and her four minor children for the death of the husband and father, the defenders moved that intimation should be made of the dependence of the action to other children who were of full age and not parties to the action, under certification that if they did not appear and crave to be sisted as pursuers to this action within such time as might be fixed, they should be held to have departed for ever from any claim competent to them in respect of their father's death. The pursuers expressed their consent to intimation being made.

The Court pronounced the following interlocutor:—"Having heard counsel for the parties upon the minute for the defenders, . . . Appoint the same to be intimated to the children of the deceased . . . other than those who are pursuers in the action, in order that they may crave themselves to be sisted in the action within eight days as pursuers, if so advised."

Counsel for the Pursuers—Ure—Deas, Agents—Simpson & Marwick, W.S.

Counsel for the Defenders—Comrie Thomson—Salvesen. Agents—Winchester & Ferguson, W.S.

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SECOND DIVISION.

[Sheriff of Aberdeenshire.

BAXTER v. ABERNETHY & COMPANY.

Reparation—Master and Servant—Personal Injury—Dangerous Operation—Fault of Fellow-Workman—Action Irrelevant at Common Law.

A boilermaker raised an action of damages against his employers for injuries sustained while in their employment. The action was laid only at common law. The pursuer averred that a small crane in the works which ran on rails 15 feet above the ground, to the defenders' knowledge was defective, and frequently got displaced during work, that on one occasion he was ordered by his foreman to climb up to assist in replacing it in its proper position, that in order to do so he had to hang on by his hands to a beam about 5 feet higher, on which another and larger crane travelled, and that while in that position the larger crane

was moved along its rails and passed over the pursuer's hand and severely injured it.

The Court dismissed the action as irrelevant at common law.

Andrew Baxter raised an action in the Sheriff Court at Aberdeen against James Abernethy & Company, engineers and boilermakers there, for £200 in name of damages for injuries received by him while in their employment.

He averred—" (Cond. 2) On Friday 11th December 1891 pursuer was engaged as a boilermaker in the defenders' service at their works at Ferryhill, Aberdeen. He was subject to the orders of George Andrews, the foreman of the defenders' boilermaking department. (Cond. 3) The defenders use a small travelling crane for the purposes of their work, and on the afternoon of said 11th December 1891 this crane had got displaced from the rails upon which it travels. The pursuer was ordered by the said George Andrews, his foreman; to assist in placing this crane in proper position on its rails by means of a sling. In order to do so the pursuer had to climb up to the rails, which run upon beams about 15 feet from the ground. The pursuer had to stand on one of these beams and hang on by his hands to a beam about 5 feet higher, on which another and larger crane travels. While in that position the larger crane was moved along its rails and passed over the pursuer's left hand and severely injured same. . . . Explained that the smaller crane was, to the defenders' knowledge, defective and unfit for the use to which the defenders put it. In consequence of its insufficiency the strain placed upon it in the raising and carrying of plates, &c., almost invariably caused it to be displaced from the rails. The defenders' took no means to remedy such defect, and in consequence the workmen employed at the job for which such small crane had to be used necessarily had to replace same on the rails. The defenders, however, although they were well aware that this was matter of daily occurrence, provided no proper means or appliance for the work of replacing the crane, and in consequence of the want thereof the workmen, such as pursuer, were compelled to adopt the means before narrated, which involved risk and danger that would have been entirely obviated had the defenders either remedied the original defect in the said crane or provided proper appliances for replacing same when displaced. (Cond. 4) The said accident, and the injuries thereby caused to the pursuer were due to the negligence of the defenders, or of their said foreman, or of other of their servants for whom they are responsible. In obeying the said foreman's orders the pursuer relied, and was entitled to rely, that proper arrangements would be made by the defenders for insuring his safety while engaged in the dangerous work he was ordered to do, and in particular that the upper crane should not be used. The defenders, however, took no precautions whatever for the pursuer's safety, and gave no warning or