

as meaning the railway of any railway company to which the Regulation of Railways Act 1873 applies. Under that Act, section 3, the term "railway company" includes any person being the owner or lessee of or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament; and the term "railway" includes "every station, siding, wharf, or dock of or belonging to such railway, or used for purposes of public traffic."

Now, the accident occurred upon a siding on a private line of railway belonging to the Coltness Iron Company. This private line had a connection with the respondents' main line at Newmains, and the place where the accident occurred was at a distance of three-quarters of a mile from the connection. Under an arrangement between the respondents and the Coltness Iron Company the former were in use to deliver and take away by means of their own engines and trucks by that private line of railway ore consigned to or mineral consigned by the Coltness Iron Company.

The question is, whether the Act of 1897 applies to the private line in question. It was argued, in the first place, that the siding could be regarded as a siding of the respondents' railway. I do not think that this contention is well founded. The siding is a siding of a private line belonging to the Coltness Iron Company, and not of any part of the system of the respondents' company.

Next, it is said that the accident occurred "about" the respondents' railway. This is a more plausible ground, because the private line is connected with the respondents' railway, and the respondents' engines and trucks daily use it in connection with the public traffic which is carried on upon the respondents' railway. But this is not, in my opinion, sufficient. It is true that by means of the connection the respondents' engines and trucks can under the arrangement with the Coltness Iron Company deliver and take up ore in the way which I have mentioned. But for all that the line is a private line, and the position of the respondents in regard to it is just the same as if in a town they had sent their carts to the private premises of a trader for the purpose either of delivering goods consigned or taking away goods for carriage by their line.

Further, the accident occurred at such a distance from the respondents' own line that I think the siding cannot in any reasonable sense be described as being about the respondents' railway.

I would only add in conclusion that the private line appears to be connected not only with the North British but with the Caledonian system, and it might with equal force be maintained that it was a part of that system. It is settled by decision that in order to bring the *locus* of an accident within the scope of the statute it is not enough that the workman should at the time of the accident have been employed on the employer's business. It is also necessary under the 7th section that

the accident should have occurred "on or about" the premises there mentioned. It was not intended that the Act should apply to private railways, and I think that we should be setting a dangerous precedent if we held that this line of railway fell within the scope of the Act.

LORD YOUNG was absent.

The Court answered the question of law in the negative and dismissed the appeal.

Counsel for the Claimant and Appellant—Salvesen, Q.C.—Findlay. Agent—Marcus J. Brown, S.S.C.

Counsel for the Respondents—Solicitor-General (Dickson, Q.C.)—Glegg. Agent—James Watson, S.S.C.

Tuesday, November 6.

## SECOND DIVISION.

[Sheriff-Substitute at Hamilton.]

CADZOW COAL COMPANY, LIMITED  
v. GAFFNEY.

*Reparation — Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), First Schedule (1)(b)—Amount of Compensation — "Average Weekly Earnings"—Period of Employment from which to Calculate Average Weekly Earnings—Week.*

A miner received injuries in the course of his employment. He had entered the service of his employer on Friday of the week preceding the accident, and did not work on Saturday. He worked from Monday to Thursday of the following week, on which day he was injured.

*Held* that there were sufficient materials to enable the Court to estimate his "average weekly earnings" as required by the First Schedule (1) (b) of the Workmen's Compensation Act 1897, in respect that he had been in the employment during part of two weeks.

The word "weekly" in the schedule is to be taken as referring to the calendar week.

*Opinion reserved (per Lord Moncreiff)* upon the question whether a workman who had been in the employment during one week only was excluded from the benefits of the Act.

This was an appeal in an arbitration under the Workmen's Compensation Act 1897 between Charles Gaffney, miner, Hamilton, claimant and respondent, and the Cadzow Coal Company, Limited, appellants. The claimant claimed compensation on account of injuries received by him on 29th March 1900, while working in the employment of the appellants as a miner.

The facts of the case as set forth by the Sheriff-Substitute (DAVIDSON) as arbitrator were as follows—"That the respondent entered the defenders' employment on Friday 23rd March last, on which day he

earned 7s. 7d. That on the 24th he did no work; that he worked on Monday the 26th March, and every day thereafter till the 29th, on which day he was knocked down by a hutch and so severely injured that he was unable to work till 14th May. That during the four days from 26th to 29th March inclusive he earned the sum of £1, 12s. That since he resumed work on 14th May he has earned 5s. 6d. per day. That he was not paid any wages by the defenders before the accident. That he and other miners in appellants' employment are engaged from day to day. That wages are paid fortnightly on Saturday, but if the miners desire they can usually get their wages on the intermediate Saturdays. That the 24th day of March was an intermediate Saturday."

The Sheriff-Substitute decided that the amount the respondent earned on Friday the 23rd March was his wages for the week on which that Friday occurred; that the amount he earned on the following week, viz., the 26th, 27th, 28th, and 29th March, was his wages for that week, and that the Court was entitled to strike an average between them, which the Sheriff-Substitute did. He awarded the respondent at the rate of 9s. 10d. a-week for four weeks and one day, and the expenses of the action.

The question of law for the opinion of the Court was—"Whether the respondent, having entered the employment of the appellants on 23rd March 1900, and worked on that day, and having also worked on the 26th, 27th, 28th, and 29th March 1900, on which last day he was injured, is entitled in law to compensation under the First Schedule (1) (b) of the said Act?"

By the Workmen's Compensation Act 1897, First Schedule (1) "The amount of compensation under this Act shall be . . . (b) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound."

Argued for the appellants—The respondent was not entitled to compensation under the Act. It was settled that a workman had no claim unless he had worked for two weeks—*Lysons v. Andrew Knowles & Sons* [1900], 1 Q.B. 780; *Stuart v. Nixon & Bruce* [1900], 2 Q.B. 95. If the calculation was by calendar weeks then the respondent had worked only one day in the first week, which could not be held to be a fair week's work. The case would have been the same if he had worked only an hour. That showed that it was impossible to estimate the average weekly earnings unless the workman had done two fair weeks' work. If the calculation was by the colliery week, the claimant in *Lysons*' case had worked one day in each colliery week, and he was held not entitled to compensation. In *Doyle v. Beattie*, July 10, 1900, 37 S.L.R. 915, and *Russell v. M'Cluskey*, July 20, 1900,

37 S.L.R. 931, the workman had worked a substantial part of two weeks, and thus the Court had material for estimating his average weekly earnings.

Argued for the respondent—The enacting clause of the Act affirmed the workman's right to compensation, and it was not to be readily taken away by inference from the terms of the schedule. The Court was not required to determine whether the workman had worked two weeks, but to estimate his "average weekly earnings," and it was settled that two full weeks' work was not essential for that calculation—*M'Cluskey, supra*. The result was quite equitable to the employer, for if the workman had worked only a few days in one week, his average earnings would be thereby reduced.

LORD JUSTICE-CLERK—Whatever anomalies there may be in regard to the right to compensation under this statute we must deal with the statute as we find it. Its purpose is to give a right to compensation to workmen who have been injured in the course of their employment apart from any question of fault on the part of the employers. But when it came to the working out of that right to compensation the Legislature has thought proper to enact that the amount of compensation, in the case of workmen who have been less than three years in the same employment, shall be based on the average weekly earnings of the injured person, and as you cannot have a case of a weekly average if you have only one week to determine by, it has been said that the injured person must have worked for more than one week in order to entitle him to compensation. From this it is argued by the appellants here that the present case must be taken to be a case of working for one week only, because the respondent had been in their employment at the date of the injury for a single day only in one of the weeks. I am unable to assent to that. It is not wages to which the injured person would be entitled if he worked for two full weeks that we are to take as the basis of computation, but earnings which he did in fact make. If he worked for a short time only in one week and in consequence earned little for that week, then he must suffer, because he cannot bring up to a high figure the sum from which the average is to be struck. This is how the Sheriff-Substitute has dealt with the case. It seems to me that he has taken the proper course, and that we should adhere to his judgment.

LORD TRAYNER—I am of the same opinion. The principle of the Act is, that a workman in an employment to which the Act applies shall be entitled to compensation from his employer for injuries received by him in the course of his employment. The amount of compensation to which the workman is to be entitled is fixed by the first schedule of the Act, and it has been held that a workman cannot recover compensation under the Act unless he has been at least two weeks in the employment, because the statutory standard for measur-

ing compensation can only be applied in circumstances which enable the Court to strike an average. I think we can here fix the amount of compensation to which the respondent is entitled in terms of the statutory standard. In the course of the argument use was made of the words "wages," "weekly wages," and "average weekly wages." But that is not the language of the statute, and to introduce these terms may only add to difficulties in connection with the construction of this statute, already sufficiently great. The statute makes no reference to the wage or weekly wage of the workman, but to the amount of his "earnings" in a week. A workman obviously might earn in any week less than what would be recognised as his weekly wage, by working for less than a full week, or he might earn more by working overtime. The statute, however, only takes account of what the workman "earned" in the week. It was also suggested that as in some employments the working-week may begin, say on a Tuesday, and end on the following Monday, we should regard "week" in the statute as if it were six full days. I do not think so. The statute is not dealing with special employments but with the general question; and when it speaks of weeks I regard it as meaning the space of time which commences on Sunday and ends on Saturday. In the present case it appears that the respondent worked for one day in the week ending Saturday March 24th, and that the sum which he received for that day's work constitutes his earnings for that week. In the same way the sum he received for his four days work in the following week constitutes his weekly earnings for that week; and if these two sums be added together and then divided, you get his average weekly earnings in the two weeks preceding his injury. The Sheriff-Substitute has awarded compensation on this principle, and I think that his judgment is right.

LORD MONCREIFF—Although the decision which we are about to pronounce goes further than any previous decision on the point, I think that it is in accordance with the proper construction of the statute. There is nothing in the body of the statute to the effect that an injured workman shall not be entitled to compensation unless he has been in the employment for more than one week. Continuity of employment is not a condition of the right to compensation according to the body of the statute. The question arises only inferentially from the terms of the first schedule to the Act. That schedule provides that the amount of compensation in the case of a workman who has been totally or partially incapacitated for work shall be based on his average weekly earnings during the period of his employment. This has been held to imply that service for at least two weeks is an essential condition of a right to compensation, because, it is said, you cannot strike a weekly average unless you have the earnings of at least two weeks. But I should like to reserve my opinion on the

question whether a workman who had worked only for, say, five days in a single week is excluded from the benefit of the Act. I doubt whether such a result was within the view of those who framed the Act; but assuming that work during two weeks is essential to the right to compensation, I think that even on that construction the conditions of the statute are here sufficiently fulfilled. The respondent did work during two weeks, in a popular sense, for he worked (no doubt for one day only) in the week ending March 24th, and he also worked in the following week each day until the 29th March, when he was injured. He earned 7s. 7d. for the first week, and £1, 12s. for the second week. If we add these two sums together and then divide the total, we get the average weekly earnings of the respondent. This method of computation is in favour of the employers, because the respondent's earnings were small in the first week as he then worked for only one day, and thus the average is greatly reduced. I think that the Sheriff-Substitute has arrived at the right conclusion, and that we should answer the question accordingly.

LORD YOUNG was absent.

The Court answered the question of law in the affirmative, and dismissed the appeal.

Counsel for the Appellants—Salvesen, Q.C.—Chree. Agents—W. & J. Burness, W.S.

Counsel for the Claimant and Respondent—H. Johnston, Q.C.—Younger. Agents—Simpson & Marwick, W.S.

Tuesday, November 6.

## SECOND DIVISION.

[Dean of Guild Court,  
Edinburgh.

### SOMERVILLE v. CALEDONIAN RAILWAY COMPANY.

*Burgh — Dean of Guild — Jurisdiction —  
Erection of Railway Bridge over Street —  
Edinburgh Municipal and Police Act  
1891 (54 and 55 Vict. cap. cxxxvii.), secs. 3,  
48 and 59 — Edinburgh Municipal and  
Police Act 1879 (42 and 43 Vict. cap.  
cxxxiii.), sec. 5 — Edinburgh Improvement  
and Tramways Acts 1896 (59 and 60 Vict.  
cap. cxxxiv.), sec. 74 — "House or Building"  
— Building connected with Railway  
— Railway.*

By section 48 of the Edinburgh Municipal and Police Amendment Act 1891, "every person who proposes to erect any house or building, or to alter the structure of any existing house or building" must present a petition for warrant so to do, and by section 59 "every person who shall erect or begin to erect any house or building . . . without a warrant, or otherwise than