Saturday, June 8.

SECOND DIVISION.

[Sheriff Court at Hamilton.

LEONARD *v.* WILLIAM BAIRD & COMPANY, LIMITED.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1, *and First Schedule*, (1) (*a*) (i)—*Amount of Compensation — Workmen Killed in Course of Employment, but before he had Earned Wages—Minimum Sum of* £150.

A miner was killed in the course of his employment, after he had descended his employers' pit to work, but before he had actually commenced work, and before he had earned anything.

Held that in accordance with the construction put upon the Act in the case of *Lysons* v. *Andrew Knowles & Sons, Limited* [1901], A.C. 79, the workman's widow was entitled to £150 as compensation under the Workmen's Compensation Act 1897.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) enacts:—Section 1 (1) "If in any employment to which this Act applies, personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act." The First Schedule contains the following provision:—"(1) The amount of compensation under this Act shall be—(*a*) where death results from the injury—(i) if the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of £150, whichever of those sums is the larger, but not exceeding in any case £300, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer." . . .

This was an appeal in an arbitration under the Workmen's Compensation Act 1897 before the Sheriff - Substitute at Hamilton (DAVIDSON), between William Baird & Company, Limited, coalmasters, Glasgow, appellants, and Mrs Urse Jakamawicus or Leonard, widow of Lenaware Jakamawicus, commonly known as John Leonard, miner, Bellshill, claimant and respondent. The claimant claimed compensation in respect of injuries received by her husband on 21st November 1900 while in the employment of the appellants at Bothwell Park Colliery, which resulted in his death.

The facts admitted or proved as set forth in the stated case were as follows:—"That the deceased was employed by the appellants on 20th November 1900, and descended their pit to dig coal on the following day: That before commencing work on said last-mentioned date his lamp went out, and he took it and a lighted one, borrowed from a fellow-workman, to the lamp station: That while returning he was crushed by a rake of hutches, and subsequently died from his injuries: That he had earned no wages, and was entitled to none from the appellants."

The Sheriff - Substitute found that the average weekly wage of the deceased was *nil*, and that his widow the claimant was entitled to the alternative sum of £150 under the first schedule of the Act.

The question of law for the determination of the Court was—"Whether the applicant is entitled to compensation under the first schedule of section 1, sub-section (*a*) (i), of said Act, the accident which caused the death having befallen deceased after he had descended appellants' pit to work, but before he had actually commenced work and before he had earned anything?"

Argued for the appellants—No workman was entitled to any compensation under the Act unless he had earned some wages. If a workman was seriously injured, he was not entitled to any compensation unless he had earned something, and it would be anomalous that in the same circumstances, if he was killed, his representatives should be entitled to compensation. The case of *Lysons* v. *Andrew Knowles & Sons, Limited* [1901], A.C. 79, did not touch the point. That case decided that a generous construction must be placed on the statute, but the present case was a *casus improvisus*.

Argued for the claimant and respondent—The enacting clause of the statute founded on was section 1, and that section provided that compensation should be given in every case where the workman was employed in an employment to which the Act applied. What employment meant was not doubtful. Section 7 showed that employment was constituted by a contract of service, express or implied. There was no doubt in this case that there was between employer and employed that *consensus* which completed a contract of service. In *Robert Forrester & Company* v. *M'Callum*, March 12, 1901, 38 S.L.R. 448, it was decided that a workman did not require to have been three years in the employment in order to entitle his representatives to the minimum award of £150. If there had been employment, however short, the representatives of the workman were entitled to that sum.

At advising—

LORD JUSTICE-CLERK—This case raises a difficult question, particularly in view of what has been decided in previous cases in regard to compensation under the Workmen's Compensation Act.

The deceased had entered the employment, but was killed as he was proceeding to work, but before he had done anything which gave him a claim for any sum of wages. Under the Act, in the case of a death, an alternative is given by which if, on a computation of wages for the period

prescribed, less is brought out than £150, nevertheless decree may be given for that sum. The question is, whether that ratio can be applied in a case where, although the workman had entered on the employment, no right to any earnings had arisen before the death. I confess that but for the view that has been taken in the highest Court of Review that the schedule of the Act only provides a mode of ascertaining damages, and does not exclude damages where the circumstances prevent its application, thus practically indicating that where the schedule will not apply, compensation may be ascertained notwithstanding, I should have felt great difficulty in agreeing with the Sheriff's finding. But I take it that the decision of the House of Lords amounts to an instruction that a sound interpretation of the Act involves the right to compensation where there has been employment and accident in the employment. Accepting that, as I feel bound to do, I find that means are given by the statute for fixing £150 in the case of a death where the application of the rules as to computation of earnings would not bring out so large a sum. Here, dealing with earnings, no sum can be brought out at all, and I think that the Sheriff was justified, looking to the decision I have referred to, in fixing the sum according to the alternative given in the Act.

LORD TRAYNER—The appellants' contention here is this—that compensation under the Act can only be claimed by an injured workman who has earned wages in the employer's service, or by the representative of a deceased workman who had earned wages; that in this case the deceased had not earned anything in the service of the appellants, and that therefore the respondent's claim was excluded by, or at all events not provided for in the Act. I think the construction put upon the Act in the case of *Lysons* excludes the appellants' contention. The respondent's husband met his death in a mine belonging to the appellants and in the course of his employment. His case therefore fell within the leading provision of the Act, and that leading provision is not derogated from (according to the construction approved by the House of Lords) by the fact that the precise terms of the schedule which prescribes the mode in which the award of compensation is to be determined cannot be exactly applied to the particular circumstances of this case. I think, on the authority of the case referred to, the appeal should be dismissed.

LORD MONCREIFF—It logically follows from the judgment of the House of Lords in the case of *Lysons*, and our own judgment to-day in the case of *Nelson* (*supra*, p. 645), that the respondent's husband having been killed while in the employment of the appellants, and in consequence of an accident arising out of his employment, the respondent as his widow is entitled to the alternative sum of £150, although he died before he had time to earn any wages. This is an extreme case, but the grounds of judgment on which the House of Lords proceeded, in my opinion, cover it. The right to compensation does not depend upon the length of service, but on the fact that the workman was injured while in the employment of the undertaker through an accident arising out of the employment.

LORD YOUNG was absent.

The Court pronounced this interlocutor:—

"Find in answer to the question of law therein stated that the respondent is entitled to compensation under the First Schedule, section 1, sub-section (*a*) (i) of the Workmen's Compensation Act 1897: Therefore dismiss the appeal and affirm the award of the arbitrator and decern."

Counsel for the Appellants—Campbell, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Salvesen, K.C. — Moncrieff. Agents — Simpson & Marwick, W.S.

Wednesday, June 5.

SECOND DIVISION.

POLICE COMMISSIONERS OF HAWICK *v.* WILLIAM WATSON & SONS.

Local Government — Burgh — Water Supply—Assessment—Manufactories—Assessment of Manufactories on One-Fourth of Annual Value—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *sec.* 347 *—Public Health (Scotland) Act* 1897 (60 *and* 61 *Vict. cap.* 38), *secs.* 134 *and* 136.

The police commissioners of a burgh as local authority under the Public Health (Scotland) Act 1867, introduced in 1882 an additional supply of water into the burgh, under the powers conferred by that Act.

By the Burgh Police (Scotland) Act 1892, sec. 21, the whole powers and duties of local authorities under the Public Health Acts in burghs, together with all existing waterworks, and relative debts and obligations, were transferred to the commissioners under the Burgh Police Act.

Section 347 of the Burgh Police Act 1892 provides, that "where the commissioners shall have supplied, or resolved to supply, the burgh with water in terms of this Act, the annual value of all . . . manufactories within the burgh shall, as regards the burgh general assessment, so far as is applicable to water, . . . be held to be one-fourth of the annual value thereof entered in the valuation roll."

Held that the owners and occupiers of manufactories within the burgh fell to be assessed for water rates only on one-fourth of the value of their premises, in respect that the water supply in question was being supplied by the commissioners "in terms of this Act"