they had not occasion to consider, it has become proper to amend their scheme. I am the more inclined to hesitate, because the perfectly legitimate use which has been made by the petitioners of a previous decision seems to me to show that we ought to be cautious in enlarging powers which have been fixed by the Commissioners. I accordingly agree that as regards this third point we should continue the petition.

LORD ADAM was absent.

The Court pronounced this interlocutor:—

"Alter the provisions of the scheme for the administration of the endowments of 'The Governors of the Glasgow and West of Scotland Technical College,' to the effect of adding thereto Clauses (1) and (2) contained in the schedule annexed to the said report: *Quoad ultra* continue the petition, and decern."

Counsel for the Petitioners — Dundas, K.C.—Younger. Agents—Bell & Bannerman, W.S.

Thursday, July 10.

SECOND DIVISION.

[Sheriff-Substitute at Edinburgh.

GOODLET *v.* CALEDONIAN RAILWAY COMPANY.

Reparation—Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1 (1)—"*Arising out of and in the Course of the Employment*" *— Railway Engine-Driver—Railway.*

An engine-driver having brought his train into the station about 10·10 p.m. was ordered to take his engine into a particular lye at the station. Having done so he crossed some four or five sets of rails to ask A, a traffic regulator in the employment of the railway company, why he had been ordered to put his engine into that particular lye. Thereafter he crossed two more sets of rails to a spot about twelve or thirteen yards further off from his engine to speak to B, another employee in the company's service. What he had to say to B was merely casual conversation lasting a moment or two, and had nothing to do with his duties as engine-driver. His next duty was to take out a train at 11 p.m. Immediately after leaving B, and while he was on his way back to his engine, he was knocked down and killed by an empty train which was being shunted. *Held* that the accident arose out of and in the course of the deceased's employment within the meaning of the Workmen's Compensation Act 1897.

This was an appeal in an arbitration under the Workmen's Compensation Act 1897, in the Sheriff Court of the Lothians and Peebles at Edinburgh, between the widow and children of the late John Goodlet, claimants and appellants, and the Caledonian Railway Company, respondents.

The facts admitted and proved were as follows:—"On the night of 23rd November 1901, the deceased John Goodlet, an engine-driver in the employment of the respondents, arrived at Princes Street Station, Edinburgh, about 10·10 p.m., after having brought a train from Leith, and was ordered to take his engine into a lye beside a water column. After placing his engine in the lye the deceased left his engine in charge of his fireman, and crossing some four or five sets of rails went to a small island platform to the west of the passenger station, where Donald Macrae, an assistant traffic regulator in the employment of the respondents, was standing, a distance of from 35 to 40 yards from his engine. When he had reached Macrae he asked him why his engine had been put into that particular lye. There was no necessity for the deceased to leave his engine, nor to interrogate Macrae, as the lye to which deceased's engine had been sent was quite a convenient one for his next duty—of which duty he was fully aware—viz., to take the eleven o'clock p.m. train out to Balerno. After speaking to Macrae, the deceased left that island platform, and crossing two more sets of rails still further from where his engine was placed, and 12 or 13 yards from where Macrae was standing, spoke for a moment or two to Edward Wilson, a carriage inspector in the respondents' employment. What he had to say to Wilson was merely casual conversation, and had nothing to do with his duties as an engine-driver. After leaving Wilson, the deceased, while returning to his engine and re-crossing the last-mentioned lines of rails, was knocked down and killed by an empty train which was being backed or shunted from the passenger station into a dock for the night. There was no lamp attached to the end carriage of the train which knocked the deceased down, but it was both unusual and practically impossible to shunt empty trains within the station-yard with tail lamps attached, this operation being conducted with hand lamps and hand signals. It is admitted by the parties that in the event of the respondents being liable in compensation for the death of the deceased the amount of such compensation should be £273, 17s. 11d."

On these facts the Sheriff-Substitute (HENDERSON) held that the accident through which the deceased met with his death did not arise out of and in the course of his employment by the Caledonian Railway Company in terms of the Workmen's Compensation Act 1897, and he accordingly assoilzied the respondents with expenses.

The following question was stated for the opinion of the Court:—"Whether the deceased John Goodlet was killed by an accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act 1897?"

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 1 (1) enacts:—

"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 after mentioned, be liable to pay compensation in accordance with the first schedule to this Act."

Argued for the appellant—There was no question as to the deceased being on the premises of the railway company. He had crossed the rails to make a pertinent inquiry regarding his engine. He was still in charge of his engine. It was within working hours, and he was earning wages at the time the accident happened—*Tod* v. *Caledonian Railway Co.*, June 29, 1899, 1 F. 1047, 36 S.L.R. 784; *Callaghan* v. *Maxwell*, January 23, 1900, 2 F. 420, 37 S.L.R. 313; *Harrison* v. *Whitaker Brothers, Limited*, December 16, 1899, 16 T.L.R. 108. The case of *Smith* (cited *infra*) relied on by the respondents was distinguishable, for the ticket collector in that case was not engaged in his employment at the time he was killed.

Argued for the respondents—The deceased was not engaged in the employment of the respondents in the sense of the Act at the time he was killed. He had been engaged in a casual conversation with another employee and was on his way back to his work — *M'Nicol* v. *Spiers, Gibb, & Co.*, February 24, 1899, 1 F. 604; 36 S.L.R. 428; *Smith* v. *Lancashire and Yorkshire Railway*, [1899], 1 Q.B. 141; *Falconer* v. *London and Glasgow Engineering Company, Limited*, February 23, 1901, 3 F. 564. 38 S.L.R. 381.

LORD JUSTICE-CLERK—There is no doubt that many of the cases under this Act give rise to very fine distinctions. The strongest case quoted to us by the respondents was that of *Smith* v. *Lancashire and Yorkshire Railway*, but that case was peculiar in this respect, that the ticket collector there got on to the footboard of the train and allowed the train to get into motion at a time when he had no duty to be on it. He was not at the time acting in the employment of his master, and, moreover, was exposing himself to a danger which was palpable to him. I think that case is clearly distinguishable from the present.

In the present case the deceased had arrived at the station with his engine, and had been told to put it into a particular lye at the station. As it was not the usual lye he went across the rails to inquire why he had been ordered to put his engine there—possibly thinking that it might have been a mistake.

After crossing two sets of rails further on he engaged for a moment or two in a casual conversation with another man, and then turned to come back. On his way back to his engine he was knocked down and killed by an empty train which was being backed or shunted from the passenger station into a dock for the night.

I think in view of these facts the pursuer is entitled to say that the deceased at the time he met with his accident was in the course of his employment within the meaning of the Act. No fault is attributable to him in going across the rails, as he was an engine-driver and entitled to cross them. Moreover, at the time of the accident he was on his way back to his engine.

If he could be held to have been doing anything wrong in crossing the rails the first time the result might have been different, but he cannot.

On the whole matter I think the interpretation which the Sheriff-Substitute has put on the statute is too strict a one, and that his interlocutor ought therefore to be recalled.

LORD YOUNG—On the best consideration I have been able to give to this case I have come to the conclusion that the widow and children are entitled to compensation, and I would therefore answer the question accordingly.

LORD TRAYNER—I think this is a case in which the injury arose out of and in the course of the deceased's employment.

LORD MONCREIFF was absent.

The Court sustained the appeal, answered the question of law in the affirmative, and remitted to the arbitrator to proceed.

Counsel for the Pursuers and Appellants —Watt, K.C.—Macmillan. Agent—Marcus J. Brown, S.S.C.

Counsel for the Defenders and Respondents — Guthrie, K.C. — King. Agents — Hope, Todd, & Kirk, W.S.

Wednesday, July 2.

SECOND DIVISION.

[Bill Chamber.

M'LINTOCK *v.* PRINZEN & VAN GLABBEEK.

Sheriff—Extract—Charge—Decree ad factum præstandum—Interlocutor not Specifying Time Within which Order to be Implemented — Warrant in Extract to Charge on Seven Days Inducicæ — Diligence—Sheriff Courts (Scotland) Extracts Act 1892 (55 *and* 56 *Vict. cap.* 17), *secs.* 4 *and* 7 (2), *and Schedule* 12.

An interlocutor pronounced by a sheriff ordained the defenders to consign a sum of money, but contained no mention of the time within which the order was to be implemented.

The extract decree proceeding on this interlocutor contained a warrant to charge on seven days *inducicæ*, and a charge was given requiring consignation to be made within that time under the pain of imprisonment.

In a suspension of the charge brought on the ground that it was not conform to the interlocutor, in respect that the latter contained no mention of the time within which the order was to be implemented, *held* that, the decree being a decree *ad factum præstandum*, it was competent under the provisions of the