

travention of that Act to be found in Schedule B of the Court of Exchequer Act, for the very good reason that the Act of 24 and 25 Vict. c. 91, had not then been passed. It is true that that Act does not contain a form of information applicable to the particular offence charged, but at the end of section 12 it is declared that "in any information or other proceeding for the recovery of the penalty hereby imposed, it shall be sufficient to charge that the defendant sold beer by retail without having duly obtained a certificate and also an Excise licence respectively authorising him to sell beer under the provisions of the statute in that case made and provided, and it shall not be necessary further or otherwise to describe such offence."

It is to be observed that this Act assumes the proceeding by information to be applicable to offences under it—that is to say, it takes up the rules of procedure provided by the Exchequer Act of 19 and 20 Vict. c. 56, and makes them applicable to the offences with which it deals. It therefore seems to me that where an information under the Act of 24 and 25 Vict. c. 91, contains all the particulars required by the Act of 19 and 20 Vict. c. 56, it is *prima facie* sufficient, and that in the absence of any provision for further or different particulars it constitutes a due compliance with the provisions of that Act. This view appears to me to derive strong confirmation from the declaration at the end of section 12 of the Act of 24 and 25 Vict. c. 91, that "it shall not be necessary further or otherwise to describe such offence." These words, in my view, expressly dispense with the necessity for any further particulars than are specified as requisite either in that Act or in the Act of 19 and 20 Vict. c. 56, and the names of the persons to whom the beer is alleged to have been sold are nowhere stated to be requisite. Seeing that the information in question thus complies with all the statutory requirements, I think that the objections stated to its relevancy are not well-founded. The particular person or persons to whom the beer was sold is not of the essence of the offence, which consists in selling the beer to anyone without having obtained a certificate and an Excise licence.

For these reasons I am of opinion that the Lord Ordinary's interlocutor should be recalled in so far as it finds the third and seventh counts of the information irrelevant for want of specification, and that a proof should be allowed to the Crown of these counts as well as of the others.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"Adhere to the said interlocutor in so far as it finds counts one, two, four, five, six, and eight in the information are relevant: Recall the interlocutor in so far as it finds that the third and seventh counts in the information are irrelevant for want of specification: Find all the counts in the information

relevant, and remit to the Lord Ordinary to allow a proof thereof, and decern," &c.

Counsel for the Lord Advocate—Sol.-Gen. Dickson, K.C.—A. J. Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defender—J. Wilson, K.C. Agent—John Robertson, Solicitor.

Tuesday, November 4.

SECOND DIVISION.

[Sheriff Court at Glasgow.]

STEWART v. DUBLIN AND GLASGOW STEAM PACKET COMPANY.

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 7, sub-sec. 2—Factory and Workshop Act 1895 (58 and 59 Vict. cap. 37), sec. 23, sub-sec. 1—Factory—Quay—Undertakers—Actual Use and Occupation of Quay.

A firm of shipowners had a particular berth in Glasgow Harbour allotted to them by the Clyde Trustees, which they used for loading and unloading their vessels. They had a box or office at this berth, and kept clerks and servants constantly there. The same berth was also used by another steamship company who had also a box or office there, and when it was not required by either of these companies the harbour-master allowed occasional trading vessels to use it.

In a stated case under the Workmen's Compensation Act 1897 with regard to an accident which happened on the quay to a coal-trimmer, employed by a subcontractor for the coaling of one of the shipowners' steamers, which was then coming up the Clyde and arrived at the quay an hour later, held that at the time of the accident the shipowners were not the occupiers of the quay, and consequently were not liable as undertakers under the Act.

Opinion (per Lord Moncreiff) that if the berth had been set aside and reserved exclusively for the shipowners' vessels the shipowners would have been the occupiers of the quay although the vessel had not arrived when the accident happened.

Master and Servant—Workmen's Compensation Act 1897 (30 and 31 Vict. cap. 37), sec. 4—Shipowners—Supplying Coal for Steam Vessels—Work Ancillary or Incidental to and no Part of or Process in Business of Undertaker.

Held that the supplying of coal to a steam vessel was no part of or process in the business carried on by the shipowners, but merely ancillary or incidental thereto.

In an arbitration under the Workmen's Compensation Act 1897 in the Sheriff Court at Glasgow Mrs Agnes Nisbet or Stewart,

widow of the deceased Robert Stewart, coal porter, as tutor and administrator-in-law to her pupil children, Agnes, Nathaniel, and Robert Stewart, and as an individual, and Margaret Stewart, the deceased's daughter, claimed compensation from the Dublin and Glasgow Steam Packet Company, Glasgow, for the death of the said Robert Stewart.

On 23rd June 1902 the Sheriff-Substitute (GUTHRIE) found the Steam Packet Company liable, and assessed the compensation at £187, 4s., with interest at 5 per cent. from the date of citation. Against this decision the Steam Packet Company appealed, and a case was stated.

The following facts were found to have been admitted or proved:—(3) "That the Dargavil Coal Company, Limited, colliery proprietors, were under contract with appellants to supply them with coal for bunkering their vessels, and that it was a condition of the contract of sale that the said Company was to deliver such coal on board appellants' vessels free of charge. (4) That in carrying out said contract the Dargavil Company brought the coal in carts to the quay opposite the berth where the steamers were to lie for loading and discharging cargo and passengers, and that the Dargavil Company, for the purpose of having the coal so brought to the quay trimmed and transported on board the appellants' steamers, contracted with John M'Keown, coal porter, for that work, and that he in turn employed men to do this as required from time to time. (5) That trimming consists of putting the coal up in a heap to keep it together, and to prevent it from falling over the edge of the wharf. (6) That the coal is transported on board in ordinary wheel-barrows, which are wheeled along planks extending from the shore to the ship, and in case of one of the appellants' steamers by shoots, said barrows, planks, and plant being the property of the appellants. (7) That on 23rd July 1901 the Dargavil Coal Company, in anticipation of the arrival at berth No. 38 of Glasgow Harbour of one of the appellants' steamers on board which they had to deliver coal under and in terms of their contract, sent some coal in carts to said berth, and that the deceased Robert Stewart, who was employed by M'Keown, was there receiving the coal from the carts, it being part of his duty to trim it on the wharf, and when the steamer arrived to wheel same on board. (8) That after part of the coal coming forward had been deposited on the quay there was an interval before another cart arrived, and that during this interval the deceased, while waiting for the next cart of coal or the steamer, whichever might first arrive, and standing on the space between the coal and the river, slipped and fell into the water and was drowned. (9) That the steamer upon which the coal was to be loaded was at that time coming up the river Clyde in the course of her voyage from Dublin to Glasgow, and arrived at said berth about an hour after the accident. (10) That the appellants have had for many years said berth No. 38 allotted

to them by the Clyde Trustees, and they have used it for the reception of their vessels and for loading and unloading the same. The appellants have a box or office at said berth, and keep clerks and servants constantly working there for the reception of cargo being taken to and from their various steamers. The dues paid to the Clyde Trustees in respect of ship and goods are paid in the first instance by the appellants, and refunded by the cargo owners so far as laid upon cargo. The same berth is used also by the Isle of Man Steamship Company, who have also a box or office there, and when it is not required by either of these companies the harbour-master allows occasional trading vessels which can load or discharge within a few hours to use it, but so as not to interfere with the requirements of the said regular lines of steamers."

On the facts stated the Sheriff-Substitute found—(1) That the appellants were occupiers at the time of the berth No. 38 of Glasgow Harbour, and that it is a factory in the sense of the Workmen's Compensation Act 1897; and (2) That the deceased Robert Stewart was employed by John M'Keown, who was a contractor with the Dargavil Coal Company, who were contractors with the appellants for loading their steamers with bunker coal, and that the appellants are liable to pay compensation for the death of the said Robert Stewart in respect of the 4th section of the said Act."

The questions of law were—"(1) Whether in the circumstances the case was within the scope of the Workmen's Compensation Act 1897. (2) Whether on the facts found proved the appellants were occupiers of the quay, and therefore of a factory within the meaning of the Act. (3) Whether in the circumstances the appellants are liable as being within the scope of the 4th section of said Act. (4) Whether on the facts proved the accident arose out of and in the course of the deceased's employment."

Argued for the appellants—*On Question* (2)—At the time of the accident the appellants were not in actual use and occupation of the quay. Before they could be said to be in that position they would require to be actually using the quay for the purpose of loading or unloading the ship. In this case the ship did not arrive till an hour after the accident happened. Further, the berth was not used solely by the appellants. It was also used by the Isle of Man Steamship Company and by anyone else to whom the harbour-master chose to assign it. The use of this berth by the appellants and others depended solely on his pleasure. *On Question* (3)—Supplying their vessels with coal was no part of the business of the appellants. It was clearly ancillary to it. Such work stood in the same position as supplying provisions for the crew, and it was an abuse of language to say that doing so was part of or a process in the business of the appellants—*Wrigley v. Bagley & Wright* [1901], 1 K.B. 780; *Dundee and Arbroath Joint Railway Company v. Carlin*, May 31, 1901, 3 F. 843, 38 S.L.R. 635.

Argued for respondents—*On Question (2)*—The appellants were in occupation of the quay at the time of the accident. The quay was occupied in connection with their ships, they had an office with clerks, &c., on the quay, and work was being carried on there by a contractor on their behalf. It was not material that the ship should be alongside the quay. Whether or not a particular ship happened to be alongside had nothing to do with the matter so long as the accident happened on the quay in connection with their business. The fact that this quay was sometimes used by others did not signify. A place might be in the occupation in terms of the Act of two different persons at the same time—*Bartell v. W. Gray & Co.* [1902], 1 K.B. 225. *On Question (3)*—Putting coal on board was necessary before a steam vessel could proceed. It was therefore part of the appellants' business—*M'Govern v. Cooper & Co.*, November 30, 1901, 4 F. 249, 39 S.L.R. 102.

LORD JUSTICE-CLERK—This case can be decided on two points—(1) Whether or not the appellants were in occupation of the quay, and (2) whether or not the work that was being done was ancillary or incidental to their business. Assuming that the quay was a factory I am satisfied that it was not in any true sense in the occupation of the appellants. At the time the accident happened there was no ship at the quay. The ship was expected and might or might not have arrived at the quay. It depended on the will of the harbourmaster whether when it arrived it should be allowed to get that particular berth or not. Assuming therefore that the quay was a factory, I am unable to hold that it was in the occupation of the appellants. But I also hold without any difficulty that the work at which the deceased was engaged was not a work which was part of the business of the appellants. Shipowners carry goods and passengers from one place to another, and in order to enable them to do so it is necessary that they should have certain supplies of coal, engine stores, food, tackle, and articles of various kinds. I cannot hold that the taking on board of any of these articles is part of the business of a shipowner. I am therefore of opinion that the appellants are not liable.

LORD YOUNG—I concur.

LORD TRAYNER—I am of the same opinion. As to whether in the circumstances here stated a quay is to be held a factory it is not necessary to give any opinion, and I give none. But assuming the quay to be a factory, I think the appellants were not the occupiers of it. I am also of opinion that the work in which the deceased was engaged was work under a contractor, which was not any part of the business of the appellants, but was only at the most incidental or ancillary to it.

LORD MONCREIFF—I am also of opinion that questions (2) and (3) should be answered in the negative.

As to whether the appellants were occupiers of the quay, if the Sheriff had found in point of fact that that particular berth had been set aside and reserved exclusively for the appellants' vessels, I should have been disposed to think that the appellants were the occupiers of the berth although the vessel had not arrived when the accident happened. But the finding of the Sheriff does not amount to that.

In regard to question (3), I have no doubt that the supplying of coal to a steam vessel is merely ancillary or incidental to the business of the shipowners. The view which I take of section 4 of the Act is that it is intended to apply to sub-contracts, under which the sub-contractor executes what is really part of or a process in the trade carried on by the principal contractor, and that it does not apply to furnishings such as coal or other things, which are required in order to enable the principal contractor to carry on his business.

The Court pronounced this interlocutor—

“Sustain the appeal, answer the second and third questions of law therein stated in the negative: Therefore recal the award of the arbitrator, and remit to him to dismiss the claim.”

Counsel for the Appellants—Salvesen, K.C.—Spens. Agents—Boyd, Jameson, & Young, W.S.

Counsel for the Respondents—Watt, K.C.—Guy. Agent—William Fraser, S.S.C.

Tuesday, November 4.

SECOND DIVISION.

[Sheriff Court of Forfarshire,
at Dundee.

FRASER v. CALEDONIAN RAILWAY COMPANY.

Reparation—Negligence—Safety of the Public—Railway—Injury to Passenger Owing to Crowd on Station Platform.

An intending passenger who had been injured at a railway station by being pushed off the edge of the platform on to the railroad, raised an action of damages against the railway company, in which she averred that she and others had been permitted to enter one of the defenders' stations at a time when the platform was much overcrowded; and that there was such a pressure behind her that she was carried along and hurled from the platform on to the railroad and severely injured. She further averred that the defenders or their servants were aware of the overcrowded condition of the platform prior to and at the time of the accident, but that they did nothing to prevent the additional influx of people and pressure, as they should have done, by closing the entrance door of the station until the platform had been cleared and made