

tion of the property at the death of the deceased, and in the present case the property left by the ward consisted of money and not of land. But it is said that it must still be treated as heritage, because the curator had no power to convert land into money except in case of necessity, and there was no legal necessity in the present case. I confess I do not understand the distinction between what is called legal and practical necessity. But then a sale may be necessary for one purpose and not for another; and the question in the particular case must be whether the purpose for which a curator thought it necessary to sell is one which the law recognises as a sufficient justification for converting land into money. Now, in the present case the necessity was to provide for the maintenance of the ward, because she could not be maintained without money, and the curator accordingly applied for and obtained the sanction of the Court to sell the heritage. It is said that the curator could have borrowed money on the property, but it is not so stated in the case, and we must take the case as containing a correct and exhaustive statement of all the facts which the parties have agreed are to form the basis of the judgment, and I am afraid therefore that any statement of fact which is not made in the case must be assumed to be either irrelevant or inaccurate. I therefore agree that the property in question must be treated as moveable.

The LORD PRESIDENT concurred.

The Court answered the first question in the negative and the second question in the affirmative.

Counsel for the First and Third Parties—  
—Hon. P. Balfour. Agent—H. Hume  
M'Gregor, S.S.C.

Counsel for the Second Party—W.  
Mitchell. Agent—James F. Mackay, W.S.

Tuesday, December 6.

## SECOND DIVISION

[Sheriff-Substitute at Kirkcaldy.

### ANDERSON v. LOCHGELLY IRON AND COAL COMPANY, LIMITED.

*Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), sec. 7—Mine—Colliery Siding—"On or in or About a Mine"—Accident on Private Railway at Drumhouse, 800 Yards from Pithead.*

A workman was employed by the proprietors of a colliery as an engine-driver in charge of an engine which conveyed waggons from the pithead to a drumhouse 800 yards distant. From the drumhouse to the point where the line joined the North British Railway about 1140 yards from the pithead, the gradient was too steep for a locomotive, and the waggons were lowered by a

wire rope passed round a regulating drum in the drumhouse and empty waggons were at the same time hauled up the incline. It was part of the engine-driver's duty to "sprag" the empty waggons as they reached the top of the incline, and while engaged in this work he was caught by the wire rope and received injuries of which he died. There were sidings at the pithead and also at the drumhouse and beside the North British Railway. The whole of the railway from the pithead to the junction with the North British Railway, including the drumhouse, was owned and worked by the proprietors of the colliery.

*Held (diss. Lord Justice-Clerk) that the accident arose out of and in the course of the deceased's employment on or in or about a mine within the meaning of the Workmen's Compensation Act 1897, section 7, and that the employers were liable in compensation.*

By section 7 (1) of the Workmen's Compensation Act it is enacted that the Act "shall apply only to employment by the undertakers . . . on or in or about," *inter alia*, "a mine." By section 7 (2) it is declared that "mine" means a "mine to which the Coal Mines Regulations Act 1887 applies." By section 75 of that Act it is declared that "mine" includes "all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground, in and adjacent to and belonging to the mine."

This was an appeal upon a stated case from the Sheriff Court at Kirkcaldy in an arbitration under the Workmen's Compensation Act 1897, in which Mrs Margaret Wright or Anderson, widow, residing at No. 31 High Street, Lochgelly, appellant, claimed from the Lochgelly Iron and Coal Company, Limited, respondents, compensation in respect of the death of her son John Anderson through injuries sustained by him on 11th November 1903 while in their employment.

The following facts were found proved by the Sheriff-Substitute (HAY SHENNAN):—  
“(4) That the respondents are owners or occupiers of two pits situated at Lochgelly, known as the Melgund and the Jenny Gray pits. These are connected by a line of railway with the North British Railway system. The total length of this line from the Melgund Pit (the more distant) to its junction with the North British Railway is about a mile and a quarter. The Jenny Gray Pit is nearly a quarter-of-a-mile from the Melgund Pit. This line of railway takes the following course—from the Melgund Pit it runs past the Jenny Gray Pit to a drumhouse situated about 800 yards from the Jenny Gray Pit, crossing on its way a public road by a level-crossing. Over that portion of its course the line is sufficiently level to be worked by a locomotive. From a point near the drumhouse the line for about 340 yards runs down a steep incline (about 1 in 9) known as a wheelbrae, and over that portion the haulage is worked by a wire rope (passed round a regulating drum in the drumhouse), of which one end

is attached to the full waggons at the top of the incline, and the other to the empty waggons at the foot. Near the foot of this wheelbrae the line joins the North British Railway system. At the Melgund Pit and the Jenny Gray Pit there are the usual colliery sidings, and there are also sidings at the drumhouse and alongside the North British Railway line at the foot of the wheelbrae. The line of railway above described is of the usual gauge, and ordinary railway waggons are used on it. (5) That at the time of the accident the deceased was employed by the respondents as an engine-driver, in conveying waggons between the Melgund and the Jenny Gray Pits and the drumhouse. It was part of his duty, when the brae was being run, to leave his engine at the back of the drumhouse, and go forward towards the top of the wheelbrae, in order to sprag the empty waggons when they came up, and in doing so he usually walked through under the drumhouse by the side of the line. On 11th November 1903 the deceased, when proceeding to this duty, was caught by the wire rope, as it suddenly became taut with a jerk on the waggons being allowed to start, and was tossed in the air, receiving injuries, of which he died on 13th November. The place where the accident occurred was about 800 yards from the Jenny Gray Pit, the nearer of the two. (6) That the line of railway connecting these two pits with the North British Railway system and the various sidings in connection therewith are the property of the respondents, and are used by them in connection with the working of these pits."

On these facts the Sheriff-Substitute found that the said accident arose out of and in the course of deceased's employment, but that said accident did not happen on or in or about a mine in the sense of the Workmen's Compensation Act 1897. He therefore assoltized the respondents from the conclusions of the action, with expenses.

The questions of law for the opinion of the Court were:—(1) Whether, on the facts stated, the place where the accident occurred formed part of a mine within the meaning of the Workmen's Compensation Act 1897? (2) Whether in the circumstances stated, the said accident occurred on or in or about a mine within the meaning of the said statute?

Argued for the appellant—It was not necessary for the place of the accident to be adjacent to the mine; it was enough if the siding where the accident took place was connected with the mine. The Act was intended to cover injuries to workmen while at work on any part of the owner's premises. This was supported by the analogy of the Factory and Workshops Act 1901 (1 Edw. VII, cap. 22), sec. 106—*Monaghan v. United Collieries, Limited*, November 27, 1900, 3 F. 149, 38 S.L.R. 92; *Caton v. Summerlee and Mossend Iron and Steel Company, Limited*, July 11, 1902, 4 F. 989, 39 S.L.R. 762,

Argued for the respondents—The Coal Mines Regulation Act of 1887 only includes

as part of a mine sidings that are adjacent. In these cases and the analogous factory cases contiguity was the test, and a place 800 yards distant could not be called "adjacent." The siding must belong to the mine, it was not enough for it to belong to the mine-owner—*Turnbull v. Lambton Collieries, Limited*, 1900, 16 T.L.R. 369.

At advising—

LORD YOUNG—I shall express my opinion in this case in a very few words. I do not need to read what is stated in the case; the statement of facts is before your Lordship. The Sheriff says—"On these grounds," which he states, "I found that the said accident arose out of and in the course of deceased's employment, but that said accident did not happen 'on or in or about a mine' in the sense of the Workmen's Compensation Act 1897." Now, I state my opinion in these few words, that upon the facts stated in the case I am of opinion that the accident did arise "on or in or about a mine," that is to say, the mine of which the respondents here were the undertakers, and when in the course of the appellant's husband's employment connected with the mine.

LORD TRAYNER—From the description given of it by the Sheriff-Substitute I entertain no doubt that the railway on which the deceased met with the accident which caused his death is a siding belonging to the respondents connected with and used by the respondents in connection with their mines. The definition of "mine" given in the Coal Mines Regulation Act 1887 (which is also the definition of "mine" under the Workmen's Compensation Act) includes as part of the mine any siding "adjacent to and belonging to the mine." That definition covers the railway siding in question, and as the deceased was fatally injured on the siding he was so injured on or in the mine. I therefore think the judgment of the Sheriff-Substitute was wrong, and am prepared to answer both of the questions put to us in the affirmative.

LORD MONCREIFF—I have come to the conclusion that the Sheriff is wrong. The question is, whether the place where the accident occurred was on or in or about a "mine" within the meaning of the Workmen's Compensation Act 1897. It was not on, in, or about a "railway" within the definition of the word "railway" given in section 7 (2) of the Act, and therefore to bring the case within the Workmen's Compensation Act it must be shown that the accident occurred "on or in or about a mine" to which the Coal Mines Regulation Act of 1887 applies. We are thus sent to the 75th section of that statute for the definition of a "mine" to which the Act applies, and we find that the word "mine" includes, *inter alia*, "tramways and sidings, both below ground and above ground, in and adjacent to and belonging to the mine." Therefore if an accident occurs "about" a siding which is adjacent and belongs to a mine, the person injured, provided he was injured in the course of his employment, will be entitled

to compensation under the Workmen's Compensation Act. The question in the present case is one of some delicacy, but on considering the facts found by the Sheriff I am disposed to think that, giving a liberal but fair interpretation, the appellant's husband was injured in the course of his employment "about a mine" in the sense of the statutes. The distance between the Jenny Gray pit and the North British Railway system is in all a mile, but on account of a steep incline loaded trucks cannot be drawn by an engine beyond the drum-house, situated less than half-a-mile from the Jenny Gray pit. It is found as a fact in the case that at the Jenny Gray pit there are the usual colliery sidings, and that there are also sidings at the drum-house 800 yards away from the pit, and probably not so far distant from the sidings at the pit.

The next point is that the appellant's husband, when he received his injuries, was not upon his engine, which could proceed no further; he left his engine at the back of the drum-house and went forward towards the top of the brae for the purpose of spragging the empty waggons when they came up, I suppose, into the sidings connected with the drum-house. There is no doubt that he was injured in the immediate vicinity of those sidings, and if those sidings can be regarded as adjacent to the Jenny Gray pit the appellant is entitled to succeed.

I am disposed to hold that the sidings at the drum-house were really part of the equipment of the pit, and adjacent to it in the sense of the Coal Mines Regulation Act 1887. The present case is somewhat stronger than the case of *Monaghan v. United Collieries, Limited*, November 27, 1900, 3 F. 149, decided by the First Division, because in that case the accident occurred not upon the branch line but upon the Caledonian Railway with which it was connected. In deciding that case the First Division had before them the case of *Turnbull v. Lambton Collieries, Limited*, May 7, 1900, 16 Times L.R. 369. The opinions in the latter case are very shortly given, but they seemed to have turned upon this, that the private line connecting the collieries with the North-Eastern Railway was 12 miles in length, and the Court of Appeal seem to have held that when the accident occurred the operations which were going on were those of transit, and not sufficiently connected with the work of the mine to make the *locus* adjacent to and belonging to the mine as distinguished from belonging to the mine-owner.

On the whole matter I am for answering the questions put to us in the affirmative.

LORD JUSTICE-CEERK— I cannot regret the conclusion at which your Lordships have arrived from one point of view, because it results in this widow receiving compensation for what was a very sad loss to her, but I regret that I am unable to concur in the judgment which is proposed, holding, as I do, that the decision of the Sheriff-Substitute was right. This accident happened on a railroad constructed by the respondents' company to enable them to

convey coals and materials from or to the North British Railway, with which their private line was joined up. At a place on that private railroad, 800 yards from the mine, there was a steep gradient which necessitated the use of a rope working on a drum, so that the weight of the loaded waggons descending the incline could be used to haul up the empty waggons from the bottom. It was therefore necessary to have a double line or loop at this place that the outgoing and returning waggons might pass one another on the incline. The injured man was an engine-driver, and in the course of his duty hauled the waggons to and from the incline, and he met with his accident which caused his death when spragging empty waggons which had been brought up by the rope to the top of the incline.

The question is whether this accident happened "on or in or about a mine." I am of opinion with the Sheriff-Substitute that it did not. The place at which the accident happened was 800 yards from the mine, and the work that was being done was being carried out, not at a siding at the mine, but on a road made for conveyance of material away from or towards the mine. Had it occurred at the sidings at the mine itself—those sidings which were required there for loading waggons and making up trains—I should have held that it happened about the mine, but at the place where it did happen I hold that it was as little "about" the mine as would have been the case had there been no railroad, and the work of transit from the mine had been done by horse haulage on a private road made for conveying the products of the work from the mine to some other place. My view is, that unless it can be held that every private railway made from a mine to a public railway is a siding, however long it may be, because it is coupled up to the public line, and that it is therefore a siding in the sense of the statute throughout its whole length, the railroad in this case cannot be held to be a siding to which the Act applies. I am not prepared to hold this entire line to be a siding. My opinion is that this was, at the place where the accident happened, a road leading away from the sidings about the pit, and not itself a siding about the pit. It was not, in my opinion, a "siding" "adjacent to and belonging to the mine." If I were able to see that the decision in the case of *Monaghan v. United Collieries Co.* ruled this case I should have no hesitation in following it. I think the decision there may have been quite right. In that case only 80 yards of distance intervened between the pit and the public line of the Caledonian Railway. There was in fact no road there for conveyance to a distance, as distinguished from a short siding at the very pit itself, to hold the waggons clear of the railway line while being loaded and kept standing ready to be passed on to the public line. That is, in my opinion, a very different case from the present, where the place of the accident was nearly half-a-mile away from the pit, the waggons being at a place nearly half-way on a journey of more

than a mile between the main line of railway and the mine.

In the case of *Caton v. Summerlee and Mossend Coal Company* I expressed the opinion that an accident happening in a place on a private railway 230 yards away from the mine could not be held to have happened on, in, or about the mine, and it appears to me that, as regards the place of the accident in the present case, still less is there ground for holding that expression to apply to it. The case of *Turnbull v. The Lambton Collieries* in the English Court, which was quoted at the debate, appears very much to resemble the present. There the injured man was driving waggons with coal along a private line, and was injured by his head striking a waggon on the Coal Company's private line near the end of the line furthest from the pit. It was held that the case was clearly not one to which "on in or about" could apply, and that the word "adjacent" in the Act of 1887 meant physically adjacent. It is true that in that case the private line was some miles long, but the accident happened about three-quarters of a mile from the pit, and I am unable to see—if the principle of that decision was right, as I hold it to have been—that a place 800 yards distant can be held to be "adjacent." It would be difficult, indeed impossible, to draw a line between "adjacent" and "non-adjacent," unless it may be taken at the place where the sidings at the pit end and the road for transit from the pit must be reasonably held to begin, the traffic having left the pit and being on its journey to another place.

My opinion therefore is that both questions should be answered in the negative.

The Court answered the questions of law in the affirmative, recalled the award of the arbitrator, and remitted to him to award compensation.

Counsel for the Claimant and Appellant—George Watt, K.C.—Wilton. Agent—P. R. M'Laren, Solicitor.

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

Tuesday, December 6.

## FIRST DIVISION.

[Lord Stormonth Darling,  
Ordinary.]

### PARISH COUNCIL OF BRECHIN v. PARISH COUNCIL OF MONTROSE.

*Poor—Pauper Lunatic—Derivative Settlement—Effect of Relief Given to Son on Acquisition by Father of Residential Settlement—Change of Circumstances after Admission of Liability—Lunacy (Scotland) Act 1857 (20 and 21 Vict. c. 71), sec. 75.*

X, a lad aged fourteen years, residing in family with his father in the parish of M, received parochial relief from

that parish in November 1876. The father of X was an able-bodied man who at that date did not have a settlement in the parish of M, and the parish of B, the birth parish of X's father, in March 1877 admitted its liability to relieve the parish of M for payments made on behalf of X. X, who was weak-minded, was never forisfamiliated or able to maintain himself, and continued to receive parochial relief intermittently. In September 14, 1891, he was placed by the order of the Sheriff in an asylum as a pauper lunatic. In May 1877 X's father had resided in the parish of M for the five years necessary to give him a residential settlement there, unless he was to be regarded as a pauper in respect of the relief given to his son in November 1876.

In an action by the parish of B to recover the disbursements made by it on behalf of X, after the statutory notice claiming relief had been sent by it to the parish of M, held (1) that X, being incapable of acquiring a settlement, followed the settlement of his father; (2) that X's father was not made a pauper by the relief given to his son while living with him in 1876, and consequently acquired a residential settlement in the parish of M in May 1877; (3) that the admission of liability for X, rightly made by the parish of B in March 1877, was not binding after X's father acquired a settlement in the parish of M; and accordingly (4) that the parish of M was liable to relieve the parish of B for the disbursements made by it on behalf of X from one year prior to the date at which the statutory notice claiming relief was sent.

The Lunacy (Scotland) Act 1857 (20 and 21 Vict. c. 71), sec. 75, enacts—"Every pauper lunatic detained in any district asylum under this Act shall be deemed and held to belong and be chargeable to the parish of the legal settlement of such lunatic at the time the order for his reception in such asylum was granted, and the expense of his maintenance at such district asylum shall be defrayed by such parish accordingly."

In April 1903 the Parish Council of Brechin brought this action against the Parish Council of Montrose and the Parish Council of Marykirk, concluding that the defenders the Parish Council of Montrose should be ordained to make payment to the pursuers of (1) £131, 19s. 7d., being the amount disbursed by the pursuers in relieving William Crocket, presently an inmate of the Montrose Royal Lunatic Asylum, from 6th October 1896 to 15th February 1903, and (2) £21, 5s. 1d., being interest on the amount so disbursed, or otherwise that the defenders the Parish Council of Marykirk should be ordained to make payment to the pursuers of (1) £166, 5s. 6d., being the amount disbursed by the pursuers in relieving the said William Crocket from 24th October 1894 to 15th February 1903, and (2) £32, 19s. 3d., being interest on the amount so disbursed, and that the defenders, or whichever should be found liable, should be ordained to relieve