SUMMER SESSION, 1912.

COURT OF SESSION.

Thursday, May 16, 1912.

FIRST DIVISION.

[Sheriff Court at Peebles.

EUMAN *v.* DALZIEL & COMPANY.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Second Schedule, sec.* 17 (*b*)—*Application for Order for Stated Case—Competency—Question of Law not in Proper Form—A.S., 26th June* 1907, *sec.* 17 (*h*).

In an arbitration under the Workmen's Compensation Act 1906, in which the Sheriff-Substitute, acting as arbitrator, had awarded compensation, the defenders craved a stated case for the opinion of the Court of Session on the following question of law, viz., whether the death of the said Robert Euman was the result of an accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act 1906. The Sheriff-Substitute having refused the application, the defenders presented a note to the First Division for an order on the respondent to show cause why such a case should not be stated.

The Court *granted* the order with the question of law framed as follows:—"Whether there was evidence upon which it could competently be found that the death of Robert Euman was the result of an accident arising out of and in the course of his employment."

Mrs Agnes Easton or Euman, widow of Robert Euman, mill foreman, Walkerburn, claimed compensation under the Workmen's Compensation Act 1906 from James Dalziel & Company, manufacturers, Walkerburn, in respect of the death of her husband, which she alleged to be due to an accident sustained by him while at work in the defenders' employment.

On 12th January 1912 the Sheriff-Substitute (ORPHOOT), acting as arbitrator, found in fact—"(1) That on 18th July 1911 Robert Euman, mill foreman, Walkerburn, was in the employment of the defenders as a millworker in their mills at Walkerburn when he met with an accident arising out of and in the course of his said employment, through a ladder on which he was standing accidentally slipping, whereby he was thrown to the ground and injured; (2) that the said Robert Euman died at Walkerburn on 15th August 1911; (3) that his death resulted from the injuries he received by said accident," and awarded compensation accordingly.

Thereafter the defenders lodged a minute craving the Sheriff-Substitute to state a case for the opinion of the Court on the following question of law, viz.—"Whether the death of the said Robert Euman was the result of an accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act 1906."

They also lodged with the Sheriff-Clerk a draft stated case, which, after narrating the facts which they alleged had been proved, submitted for the opinion of the Court the following questions—"(1) Whether the arbiter was entitled to draw from the facts stated the inference that the appendicitis which caused the death of the deceased was the result of his being confined to bed with a staved ankle? (2) Whether the death of the deceased was caused by personal injury by accident arising out of and in the course of his employment?"

On 13th February 1912 the Sheriff-Substitute refused the application, stating that he did so in respect "(1) That the questions of law stated in the draft stated case submitted to me are not raised by the admissions made or the facts proved before me; (2) that the only question raised in this arbitration is—Did the death of Robert Euman, husband of the pursuer, on 15th August 1911, result from personal injuries sustained by him in the accident which happened to him on 18th July 1911? and (3) that that question is a question of fact."

The defenders thereafter presented a note to the First Division, in which, after narrating the nature of the evidence led, they craved an order on the respondent to show cause why a case should not be stated by the Sheriff-Substitute for the following

reasons—"Because the question whether the death of the deceased did or did not result from injury by accident arising out of and in the course of his employment under the conditions found proved as above is a question of law and not of fact. Because there was no evidence that the death of the deceased resulted from the injuries he received by the accident on 18th July aforesaid."

The *questions of law* proposed were as follows—"(1) Whether the arbiter was entitled to draw from the facts stated the inference that the peritonitis which caused the death of the deceased was the result of his being confined to bed with a staved ankle? (2) Whether the death of the deceased was caused by personal injury by accident arising out of and in the course of his employment?"

Mrs Euman lodged answers, in which she submitted that the Sheriff-Substitute had rightly refused to state a case in respect that the questions proposed were questions of fact.

The note and answers were heard in the Summar Roll on 14th May 1912.

Argued for the respondent—Where, as here, the question originally put to the Sheriff was solely one of fact, the Court would not now ordain him to state a case—*Rae* v. *Fraser*, June 28, 1899, 1 F. 1017, 36 S.L.R. 782; *Hobbs and Samuels* v. *Bradley*, March 14, 1900, 2 F. 744, 37 S.L.R. 532. The proper form of question was as follows—"Was there evidence given before the Sheriff-Substitute upon which he might reasonably have found that the accident in question arose out of and in the course of the deceased's employment," *per* Lord Atkinson in *Jackson* v. *General Steam Fishing Company, Limited*, 1909 S.C. (H.L.) 37, at p. 41, 46 S.L.R. 901. That question had not been put to the arbitrator, and the note therefore should be refused.

Argued for appellants—*Esto* that the question originally put to the arbitrator was not in proper form it was his duty to have adjusted it, for the facts clearly raised a question of law. There were many cases in which the Court had entertained appeals on questions so framed, *e.g.*, *Coe* v. *Fife Coal Company, Limited*, 1909 S.C. 393, 46 S.L.R. 328; *Blakey* v. *Robson, Eckford & Company, Limited*, 1912 S.C. 334, 49 S.L.R. 254. The Lord President referred to *Miller* v. *Refuge Assurance Company, Limited*, 1912 S.C. 37, 49 S.L.R. 67. It was the duty of the claimant to establish either by direct evidence or by legitimate inference from proved facts that the accident arose out of as well as in the course of the employment—*per* Cozens Hardy, M.R., in *Hawkins* v. *Powells Tillery Steam Coal Company, Limited*, [1911] 1 K.B. 988, at p. 991. This she had failed to do, and the order craved should therefore be granted.

LORD PRESIDENT—This is an application to us to ordain the Sheriff to state a case. He has refused to state a case when asked, and the application is made in accordance with the provisions of the Act of Sederunt of 1907 which deal with that matter.

The claim is at the instance of the widow of a workman who died. He died, it seems, of peritonitis—appendicitis and peritonitis, I think, is the form of the certificate—which I suppose means that the cause of death was appendicitis, or otherwise inflammation of the appendix, and that that inflammation had spread to the peritoneum, so that there was inflammation of the peritoneum as well as of the appendix. Now the accident which he had met with—using the word "accident" in the popular sense of the word—was that he had fallen from a ladder, and the question that is really raised between the parties, one can see easily enough, is whether the death was due to the accident or was not. The Sheriff-Substitute, acting as arbiter, disposed of the matter by the following findings—(1) that the workman met with an accident arising out of and in the course of his employment, through a ladder on which he was standing accidentally slipping, whereby he was thrown to the ground and injured; (2) that the said Robert Euman died at Walkerburn on 15th August 1911; and (3) that his death resulted from the injuries he received by said accident; and that is all the interlocutor tells us about the accident; the rest of the case concerns the adjustment of the compensation.

Now, as your Lordships well know, it has been conclusively settled by decisions of the House of Lords and of this Court, that although such appeals are by statute limited to questions of law, nevertheless they are competent when the question is whether such findings as these can be supported upon the evidence submitted, for that has been held to be a question of law. The criterion is whether anyone could reasonably have come to that conclusion. It has been said more than once that this criterion is, if not exactly the same, at least strictly analogous to the criterion we are in use to apply where we are asked to direct a new trial on the ground that the verdict of a jury is contrary to evidence. It is not a question of whether the decision is right or wrong, but a question of whether there was evidence led upon which the decision can be supported. I think as soon as that position is laid down it is quite impossible for us to direct our minds intelligently to the question unless we have before us a stated case which will give us a description of what the evidence that was led was. Accordingly we have more than once insisted either upon cases being stated, or upon cases being modified which were inadequate in their statement, so as to enable us to apply our minds intelligently to the question before us. I gave a very recent illustration of that in the case of the *Refuge Insurance Company* v. *Millar*, where, after a case was stated, we sent it back again in order that it should be modified, and I do not think here there can be any doubt that the respondents had a right to have the question raised which they wished decided, namely, whether these findings of the Sheriff can be reasonably supported on the evidence given.

Now the only difficulty that I have had at all in this case is owing to the terms of the minute in which the respondents made their original crave. The minute is lodged also in terms of the Act of Sederunt, and runs thus — "Oliver for the defenders respectfully craved the Court to state a case for the decision of the First Division of the Court of Session upon the following question of law, viz., whether the death of the said Robert Euman was the result of an accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act 1906." Now, strictly speaking, I think that question is wrongly put, because that is not a question for us. That would be simply asking us to reply to a question of fact upon the merits. The question is, as I have said, whether the evidence as led before the Sheriff could support the finding that he made. But although that is so, and although I think it should be made clear that the proper form of the question is as I have said, I think it would be treating the respondents too harshly if we refused to allow a case to be stated upon the ground that they phrased their question in that form, in view of the fact that there are many cases in the books where we have gone into the question of whether the evidence did support the findings in a reasonable sense upon a question phrased exactly as this question is phrased. As recently as the case of *Robson, Eckford, & Company* (23rd December 1911) the question was phrased in that way. I think the proper form of the question is the form that is given in the *Refuge Insurance Company* v. *Millar*, 1912 S.C. 37—"Whether there was evidence upon which it could be competently found that the said James Millar sustained an accident arising out of and in the course of his employment on 9th May 1910?"

I think that is the form in which the question ought to be put. To refuse this note because it is put in a different form would, I think, be treating the respondents too hardly. I think, therefore, the case should go back to the Sheriff in order that he may state the facts proved before him upon which he found that the death was the result of an accident arising out of and in the course of the employment.

LORD JOHNSTON—I think that in the minute presented to the Sheriff, and equally in the draft special case laid before him, the question put to him was one on which he was not bound to prepare a special case, and I cannot say he did wrong in refusing to do so. But now that the parties desiring to appeal have learned what the question ought to have been, I agree that it would be too stringent to refuse to let them have a case in proper form. I do so, however, with reluctance. For I think in the interest of the Sheriff as arbitrator it is imperative that he should know precisely what the question is to which he has got to apply his mind, to meet which he has got to prepare a case. I think that if the proper form of question were more consistently adopted, we should not have so much difficulty in determining whether cases coming here really present the *species facti* which the Sheriff ought to have stated, and doubtless would have stated, had his mind been properly directed to the precise question which the case was intended to raise. And further, the competency or incompetency of such cases would be much more easily determined. While therefore allowing in the circumstances a case to be stated, I should be inclined to mark this case in some such way as to indicate that as originally prepared it was incompetent.

LORD SKERRINGTON—I agree.

LORD KINNEAR and LORD MACKENZIE were sitting in the Extra Division.

The Court pronounced this interlocutor—

"Remit to the Sheriff Substitute as arbitrator to state a case upon the following question of law, viz., whether there was evidence upon which it could competently be found that the death of Robert Euman was the result of an accident arising out of and in the course of his employment: Find the pursuer and respondent entitled to expenses since 12th January 1912, and remit the account thereof," &c.

Counsel for Appellants—W. J. Robertson. Agents—Steedman, Ramage, & Company, W.S.

Counsel for Respondent—T. G. Robertson. Agents—J. J. Galletly, S.S.C.

Tuesday, May 28.

SECOND DIVISION.

[Sheriff Court at Dumbarton.

JOHN BROWN & COMPANY, LIMITED *v.* HUNTER.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (3)—*Arbitration—Competency—"Question" Arising in Proceedings under Act.*

An application by a workman for the registration of a memorandum of agreement under the Workmen's Compensation Act 1906 was objected to by the employers on the ground that the workman had signed a receipt which bore that compensation should be paid only while his employers were of opinion that his incapacity continued. The application was abandoned. The workman having then presented an application for arbitration to fix the amount of compensation, the employers objected on the ground that there was no "question" arising in any proceedings under the Act. *Held* that there was a "question" in the sense of the Act, and that the workman was entitled to have the amount of his compensation determined.