

Counsel for the Appellants—Horne, K.C.
—Hon. W. Watson. Agents—W. & J.
Burness, W.S.

Counsel for the Respondent—Macdonald.
Agent—T. J. Connolly, Solicitor.

Friday, May 23.

FIRST DIVISION.

[Sheriff Court at Glasgow.]

MANSON v. FORTH AND CLYDE STEAMSHIP COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (8 Edw. VII, cap. 58), sec. 1 (1)—Accident Arising "out of" the Employment—Workman Injured through Fire on Board Ship—Fire Due to Act of Shore Labourer who had Come Aboard.

A ship's carpenter while at work on board amid shavings and with oily trousers was severely burned owing to the shavings being set on fire through the act of a shore labourer who had come on board lighting a cigarette and throwing down a match.

Held that the accident arose out of the employment.

Magnus Charles Manson, ship's carpenter, Leith, pursuer, having claimed compensation under the Workmen's Compensation Act 1906 (8 Edw. VII, cap. 58), from his employers the Forth and Clyde Steamship Company, Limited, Glasgow, defenders, the matter was referred to the arbitration of the Sheriff-Substitute of Lanarkshire at Glasgow (GLEGG), who assoilzied the defenders, and at the pursuer's request stated a Case for appeal.

The facts were as follows:—“(1) That appellant signed on as carpenter on board the s.s. 'Crest,' owned by respondents, The Forth and Clyde Steamship Company, Limited, on 21st December 1911; (2) that his wages on board said ship were £6, 10s. monthly, together with his board and lodging, which are valued at 11s. 1d. per week; (3) that on 15th January 1912, when appellant was working in the poop of the said s.s. 'Crest' in Leghorn Harbour, a shore labourer came down the ladder lighting a cigarette and threw a match down, which fell, still alight, among some shavings on the floor of the poop, setting fire to said shavings; (4) that the fire thus caused lighted appellant's trousers, burning him severely; (5) that appellant had previous to said fire been shifting a barrel of kerosene oil, from which some oil had leaked on to his trousers; (6) that appellant was left in hospital at Leghorn, and did not arrive back in this country until 26th September 1912; (7) that he is still incapacitated as the result of the injuries sustained on 15th January 1912.”

The Sheriff-Substitute further stated—“I found that . . . (2) the accident to the appellant did not arise out of and in the course of his employment with the respon-

dents. I therefore assoilzied the respondents and found them entitled to expenses.”

The questions of law included the following:—“(2) Was I entitled to hold that the injury to the appellant was not caused by accident arising out of and in the course of his employment with the respondents within the meaning of the Workmen's Compensation Act 1906?”

Argued for appellants—The accident clearly arose out of the appellant's employment, for the risk of fire was reasonably incident to employment on board ship. Moreover, the appellant was specially exposed to that risk owing to the conditions in which he was working, viz., amid inflammable materials and with oily trousers. He was therefore clearly entitled to compensation—*M'Intyre v. Rodger & Company*, December 1, 1903, 6 F. 176, 41 S.L.R. 107; *M'Lauchlan v. Anderson*, 1911 S.C. 529, 48 S.L.R. 349; *Wicks v. Dowell & Company, Limited*, [1905] 2 K.B. 225; *Challis v. London and South-Western Railway Company*, [1905] 2 K.B. 154. The case was a *fortiori* of *Murray v. Denholm & Company*, 1911 S.C. 1087, 48 S.L.R. 896, for there was an entire absence of any tortious act. As to the meaning of “reasonably incident to the employment” reference was made to *Morgan v. Owners of s.s. "Zenaida,"* 1909, 25 T.L.R. 446 (sun-stroke case); *Andrew v. Failsworth Industrial Society*, [1904] 2 K.B. 32; *Kelly v. Kerry County Council*, 1 B.C.C. 194 (lightning cases); and to *Warner v. Couchman*, [1912] A.C. 35 (frostbite case).

Argued for respondents—The cases cited by the appellant were distinguishable, for in all of them—apart from the cases of *Murray* and *Warner*—the risk encountered was reasonably incidental to the employment. That was not so here, for the risk of a lighted match being thrown away by a shore labourer was not a risk reasonably incident to this man's employment. It was not enough to say that because he was working amid shavings and with oily trousers the accident arose out of his employment where, as here, the accident was due to an outside cause. It might have been different had the accident been due to a spark from the ship's fires and not, as here, to the act of a shore labourer. The respondents therefore were not liable—*Falconer v. London and Glasgow Engineering Company, Limited*, February 23, 1901, 3 F. 563, 38 S.L.R. 381; *Burley v. Baird & Company, Limited*, 1908 S.C. 545, 45 S.L.R. 416; *Rodger v. Paisley School Board*, 1912 S.C. 584, 49 S.L.R. 413; *Armitage v. Lancashire and Yorkshire Railway Company*, [1902] 2 K.B. 178; *Fitzgerald v. Clarke & Son*, [1908] 2 K.B. 796; *Clifford v. Joy*, (1909) 2 B.C.C. 32; *Craske v. Wigan*, [1909] 2 K.B. 635; *Mitchinson v. Day Brothers*, [1913] 1 K.B. 603.

LORD PRESIDENT—In this case the facts, as admitted by agreement, were that the pursuer was a carpenter on board a ship owned by the defenders and earned a certain wage; that on 15th January 1912, when he was working on the poop of

the said vessel, a shore labourer lighted a cigarette and threw the match down; the match, still alight, fell among some shavings on the floor of the poop, setting fire to the said shavings; the fire thus caused lighted the pursuer's trousers, burning him severely; that the pursuer had, previously to the fire, been shifting a barrel of kerosene oil from which some of the oil had leaked on his trousers; that he was injured by the fire; and that he has not yet recovered.

Under those circumstances I think that only one result can be arrived at, namely, that the accident did arise out of and in the course of the employment of the pursuer. That it arose in the course of his employment is not doubtful. It has been argued to us that it did not arise out of the employment. Now I think it did, and for a very simple reason, the pursuer had got the oil upon his trousers owing to the work to which he was put; he was surrounded by shavings on the poop owing to the work to which he was put; and therefore it was a result of the work to which he was put that the pursuer at that moment was working in a position in which he was in more than ordinarily inflammable surroundings. An accident occurred by which the inflammable surroundings were set on fire and the pursuer was injured. That, in my view, is an accident arising out of the pursuer's employment.

I think that the fallacy of Mr Horne's argument was that he treated the throwing down of the match as the accident. It was not the throwing down of the match that was the accident; the fire was the accident; but the throwing down of the match was the cause of the accident. It was through the accident, namely, the fire, that the pursuer was injured. Well, I think that was a risk to which he was exposed to a greater extent than other people because of his employment. Other people were not exposed to the risks of that fire because they had not to work on the poop among these shavings and to work with oily trousers. He was bound to work under those conditions.

I am therefore for sending back the case to the learned Sheriff-Substitute with an instruction to him to find that the accident arose in the course of and out of the pursuer's employment, and to assess the proper compensation.

LORD KINNEAR—I quite agree with your Lordship. I think it clear, upon the admitted facts, that the accident from which this man suffered occurred in the course of his employment, and I think it equally clear that it arose out of the employment, because the risk to which he was exposed was incidental to the particular work which he was required to do at the time, and was very much greater than the risks to which other people might be exposed from the same cause. I think that his duty compelled him to run a greater risk than people ordinarily run from being in the neighbourhood of careless persons who throw about lighted matches, because his

duty was to work among very inflammable material with his clothes more or less saturated with inflammable oil, and a lighted match having been thrown among this material and set it on fire, I think he incurred an injury to which his employment specially exposed him and to which he would not have been exposed otherwise.

LORD JOHNSTON—I agree. I think that this accident has occurred from a normal risk to which all are exposed, but to which this man was abnormally exposed, and that he was so exposed by reason of the nature of his employment; and I therefore think that the accident arose out of, as well as occurred in, the course of his employment, and that he is entitled to compensation.

LORD MACKENZIE—I agree with your Lordships.

The Court pronounced this interlocutor—

“Answer the second question of law in the case in the negative. . . . Recal the determination of the Sheriff-Substitute as arbitrator: Remit the cause to him to find that the accident arose out of and in the course of the appellant's employment, and to proceed as accords, and decern.”

Counsel for Appellant—Moncrieff, K.C.—Fenton. Agent—T. M. Pole, Solicitor.

Counsel for Respondents—Horne, K.C.—Carmont. Agents—J. & J. Ross, W.S.

Friday, May 23.

FIRST DIVISION.

[Scottish Land Court.]

CLYNE v. SHARPE'S TRUSTEES.

Landlord and Tenant—Property—Small Holding—“Determination of Tenancy”—Tacit Relocation—Renewal of Tenancy as from Expiry of Lease—Competency—Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, c. 49), sec. 32 (4).

A statutory small tenant whose lease had expired at Whitsunday 1912, but who had remained in possession of his holding, applied on 16th August 1912 to the Land Court to grant a renewal of his tenancy and to fix a fair rent. The Land Court having renewed the tenancy as from Whitsunday 1912, the proprietors appealed, maintaining that as the respondent's lease had expired at Whitsunday 1912 it was incompetent for the Land Court to renew the tenancy as from that date.

Held that the respondent was entitled to a renewal of his tenancy as from Whitsunday 1912.

The Small Landholders (Scotland) Act 1911, sec. 32, enacts—“With respect to statutory small tenants the following provisions shall have effect:—“(4) Except in any case where the landlord satisfies the Land Court