

means the workman is completely safeguarded. He runs no risk by accepting employment, even if he is not actually earning all the wages that are being paid, because if he loses his job from any cause, either by action of the employer or any other reason whatever, if it be the case that in consequence of the accident he is still suffering from the injuries and is thereby unable to earn as good wages as he was before, then the liability of the employer having been established by the memorandum having been recorded, the workman's right to exact payment of compensation under that ascertained liability is merely suspended.

It appears to me that if the workman is a loser in this case, it may have been from the fact that the law about the time when these applications were made was, perhaps, not so well cleared up as it has been by the recent judgments of the House of Lords, and although the judgments were pronounced prior to the actual dates in question, the result of the decisions may not have been so fully reported as to bring them before the legal profession. We cannot consider any questions of equity if the provisions of the statute are clear and distinct. I think, therefore, that the result reached by your Lordships is the only one which is open to us on the facts of this case, on the terms of the statute, and as the result of the authorities which have been referred to.

LORD SKERRINGTON—I agree.

The Court pronounced this interlocutor—

“Find in answer to the question of law in the case, that as at 20th March 1913 the proper procedure in the cause was for the arbitrator to have ordered the memorandum to be recorded, but in respect of the employer's offer of light employment at 19s. a-week, *hoc statu* to have sisted further procedure: Further find that in respect it is admitted that the appellant has completely recovered from the results of the accident, it is unnecessary that there should be any further proceedings in the arbitration process: Find no expenses due to or by either party, and decern.”

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

Counsel for Respondent—D. P. Fleming. Agents—Fraser, Stodart, & Ballingall, W.S.

Friday, March 20.

## FIRST DIVISION.

(SINGLE BILLS.)

### MACARTHUR v. MACKAY.

*Process—Company—Reclaiming Note—Competency—Winding-up of Company—Note not Timeously Presented—Companies Consolidation Act 1908 (8 Edw. VII, c. 69), sec. 181 (3).*

The Companies (Consolidation) Act 1908, sec. 181, provides with regard to appeals from orders made in the winding-up of a company—“(3) Provided also, in regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding-up has been remitted, that any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment. . . .”

*Held* (after consultation with the Second Division) that sub-section (3) was imperative and not directory, and that accordingly a reclaiming note which had not been presented until after the expiry of the fourteen days was incompetent.

On 24th May 1913 J. R. Mackay, C.A., Glasgow, liquidator of the Motor Brougham and Cab Company, Limited, presented a note to the Lord Ordinary in the liquidation for approval of the “A” list of contributories, in which the name of the respondent A. J. MacArthur was entered as a shareholder. The respondent having lodged answers, in which he submitted that his name had been wrongfully included, the Lord Ordinary (CULLEN) on 12th February 1914 sanctioned the list. MacArthur reclaimed, the note being boxed on 5th March 1914.

On the note appearing in the Single Bills of 6th March 1914, counsel for the liquidator objected to its competency on the ground that it had not been presented within fourteen days as required by section 181 (3) of the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69).

Argued for reclaimer—The provisions of the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 181 (3), were directory and not imperative, and the Court therefore had power to dispense with the regulation. The Court had construed section 13 of the Judicature Act 1825 (6 Geo. IV, cap. 120), which was in equally imperative terms, as merely directory—*Burroughes & Watts, Limited v. Watson*, 1910 S.C. 727, 47 S.L.R. 638. The liquidator had suffered no prejudice, and the note therefore should be received.

The LORD PRESIDENT intimated that the Court would consult with the Second Division before disposing of the reclaiming note.

The note was advised on 20th March 1914, the opinion of the Court being delivered by

LORD PRESIDENT—We have consulted with our brethren of the Second Division

and have come to the conclusion that this reclaiming note is incompetent. But I desire to call the attention of the claimer's counsel to the fact that he may find a remedy in the Court of Session (Appeals) Act 1808, section 16 (48 Geo. III, cap. 151). I would also refer him to the opinions delivered in the case of *Watt's Trustees v. More*, (1890) 17 R. 318, 27 S.L.R. 259.

The Court refused the reclaiming note as incompetent.

Counsel for the Reclaimer—M. J. King.  
Agents—Simpson & Marwick, W.S.

Counsel for the Liquidator—M. P. Fraser.  
Agent—Harry H. Macbean, W.S.

Friday, March 20.

## SECOND DIVISION.

[Sheriff Court at Glasgow.

R. & J. M'CRAB, LIMITED v. RENFREW.

*Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (1)—Accident—“Arising out of and in the Course of the Employment” —Intoxicated Commercial Traveller on Journey Home from Town where no Business in fact Transacted—Onus.*

A commercial traveller travelled to a town where he had customers but made no attempt to transact business. He went to the railway station in an intoxicated condition to return home. The night was dark, the station not fully lit, and the traveller short-sighted. After a non-stopping goods train had passed through the station he was found on the line with one of his legs cut off, and he died shortly afterwards. No one saw the deceased go or fall on to the line. The arbiter found that the accident arose out of and in the course of the employment.

*Held* that there was not evidence to justify the finding that the accident arose out of the employment.

*Opinion* (per the Lord Justice-Clerk) that neither was there sufficient evidence to justify the finding that the accident arose in the course of the employment.

In an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between Mrs Renfrew and others, the widow and children of Robert Renfrew, commercial traveller, Glasgow, *applicants and respondents*, and R. & J. M'Crab, Limited, bedding manufacturers, Glasgow, *appellants*, the Sheriff-Substitute (SCOTTMONCRIEFF) granted compensation and stated a Case for appeal.

The Case stated—“The case was heard before me, and proof led on 15th December 1913, when the following *facts* were established—(1) That the respondents are the widow and the four pupil children of the deceased Robert Renfrew, who died within the Royal Infirmary, Glasgow, upon 6th

August 1913, his death being due to an accident sustained by him at Beith railway station upon the previous evening. (2) That the respondents were totally dependent upon the deceased. (3) That deceased was a commercial traveller in the employment of the appellants, that he had a free hand in going his journeys, and could choose his own hours for travelling. (4) That Beith was one of the places included in his district and at which he had customers. (5) That upon the morning of 5th August last he intimated to a witness in the employment of the appellants his intention of going to Paisley, Lochwinnoch, and Beith, and was advised to call upon a customer named Hunter at Lochwinnoch. (6) That he went to Paisley and booked an order there, and afterwards came to Lochwinnoch, where by accident Hunter found him at the bar of a public-house. (7) That they had drink there and at another public-house and talked upon business. (8) That Hunter having to go to Beith, deceased proposed to go with him, adding that although late in the day he might see some of his customers, and that it was as easy to get back to Glasgow, where he lived, from Beith as from Lochwinnoch; that accordingly they hired a dogcart and drove to Beith, where they had drink in one hotel, but that at another the proprietor intimated that he would not supply because of the intoxicated condition in which the deceased then was. (9) That his friend Hunter parted with him in the street of Beith about 9 p.m., and was under the impression that he was then going to visit a customer, but that there is no evidence that deceased transacted any business in Beith upon that night. (10) That deceased was next seen about 9.40 p.m. crossing the foot-bridge at Beith station, which is about a mile or twenty minutes walk from Beith. (11) That his unsteady condition was noticed by a porter, the stationmaster, and others. (12) That after crossing said bridge he walked along the platform upon the side for Glasgow, which was twelve feet wide, and sat down upon a seat some ten feet from the edge of the platform. (13) That shortly after a non-stopping goods train had passed he was found by the porter upon the rails with his head outwards and his feet towards the platform, one of his legs being almost severed from the body. (14) That he was removed to the Infirmary and died within a few hours. (15) That no one saw deceased go or fall upon the rails, but that it is a reasonable inference that while waiting for the Glasgow train he had either fallen off the edge of the platform or been knocked off by the engine of the passing train while standing on the edge. (16) That the night was dark and the station not fully lit, as some of the lamps had been lowered or put out. (17) That deceased was short-sighted and had recently complained of his spectacles as unsatisfactory.

“I found in law that a commercial traveller when out upon his travels continues in employment until he returns home, and that as deceased was at Beith station, which was one within his circuit, for the purpose of returning to Glasgow after trans-