the relevancy of the complaint in the Inferior Court; in answer to the second and third questions in the case, that the appellants were rightly convicted of a contravention of the Annan Fisheries Act." The appeal was dismissed, but no expenses were found due.

Counsel for the Appellants — N. J. D. Kennedy—W. Thomson. Agent—William Balfour, S.S.C.

Counsel for the Respondent—Dundas, Q.C.—A. S. D. Thomson. Agents—Hope, Todd, & Kirk, W.S.

COURT OF SESSION.

Tuesday, November 6.

SECOND DIVISION.

[Sheriff-Substitute at Edinburgh.

BRODIE *v.* NORTH BRITISH RAILWAY COMPANY.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7 (2)—*Railway — Employment "on or in or about a Railway"— Workman of Railway Company Injured on Private Railway Line—Regulation of Railways Act* 1873 (36 *and* 37 *Vict. c.* 48), *sec.* 3.

A servant of a railway company in the course of his employment was injured on a private line which belonged to a trading company, and which was not constructed or carried on under any Act of Parliament. The accident occurred at a point three-quarters of a mile from the junction with the system of the railway company. The private line was used by the railway company solely for the carriage of goods to and from the works of the owners by means of the engines and trucks of the railway company.

Held that the accident did not occur "on or in or about" a railway within the meaning of the Workmen's Compensation Act 1897, section 7, and the Regulation of Railways Act 1873, section 3, and that the railway company were not liable in compensation.

This was an appeal under the Workmen's Compensation Act 1897 in the matter of an arbitration before the Sheriff-Substitute (MACONOCHIE) at Edinburgh, between John Brodie, goods guard, claimant and appellant, and the North British Railway Company, respondents.

The facts stated as proved or admitted were as follows:—"On January 15th 1900 the appellant was injured on a siding of the Coltness Iron Company's mineral line while in the performance of his duty as a goods guard in the employment of the respondents. Said line is a private line of railway belonging to the said Coltness Iron Company, and it was not constructed and is not carried on by them or by any other company under the powers of any Act of Parliament. Said mineral line has a communication with the Caledonian Railway Company's system at a point near Newmains, shown on the plan produced, and also at a point near Prospecthill, also marked on said plan. Said mineral line has a communication with the respondents' system at a point near Newmains marked on said plan, but it has no other communication with the respondents' line. The Caledonian Railway Company are in the habit of sending daily a small part of their through goods traffic from the point first above mentioned to the point second above mentioned, both on their line, over the said mineral line, instead of sending it exclusively over their own line, which is somewhat longer, but they do not do this in virtue of any Act of Parliament or of any arrangement between them and the owners of the private line. The respondents, by means of their own engines and trucks, deliver at the Coltness Iron Works, by said private line of railway, ore consigned to the Coltness Iron Company from various parts of the country, and take away in a similar way mineral consigned by the Iron Company to various consignees. The respondents have no arrangement with the owners of the private line with regard to the carriage of goods other than those above mentioned, and they do not use the said line for the carriage of such other goods. The accident occurred on a siding connected with the said private line at a point about three-quarters of a mile from the only point at which the main mineral line is connected with the respondents' system."

Upon the foregoing facts the Sheriff-Substitute held in law that "the said accident did not take place on, in, or about a railway within the meaning of section 7 (2) of the Workmen's Compensation Act 1897, and dismissed the application with expenses to the respondents."

The question of law for the opinion of the Court was—"Whether the accident took place on, in, or about a railway within the meaning of the Workmen's Compensation Act 1897?"

The Workmen's Compensation Act 1897 enacts (sec. 7)—"This Act shall apply only to employment by the undertakers, as hereinafter defined, on or in or about, *inter alia*, a railway." Sub-sec. 2—"'Railway' means the railway of any railway company to which the Regulation of Railways Act 1873 applies, . . . and 'railway' and 'railway company' have the same meaning as in the said Act of 1873."

By the Regulation of Railways Act 1873, section 3, "the term 'railway company' includes any person being the owner or lessee of, or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament, and the term 'railway' includes every station, siding, wharf, or dock of or belonging to such railway, and used for the purposes of public traffic."

Argued for the appellants—The Sheriff was wrong in holding that the accident did

not occur "on or in or about" a "railway" within the meaning of the Act. The siding in question was clearly a siding "of" the respondents' company although not "belonging to" them. It was enough to satisfy the definition if the siding was used, as here, for public traffic under the law applicable to railway rates. The fact that it was used also by the Caledonian Railway showed that it was used for public traffic. The respondents worked the siding with their own locomotives and waggons, and it was only of use in connection with their system. The siding was *pro tempore* the siding of the respondents, who were in the position of lessees, being on the private line by arrangement with the owners. 2. Alternatively, the accident occurred "about" the respondents' railway, although the *locus* was in fact three-quarters of a mile from their line; the question would have been the same if the distance had been 100 yards. The word "about" did not refer to distance, but to the connection between the workman's employment and the accident—*Middlemiss* v. *Berwickshire County Council*, Jan. 17, 1900, 2 F. 392. If the accident had occurred while a through train was running over the system of another railway company the respondents would have been liable. It was therefore impossible to hold that the workman could not recover unless he were actually on his employers' railway.

Argued for the respondents—The Sheriff-Substitute was right. This was not a railway within the meaning of the Act. It did not "belong to" the respondents, for it was found as matter of fact to belong to the Coltness Company. It was not constructed or carried on under Act of Parliament, and was not under the Regulation of Railways Act. The word "of," relied on by the appellant, referred to the case of a railway company leasing or exercising running powers over the lines of another company for purposes of public traffic. This line was not so used. The only traffic was the private traffic of the Coltness Company. 2. Neither was the *locus* of the accident "about" the respondent's railway. The word "about" implied local contiguity, and did not refer to the connection between the accident and the workman's employment — *M'Millan* v. *Barclay, Curle, & Company*, November 10, 1899, 2 F. 91; *Fenn* v. *Miller* [1900], 1 Q.B. 788. The policy of the Act was to make the railway company responsible for accidents sustained by their workmen while employed on a public line which was subject to statutory regulation, but not otherwise.

At advising—

LORD JUSTICE-CLERK—The facts in this case are very clearly stated by the Sheriff-Substitute. The real question is, whether the accident which occurred took place on, in, or about a railway to which the Regulation of Railways Act of 1873 applies, for unless it did the section 7 (2) of the Workmen's Compensation Act will not apply. I am of opinion that the place being three-quarters of a mile from the respondents' railway, and on a private line made for the service of a private company, and under the control and management of that private company, the accident did not occur upon a railway to which the Regulation of Railways Act of 1873 applies, and I therefore would propose to answer the question submitted to the Court in the negative.

LORD TRAYNER—The appellant, a servant in the employment of the respondents, was accidentally injured in the course of his employment, and he claims compensation in respect of his injuries under the provisions of the Workmen's Compensation Act 1897. The answer made to the appellant's demand is, that in the circumstances stated the appellant can maintain no claim under the Act on which he founds. The Sheriff-Substitute has given effect to this answer and dismissed the appellant's petition. I think he is right.

The injury which the appellant received was so received on a railway siding belonging to the Coltness Iron Company, about three-quarters of a mile from the place where that siding connects with the respondents' system. In one view, therefore—the popular view—the appellant was injured on, in, or about a railway. But was it a railway within the meaning of the Act? Railway is there defined as meaning the "railway of any railway company to which the Regulation of Railways Act 1873 applies." The siding on which the injury was received was not and is not the railway of any railway company, but is the railway of the Coltness Iron Company. Nor is it a railway to which the Regulation of Railways Act applies, in respect (1) it was not constructed, nor is it carried on, under the powers of any Act of Parliament, and (2) it is not used for public traffic but only for the traffic of the Coltness Iron Company.

It was maintained, however, for the appellant that even if the siding on which he was injured was not a railway within the meaning of the Workmen's Compensation Act, yet that the railway of the respondents was so, and that he was injured on, in, or about that railway. I cannot adopt that view. The result of the decided cases, both in England and here, is that the words "on, in, or about," imply local contiguity to the factory or railway where the injury for which compensation is claimed was received. There was no such contiguity here. The site of the injury was three-quarters of a mile away from the respondents' railway, and a much less distance than that has been held, more than once, not to satisfy the condition of "on, in, or about." I am therefore of opinion that the question put to us should be answered in the negative and the appeal dismissed.

LORD MONCREIFF—I think the Sheriff-Substitute's decision is right. The claim is made under the Workmen's Compensation Act 1897 against the appellant's employers the North British Railway Company. Under that Act compensation can only be obtained for injuries sustained "on or in or about a railway." "Railway" is defined

as meaning the railway of any railway company to which the Regulation of Railways Act 1873 applies. Under that Act, section 3, the term "railway company" includes any person being the owner or lessee of or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament; and the term "railway" includes "every station, siding, wharf, or dock of or belonging to such railway, or used for purposes of public traffic."

Now, the accident occurred upon a siding on a private line of railway belonging to the Coltness Iron Company. This private line had a connection with the respondents' main line at Newmains, and the place where the accident occurred was at a distance of three-quarters of a mile from the connection. Under an arrangement between the respondents and the Coltness Iron Company the former were in use to deliver and take away by means of their own engines and trucks by that private line of railway ore consigned to or mineral consigned by the Coltness Iron Company.

The question is, whether the Act of 1897 applies to the private line in question. It was argued, in the first place, that the siding could be regarded as a siding of the respondents' railway. I do not think that this contention is well founded. The siding is a siding of a private line belonging to the Coltness Iron Company, and not of any part of the system of the respondents' company.

Next, it is said that the accident occurred "about" the respondents' railway. This is a more plausible ground, because the private line is connected with the respondents' railway, and the respondents' engines and trucks daily use it in connection with the public traffic which is carried on upon the respondents' railway. But this is not, in my opinion, sufficient. It is true that by means of the connection the respondents' engines and trucks can under the arrangement with the Coltness Iron Company deliver and take up ore in the way which I have mentioned. But for all that the line is a private line, and the position of the respondents in regard to it is just the same as if in a town they had sent their carts to the private premises of a trader for the purpose either of delivering goods consigned or taking away goods for carriage by their line.

Further, the accident occurred at such a distance from the respondents' own line that I think the siding cannot in any reasonable sense be described as being about the respondents' railway.

I would only add in conclusion that the private line appears to be connected not only with the North British but with the Caledonian system, and it might with equal force be maintained that it was a part of that system. It is settled by decision that in order to bring the *locus* of an accident within the scope of the statute it is not enough that the workman should at the time of the accident have been employed on the employer's business. It is also necessary under the 7th section that the accident should have occurred "on or about" the premises there mentioned. It was not intended that the Act should apply to private railways, and I think that we should be setting a dangerous precedent if we held that this line of railway fell within the scope of the Act.

LORD YOUNG was absent.

The Court answered the question of law in the negative and dismissed the appeal.

Counsel for the Claimant and Appellant—Salvesen, Q.C.—Findlay. Agent—Marcus J. Brown, S.S.C.

Counsel for the Respondents—Solicitor-General (Dickson, Q.C.)—Glegg. Agent—James Watson, S.S.C.

Tuesday, November 6.

SECOND DIVISION.

[Sheriff-Substitute at Hamilton.

CADZOW COAL COMPANY, LIMITED *v.* GAFFNEY.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *First Schedule* (1)(*b*)—*Amount of Compensation —"Average Weekly Earnings"—Period of Employment from which to Calculate Average Weekly Earnings—Week.*

A miner received injuries in the course of his employment. He had entered the service of his employer on Friday of the week preceding the accident, and did not work on Saturday. He worked from Monday to Thursday of the following week, on which day he was injured.

Held that there were sufficient materials to enable the Court to estimate his "average weekly earnings" as required by the First Schedule (1) (*b*) of the Workmen's Compensation Act 1897, in respect that he had been in the employment during part of two weeks.

The word "weekly" in the schedule is to be taken as referring to the calendar week.

Opinion reserved (*per* Lord Moncreiff) upon the question whether a workman who had been in the employment during one week only was excluded from the benefits of the Act.

This was an appeal in an arbitration under the Workmen's Compensation Act 1897 between Charles Gaffney, miner, Hamilton, claimant and respondent, and the Cadzow Coal Company, Limited, appellants. The claimant claimed compensation on account of injuries received by him on 29th March 1900, while working in the employment of the appellants as a miner.

The facts of the case as set forth by the Sheriff-Substitute (DAVIDSON) as arbitrator were as follows—"That the respondent entered the defenders' employment on Friday 23rd March last, on which day he