regard it as a case of very high privilege, but it is a case of privilege to such an extent that I think we must find on record something which amounts to an averment of actual malice.

Now several things are founded upon as being sufficient for that purpose. In the first place, we have a distinct averment that if the defender had made the least inquiry he would have found that there was no ground whatever for the charge, because he would have found that the money for which the pursuer accounted corresponded with the tickets which she had given out. The defender, however, it is averred, made no inquiry whatever. Further, he did not speak to the pursuer on the subject privately, but he made the charge in the presence of two employees. I think that these circumstances go a very long way, and may be regarded as a circumstance from which a jury would be entitled to infer malice.

But there is more than that. It is averred that there was some disagreement between the pursuer and one Milne, who was the manager of the circus; that Milne complained to the defender of something in the pursuer's conduct; and that the defender, who had formerly been friendly with the pursuer, ceased to speak to her. It is also averred that the pursuer's father, who was an employee of some importance to the defender, left his service; that the defender was very much aggrieved at that; and that he again showed by his conduct that he had changed his attitude towards the pursuer, because, instead of being friendly as formerly, he ignored her altogether. Of course such conduct may be capable of a perfectly innocent explanation, but it is also capable of the explanation that for some reason or other the defender had taken a dislike to the pursuer; and if conduct of that sort is followed by an entirely unfounded charge of a criminal nature, I am of opinion that facts and circumstances are averred from which the pursuer is entitled to ask a jury to infer that there was actual malice. For these reasons I am of opinion that the Lord Ordinary was right in allowing an issue in the form which he has approved.

LORD JUSTICE-CLERK—I have had very great difficulty about the first part of this case. If there had been nothing in this record from which malice was to be inferred except the statements in Cond. 4, I certainly should not have been prepared to hold that the pursuer was entitled to proceed. I think it would be a very strong thing indeed to say that it is a sufficient averment of facts and circumstances inferring malice if the pursuer alleges that a person who had formerly spoken to him had taken a dislike to him, founded only on this, that he had ceased to speak to him for a month.

But then it is also said here that the defender made no inquiry before bringing this charge. That, I think, puts the case in a very different position. If the pursuer can prove that the defender, without making any inquiry, brought an accusation of dishonesty against her, I think that the jury might be justified in holding that he was actuated by a malicious motive. I agree that as the case stands an issue must be allowed. I merely wish to protest against the view that such statements as are contained in Cond. 4 would be sufficient to entitle the pursuer to an issue.

LORD ARDWALL and LORD DUNDAS concurred.

The Court adhered.

Counsel for the Pursuer (Respondent)—Watt, K.C.—Lippe. Agents—Gardiner & Macfie, S.S.C.

Counsel for the Defender (Reclaimer)—Morison, K.C.—Bartholomew. Agents—Gill & Pringle, W.S.

Friday, October 15.

SECOND DIVISION.

[Sheriff Court at Kirkcaldy.

ANDERSON *v.* FIFE COAL COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Accident Arising out of and in Course of the Employment*"—*Accident to Workman while on Way to Work—Accident on Premises of Employers—Finding in Fact that Duties had not Begun.*

A miner, while proceeding to his work by the usual and recognised way, tripped and fell, sustaining injuries resulting in incapacity. The accident happened on premises belonging to the mine-owners at a point about 360 yards from a lamp cabin, where it was the miner's duty to obtain and examine his safety lamp preparatory to proceeding to the pit-head. The time of the accident was about twenty minutes before the time when the miner had to be down the pit. The miner claimed compensation under the Workmen's Compensation Act 1906, and in an arbitration under the Act the arbiter found in fact that the claimant's duties on the day in question did not begin until he reached the lamp cabin and obtained his lamp.

Held that the accident did not arise out of and in the course of the claimant's employment in the sense of section 1 (1) of the Act.

In an arbitration in the Sheriff Court at Kirkcaldy under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between James Anderson and the Fife Coal Company, Limited, the Sheriff-Substitute (SHENNAN) refused compensation and at the request of the claimant stated a case for appeal.

The following facts were found proved or admitted—"(1) On 18th January 1909

James Anderson, the pursuer, was a miner in the defenders' employment at their Mary Pit, Lochore. In going to his work that morning he sustained an injury to his left hand in the manner hereinafter described, and was totally incapacitated down to 26th February 1909, after which he was partially incapacitated down to 30th March 1909. . . . (3) Anderson lives in Waverley Street, Lochore, in a house belonging to the defenders. In going to his work he first crossed a branch line of railway used by defenders in connection with building operations; then he passed through a field, of which defenders are occupants, and crossed the railway belonging to the defenders, which connects the Mary Pit with the North British Railway system; thereafter he traversed ground used by the defenders for the purpose of the pit till he came to the lamp cabin near the pithead, where it was his duty to obtain and examine his safety lamp preparatory to proceeding to the pithead for the purpose of descending the shaft to his work. He had to be down the pit by 6 o'clock a.m. There were other possible roads to the pithead used by the miners and other workers, but this was the usual and recognised road. (4) On the morning of 18th January 1909 it was very dark when the pursuer went to his work. After crossing the defenders' railway line near the place where the branch line previously referred to leaves it, he tripped over the lever handle used for shifting the points, and the point of his pick pierced his left hand, causing the injuries which incapacitated him. The spot where he met with the accident is about 400 yards from the stair leading to the pithead, and about 360 yards from the lamp cabin. The accident occurred about 5·40 a.m. (5) The place of the accident is part of the mine within the meaning of the Coal Mines Regulation Act 1887, and it is possible that pursuer might have been required to work at that place under No. 2 of the general regulations and conditions of employment in force at the pit, which, *inter alia*, provides that in the event of an unavoidable stoppage it shall be in the power of the company to require the workmen to continue in their service subject to their orders, and liable to be employed by them in any kind of work connected with the works they may see fit to employ them in. But on the date of the accident his duties were those of a miner underground. These duties did not begin until he reached the lamp cabin and obtained the safety lamp."

On these facts the Sheriff-Substitute found in law that the accident to the appellant did not arise out of and in the course of his employment.

The question of law for the opinion of the Court was—"Did the said accident to the appellant arise out of and in the course of his employment within the meaning of the Workmen's Compensation Act 1906?"

Argued for the appellant—The accident did arise out of and in the course of the employment. It was not necessary that the appellant should be actually in the mine at the time of the accident. If he was on the employer's premises for the performance of his duties, that was sufficient—*Cross, Tetley, & Company* v. *Catterall*, unreported, referred to in *Sharp* v. *Johnson & Company, Limited*, [1905] 2 K.B. 139; *Gane* v. *Norton Hill Colliery Company*, 1909, 25 T.L.R. 640; *Percy* v. *Donaldson Brothers*, 1909 S.C. 267, 46 S.L.R. 199, *per* Lord Justice-Clerk. Further, the place where the accident happened was part of the mine within the meaning of the Coal Mines Regulation Act 1887 (50 and 51 Vict. cap. 58), sec. 75. The appellant was on the way to his work at the time, and that brought him within the Act—*Cremins* v. *Guest, Keen, & Nettlefolds, Limited*, [1908] 1 K.B. 469; *Nelson* v. *Belfast Corporation*, 1908, 42 Ir. L. T. 223; *M'Kie* v. *Great Northern Railway Company*, 1908, 42 Ir. L.T. 132. The Sheriff had, no doubt, found in fact that the appellant's duties did not begin until he reached the lamp cabin, but the Sheriff had there misdirected himself, and had failed to distinguish between the special duties of a miner and the duties of the appellant under his contract with the appellants. *Jackson* v. *General Steam Fishing Company, Limited*, 46 S.L.R. 901, was also referred to.

Argued for the respondents—The accident did not arise out of and in the course of the appellant's employment. The fact that it happened in the respondents' premises was immaterial. In point of fact the appellant was never off the respondents' premises all the way from his house to the mine. Nor did it follow that a workman was entitled to compensation because the accident happened on the way to or from his work—*per* Cozens-Hardy, M.R., in *Cremins* v. *Guest, Keen, & Nettlefolds, Limited*, *cit.* The test was whether at the time of the accident there were mutual duties on the part of the master and servant—*Caton* v. *Summerlee and Mossend Iron and Steel Company*, July 11, 1902, 4 F. 989, 39 S.L.R. 762; *Gibson* v. *Wilson*, March 12, 1901, 3 F. 661, 38 S.L.R. 450; *Holness* v. *Mackay & Davis*, [1899] 2 Q.B. 319; *Haley* v. *United Collieries, Limited*, 1907 S.C. 214, 44 S.L.R. 193; *Benson* v. *Lancashire and Yorkshire Railway Company*, [1904] 1 K.B. 242. The cases cited by the appellant were consistent with that view. In *Cremins* v. *Guest, Keen, & Nettlefolds, Limited*, *cit.*, for instance, the master had undertaken the duty of providing a train for the conveyance of the workmen. But for that there would have been no liability—*Davies* v. *Rhymney Iron Company, Limited*, 1900, 16 T.L.R. 329. In this case there were no mutual duties at the time of the accident. The Sheriff had found in fact that the appellant's duties had not begun, and that was conclusive.

LORD JUSTICE-CLERK—The question in this case is almost entirely one of fact, and we must take the facts as stated. They seem to come to this, that the man's duties did not begin until he came to the place where it was his business to get a lamp. I suppose it is usual in collieries that the lamps are kept in one place in order to be inspected every morning, that they may be

given out perfectly sound and sufficiently closed to exclude the risk of explosion. They are handed out to the men when they reach the place where the lamps are kept.

The Sheriff-Substitute has held that up to this point the man was not engaged in his employment. I must say I think that is right. There are only two ways of looking at it. Either you must have a rule that the moment a man enters the premises of his master he is then in the course of his employment; or you must have a rule that he must come to some point at which he enters upon the work which he has to do, and that only then does he begin to be in the course of his employment.

Whatever may be said about some of the cases quoted to us—and I feel bound to say that I have very grave doubt about the soundness of some of them—I do not think that we impinge upon their authority by deciding in this case that the Sheriff-Substitute was justified in holding, as he did as matter of fact, that the accident did not arise out of and in the course of the employment of the pursuer, and therefore that he was not entitled to receive compensation.

LORD ARDWALL — I am of the same opinion. The Sheriff-Substitute, as arbitrator, decides most distinctly that the miner's duties on this occasion were those of a miner underground, and that these duties did not begin until he reached the lamp cabin and obtained the safety lamp. That being a finding in fact, I cannot see how the arbitrator could come to any other conclusion in law than that which he did. I therefore think, along with your Lordships, that the question must be answered in the negative.

LORD LOW and LORD DUNDAS concurred.

The Court answered the question of law in the negative.

Counsel for the Appellant—Morison, K.C. —Wilton. Agent—D. R. Tullo, S.S.C.

Counsel for Respondents—Horne—Strain. Agents—W. & J. Burness, W.S.

Friday, October 15.

FIRST DIVISION.

(SINGLE BILLS.)

ROGER *v.* J. P. COCHRANE & COMPANY AND ANOTHER.

Interest — Process — Damages — Petition to Apply Judgment of the House of Lords — Interlocutor of Lord Ordinary Giving Damages Recalled by Inner House but Restored by House of Lords — Claim for Interest from Date of Lord Ordinary's Interlocutor — Court of Session Act 1808 (48 *Geo. III, cap.* 151), *sec.* 19.

In an action of damages for infringement of letters-patent the Lord Ordinary awarded to the pursuer £1500. The Inner House recalled this interlocutor and assoilzied the defender, but the Lord Ordinary's interlocutor was restored by the House of Lords, no mention of interest being made. The pursuer in his petition to apply the judgment of the House of Lords, asked, *inter alia*, for interest at 5 per cent. on the £1500 from the date of the Lord Ordinary's interlocutor.

Held that he was not entitled to interest.

The Court of Session Act 1808 (48 Geo. III, cap. 151), section 19, enacts—"If upon hearing the appeal it shall appear to the House of Lords to be just to decree or adjudge the payment of interest, simple or compound, by any of the parties to the cause to which such appeal relates, it shall be competent to the said House to decree or adjudge the payment thereof as the said House in its sound discretion shall think meet."

On 9th April 1907 James Henry Roger raised an action against J. P. Cochrane & Company, of 27 Albert Street, Edinburgh, and James Pringle Cochrane, sole partner of the said firm, concluding for interdict against the defenders from making, selling, advertising, or exposing for sale golf balls made in infringement of certain letters-patent granted in favour of Frank Hedley Mingay, and also for delivery to the petitioner of all golf balls in the defenders' possession or under their control, made in infringement of said letters-patent, and for payment to the petitioner of the sum of £5000 sterling with expenses of process.

On 7th November 1907 the Lord Ordinary (SALVESEN), before whom the cause depended, pronounced the following interlocutor—". . . Finds that the defenders have made and sold, in the United Kingdom, between 1st September 1906 and 30th September 1907, 20,010 dozens golf balls, under the name of the "Ace" ball: Finds that said balls are manufactured in terms of the letters-patent . . . belonging to the pursuer: Finds further that the defenders are liable to pay damages in lieu of royalty to the pursuer in respect of the manufacture and sale of said balls at the rate of one shilling and sixpence per dozen balls, amounting in all to £1500, 15s.; decerns against the defenders to make payment to the pursuer of the said sum of £1500, 15s.: Further, in respect the defenders hold a licence for the manufacture of balls under the said patent, dismisses the conclusions of interdict; and decerns. . . ."

On 14th November 1907 the defenders reclaimed to the First Division of the Court of Session.

On 14th July 1908 the First Division recalled the interlocutor of the Lord Ordinary, assoilzied the defenders from the conclusions of the summons, and decerned.

The pursuer appealed to the House of Lords, and after hearing counsel for the parties, the Lords on 11th May pronounced judgment in the following terms:—". . . It is ordered and adjudged by the Lords Spiritual and Temporal in the Court of Parliament of His Majesty the King