law in the negative, found it unnecessary to answer the second question, recalled the Sheriff's sist of procedure, and remitted to him to proceed as accords.

Counsel for the Appellant—George Watt, K.C.—Macdonald. Agents—Paterson & Salmon, Solicitors.

Counsel for the Respondents—Constable. Agents—Oliphant & Murray, W.S.

Tuesday, June 23.

FIRST DIVISION.

[Sheriff Court at Glasgow.

M'INNES *v.* DUNSMUIR & JACKSON, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *sec.* 1 *sub-sec.* (1)—*Injury by Accident—Accident—Cerebral Hæmorrhage Recurring Four Days Subsequent to Stopping Work and Resulting in Paralysis.*

A workman while engaged in his employment had an attack of cerebral hæmorrhage as the result of exertion. The work was being performed in the usual mode. He was put to bed, where he remained for four days, when a second attack occurred resulting in permanent disablement. His arteries were in a degenerate condition rendering an attack of hæmorrhage more likely.

Held that the workman had sustained "personal injury by accident arising out of and in the course of his employment," within the meaning of the Workmen's Compensation Act 1906.

The Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), sec. 1, sub-sec. (1), enacts—"If in any employment personal injury by accident arising out of and in the course of his employment is caused to a workman, his employer shall . . . be liable to pay compensation. . . ."

In an application in the Sheriff Court at Glasgow under the Workmen's Compensation Act 1906, by Charles M'Innes, labourer, 5 Peel Street, Bridgeton, Glasgow, against Dunsmuir & Jackson, Limited, engineers and boilermakers, Govan, the Sheriff-Substitute (BOYD) awarded compensation, and at the request of the defenders stated a case.

The *facts* proved, as stated in the case, were—"(1) That the respondent is a labourer, and on 6th November 1907 was in the employment of the appellants at a wage of 18s. a-week; (2) that the respondent, along with another labourer, had been engaged for some hours in arranging plates in which holes had to be punched by a punching machine; (3) that these plates were between 3 and 4 cwt. each; (4) that the two labourers followed the ordinary and usual course of working—they lifted the plates on to a barrow, which was managed by a third workman, and the plates were conveyed to the vicinity of the punching machine and stacked on end; (5) that after they were thus arranged, the respondent and another labourer placed before the punching machine a cylindrical pedestal called a 'thimble'; (6) that they then took hold of a plate and brought it to a vertical position, and edged it, with arms and shoulders, towards the thimble and laid it down, so that it leant against the thimble, with the lower edge on the ground; (7) that they then lifted the plate to a horizontal position on to the thimble, and held it until the slings of a crane were attached to each side; (8) that the crane was then heaved until the plate swung, and the labourers then directed the plate under the punching machine; (9) that after the crane was heaved there was no weight on the arms of the labourers; (10) that on the occasion in question a plate had been slung, and subjected to the punching machine for about ten or twelve minutes, when the respondent felt a slight pain on the left side of his head, accompanied by a giddy feeling, which caused him to seize hold of the side of the machine for support; (11) that he was helped outside by his fellow labourer, and remained resting for a quarter of an hour, and then returned to work; (12) that he worked for about three quarters of an hour, when he again became giddy, and complained of want of power in his right arm and leg; (13) that he was taken home, and still complained of this loss of power, but by the afternoon he had recovered from this, and showed no trace of powerlessness in either arm or leg; (14) that he remained in bed, and on the 10th November he had an attack of cerebral hæmorrhage, which caused right side paralysis, from which he still suffers; (15) that the respondent's arteries were on 6th November 1907 in a degenerate and hard condition, rendering an attack of hæmorrhage more likely to occur; (16) that on said 6th November he had an attack of cerebral hæmorrhage as the result of the exertion he was using in the course of his employment as described above.

The Sheriff-Substitute further stated—"On these facts I find that the respondent thus received personal injury by accident in the sense of the Workmen's Compensation Act; that his average weekly wage was 18s., and that he is still unable for his ordinary employment. I therefore awarded him the sum of 9s. sterling per week as from and after 13th November 1907 until the future orders of Court, with expenses."

The *question of law* was—"Did the respondent sustain injury by accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act 1906?"

Argued for appellants—The claimant's injuries were not due to accident in the sense of section 1 (1) of the Workmen's Compensation Act 1906. To be within that section it was essential (1) that they should be due to accident; and (2) that the accident should be one arising out of and in the course of his employment. Neither of these essentials was present here. (1) There was no accident here in the sense

of the statute. An accident meant something unusual or untoward or unexpected, *e.g.*, something "fortuitous," as was the case in *Stewart* v. *Wilsons and Clyde Coal Co., Limited*, November 14, 1902, 5 F. 120, 40 S.L.R. 80—or an act of "over-exertion," as in *Fenton* v. *Thorley & Co., Limited*, [1903] A.C. 443—or "the alighting of a bacillus" on a man's eye, as in *Brintons, Limited* v. *Turvey*, [1905] A.C. 230. There was nothing of that kind here, for the Sheriff had found that the "ordinary and usual course of working" was being followed. In short, the only unexpected event was the man's being taken ill. The claimant's injuries were due to disease, viz., deterioration of the arteries of the brain, and that was not an accident in the sense of the statute, for except in the case of injuries arising from "industrial diseases" (*vide* section 8 of the Act), injuries arising from disease were by implication excluded. (2) The accident, if there was one, did not arise out of and in the course of the claimant's employment. There was nothing to connect the attack of cerebral hæmorrhage occurring on 10th November (the injury for which compensation was claimed), with that of 6th November, the attack which occurred while the claimant was at work. The Court should remit to the Sheriff to report whether such connection existed.

Counsel for the respondent were not called on.

LORD M'LAREN — It is true that the general question in this case is not precisely the same as that which was put in the case of *Stewart*, 5 F. 120, or in either of the two English decisions in the House of Lords, but if I am asked if it differs in principle I am unable to say that it does. If we look for guidance to the case of *Stewart*, that was a case of injury to the muscles of the back caused by over-exertion in the course of the man's employment; there was nothing external or visible in the injury. Nevertheless it was an injury which prevented the workman from following his employment, and which in fact disabled him from any other employment for some time, and the decision of the Court was that an injury of that kind, which is not visible and external, may nevertheless be an injury caused by accident within the meaning of the statute. That seems a very simple case, and Lord Robertson said in *Brintons, Limited* v. *Turvey*, [1905] A.C. 230, that he thought that a case of rupture also was a very simple case of accident in the sense of the statute. His Lordship's dissent was founded on the ground that in a case of anthrax what was communicated was a disease. I may say that these cases of industrial disease are all now regulated by the Act of 1906, and therefore we have not to consider whether the contracting of an industrial disease is an accident in the ordinary acceptation of the term. But the present case is not the case of an industrial disease. It is the giving way of an artery causing effusion of blood on the brain, and I am unable to see any distinction between this kind of physiological injury resulting in disablement and the kind of injury we had to consider in the case of *Stewart*. The real difficulty in the case is not to connect the attack of partial paralysis which the claimant sustained in immediate sequence to heavy exertion in working a crane; it is rather whether we are to connect that with the subsequent and more serious paralysis which occurred four days later, and which seems to have resulted in permanent disablement. It is said that the Sheriff has refused to make a finding directly finding that the second attack was consequent upon the first. That may have been because it was one of the matters which he desired to leave to the decision of the Court. At all events, before we can affirm the Sheriff's decision I think it will be necessary that we should hold that these two attacks were connected. The first attack was a slight one, and the man was in course of recovering from it when the second attack supervened. But unless we had evidence which would enable us to assign a different origin to the second attack, I think the logical deduction from the evidence is that the man's improvement was only a partial recovery from the first attack, which was caused by the arteries of the brain being in a strained condition in consequence of over-exertion, and that this second attack was a further development of the injury he suffered from the over-exertion. I think that the decision of the Sheriff as arbiter holding that the man received injury by accident in the sense of the Workmen's Compensation Act is a right decision, and that it ought to be affirmed.

LORD KINNEAR—I am of the same opinion. I think it must in all these cases be kept in view that we are required to construe words of ordinary language, and therefore that the question we have to decide is whether any injury which a workman is said to have sustained and which is said to be within the definition of the Act is or is not an accident according to the ordinary sense of the words. I refer to the opinion of Lord Macnaghten in the case of *Fenton*, [1903] A.C. 443, at p. 446, where he says that, if a workman has suffered an injury by breaking a limb or by a rupture while he is trying to lift a weight too heavy for him, then, according to the ordinary use of language, one would say that that injury was caused by an accident which he met with while he was engaged at his work. I think the same rule of construction applies to the question before us, and that we should say that this man suffered from the bursting of a blood vessel while trying to lift a weight too heavy for him. That it might not have been too heavy for a man whose arteries were in a sound condition is nothing to the purpose. In the condition in which this man's arteries were he was undertaking a work which was too great for him.

The other question is whether on a sound construction of the Sheriff's findings we are to say that the hæmorrhage which occurred on the 10th November is or is not to be connected, like the hæmorrhage which

occurred on the 6th November, with the accident, and I agree with your Lordship in the chair that we must so hold, because when the Sheriff has found that the effect of the man's over-exertion was to bring on an attack of cerebral hæmorrhage, and that he thereupon was put to bed and remained there for four days, when the second attack occurred which caused the paralysis, it lies upon the party who alleges that that second attack was disconnected with the first attack altogether, to prove it. We must hold that the Sheriff was right in holding that they were connected. His decision that the respondent received personal injury in the sense of the Act could not have been come to unless his opinion was that the hæmorrhage which caused the paralysis was itself caused by over-exertion.

LORD MACKENZIE—I agree. I think that the facts found by the Sheriff show plainly that the respondent was engaged in an operation which involved the use of considerable physical force. The Sheriff has found that as the result of those exertions the claimant had an attack of cerebral hæmorrhage upon the 6th of November. I think it is impossible, taking the term "accident" in the sense in which it should be applied in the construction of the Workmen's Compensation Act, to say that the injury which the man sustained on the 6th November was not an injury by accident arising out of and in the course of the employment. When it is seen that the Sheriff further finds that on the same day the man did not continue at his work, but that he was taken home and put to bed, where he remained until the 10th of November, and that on the 10th of November there was a recurrence of exactly the same hæmorrhage from which he had suffered on the 6th November, the result being that his right side was paralysed, it is clear that he was suffering from the results of the same injury. In these circumstances I think there is sufficient to justify the conclusion at which the Sheriff has arrived—that the respondent had received injuries by an accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act.

The LORD PRESIDENT and LORD PEARSON were absent.

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

Counsel for the Appellants—Clyde, K.C. —C. D. Murray. Agents—Morton, Smart, Macdonald & Prosser, W.S.

Counsel for the Respondent—Johnston, K.C.—Cochran Patrick. Agents—Oliphant & Murray, W.S.

Tuesday, June 23.

FIRST DIVISION.

[Lord Dundas, Ordinary.

HENRY LAMONT & COMPANY *v.* THE DUBLIN AND GLASGOW STEAM PACKET COMPANY.

Process—Reclaiming Note—Competency—Accounting — Interlocutor Appointing Account to be Lodged—Court of Session Act 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 28—*A.S.*, 10*th March* 1870, *sec.* 2.

In an action of accounting in which the pursuers sought an account over a period of years of the gross profits of the defenders, a company, for the purpose of calculating the commission alleged to be due to them, and in which the defenders, denying that the pursuers were entitled to commission on the gross profits but only on the profits of a particular branch of the business, pleaded that on the agreement set forth by the pursuers their averments were irrelevant, that they had already accounted for any balances due, and that the pursuers were barred by having accepted payments in knowledge of the system upon which the sums paid were brought out, and by *mora*, the Lord Ordinary in the procedure roll pronounced an interlocutor before answer appointing the defenders to lodge in process the account called for.

Held that the interlocutor did not "import an appointment of proof, or a refusal or postponement of the same," within the meaning of the A.S. 10th March 1870, sec. 2, and consequently that it could not be reclaimed against without leave.

The Court of Session Act 1868 (31 and 32 Vict. c. 100), enacts—sec. 28—"*Review of Certain Interlocutors of the Lord Ordinary.* —Any interlocutor pronounced by the Lord Ordinary as provided for in the preceding section [*section* 27 *dealt with procedure after record closed and adjustment of issues*] . . . shall be final, unless within six days from its date the parties, or either of them, shall present a reclaiming note against it to one of the Divisions of the Court by whom the cause shall be heard summarily. . . ."

Section 54—"*No Appeal Allowed against Interlocutory Judgment without Leave; Effect of such Appeal.*—Except in so far as otherwise provided by the 28th section hereof, until the whole cause has been decided in the Outer House it shall not be competent to present a reclaiming note against any interlocutor of the Lord Ordinary without his leave first had and obtained. . . ."

The A.S. 10th March 1870, enacts—sec. 1 —"That the 27th section of the said Act" (*i.e.*, Court of Session Act 1868) "shall be altered to the effect of substituting for the enactments thereof the following provisions:—At closing of the record the Lord Ordinary shall require the parties to state