LENNOX, J. JANUARY 8TH, 1916.

*CAPLIN v. WALKER SONS.

Master and Servant—Injury to Servant—"Services of Workman Temporarily Let or Hired to Another"—Action against that Other—Remedy under Workmen's Compensation Act, 4 Geo. V. ch. 25—Exclusion of Action by sec. 13—Defective Condition of Works—Knowledge of Defect—Voluntary Assumption of Risk.

The plaintiff, a teamster employed by George Nevin & Sons, was sent by them to work in the yard of the defendants with his employers' team; and, while there, he was to perform such services in the way of team work as the defendants might require or direct. The plaintiff was injured while working in the defendants' yard, by reason of their negligence, as he alleged, and brought this action to recover damages for his injuries.

The action was tried without a jury at Sandwich.

F. C. Kerby, for the plaintiff.

A. J. Gordon, for the defendants.

LENNOX, J., said that the business of the employers—teaming—was of the character described in class 30 of schedule 1 of the Workmen's Compensation Act, 4 Geo. V. ch. 25 (O.) It did not come within the classes of trade or business embraced in schedule 2.

The plaintiff was "a workman whose services are temporarily let or hired to another" by his employers, and Nevin & Sons continued to be his employers, as defined by sec. 2(1)(*f*) of the Act.

The defendants raised the question whether the plaintiff could maintain this action, or whether he was limited to obtaining compensation as a servant of Nevin & Sons out of the accident fund.

Section 10 of the Act would not help the plaintiff; for the employer, if liable, was not "individually liable"—those words refer to the liability of the employer of the class embraced in schedule 2 only; and, even if sec. 10 applied, his claim would still be for compensation, and not for damages recoverable by action. See secs. 4, 5.

Section 9 provides that "when an accident happens to a