

The Court adhered.

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Thursday, March 16.

SECOND DIVISION.

[Sheriff Court of Perthshire
at Perth.]

M'EWAN v. MAGISTRATES OF PERTH.

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 7 (2)—“Factory”—Warehouse—Factory and Workshop Act 1901 (1 Edw. VII. cap. 22), sec. 104—Headings of Sections.

A workman in the employment of the magistrates of a burgh was injured while employed in breaking stones by a chip of stone striking him in the eye. The place of employment was a yard 60 poles in extent belonging to the magistrates, used for storing materials for making and repairing the roads, and at the side of the yard was a shed, 30 feet by 23 feet, in which implements were kept. No mechanical power was used in the yard. *Held* that the yard was not a “warehouse” within the meaning of the 104th section of the Factory and Workshop Act 1901, and was therefore not a “factory” within the meaning of section 7 (2) of the Workmen's Compensation Act 1897, and that consequently the workman was not entitled to compensation.

In an arbitration under the Workmen's Compensation Act 1897, on a claim by David M'Ewan, stonebreaker, Perth, against the Magistrates of Perth, the Sheriff-Substitute (SYM) found the pursuer entitled to damages.

The defenders appealed, and the following case was stated by the Sheriff-Substitute:—“This is an arbitration under the Workmen's Compensation Act. The question is whether the place in which the respondent was working comes within the definition ‘warehouse.’

“The respondent was employed by the Road Department of the Corporation of Perth to break stones. These stones consisted of old street pavement and causeway blocks. The respondent neglected to have the ‘goggles’ which stonebreakers use, and which he was wearing, repaired. A piece of dirt or a chip of stone injured one of his eyes. It is not disputed that the accident arose out of his employment, and happened in the course of it, and it is not said that the respondent was guilty of any serious and wilful misconduct.

“The place in which the accident hap-

pened was a yard belonging to the Corporation, part of their gas undertaking, but used at the time by the Road Department. It was entered by one of the streets, and was separated from another yard, used as part of the gas undertaking, by a fence made of sleepers. The yard was about 60 poles in extent, 100 yards long by 17 wide. It was used for storage of pipes, concrete, and other materials used in the making and repairing of drains and roads. It contained also the bings of stone which the respondent and other men were breaking. It was sometimes crowded with materials, so much so that the men broke down the sleeper fence and put some of them into the adjoining yard, but the gas manager objected to this being done, and the fence was restored. At the side of it was a large shed, 30 feet long by 23 feet wide, in which implements were kept, and which was used for men to work in in wet weather. No mechanical power was used in the yard.

“The materials in the yard were used in the repair of roads under the charge of the Road Department in carrying out works ordered by the Corporation, and which private individuals had elected to leave it to the Corporation to do, and had to pay for; also to a small extent in doing work by contract for private individuals.

“It was maintained that this yard was a ‘warehouse’ in the sense of the Workmen's Compensation Act, and that it was not necessary to bring it within the definition that it must be a place in which manual labour was exercised for gain, and in which mechanical power was used in aid of a manufacturing process carried on in it.

“I was of opinion that this argument was right, for the following reasons, viz.—The definition of the word ‘factory,’ as having ‘the same meaning as in the Factory and Workshop Acts 1878 to 1891,’ and as including any ‘dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Act is applied by the Factory and Workshop Act 1895 . . . has been affected by the Factory and Workshop Act 1901.’ The combined effect of section 104 of that Act and of the Interpretation Act 1889 is that the provisions of the Factory Act with regard to accidents shall have effect ‘as if every dock, wharf, quay, and warehouse, and all machinery and plant used in the process of loading or unloading, or coaling any ship in any dock, harbour, or canal, were included in the word factory, and the purpose for which the machinery or plant is used were a manufacturing process’—*Stevens v. Navigation Company*, 1 K.B. [1903], 890. The same Court has held that it is ‘sufficient to say that a warehouse is a factory for the purposes of the Workmen's Compensation Act,’ and that the meaning of the word warehouse is not modified by its collocation with ‘wharf, dock, or quay’—*Wilmott v. Paton*, 1 K.B. [1902], 237. Further, the fact that an enclosed place is in the open air does not prevent it from being a ‘factory’—Act 1901, sec. 149, sub-sec. 5.

“I was of opinion that ‘factory’ covers ‘every . . . warehouse,’ and that ‘ware-

house' covers a place of deposit of goods as well as a place of sale, and therefore covered this yard.

"The respondent had only worked a very short time when the accident happened.

"No question as to the amount of compensation appeared to arise. I found the respondent entitled to compensation, and fixed a weekly sum.

"The question of law for the opinion of the Court was—Was the yard which I have described a 'warehouse,' and therefore a 'factory,' within the meaning of the Workmen's Compensation Act?"

Argued for the appellants—The yard in question was not a "factory" in the sense of the Workmen's Compensation Act 1897; to show that it was so it must be proved to be a warehouse within the meaning of the Factory and Workshop Act 1901, sec. 104. It was not a "warehouse" in the sense of the Act of 1901, because it was not associated with a "dock, wharf, or quay," or *ejusdem generis* with such a warehouse as you find at a dock—*Colvine v. Anderson & Gibb*, December 18, 1902, 5 F. 255, 40 S.L.R. 231; in the case of *Willmott v. Paton*, cited *supra*, the yard in question was surrounded by sheds and distinguishable from the present yard, which was uncovered; the heading "Docks" to the 104th section of the Factory and Workshop Act 1901 went to show that a "warehouse" must be connected with a dock; the heading of a section was a part of the statute—*Nelson v. M'Phee*, October 17, 1889, 17 R. (J.C.) 1, 27 S.L.R. 12; *Rayson v. South London Tramways Company* [1893], 2 Q.B. 304, at p. 307; *Lang v. Kerr & Anderson*, February 26, 1878, 5 R. (H.L.) 65, 15 S.L.R. 386; *Hammer-smith, &c. Railway Company v. Brand*, [1869] L.R. 4 E. and I. App. 171, at p. 203; *Inglis v. Robertson & Baxter*, July 11, 1898, 25 R. (H.L.) 70, 35 S.L.R. 963. Further, this yard was not a "warehouse," because it was not a place of deposit for goods for sale—*Green v. Britten & Gibson* [1904] L.R. 1 K.B. 350. Thirdly, this was an open yard and could not be a "warehouse" either in the meaning of the Act or in popular parlance.

Argued for the respondent—This yard was a warehouse. Its not being connected with a dock or wharf was immaterial. In the case of *Willmott v. Paton*, *supra*, the yard was 100 miles inland—*Mackie v. J. & R. Ramsay*, November 19, 1904, 42 S.L.R. 114; it was not excluded from the definition of warehouse because it was uncovered—Factory and Workshop Act 1901, sec. 149 (5); the yard need not be used for purposes of ordinary commercial transactions—*Henderson v. Corporation of Glasgow*, July 5, 1900, 2 F. 1127, 37 S.L.R. 857; *Mooney v. Edinburgh and District Tramways Company, Limited*, December 20, 1901, 4 F. 390, 39 S.L.R. 260; the Workmen's Compensation Act being a remedial statute should be liberally construed.

At advising—

LORD JUSTICE-CLERK—Two questions present themselves in this case, (1) whether the place described in the facts as found by

the Sheriff can be properly designated as a "warehouse," and (2) whether, if it can be so designated, such a warehouse is one to which the provisions of the Act of 1889 apply, by which it is declared that the provisions of the Factory Act with regard to accidents shall have effect "as if every dock, wharf, quay, or warehouse," &c., were included in the word "factory."

My opinion is that both these questions should be answered in the negative. Taking all the facts stated by the Sheriff they do not in my judgment describe a warehouse in any true sense. The Sheriff proceeds on the ground that the "word warehouse covers a place of deposit of goods as well as a place of sale, and therefore covers this yard." Such a view is sufficiently startling. It seems to be the logical sequence from it that any place in which goods are stored is a warehouse, with the result in sequence that it is a factory, and that therefore any employee connected with the owner who meets with an accident is entitled to compensation on the footing that he was employed in a "factory" in the sense of the Factory Act. That is a view to which I cannot give my assent. There is no definition of "warehouse" to guide us in interpreting its meaning, and therefore it must be interpreted according to its ordinary meaning, and most certainly it is not an ordinary meaning of the word warehouse that it "covers a place of deposit of goods," *i.e.*, every place where goods are deposited. For if it does not cover every place, then some places must be differentiated from others, and it is difficult to conceive how any place where goods were deposited could be held not to be a warehouse; if this storing yard for road mending materials and plant must be held to be a warehouse it is impossible to believe that any sane person could describe it as a warehouse except upon the view of the Sheriff, for which there seems to me to be no foundation—that deposit of goods *per se* creates a warehouse at the place where the deposit is made.

This view makes it unnecessary to consider the second question, *viz.*, whether supposing this place to be a warehouse the statutory provisions apply to it so as to bring it within them. I am of opinion that it cannot. The word "warehouse" where it occurs is in such collocation that it is to me plain that it cannot apply to such a place as we are dealing with, even though it fell under the ordinary description of a warehouse. It occurs under a division of the statute which is headed "Docks," and there is high authority for saying that such a heading should be looked to in considering to what the clauses under apply, these headings being part of the statute as distinguished from the marginal rubrics, which are not parts of it, but only inserted by the printer for convenience of reference, and which may be modified at any time to cover amendments that have been made while the bill was under consideration. If this be so, I see no ground for holding that the word "warehouse" under that heading is to be

held to refer to any warehouse a hundred miles inland and having no connection with a dock or similar place. And I should hold it to be a totally strained and unnatural reading to apply it to such a place where the whole context both before and after it plainly points to the subject-matter that is being dealt with being connected with shipping work. For the words are "as if every dock, wharf, quay, and warehouse, and all machinery and plant used in the process of loading or unloading, or coaling any ship in any dock, harbour, or canal were included in the word factory." It was pointed out to us, and the Sheriff refers to it in the case, that it has been held in England that the meaning of the word "warehouse" is not modified by the above collocation. That is, in other words, to say that a word in the middle of a sentence is to be divorced from all association with the heading under which it is found or with the rest of the sentence which is before and after it, and be read as if it stood by itself. I find myself unable to do so. To do so would be to carry the principle of giving a liberal reading to a remedial statute to a very extreme point, contrary, as I hold, to all reasonable rules of construction, under which words are not to be divorced from their context and given a reading as if they stood by themselves. The clause seems to me to be plainly intended to deal with subjects connected with water transit, and I am not prepared to isolate one word and thereby give it an extended meaning, which it is plain to me cannot have been intended when the clause was passed, and which can only be reached by ignoring the whole context in which the word is found.

On other grounds I come to the conclusion that the only question of law on which our opinion is asked should be answered in the negative.

LORD KYLLACHY—The question in this case is whether the yard or enclosed space in which this accident happened is a "factory" in the sense of the Workmen's Compensation Act of 1897. It is common ground that it must be held to be so if it be a "warehouse" within the meaning of the 104th section of the Factory and Workshop Act of 1901. For if it be such a warehouse it is a place to which beyond doubt some provisions of the Factory and Workshop Act apply. And being such a place it falls within the definition of the word "factory" contained in section 7, sub-section 2, of the Compensation Act. On the other hand, it is equally common ground that, unless it be a warehouse in the sense of section 104 of the Factory and Workshop Act, it cannot upon any other ground be brought within the scope of the Compensation Act. That is to say, it cannot in any other way become a "factory," either directly under the Act of 1897 or indirectly under the Act of 1901.

Accordingly the case depends on the just construction of section 104 of the 1901 Act. And as to that section there are two points to be noted.

The first point is, that it is a section which stands by itself under a separate

heading, viz. —“(V) Docks,” and forms under that heading one of the seven compartments of Part V of the Act, of which part the six other compartments are—(1) Tenement Factories, (2) Cotton Cloth and other humid factories, (3) Bakehouses, (4) Laundries, (6) Buildings, (7) Railways.

The second point is this, that the purpose of the 104th section is to apply to docks, wharfs, quays, warehouses, &c., certain provisions of the Factory Act, viz., those relating to “Dangerous Machines,” “Accidents,” “Dangerous Trades,” “Powers of Inspection,” and “Fines in case of death or injury,” the enacting words being directed to making that application which is declared to operate “to the same effect as if such dock, wharf, quay, warehouse, &c., were included in the word “factory.” In other words the context of the section deals merely with docks, and premises and plant used in connection with docks.

It is perhaps a third observation that in the previous Act of 1895 the corresponding compartment or section is headed “Docks, &c.,” and that in the present Act—the consolidating Act of 1901—the expression is “Docks” without the “&c.”

In these circumstances if the word “warehouse,” occurring in a section or compartment so headed, and having such a context, is to be construed in the usual way and on ordinary principles, I confess to being quite unable to see how by any stretch of construction it can be read as covering a yard in the city of Perth “used for the storage of pipes, cement, and other material used in the making of roads,” and for the breaking of road metal and its storage in bings. It appears to me that if any effect is to be given to the heading of the section and to the context in which the word in question occurs, the reference must be held to be not to warehouses generally but to dock warehouses—warehouses used in connection with docks. And as to the effect of “headings” in Acts of Parliament (as distinguished from mere marginal notes), I have as yet heard nothing to displace or to qualify the doctrine laid down by the House of Lords in the case of *Inglis v. Robertson & Baxter*, 25 R. (H.L.) 70, and in the previous case of *Brand v. Hammer-smith Railway*, L.R., E. & I. App. 203, and also by this Court in the case of *Nelson v. M'Phee*, October 17, 1889, 17 R. (J.C.) 1.

It is said that it has been held in England that the Compensation Act of 1897 may apply to a warehouse which has no connection with docks, and is not even *ejusdem generis* with dock warehouses, but so far as appears the effect to be given to the “heading” or “head line” of the 104th section of the Factory Act was not there raised or considered. Nor does it appear to have been pointed out that the word “&c.” used in the Act of 1895 had been, as I have said, dropped in the consolidating Act of 1901. In any case I cannot, speaking for myself, be a party to ignoring both the heading and the general tenor of the 104th section. Nor am I prepared upon any ground of policy to construe that section in a manner opposed, as it seems to me, to the

ordinary principles of construction.

It is not, however, necessary in this case to decide anything adverse to any previous decision or expression of judicial opinion. For supposing it to be held that the word "warehouse" falls to be read, without reference to heading or context and in its ordinary sense as used in common speech, I am still of the same opinion. I do not consider that the word "warehouse" in any proper or usual sense includes every store or depot in which persons public or private may store goods or materials which they are using from time to time or intend to use in the future. Farmers have such stores; owners of estates have them; public bodies have them; and it would, I think, be a very extreme conclusion that such stores or depots should be held as warehouses, and as such subject not only to the provisions of the Workmen's Compensation Act, but by consequence also to the whole provisions of the Factory and Workshop Act with respect to "inspection," "fines in the case of death or injury," and the other matters which I have mentioned. I consider that, taking the word "warehouse" in its widest sense as commonly used, it can only apply to premises wholly or mainly used for commercial purposes, and that it cannot therefore apply to the yard or depot in question.

I am therefore of opinion that the question of law stated by the Sheriff falls to be answered in the negative.

LORD KINCAIRNEY—This is a stated case under the Workmen's Compensation Act 1897. The respondent David M'Ewan was employed by the appellants the Magistrates of Perth to break stones, and while so engaged he suffered an injury to one of his eyes, and he now sues for compensation from his employers, and the Sheriff-Substitute has decided in his favour.

The appellants the Magistrates of Perth have raised only one question, and subject to that question they, as I understand, admit the respondent's right to compensation. But they maintain that he is not entitled to the benefit of the Act, because the place where the accident happened is not covered by its terms.

The place is distinctly described by the Sheriff-Substitute. It was, he says, a yard, 100 yards long by 15 wide. It was used for storage of materials employed in making and repairing drains and roads. It contained also the bings of stone which the respondent and other men were breaking. At the side of it was a large shed in which implements were kept, and which was used for men to work in wet weather. "No mechanical power was used in the yard." The materials were used in the repair of roads, and in carrying out works ordered by the Corporation, "and which private individuals had elected to leave it to the Corporation to do and had to pay for, and also to a small extent in doing work by contract for private individuals."

The Sheriff-Substitute has expressed the opinion "that 'factory' covers every warehouse," and that "warehouse covers a place

of deposit of goods as well as a place of sale, and therefore covered this yard." His meaning is that the place which he describes and calls a place of deposit of goods is a warehouse in the sense of this Act, and that if it is a warehouse it is a factory. I think the latter proposition was not disputed, and the Sheriff expresses the question of law submitted thus—"Was this yard a warehouse, and therefore a factory within the meaning of the Act?"

The question depends primarily on the first part of the seventh section of the Act, under which section the respondent must bring his case, and which provides (section 7, sub-section 1) that "this Act shall apply only to employment by the undertakers as hereinafter defined on or in or about a railway, factory, mine, quarry, or engineering work." The rest of the sub-section clearly does not apply, and it is unnecessary to quote it. The question is, whether this yard was a railway, factory, mine, quarry, or engineering work, and it would be absurd to suggest that the yard should be held to be described or covered by the words or terms railway, mine, quarry, or engineering work, the yard being certainly none of these. The only question is, whether it can be said to be a "factory" in the sense of the Act—that is a term which depends for its meaning almost entirely on the Workmen's Compensation Act and on the Factory Acts. Now, the 2nd sub-section of section 7 seems to profess to interpret the word "factory." It does not, strictly speaking, do so, but refers for the interpretation to other statutes, viz., the Factory Acts, and it provides that "factory" has the same meaning as in the Factory and Workshop Acts 1878 to 1891, and "also that it includes any dock, wharf, quay, warehouse, machinery or plant to which any provision of the Factory Acts is applied by the Factory and Workshops Act 1895.

This application seems made by section 23 of the Factory Act of 1895, which provided (but it is itself repealed) that certain sections and provisions of the Factory Acts enumerated "shall have effect as if" (in this action) "every work, wharf, quay, and warehouse were included in the word 'factory'". From which it follows undoubtedly that the term "factory" as used in the 7th section of the Workmen's Compensation Act includes a warehouse (that is the point of importance), for it does not signify to this case whether docks, wharfs, and quays should be factories, since it is certain that the yard in question cannot possibly be held to be either a dock or a wharf or quay. But it is said that it may be described as a warehouse, which is an unlikely but not an impossible interpretation, so that the matter seems to stand thus—The Act applies to factories, and a warehouse is a factory. Hence the Act applies to warehouses. Now that a warehouse is a factory is a result arrived at by an interpretation of the words of the Act, and there is no doubt about it. But that conclusion cannot avail the respondent unless he can go a step further and show that the yard in question is

a warehouse in the sense of the Workmen's Compensation Act. Not only that a warehouse is a factory, in which I think he succeeds, but also that the yard in question is in the sense of the Workmen's Compensation Act a warehouse, which is a much more difficult but also a more special point.

Now this latter is a question to the solution of which the Act gives very little assistance. The Act has not a very copious interpretation clause, but it does give interpretations of various terms. But there is no interpretation of the word warehouse, probably because it was thought that none was required, and that seems to indicate that the Legislature intended that the word should receive its ordinary and, so to speak, popular and colloquial meaning, and I think the question is whether the word warehouse used in its ordinary meaning, since it has no statutory meaning, can be properly applied to the yard as described in the stated case. It seems to me that cannot be done without a very strained and artificial interpretation, and I think that this case may be most simply solved by saying that no one would speak of this open yard, the chief purpose of which is to serve as a place of storage for materials and stones used in repairing the roads and drains of the town, as a warehouse, or as a place to any extent of the nature of a warehouse. The materials were not stored for sale but merely heaped together for sake of convenience. That was the use to which the yard was ordinarily put. As I read the case, none of the materials were sold, but it may be that some profit was made if the burgh with their materials performed the work which they had ordered to be done by others. But that was not the general use or purpose of the yard. It was not a house, and it was not used for the storage of wares, so that it is at least very difficult to see the propriety of calling it a warehouse.

If such a gathering of stones and road materials were held to be a warehouse, which I think in the ordinary sense it is not, it is difficult to see where such methods of interpretation would stop. Every stack-yard in the country would, for as strong or stronger reasons, be converted into a warehouse and a factory, and so, so far as I can see, would every heap of metal collected by a roadside to be broken and laid on the road. I think the Act has never been so interpreted, and that such an interpretation would be absurd.

I do not think that there are any special grounds derived from the terms of the Act which can be urged in favour of the view which the Sheriff-Substitute has taken. There are considerations the other way. It has been argued for the appellants that the term warehouse as used in the Act should be read with a restricted meaning, and as confined to such warehouses only as were contiguous to the sea, and were naturally collocated with docks, wharfs, and quays, and signified only such warehouses as are usually found at docks, and harbours, and ports—such, for example, as bonded warehouses, and that the Act would not

apply to inland warehouses. This was argued on account of the manner in which the word is collocated with docks, wharfs, and quays throughout the Act, and also on account of the headings of the different sections of the Factory and Workshops Acts 1895 and 1901, particularly the headings of "Docks, &c." in the Act of 1895 before section 23, and the heading of "Docks" being the fifth division of the Act of 1901. It was maintained that these headings, unlike the side headings, formed parts of the statute, and that they had the effect of limiting the meaning of the word warehouses to warehouses at or near a dock or quay, or at least to warehouses of the same kind as those usually found at docks and quays. Assuming that these headings in the Factories Act are to be read as parts of the statute, I do not differ from the conclusion derived from that argument in this case, but I confess I feel some doubt as to the legitimacy of the argument. I feel some hesitation in accepting the view that these headings could have the effect of striking out of the statute all warehouses which were not contiguous to the sea. My view of the case does not necessitate such a sweeping conclusion, and I reach the same result by what I conceive to be an easier route, and I would prefer to reserve my opinion on these questions. Further, it is settled in the English courts that contiguity to the sea is not essential to premises being designated as a warehouse, although apparently it may be a consideration which may bear on the question—*Wilmott v. Paton*, 1902, 1 K.B. 237; *Green v. Britten*, December 12, 1903, 1 K.B. 350.

Reference was made in the argument to the fact that this yard was uncovered. It seems to have been settled in England that premises might be a warehouse though uncovered; still I think that that is a circumstance which might add to the difficulty of holding such premises to be so when the word warehouse is used in its ordinary meaning.

I am for recalling the judgment of the Sheriff-Substitute and finding that the yard was not a warehouse or falling within the meaning of the Act.

LORD YOUNG was absent.

The Court answered the question of law in the negative.

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