band's death means of support of a more or less permanent and substantial character. Now, applying that test here we find that this pupil child had been supported by his mother for very nearly eleven years prior to the father's death, which gives the support the character of substantial permanence, and there is nothing to suggest that at the time of the father's death the support which the pupil child was receiving had come to be of a precarious character.

I am therefore of opinion that in the case of the child, as in the case of the mother, the determination of the Sheriff-Substitute was right, and accordingly I concur that the question of law should be answered in the negative.

LORD ARDWALL—I concur with both your Lordships. This is a Compensation Act, and its purpose is to give compensation to workmen and also to dependants of workmen who may have suffered by their deaths or disability. Now that being the purpose of the Act, we must start with this, that it is only actual loss for which compensation is to be awarded and not prospective or possible loss, and accordingly the Act provides that the dependants who are to be entitled to compensation are such of the persons entitled according to the law of Scotland to sue the employer for damages or *solatium* in respect of the death of the workman "as were wholly or in part dependent upon the earnings of the workman at the time of his death." Now it appears to me that that definition excludes altogether the idea that a legal right to support from a person killed by an accident on the part of a person surviving him can by itself constitute the latter a dependant of the deceased in the sense of the Act; it concentrates the attention of any Court which has to decide a case like the present on these points—*first*, whether the person claiming compensation was in fact dependent upon the earnings of the workman, and *second*, whether he or she was so at the time of the workman's death. Now it has been decided in the case of the *Main Coal Company* in the House of Lords, and in the cases of *Turners*, *Baird*, and *Moyes* in the First Division of this Court, that the question raised by this definition is primarily one of fact, and, if I may humbly say so, I think that that is the true view of the matter. Of course every question of fact under a statute may become a question of law in so far as a question may arise whether certain circumstances bring a person within a certain category laid down in the statute—for instance, whether certain facts render or do not render a person a dependant within the meaning of the Act—and so far that may be said to be a question of mixed fact and law, but being so it is primarily a matter of fact that has to be decided. Now after what your Lordships have said I do not think I need say more except that I desire to express my concurrence with what was said by the Lord President on the construction of this Act in the case of *Baird*, 8 F. 438, and in particular I concur in his criticism of Lord Young's judgment in the case of *Sneddon* v. *Addie*.

I accordingly agree with your Lordships that we should affirm the judgment of the Sheriff-Substitute.

The LORD JUSTICE-CLERK was absent.

The Court answered the question of law in the negative.

Counsel for the Appellant—Orr, K.C.—D. P. Fleming. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondents—Murray—MacRobert. Agents—Cadell, Wilson, & Morton, W.S.

Friday, March 13.

FIRST DIVISION.

[Glasgow Dean of Guild Court.

SUMMERLEE IRON COMPANY, LIMITED *v.* LINDSAY AND OTHERS.

(See *ante*, July 12, 1907, 44 S.L.R. 854, and 1907 S.C. 1161.)

Burgh—Dean of Guild—Building Regulations—Height of Building—Consent of Corporation—Appeal to Dean of Guild—Objections to Consent—Relevancy—Procedure in Guild Court—Glasgow Building Regulations Act 1900 (63 *and* 64 *Vict. cap. cl*), *sec.* 60 (3).

The Glasgow Building Regulations Act 1900, sec. 60 (1), provides that no building except with the consent of the Corporation be erected in on or adjoining any street above a certain height.

Section 60 (3) enacts—"Whenever the Corporation consent to the erection of any building of a greater height than that prescribed by this Act notice of such consent shall, within one week after such consent has been given, be published in such manner as the Corporation may direct, and such consent shall not be acted on till twenty-one days after publication; and the owner or lessee of any lands or heritages within one hundred yards of the site of any intended building who may deem himself aggrieved by the grant of such consent may within twenty-one days of such publication appeal to the Dean of Guild, who shall have power to deal with the case as shall seem to him just."

Held that the grounds of appeal contemplated by section 60 (3) included, not being restricted to whether the Corporation in giving consent had acted capriciously or *ultra vires*, grounds upon which the owner or lessee within one hundred yards of the site of the proposed building alleged that owing to his proximity (apart however from his legal rights which fell to be considered in the ordinary petition for

lining) the building scheme to which consent had been given would unduly affect him.

Averments in an appeal under Glasgow Building Regulations Act 1900, sec. 60 (3), which were held *relevant*, but which fell to be disposed of by the Dean of Guild by his ordinary *summary procedure*, and not to be made the subject of a *proof* in his court.

This case is reported *ante ut supra.*

Archibald Maclaren Lindsay, Robert Meldrum, and John Lumsden Oatts, all solicitors, took two appeals from the Dean of Guild in Glasgow, the one in a petition for lining presented by the Summerlee Iron Company, Limited, 172 W. George Street, Glasgow, and the other under sec. 60 (3) of the Glasgow Building Regulations Act 1900 (*v. sup. in rubric*) against the same building scheme. The First Division on July 12, 1907, recalled the Dean of Guild's interlocutor and remitted to him to consider whether the consent given to the scheme by the Corporation had been given knowingly for a building which was to be held as abutting on two streets (*v.* previous report).

Following upon the judgment of the First Division, the Dean of Guild, by interlocutor of date August 1, 1907, appointed the Summerlee Iron Company, Limited, to intimate the interlocutor of the Court of Session to the Corporation of the City of Glasgow. The Corporation considered the proceedings and reported to the Dean of Guild that their consent had not been knowingly given to a building which must be held under section 62 to abut on two streets. Subsequently, on December 20, 1907, the Corporation executed the following minute —"The Corporation of the City of Glasgow intimate their consent, in terms of section 60 (1) of the Glasgow Building Regulations Act 1900, to the proposal of the petitioners to erect the building situated at 172–176 West George Street, extending from said street to West Regent Lane, as shown on the plans lodged in Court relative to said petition. In respect whereof,

"City Chambers, "Glasgow, 20th December 1907. A. W. MYLES, *Prov. for said Corporation.*"

This minute was lodged in the process of petition for lining by the Summerlee Iron Company on December 24, 1907, and notice of the consent therein contained was advertised in the *Glasgow Herald* of 24th and 25th December 1907.

On January 14, 1908, Lindsay, Meldrum, & Oatts, as proprietors of the subjects 85 to 87 West Regent Street and 58 to 60 West Regent Lane, Glasgow, presented a note of appeal against the consent contained in the above minute, and averred, *inter alia*—"(Cond. 9) The appellants consider themselves aggrieved by the proposal under which the Glasgow Corporation are alleged to have given consent in terms of the said advertisement, and that for the following reasons—... (3) The erection of the buildings to the height proposed would be detrimental to the interest of adjoining proprietors and occupiers by unnecessarily restricting air space and light, and in the event of fire would become a serious danger to adjoining proprietors. (4) No reasons exist on account of site or otherwise for relaxing the statutory height of the building, and the fact of its being more remunerative to the Summerlee Iron Company, Limited, to have increased height is no reason for such consent being granted. (5) The granting of consent has resulted in the Corporation conferring an unnecessary pecuniary advantage on the Summerlee Iron Company, Limited, to the detriment of adjoining proprietors and the amenity, health, and safety of the neighbourhood."

On February 6, 1908, the Dean of Guild conjoined the two processes (1) of petition for lining at the instance of the Summerlee Iron Company, Limited, and (2) appeal at the instance of the said Lindsay and others, and there after pronounced, on February 24, 1908, the following interlocutor—"Having heard parties upon the conjoined processes, the Dean of Guild, before answer, allows to the objectors a proof of their averments in article 9 (3), (4), and (5) of their note of appeal and to the petitioners a conjunct probation; appoints the evidence to be led on a day to be afterwards fixed, and, on the motion of the petitioners, and if and in so far as such leave may be necessary and he has power to grant it, the Dean grants leave to appeal."

Note.—"It appears to the Dean of Guild that his duty in the present position of this case is obvious from two sentences in the opinion of the Lord President. In remitting the case his Lordship said—'That if the consent (*i.e.*, the consent of the Corporation) had been given, and the Dean of Guild sees no reason to interfere with it, then all is right. If that consent has not been knowingly given, then of course the Dean of Guild in his turn would send it back to the Corporation in order that they should consider the matter for the first time.' By minute the Corporation stated that their consent had not been knowingly given to a building which under section 62 of the Act must be held as abutting on two streets. But by further minute the Corporation intimate their consent to the proposal of the petitioners to erect the building situated at 172–176 West George Street, extending from said street to West Regent Lane, as shown on the plans. That consent being now in process the duty of the Dean is to say whether or not he sees any reason to interfere with it. The objectors take exception to the consent on several grounds. Some are technical; the others deal with what may be said to be the practical side of the matter. The Dean thinks it would be unfortunate if by any pronouncement of his upon the technical pleas the case would reach the Court of review without all the relevant considerations upon the practical side of the matter having been ascertained. He has therefore before answer allowed a proof of the averments as to the detriment which the objectors would suffer by the building proposed to be erected by the petitioners being authorised."

The petitioners (the Summerlee Iron Company, Limited) appealed, and argued—The consent of the Corporation had now been obtained, after full consideration by it, and was in order; the objectors' objections had already been considered on their merits and disallowed; there was nothing left to be done save to grant the lining. The procedure proposed by the Dean was useless and incompetent. In particular, the averments in article 9 (4) and (5) were irrelevant, and in any event the whole averments remitted by the Dean of Guild to probation raised just such questions as would best be decided by a man of skill. The Dean of Guild himself had the skill to decide such matters, and it was just in respect of his skill that the question of the propriety of the Corporation's consent was remitted to him. His duty was to inform himself by an inspection of the properties or by an examination of the plans, and to dispose at once of the whole matter.

Argued for the respondents (Lindsay and Others)—The respondents' averments were quite relevant. The Dean of Guild was given by the statute "power to deal with the case as shall seem to him just." He was therefore entitled to inform himself in any way he thought most suitable, and, accordingly, it was within his discretion to allow a proof. He might be competent in respect of his skilled knowledge to judge of the validity of the objections, but if he thought it necessary he was quite entitled to avail himself of the assistance of people who had experience in the matter raised by the objections.

At advising—

LORD PRESIDENT—When this case was before us in this Division on the former occasion we pronounced an interlocutor to this effect—"Recal *in hoc statu* the interlocutors of the Dean of Guild, dated 3rd June 1907, in the respective processes, and remit to him to consider whether as a matter of fact the consent of the Corporation has been knowingly given to a building which under section 62 of the foresaid Act must be held as abutting on two streets, and if he is satisfied that such consent has been so given, and does not propose to recal that consent in virtue of the powers given to him by said sub-section 3 of section 60 of the said Act, to dismiss the appeal taken to him, with or without expenses as to him shall seem just, and to grant the lining in the petition therefor." The case went back to the Dean of Guild, and as the Dean of Guild was not certain as to whether, as a matter of fact, the consent of the Corporation had been knowingly given to a building which must be held as abutting on two streets, he asked the Corporation to that effect, as indeed was indicated as the appropriate course by the opinion pronounced by myself in that case. The result of that was that the Corporation confessed that they had not viewed the case from that standpoint, and therefore they quite rightly again considered the matter from the standpoint which the Court had given them, namely, that this was a building which was to be held as abutting upon two streets. Having done so, they then again gave their consent. Against that consent an appeal was again taken to the Dean of Guild so that he might, as it is expressed in the interlocutor, "recal that consent," if he wished to do so under the powers of sub-section 3 of section 60.

Now, it is quite true that the Dean of Guild had already pronounced, so to speak, an opinion on the merits of this matter when the former consent was given, but I have no doubt whatsoever that technically the Dean of Guild was perfectly entitled, if he wished, to reconsider the matter, because the old consent was gone as inapplicable, and this was a new consent, and I do not say a word against the technical propriety of the appeal being taken in order that the Dean of Guild might this time refuse his consent if so advised. The Dean of Guild, however, upon that matter has not as yet indicated whether he consents or not, but he has pronounced an interlocutor to this effect—"Before answer, allows to the objectors a proof of their averments in article 9 (3), (4), and (5) of their note of appeal." Now, the articles there referred to, of which proof has been allowed, are as follows:— . . . [*quotes supra*] . . .

Before I deal with these averments perhaps it may be as well to say a word upon what I think the Dean of Guild has got to consider upon this matter. The section which gives the Dean of Guild appeal is the 3rd sub-section of the 60th section of the Glasgow Building Regulations Act (63 and 64 Vict. cap. cl), which, after providing that the Corporation's consent shall be advertised, says it "shall not be acted on till twenty-one days after such publication, and the owner or lessee of any lands and heritages within one hundred yards of the site of any intended building who may deem himself aggrieved by the grant of such consent may, within twenty-one days of such publication, appeal to the Dean of Guild, who shall have power to deal with the case as shall seem to him just." Now, the Dean of Guild made certain observations—not in this case but in the last—as to what that appeal really meant, and we had not occasion on the last occasion to deal with that, so I shall deal with it now.

I do not think that the view that the Dean of Guild there took is quite correct. I think he took too restricted a view of his own powers. He seemed to think that because the appeal was given from a public body to one person, namely, himself, all that he had to do was to see that the public body had not acted capriciously, or in any way *ultra vires*, but that he could not consider the matter on the merits. I do not think that there is necessarily any such limit. Nor do I think that there is anything to be surprised at in the Legislature giving an appeal from a public body to one person, seeing that that public body fails in two respects—first, it is not a judicial body, and secondly, it is not a body that necessarily has among its numbers any member practically skilled in these matters,

and seeing that the Dean of Guild enjoys both those advantages. The scheme of the statute seems to me clear enough. There are certain restrictions made upon height which are, I suppose, for the good of everybody concerned. Well then, these restrictions are allowed to be dispensed with by the Corporation, and I think the matter which the Corporation in that question has to decide is a question, so to speak, of public policy. If they think that in their view as custodiers of the town it is a bad thing that the restriction should be dispensed with, then they will not give their consent; on the other hand, if they think there is no harm from the public point of view they may dispense with the restriction and give their consent.

But then comes in the question of individuals, because there is no doubt that one person may have from his local situation a great deal more interest than another, even although the thing which is being dealt with is, so to speak, a matter of public interest. A very obvious illustration is this—it is a matter of public interest whether a certain street should be shut up, but it is very much more a matter of interest to the man who lives in a house near the street, and perhaps uses that street every day as a convenient way of getting to his business, than to somebody else, who is equally a citizen but who lives two miles away at the other end of Glasgow. And therefore I think quite properly the statute said—"We must have a secondary consideration in the light of how this is going to affect private people." But then I think it is very necessary to say that I do not think this has anything to do with what may be called private people's legal rights. Private people's legal rights—rights of servitude, rights of prospect, and so on—have nothing to do with this matter, because they are, of course, perfectly safeguarded in the process of lining, which this is not. If a person has a servitude of light which is going to be affected by the building which is proposed to be put up, the proper place for him to appear is not in this question as to height, but in a question of decree for lining, and there he will have his right made good if he can. It must be remembered that these restrictions are purely statutory restrictions, and not under the common law at all. A man at the common law, if he is not restrained by other rights in his neighbour—of servitude or building conditions or something of that sort, all of which, as I have said, can be made good in the decree of lining—of course may build his house as high as the Tower of Babel. But then comes in this Building Regulations Act, which says that except on certain conditions he shall not. Well, then, after the Town Council consents the neighbour says—"But then this is going to affect me in a peculiar way." I think he has got a right to say so, and I think it falls within the province of the Dean of Guild to consider his objection in an appeal under sec. 60, sub-sec. (3), but I think he must show his hurt, not upon any ground of private injury—for that he must do in the lining—but upon what I may call the public ground, which he says presses upon him more severely than it would do upon other people.

I now revert to the Dean of Guild's interlocutor, and I first take the averments upon which he has allowed proof. I think that the third is in itself a good averment—that is to say, ". . . [*quotes, supra*] . . ." I can imagine that a building could be so high and so big that it would as a public matter really hurt the air and light of the neighbourhood, and I think the adjoining proprietor should be able to say, "Well, that is so, and I am one of the people who would be specially hurt by it." I again call attention to the fact that a restriction of light does not mean a question of servitude. If he has got that he must make it good in the lining. This must be a public detriment, but one which a particular person feels more than others. But it seems to me that averment (4) is no averment at all. Really, if I may say so without offence, it is ridiculous to allow proof upon averment (4), to prove a negative—"That no reasons exist." I cross that averment out altogether. Averment (5) seems to me to be as to part of it entirely irrelevant. The part where it talks about conferring unnecessary pecuniary advantages on the Summerlee Iron Company—for that is neither here nor there, and so far as it is relevant at all it seems to me nothing more than a repetition of averment (3) without the specification given in averment (3), because, whereas the detriment is explained in averment (3), it is not explained in averment (5) at all. I therefore cross out averment (5) because I think it has not added anything to averment (3), and that leaves averment (3) alone.

Now, as to the allowance of proof itself, while I want to make it perfectly clear to the Dean of Guild that we should certainly never interfere with his taking the best means he can for the expiscation of a case, and while I also want to make it clear that there might be such specific averments as to particular things as if not admitted might make it perfectly proper for him to have a proof before he comes to his decision, yet it seems to me perfectly clear that the class of averment that is made in article (3) is an averment which is not meant to be expiscated by puting people in the witness-box; it is meant to be decided by the Dean of Guild himself as a practical man, for which reason it is that he is selected. Holding these views, and expressing them so, I wish to say that I hope the Dean of Guild will not misunderstand me. I propose that we should recal the Dean of Guild's interlocutor and remit to him to pronounce his judgment, whether he thinks there is any reason for interfering with the consent which has been granted by the Corporation.

LORD M'LAREN—I think it is necessary to keep in view that this is an appeal in a process which is preliminary to the regular application to the Dean of Guild Court for authority to build. I should have thought

that it would be a more convenient mode of procedure if it had been enacted that the Dean of Guild, when the case comes before him for hearing, should be entitled, notwithstanding the consent given by the Town Council, to refuse the additional height upon public grounds. But that is not done; the provision is that there may be an appeal from the authority given by the Town Council to exceed the height prescribed for ordinary uses. Now, I think, although this is not the ordinary Dean of Guild jurisdiction, it must have been intended that the Dean of Guild should proceed according to the same methods of inquiry and procedure as in his ordinary jurisdiction, because if it had been an appeal in which the parties were expected to adduce expert evidence on either side, it would, I venture to think, be more convenient if that appeal had been to the Sheriff rather than to the Dean of Guild. The Dean of Guild in his note remarks that he considers it a somewhat anomalous thing that there should be an appeal from the whole Council to a single member of it, and so it would be if this were an appeal in which evidence were to be taken and dealt with as in a regular action. But then in my view that is not the intention of the Legislature. In the present case it happens that the parties were heard before a committee of the Town Council upon the question whether the necessary consent should be given, but that was owing to the peculiar position into which the case had got. In the ordinary case, I take it, when the applicant goes to the Town Council in the first instance there is no argument, and if he makes a *prima facie* case before the committee of the Town Council he may get their consent to the extension of the height of his building, and then that is safeguarded by the provision that there may be an appeal to the Dean of Guild Court at the instance of other parties. Now that is not like an ordinary appeal from a whole body to one of its members, because the consent given in the first instance is given upon an *ex parte* application. I suppose it is thought more convenient that the hearing should be before a single member of the Town Council, and one who is specially conversant with these questions, rather than before the Town Council or its committee. In any case, as the appeal is given to the Dean of Guild, I think it must have been intended that he should proceed in the summary manner which is appropriate to his jurisdiction. It would be very much to be regretted if in these applications the case should go through all the stages of an ordinary action.

I cannot help thinking that in allowing a proof the Dean of Guild was largely influenced by a consideration which he mentions in his note, that the proof might be useful in the event of the case going to a higher Court. There have been previous appeals in this case—I think this is appeal C—and probably he contemplated that there would be appeals with other letters, and that the Court might need evidence to enable the point to be decided finally. But in the view which your Lordship has taken—in which I entirely concur—that this is to be treated as summary procedure, if cause can be shown against the decision which the Dean of Guild has given, with the aid of the expert members of his Council, we have always power to remit to a man of skill to give us such information as to enable us to check the conclusions to which the Dean of Guild Court has come. That is a power we have rarely had occasion to exercise, but it exists. And it is a better mode of dealing with these questions than by having a proof with half-a-dozen experts on each side coming to different conclusions. I therefore agree that this case should be remitted back for the purpose of having it decided by the Dean of Guild in a summary manner in accordance with the practice of his Court.

LORD KINNEAR—I agree with your Lordship in the chair, and I only desire to add a single observation with reference to the future procedure. I agree that the Court ought to be very slow to interfere with the discretion of the Dean of Guild, or any other magistrate, in the course of procedure which he has thought necessary to adopt in order to inform his own mind. But then I think that on the remit which your Lordship proposes the Dean of Guild will have a different question to consider from that which he disposed of in the interlocutor under appeal, because it is now fixed that two out of three of the averments which he thought ought to go to proof are irrelevant. The remaining averment raises a question of fact, but one on which the Dean of Guild himself is an expert authority. According to the ordinary course of procedure in this Court, in an appeal from the Dean of Guild Court the usual method for reaching a decision of practical questions of this kind is to remit to the Dean of Guild to decide on an inspection of the premises, or on a consideration of the plans if he thinks an inspection unnecessary. The question being limited, as it will now be, to the judgment proposed, the Dean of Guild will not be precluded by his former judgment from taking the course which seems most expedient under the altered circumstances of the case. It will be for him to consider whether he is or is not in a position to pronounce his own opinion without extrinsic evidence. I therefore agree in the course your Lordship proposes.

LORD PEARSON was absent.

The Court recalled the interlocutor of the Dean of Guild and remitted to him to pronounce his judgment on the question whether there was any reason for interfering with the consent granted by the Corporation.

Counsel for the Petitioners (Appellants) (Summerlee Iron Company, Limited)—Dickson, K.C.—Hon. W. Watson. Agents—Webster, Will, & Co., S.S.C.

Counsel for the Objectors (Respondents) (Lindsay and Others)—Cooper, K.C.—Lippe. Agents—Erskine Dods & Rhind, S.S.C.