Wednesday, March 13.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

HALSTEAD *v.* ALEXANDER THOMSON & SONS.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7 (1) *and* (2)—*Height of Building—Cupola—Culverts beneath Floor for Pipes—Foundations—Question of Fact or Law—Undertakers.*

The police commissioners of a burgh erected a wash-house. On the roof was a cupola over 8 feet in height. Occupying two-fifths of the area underneath the floor of the wash-house, but above the foundation of the building, were culverts over 6 feet in height containing pipes for conveying steam and water in connection with the wash-house, formed with brick walls and concrete floors, and constituting a separate basement. The height of the building without the foundations, but including the height of the culverts and of the cupola, was 30 feet 5½ inches.

Held that the building in question exceeded 30 feet in height within the meaning of the Workmen's Compensation Act 1897, section 7 (1).

Opinions that whether or not the building at the time of the accident exceeded 30 feet in height was a question of fact for the decision of the arbitrator.

Question whether the foundations could be included in calculating the height of the building.

Opinion (*per* Lord Young) that the Police Commissioners, and not the tradesmen engaged by them to erect the wash-house, were the undertakers in the sense of the Act.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7 (1)—*Scaffolding—Scaffolding not in Use or Erected at Time of Accident—Question of Fact or Law.*

In a claim under the Workmen's Compensation Act 1897 it was proved that in the construction of a building certain trestles and planks were erected and used from time to time for the purpose of forming a scaffolding, but that at the time of the accident they were not erected or in use. *Held* that the building in question was at the time of the accident being constructed by means of a scaffolding within the meaning of the Workmen's Compensation Act 1897, section 7 (1).

Opinions (*per* Lord Justice-Clerk, Lord Young, and Lord Trayner) that whether or not the building at the time of the accident was being constructed by means of a scaffolding was a question of fact for the decision of the arbitrator.

In an arbitration upon a claim under the Workmen's Compensation Act 1897 made by Charles Halstead against Alexander Thomson & Sons, masons and builders, Glasgow, the Sheriff-Substitute at Glasgow (BALFOUR) found the claimant entitled to compensation, and awarded him a weekly payment of 7s. 6d. from 3rd February 1900 till the further orders of the Court. Against this decision Alexander Thomson & Sons appealed.

In the case stated for appeal the Sheriff-Subsitute found the following facts admitted or proved. In the winter of 1899-1900 the Glasgow Police Commissioners erected a public wash-house in Bain Square, Glasgow. The appellants were the contractors for the mason and brick work of the building. The respondent was in the employment of the appellants as a watchman. The wash-house was a building of one flat with a roof on which there was a large cupola for the purpose of light and ventilation, and underneath the floor of the wash-house were conduits or culverts which contained pipes for conveying steam and water in connection with the wash-house. The culverts were formed with brick walls and concrete floors, so that men might walk along them to look after the pipes, and the culverts occupied two-fifths of the area of the ground underneath the floor of the wash-house, and constituted a separate basement in connection with the wash-house. The height of the building without the foundation was 30 feet 5½ inches from the floor level of the subway or culvert to the top of the cupola, consisting of 6 feet 4 inches from the level of the subway to the floor of the wash-house, 15 feet 7 inches from the floor of the wash-house to the roof of the wash-house, and 8 feet 6½ inches from the roof of the wash-house to the top of the cupola. The building was being constructed by means of a scaffolding, and the various tradesmen on the job used the scaffolding between May 1899 and July 1900. The scaffolding consisted of trestles and planks, and it was used from the beginning of the job to the end of it by the various tradesmen, including plasterers, engineers, bricklayers, painters, plumbers, and joiners according to their requirements. The scaffolding was used by the appellants themselves prior to the accident, and on various occasions subsequent thereto, down to June 1900, and although the scaffolding was not always in use, and on the day of the accident was not erected, it was always on the ground, and was used from time to time from the beginning to the end of the contract, and it was not removed until July or August 1900. There were sundry openings in the floor of the wash-house for the laying of pipes, and on 20th January 1900, the respondent, while crossing one of these openings on planks, fell into the opening and sustained injuries, including a double fracture of his right thigh, from which he had not yet recovered.

In these circumstances the Sheriff-Substitute found that the respondent was engaged in or about a building exceeding 30

feet in height, which was being constructed by means of a scaffolding, and that he was entitled to compensation from the appellants as above mentioned.

The questions of law for the opinion of the Court were—"(1) Whether the building in question at the time of the accident exceeded 30 feet in height, and within the meaning of section 7 (1) of the Workmen's Compensation Act 1897? (2) Whether it was at the time of the accident being constructed by means of scaffolding in terms of section 7 (1) of the Workmen's Compensation Act 1897?"

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), sec. 7 (1), enacts that the Act shall apply, *inter alia*, to employment by the undertakers as thereinafter defined "on, in, or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding." . . .

Argued for the appellants—The Act did not apply to this building for three reasons—(1) If the dug out culverts were left out of account the building would be less than 30 feet in height. The depth of the building below the ground level should not be taken into consideration in calculating the height. The building should be measured from the level of the street from the point at which the walls left the ground surface. There was no decision on this question, the point having been reserved in *Hoddinott* v. *Newton*, 1899, 1 Q.B. 1018, reversed in House of Lords, 1901, A.C. 49. See opinion of A. L. Smith, L.J., 1899, 1 Q.B. 1021. (2) There was no scaffolding here in the sense of the Act. Trestles and planks piled up and not tied together did not constitute a scaffolding; they were only the materials for a scaffolding. They could no more be called a scaffolding than a simple ladder. (3) Even if there were here a proper scaffolding, the Act did not impose liability when the scaffolding was not in use. The Court read into the definition of "any building which exceeds 30 feet in height" the words "at the time of the accident"—*Billings* v. *Holloway*, 1899, 1 Q.B. 70. This also applied to the scaffolding. It must be erected at the time of the accident. Upon the occasion in question it was lying in pieces on the floor.

Argued for the claimant and respondent—It was apparently not now contended by the appellants that the cupola should not be taken into consideration in gauging the height of the building. (1) The culverts must also be taken account of when measuring the height of the wash-house. They were an integral and essential part of the building. The height of a building must be measured at least from the top of its foundations, and the Sheriff-Substitute had found that the height of this building without the foundation exceeded 30 feet. (2) and (3) In regard to the scaffolding, the question whether the building at the time of the accident was being constructed by means of a scaffolding was a question of fact for the decision of the arbitrator, and the arbitrator having decided that the building was being constructed by means of a scaffolding, his finding on this point was not subject to review—*Maude* v. *Brook*, 1900, 1 Q.B. 575; *Ferguson* v. *Green*, 1901, 1 Q.B. 25. If the Court held that there was any legal point raised, the decision of the Sheriff-Substitute was right. The statute was one that ought to be liberally construed, and there was no doubt that it was meant to apply in the case of all buildings that were 30 feet in height and required scaffolding in their construction.

LORD JUSTICE-CLERK—I concur in what has been said as to the questions before us. I think that they are questions of fact, and I agree that the Sheriff-Substitute has rightly decided them. I only wish to guard myself against being thought to sanction the idea that in all cases the height of a building is to be measured from the actual foundation. I am not at all clear as to that. I have myself seen buildings where in order to get a foundation the workmen required to go a great deal further down into the ground than the building was intended to be erected above the level of the ground, and where after the foundations were laid the excavations about them were filled up with soil. In such cases it would be difficult to hold that the height of the building was to be measured from the lowest point at which any building work on the first foundation-stones had been placed.

LORD YOUNG—On the questions put to us I have really do doubt whatever. The Sheriff has decided in point of fact that the building measured from the foundation is over 30 feet in height. So far it is a simple question of fact. The point represented as a point of law is whether if the foundation of a building is reached by digging below the ordinary level of the earth the space so excavated is to be taken into account in measuring the height. I suppose there are very few houses that have their foundation on the natural level of the ground. There is nothing with which one is more familiar than excavating in order to put the foundations of a building below the level of the soil. Very often the foundation itself is made by building. In some cases in Edinburgh the foundations of the houses are constructed of wooden piles, and very good foundations they are said to make. But in the present case there is no difficulty, and we do not need to consider whether the artificial foundations of a building are to be included in the height, because in this case it has been found by the Sheriff that the height of the building without including the foundation is more than 30 feet.

As to the question about the scaffolding, I agree with the English Judges in the cases referred to by the respondent, that the question is one of fact. The Sheriff-Substitute has found as matter of fact that the building was being constructed by means of a scaffolding. I have therefore no doubt that we must take it as a matter of fact that this building was being constructed by means of a scaffolding.

I wish to say that I see no ground, and none was stated, for another question not

being raised in this case, viz., Who were the undertakers here in the sense of the Act? In my opinion the undertakers in this case were the Glasgow Police Commissioners. In carrying out the undertaking they had to employ tradesmen just as a railway company have to employ tradesmen to repair their stations, &c. But the railway company is in such cases the undertaker notwithstanding. I merely notice that in order to guard against it being said hereafter that I concurred in a judgment in which compensation under the Act was awarded against tradesmen employed by the real undertakers in the sense of the Act.

LORD TRAYNER—In dealing with this case the difficulty I have experienced is in discovering any question of law raised by it at all. What are termed the questions of law appear to me to be questions of fact. The first is—"Whether the building in question at the time of the accident exceeded 30 feet in height within the meaning of section 7 (1) of the Workmen's Compensation Act 1897?" Now, I quite understand that a question might arise as to the exact point from which the height of the building was to be measured, and this may admit of different views on the part of the judges dealing with that matter. But, nevertheless, the question whether a building is or is not 30 feet in height is a question of fact. If, however, any question of law has arisen on which we can give an opinion, I have no doubt that this building was 30 feet high within the meaning of the Act, as it has been found in fact that the height of the building above the foundation was 30 feet 5½ inches.

The second question is—"Whether the building was at the time of the accident being constructed by means of scaffolding in terms of section 7 (1) of the Workmen's Compensation Act 1897?" The Sheriff-Substitute has held that it was. This question I also think is one of fact, but as far as it may be held to raise a question of law I think that the Sheriff-Substitute's decision thereon is right.

I am not prepared to concur in the view that the Corporation of Glasgow were here the undertakers, but on that question no decision is called for.

LORD MONCREIFF—The point on which an opinion has been expressed by Lord Young as to who are the undertakers in the sense of the Act is not raised in the case before us, and on that matter I reserve my opinion.

Turning to the two questions put to us in the case, I think the first is not a question of law but purely a question of fact, which so far as I can judge was rightly decided. A question of law or construction of the statute may be involved in the second question, because it is found in this case that the scaffolding was not actually erected and in use on the day of the accident. Notwithstanding that, I am inclined to think that the building was at the time of the accident being constructed by means of scaffolding in the sense of the Act. The scaffolding was regularly used from time to time by all the tradesmen engaged in the work during the construction of the building both prior and subsequently to the accident, and it was not removed from the building till six months after the accident.

The Court answered the questions in the affirmative, affirmed the award of the arbitrator, and decerned.

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Counsel for the Claimant and Respondent—Salvesen, K.C.—Munro. Agents—St Clair Swanson & Manson, W.S.

Wednesday, March 13.

SECOND DIVISION.

[Sheriff Court at Glasgow.

STRAIN *v.* WILLIAM SLOAN & COMPANY.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37) *sec.* 7 (2)—*Factory—Wharf—Accident in Street "immediately Outside" Wharf—Machinery or Plant Used in Loading or Unloading from or to Wharf—Factory and Workshop Act* 1895 (58 *and* 59 *Vict. cap.* 37), *sec.* 23.

In a stated case under the Workmen's Compensation Act 1897 the following facts were admitted—(1) The claimant, a quay labourer in the employment of the respondents, a firm of shipowners, at a wharf on the Clyde at Glasgow occupied by them, was assisting in removing iron girders from the street immediately outside the wharf shed to the side of a steamship belonging to the respondents which was being loaded; (2) the girders were lifted by means of a hand crane on to a truck, by which they were conveyed to the ship's side; (3) while removing the hand crane from one pile of girders to another, both of which lay in the street immediately outside the wharf shed, the claimant got jammed between the platform of the crane and one of the girders, and sustained injuries.

On these facts the Sheriff-Substitute dismissed the application, finding in law that in accordance with the decision in *Hall* v. *Snowden, Hubbard, & Company*, 1899, 2 Q.B. 136, the Factory and Workshop Act 1895 did not apply to the present case, in respect that the accident did not occur on the quay but on the street; and that no accident occurred on, in, or about a factory within the meaning of the Workmen's Compensation Act 1897.

The Court *recalled* the interlocutor of the arbitrator; found (1) that the wharf was a factory within the meaning of the Act of 1897, and (2) that the