

but to hold that the provisions of the Judicature Act and relative Act of Sederunt have not been complied with, and that therefore the present reclaiming-note is incompetent. Whatever might be the expediency of altering these rules in the direction of relaxing their strictness, I think we have no power as matters now stand to dispense with full compliance with what they require.

LORD MONCREIFF — I agree with the majority of your Lordships. I regret to do so, as it is plain that in the discussion we should have had nothing to do with the amendment. But I agree that we are driven to this result by the terms of the statute and Act of Sederunt (the latter of which specially mentions amendments of the summons as things which must be appended to a reclaiming-note), and by the decisions which have followed on those enactments. The decided cases satisfy me that we have no discretion to consider whether the part of the record which has been omitted is material or not.

The Court pronounced this interlocutor—

“Refuse the reclaiming-note, as incompetent, and decern: Find the defender entitled to additional expenses, and remit,” &c.

Counsel for the Pursuer—Shaw, Q.C.—Salvesen—A. S. D. Thomson. Agent—John Veitch, Solicitor.

Counsel for the Defender—Lees—Craigie. Agents—Campbell & Smith, S.S.C.

Thursday, May 18.

FIRST DIVISION.

[Sheriff Court of Ayrshire.

MURNIN v. CALDERWOOD.

Reparation — Workmen's Compensation Act 1897 (60 and 61 Vict. c. 31), sec. 7 (1).

Section 7 (1) of the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) provides 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, and to employment by the undertakers, as hereinafter 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, or being demolished, or on which machinery driven by steam, water, or other mechanical power is being used for the purpose of the construction, repair, or demolition thereof.”

Held (following *Mellor v. Tomkinson & Co.*, L.R. [1899] 1 Q.B. 374) that the section applies to employment on, in, or about a building on which machinery driven by steam, water, or other mechanical power is being used for the

purpose of the construction, repair, or demolition thereof, and it is not also necessary that the building should exceed thirty feet in height.

This was a stated case under the Workmen's Compensation Act 1897 following upon an interlocutor pronounced by the Sheriff-Substitute of Ayrshire in a statutory arbitration in which the present appellant, James Murnin, labourer, claimed compensation from the respondent Andrew Calderwood, builder and contractor.

The following was the case as stated by the Sheriff-Substitute:—“This is an arbitration in which there was no proof led, but, as appears from the pleadings, the facts are as follows, viz.—On 4th July 1898 the pursuer was engaged, with other workmen in the defender's employment, in demolishing a wing of Elmbank House, Kilmarnock, which wing had formerly been occupied as a museum. A steam crane was used to aid in the process of demolition. In the course of the operation the pursuer met with an accident, in consequence of which he sustained serious personal injury. Though before the process of demolition began Elmbank House had exceeded thirty feet in height, no part of it was at the time of the accident so high as thirty feet, and the said wing had never exceeded thirty feet in height.

“I decided, in respect that no part of said Elmbank House at the time of the accident exceeded thirty feet in height, and that the work at which the pursuer was engaged was not an engineering work within the meaning of the Workmen's Compensation Act 1897, that the pursuer's claim against the defender under the said Act was excluded by the terms of section 7 thereof. I accordingly sustained the defences and dismissed the action.

“The questions of law for the opinion of the Court are—(1) Whether the pursuer is entitled to compensation from the defender for injuries sustained by him on the said building in course of demolition, that building being at the date of the accident to the pursuer under thirty feet in height, and the wing at which the accident took place never having exceeded thirty feet in height, although the main part of the building was beyond that height when the demolition began? and (2) Whether the work on which the pursuer was engaged at the time of the accident was an engineering work within the meaning of the Workmen's Compensation Act 1897, in respect that a steam crane was being used in the demolition of the building.” . . .

Sec. 7 (1) of the Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37) provides 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, and to employment by the undertakers, as hereinafter 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, or being demolished, or on which machinery driven by steam, water, or other mechanical power

is being used for the purpose of the construction, repair, or demolition thereof."

Argued for appellant—The claim did fall under the statute, the case being governed by that of *Mellor v. Tomkinson & Company* [1899], L.R., 1 Q.B. 374.

Argued for the respondent—The Sheriff had only decided one of the points raised by section 7, viz., that decided in the case of *Billings v. Holloway*, L.R., 1899, 1 Q.B. 70, as to whether the building exceeded 30 feet in height at the time of the accident. The other questions raised by sec. 37 had never been argued before or decided by him. But the Court would only consider the specific point decided by the Sheriff—*Durham v. Brown Brothers*, December 13, 1898, 36 S.L.R. 190. It was not enough merely to table section 7, but the exact point raised must be stated, and no other could be decided.

LORD PRESIDENT—The Sheriff has decided that section 7 does not apply to the work in question, "in respect that no part of the house at the time of the accident exceeded thirty feet in height, and that the work at which the pursuer was engaged was not an engineering work within the meaning" of the Act. Now, he so decides, although, as explained in the previous statement of facts, a steam crane was used to aid in the process of demolition. Therefore he thinks that the fact of a steam crane being used does not bring the case within the section. I think that it does, and the decision of the Court of Appeal in *Mellor v. Tomkinson & Company* [1899], 1 Q.B. 374, is expressly to that effect. The words of Lord Justice A. L. Smith are—"Therefore if machinery driven by steam, water, or other mechanical power is being used for the purpose of the construction, repair, or demolition of the building, it need not exceed 30 feet in height," and, of course, I add it need not be an engineering work. Accordingly I think that the Sheriff's judgment is wrong and must be recalled.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced this interlocutor:—

"Find in answer to the queries in the case that machinery driven by steam having been used for the demolition of the building, the claim is not excluded by the terms of the 7th section of the Workmen's Compensation Act 1897: Recal the dismissal of the claim, and decern: Find the appellant entitled to the expenses of the stated case on appeal, and remit the account thereof to the Auditor to tax and to report, and meanwhile continue the cause."

Counsel for the Appellant—G. Watt—Guy. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondent—Orr. Agents—Simpson & Marwick, W.S.

Thursday, May 18.

FIRST DIVISION.

[Lord Pearson, Ordinary.

MACQUEEN (WHARTON DUFF'S CURATOR BONIS) v. TOD.

Process—Summary Petition—Court of Session [Distribution of Business] Act 1857 (20 and 21 Vict. cap. 56).

Jurisdiction and procedure in summary petitions are regulated by the Distribution of Business Act 1857, and not by the Court of Session Act 1868.

Process—Summary Petition—Reclaiming-Note—Competency—Court of Session [Distribution of Business] Act 1857 (20 and 21 Vict. cap. 56), sec. 6.

In a petition to charge an entailed estate with improvement expenditure, the Lord Ordinary pronounced an interlocutor granting authority to the petitioner to charge, and remitting to a man of business to revise and adjust the bond and to report.

Held that a reclaiming-note against this interlocutor was competent under section 6 of the Distribution of Business Act 1857.

This was an application presented under the Entail Statutes by John Otto Macqueen, S.S.C., curator bonis to Miss Anne Jane Wharton Duff, heiress of entail in possession of the entailed estates of Orton and Barmuckity, for authority to charge certain improvement expenditure upon the said estates.

Answers were lodged by John Wharton Tod, the heir of entail next entitled to succeed to the said estates, and after a debate upon the relevancy and the competency of the petition, the Lord Ordinary, on 7th December 1898, pronounced an interlocutor making the usual remits.

The man of business and the man of skill having presented their reports, the Lord Ordinary (PEARSON), on 25th April 1899, pronounced the following interlocutor:—"Interpones authority, grants warrant to, and authorises the petitioner . . . to charge the fee and rents of the said entailed estate . . . with the sum of £3056, 2s. 6d., together with the sum of £143, 1s. 11d., being the estimated cost of the application and the proceedings therein and of obtaining the loan and granting security therefor . . . and to that end to make and execute in favour of the said Miss Anne Jane Wharton Duff, her heirs, executors, and assignees whomsoever, or in favour of such other person or persons as may advance the said sum, a bond of annual rent or bonds of annual rent in ordinary form over the said entailed lands and estate . . . or otherwise, in the option of the petitioner, to make and execute in favour of the said Miss Anne Jane Wharton Duff, her heirs, executors, and assignees whomsoever, or in favour of such other person or persons as may advance the