to affirm the judgment of the Sheriff-Substitute.

LORD YOUNG—I agree in the judgment of the Sheriff-Substitute.

LORD JUSTICE-CLERK—I am of the same opinion.

LORD TRAYNER was absent.

The Court pronounced this interlocutor—

"Sustain the appeal and recal the said interlocutor appealed against: Find in fact (1) that the defenders were carriers of a Siever's lasting machine from Hull to Glasgow about 7th December 1899 which was consigned to the pursuers; (2) that when the defenders got delivery of the said machine it was in good order, but that when it was tendered to the pursuers the machine was found to have been seriously broken in transit, and the pursuers refused to take delivery of it; (3) that the machine was so much injured while in the defenders' custody that the pursuers were entitled to reject it; and (4) that the cost of the machine at Glasgow was £100 sterling: Therefore decern against the defenders for payment to the pursuers of the said sum of £100 sterling, with interest thereon at 5 per centum per annum from the date of the citation till payment."

Counsel for the Pursuers and Respondents—Salvesen, K.C.—Hunter. Agents—T. F. Weir & Robertson, W.S.

Counsel for the Defenders and Appellants—J. Wilson, K.C.—Younger. Agents—Macpherson & Mackay, S.S.C.

---

*Saturday, November 23.*

## FIRST DIVISION.

[Sheriff-Substitute at Elgin.

## GEORGE v. MACDONALD.

*Reparation — Workmen's Compensation Act* 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7, *sub-sec.* (2)—"*Factory*"—*Factory and Workshops Act* 1878 (41 *Vict. c.* 16), *sec.* 93, *sub-sec.* (3)—*Travelling Threshing Machine.*

*Held* that an accident which happened to a workman in the employment of owner of a travelling threshing-mill when working at its attendant engine, at a time when the mill was not geared to the engine for the purpose of threshing but merely for the purpose of haulage, and at a place where there was no intention of using the mill for threshing, did not entitle the workman to compensation under the Workmen's Compensation Act 1897, in respect that he was not at the time in question employed on in or about a factory.

*Question* — Whether a threshing-machine and engine, geared for threshing at a particular place, fell within the statutory definition of "factory."

This was an appeal under the Workmen's Compensation Act 1897 from the decision of the Sheriff-Substitute (Webster) at Elgin in an arbitration between Arthur George, claimant and appellant, and Alexander Macdonald, engine owner, Bishopmill, by Elgin, respondent. The claimant claimed 10s. weekly in respect of injuries sustained by him on 20th February 1900, while in the employment of the respondent.

In the case for appeal the Sheriff-Substitute stated as follows:—"The respondent is the owner, *inter alia*, of a travelling threshing-mill which in the course of his business he takes from place to place for the purpose of threshing corn for farmers at their farms. On the 20th February 1900 the appellant was engaged as second man in the employment of the respondent, while the respondent acted as engine-driver. The said threshing-mill when being transported from place to place is drawn by a traction-engine, also belonging to the respondent. The traction-engine is driven by steam, the mill when threshing corn being driven by a belt from the traction-engine. The respondent in course of his business contracts with farmers to thresh their corn for gain, taking the mill for this purpose to their farms where the corn is to be threshed. On said last-mentioned date the said threshing-mill and traction-engine were put up for the night in a field on the farm of Monaughty, near Alves, on its way to Brodieshill, which is fully three miles distant from Monaughty, for the purpose of fulfilling a contract entered into between the respondent and the farmer at Brodieshill for the threshing of corn belonging to the latter. On the date foresaid, and in the course of his employment, the appellant was adjusting a wire rope in order to allow it to pass through certain rollers at the rear of said engine so as to enable it to be wound up on the drum on driving axle of the engine. The wire rope referred to is only used for connecting the engine and threshing-mill for the purpose of hauling the latter by short stages over rough or heavy ground. During this process the engine remains stationary, and the mill is pulled towards it by the wire-rope being wound up on the drum on driving axle of the engine. When travelling over normal ground the mill is attached close to the engine by an iron hook. At the time of the accident both the engine and mill were stationary and not working, and the mill was not connected with the rope nor with the engine. The rope was in process of being coiled up on the drum on driving axle of the engine preparatory to the latter proceeding on the journey after the mill had been attached to it by the hook in the usual way. While engaged as aforesaid the appellant's right hand was caught between the said rollers, and his first or index finger was so lacerated that it had to be amputated. The appellant's thumb was also injured and rendered almost completely useless. His second finger was also much injured. In consequence of said accident the appellant has suffered partial disablement."

Upon the foregoing facts the Sheriff Substitute held that "the Workmen's Compensation Act 1897 did not apply to the circumstances of the present case, in respect that the accident did not take place on in or about a factory, and therefore assoilzied the defender from the conclusions of the action."

The question of law for the opinion of the Court was—"Whether the employment in which the appellant was engaged at the time of the accident was employment on, in, or about a factory within the meaning of the Workmen's Compensation Act 1897?"

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), sec. 7, enacts that the Act shall apply only to employment on in or about, *inter alia*, a "factory," and (sub-sec. 2) that the word "factory" shall have the same meaning as in the Factory and Workshops Acts 1878 to 1891.

The Factory and Workshops Act 1878 (41 Vict. c. 16), sec. 93, defines "non-textile factory" as meaning, . . . sub-sec. 3, any premises wherein, or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes, or any of them—that is to say, . . . (*c*) in or incidental to the adapting for sale of any article, and wherein or within the . . . precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there."

Argued for the appellant—A traction engine and threshing-mill constituted a factory in the sense of the Act, and did not cease to be a factory by reason of the fact that they were in the open air—Act of 1878, sec. 93. The provisions of the Factory and Workshop Acts as to the powers of inspectors, &c., were not inapplicable to a threshing-mill, which had been assumed to be a factory—*Callaghan* v. *Maxwell*, January 23, 1900, 2 F. 420, 37 S.L.R. 313. Taking the mill to the place where it was to thresh was incidental to its work—*Petrie* v. *Weir*, June 19, 1900, 2 F. 1041, 37 S.L.R. 795, and the work of threshing grain was "adapting it for sale"—*Nash* v. *Hollinshead* [1901], 1 K.B. 700, *per* Romer, L.J. 717.

Argued for the respondent—The statutory definition of "factory" contemplated some premises having a definite locality, but a travelling apparatus could not be said to be localised at all. At the time of the accident there was no connection between the mill and the engine, and the coiling of the rope might have been by hand for all that appeared in the case. Even if steam was used, the rope was not being coiled in aid of any manufacturing process, and had nothing to do with threshing.

LORD PRESIDENT—The question which we have to decide is whether the case falls under the Workmen's Compensation Act of 1897. It was contended by the appellant that the place at which the accident occurred was a factory within the meaning of section 93 of the Factory and Workshop Act 1878, which is referred to in and imported into the Act of 1897.

In section 93 of the Act of 1878 there are three sub-heads which refer to "non-textile factories" and define the premises to which that expression shall apply; and the appellant maintains that this case falls under sub-head (3), the definition in which is "any premises wherein, or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes, or any of them; that is to say"—then follows an enumeration of the purposes, and the only one under which the appellant maintains that this case falls is (*c*) "in or incidental to the adapting for sale of any article."

His argument was that the work which the threshing-mill performed was incidental to the adapting for sale of an article, viz., the grain which it threshed. I think that this argument would have been sound if the other conditions required had been fulfilled. Nothing that I am about to say is adverse to the view that if the mill was geared for threshing and was threshing at a place, even in a field, to which it had gone for the purpose of threshing grain, it might be a factory. I wish to reserve my opinion on that question and not to indicate any adverse view upon it.

The facts, however, which we have to deal with are wholly different. The two parts of the mechanism which when geared together would make a mill which could thresh were not so geared together, nor were they intended to be at the place where the accident occurred. They were going to fulfil a contract at Brodieshill, about three miles from the place where the accident occurred. We are not told, and it is not material, how they came to be in that place. I assume that they were lawfully there, but the two things there were the threshing-mill and the engine which was intended to haul it to Brodieshill. They were not, when the accident occurred, so geared together that they could thresh and thus prepare grain for the market.

The two things were to start for Brodieshill, but at the time of the accident they were both stationary, and at this point there is a deficiency in the statement of the case. The Sheriff-Substitute has not stated whether the engine had steam up at the time, though apparently it must have had, and adopting the construction most favourable to the appellant, I assume that the engine had been yoked to the mill for the purpose of hauling it, and that while it was so yoked the appellant was fitting the wire rope round the drum with a view to haulage. In the condition of things thus existing at the time of the accident, the mill could not thresh; and there was no factory within either the definition in section 93 or any other section of the Factory Act or the Workmen's Compensation Act.

It so happened that the mill was only going to be hauled about three miles, but it might have been intended to go a hundred; and the appellant could only prevail if every inch of that journey

was "premises" and therefore a factory. It seems to me that a mill and locomotive pursuing a journey, not fitted or intended to do any work except haulage, cannot be a factory, and I am therefore of opinion that the question must be answered in the negative.

LORD ADAM—I agree with your Lordship. It appears to me that the Factory Act postulates that the work carried on shall be carried on in some particular premises or place.

In this case the factory does not come into existence until the mill and the engine are united. They may be united in more than one way, and they may be capable of becoming a factory when united; but when they are merely connected by ropes for haulage, I should never suppose that they would be capable of becoming a factory. I agree that in order to be a factory the combination must be capable of being worked as a mill, and not merely for transit, the haulage being by a traction engine, as it might be by horses.

I also agree that when the engine and mill are properly connected, if they are permanently in a particular place for their work, it may be a question whether that would not be "premises," or a place, within the meaning of the Act. But that is not what we have here. This mill was being hauled along a road, some miles, in order to do its work. It seems to me a startling proposition that as this machine was being hauled along every inch of the road became a factory for the time, and "premises" in the sense of the Factory Act. I think when the combination is connected in a particular place for the purpose of doing its work that may be within the Act; but "premises" in the Act does not mean any place which may be momentarily covered in the course of its journey by a traction engine hauling a mill. I agree therefore that here there were no "premises" in the sense of the Factory Act.

But then we have this circumstance, that in this particular case, when the accident happened the mill and engine were separate. If that was so it seems to me to follow that neither the one nor the other was a factory, and I think that sufficient for the decision of the case.

LORD M'LAREN—On the argument that was put in condensed form by counsel for the workman when he said that what he contended for was a peripatetic factory, I agree with your Lordship and Lord Adam. I think that the definition of factory in the Factory Act of 1878, which is incorporated by reference into the Workmen's Compensation Act, cannot be so extended as to include the case of a travelling apparatus which performs functions similar to those of a factory. I think in order to the conception of a factory under the statute it must be for the purpose of work carried on in some premises, place, or the curtilage or precincts thereof; and that phraseology is to my mind wholly inapplicable to the case of travelling mechanism. I understand the *locus* of a moving point or object when the *locus* is a line or orbit in which it moves, but I cannot understand the *locus* of a thing to mean wherever the owner chooses to take it.

I agree with what has been said by your Lordships about the difficulties that arise from the circumstances of the actual case. We do not have an engine and threshing-mill coupled together and at work, but only in transit from one place to another. These difficulties are rather consequential on the initial difficulty, showing the difficulty of working out the statute according to the extended meaning which is claimed for it, because if you suppose a proper factory, it would not appear to me to be an objection to the application of the Act that the working machinery was disconnected.

There is another difficulty (I do not think that it arises in this case) that if I could hold that a threshing-machine was a factory, then the person liable under the statute of 1897 would be the farmer, who would certainly be an undertaker under the statute. But that question is not raised, and probably never will be raised, because under the statute of 1900, which came into operation on 1st July in the present year, the question of travelling machines is specially dealt with, and is made an exception to the general rule as to the liability of "undertakers."

LORD KINNEAR concurred.

The Court answered the question in the negative.

Counsel for the Appellant—J. C. Watt—D. Anderson. Agent—William Considine, S.S.C.

Counsel for the Respondent—C. D. Murray—C. A. Macpherson. Agents—Macpherson & Mackay, S.S.C.

---

*Tuesday, November 26.*

## SECOND DIVISION.

[Sheriff of Lanarkshire.

## CAMMICK *v.* THE GLASGOW IRON AND STEEL COMPANY, LIMITED.

*Reparation—Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), Sched. II., sec. 8—A.S. 3rd June 1898, sec. 7 (a), (b)—Registration of Memorandum of Agreement—Application to Sheriff for Warrant—Appeal—Competency.*

In an application to a Sheriff for a special warrant to register a memorandum of agreement for periodical payments in respect of injuries, made in terms of Schedule II., section 8, of the Workmen's Compensation Act 1897, and section 7 (*a*) of the Act of Sederunt 3rd June 1898, the Sheriff is bound, if satisfied of the genuineness of the memorandum of agreement, to grant warrant for its registration without inquiry whether the employers are or