quired, and also that as only she and one of the children were entitled to claim under the statute, she might obtain a larger award than if she joined the rest of the family in an action at common law.

But it is out of the question to say that because the statute has conferred upon dependants an exceptional remedy, other relatives who are not entitled to that remedy, but who have a legal title to claim *solatium* at common law, are thereby deprived of their right.

At first sight there seems to be some hardship in the defenders being subjected in a full award of compensation under the Act and also to this claim at common law. But I do not think that there is much substance in this objection for two reasons. First, damages under the statute are fixed on the footing that it is not necessary to prove fault, and if fault is proved the complainer can scarcely complain if some additional damages are awarded. Secondly, the claims which were sustained under the statute have exhausted all or almost all claims on the head of patrimonial loss, and as all but one of the pursuers were not dependent to any extent on the deceased at the date of his death, even if they succeeded in proving fault they will all (except perhaps one) only recover damages in name of *solatium*.

I am for affirming the Lord Ordinary's interlocutor.

LORD YOUNG was absent.

The Court adhered, and remitted to the Lord Ordinary to proceed.

Counsel for the Pursuers and Respondents—Orr—A. M. Anderson. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defenders and Reclaimers—Salvesen, K.C.—C. D. Murray. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Friday, June 5.

SECOND DIVISION.

[Sheriff Court at Glasgow.

SELLARS *v.* CAMPBELL.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7, *sub-sec.* 1—*Scaffolding—Ladder Used for Work Generally Done by Means of Scaffolding.*

A workman sustained injuries while engaged in silicating and painting the wall of a house more than 30 feet high by means of a ladder. The work of silicating is generally done by slaters by means of a scaffolding suspended by a rope from the roof of the building, but where the work is limited to particular portions of the building it is frequently done by painters by means of ladders, which are in that case much more convenient.

Held that the ladder was not a scaffolding within the meaning of section 7 (1) of the Workmen's Compensation Act 1897—*diss.* Lord Trayner, who was of opinion that the ladder being supplied in the place of scaffolding was *pro hac vice* a scaffolding in terms of the Act.

By section 7, sub-section 1, of the Workmen's Compensation Act 1899 it is enacted that the Act shall apply, *inter alia*, to employment "on in or about any building which exceeds 30 feet in height, and is either being constructed or repaired by means of a scaffolding." . . .

This was an appeal upon a stated case against the decision of the Sheriff-Substitute (STRACHAN) at Glasgow in an arbitration under the Workmen's Compensation Act 1897 between Mary Ann Matthew or Campbell, widow of the late Donald Campbell, Donald Campbell, and the said Mary Ann Matthew or Campbell as tutrix for her pupil children Isabella Campbell, Andrew Campbell, William Campbell, and Catherine Campbell, claimants and respondents, and George W. Sellars, painter and decorator, Glasgow, appellant.

In the case stated the Sheriff-Substitute found that the following facts were admitted or proved:—

"1. That the respondent Mrs Mary Ann Matthew or Campbell is the widow, and the said Donald Campbell, Isabella Campbell, Andrew Campbell, William Campbell, and Catherine Campbell are children of the deceased Donald Campbell, and were all totally dependent on his earnings.

"2. That the said deceased Donald Campbell was a painter in the employment of the appellant.

"3. That on 14th August 1902 he was engaged in silicating and painting a wall of a house No. 25 Belhaven Terrace, Glasgow, and while engaged at that work he fell and sustained such injuries that he died very shortly afterwards.

"4. That the work of silicating consists in washing or cleaning stones in the walls of a house which have begun to decay, and painting or covering them with a preparation known as silicate, for the purpose of preserving them.

"5. That the work is generally done by slaters by means of a scaffold suspended by a rope from the roof of the building, but that where the work is limited to particular portions of the building it is frequently done by painters by means of ladders, which are in that case much more convenient.

"6. That in the case in question the work was confined to the cornices on the roof, the rybats of the windows, and the balustrades above the door, and that it was done by painters using ladders for the purpose.

"7. That there were three men engaged at the work, and there were three ladders used by them, from 16 to 60 feet in length.

"8. That the house in question was over 30 feet in height, and that the deceased Donald Campbell was employed in repairing it at the time of his death.

"9. That the ladders used by the deceased and the other workmen kept them in position, and afforded them the necessary support while working at a height above the

ground, which are the purposes for which scaffolding is generally used.'

On the facts established the Sheriff-Substitute held in law that the deceased was employed at the time of his death in repairing a building over 30 feet in height by means of scaffolding in the sense of the Act, and awarded the respondents the sum of £239, 8s. of compensation, and found them entitled to expenses.

The question of law for the opinion of the Court was—"Whether the deceased was employed at the time of his death in repairing a building over 30 feet in height by means of 'scaffolding' within the meaning of the Workmen's Compensation Act 1897?"

Argued for the appellant—A ladder had been held not to be scaffolding in the sense of the Act both by the Scottish and the English Courts—*M'Donald* v. *Hobbs & Samuel*, October 17, 1899, 2 F. 3, 37 S.L.R. 4; *Wood* v. *Walsh & Sons* [1899], 1 Q.B. 1009. The Sheriff-Substitute's difficulty had undoubtedly arisen from the wrong view of the decision in *Hoddinnott* v. *Newton, Chambers, & Co.* [1901], A.C. 49, taken by the English Judges in *Veasey* v. *Chattle* [1902], 1 K.B. 494, and in *Marshall* v. *Rudeforth* [1902], 2 K.B. 75; *Hoddinnott, supra*, did not overrule *Wood, supra*, in the matter of a ladder, and there was nothing in the opinions of the Judges in the House of Lords' case to suggest that they would have held an ordinary ladder to be a "scaffolding." Indeed, Lord Macnaghten, at p. 57, had laid it down that the words of the Act must be taken in their ordinary signification, and a ladder when used alone could in no sense of the term be described as a scaffolding.

Argued for the claimants and respondents—The ladder in this case was not being used as a means of access but as a substitute for scaffolding. The ordinary mode of doing the work of silicating was by means of a scaffolding. For such work a scaffolding was appropriate. The balance of authority was in favour of the view taken by the Sheriff-Substitute, that where a ladder was being used for purposes for which a scaffolding was ordinarily used and admittedly appropriate, it was a scaffolding within the meaning of the statute. The decision in *M'Donald, supra*, was founded on that in *Wood, supra*, and the latter was not consistent with the principles on which the decision in *Hoddinnott, supra*, was based—opinion of Collins, M.R., in *Veasey, supra* [1902], 1 K.B. 500. In the present case the Sheriff-Substitute had found as a fact that in the circumstances of the case this ladder was a scaffolding in the sense of the Act. His decision ought not to be overruled—*Marshall, supra*. A pair of painters' steps had been held to be a scaffolding—*Elvin* v. *Woodward & Co.* [1903], 19 T.L.R. 410. This ladder was in a similar position.

At advising—

LORD JUSTICE-CLERK—The decision in this case must depend upon the legal effect that is to be given to the facts stated in the fifth paragraph of the case, which is—[*His Lordship read the fifth paragraph of the findings in fact*]. It is quite certain that if the work done had been done by slaters by a scaffold, the Act would have applied. But the statement is that when the particular kind of work is only required to be applied to particular portions of a building, then "it is frequently done by painters by means of ladders."

The Sheriff-Substitute has held that in this case, which was of the latter class, the work was being done "by means of scaffolding in the sense of the Act." I regret that I am unable to agree with his decision. What he describes in paragraph 5 is the use of ladders without its being suggested that they were used in any other than the ordinary way in which work is done from a ladder. I cannot see ground for holding that if a particular work done upon a building is sometimes done by using a scaffolding and sometimes done by using ladders, not as part of a scaffolding but in the ordinary way in which painters use ladders when engaged at their work, a ladder so used can be held to be scaffolding. It may be anomalous that a fall from a scaffold should give right to compensation and a fall from a ladder should not, but I think it would be as anomalous to hold that a ladder is a scaffolding when the Act has not included it by definition clause or otherwise, and I am unable to see any substantial ground on which the Court could in any case refuse to hold a ladder of any considerable length placed against a wall to be a scaffolding, if it is to be held that a ladder is a scaffolding in this case. It would I think be quite inconsistent with a case recently decided in this Division, in which it was held a painter's ladder was not a scaffold.

I am therefore in favour of answering the question in the negative.

LORD TRAYNER—In the case of *M'Donald* I stated my opinion that "a ladder *per se* is not scaffolding," and I remain of that opinion. There is nothing said in the decision of the case of *Hoddinnott* in the House of Lords contrary to the opinion so expressed. But taking a ladder in connection with the special circumstances under which and the purposes for which it was used is not taking a ladder *per se*, and therefore I do not think there is any inconsistency in my holding, as I do, that taking into account all the facts set forth by the Sheriff-Substitute in the case before us, the ladder from which the deceased fell was scaffolding within the meaning of the Act. I come to this conclusion mainly on a consideration of the facts stated in article 5 of the case. The work being done is work "generally done by slaters by means of a scaffold," but when the work is limited, as it was here, to certain portions of the building, it is frequently done "by painters by means of ladders." Now, that statement amounts to this—that the work in the general case is slaters' work done by means of a scaffold, but in exceptional cases (although the exceptions are frequent) the work is done by painters by means of

ladders. If the defender undertook slater's work it was his duty to supply the proper and ordinary appliances for its execution—that is a scaffold or scaffolding. The ladder he supplied in place of scaffolding was scaffolding *pro hac vice*, and I demur to allowing the appellant to say it was not. The effect of the judgment which your Lordship proposes is to enable the appellant and everyone in his position to get rid of a liability which the statute has imposed. He undertakes work generally executed by means of scaffolding, but recognising that if that were used he might be liable to his workmen for the consequence of an accident, he refuses to give the ordinary appliances and provides ladders instead, because not being scaffolding he would not come within the provisions of the Act. Any judgment which could support such an argument is in my view directly against the meaning and intendment of the Act, giving that Act a fair and reasonable interpretation. In the special circumstances of this case, which I have already adverted to, I think the ladders used were equivalent to scaffolding, and I am therefore of opinion that the appeal should be dismissed.

LORD MONCREIFF—After anxious consideration I am unable to distinguish this case from the case of *M'Donald* (2 F. 3), in which we held that a ladder used in the ordinary way by a painter in painting beams in a building over thirty feet in height was not a scaffolding within the meaning of the Act. In considering this question it is important to notice the provisions of the Act. Section 7 defines what are to be considered "undertakings" in the sense of the statute, and provides, *inter alia*, that the Act shall apply to employment by the undertakers "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."

I apprehend that the reason for inserting the words "by means of a scaffolding" is, that if a building exceeding thirty feet in height requires a scaffolding for its construction, repair, or demolition, that affords a certain criterion of the magnitude and danger of the operation. On the words of the statute I shall only add that if a building is being constructed, repaired, or demolished by means of a scaffolding, it is at once raised to the dignity of an undertaking, with the result that if a workman is injured or killed while engaged in an employment on in or about the undertaking, compensation will be due although his injuries may not have been connected with the scaffolding. This makes it all the more necessary that nothing should be regarded as a scaffolding that cannot fairly be brought within that category.

Now, in the present case all that we know is that the deceased workman fell from a ladder. We are not told from what height he fell, neither are we told what was the length of the ladder, beyond this, that it may have been sixteen or sixty feet in length. It is not said that the ladder was in any way fastened to the wall or to the other two ladders which were being used at the same time. Therefore what is said to have been "a scaffolding" was simply a ladder placed against the wall of a building upwards of thirty feet in height. If the ladder, which may have been only sixteen feet in length, is to be considered "a scaffolding," that would constitute the silicating or painting this house an undertaking, with the consequences which I have indicated.

It is said that work of this kind is generally done by means of a scaffold suspended from the roof, and that the ladder being substituted for such a scaffold must therefore be considered a scaffold in itself. I am not prepared to admit this. If the employer was in fault in failing to erect a scaffold, and improperly made his workmen do the work by means of a ladder, he may be liable at common law; but that is not suggested, and all that seems to have happened was this, that some portions of the building could be conveniently reached by means of a ladder, which course was accordingly adopted.

Now there may be as much risk of falling from a ladder as of falling from a scaffold, but a ladder placed against a wall is not "a scaffolding," and therefore in my opinion the Act does not authorise compensation to a workman who is injured while working on a ladder. On these grounds I am of opinion that the question put to us should be answered in the negative.

LORD YOUNG was absent.

The Court pronounced this interlocutor—

"Answer the question of law therein stated in the negative; therefore recal the award of the arbitrator, and remit to him to dismiss the claim; and decern."

Counsel for the Appellant—Salvesen, K.C.—Hunter. Agents—Millar, Robson, & M'Lean, W.S.

Counsel for the Claimants and Respondents—Clyde, K.C.—Christie. Agents—R. & R. Denholm & Kerr, S.S.C.

Tuesday, November 4, 1902.

SECOND DIVISION.

[Sheriff Court at Inverness.

MACNAUGHTON *v.* FINLAYSON'S TRUSTEES.

Writ—Document Acknowledging Indebtedness—Document neither Holograph nor Tested—Evidence to Prove Document Signer's Writ—Proof.

In support of a claim for money due as wages by her father, a daughter, after her father's death, produced a document acknowledging his indebtedness to the extent claimed. This document was signed by the father, but was