Wednesday, July 15.

SECOND DIVISION.

[Sheriff Court at Glasgow.

CAMPBELL *v.* M'NEE.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7—*Factory and Workshop Act* 1901 (1 *Edward VII., cap.* 22), *sec.* 149, *Schedule VI., Part II., sec.* 28—*Relevancy—Factory — Workshop — Bottle-Washing Work — Averment that Applicant for Compensation Employed in a Factory—Dismissal of Application as Irrelevant.*

A claim for compensation under the Workmen's Compensation Act 1897 was made in respect of an injury sustained by a workman in the employment of a spirit merchant while washing bottles in a store used in connection with his employer's shop, "which store," the applicant averred, "is used for the purpose of bottling beer and washing beer bottles, and is a factory within the meaning" of the Act. The Sheriff dismissed the application as irrelevant. In a case stated on appeal, *held* that the application was properly dismissed as irrelevant, in respect that it was not averred that steam, water, or other mechanical power was used in the employer's store.

This was a case stated on appeal by the Sheriff-Substitute of Lanarkshire at Glasgow (FYFE) in an arbitration under the Workmen's Compensation Act 1897 between Hugh Campbell, spirit salesman, 240 Main Street, South Side, Glasgow, applicant and appellant, and John M'Nee, spirit merchant, Castle Chambers, 65 Renfield Street, Glasgow, respondent.

The case stated as follows. "The following were the averments in the appellant's condescendence:— . . . (2) On or about the date after mentioned the applicant was employed in one of respondent's shops at 216 Naburn Street, South Side, Glasgow. In connection with the business of said shop, but separate from it, there is a store at 126 Kidston Street, South Side, Glasgow, which store is used for the purpose of bottling beer and washing beer bottles, and is a factory within the meaning of the Workmen's Compensation Act 1897. The work of said store formed part of applicant's duties. (3) On or about 13th March 1903 the applicant was engaged in said store washing bottles. . . . While the applicant was so engaged, a piece of glass in the tub entered the thumb of his left hand between the nail and the finger, in consequence of which he has been incapacitated for work, and is at present under medical treatment. . . ."

On 5th May 1903 the Sheriff-Substitute held that the appellant had not set forth facts and circumstances relevant to infer that he was employed in or about a factory in the sense of the Workmen's Compensation Act 1897, and accordingly dismissed the case as irrelevant.

The question of law for the opinion of the Court was—"Whether the application was properly dismissed as irrelevant."

The Factory and Workshop Act 1901 (1 Edward VII., cap. 22) enacts (sec. 149) . . . "The expression 'non-textile factories' means . . . (*b*) any premises or places named in Part II. of the Sixth Schedule to this Act wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there; and (*c*) 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 any of the following purposes namely . . . (iii) the adapting for sale of any article, and wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there. . . . The expression 'workshop' means (*a*) any premises or places named in Part II. of the Sixth Schedule to this Act, which are not a factory." The Sixth Schedule of the Act provides as follows:—"List of Factories and Workshops . . . Part II., Non-textile Factories and Workshops . . . (28) . . . bottle washing works."

Argued for the appellant—No severe test should be applied to the averments of an applicant for compensation under the Act. The appellant's averment that he was employed in a factory was sufficient to entitle him to inquiry, and he should not be denied an opportunity of proving that the store in which he was employed was a "factory" or a "workshop" within the meaning of the Factory and Workshop Act 1901 (1 Edward VII., cap. 22), sec. 149, Schedule 6, II., (28); and the Workmen's Compensation Act 1897, section 7.

Counsel for the respondent was not called upon.

LORD JUSTICE-CLERK—I think the decision of the Sheriff-Substitute is right. The pursuer states nothing more in regard to the place where the accident occurred than that it is a store in connection with a shop, but separate from it, which is used for the purpose of bottling beer and washing beer bottles. *Prima facie* that is not a factory, and it adds nothing to the relevancy of the statement to say that it is a factory. What is required in order to convert a place where bottles are washed into a factory within the meaning of the Factory and Workshop Act 1901 is that steam, water, or other mechanical power be used in aid of the work (sec. 149 (1) *b*). There is no averment of this in the present case. Mr Munro sought to bring the case under sec. 149 (1) (*c*) by maintaining that this was a place where manual labour was exercised for the purpose of adapting the bottles for sale. But even in this case it is necessary that steam, water, or other mechanical power be used in aid of the work, and that this be averred. Had this been averred the case would have been relevant, but as it is I am of opinion that no relevant case has been stated by the pursuer.

LORD TRAYNER—It is contended for the pursuer that it is sufficient for the relevancy of his case to state that the place where the accident occurred was a factory within the meaning of the Workmen's Compensation Act. This is not so. The pursuer cannot prove more than he avers, and all that he avers is that he was employed in a store used for the purpose of bottling beer and washing beer bottles. Even if his averments were true they would not prove that the place in which he was working was a factory, and I am therefore of opinion that the Sheriff-Substitute was right in dismissing the action as irrelevant.

LORD MONCREIFF—I agree. It is not enough to say that the place where the pursuer was injured was a factory within the meaning of the Workmen's Compensation Act. All that the pursuer avers is that in connection with their shop the defenders have a store which is used for bottling beer, and which is a factory within the meaning of the Workmen's Compensation Act. Mr Munro maintained that this was a "bottle-washing work" within the meaning of the Factory and Workshop Act 1901, Sched. 6, Part II. (28). If this was his case it should have been stated on record. But even this averment would not have been sufficient, for by sec. 149 (1) (*b*) of the Act such works are not a factory unless steam, water, or other mechanical power is employed, and there is no suggestion here that any of these methods were in use. Sec. 149 (1) (*c*) does not aid the pursuer, for even if we hold that washing bottles is "adapting them for sale," there must still be an averment of the use of steam, water, or other mechanical power. On the whole matter I think that the Sheriff-Substitute has come to a right decision.

LORD YOUNG was absent.

The Court answered the question of law in the affirmative, and affirmed the dismissal of the claim.

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

Counsel for the Respondent—Galbraith Miller. Agents—Gill & Pringle, S.S.C.

Wednesday, July 15.

SECOND DIVISION.

[Sheriff Court at Edinburgh.

THE EDINBURGH AND DISTRICT AERATED-WATER MANUFACTURERS' DEFENCE ASSOCIATION, LIMITED *v.* JAMES JENKINSON & COMPANY.

Trade Union—Restraint of Trade—Combination between Masters and Masters—Registration of Trade Union as Limited—Restrictions on Conduct of Trade—Company—Process—Instance—Title to Sue—Trade Union Act 1871 (34 *and* 35 *Vict. c.* 31), *secs.* 4 (1) *and* (2) *and* 5 (3)—*Trade Union Act Amendment Act* 1876 (39 *and* 40 *Vict. c.* 22), *sec.* 16.

An association was formed by several firms of aerated water manufacturers, and registered under the Companies Acts, its principal object being to protect the bottles and boxes of members from being used or dealt with by persons not having lawful authority. By the articles of association and certain bye-laws duly made prohibitions were imposed upon members with regard to the purchase and exchange of bottles and the employment of travellers formerly in the employment of other members, and there were provisions for fines for breach of the rules or bye-laws.

In an action brought by the association in its descriptive name for the recovery of a fine imposed on one of its members for breach of its rules, the defenders pleaded no title to sue. *Held* that the association was a trade union within the meaning of section 16 of the Trade Union Act 1876, as being a combination for regulating the relations between masters and masters, and a combination for imposing restrictive conditions on the conduct of a trade; that its registration under the Companies Acts was consequently void in terms of section 5 (3) of the Trade Union Act 1871; that it could not sue in its descriptive name, and that the plea of no title to sue must be sustained.

The Trade Union Act 1871 (34 and 35 Vict. cap. 31) enacts (section 4)—"Nothing in this Act shall enable any Court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely—(1) Any agreement between the members of a trade union as such concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ or be employed. (2) Any agreement for the payment by any person of any subscription or penalty to a trade union." . . .

Section 5 enacts—"The following Acts—that is to say, . . . (3) The Companies Acts 1862 and 1867 shall not apply to any trade union, and the registration of any trade