

quences now. But the insertion of obsolete words is not in my opinion sufficient to vitiate the attestation of the undoubted fact that the ship was arrested to found jurisdiction.

For these reasons I agree in the opinion of your Lordship.

LORD SKERRINGTON—I concur.

The LORD PRESIDENT intimated that LORD CULLEN, who was absent at advising, also concurred.

The Court adhered.

Counsel for the Pursuers (Respondents)—A. M. Mackay. Agents—W. & F. Haldane, W.S.

Counsel for the Defender (Appellant)—Macmillan, K.C.—A. R. Brown. Agent—Peter Clark, S.S.C.

Thursday, January 29.

FIRST DIVISION.

[Lord Ormidale Ordinary.]

CALDWELL v. GLASGOW CORPORATION.

Reparation—Negligence—Relevancy—Emergency Legislation—Lighting of Common Stair—Defective Fittings and Quality of Illumination—Glasgow Police Act 1866 (29 and 30 Vict., cap. cclxxiii), sec. 361—Glasgow Gas Act 1910 (10 Edw. VII, and 1 Geo. V, cap. cxxxii), secs. 29 and 30, as Amended by the Gas (Standard of Calorific Power) Act 1916 (6 and 7 Geo. V, cap. 25), sec. 1 (1) (a)—Defence of the Realm Regulations, Regulation 8 G—Gas Works (Ministry of Munitions) Order 1918—Gas Works (Ministry of Munitions) General Regulations 1918.

In an action brought against the Corporation of Glasgow to recover damages the pursuers alleged that their father had slipped and fallen down the common stair in a tenement, that the lighting of the stair was insufficient, and that the accident would not have happened had the lighting been adequate. They further averred that the defenders were at fault in respect that their inspector of lighting had failed to see that the proprietor of the common stair had provided suitable gas pipes and brackets, lamps and burners, or one or other of them, in the stair, contrary to their obligations under the Glasgow Police Act 1866, or alternatively in respect that they had not supplied the burners with a supply of gas sufficient to illuminate the stair in a proper manner. They also averred that complaints had been made by certain persons on certain dates as to the lighting in the stair, and that nothing had been done. The pursuers did not particularly specify any defect in the fittings, nor did they aver that the defenders had failed to give gas of the

thermal efficiency which they were bound to supply under the Defence of the Realm Regulations, 8 G, and the Gas Works Regulations 1918. Held (*sus. Lord Ormidale*) that the averments of the pursuers were irrelevant, and action *dismissed*.

The Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii) enacts—Section 361—“The proprietor or proprietors of every land or heritage having an access by a common stair shall provide and maintain suitable gas pipes and brackets, lamps and burners, in such common stair to the satisfaction of the inspector of lighting or the Corporation, and placed as the said inspector or the Corporation may direct, under a penalty of forty shillings payable by each such proprietor, and the Corporation shall cause them to be supplied with gas and lighted during the same hours as the public street lamps, and for each burner the proprietor or proprietors shall pay to the Corporation such sum not exceeding ten shillings per annum as the Corporation may from time to time direct, and the said sum shall be recoverable by the proprietor from the occupiers in proportion to their respective rents and be deemed to be a debt recoverable as and in the same way as rent.”

The Glasgow Gas Act 1910 (10 Edw. VII, and 1 Geo. V, cap. cxxxii) enacts—Section 30—“The gas supplied by the Corporation for illuminating purposes shall be such as to produce when consumed at the rate of five cubic feet of gas per hour in the burner prescribed as hereinafter in this Act provided a light equal to not less than fourteen sperm candles of six to the pound and each consuming one hundred and twenty grains per hour, and shall in all respects be in accordance with the provisions of the Gas Works Clauses Act 1871.”

The Gas (Standard of Calorific Power) Act 1916 (6 and 7 Geo. V, cap. 25) enacts—Section 1—“(1) Where by virtue of any Act or Order confirmed by Act of Parliament regulating the undertaking of any company, authority, or person authorised to supply gas in any area in the United Kingdom (hereinafter referred to as the undertakers), the gas supplied by the undertakers is required to be of a prescribed illuminating power, and the undertakers are liable to penalties in the case of the illuminating power of the gas provided by them being less than, or being less by a prescribed extent than, such prescribed illuminating power, then on application being made by the undertakers the appropriate Government department may if they think it expedient and subject to such conditions if any as they consider proper, including such variation as they may think desirable of the prescribed pressure at which the gas is to be supplied, by Order—(a) Substitute for the prescribed standard of illuminating power a prescribed standard of calorific power; (b) Exempt the undertakers from penalties in respect of a deficiency in illuminating power and substitute for the provisions imposing such penalties provisions imposing penalties in the case of deficiency in calorific power; and (c)

Substitute for the provisions as to testing for illuminating power provisions as to testing for calorific power, and on the making of such an Order the Act or Order regulating the undertaking shall have effect as amended by the Order."

The Defence of the Realm Regulations, Regulation 8 G, gives power to, *inter alia*, the Ministry of Munitions to require that the manufacture of gas shall be carried out in accordance with directions, regulations, or restrictions given or made by the Minister.

The Gas Works (Ministry of Munitions) Order 1918 under the above Regulation provides—"1. This Order shall apply to all gas works throughout the United Kingdom, excepting only gas works which possess coal gas plants only, and have no plant installed for scrubbing or washing their gas either with oil or with tar. 2. As on and from 1st July 1918, the manufacture and production of gas in all gas works to which this Order applies shall be carried out in accordance with the general regulations set out in the schedule hereto, save and except only if and so far as such general regulations may in the case of any particular gas works be varied or superseded by any special directions or regulations given or made from time to time with regard to such gas works by or under the authority of the Minister of Munitions. . . . THE SCHEDULE

—*General Regulations*—1. Gas works which have coal-gas plants only shall work such plants so as to produce gas of a calorific power of as nearly as possible 500 B. Th. U. gross, but not in any event less than that calorific value, before scrubbing as mentioned in regulation 3 below. 2. Gas works which have both coal gas and water gas plant shall work such plants so as to produce a gas of the calorific value specified in regulation 1 above. Gas of the required calorific value may be produced either by working the coal gas plant alone so as to produce a gas which (before scrubbing in the case of works having scrubbing facilities) is of the required calorific value, or by working the coal gas plant so as to produce gas of a higher calorific value, and subsequently mixing with the same such a quantity of uncarburetted water gas as, apart from any reduction in the calorific value of the coal gas produced by scrubbing, would produce a mixed gas of the required calorific value."

Mrs Ellen Boyle or Caldwell and others, the children of the deceased John Boyle, *pursuers*, brought an action against the Corporation of Glasgow, *defenders*, concluding for decree for £100 in favour of each of them for the death of their father.

The *pursuers averred, inter alia*—" (Cond. 2) For some time prior to his death the deceased John Boyle resided with his daughter the pursuer Mrs Caldwell in a house at 778 Garscube Road aforesaid. The said house is situated in a common stair and is on the first floor. On Sunday, 24th November 1918, Mrs Caldwell and her late father had tea together in said house and immediately thereafter Mrs Caldwell had occasion to proceed to a shop of which she is tenant situated on the ground floor at the

foot of said common stair. She accordingly left said house about 7:30 p.m., leaving her father alone in the house. About 8 p.m. Mr Boyle was descending said common stair leading from the house when he slipped on said stair and fell to the bottom, where he was discovered a little later in an unconscious condition. He was thereafter carried into Mrs Caldwell's shop, and there died about 11:15 p.m. on the same night without having recovered consciousness. (Ans. 2) Admitted that the said house is situated in a common stair and is on the first floor. Believed to be true that the said Mrs Caldwell resided in the said house, and that she is tenant of the above-mentioned shop. Believed to be true also that on the evening in question the said John Boyle was found at the bottom of the said stair in an unconscious condition, and that he died the same night. *Quoad ultra* not known and not admitted. Explained that the said John Boyle was at the date of his death 81 years of age and in a condition of general physical enfeeblement natural to his years. (Cond. 3) The said common stair is what is known as a brick newal scale stair and extends from the ground floor to three floors above with a landing at each floor and a half landing next the back wall of the building between each floor. The close and common stair is lit by four L cock brackets with rat-tail burners—one bracket in the close and one on each landing. The bracket in the close is placed on the side wall of the close about 4 feet from the start of the stair and the burner is enclosed in a lamp. The bracket on the first landing is placed on the wall of the landing facing a person ascending the stair and the burner is unprotected. On the evening in question the gas in said brackets was lit, but each burner only gave out a thin blue flame and was quite inadequate for the purpose of illuminating the close and stair. In particular, the light given by each of the burners on the first landing and in the close was wholly insufficient to enable anyone to see the close, the half landing, or the steps on the stair from the half landing to the ground floor, and instead of proving helpful to a person using said close, stair, and half landing, only rendered the darkness more impenetrable and deceptive. On the evening in question the said John Boyle was proceeding down the stair from the said house to the ground floor, and the pursuers believe and aver that he met with the fatal accident above described in consequence of the absence of sufficient gas illumination on said stair, half landing, and close. Had there been sufficient gas illumination on said stair, half landing, and close, the said fatal accident would not have happened. (Ans. 3) The averments regarding the description of the said common stair and the situation of the lighting appliances are admitted as being substantially accurate. Admitted also that the gas in the said brackets was lit. Not known and not admitted as to the movements and actions of the said John Boyle. *Quoad ultra* denied, and explained that if he found the stair in question insufficiently lighted on the occasion in

question and proceeded thereupon, he did so at his own risk. Further, it is believed and averred in answer that his fall was brought about through his lack of care in course of descending the stair, or alternatively through natural causes. (Cond. 4) For said fatal accident the defenders are responsible. Section 361 of the Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii) provides as follows, viz.— . . . *section quoted, v. supra* . . . On the night in question the said inspector of lighting (who is a servant of the Corporation for whom they are responsible), or the Corporation, was at fault in not having seen that the proprietor of said common stair had provided suitable gas pipes and brackets, lamps and burners, or one or other of them, in said close and common stair, or alternatively the Corporation was at fault in not having supplied said burners with a supply of gas sufficient to illuminate in a proper manner said close, half landing, and common stair. Moreover, prior to the date of said fatal accident the attention of the Corporation had been directed to the insufficiency of the lighting of said close and common stair on several occasions. In particular, on 19th November 1918, Mrs Philips, wife of Alexander Philips, 776 Garscube Road, Glasgow, and Mrs Maxwell, wife of George Maxwell, 768 Garscube Road, Glasgow, went to the head office of the Lighting Department of the Glasgow Corporation in John Street to complain about the state of the lighting in said close and common stair. They were directed to the Inquiry Office in Well Street, and from there were sent to the Lamplighting Department, 20 Trongate. At the last-mentioned place Mrs Philips complained to an official of the Corporation about the inadequacy of the lighting, and the official promised to attend to the matter and get it put right, but it was not put right prior to said accident. Further, one of the Corporation's lamplighters, Mrs Hosie, resides in a house in said common stair and was well aware of the insufficiency of the gas illumination in said close and stair. With reference to the explanations in answer, the Regulations and Order mentioned are referred to for their terms. *Quoad ultra* the said explanations are denied. (Ans. 4) Admitted that on or about 19th November 1918, a complaint was lodged with the defenders as to the lighting in the said close and stair. Believed to be true that the said Mrs Hosie, who is one of the defenders' lamplighters, resides in a house therein. Explained that in response to the said complaint action was taken by the defenders, with the result that a small local defect was removed. The quality and pressure of the gas supplied by the defenders under the statutes was regulated by Regulation 8 G of the Defence of the Realm Regulations and the Gas Works (Ministry of Munitions) Order 1918. The operation of these orders had the effect of diminishing the illuminating power of the said gas. *Quoad ultra* denied."

* The defenders *pleaded, inter alia*—"1. The averments of the pursuers being irre-

vant and insufficient in law to support the conclusions of the summons, the action should be dismissed."

On 12th November 1919 the Lord Ordinary (ORMIDALE) sustained the first plea-in-law for the defenders and dismissed the action.

The pursuers reclaimed, and argued—The pursuers' averments relevantly averred defective fittings and specified failure to remedy a defect notified to the pursuers. Defective quality in the gas supplied was also relevantly averred, *res ipsa loquitur* applied, and a general averment of poor quality without precise specification of the nature of the defect was enough—*Macfarlane v. Thompson*, 1884, 12 R. 232, per L.J.-C. Moncreiff, 22 S.L.R. 179. The reduction in illuminating standard of the gas and the adoption of a thermal standard, founded on by the defenders, was immaterial, for they did not aver that they could not have given better gas than they actually did, or that they gave gas of the full thermal efficiency but it was defective in illuminating power. Further, the duty upon the defenders under the Glasgow Police Act 1866 (29 and 30 Vict. cap. lxxiii), section 361, to provide suitable fittings, implied that the fittings must be suitable to the gas provided.

Argued for the defenders—The averments of the pursuers were irrelevant. The precise defects in the fittings provided must be and were not specified—*Gaunt v. McIntyre*, 1914 S.C. 43, 51 S.L.R. 30, where averments more specific than the present were held irrelevant. The averments as to quality of illumination were founded on the wrong statute. The Act of 1866 imposed no duty as to the quality of gas to be supplied. That was dealt with in the Glasgow Gas Act 1910 (10 Edw. VII, and 1 Geo. V, cap. cxxxi), sections 29 and 30. The standard of illumination provided by that Act had been replaced by a calorific standard in the Gas (Standard of Calorific Power) Act 1916 (6 and 7 Geo. V, cap. 25), section 1 (1), the Defence of the Realm Regulations, regulation 8 G, and the Gas Works Order 1918, made under that regulation. If the defenders complied with that standard and so performed their statutory duty, the illumination where the gas was not used to produce light from heat, as in the case of incandescent mantles, might still be defective. The pursuers' averments did not exclude such defective lighting as being the cause of the darkness of the stair, and if so, as there was no duty on the defenders to provide incandescent mantles and fittings, those averments did not instruct fault on the defenders' part.

LORD PRESIDENT—As the Lord Ordinary has not written an opinion in this case we do not know the precise ground on which the action was dismissed, but it seems fairly obvious from the debate to which we have just listened what his Lordship's grounds of judgment were.

It appears that the pursuers' father, an elderly man, slipped and fell on a common stair in a tenement in the City of Glasgow, and unfortunately death resulted from the

fall. The pursuers seek to make the Corporation of Glasgow liable on the ground, generally speaking, that the lighting of the stair was defective. The precise grounds of fault which are alleged are two and they are put alternatively. The first is that there were not suitable gas pipes and brackets, lamps and burners, and that as it was the statutory duty of the Corporation to see that there were suitable fittings they failed in that duty and accordingly are liable in damages. But, as has been observed more than once in the course of the debate, there is no allegation on record of the pipes, brackets, lamps, and burners being in any way defective or unsuitable for the purpose for which they were supplied, and accordingly that ground of fault fails on relevancy. It is not sufficient to say that they were unsuitable. There must be a specific averment of defect in these various fittings to render such an action as this relevant against the Corporation, who are said to have failed in their statutory duty of inspection.

The other ground of liability, which was the one mainly relied on by counsel for the pursuers, was that the Corporation were at fault in not having supplied these burners with gas sufficient to illuminate the close in question in a proper manner. In support of that allegation they set out the statutory duty of the Corporation under the Act of 1866 to supply gas to these common stairs, meaning thereby gas suitable, if the fittings were suitable, to light the stairs properly. But it appears that the pursuers here have founded upon the wrong statute. The Statute of 1866 sets up no standard of lighting. The Glasgow Gas Act of 1910 does, and it is not said that the specific standard of lighting which was set up by the thirtieth section of that statute was not supplied. There is no suggestion of a standard existing and a standard not complied with. At the time of the accident, in point of fact, the statutory provisions which the Act of 1910 imposed were superseded by an Order passed under the authority of the Defence of the Realm Regulations, which set up what is obviously a lower standard, namely, 500 British thermal units gross, or in certain circumstances 450 British thermal units gross. That was the standard of gas which the Corporation of Glasgow at the time of the accident were bound to supply for this common stair. Once more, it is not alleged by the pursuers that they failed there in the performance of their statutory duty.

Accordingly there is here no relevant averment of fault in respect of defective supply of gas. In other words, it is not averred that the standard of gas which was set up and prevailed at the time when the accident occurred was not maintained by the defenders. On these grounds I think that the pursuers have failed to make a relevant case here, and that we ought to adhere to the Lord Ordinary's interlocutor.

LORD MACKENZIE—I agree. It has appeared in the course of the discussion that at the time the accident happened the supply of gas by the Corporation of Glasgow

was governed by a somewhat elaborate set of provisions necessitated by the war. There is no averment on record that there was any breach on the part of the Corporation of these statutory obligations which governed the supply of gas at the time of the accident. Therefore there is no averment in the case so far as regards the insufficiency of the supply of gas. There is no averment that there was a failure to provide the necessary apparatus. There is no averment that there was a defect in the apparatus which was supplied. There is no averment that the accident was due to any temporary defect in the apparatus for which the Corporation was responsible. Accordingly I think the action is irrelevant.

LORD SKERRINGTON—The pursuers aver alternative grounds of fault against the defenders. According to the familiar rule it is fatal to their case if either alternative is bad. I think that each of the alternatives as stated in the condensation is irrelevant.

LORD CULLEN—I concur.

The Court adhered.

Counsel for the Pursuers (Reclaimers)—Maclaren. Agent—John Baird, Solicitor.

Counsel for the Defenders (Respondents)—The Solicitor-General (Morison, K.C.)—Crawford. Agents—Campbell & Smith, S.S.C.

Saturday, January 31.

FIRST DIVISION.

[Sheriff Court at Hamilton.]

SUMMERLEE IRON COMPANY, LIMITED v. DUFF.

Process—Appeal—Competency—Sheriff—Suspension Disposed of “in a Summary Manner”—*Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), sec. 28, and First Schedule, Rule 124, as Amended by the Sheriff Courts (Scotland) Act 1913 (2 and 3 Geo. V, cap. 28), sec. 2.*

A sheriff disposed of a suspension using the forms and procedure appropriate to summary causes. One of the parties appealed, although the Sheriff had not certified the cause as suitable for appeal. *Held* that as it was competent under rule 124 of the Sheriff Courts (Scotland) Act 1907 for a sheriff to dispose of a suspension “in a summary manner,” the appeal was incompetent in terms of section 28 (1) (a) of the Act of 1907, as amended by the Act of 1913, in respect that the cause had been tried as a summary cause.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), section 28, as amended by the Sheriff Courts (Scotland) Act 1913 (2 and 3 Geo. V, cap. 28), section 2, enacts—Section 28—“(1) Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment