amendment must be allowed, we might hear parties on the question of expenses before determining the conditions under which the amendment may be made.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court pronounced this interlocutor—

"Recal the interlocutor of the 2nd March 1898 and all subsequent interlocutors of the Lord Ordinary, including the interloutor of 23rd November 1898 reclaimed against: Allow the amendments proposed by the pursuer in the said minute, No. 60 of process, to be made on the condition of payment by the pursuer to defenders of two-thirds of the taxed amount of expenses of and incident to the proof, and of the whole expenses incurred by the defenders subsequent to the proof, and decern; and remit," &c.

Counsel for the Pursuer—Sol.-Gen. Dickson, Q.C.—M'Lennan. Agents—Dalgleish & Dobbie, W.S.

Counsel for the Defender—James Ross—Jameson, Q.C.—M'Clure. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Defender—William Ross—Jameson, Q.C.—M'Clure. Agents—Duncan Smith & M'Laren, S.S.C.

Tuesday, October 17.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

M'DONALD *v.* HOBBS & SAMUEL.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7, *sub-sec.* 1—*Ladder not "Scaffolding."*

Held (*diss.* Lord Young) that a ladder *per se* is not a "scaffolding" in terms of the Workmen's Compensation Act 1897, sec. 7, sub-sec. 1.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7, *sub-sec.* 1—*"Painting" not "Repairing."*

Opinion by Lord Young that painting the beams and joists of a building for the purpose of preserving them from decay is not "repairing" the building in the sense of the Workmen's Compensation Act 1897, sec. 7, sub-sec. 1.

Process—Stated Case—Remit to Sheriff to Amend—Workmen's Compensation Act 1897, *Second Schedule* (14) (*c*)—*Act of Sederunt, 3rd June* 1898, 9 (*g*).

The Court (*diss.* Lord Young) *refused*, on the motion of one of the parties, to remit a stated case under the Workmen's Compensation Act 1897 to the Sheriff to get other facts stated which raised a new question of law.

By section 7, sub-section 1, of the Workmen's Compensation Act 1897, it is enacted that the Act shall apply, *inter alia*, to employment "on, in, or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding,"

The following case was stated in terms of the Act by the Sheriff-Substitute at Glasgow (SPENS) in an appeal by James M'Donald, house painter, Glasgow, against the Sheriff-Substitute's decision in an arbitration under the Act between the appellant and Hobbs & Samuel, house painters, Glasgow:—"This is an arbitration under The Workmen's Compensation Act 1897, brought before the Sheriff of Lanarkshire at Glasgow, in which the Sheriff is asked to find that compensation is due to the appellant by the respondents, to ordain the respondents to pay to the appellant compensation at the rate of 15s. per week from and after the 25th day of February 1899, or such other sum less or more weekly as may be found to be due to the appellant in terms of the Workmen's Compensation Act, to continue said weekly payments until the further orders of Court, with the legal interest on each weekly payment from the time the same falls due till paid, and to find the respondents liable in expenses. These claims were made in respect of injuries alleged to have been sustained by the appellant on 21st November 1898, while in the employment of the respondents, in consequence of which he avers he has since been unable to work, and will never be able to resume his employment as a house painter.

"The case was heard before me of this date (June 2, 1899), when the following facts were admitted, viz.—(1) That on the 21st November 1898, the appellant, who is a journeyman house painter, and was then in the employment of the respondents, who are house painters, as such journeyman house painter was engaged painting iron beams or joists in the Dead Meat Market, Moore Street, Glasgow, which is a building over 30 feet in height. (2) That the said painting was done for the purpose of preserving said iron beams and joists from decay, and that the appellant when painting these beams necessarily used a ladder which had been provided by the respondents for the purpose for standing upon to reach said beams and do said work. (3) That while the appellant was so engaged the occupier of one of the stands for exhibiting carcases in said Dead Meat Market, and which stand was in close proximity to the said ladder, swung round the carcase of a bullock for the purpose of showing it to an intending purchaser. (4) That said carcase came violently in contact with said ladder, whereby the appellant was knocked off the same and fell to the ground. His skull was thereby fractured, and he sustained certain other serious injuries.

"I decided that said building was not being repaired by means of a 'scaffolding' within the meaning of the Act, and therefore I found it unnecessary to decide whether the building was being 'repaired,'

and I held that the accident was not one cognisable under the Workmen's Compensation Act, and dismissed the application.

"The question of law for the opinion of the Court is :—Whether the ladder used by the appellant at the time of the accident was 'a scaffolding' within the meaning of the Workmen's Compensation Act 1897?"

Argued for appellant—In construing the Act the word "scaffolding" was to be taken in a popular and not in a strictly technical sense. A scaffolding was an erection on which to stand, and this definition applied to a ladder. If it were held that a ladder was not a "scaffolding" within the meaning of the Act, it would put it within the power of employers to evade the plain intention of the Legislature by employing ladders of an abnormal length and in dangerous positions. The case of *Wood* v. *Walsh & Sons* [1899], 1 Q.B. 1009, appeared to be against his contention; but in the first place that was an English decision, and in the second place the force of the judgment as regards this point had been modified by the subsequent case of *Hoddinott* v. *Newton, Chambers & Co.* [1899], 1 Q.B. 1018, in which it was laid down by Collins, L.-J., who was one of the Judges in the case of *Wood*, that "the word 'scaffolding' must be interpreted by reference to the nature of the work for which the Legislature contemplated that it was to be used." In any event, the building here was in point of fact under repair by means of scaffolding. If such were the case, the accident fell under the Act even if the particular ladder on which the appellant was working was not held to be a "scaffolding," and if the painting at which he was engaged was held not to be "repairing" in terms of the Act. If the Court thought it necessary he would move that the case be sent back to the Sheriff to state whether the building was under repair by means of a scaffolding at the time of the accident.

Argued for respondents—The building was not at the time of the accident being "repaired by means of a scaffolding" in terms of the statute; that painting was not repairing, and that a ladder was not a scaffolding, had been authoritatively laid down in the case of *Wood, supra.* That decision was sound, and had in no sense been weakened by the judgment in *Hoddinott.* It was too late to seek to introduce new facts into the case.

LORD JUSTICE-CLERK — In this appeal there is a distinct question, and only one question, and I think we ought to answer it. It is, whether the ladder used by the appellant at the time of the accident was a scaffolding within the meaning of the Workmen's Compensation Act 1897. There was nothing extraordinary about the use of the ladder. It seems to have been used as a ladder always is used. We are told that it has been decided by the Court of Appeal in England that the use of a ladder in the ordinary way is not the use of scaffolding under the Act. Even if I had doubt on the point I should have bowed to the decision of these eminent Judges. But my own opinion is in accordance with that expressed by them. I think that a ladder used in an ordinary way is not a "scaffolding," and that if the Legislature had intended to include the use of a ladder under that term it would have said so. We must take the Act as it stands, and I hold that the ladder used by the appellant at the time of the accident was not a scaffolding within the meaning of the Workmen's Compensation Act.

LORD YOUNG—I doubt whether we are disposing of the case quite rightly in taking the view which your Lordship has expressed. I am quite of opinion that painting a beam is not "repairing," and even if it had been admitted that the ladder used in the painting was a "scaffolding," the case is not one that comes within the meaning of the Act. We are told, however, at the bar, that even although it be held that painting is not repairing, and that a ladder is not a scaffolding in the sense of the statute, yet the building was in fact in course of being repaired by means of a scaffolding. If that were so, it would be idle to decide that a ladder could not possibly be a scaffolding, although used for the purpose of erecting a building or of repairing it. It is admitted that if there were repairs going on by means of a scaffolding, anyone engaged on the work, whether on the building or on the ground, would be entitled to compensation for injury. That was a question which was not under the consideration of the Sheriff at all. I think that the case should go back to the Sheriff to have this point settled. It need not cause the slightest expense.

I should like to add that if the ladder had been used, not for the purpose of painting, but for the purpose of building or repairing, I should not have been disposed to hold that because a ladder was not usually termed a scaffolding, it did not come under that head in terms of the statute. It is the duty of the Court to ascertain the real sense and meaning of the provisions of a statute. I cannot impute it to the Legislature that the real sense and meaning of the statute was that if a building was undergoing repair by means of one or more ladders, and if an accident happened, the statute was to apply where the accident arose from the use of a scaffolding which is the safest structure which could be used, and was not to apply where a ladder was used which is more unsafe. To hold that would be imputing worse than nonsense to the Legislature.

While therefore concurring in the judgment to the effect that if nothing more is being done to the building than painting the statute does not apply, I think that the case should be remitted to the Sheriff with instructions to amend it by stating whether at the time of the accident the building was in fact being repaired by means of a scaffolding.

LORD TRAYNER—The question here put to us has already been decided in the Court of Appeal in England, the learned Judges having there determined that a ladder is

not "scaffolding" within the meaning of the Workmen's Compensation Act 1897. I agree in that decision, and that view being adopted disposes of the case before us. I do not say that ladders, with something added, may not form a scaffolding, for ladders may very well form a part of scaffolding. But a ladder *per se* is not scaffolding.

I am not disposed to send this case back to the Sheriff on the statement now made at the bar, for the first time, that the deceased was using something more than a ladder at the time when he received his injuries. That statement was not made to the Sheriff, and the inquiry which it would have involved has consequently not been made. I think this case should be determined on the facts as there stated.

LORD MONCREIFF — I agree with the majority of your Lordships that we ought to answer the question now, and not send the case back to the Sheriff for amendment on the lines indicated.

The question put to us is raised on facts which the parties asked to have stated, and I do not think that we should be justified (even if we had the power, which I think we have not) in remitting the case to get other facts stated, not to enable us the better to decide the question put, but in order to raise another question of law which has not been put to us.

I am not sure that it is necessary to decide that under no circumstances should a ladder be held to be a scaffolding in terms of the Act. I can conceive circumstances in which it might be possible so to hold. But in the present case, in the circumstances stated, I have no doubt that the ladder used by the appellant at the time of the accident was not a scaffolding within the meaning of the Act.

The Court answered the question in the negative.

Counsel for the Appellant—Shaw, Q.C.—Morton. Agents — Robertson, Dods, & Rhind, W.S.

Counsel for the Respondents — Watt. Agents—Cuthbert & Marchbank, S.S.C.

Tuesday, October 17.

SECOND DIVISION.

WOOD *v.* NORTH BRITISH RAILWAY COMPANY.

(*Ante*, February 14, 1899, 36 S.L.R. 407.)

Trespass—Railway—Brevi manu—Removal by Force of Cabman from Railway Station.

Where a cabman in a railway station has concluded the business which brought him there and refuses to leave, and persists in refusing to leave, he becomes a trespasser, and the railway servants are at common law entitled to remove him by force if necessary.

Remarks *per* Lord Trayner on the law of trespass in Scotland.

Process—Proof—Jury Trial—Direction to Jury—Discretion of Judge to Give Direction Asked.

Where a judge is asked to give a direction to the jury he is entitled to exercise his discretion, looking to the circumstances of the case before him, and is not bound to give the direction simply because as an abstract proposition it is correct in law.

This action of damages was tried before the Lord Justice-Clerk and a jury on 19th June 1899, and the jury returned a verdict for the defenders.

In the course of his charge to the jury the Lord Justice-Clerk directed them as follows, viz.—"That when a cabman in a railway station has concluded the business which brought him there and refuses to leave, and persists in refusing to leave, he becomes a trespasser, and the railway servants are, at common law, entitled to remove him by force if necessary." The pursuer's counsel excepted to the direction, and asked the Lord Justice-Clerk to give the following direction, viz.—"That the pursuer, if lawfully in the station premises with his cab, did not wilfully trespass within the meaning of the 16th section of the Railways Regulation Act 1840 by accepting an engagement from a passenger to drive the passenger and his luggage from the station." This direction his Lordship refused to give, whereupon counsel for the pursuer excepted, and a bill of exceptions was signed by the Lord Justice-Clerk.

Argued for pursuer:—*On First Exception*—The direction was erroneous in law. There was no authority entitling one man to use force to eject another from private property. [LORD TRAYNER—There appears to be a notion that there is no law of trespass in Scotland, and that if a man trespasses on private property he cannot be ejected by force under any circumstances. I think that is erroneous. It is absurd to contend that if a stranger enters one's dining-room and refuses to leave when requested he cannot be removed by force. Of course in such a case one is not entitled to use more force than is necessary, or one might make himself liable for damages for assault.] *On Second Exception*—The direction desired being sound in law the Judge had no right to refuse to give it. [LORD YOUNG—A judge at a jury trial is not bound to give every direction asked which is legally sound—he is entitled to use his discretion, looking to the circumstances of the case before him.]

Counsel for defenders was not called upon.

LORD YOUNG—I thought from the first, and I have heard nothing to affect the impression, that this bill of exceptions is quite unfounded. With reference to the second exception, I have already observed in the course of the discussion that where a learned Judge at a jury trial is asked to lay down a certain proposition in point of law, he has not merely to consider the soundness of it as an abstract proposition but also whether it is right and proper that such a