Counsel for the First Parties—Constable. Agents—J. L. Hill & Co., Solicitors.

Counsel for the Second Party—W. Campbell, K.C.—Sandeman. Agents—Thomson, Dickson, & Shaw, W.S.

Wednesday, February 26.

SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire.

DEMPSTER *v.* HUNTER & SONS.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 4—*Part of or Process in Trade or Business—Tailor's Workshop—"Ancillary or Incidental"—Window-Cleaning.*

A workman, who was a window-cleaner in the employment of a window-cleaning company, was sent by them to clean the windows of a tailor's workshop, which was admitted to be a factory within the meaning of the Workmen's Compensation Act 1897. While engaged in cleaning the windows he fell and was injured. He claimed compensation from the tailors as undertakers in the sense of the Act. *Held* that the work of window-cleaning in which the appellant was engaged at the time of the accident was not a part of or process in the trade or business carried on by the tailors in the factory, and that they were consequently not liable in compensation under section 4 of the Act.

Question—Whether window-cleaning could even be held to be ancillary or incidental to the business carried on in the factory.

This was a stated case on appeal from the Sheriff Court at Glasgow in an arbitration under the Workmen's Compensation Act 1897 between Hugh Dempster, 37 Lyon Street, Glasgow, claimant and appellant, and Hunter & Sons, tailors, 123 St Vincent Street, Glasgow

The following facts were stated by the Sheriff-Substitute (BOYD) to have been admitted, probation being renounced:—"(1) That the appellant is a window-cleaner and a workman in the employment of the Glasgow Window-Cleaning Company, and the respondents are tailors in Glasgow, having a workshop at 97 West Campbell Street there, which is a factory in terms of the Workmen's Compensation Act 1897; (2) That on 20th September 1901 the respondents ordered the Glasgow Window-Cleaning Company to clean the windows of their workshop, and the said company sent the appellant to do this work; (3) That while the appellant was standing on the outside sill of a window and holding by the top sash his cleaning cloth stuck on a nail at the side of the window; it required some little effort to free the cloth, and the jerk he gave it loosened his hold of the sash, and he fell and was injured."

On these facts the Sheriff-Substitute "found in law that the work in which the appellant was engaged at the time of the accident was not any part of or process in the work or business carried on by the respondents, but was merely ancillary or incidental thereto, and therefore assoilzied the respondents from the conclusions of the petition."

The question of law for the opinion of the Court was—"Whether the work of cleaning the respondents' windows, in which the appellant was engaged at the time he met with the accident, was a part of or process in the trade or business carried on by the respondents as undertakers of their factory, or whether it was merely ancillary or incidental to the said trade or business in terms of section 4 of the Act?"

Section 4 of the Workmen's Compensation Act 1897 will be found *ante*, p. 103.

Argued for the appellant — Window-cleaning was a necessary part of the work carried on by the undertakers. It was part of the process and was analogous to carting, which had been held to be part of the business of the undertakers in several cases. Light was necessary, and so the windows had to be kept in proper order—*Cooper & Company* v. *M'Govern*, November 14, 1901, 39 S.L.R. 102; *Greenhill* v. *Caledonian Railway Company*, March 13, 1900, 2 F. 736, 37 S.L.R. 524; *Bee* v. *Ovens & Sons*, January 25, 1900, 2 F. 439, 37 S.L.R. 328; *Burns* v. *North British Railway Company*, February 20, 1900, 2 F. 629, 37 S.L.R. 448. The cases of the *Dundee and Arbroath Joint-Railway Company* v. *Carlin*, May 31, 1901, 3 F. 843, 38 S.L.R. 635, and the case of *Wrigley* v. *Bagley & Wright* (1901), 1 K.B. 780, were illustrative of things incidental and ancillary to the business of the undertakers, and so outwith the section. In the present case the work in which the pursuer was engaged was part of the undertakers' business and not merely ancillary to it.

The respondents' counsel were not called upon.

LORD JUSTICE-CLERK—My only doubt in this case is as to whether the Sheriff-Substitute was right in holding that the work in which the appellant was engaged at the time of the accident was ancillary or incidental to the respondents' work or business. It seems to me that this is a case which falls absolutely outside the statute. In my opinion this is quite an extravagant claim. Apparently the same view would have been taken by Lord Moncreiff, for in his opinion in the *Dundee and Arbroath Railway* case he says—"If this claim were admitted I do not see how a claim by a glazier or gas-fitter called in to repair the signal-cabin could be excluded." I think there is no ground whatever for holding that the Act applies to the present case.

LORD ADAM—I am of the same opinion. I confess that my mind has great difficulty in accepting the proposition that window-cleaning is part of the process of tailoring. I should have had great doubt in holding

that it was even ancillary or incidental to it.

LORD STORMONTH DARLING concurred.

LORD TRAYNER and LORD MONCREIFF were absent.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the appellants on the stated case, Answer the first alternative of the question of law therein stated in the negative: Find and declare accordingly: Therefore affirm the dismissal of the claim by the arbitrator, and decern."

Counsel for the Appellant—A. M. Anderson—Hamilton. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondents—Campbell, K.C.—A. S. D. Thomson. Agent—J. Murray Lawson, S.S.C.

Wednesday, February 26.

FIRST DIVISION.

GORDON'S *CURATOR BONIS*, PETITIONER.

Judicial Factor—Curator Bonis—Heir of Entail under Curatory—Power to Grant Bonds of Annuity and Provision—Entail.

The *curator bonis* of an heir of entail in possession of an entailed estate, who was aged seventy-three and had been put under curatory two months after succeeding to the estate, presented a note in the curatory for power to grant bonds of annuity and provision in favour of his ward's wife and younger children. The two next heirs intimated that they desired the provisions to be granted. The Court upon a report by the Lord Ordinary *remitted* to him to *grant* the prayer of the note.

This was a note presented in a curatory by Kenneth Francis Gordon, *curator bonis* to Lewis Gordon, Esquire, of Abergeldie, in which the curator craved special power, *inter alia*, (1) "to grant over the entailed estate of Abergeldie a bond of annuity in favour of Mrs Isabella Lyall or Gordon, wife of the said Lewis Gordon, in the event of her surviving him, and a bond of provision in favour of Bertram Fuller Gordon, Lewis Malcolm Gordon, Emily Flaxman Gordon, Kenneth Francis Gordon, and William Maurice Gordon, the whole younger children of the said Lewis Gordon, each for the maximum amount which it is competent to grant under the deed of entail under which the estate of Abergeldie is held, or under the Act 5 Geo. IV., cap. 87, with all the clauses usual and necessary in bonds of annuity and provision by heirs of entail."

The note was duly intimated and served, and no answers were lodged.

The facts upon which the crave of the note was based sufficiently appear from the note annexed to his interlocutor by the Junior Lord Ordinary (PEARSON), who on 2nd January 1902 reported the note to the First Division of the Court.

Note.—"The ward, who is seventy-three years of age, succeeded to the entailed estate of Abergeldie on the death of his elder brother on 19th March 1901, and he was placed under curatory about two months later.

"The estate of Abergeldie at present yields a rental of £3500 a year under a lease which expires at Whitsunday 1903, and from that date a lease has been granted or is being arranged for at an increased rental of £4500. In addition a distillery on the estate is let at a rent of £600.

"Apart from Abergeldie the ward's estate is small, consisting of a house in Kent, a pension of £400 a year from a London bank, and moveable estate valued at less than £400.

"The ward has a wife and six children, and his *curator bonis* now desires special power to grant (1) a bond of annuity in favour of Mrs Gordon, and (2) a bond of provision in favour of the five younger children, each for the maximum amount competent under the deed of entail or under the Aberdeen Act.

"The Accountant reports that he is not aware of such powers ever having been granted to a *curator bonis*, and I was not referred to any case in which such an applicationn had been made.

"I was referred to the case of *Boyle*, 17 D. 790; *Blackwood*, 17 R. 1093; and *Bowers*, 19 R. 941, as affording some analogy to the present application. In the first case a *curator bonis* was authorised to pay small annuities to certain aged tenants on the ward's landed estate. It appeared, however, that but for the annuities the tenants would in all probability have to be supported by the parish in which the ward was almost the only heritor. In the case of *Blackwood* the curator, who had been in use to pay an annuity of £160 to each of the ward's two unmarried daughters, was authorised upon the marriage of one of the daughters to continue the annuity and to pay her a sum for marriage outfit. In *Bowers* the Court authorised a *curator bonis* to continue an annuity which the ward had been in use to pay to poor relations, but an increase in the amount was refused. In the present case it is said the ward is under a natural obligation to leave his wife and family provided for, and it is pointed out that the eldest son and heir-apparent and his immediate younger brother have written letters to say that they are desirous that the provisions should be granted, and offering to give such further consent as may be required.

"As the question is a novel one, and of considerable importance in practice, I have thought it right to report the case."

Argued for the *curator bonis*—It was a duty incumbent on an heir of entail in possession to provide for his wife and younger children after his decease, and that especially where he had no other means. That duty had been recognised