in painting a ship. The duty may therefore be held to be imposed generally on persons having the control of buildings or structures for human use. But these decisions are no authority for imposing on owners or occupiers of buildings liability for the personal negligence of lessees over whom they have no kind of superintendence or control. The principle relied on has no application to the present case. It is not said that this shooting-gallery was not in a perfectly safe condition. All that is said is that Binnie, the lessee, was negligent, and the defender is not answerable for his negligence.

The LORD PRESIDENT concurred.

The Court set aside the verdict and granted a new trial.

Counsel for the Pursuer—Watt, K.C.—Munro. Agents—Sim & Whyte, S.S.C.

Counsel for the Defender—M'Clure—T. B. Morison. Agents—P. Morison & Son, S.S.C.

Friday, June 17.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

SPITTAL *v.* THE CORPORATION OF GLASGOW.

Reparation—Public Authorities Protection Act 1893 (56 *and* 57 *Vict. c.* 61), *sec.* 1—*Public Authority Engaged in Commercial Enterprise under Statutory Authority*

Held that the protection given to public authorities by the Public Authorities Protection Act 1893 is given to them not only in the execution of strictly official duties but of duties arising in connection with commercial trades and enterprises (such as the running of electric cars), which they have been empowered to undertake by Act of Parliament.

Reparation—Public Authorities Protection Act 1893 (56 *and* 57 *Vict. c.* 61), *sec.* 1 (*a*)—*Limitation of Time for Bringing Action—Continuance of Injury or Damage.*

The Public Authorities Protection Act 1893, section 1, sub-section (a), enacts that an action against any person in respect of any alleged neglect or default in the execution of any Act of Parliament or any public duty or authority must be commenced within six months next after the act, neglect, or default complained of, "or in case of a continuance of injury or damage, within six months next after the ceasing thereof."

An action was raised against the Corporation of Glasgow, who were proprietors of the electric tramways throughout the city, in respect of an accident which had occurred more than six months previously by reason of the alleged fault of one of the car-drivers in their employment.

The pursuer alleged that for more than six months after the accident it was impossible to tell the effects of the injury which he received at the time of the accident, and that there was thus a continuance of the injury and damage within the meaning of the Act.

Held that the action was excluded by the Act, as the pursuer's averments did not disclose a case of continuing injury or damage within the meaning of the statute.

Expenses — Public Authorities Protection Act 1893 (*56 and 57 Vict. c.* 61), *sec.* 1 (*b*)—*Expenses Occasioned by Reclaiming-Note.*

Held that the Public Authorities Protection Act 1893, section 1, sub-section (*b*), by which in any action against a public authority a judgment obtained by the defenders carries expenses as between agent and client, applies to the expenses occasioned by a reclaiming-note.

Section 1 of the Public Authorities Protection Act 1893 enacts—"Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance or execution or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty, or authority, the following provisions shall have effect:—"(*a*) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage, within six months next after the ceasing thereof; (*b*) Whenever in any such action a judgment is obtained by the defendant it shall carry costs to be taxed as between solicitor and client."

On 5th September 1903 Robert Douglas Spittal, carting contractor, Glasgow, raised against the Corporation of the City of Glasgow an action for £7000 as damages for injuries caused to the pursuer by a collision of an electric car driven by a servant of the Corporation with a trap in which the pursuer was driving on 23rd November 1901. It was averred that the collision was caused by the fault of the driver of the car.

The defenders admitted that they were proprietors and had full control of the electric cars throughout Glasgow, and as such were liable for the fault of the driver of the electric car if proved, but they averred—"The action is in any case excluded by section 1 of the Public Authorities Protection Act 1893, in respect that the neglect or default complained of arose in the execution by the defenders of their powers and duties under the various statutes authorising them to construct and work a system of tramways in Glasgow, and that the action has not been commenced within six months next after such neglect or default. There has been no con-

tinuance of injury or damage within the meaning of the statute."

The statute under which the defenders had possession of the tramways was the Glasgow Street Tramways Act 1870 (33 and 34 Vict. cap. clxxv., sec. 82).

The defenders pleaded, *inter alia*—"(1) The action is barred by section 1 of the Public Authorities Protection Act 1893, and the defenders are entitled to expenses as between agent and client."

As regards the continuance of the injury or damage the pursuer averred—"There has been as regards the pursuer a continuance of injury or damage since the accident on 23rd November 1901 down to the present date. For more than six months after said date the pursuer's condition was such that it was impossible to tell the extent of the injuries he had received and the immediate effects thereof, or whether the accident would not result fatally within a few months. From the date of the accident until now there has been a continuance of injury and damage in the sense and meaning of the statute referred to by the defenders. The pursuer was more than once examined by the defenders' medical advisers both before and after the expiry of six months from date of the accident, the last examination being within six months of the raising of the action."

The pursuer pleaded, *inter alia*—"(3) The statute founded on by the defenders does not apply, in respect the defenders are not, as regards the running of the tramway cars, under the Act; *et separatim*, there is here a continuance of the injury or damage in the sense of the Act."

On 19th March 1904 the Lord Ordinary (KINCAIRNEY) found that the action was barred by the Public Authorities Protection Act 1893, and therefore dismissed it.

Note.—[*After a statement of the facts*]—"I am of opinion that the Act applies, and excludes this action.

"The pursuer maintained that the Act did not apply, because under the Glasgow Street Tramways Act 1870, by which the electric tramways in Glasgow were placed under the charge of the Corporation, the Corporation were entitled to exercise their powers in certain cases for a profit. I think they might do so, but that the powers and duties of the Corporation under the Act are mainly directed to the public benefit. But I think that a public authority incorporated for public purposes does not lose the protection of the Act merely because the powers of the authority may in specified cases be used for profit.

"That point seems to have been quite settled in England by the cases of *The Ydun*, [1899], Probate 236, and *Ambler* v. *The Corporation of Bradford* [1902], 2 Ch. 585, which was an action directed against the Corporation of Bradford acting under a Provisional Order for lighting the town, and is a case in point. These cases appear to me consistent with the Act, and I therefore disallow this answer to the defenders' plea.

"The pursuer further maintained that the Act did not apply because the time allowed by the Act had not elapsed; it was true that greatly more than six months had elapsed since the date of the collision, but the evil effects of the collision had continued, and so long as they did the time for raising the action could not be excluded. This point was raised in the case of *Markey* v. *The Tolworth Joint Hospital Board*, 1900, L.R., 2 Q.B. 454, and it was decided that the six months allowed for raising the action ran from the date when the injury was inflicted, and not from the time when the person injured had wholly or partially recovered. The same point was decided in *Carey* v. *The Metropolitan Burgh of Bermondsey*, 27th October 1903, 20 Times L.R. 2. I do not see that any other meaning can be put on the Act. On the whole, I am of opinion that the pursuer has not successfully met the defenders' plea founded on the Act, and that the action is excluded by the lapse of time since the collision."

The pursuer reclaimed, and argued—(1) The Act was only intended to protect public authorities when acting in an administrative capacity, as in *M'Fadzean* v. *Corporation of Glasgow*, January 20, 1903, 40 S.L.R. 339; it was not intended to protect them from the effects of injury done by those in their employment while engaged in carrying on private business or conducting private enterprises not supported by public rates, but for the purpose of earning profits, such as tramways — *Attorney-General* v. *Company of Proprietors of Margate Pier and Harbour* [1900], 1 Ch. 749; *Christie* v. *Corporation of Glasgow*, May 31, 1899, 36 S.L.R. 694, opinions of Lord President Robertson and Lord M'Laren, at p. 698. (2) The action had been raised within six months of the causing of the injury or damage. There had been here a continuance of the injury or damage in the sense of the statute.

Counsel for the defenders and respondents were not called on.

LORD JUSTICE-CLERK—I am of opinion that the judgment of the Lord Ordinary is right. If the Legislature thinks fit to permit corporations to take up and carry on for a profit a business that is usually undertaken by private individuals or companies, I think that such a business so authorised must be treated as a part of their public duties, and that in fulfilling these duties they are entitled to the protection afforded by the Public Authorities Protection Act 1893.

That Act provides that any action against public authorities for any act done in execution of an Act of Parliament or of any public duty or authority must be brought within six months after the act, neglect, or default complained of, or in the case of a continuance of the injury or damage, within six months after the ceasing thereof. It is maintained by the pursuer that this allows him to raise his action not within six months after the accident but within six months after the effects of the accident have been ascertained, and it is said that in many cases it is impossible to judge the effect of an accident within six months from its date. But I think that

the answer to that is that while in a case like the present the action must be raised within the six months, so that the public authority may have notice to enable them to inquire into the circumstances and to prepare their defence while the matter is fresh, yet if it can be shown that the person injured is not in a fit state to prosecute the action properly, I am quite satisfied that no judge would insist on the action going forward till the pursuer is in a sufficiently sound state of health.

LORD YOUNG concurred.

LORD TRAYNER — The reclaimer has stated two grounds on which he maintains that the interlocutor of the Lord Ordinary should be recalled. Both these grounds turn on the construction of the Public Authorities Protection Act 1893, and in my opinion the argument fails on both. On the first ground, viz., that the Act does not apply, I adopt the judgment of the President of the Probate Division in the case of "*The Ydun*," L.R. [1899] p. 236 (at p. 239.) On the second ground, which was to the effect that there was here a continuing injury or damage, and that the statutory six months only dated from the time when the full effects of the injury became certain and ascertained, I adopt the opinion of Lord Low in the case of *Christie* v. *Glasgow Corporation*, 36 S.L.R. 694.

LORD MONCREIFF was absent.

Counsel for the defenders and respondents moved for expenses as between agent and client, in terms of section 1 subsection (*b*).

Counsel for the pursuer and reclaimer objected to the expenses being taxed as between agent and client, on the ground that subsection (*b*) did not apply to appeals — *Feilden* v. *Mayor of Morley* [1900], A.C. 133.

LORD TRAYNER—I think the statute applies to the expenses incurred by the reclaiming-note.

LORD JUSTICE-CLERK and LORD YOUNG concurred.

The Court adhered, and found the defenders and respondents entitled to additional expenses as between agent and client from the date of the reclaiming-note.

Counsel for the Pursuer and Reclaimer — Clyde, K.C. — Hunter. Agents — Webster, Will, & Company, S.S.C.

Counsel for the Defenders and Respondents—Kincaid Mackenzie, K.C.—Constable. Agents—Simpson & Marwick, W.S.

Friday, June 17.

FIRST DIVISION.

[Sheriff-Substitute at Hamilton.

TURNERS LIMITED *v.* WHITEFIELD.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7 (2)—*Dependants—Wholly or in Part Dependent—Husband Living Apart from and Not Supporting Wife.*

In an arbitration under the Workmen's Compensation Act 1897, in which the widow of a workman claimed compensation from his employers on account of the death of her husband while in the course of his employment, it was proved that the spouses had separated by mutual consent six months after their marriage in October 1897, and thereafter, till the husband's death in September 1903, had only had three meetings —all quite casual—on each of which occasions the husband had given the wife five shillings; that otherwise the husband had not contributed to the maintenance of his wife, who had lived with some of her illegitimate children, and had supported herself by keeping house for one of them and doing occasional washing; that at the date of the husband's death the wife was physically unfit to do anything for her own support, and was being maintained in the illegitimate child's house.

Held that the claimant at the date of her husband's death was not wholly or in part dependent upon his earnings within the meaning of the Workmen's Compensation Act 1897, section 7 (2).

This was an appeal upon a stated case from the Sheriff Court of Lanarkshire at Hamilton in an arbitration under the Workmen's Compensation Act 1897 between Turners Limited, coalmasters, Stane Colliery, Shotts, Lanarkshire, appellants, and Mrs Isabella Gillies or Whitefield, widow, residing at 744 London Road, Glasgow, claimant and respondent.

Whitefield claimed from the appellants £300 as compensation in respect of the death of her husband George Whitefield.

The facts which the Sheriff-Substitute (THOMSON) found proved or admitted were as follows—"(1) That the applicant is the widow of the deceased George Whitefield, to whom she was married on 4th October 1889; (2) that about six months after the marriage the spouses separated of mutual consent, and have never since cohabited, the deceased having lived with his four children by a former marriage (who are all married, and were not dependent to any extent on the deceased at the time of his death), and the respondent with some of her illegitimate children (of whom she has six to two different men, all born prior to her marriage with the deceased); (3) that since their separation the spouses had only three meetings—all quite casual—and on each of these occasions the deceased gave the respondent five shillings, and beyond