ment assessment." Now, the subject-matter of this clause is that where an owner is ordered to perform any work in reference to his premises, and fails to do it, and the Commissioner is obliged to do it for him, the Commissioner shall be entitled to charge the expense thereof against the individual occupier of the premises, and not a word is here said of any apportionment among other individuals. Such is the private improvement assessment, to which alone the notices under the 397th section apply; and I think, on plain construction of this 103d section, that it is quite impossible to bring any of the operations here complained of under it, and the 397th section is therefore of course inapplicable, and that being so, it is unnecessary to consider whether it was necessary to give notice under the 394th section. I think the Commisssioners acted wisely and well in giving such notices, but I do not feel myself called upon to decide as to their necessity.

Lord BENHOLME concurred generally. He could not congratulate the framers of the Act on their talents for clearness of definition. These appeared to consist principally of negatives. What was a public street was got at by proving that it was not a private street; while a private street was itself defined by two negatives. There were two kinds of notices required by the statute applicable to two different kinds of operators—the one under the 394th, and the other the 397th clause. He thought the terms of the former clause were broad enough to embrace a private street, though doubtless this required some violence of construction. He should be very sorry to have been obliged to come to a different conclusion, because, in that case, no notice whatever would be required for operations such as the present. He could not for a moment imagine that such was the intention of the framers of the Act.

Lords COWAN and NEAVES concurred, and judgment was accordingly given in favour of the respondents.

Agents for Complainer—Campbell & Lamond, W.S.

Agent for Respondents—P. S. Beveridge, S.S.C.

Saturday, June 23.

BRAIDWOODS *v.* BONNINGTON SUGAR REFINING CO. (LIMITED) AND OTHERS.

Reparation—Principal and Agent—Relevancy—Conjunct and Several Liability. Held (1) that a company who employed qualified persons to construct a building for them was not liable to repair damage caused by reason of its insufficient construction; (2) that it made no difference that the proprietors were represented at the building by an inspector, because he was there to look after the interests of the proprietors, and not to discharge for them any duty to others; and (3) that the action might proceed against one defender after being found irrelevant against another, although the conclusion was against both "conjunctly and severally." Issue adjusted.

This was an action at the instance of the widow and children of the late John Braidwood, engineer, who was killed by the fall of a sugar refinery, in or near Bonnington, on 27th February 1865, for damages for the loss thereby sustained by them. The defenders were the Bonnington Sugar Refining Company (Limited) and Blake, Barclay, & Company, engineers, Greenock, and the pursuers alleged that the building fell in consequence of its imperfect construction, which was attributable to the fault of the defenders.

The pursuers proposed the following issue which was reported by Lord Barcaple :—

"It being admitted that the pursuers are respectively the widow and children of the said John Braidwood :

"Whether, on or about the 27th day of February 1865, the said John Braidwood was killed by the fall of a sugar refinery in or near Bonnington, in consequence of the imperfect construction thereof, through the fault of the defenders, to the loss, injury, and damage of the pursuers?"

Damages £1200 sterling.

When the case was moved in the Inner House, it appeared that the record had been made up and closed without a *curator ad litem* having been appointed to the children. A curator was therefore appointed.

CLARK and GUTHRIE SMITH for the defenders, the Bonnington Sugar Refining Company, argued that there was no relevant case stated for the widow against them. They had employed persons who were not said to be incompetent, and if the construction of the building was insufficient, that was a thing for which they as proprietors of it were not in law responsible.

THOMS (with him SOLICITOR-GENERAL) for the other defenders, argued that as both defenders were concluded against *conjunctly* and *severally*, the action could not proceed against one if it was found irrelevant as against the other.

F. W. CLARK for the pursuers was heard in reply.

The LORD JUSTICE-CLERK—The question we have now to consider is entirely betwixt the leading pursuer, the widow, and the two sets of defenders. In a question betwixt her and the Sugar Refining Company I am very clear that there is no relevant case; and I shall explain why I think that the action should be dismissed as at her instance against these defenders. The way in which the averments are made on record is not satisfactory, and we are compelled to take what seems to be their fair meaning. I take the second article of the condescendence to amount to this—that this company is composed of a body of gentlemen associated for the purpose of conducting the business of sugar refining; and that, being registered, it is substantially a corporation or *quasi* corporation. Now, this company employs the other defenders to prepare plans and specifications for the erection of a large building to be used as a sugar refinery. It also authorises them to enter into contracts with tradesmen for the erection of the building, and to engage an engineer for the purpose of superintending the fitting up of the steam machinery. The person so engaged was the deceased John Braidwood. Then the articles of the condescendence which immediately follow have regard to the actings of the defenders, Barclay, Blake, & Co., under the authority committed to them by the other defenders. It is unnecessary to go over them in detail. But the 8th article alleges that "the foundations of said building were insecure, weak, or insufficient to sustain the heavy superstructure which was reared upon them. These foundations were stone piers, each surmounted by a block of stone, on which blocks the said iron columns were rested or sunk. Several, or at all events one, of the said blocks of stone failed or broke shortly

before the said fall. The said blocks of stone, or at least those which failed, were soft or defective in quality, and quite unsuited, from their size, quality, and the manner in which they were cut and built in, for sustaining their superincumbent weight." Then in article 9 it is averred that the Refining Company, "by themselves or through their inspector of works, or others for whom they are responsible, failed properly to examine the quality of the material used in, and to superintend the character of the workmanship at, said building." The inspector of works is said in article 2 to have been appointed by them "to watch and superintend for them, and in their interest and on their behalf, the erection of said buildings." It is upon these averments that the pursuer seeks to make this company answerable for what happened: and it appears to me that upon principles of law clearly settled in this country no such liability arises. The defenders employed persons of proper character, engineers not said to be unqualified, and they entered into contracts with tradesmen for the execution of this work. On the authority of the case of M'Lean *v.* Russell, M'Nee & Co. and Others (12 D. 887), I have no difficulty in holding that persons in that position are not liable for such an occurrence as here happened. But then it is said they did not so far separate themselves from those whom they employed—that they had an inspector looking after their interests. That makes no difference. The inspector failed in no duty which he was bound as the defenders' representative to discharge to the deceased. He was not there to attend to the interests of the deceased, or to any duty of the defenders to the deceased. The company was not bound to have an inspector there, and it did not send him there to protect his interests. Anything he failed to do he was answerable for to the company, and to no one else. He might be liable personally, no doubt, for his own delinquency, but he could not bind the company. As regards Barclay, Blake, & Co., they were unquestionably charged with the control of this work. It does not exactly appear what was the nature of the contracts they made. We have not that at present; but, in the meantime, we have it alleged against them that the fault was theirs, and that the insufficient construction which caused the fall of the building went on under their eyes. I think, therefore, there is a relevant case stated against them.

The other Judges concurred; and the action as at the instance of the widow against the Refining Company, was therefore dismissed as irrelevant. The curator *ad litem* for the children was allowed time to consider whether, after the judgment now pronounced, he could amend the record so as to make a relevant case against the company.

The following issue was afterwards adjusted to try the question with the other defenders:—

"It being admitted that the pursuers are respectively the widow and children of the said John Braidwood; and it also being admitted that the said John Braidwood was killed by the fall of a sugar refinery at Bonnington on the 27th February 1865:

"Whether the defenders undertook to furnish the plans and specifications for the said building and to superintend the erection thereof; and whether the fall of the said building was caused by the insufficiency of the foundations, arising from a defect in the plans and specifications; or from the failure of the defenders duly to superintend the execution of the work—to the loss, injury, and damage of the pursuer?"

Damages laid at £1200 sterling.

Agent for Pursuers—David Forsyth, S.S.C.

Agents for Refining Company—Murdoch, Boyd, & Henderson, W.S.

Agents for Barclay, Blake, & Co.—Lindsay & Paterson, W.S.

Tuesday, June 26.

EVANS, ARNOTT, AND CO. *v.* DRYSDALE'S TRUSTEES.

Process—Trial before Lord Ordinary without Jury—Verdict—Reclaiming-Note—Competency. A reclaiming-note against a verdict of a Lord Ordinary refused as incompetent in respect none of its findings involved law. Opinions that when law is thought to be involved in a verdict, and is to be called in question, it should be brought under the notice of the Lord Ordinary in the note for re-hearing, and (diss. Lord Benholme) verdict should not be accompanied by a note.

Mrs Drysdale, widow of the deceased Alexander Drysdale, tailor and clothier in Sauchie, who died there on 8th September 1863, continued to carry on the business after her husband's decease, and became indebted to the pursuers, woollen manufacturers in Leeds. This action was raised against her husband's trustees, on the ground that through the widow they carried on the business for which the debts were contracted.

By the trust-deed in question, the trustees were directed to pay the free yearly income thereof to the widow for the maintenance of herself and the children, and on the widow's death, if the children were then major, or if not, as soon as all the children should attain majority, the heritable properties were to be conveyed to them in certain proportions, and the personal estate distributed as specified. As to the stock-in-trade and business of the deceased, it was provided thus:—"Thirdly, My trustees shall have power, if they think it expedient to do so, to allow my widow to carry on my business of tailor and clothier and general dealer at Sauchie; and for that purpose to leave in her hands the whole stock-in-trade, outstanding debts, and other assets belonging to the business, with power to her to intromit therewith in the fullest manner; but my trustees shall have it in their power, at any time they may judge proper, to call upon my said widow to account for and pay over to them the value of the said stock-in-trade, debts, and assets, as the same stood at the time of my death; and to this extent my widow, should she be allowed to carry on the said business, shall be accounted debtor to the trust-estate; but my trustees shall not be obliged to compel her to pay the same, unless they shall consider it expedient to do so, in which matter I give them full discretionary powers."

The widow having applied to the trustees in terms of the foregoing clause to be allowed to carry on the business, the trustees executed a factory and commission, whereby they empowered and allowed her to carry on the business, and for that purpose left in her hands the whole stock-in-trade and other assets; authorised her to uplift the outstanding debts, and in their room and name empowered her to lift the rents of the heritable properties belonging to the trust.

The case was tried before Lord Kinloch with-