

LORD M'LAREN—I concur with your Lordships. It is necessary carefully to distinguish between the statutory powers conferred upon the Court under the Endowments Commission and the powers of the Court under its ordinary jurisdiction. I only know of two cases for the exercise by the Court of its common law powers. One is where the founder of a charity or other endowment only expresses his purpose in general terms, and where it is thus necessary to have a scheme for its administration. The other is where the object of a charitable trust has failed; where this has happened the Court has on rare occasions sanctioned the application of the funds to objects nearly resembling those selected by the trustor. In the latter case I doubt if a petition is the appropriate mode of invoking the jurisdiction of the Court. I rather think some declaratory process would be necessary.

The present case does not, however, fall under either of these categories. What is proposed is not merely an administrative variation. It is proposed to admit women to the benefit of an endowment expressly given to men, and given by a member of a profession not very friendly to the admission of women within its ranks. Nor can it be said that the admission of women is necessary for administration, because the only result of refusing the application would be to accumulate the funds and add to the capital until a candidate comes forward falling within the class benefited by the trust as it stands. That would not be in any way inconsistent with the testator's object. For these reasons I think the application should be refused.

LORD KINNEAR—I agree. I think we should be straining the powers of the Court in the administration of charitable bequests unreasonably if we were to comply with the petitioners' demand, because what we are asked to do is to extend the benefit of a recent bequest to persons who are not the object of the testator's bounty. I also agree with the view indicated by Lord M'Laren, that if this application were presented on the footing that this bequest had become practically unworkable owing to a change in the circumstances that would raise an entirely different question. I do not say that we should have solved it in the manner proposed in this petition, but the question would have been entirely different. But nothing of that kind is said. Even if we assume that candidates do not come forward on every occasion on which this bursary is vacant, it does not follow that the testator's bequest is not being worked in the most suitable and convenient way. It is the case with many bursaries that from time to time suitable candidates fail to present themselves; but the remedy is that the funds are administered in the meantime by the University in accordance with statutory regulations for the purpose intended by the founder of the bursary. The ground averred here is not even that candidates do not come forward; all that is said is that the trustees

experience difficulty in getting male candidates for the bursary, and as the medical degree is now open to women it is expedient that the bursary should also be open to them. I cannot read that as an averment that the trustees find it impossible to carry out the testator's wishes as expressed in his settlement. It is simply the expression of their opinion on a general question that since medical degrees are now open to women medical bursaries ought to be open to them also, although they may have been intended by the founder for young men only. That may or may not be reasonable, but it is not a ground on which we interfere with a testator's directions. I therefore agree with your Lordships that the petition should be dismissed.

The Court refused the prayer of the petition.

Counsel for the Petitioners—M'Lennan.
Agents—Cumming & Duff, S.S.C.

Wednesday, July 15.

SECOND DIVISION.

[Sheriff Court of Lanarkshire,
at Glasgow.]

M'CULLOCH v. CLYDE NAVIGATION TRUSTEES.

*Reparation—Negligence—Duty to Public—
Injury Sustained through Roof Falling
on Outbreak of Fire—Accident Alleged
to be Due to Faulty Construction Known to
Defenders—Relevancy.—Specification.*

A dock labourer was injured through the roof of a shed in which he was employed falling in consequence of an outbreak of fire. He raised an action of damages for personal injury against the owners of the shed, in which he averred that the shed extended for several hundred yards, that the fire broke out in the shed "at a considerable distance from where he was working;" that immediately thereafter the roof of the shed collapsed for several hundred yards; "that the cause of the said accident was that the said shed was improperly constructed and unsafe, in respect that the roof, which was constructed in one connected length for several hundred yards, had no support for a distance of several hundred yards beyond the lateral support of" a brick wall on one side with numerous openings in it, and iron pillars at intervals of 32 feet on the other side, without any cross walls or central pillars "such as were necessary to render the erection stable and secure," and that consequently it was unable to stand a fire in one part without the whole roof of the shed falling. He further averred "that the defenders were well aware of the defective construction of the shed, and had previously had their attention

drawn to the defective condition of their shed and to its flimsy character, and to the fact that if a fire broke out it was dangerous owing to its construction." Held that the pursuer's averments were irrelevant.

An action of damages for personal injury was raised in the Sheriff Court at Glasgow by James M'Culloch, stevedore's labourer, 53 Piccadilly Street, Glasgow, against the Trustees of the Clyde Navigation.

The pursuer averred that on 18th November 1902 he was employed in one of the defender's sheds in connection with the loading of a ship at one of their quays. "(Cond. 2)

. . . Said shed is composed of a wall of bricks on the side facing the street, with numerous openings or 'blinds' in same for the passage of traffic from the street into the shed, and on the side next the quay there are a number of iron pillars at intervals of 32 feet, which support the roof. The shed in question extends for several hundred yards without any cross walls or partitions of any kind. On said date a fire sprang out at one part of the shed at a considerable distance from where the pursuer was working . . . Immediately thereafter the roof of the shed collapsed for several hundred yards distance, and the pursuer was knocked down and sustained very severe . . . injuries to his head through the said collapse of the roof of the shed . . . (Cond. 3) The pursuer believes and avers that the cause of the said accident was that the said shed was improperly constructed and unsafe, in respect that the roof, which was constructed in one connected length for several hundred yards, had no support for a distance of several hundred yards beyond the lateral support of the brick wall on the street side and the pillars on the quay side, and in particular had no cross walls or central pillars, or other cross stays or supports such as were necessary to render the erection stable and secure, and consequently unable to stand the fire in one part without the whole roof of the shed falling. This could have been remedied by the erection of bulkheads, or cross partitions, or dividing walls, which would at once have given sufficient support to the roof of the shed, and would also have prevented the fire spreading too readily, and would at the same time have served all purposes of through traffic as well as the present sheds had openings or 'blinds' for traffic been made in same, the falling of the roof being only prevented spreading further by the only bulkhead in a space of 300 yards or thereabout. . . . Had there been division walls or bulkheads at short intervals the roof could not have collapsed beyond the scene of the fire, and in particular could not possibly have collapsed at the place where pursuer was working. (Cond. 4) The pursuer believes and avers that the defenders were well aware of the defective construction of the shed, and had previously had their attention drawn to the defective condition of their shed and to its flimsy character, and to the fact that if a fire broke out it was dangerous owing to its construction; and the pursuer believes

and avers that this accident was entirely caused through the defenders' negligence in failing to take steps to remedy the dangerous and unsafe condition of said shed."

The pursuer pleaded—"The pursuer having been injured through the negligence of the defenders or their servants, is entitled to reparation from them, with expenses, as craved."

The defenders pleaded—" (1) The pursuer's statements are irrelevant, and insufficient to support his plea-in-law."

On 12th March 1903 the Sheriff-Substitute (STRACHAN) allowed a proof before answer.

The pursuer appealed for jury trial.

At the calling of the cause counsel for the defenders maintained that no relevant case was set forth upon record.

The appellant maintained that the case was relevant, and should be sent to a jury.

LORD JUSTICE-CLERK—This is a case of great novelty. The pursuer's contention is that a shed, which is not alleged to have been unfit for its purpose, must be held to have been badly constructed because when a fire took place at one part of it the roof at another part of it, "at a considerable distance" from the fire, fell down. Now, can it be maintained that anyone building a shed is bound to provide against the possibility of such an occurrence as that? I think not. It is not suggested that there was anything unusual in the construction of this shed, and I think it would be a very strong thing to hold that the pursuer's allegations entitled him to a proof in a question with those parties who have had sheds of the same kind upon their docks for years.

On the whole matter I am of opinion that the pursuer's averments are irrelevant, and that the action should be dismissed.

LORD TRAYNER—I am of the same opinion. The shed in question is not said to be different in construction from any other shed of the same kind in the harbour of Glasgow, and, but for the fire which destroyed it, it would have sufficiently and with safety to all concerned have served the purposes for which it was constructed. It is not a fault on the part of the defenders that the shed was not built so as to resist the effects of fire. If the shed had fallen during a gale the defenders would not in my opinion have been liable for damages caused by such *vis major*, and I think the damage caused by fire is in the same position.

The pursuer tries to make his case relevant by averring that the defenders had been informed of the dangerous nature of the construction of the shed. But that statement is much too vague to be admitted to probation. It is not stated when or by whom the defenders were informed.

LORD MONCREIFF—I am of the same opinion. It is not said that this shed was constructed in an unusual way, nor that it was unfit for its purpose in ordinary circumstances. The question comes to be,

whether the defenders were bound to provide for the unseen results of fire. I do not think that they were. It is said in condescendence 4 that the defective condition of the shed had been brought to the defenders' notice before the fire occurred. That seems to me rather an unlikely thing to have happened. It is not said that it had ever caught fire before, and it does not seem probable that the defenders should be called upon to remedy its construction in order to provide for the occurrence of an unlikely event. Even if they were, I do not think they were called upon to pay attention to such warnings, and I agree with the observations of Lord Trayner as to the pursuers' obligation to state when and by whom such warnings were given.

On the whole matter I think the pursuer has stated no relevant case.

LORD YOUNG was absent.

The Court dismissed the action.

Counsel for the Pursuer and Appellant—Campbell, K.C.—Younger. Agents—Oliphant & Murray, W.S.

Counsel for the Defenders and Respondents—Guy. Agents—Webster, Will, & Co., S.S.C.

Wednesday, July 15.

SECOND DIVISION.

[Sheriff-Substitute at Perth.]

HUSBAND v. P. & P. CAMPBELL.

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), Workman Recovered from Injury—Loss of Finger—Right of Workman to Nominal Award to Preserve Claim in the Event of Supervening Incapacity.

A workman, a boy of seventeen, who was temporarily incapacitated by the loss of the third finger of his left hand in consequence of an injury sustained in his employers' factory, for a number of weeks received from his employers 8s. a-week, being the full sum which he would have earned had he been working. The employers having offered to receive the workman back, and the workman having promised to return, but not having done so, the employers ceased the payments. The workman then took work from a new employer, and thereafter claimed compensation under the Workmen's Compensation Act in respect of the loss of his finger, and instituted arbitration proceedings, in which he admitted that he was then able to do all his old work, and in which the Sheriff found that he could have done so and earned 8s. a-week before he entered his new employment; the Sheriff accordingly assoilized the respondents. In a case for appeal at the

instance of the workman, he maintained that he was entitled to such a declaration of the liability of his former employers as would preserve his rights in the event of supervening incapacity. The Court dismissed the appeal.

This was a case stated by the Sheriff-Substitute at Perth (SYM), in an arbitration under the Workmen's Compensation Act 1897 between Alexander Husband junior, New Row, Perth, claimant and appellant, and P. & P. Campbell, dyers, Perth, respondents.

The case stated, *inter alia*, as follows:—
“The applicant for compensation is a lad of seventeen years of age; for some time prior to July 31st 1902 he was employed in the works of Messrs P. & P. Campbell, dyers, Perth, the respondents, at boy's unskilled labour in assisting a dyer. The Workmen's Compensation Act 1897 applies to the employment in these dye works. The work in which the applicant was engaged was that of lifting parcels of goods about fourteen pounds weight and carrying them a short distance to the dyer for whom he worked; his wages were 8s. a-week. The applicant would not have risen above a labourer's position if kept on in the works. On the said 21st July the applicant was injured in the works by having his hand caught in a starching-machine, and in consequence the finger next the little finger of his left hand was severely crushed and torn, and had to be amputated. For the purposes of the arbitration the respondents admitted that the injury was one for which they are made liable in compensation under the Workmen's Compensation Act. For each week up to the week in which 13th October fell the respondents paid the applicant his full wages of 8s. per week which he would have earned had he been working. The respondents were willing to receive him back into their employment whenever he could return at safe work at the same wages of eight shillings. At 13th October they stopped the payments above referred to only after they had received his repeated promise to come back to work. The offer to receive him back was made in *bona fide*, because the respondents were aware that the applicant was playing about the streets. Eventually the applicant declined to return to the respondents' work, and in the beginning of November 1902 he took employment as message boy with a grocer at 6s. per week, which sum has since March 1903 been raised to seven shillings. Before that he had made no attempt to do work or to get work. This employment with a grocer does or may at any time require him to grasp or lift weights as heavy as or heavier than the bundles of goods which he had to lift in the respondents' works. The applicant's prospects and earning capacity appear, for aught proved, to be as good in the grocer's trade as in the trade of a dyer's labourer, to which he declines to return. He is now quite well though thinner than before the injury. Had he been kept on in the respondents' works and become a