Thursday, March 16.

FIRST DIVISION.

[Sheriff-Substitute of Aberdeen, Kincardine, and Banff.

THE ABERDEEN STEAM TRAWLING AND FISHING COMPANY, LIMITED *v.* PETERS.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7 (1) (2)—*Factory and Workshop Act* 1895 (58 *and* 59 *Vict. cap.* 37), *sec.* 23 (*a*)—*Factory.*

Machinery on board ship, though used in dock for loading or unloading, is not a factory within the meaning of the Factory and Workshop Act 1895, and so not within the meaning of the Workmen's Compensation Act 1897; and employment on such machinery is not an employment to which the latter Act applies.

On 27th September 1898 William Peters, a fireman in the employment of the Aberdeen Steam Trawling and Fishing Company, was engaged in working a steam-winch on board the company's trawler "Strathavon" in the operation of unloading in the harbour of Aberdeen. While Peters was so engaged his foot was caught in the machinery of the winch, and he was fatally injured.

These facts were admitted in an arbitration at the instance of the widow and pupil son of Peters under the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), before the Sheriff-Substitute at Aberdeen (BURNET), who pronounced an interlocutor on 25th January 1899 granting decree for the amount of compensation claimed, which contained the following findings in law:—"(1) That the pursuer and the said George Noble Peters are dependants of the said William Peters within the meaning of the Workmen's Compensation Act 1897; (2) that the work in which the said William Peters was engaged at the time of his death is an employment to which the said Act applies; and (3) that the personal injuries caused to the said William Peters, from which his death resulted as aforesaid, arose out of and in the course of his said employment: Therefore finds that the defenders are liable to pay compensation to the pursuer in accordance with the first schedule to the said Act."

Note.—"It was admitted for the parties, and the debate proceeded upon the footing, that the only question in dispute between them was, whether the employment in course of which the deceased William Peters received the injuries which resulted in his death was one to which the Workmen's Compensation Act 1897 applies.

"He was employed by the defenders on board a trawler belonging to them, as fireman and worker of a steam-winch which was fixed on the vessel. The winch is used for the double purpose of raising the trawl when the ship is at sea and landing the cargo when she is in port.

"At the time of the accident the vessel was in the harbour of Aberdeen, the winch was being used in the process of unloading the cargo on to the quay at which she was lying, and the deceased was actually working it when he was injured.

"The Workmen's Compensation Act 1897 is declared, section 7 (1), to apply 'only to employment by the undertakers as hereinafter defined on or in or about a . . . factory.' . . . The word 'factory' is declared, section 7 (2), to have the same meaning as in the Factory and Workshops Acts 1878 to 1891, and to include also 'any dock, wharf, quay, warehouse, machinery or plant, to which any provision of the Factory Acts is applied by the Factory and Workshops Act 1895;' and the same section 7 (2) of the Act further declares that the word 'undertakers' means in the case of a factory 'the occupier thereof within the meaning of the Factory and Workshops Acts 1878 to 1895.'

"By the Factory and Workshops Act 1895 it is declared (section 23) that certain specified provisions of the Factory Acts 1878 to 1891, 'shall have effect as if (*a*) every dock, wharf, quay, and warehouse, and so far as relates to the process of loading or unloading, therefrom or thereto, all machinery and plant used in that process . . . were included in the word factory,' . . . and further, that 'for the purpose of the enforcement of these sections the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using such machinery,' shall be deemed to be the occupier of a factory.

"The joint effect of these sections seems to be to make the defenders, using the winch in the process of unloading their vessel, 'undertakers' within the meaning of section 7 (1) of the Workmen's Compensation Act 1897, and to make their employment of the deceased 'on or in or about' the winch used in that process an employment to which the Act applies.

"This appears to be the view of the effect of these sections taken by the Court of Appeal in England in the case of *Woodham*, Nov. 19, 1897, 79 L.T. 395, under circumstances which present a remarkable similarity to the present case. The only material differences in the facts of the two cases appear to be, that on the one hand the crane at which the deceased man Woodham was employed when he was injured was fixed on the quay and not on the vessel; and on the other, that he was not engaged, as Peters was here, in actually working the crane at the time of the accident. Neither of these circumstances appear to be material to the conclusion to which the Court came as to the legal effect to be ascribed to the phraseology of the sections.

"It was argued for the defenders that as Peters' employment on board ship brought him within the definition of a seaman in the Merchant Shipping Act 1894, it was not within the purview of the Workmen's Compensation Act 1897. That Act, however, as has frequently been remarked is a remedial

statute, and is therefore subject to liberal interpretation. It contains no express exclusion from its benefits of seamen as such, these being conferred upon workmen in general—section 1 (1), and that word being declared, section 7 (2), to include 'any person who is engaged in an employment to which this Act applies.' The limits of this application therefore are settled by consideration of the nature of the employment in the course of which accidents occur, and its scope is to be ascertained solely by reference to the definition which it contains, of an 'employment to which it applies.' If, therefore, the work in which a man is actually engaged when an accident happens to him can, on a sound construction of the statute, be brought within that definition, it seems a quite irrelevant consideration, and at all events not a sufficient reason for excluding him from its benefits, that his employment may also entitle him to the benefits and subject him to the liabilities of another statutory enactment passed for totally different purposes.

"But even if it were clear from the terms of the Act that its benefits were not intended to be conferred upon a seaman, it rather appears that that designation, though applied to Peters by both parties in their minute of admissions, article 3, is not a precisely accurate description of his employment, as its duties are explained further on in the same article. So far as appears, these did not involve the exercise of seamanship on his part at all. They might be more appropriately termed those of a seawinchman. And if his work as a winchman can, under the circumstances of this case, be brought within the definition of an employment to which the Act applies, there seems no reason for holding that it should be excluded because under different circumstances it might be."

At the instance of the defenders the Sheriff-Substitute stated a case narrating the facts as above, and submitting the following question of law for the opinion of the Court:—"Whether the employment, in the course of which the deceased received the injuries which resulted in his death, is an employment to which the Workmen's Compensation Act 1897 applies?"

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) enacts, section 7 (1)—"This Act shall apply only to employment . . . on or in or about a . . . factory . . . (2) In this Act . . . 'factory' has the same meaning as in the Factory and Workshop Acts 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery or plant to which any provision of the Factory Acts is applied by the Factory and Workshop Act 1895 (58 and 59 Vict. cap. 37)." . . .

Section 23 of the Factory and Workshop Act 1895 (58 and 59 Vict. cap. 37) enacts that certain provisions of that Act and of the Factory Acts 1878 to 1891 should have effect as if—1 (V), (a)—"every dock, wharf, quay, and warehouse, and so far as relates to the process of loading or unloading therefrom or thereto, all machinery and plant used in that process . . . were included in the word factory." . . .

Argued for the appellants — A seaman injured by ship's tackle was not within the Workmen's Compensation Act. If it had been intended to extend that Act to seamen, it would have been done expressly. It was impossible to bring the whole or any part of a ship within the Factory and Workshop Act 1895, and so within the Workmen's Compensation Act, the former Act being confined to machinery on shore. A ship lying in a dock was not part of the dock. The fencing clauses of the Factory Acts 1878 to 1891 could not be applied to machinery on ships; these clauses did not contemplate the possibility of machinery being a factory at one moment and not at another, but the effect of applying them to machinery on board ship would be to make that machinery a factory while in use in dock for loading or unloading, though the moment it left the dock it would cease to be a factory. By the Act of 1891 (54 and 55 Vict. cap. 75) the special rules laid down were to be in the Welsh language in Wales, which showed that no application to ships was contemplated. The provisions of the Merchant Shipping Act 1894 (57 and 58 Vict. cap. 60), as to the powers of inspectors under it, were intended to ensure seaworthiness, and they were all subject to a provision that a ship should not be unnecessarily detained; but to bring ships within the Factory Acts would submit them to inspection by Factory Inspectors, and to do that would be in conflict with the provisions of the Merchant Shipping Act. The word "all" in section 23 of the Factory and Workshops Act 1895 was to be read in a reasonable sense, and the words "therefrom or thereto" showed that the section applied only to machinery on shore. The subject of ships was too large to be brought within the Workmen's Compensation Act by the mere use of the words dock, wharf, or quay.

Argued for the respondent—On a fair reading of the Workmen's Compensation Act, its provisions might be applied to machinery on ships. It was clear from section 23 of the Factory and Workshop Act 1895 that that Act intended "machinery" to include something over and above docks, and that pointed strongly to machinery on ships. The clauses of the Factory Acts 1878 to 1891 as to fencing, and the provisions as to the powers of inspectors, were not irreconcilable with the application of those Acts to machinery on ships—the fact that a ship might sail away was no objection to such a reading. The provisions of the Act of 1891 (54 and 55 Vict. cap. 75) which were inappropriate to ships were equally inappropriate to open docks. There could be no conflict with the Merchant Shipping Act consequent upon the application of the Factory Acts to ships, as that Act applied to ships at sea, and it was necessary to bring them under the Factory Acts for the purposes of the industrial operations of loading and unloading, because when in dock machinery used in these operations was clearly subject to the regulations of the Factory Acts; it did not matter whether the machinery was

wholly on the ship or quay, or partly on the ship and partly on the quay—*Woodham* v. *Atlantic Transport Company*, November 19, 1898, L.R., 1 Q.B. 15. If not applicable to employment on or in or about a ship, at least the Workmen's Compensation Act was applicable to employment on or in or about a quay—*Powell* v. *Brown and Another*, November 26, 1898, L.R., 1 Q.B. 157.

At advising—

LORD PRESIDENT—The appellants are shipowners, and the deceased was a hand on board one of their vessels. His particular duties were those of fireman and winch-worker, and he lost his life while working the steam-winch fixed on the vessel, at a time when the winch was being used in unloading the vessel in the harbour of Aberdeen. The question is, whether, so acting, the deceased was engaged in an employment to which the Workmen's Compensation Act applies, and this can only be affirmed if the appellants can be held to be the occupiers of a factory in the sense of the Act.

"Factory" according to the Act has the same meaning as in the Factory and Workshops Acts 1878 to 1891, and includes any dock, quay, warehouse, machinery, or plant to which any provision of the Factory Acts is applied by the Factory and Workshop Act 1895. We are thus obliged to turn to the Act of 1895, and accordingly we have (as Lord M'Laren reminded us) to drop in the meantime consideration of the Workmen's Compensation Act, and to construe the Factory Act of 1895 from the point of view and in the spirit of its own proper purposes.

The section of the Act of 1895 which applies certain provisions of the Factory Acts to docks and to certain machinery is the 23rd, and it enacts that certain enumerated provisions in the older Factory Acts shall have effect as if every dock, wharf, quay, and warehouse, and, so far as relates to the process of loading and unloading therefrom or thereto, all machinery and plant used in that process, were included in the word "factory." The respondent maintains that the winch of the appellants' steamer is machinery used in the process of loading or unloading from or to the dock or quay at Aberdeen in the sense of the Act.

Now, first of all, the section itself speaks, so to say, from the land. It is defining "factory," which *prima facie* is on land, and all the things it names (setting aside in the meantime machinery) are on land. The idea of a ship is something so clear and concrete that it is difficult to suppose that it would not have been expressed if it was intended to be included in a group of things subservient to ships. And here it may be convenient to generalise this observation by saying that, if the respondent is right, there is a singular perversity in the method adopted by the Legislature, for in no one of the rather intricate set of provisions which we have to piece together are ships named, and it is only by circuitous reasoning that they can be fetched within the scope of the enactment.

I have in the meantime commented on that part of section 23 of the Act of 1895 which expresses the extension of the word "factory;" but the appellants' argument is strongly supported by the nature of the provisions which are to have this extended application. The first and third of the enumerated provisions may serve as illustration. The first (to wit, the 82nd section of the Factory Act of 1878) imposes a fine, as penal compensation, when a person is killed in consequence of the occupier of the factory having neglected to fence any machinery required by the Act to be fenced. This of course implies that the machinery of the factory is to be subject to the fencing clauses of the Factory Act—that there has been a continuing obligation on the "occupier" to fence and that he has neglected to do so. Again, the third enumerated provision introduces to "factories" (as extended) the Factory Inspectors with all their powers. Now, if the respondent is right, all this means that the unloading machinery of ships is to be inspected by the Factory Inspectors, and that shipowners are liable to the corresponding requirements and penalties of the Factory Acts. Quite plainly the conditions existing in ships are different in many important respects from factories on land, and it is extremely difficult to see how the enumerated provisions could be worked out in regard to them. The ship is not accessible to the inspector till she comes into port—she may be at one port to-day, and at another to-morrow, with a different inspector at each. Again, what shall be said of foreign ships? and this inquiry is relevant both as regards the Factory Acts and as regards the Workmen's Compensation Act. Further, all the machinery on board ships is already subject to inspection under the Merchant Shipping Act by a different set of inspectors, viz., the Board of Trade inspectors. These and many other points are enough to indicate that if the Legislature had considered the case of ships there are obvious difficulties, to say the very least, which would necessitate the careful and special application to ships of a scheme of supervision and control which is primarily at least intended for things totally different.

I say, then, that ships are too large a subject and too special a subject for such casual treatment, and that it is not to be readily believed that the Legislature did treat them in a casual way. Not only so, but in the history of legislation ships have generally been made the subject of a special chapter of legislation, adapted to their special conditions.

The conclusion to which I come is that the 23rd section of the Factory Act of 1895 does not apply any of the provisions which it enumerates to loading or unloading machinery which forms part of a ship's apparatus. The winch in question is a fixed part of the steamer, and is used at sea as well as in harbour, and its use cannot be said to be related to a dock or

quay. This would be, not a definition, but only an illustration of its use.

Before leaving the Act of 1895 I ought to say that the argument that the word "dock" includes ships in the dock seems to me entirely untenable, and much that has already been said applies to it. But I find it difficult to see how this reading can be reconciled with the argument about machinery or with the structure of the 23rd section, which in the words "loading or unloading therefrom or thereto" seems plainly to imply that the ship is something external to the dock as that word is there used.

Accordingly, having examined the Factory Act of 1895 from the point of view of a Factory Act, I come back to the Workmen's Compensation Act, and I find in it a somewhat striking confirmation of the conclusion arrived at. I refer to section 7, sub-section 3, which says that a workman employed in a factory which is a shipbuilding yard shall not be excluded from the Act by reason only that the accident arose outside the yard in course of his work upon a vessel in any dock, river, or tidal water near the yard. To my thinking this plainly implies that *prima facie* the man's being employed on board a ship put him out of the Act, and that to bring him within the Act he requires to explain that he and his employment are not, so to speak, of the ship. The *locus* of the accident is not conclusive—and this is very well illustrated by the recent case of *Woodham*, where the accident occurred on the ship, the machinery being quay machinery, and the employment being therefore within what I hold to be the true confines of the Act.

In my opinion, we ought to answer the question of law in the negative. As it appears on the face of the case that the Sheriff has decerned in favour of the respondent for the sum claimed, that decree must be cleared away, and under the Act of Sederunt we have power to make such order arising out of the answer as we think necessary. Accordingly, I think we should recal the decree granted, and remit to the Sheriff to dismiss the petition.

Lord Adam, Lord M'Laren, and Lord Kinnear concurred.

The Court recalled the decree granted, and remitted to the Sheriff to dismiss the petition.

Counsel for the Appellants—Campbell, Q.C.—Morton. Agent—F. J. Martin, W.S.

Counsel for the Respondent—Sym—W. Brown. Agents—Henry & Scott, W.S.

Friday, March 17.

FIRST DIVISION.

THE WESTERN RANCHES, LIMITED *v.* NELSON'S TRUSTEES.

Company — Resolution to Alter Memorandum of Association—Extension to New Business—Petition for Confirmation by Court—Companies Act 1890 (53 *and* 54 *Vict. cap.* 62), *sec.* 1, *sub-sec.* (*d*).

A company was incorporated for the purposes of acquiring a cattle ranch and of buying, grazing, breeding, and selling cattle and other live stock in the United States of America.

A petition was presented by the company for confirmation of a special resolution altering its memorandum of association so as to enable it to carry on along with the original business the business of lending money on the security of moveable property, including cattle and other live stock, and of certain stocks and shares, or on the personal obligation of persons or corporations engaged in the live stock business in America. As ancillary to these objects it was proposed to give the company power to borrow on debenture money to be employed in the increased prosecution of the lending business.

Answers to the petition were lodged by certain dissentient shareholders.

The Court, after a proof, *refused* the prayer of the petition, *holding* that while the new business proposed was likely to be profitable, it would depend for its success on the management of the local agent of the company, and would not be sufficiently under the control of the directors of the company, and that consequently it was not such an extension of the primary business of the company as could be forced on dissentient shareholders.

The Western Ranches, Limited, was incorporated under the Companies Acts and registered upon 29th January 1883 with a capital of £112,000, divided into 22,400 shares of £5 each, fully paid up, and having its registered office in Scotland. The capital was subsequently reduced to £78,400, divided into £22,400 shares of £3, 10s. each.

The objects for which the company was established were set forth in the third head of the memorandum of association as follows:—"(1) To adopt and give effect to a minute of agreement for the acquisition of a cattle ranch in the territory of Dakota, United States of America, and the cattle thereon. (2) To buy, breed, graze, and sell cattle, sheep, hogs, horses, or other live stock in the United States of America or elsewhere. (3) To acquire by purchase or lease land or other real estate, or an interest therein, in the United States of America or elsewhere, and to sell or lease the same. (4) To break up, cultivate, and occupy land. . . . (5) To borrow money from time to time in such manner as the directors shall