£1500, but also that it extended to £1500, and they acted upon that view. So they express it in their minute, that she should be secured in £1500 a-year, and not less than that, but on the other hand she should not have the chance of any more, for if in any year the income was less than £1500 it was to be made up out of what they had set aside beyond what they thought necessary to yield the £1500, and if it yielded more then what was in excess was to go into the other division—the "second part."

Upon the whole matter I think the trustees acted with great propriety in acting as they did, but I do not think that what they did was of any consequence beyond giving the £1500 a-year to the widow during her survivance, and after that £1500 to the sons in liferent and to their children in fee. I quite agree with your Lordship that what they did with a view to the actual conduct of the trust business hitherto was not a final division, and that therefore the first question should be answered in the negative, and it is for them now to make such a division as they think reasonable and proper. Our answer to the second question will be in the affirmative.

LORD TRAYNER—I am of the same opinion. I think the trustees by their minute of the 19th August 1885 did not make a division of the estate such as the truster directed his trustees to make. The truster's direction was that the trustees should ascertain as nearly as possible the amount of the residue of his estate, and divide that when ascertained into two parts. Now, from this minute I have referred to it does not appear that the trustees had taken any means whatever for ascertaining what was the amount of the estate which was to be divided. What they did was simply this: Considering that the truster's settlement conferred on his widow right to an allowance of £1500 a-year, they put aside a sum of money or put aside investments the income from which they regarded as sufficient to meet that claim. I think they did nothing more. I am of opinion with your Lordships that the first question should be answered in the negative and the second question in the affirmative.

LORD MONCREIFF was absent.

The Court answered the first question in the negative, and the second question in the affirmative.

Counsel for the Second and Fourth Parties—W. Campbell, Q.C. Agents—J. & D. Smith Clark, W.S.

Counsel for the First, Third, and Fifth Parties — Solicitor-General (Dickson, Q.C.) —J. A. Fleming. Agents—Morton, Smart, & Macdonald, W.S.

Thursday, March 8.

FIRST DIVISION.

BRUCE *v.* HENRY & COMPANY.

Reparation — Workmen's Compensation Act 1897—*Factory—Dock.*

The Workmen's Compensation Act 1897 includes in the definition of factory "any dock . . . to which any provision of the Factory Act is applied by the Factory and Workshop Act 1895." The latter Act by section 23 declares that, *inter alia*, the provision of section 18 thereof as regards notice of accidents shall apply "as if every dock . . . were a factory." Section 18 provides that "when there occurs in a factory . . . any accident . . . written notice shall forthwith be given to the inspector of the district."

Question whether the provision of section 18 applies prospectively so as to render a dock a factory before an accident has actually occurred in the dock.

Hall v. *Snowden, Hubbard, & Company*, [1899], 2 Q.B. 136, *commented on and doubted.*

Reparation — Workmen's Compensation Act 1897—*Factory—Dock—Occupier.*

By section 7 (1) of the Workmen's Compensation Act 1897 liability to pay compensation under the Act is limited to employment by the undertakers as thereinafter defined, on or in or about, *inter alia*, a factory. The undertaker in the case of a factory is declared by section 7 (2) to be the occupier thereof "within the meaning of the Factory and Workshop Acts of 1878 and 1895." In the case of a dock which is a factory the occupier thereof is by the Factory Act 1895, section 23 (1) (v) (*b*), defined to mean "the person having the actual use or occupation of a dock . . . or of any premises within the same or forming part thereof."

Held that a shipping agent undertaking the loading of a vessel and using a public dock for this purpose is not an occupier of the dock within the meaning of the Act of 1895, and therefore not the undertaker of a factory within the meaning of the Workmen's Compensation Act 1897.

By section 7, sub-section 1, of the Workmen's Compensation Act 1897 it is provided —"This Act shall apply only to employment by the undertakers, as hereinafter defined, on or in or about a railway, factory, mine, quarry, or engineering work."

By section 7, sub-section 2, "'undertaker' in the case of a factory, laundry, or quarry means the occupier thereof within the meaning of the Factory and Workshop Acts 1878 to 1895."

By the Workmen's Compensation Act 1897 it is provided, section 7, sub-section 2— "'Factory' has the same meaning as in the Factory and Workshop Acts 1878 to 1891, and also includes any dock, wharf, quay

. . . to which any provision of the Factory Acts is applied by the Factory and Workshop Act 1895."

Section 23 of the Factory and Workshop Act 1895 provides, *inter alia*—"(1) The following provisions, namely . . . (ii) The provisions of the Factory Acts with respect to accidents . . . shall have effect as if (*a*) every dock, wharf, quay, and warehouse . . . were included in the word 'factory,'" and "for the purpose of the enforcement of these sections the person having the actual use or occupation of a dock . . . shall be deemed to be the occupier of a factory."

By section 18 of the same Act it is provided—"For section 31 of the principal Act the following sections shall be substituted, namely, (1) When there occurs in a factory or workshop any accident . . . written notice shall forthwith be sent to the inspector for the district."

This was an appeal on a case stated, as adjusted by the parties, by the interim Sheriff-Substitute of the Lothians (HARVEY), at the instance of Elizabeth Sinclair or Bruce, widow of John Bruce, formerly dock labourer, in a claim at her instance under the Workmen's Compensation Act 1897 against A. Henry & Company, shipping agents, Leith.

The facts as admitted by the parties and set forth by the Sheriff were as follows:—"The appellant is the widow of John Bruce, who was a dock labourer at Leith Harbour, and who sometime resided at 16 Graham Street, Bonnington, Leith. She was wholly dependent on his earnings for her support, and there were no others dependent on him. On or about Saturday, 6th May 1899, the steamship 'Ugie' of Peterhead was lying at the south side of the Old Dock, Leith Harbour, Leith, in order to be loaded with a cargo of tea, &c., by the respondents, who are shipping agents, and had contracted with the owners of the vessel to load her. Neither at this nor any other part of the Old Dock were there, at the time of the accident which happened to the said John Bruce, any cranes or other machinery driven by steam. No winch, crane, or sling which was driven either by steam or hand was being operated from the quay, the only mechanical contrivance in use at the time of the accident being a steam-winch operated from on board the vessel, and worked by the crew, for raising and lowering goods into the hold. Although said steam-winch was being used in loading the vessel, it was not actually in motion at the time the accident happened. At the time of the accident there were no notices, abstracts, or regulations posted anywhere within the precincts of the Old Dock or wharf to show that it was regarded by Her Majesty's Inspectors as a factory within the meaning of the Factory Acts, or to inform the public of that fact. About three o'clock on the afternoon of Saturday, 6th May 1899, Bruce, who was in the employment of the respondents, started along with other workmen, who were also in their employment, to load said vessel with goods that had to be taken from a wooden shed situated on the quayside, and conveyed on board by two wheel-barrows over a gangway stretching from the quay to the vessel in immediate proximity to the hold. The gangway was 14 feet long by 5½ feet broad. Each barrow was loaded with boxes of tea and butter, and a sling chain was then put round the boxes to keep them together. After the barrow had been loaded in this manner, it was Bruce's duty to take it from the quay over the gangway to the hold of the vessel, where the sling-chain was hooked on by another workman to a crane-chain, which thereafter lowered the load into the hold. About half-past three on the 6th of May, Andrew Wilson, a foreman in the respondents' employment, loaded a barrow with several chests of tea and some butter, and Bruce then proceeded to wheel it from the quay on to the vessel. In doing so Bruce went in front of the barrow drawing if after him, and when he reached the part of the gangway on board the vessel in immediate proximity to the hold, he overbalanced himself and fell into the hold. In consequence of the fall he sustained such serious injuries that he died on the 7th May 1899. It is further admitted by the respondents that the said accident to Bruce arose out of and in the course of his employment; that due notice of the accident was given to them on 19th May 1899; that the average wages earned by Bruce for the three years prior to the accident were £1 per week, and that the sum claimed is three years' wages."

On these facts the Sheriff held in law—(1) That the machinery used in loading the vessel was not a factory in the sense of the Workmen's Compensation Act, section 7 (2); (2) that Bruce was employed 'on or about' said dock in the sense of the Act, section 7 (1); but (3) that said dock itself was not a factory in the sense of the Act, section 7 (2), and accordingly on 15th December 1899 pronounced judgment finding that the employment at which Bruce was engaged at the time of his death was not one to which the Workmen's Compensation Act 1897 applied, and dismissed the application and found the appellant liable to the respondents in expenses.

The following question of law was submitted by the appellant—"Was the place on, in, or about which Bruce met his death a factory within the meaning of the Workmen's Compensation Act 1897, sec. 7 (2)?"

Argued for the appellant—The accident here happened, if not "in" a dock, then about one—*Jackson* v. *Rodger & Company*, July 4, 1899, 1 F. 1053, and January 30, 1900, 37 S.L.R. 390. The cases where it was held that an accident occurring on a ship in a dock did not happen in the dock were cases in which the employment related purely to the ship, and might have been carried on equally well although the ship had not been in the dock at all—*Aberdeen Steam Trawling Company* v. *Peters*, March 16, 1899, 1 F. 786; *Flowers* v. *Chambers* [1899], 2 Q.B. 142. Here there was a direct connection between ship and dock. The dock was a factory, because by the Workmen's Compensation Act a dock was a factory if any of the provisions of the Factory Acts were applied to it by the Factory and

Workshop Act 1895. Sec. 23 of that Act (quoted *supra*) applied the provisions of sec. 18 as to notice of accidents to "every dock." These provisions (quoted *supra*) were applicable in a case like the present where an accident happened on a gangway between the quay and the ship. *Hall* v. *Snowden, Hubbard, & Company* [1899], 2 Q.B. 136, was distinguishable, because the accident there happened in a street adjoining a dock. The question as to whether the respondents were undertakers was not part of the question of law, and should not be considered.

Argued for the respondents — (1) An accident in a ship in a dock did not happen "in" the dock—*Aberdeen Steam Trawling Company* v. *Peters* and *Flowers* v. *Chambers*, *ut supra*. Even if it did happen "about" the dock, this dock was not a factory, and did not therefore fall under the Act, because no provision of the Factory and Workshop Acts applied to it. The provision suggested (sec. 18) was negatived by the case of *Hall* v. *Snowden, Hubbard, & Company* [1899], 2 Q.B. 136. (2) The respondents were not the undertakers, and therefore could not be liable. They were only carrying on the occupation of loading the ship with goods lying on the dock. That did not make them the occupiers of the dock or of the ship within the definition of "occupiers" given by section 23(1)(v)(*b*) of the Factory and Workshop Act 1895 (quoted *supra*), anymore than a porter carrying luggage for a passenger for a steamer would be the occupier of the dock. If they were not "occupiers" they were not "undertakers" under the definition given in sec. 7, sub-sec. 2, of the Workmen's Compensation Act (quoted *supra*); if they were not "undertakers" they could not, having regard to the terms of sub-sec. 1 of sec. 7, be liable in compensation.

At advising—

LORD PRESIDENT—The accident to which this case relates happened on board a steamship lying at the south side of the Old Dock in Leith Harbour, and it consisted in John Bruce, the appellant's husband, falling into the hold of the steamship, in consequence of his having overbalanced himself while dragging after him a barrow-load of goods which he had wheeled from the wharf.

The accident thus occurred on a ship in a dock, and a ship in a dock is not a dock for the purposes of the Workmen's Compensation Act 1897 (*vide Aberdeen Steam Trawling and Fishing Co., Limited* v. *Peters*, 1 F. 786, and *Flowers* v. *Chambers*, 1899, 2 Q.B. 142). It is, however, suggested that even if it is held that the accident did not happen "in" a dock, it happened "about" a dock in the sense of section 7 (1) of the Act of 1897, and that consequently if the dock itself is a factory in the sense of section 7 (2), the appellant has a claim.

But a dock is not necessarily a "factory" within the meaning of section 7 of the Act of 1897. By section 7 (1) of that Act it is declared that the Act shall apply only to employment by the "undertakers" as thereinafter defined, on, in, or about, amongst other things, a "factory," and it is declared by sub-section 2 that "factory" has the same meaning as in the Factory and Workshop Acts 1878 to 1891, and that it "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." It is thus necessary, in order to bring a dock or wharf, which is not truly a factory, under the term "factory," that it should be shown that some of the provisions of the Factory Acts are applicable to it; and, so far as I can see, the only provisions of these Acts which could be applicable are either section 18 of the Factory and Workshop Act 1895, as to notice of accidents, or section 68 of the Factory and Workshop Act 1878, as to powers of inspection.

In the case of *Hall* v. *Snowden, Hubbard, & Company*, 1899, 2 Q.B. 136, the Court held that the provision as to giving notice of accidents (section 18) does not apply unless and until an accident has occurred "in a factory (in the statutory sense), and that if the accident only occurred "about" a factory, that provision does not apply. Upon this view the provision as to notice would not apply in the present case, seeing that the accident did not occur "in" the dock ("factory") but only in the ship, which was near to it. In the same case it was observed that no evidence was given that any persons were employed on the wharf there in question in such a manner as to bring it within section 68, and this is also true of the present case.

I entertain considerable doubt as to whether the views expressed in that case in regard to section 18 are correct, seeing that although the obligation to give the notice only arises when an accident happens, the more natural construction would seem to me to be that the statutory requirement applies to the place throughout. I should however hesitate to dissent from the view expressed by a court of co-ordinate jurisdiction, which has had such large experience of cases under the Act of 1897 as the Court of Appeal by which the case of *Hall* v. *Snowden, Hubbard, & Company* was decided has had, unless this was necessary for the decision of the case under consideration, and I therefore prefer to rest my judgment upon the other grounds before and after stated.

Apart from these objections to the application of the Act in the present case, there is another which appears to me to be fatal to the appellant's claim, viz., that it is not established that the deceased was in the employment of the "undertakers" in the sense of section 7 (1) of the Act of 1897. That term is by section 7 (2) defined to mean, in the case of a "factory," the occupier thereof within the meaning of the Factory and Workshop Acts 1878 to 1895, and section 23 (1) (v) (b) of the Factory and Workshop Act 1895 declares that "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, or the person so using any such machinery, shall be deemed to be the occupier of a factory." The statement in the case does not appear to me to show that the respondents were the occupiers of the dock in that sense. They were not owners of the steamship, nor was that ship in their possession; they simply by their servants wheeled goods on barrows from a wooden shed on the quayside to the deck of the ship, from which the goods were lowered into the hold by the crew with appliances upon and belonging to the ship. It seems to me that the respondents in performing what was merely porterage from the quay to the ship could not be reasonably held to be the "occupiers" either of the dock or of the ship any more than a passenger walking on board or a porter carrying his luggage.

For these reasons I consider that the question put in the case should be answered in the negative.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court answered the question in the case in the negative, and remitted to the Sheriff as arbitrator to proceed and to decern.

Counsel for the Appellant—Watt—Glegg. Agents—Hutton & Jack, Solicitors.

Counsel for the Respondents — Salvesen, Q.C.—W. Wallace. Agents—Lindsay & Wallace, W.S.

Tuesday, March 6.

SECOND DIVISION.

[Sheriff-Substitute at Aberdeen.

MARSHALL *v.* CALEDONIAN RAILWAY COMPANY.

Sheriff — Citation — Railway Company — Railways Clauses Consolidation (Scotland) Act 1845 (8 *and* 9 *Vict. c.* 33), *sec.* 130 *—Companies Clauses Consolidation (Scotland) Act* 1845 (8 *and* 9 *Vict. c.* 17), *sec.* 137 *—Sheriff Courts (Scotland) Act* 1876 (39 *and* 40 *Vict. c.* 70), *secs.* 46 *and* 12 (2) — *"Principal Office"—"Place of Business."*

The petition in an action brought in the Sheriff Court at Aberdeen against the Caledonian Railway Company, which has its head office in Glasgow, was served upon the defenders at their office in Aberdeen. The Railway Company entered appearance and lodged defences. They admitted that they carried on business and had an office at Aberdeen, but explained that it was not their principal office, and maintained that they had not been duly cited, in respect that under the Railway Clauses Consolidation Act 1845, sec. 130, and the Companies Clauses Consolidation Act 1845, section 137, a railway company could only be cited at its principal office, or one of its principal offices. The Court *repelled* this defence upon the ground that, whatever might be the meaning of the expression "principal office" in the sections referred to, the Railway Company having a place of business in Aberdeen, and having been cited there, had been duly cited in terms of the Sheriff Courts (Scotland) Act 1876, sec. 46; and also, *per* Lord Young, upon the ground that the defenders, having appeared, were precluded from pleading this defence by section 12 (2) of the Act last mentioned.

Railway — Railways Clauses Consolidation (Scotland) Act 1845 (8 *and* 9 *Vict. c.* 33), *sec.* 130—*Companies Clauses Consolidation (Scotland) Act* 1845 (8 *and* 9 *Vict. c.* 17), *sec.* 137—*Citation—"Principal Office."*

Opinions that the office of the Caledonian Railway Company at Aberdeen was "one of their principal offices" within the meaning of the Railway Clauses Consolidation (Scotland) Act 1845, section 130, and the Companies Clauses Consolidation (Scotland) Act 1845, section 137.

Thomas Marshall junior, produce importer and commission merchant, 3 Regent Quay, and residing at 147 Union Street, Aberdeen, brought an action in the Sheriff Court at Aberdeen, against "The Caledonian Railway Company incorporated by Acts of Parliament, and carrying on business and having a place of business in the City of Aberdeen."

The pursuer craved decree for the sum of £1500 as damages for injuries sustained by him in a railway accident while he was travelling as a passenger from Glasgow to Aberdeen by the defenders' line of railway. The petition was served upon the defenders at their place of business in Aberdeen. They entered appearance to defend the action, and lodged defences, in which they admitted that they carried on business and had an office at Aberdeen, subject to the explanation that the said office was not their principal office.

The defenders pleaded, *inter alia*—"(1) No process, in respect that the defenders have not been competently cited at their principal office."

The defenders' head office is in Glasgow.

The Railways Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. c. 33) enacts as follows:—Sec. 130—"And be it enacted that any summons or notice, or any writ or other proceeding at law requiring to be served upon the company may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary, then by being given to any one director of the company."

Section 137 of the Companies Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. c. 17) is substantially identical in its terms.