similar lists being used by the defender. It is clear on the evidence that the defender admitted to numerous witnesses that he had such lists. This he now denies, but the Lord Ordinary would not believe him, and therefore granted interdict. On the question of damages the Lord Ordinary has awarded only £5, and I would not propose to interfere with his decision. On the whole matter I see no reason to differ from the judgment of the Lord Ordinary, and would move your Lordships to adhere.

LORD YOUNG—I am of opinion that the document referred to in the interlocutor of the Lord Ordinary contains no confidential information regarding the business of the pursuer's Society. It contains no information whatever except that which the defender acquired and became possessed of as canvasser and collector for the Society of people whom he canvassed and from whom collected on behalf of the Society. The information so acquired is, in my opinion, not confidential information, but information which he might communicate to anyone he pleased. Of course anyone is at liberty to use to his own advantage information which he has acquired in the course of his employment so long as that information is not private and confidential. If a solicitor or a director has legitimately acquired information in connection with the business under his charge he is at perfect liberty to use it to his own advantage. He may be acting in a way which one may think is, in a moral sense, not proper conduct, but anything of that kind depends upon facts and circumstances and is outside the present case.

I think this document clearly contains no information except that which the defender legitimately acquired for himself in the course of his employment as canvasser and collector. Being unable to assent to the view that the findings of the Lord Ordinary are supported by the evidence, I am of opinion his interlocutor should be recalled and the action dismissed.

LORD TRAYNER—I have no difficulty in agreeing with the Lord Ordinary.

LORD MONCREIFF was absent.

The Court adhered.

Counsel for the Pursuers — Cooper — Hamilton. Agent—Robert Wright, Solicitor.

Counsel for the Defender—Salvesen, Q.C. —T. B. Morison. Agent—F. Lamond Lowson, Solicitor.

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*Friday, November 2.*

## SECOND DIVISION.

[Sheriff-Substitute at Edinburgh.

## LAING v. YOUNG & LESLIE.

*Reparation—Workmen's Compensation Act* 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7—*Factory—Lighter in Dock—Machinery Used in Process of Loading or Unloading from or to Dock—Employment on, in, or about a Factory—Factory and Workshop Act* 1895 (58 *and* 59 *Vict. c.* 37), *sec.* 23.

A workman employed by a firm of stevedores on board a lighter, in assisting in unloading a ship in Leith Docks, fell overboard and was drowned. The ship was lying close to the jetty, and the lighter was outside and alongside the ship. The lighter was made of the hull of an old fishing-boat, out of which the mast had been taken. She had no means of propelling herself through the water, and could not be moved without external assistance. She as a general rule did not leave Leith Docks, but occasionally was towed by tugs to other ports in the Firth of Forth to be used there. She was never inspected by the Inspector of Factories. On board the lighter was a donkey-engine, and when assisting to discharge cargo a chain attached to this engine was passed through a pulley on to the deck of the vessel and led into the hold. On the occasion in question the cargo, which consisted of grain, was raised by the lighter's engine to the level of the deck, and was then put into bags by dock workmen, and after being weighed was conveyed by them to the shore without the assistance of any machinery.

*Held* (*diss* Lord Young) that the lighter's engine was not machinery or plant used in the process of unloading to a dock, wharf, or quay; that the lighter was not a place, and that her engine was not machinery or plant to which any provision of the Factory Acts was applied by the Factory and Workshop Act 1895, section 23; and that therefore the accident to the deceased did not arise out of or in course of employment on, or in, or about a "factory" within the meaning of the Workmen's Compensation Act 1897, sec. 7 (2).

Section 7 of the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) enacts as follows:—"(1) 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. . . . (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, and

every laundry worked by steam, water, or other mechanical power."

Section 23 of the Factory and Workshop Act 1895 (58 and 59 Vict. cap. 37) enacts as follows:—"(1) The following provisions, namely; (i.) Section 82 of the principal Act [of 1878]—(ii.) The provisions of the Factory Acts with respect to accidents; (iii.) Section 68 of the principal Act with respect to the powers of inspectors; (iv.) Sections 8 to 12 of the Act of 1891 with respect to special rules for dangerous employments; and (v.) The provisions of the Act with respect to the power to make orders as to dangerous machines, 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." . . .

In an application under the Workmen's Compensation Act 1897 by Mrs Lillias Wallace Smith or Laing against Young & Leslie, stevedores, Leith, the Sheriff-Substitute (MACONOCHIE) decerned for £234 as compensation for Mrs Laing and her pupil children in respect of the death of her husband John Laing. Young & Leslie appealed against this decision.

The following case was stated by the Sheriff-Substitute:—"The facts proved or admitted are as follows — On 1st November 1899 Laing was in the employment of the appellants as donkey-engine-man on board one of their lighters lying in the Leith Docks. He had been in their employment for three years prior to that date, and during the whole of that period he was earning wages at the rate of 30s. per week. On said 1st November Laing was in sole charge of one of the appellants' lighters, and was employed under the defenders in assisting, by means of the donkey-engine on the lighter, in unloading the ship 'Nerano,' which was lying alongside the Edinburgh Dock jetty in Leith Docks. The 'Nerano' was lying close to the jetty, and the lighter was lying outside, and alongside of her. On board the lighter there was a donkey-engine and boiler worked by the deceased, and close to the winch of the engine there was a pump for pumping out water which leaked into the lighter's hold. The lighter was made of the hull of an old fishing-boat, out of which the mast had been taken. She had no means of propelling herself through the water, and when it was wished to move her from one part of the dock to another, she was dragged along by means of a rope carried to the jetty. The lighter was unable to navigate without external assistance, and as a general rule did not leave the Leith Docks, but occasionally she was towed by tugs to Granton and other ports in the Firth of Forth to be used there. She was never inspected by Her Majesty's Inspector of Factories. When assisting to discharge cargo from the 'Nerano' a chain or rope attached to the donkey-engine on the lighter was passed over a pulley on to the deck of the vessel and was led into the hold. The cargo was then raised by the engine to the level of the vessel's deck, and at that stage, the cargo being grain, it was put into bags by dock workmen, and after being weighed on board was conveyed by them to waggons on shore. The engine was not used in the conveyance of the bags on shore. During the said operations the donkey-engineman never left the lighter to assist on board the vessel or on shore. About 12·30 p.m. on said 1st November there was some delay in getting forward waggons to convey away the grain unloaded from the 'Nerano,' and the donkey-engine consequently stopped working for some time. During said slack time, the deceased being anxious to pump out the hold of the lighter, leant over the side with a bucket in his hand in order to bring up water to 'fang' the pump, *i.e.*, to make it draw. It was part of his duty to pump out the lighter twice a day, and that was frequently done on all the appellants' lighters during such slack times, though it was usually done in the morning and evening. It was necessary for the deceased to bring up water from the dock for the purpose of making the pump draw. While leaning over the side of the lighter, the deceased in some unexplained way overbalanced himself, fell into the water, and was drowned. . . . On these facts I found in point of law . . (2) That the work in which the deceased was engaged at the time of the accident was an employment to which the Act applies; and (3) that the accident arose out of and in the course of his said employment." . . .

The question of law for the opinion of the Court was—"Whether the accident to the deceased arose out of and in the course of an employment within the meaning of section 7 of the Workmen's Compensation Act 1897?"

Argued for the appellants—The lighter on which the deceased was working at the time of the accident was not a place, and the engine on it was not machinery or plant to which section 23 of the Factory and Workshop Act 1895 applied. They were thus not within the meaning of section 7 of the Workmen's Compensation Act 1897. Machinery on board a ship lying at a quay or in a public dock was not a "factory" within the meaning of the Act—*Aberdeen Steam Trawling Co., Limited* v. *Peters*, March 16, 1899, 1 F. 786; *Healy* v. *Macgregor & Ferguson*, Feb. 20, 1900, 2 F. 634; *Jackson* v. *Rodger & Co.*, Jan. 30, 1900, 2 F. 533. A lighter was a ship—"*The Mac*," 1882, 7 P.D. 126. It was quite immaterial whether the lighter was discharging its own cargo on to the quay or helping to unload the cargo on board of other vessels; so long as the machinery employed was on board the lighter the Act did not apply. The reason for this was that on shore machinery could be inspected by the inspector under the Factories Acts. This could not be done where the machinery was on board a ship or lighter which could be moved from place to place, and a place to which the provisions of the Factory Acts did not apply was not a factory under the Act of 1897—*Abernethy & Co.* v. *Low*, March

7, 1900, 37 S.L.R. 506; *Hill* v. *Snowden, Hubbard, & Co.* [1899], 2 Q.B. 136. A lighter or ship while anchored within a dock did not form part of the dock—*Hennessey* v. *M'Cabe* [1900], 1 Q.B. 491; *Flowers* v. *Chambers* [1899], 2 Q.B. 142.

Argued fort he respondents—The accident happened in, on, or about a dock. A dock, in order to be included in section 23 of the Factory and Workshop Act 1895, did not need to have machinery upon it. Every dock was included in that section, and was thus a "factory" in the sense of the Workmen's Compensation Act—Opinion of Lord Moncreiff in *Jackson* v. *Rodger & Company*, July 4, 1899, 1 F. 1059. The word "dock" must be construed in its ordinary and popular signification, and included water as well as land—Opinion of Collins, L.J., in *Hennessey* v. *M'Cabe, supra; Haddock* v. *Humphrey* [1900], 1 Q.B. 609. The lighter in question was on, in, or about a dock, and the stevedores who owned the lighter and had brought it into the dock were the occupiers of the dock. The deceased was therefore injured while engaged in employment on, in, or about a factory in the meaning of section 7 of the Workmen's Compensation Act. The machinery on board the lighter was used for the purpose of unloading to the dock in terms of section 23 of the Factory and Workshop Act 1895, section 23. It therefore constituted a factory under section 7 of the Act of 1897. The Workmen's Compensation Act had been held not to apply to machinery on board a ship, because everything connected with a ship was regulated under the Merchant Shipping Acts. But an old hulk with no means on board of being propelled through the water could in no sense be called a ship, and there was no case in which machinery which was not part of the machinery on board a ship had been held not to fall under the provisions of the Act.

At advising—

LORD JUSTICE-CLERK—The facts are that a vessel which was being unloaded at a quay had the services of an engine which was in a boat, and was brought alongside the vessel on the outer side from the quay, for the purpose of hoisting cargo from the hold of the vessel to the deck. After this had been done the goods were taken charge of by persons whose duty it was to have the goods put off the vessel on to the quay, and who did so without the use of machinery. They put the material in bags and took the bags on shore. The power of the engine and its winch were not used in the work of conveying the goods to the land. A man employed on board the boat fell overboard while taking up water in a pail for use on board the boat.

In these circumstances the question for decision is, whether the Workmen's Compensation Act applies in respect of the provision in the Factory and Workshop Act of 1895 by which the Factory Acts should have effect as if "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." Thus, if the claim is to be successful two things are essential—(first) there must have been a process of loading or unloading from or to a dock, wharf, quay, or warehouse, and (second) there must have been such appliances used as fall under the description of "machinery and plant" used in so loading or unloading to or from a dock, &c.

I am of opinion that neither of these essentials are to be found in this case. The work in which the deceased was engaged was not the work of loading or unloading to or from a quay, and the machinery and plant being used was not being used in loading or unloading to or from a quay. I hold that work done within the ship and not by machinery on the quay or dock does not fall within the statute. It has been decided in more than one case quoted to us in argument that the Act does not apply where work is being done on board the ship and within the ship. I cannot hold that there is any difference here. For the ship's purposes the defender's vessel is brought alongside and work is done in the ship by aid of machinery in the defender's vessel. I cannot hold that that is work of loading or unloading to or from a dock or quay. I do not see how this could be held, unless it could be held that a vessel itself could be deemed and held to be a dock under the Acts—a view which in previous decisions has been held to be untenable. Here there was no machinery or plant being used in unloading to the dock or quay, and therefore I cannot see how the Acts can be held to apply to the effect of holding that the dock or quay was at the time a factory in terms of the Act.

I am therefore of opinion that the question put in this special case should be answered in the negative.

LORD YOUNG—I am sorry to think that there should be a difference of opinion in connection with this case, but the fact that there is such a difference shows that the question is attended with some difficulty. The Sheriff is of opinion that the case falls under the statute, the appellants being in occupation of a dock where machinery was being used for the purpose of loading and unloading. The facts stated by the Sheriff are these—[*His Lordship read extracts from the stated case*]. It would not occur to me as doubtful that the raising of the cargo from the hold to the deck was part of the process of unloading to the dock, although it was not the whole process, as after being raised the cargo had to be carried to the quay on men's backs. I therefore think that the machinery on board this lighter—which I cannot regard as in a different position whether lying on one side or other of the ship—was being used for the purpose of unloading the cargo on to the quay.

I should not think it doubtful that if this old lighter had been placed on the quay and the machinery in it used for the purpose of lifting the cargo from the hold of the vessel to the deck, the machinery

would have been machinery used for unloading the cargo on to the quay, and used by a stevedore whose business it was to do so. Does it make any difference that for greater convenience the lighter is in the water close to the quay?

That the case falls within the obvious sense and meaning of the Act of making provision for a workman incapacitated from work, or for his widow and children if he happens to be killed—provision to enable them to keep out of the poorhouse—is plain to the most elementary mind. There may be a technical question whether the process of raising the cargo from the hold to the deck is part of the process of unloading the cargo from the ship to the quay. The Sheriff thinks it is, and I concur with him.

I therefore agree with the Sheriff that the case is not only within the policy and meaning of the Act but also free from any good technical objection.

Lord Moncreiff — The respondent's action depends upon her being able to establish that the lighter on which the deceased was working at the time of his death was a place, or that the engine upon it was machinery or plant to which any provision of the Factory Acts is applied by the Factory and Workshop Act 1895, and was thus a factory within the meaning of section 7 of the Workmen's Compensation Act 1897.

The clause relied on is the 23rd section of the Act of 1895, which makes certain provisions of the Factory Acts as to fencing machinery, inspection, rules as to dangerous employments and machines and so forth, applicable to "(*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."

I understand that the respondent's contention is either that the lighter was part of a dock or quay in the sense of the clause; or at least—and on this reliance is chiefly placed—that the donkey engine was machinery used in the process of unloading from the ship "Nerano" to the jetty.

The matter is really concluded by authority both in this country and in England. It was decided in the case of the *Aberdeen Steam Trawling Company* v. *Peters*, 1 F. 786, that one of the crew of a vessel, who in the process of unloading in dock was injured by a steam-winch on board the trawler, had no claim under the statute. In the subsequent case of *Healy* v. *Macgregor & Ferguson*, 2 F. 634, in this Division of the Court, it was held that a stevedore had no claim under the statute in respect of injuries caused by a steam-winch on board a vessel which was being unloaded in dock.

In England there are the cases of *Flowers* [1899], 2 Q.B. 142, and *Hennessey* v. *M'Cabe* [1900], 1 Q.B. 491, in which it was held that loading a cargo from a lighter was not equivalent to loading it from a dock.

If, then, this operation of raising the cargo from the hold had been conducted by a steam-winch belonging to the "Nerano," and even if the steam-winch had been used for the purpose of putting the cargo on shore, the pursuer would, on the cases, have had no claim. I confess that I can see no distinction between the steam-winch of a vessel which is being unloaded and a steam-winch or a donkey engine on board another vessel which is lent or hired for the purpose of raising or unloading the cargo. As I read the decisions to which I have referred, machinery, in order to bring it within the scope of the Workmen's Compensation Act must be shown to be machinery attached to or upon the dock or quay. Now, this lighter on which the engine stood was not part of the dock and did not belong to the Dock Commissioners. It and the engine were the property of the appellants, and although they happened to be lying in Leith Docks on the day of the accident, they might have been removed elsewhere next day.

But apart from decision I should have reached the same result. I think it is sufficient that the donkey-engine on board the appellant's lighter was not engaged in unloading the cargo of the "Nerano" to the quay. From its position outside the "Nerano" it could not have done so. In point of fact it was merely engaged in raising the grain from the hold of the vessel to the deck. Before the grain could be put on the quay, another process had to be gone through; it was put into bags, not by the appellants' workmen, but by the dock-workmen, and thereafter it was taken ashore, not by means of any machinery but by the dock-workmen.

Secondly, in order to bring any of the premises or machinery mentioned in the clause quoted within the Workmen's Compensation Act 1897, they must be shown to be premises or machinery to which the provisions of the Factory and Workshop Acts are applied. Now, it is found as a fact in the case that the appellant's lighter was never inspected by Her Majesty's Inspector of Factories. It was, I think rightly, not regarded as falling within the scope of those Acts. The premises, works, and machinery to which (as factories) the Workmen's Compensation Act and Factory and Workshop Acts apply have all a certain degree of immobility which admits of the Factory Acts being applied to them. Notably the Factory Acts do not apply to subjects such as a ship, a sufficient reason being that it would not be practicable to apply to a ship (which might be at one place one day and a hundred miles away the next) the provisions as to inspection, &c., contained in the Factory and Workshop Acts.

On the whole matter, although I am not surprised that the Sheriff-Substitute should have had difficulty in construing this perplexing statute, I am of opinion that the accident which happened to the deceased did not arise out of and in the course of an employment within the meaning of the Workmen's Compensation Act 1897. I would therefore answer the question in the negative.

Lord Trayner was absent.

The Court answered the question in the negative, and remitted to the Sheriff to dismiss the case.

Counsel for the Claimant and Respondent—Watt, Q.C.—Morton. Agent—John N. Rae, S.S.C.

Counsel for the Appellants—W. Campbell, Q.C.—Glegg. Agents — Anderson & Chisholm, Solicitors.

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# HIGH COURT OF JUSTICIARY.

*Monday, November 5.*

(Before the Lord Justice-General, Lord Adam, Lord M'Laren, Lord Kinnear, Lord Trayner, Lord Moncreiff, and Lord Kincairney.)

## BRYSON *v.* PHYN.

*Justiciary Cases — Statutory Offence — Annan Fisheries Act, 4 Vict. cap. 18 (Local and Personal Acts), secs. 33 and 46 — Limits of Prohibited Area — Salmon Fishing.*

The Act 4 Vict. cap. 18 (Local and Personal Acts), commonly known as the Annan Fisheries Act, provides:—Section 33—"Be it enacted, that if any person, not being the owner or occupier of any fishery in the river Annan, or in any stream or water running into the same, or on the shores or sea-coast adjacent to the mouth or entrance of the said river, shall at any time take, fish for, or attempt to take, or assist in taking, fishing for, or attempting to take, in or from the said river Annan, or any stream or water . . . which runs into or otherwise communicates with the said river Annan, or in the shores or sea coast adjacent to the mouth or entrance of the said river, any salmon, grilse, sea-trout, bull-trout, whitling, herling, or other fish of the salmon kind . . . every such person shall, for every such offence, forfeit any sum not exceeding two pounds, together with the costs of suit and conviction." Section 46 provides—"Be it enacted, that for the purposes of this Act the limits of the shore or sea coast adjacent to the mouth or entrance of the said river Annan shall be deemed to extend, and shall extend, from the west bank or side of the water of Sark on the east to the east bank or side of the water of Lochar on the west, including the whole sea coast within these limits from the land on the Scotch side at high-water mark of spring tides into the sea at low-water mark of spring tides."

Certain persons, being neither owners nor occupiers of salmon-fishings, and having no permission from any owner or occupier of salmon-fishings to fish for salmon within the limits of the Annan Fisheries Act, were convicted of a contravention of section 33 of that Act. The accused had fished for salmon at a spot a short distance westward of Torduff Point, which lies between the Sark and the Lochar. They had fished up to an hour and a quarter before low water. The sea had then receded several miles to the south-west of the spot in question, leaving the estuary of the Solway nearly all dry except for a channel of brackish water, which flowed down to the sea, and contained the water of various tributary rivers. The spot at which the accused were fishing was within this channel and on the Scotch side, both of the *medium filum* of the channel and of the *medium filum* of the estuary of the Solway.

In an appeal *held* that the spot where the appellants were fishing was within the limits of the Annan Fisheries Act, and that consequently they were rightly convicted, and appeal *dismissed.*

*Opinions* (*per* Lord Adam, Lord M'Laren, and Lord Moncreiff) that the southern boundary of the "shore or sea coast adjacent to the mouth of the river Annan," as defined by section 46 of the Annan Fisheries Act, was the *medium filum* of the estuary of the Solway.

On 18th September 1899, Matthew Bryson, John Beattie, Joseph Boyes, William Hiddleston, and Robert Bryson, all labourers and fishermen, John Muirhead, mason and fisherman, all residing at Lowthertown, and Walter Armstrong, farmer and fisherman, residing at Muirhouse, all in the parish of Dornock, Dumfriesshire, were charged in the Sheriff Court at Dumfries on a summary complaint at the instance of Charles Steuart Phyn, Procurator-Fiscal. The complaint set forth that the accused "not being the owners or occupiers of any fishery in the river Annan, or in any stream or water running into the same, or on the shores or sea coast adjacent to the mouth or entrance of the said river, did, on 15th August 1899, in the said shores or sea coast, and at that part thereof at Torduff Point, Gretna parish, Dumfriesshire, being within the limits of the Annan Fisheries Act, by means of halve nets, fish for or attempt to take, or assist in fishing for or attempting to take, salmon or other fish of the salmon kind; or did, time and place aforesaid, trespass in or upon said water with intent to take or kill salmon or fish of the salmon kind, contrary to section 33 of the said Annan Fisheries Act," whereby they were each alleged to be liable to penalties in terms of the 50th and 51st sections of said Annan Fisheries Act; or otherwise the accused were alleged to "have contravened the Act of Parliament, 44 Geo. III., cap. 45, entituled 'An Act for the better regulating and improving the Fisheries in the arm of the sea between the county of Cumberland and the counties of Dumfries and Wigtown and the stewartry of Kirkcudbright, and also the fisheries in the several streams and waters which run into or otherwise