tained by the respondent Mrs Dawes on 20th July 1900 the said respondent was entitled notwithstanding the terms of her marriage-contract to record the bond of annuity and bond of corroboration, Nos. 25 and 27 of process, in the Register of Sasines; (2) that under and in virtue of the bonds so recorded in said Register of Sasines the respondent is duly infeft in a free liferent annuity of £800, restrictable in terms of the Aberdeen Act, during all the days of her life after the decease of the said James Somervell, to be uplifted and taken furth of the entailed lands and estates of Hamilton Farm, Sorn, Dalgairn, and Daldorch; (3) that said respondent is entitled in terms of section 18 of the Entail (Scotland) Amendment Act 1882 to have such further provision, if any, made for her said interest as creditor in the said bonds as may be rendered necessary by the proposed disentail; but (4) that she is not entitled to affect the rents of the said entailed estates or to have such provisions as aforesaid made for payment of an annuity prestable during the lifetime of the said James Somervell; (5) adhere to the fifth finding of the said interlocutor; and decern: Remit to the Lord Ordinary to proceed and find no expenses due to or by either party in the Inner House: Find the tutors *at litem* entitled to their expenses as against the sequestrated estate, and remit the accounts thereof to the Auditor to tax and to report, with power to the Lord Ordinary to decern for the expenses now found due."

Counsel for the Petitioner and Reclaimer—Dundas, K.C.—Blackburn. Agents—Dundas & Wilson, C.S.

Counsel for the Respondent Mrs Dawes — Campbell, K.C. — Macphail. Agents — Tods, Murray, & Jamieson, W.S.

Counsel for the Curator *ad litem* to J. S. H. Somervell—Dove Wilson. Agent—Donald Mackenzie, W.S.

Counsel for the Curators *ad litem* to the Daughters—A. J. Alison. Agent—Donald Mackenzie, W.S.

Tuesday, July 14.

FIRST DIVISION.

[Sheriff Court at Glasgow.

KAVANAGH *v.* CALEDONIAN RAILWAY COMPANY.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7—*Factory—Bottle-Washing Work—Cellars in Hotel—Factory and Workshop Act* 1901 (1 *Edw. VII. c.* 22), *sec.* 149, *and Sched.* 6, *Part II.*

A workman, engaged in corking a bottle in the cellar of an hotel, met with an accident, and claimed compensation under the Workmen's Compensation Act 1897. In a case stated for appeal it was set forth that the cellars were used as an adjunct to the hotel, that the process of bottling was there carried on by hand, but that for the purpose of bottle-washing there was a machine worked by water.

Held that the hotel cellar was not a "bottle-washing work" within the meaning of Sched. 6, Part II. No. 28, of the Factory and Workshop Act 1901, and was not a factory within the meaning of the Workmen's Compensation Act 1897.

This was a case stated for appeal by the Sheriff-Substitute at Glasgow (STRACHAN), in an arbitration under the Workmen's Compensation Act 1897 between Bartholomew Kavanagh, bottler, 37 Eglinton Street, Glasgow (appellant), and the Caledonian Railway Company (respondents).

The case set forth the following facts as admitted or proved:—"1. That the appellant was for some time employed by the respondents as a storeman in the wine cellars in the basement of the Central Station Hotel, Glasgow, and was on 27th October 1902 engaged in one of said cellars in corking a bottle of whisky. 2. That there is a corking machine in the cellar in which he was corking the bottle, but as there was only one bottle to be dealt with the appellant put the cork in with his hand, and that when about to strike the cork with the palm of his hand in order to force it in, the neck of the bottle suddenly broke, with the result that his hand came violently in contact with the broken glass and was severely cut. 3. That the wine and spirit stores connected with the hotel are of a very extensive character, and consist of ten or eleven cellars or compartments entering by one door and connecting with each other by a series of passages. 4. That in one of these cellars there are corking and capsuling machines all worked by hand, and in another a wooden tank in which bottles are washed. 5. That there are two small machines for washing the interiors of the bottles used in connection with this tank. These machines are placed at opposite corners of the tank, and have each a small brush attached, and on a tap being turned and the water thereby let into the machines, the machines are put into operation and the brushes revolve and clean the interiors of the bottles which are placed over them. 6. That storage is the primary object and purpose of these cellars and the various processes carried on therein—bottling, bottle-washing, corking, labelling, and where necessary capsuling—are all ancillary to that object. 7. That all these processes are part of means by which respondents' business of hotel-keeping is carried on, and are none of them of a manufacturing character."

On these facts the Sheriff-Substitute held in law "that the said appellant was not at the time his hand was injured employed in or near a factory in the sense of the Workmen's Compensation Act 1897, and was not therefore entitled to compensation under said Act."

The questions of law for the opinion of the Court were — "1. Whether the said stores or cellars belonging to the respondents, or any part thereof, are (1) a factory within the meaning of the Factory and Workshop Acts 1878 to 1891, or (2) a bottle-washing work, and consequently a factory within the meaning of the Factory and Workshop Act 1901? 2. Whether the appellant was engaged at the time his hand was injured in working in or about a factory within the meaning of the Workmen's Compensation Act 1897?"

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), enacts (sec. 7 (1)) —"This Act shall apply only to employment by the undertaker as hereinafter defined 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."

The Factory and Workshop Act 1901 enacts (sec. 149 (1))—"The expression 'non-textile factories' means . . . (*b*) any premises or places named in Part II. of the Sixth Schedule to this Act wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there; and (*c*) any premises wherein or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely, . . . (iii.) The adapting for sale of any article, and wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there."

Schedule 6, Part II., includes among non-textile factories—"(28) Dry-cleaning, carpet-beating, and bottle-washing works."

Argued for the appellant — This was a "bottle-washing work," and therefore a factory within the meaning of the Factory and Workshop Act 1901 (quoted *supra*). The reference in section 7 of the Workmen's Compensation Act to the "Factory and Workshop Acts 1878 to 1891" must now be held to involve a reference to the Act of 1901—*Stevens* v. *General Steam Navigation Co.* [1903], 1 K.B. 890. [Counsel for the respondents intimated that they admitted that the Act of 1901 applied]. If so, this was a bottle-washing work in which water-power was used, and it was therefore a factory—*Petrie* v. *Weir*, June 19, 1900, 2 F. 1041, 37 S.L.R. 795; *Law* v. *Graham* [1901], 2 K.B. 327—[The LORD PRESIDENT referred to *Caledonian Railway Co.* v. *Paterson*, Nov. 17, 1898, 1 F. (J.C.) 24, 36 S.L.R. 60, in which it was held that the laundry attached to the Central Hotel was not a factory]. That case was wrongly decided, and is in conflict with *Petrie* v. *Weir*. In the present case water-power was used for the purpose of adapting the bottles for sale. That was enough to make it a factory. It was not necessary that the machinery should be actually in use—*Stuart* v. *Nixon & Bruce* (1901), A.C. 79.

Counsel for the respondents were not called upon.

LORD PRESIDENT—We have had a very good argument from Mr Hamilton, and the points in the case are so fully before us that we do not think it necessary to invite further argument.

The facts of the case are simple. The appellant was employed as a storeman by the Railway Company in their wine cellars in the basement of the Central Station Hotel at Glasgow, and he was injured on 27th October 1902 while engaged in corking a bottle of whisky in one of the cellars. For this purpose he was using his hands alone; there was no mechanical power employed in the process. I do not say that this is conclusive against the appellant's claim, because it may be, and probably is the case, that an accidental injury occurring in a particular place may fall within the scope of the Act although the use of mechanical power did not conduce to the accident. We have therefore to inquire what is the nature and character of the place in which he received the injury, and upon that matter two questions are submitted for our opinion. The first question is divided into two sub-heads—whether the said stores or cellars or any part of them are (1) a factory within the meaning of the Factory and Workshop Acts 1878-1891, or (2) a bottle-washing work, and consequently a factory within the meaning of the Factory and Workshop Act 1901. As regards the first of these two heads no argument was submitted, and it is unnecessary to say more than this, that under these Acts mere "stores" are not a factory. Again as regards the second head, the Factory Act 1901 extends the scope of the provisions of the earlier Acts to places not previously within the scheme of factory legislation, places in which manufacturing processes are carried on by the aid of steam and other mechanical power, from which danger is found to arise to the persons employed. Amongst the additional non-textile factories and workshops enumerated in Schedule 6, part 2, there are included (28) dry-cleaning, carpet beating, and bottle-washing works. Accordingly the question we have to consider is whether the place in which the appellant received the injury is in any reasonable sense a bottle-washing work. I cannot think that such a place as this was within the contemplation of the schedule. The Legislature did not include every place in which bottles are washed, but only places where either the sole or principal business carried on is bottle-washing. The place here in question does not seem to me to answer this description at all. It is a hotel, and in its cellars there are two small bottle-washing machines, supplied with water power from a tap, and the argument for the appellant was that the presence of these machines converts the whole premises into a bottle-washing work. But it appears to me that the requisites of a bottle-washing work as mentioned in the Schedule to the Act of 1901 are absent. The business carried on in the building is not

bottle-washing but hotel keeping, and the washing of bottles, like the washing of plates and cups, &c., is carried on not as a main or separate business but merely incidentally to hotel keeping. For these reasons I think that we cannot hold that the cellars in question are a factory within the meaning of the Act of 1901, or that through that Act they are brought within the scope of the Workmen's Compensation Act 1897.

I therefore think that we should answer the second question as well as the first in the negative.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court answered both questions in the negative.

Counsel for the Appellant—Hamilton. Agents—Oliphant & Murray, W.S.

Counsel for the Respondents—Guthrie, K.C.—King. Agents—Hope, Todd, & Kirk, W.S.

Tuesday, July 14.

SECOND DIVISION.

CHALMERS' JUDICIAL FACTOR *v.* CHALMERS.

Succession—Testament—Legitim—Effect of Election to Claim Legitim—Forfeiture of Provision—Direction to Pay over Annual Proceeds to Father for Education and Support of Children.

In their mutual last will and settlement a husband and wife directed their trustees to apply the annual proceeds of one share of the residue of their estate in payment of the premiums on two policies of insurance, the surplus if any to be paid over to their son W. for the education and support of his children. The proceeds of the policies when payable were directed to be paid to the children of W. W. claimed and received his legitim.

Held (*diss.* Lord Moncreiff) that the bequest of the surplus income was a provision in favour of W., and not a trust in him for the benefit of his children, and that the bequest was therefore absolutely forfeited by W. claiming and accepting legitim.

Jack v. *Marshall*, January 21, 1879, 6 R. 543, 16 S.L.R. 326, *followed*.

Succession—Codicil Altering Will—Liferent or Fee—Testament—Construction.

In a trust settlement the trustees were directed in the fifth direction of the third clause to apply four shares of the residue of the trust-estate for the use of the testators' daughter J. in liferent till she attained 35 years of age or was married, and on her attaining said age without being married for payment of the principal to her, or in the event of her previous marriage for settlement of the principal on herself in liferent and her children in fee, whom failing the same to form part of the estate for division.

By a codicil the testator recalled the fifth direction of the third clause of the settlement, and "in lieu and in place of the provision or share of the estate thereby declared to be paid" to her daughter J., directed, appointed, and declared that only two and a half shares should be paid to her.

Held (*dub.* the Lord Justice-Clerk) that the codicil only changed the amount of the share which was to be applied for behoof of J. and did not convert the right of liferent given her by the settlement into a right of fee.

By mutual last will and settlement executed on 16th August 1872 William Chalmers and Jane Cruickshank or Chalmers, his wife, after providing, *inter alia*, for payment of an annuity of £20, provided in the third place that, subject to the burden of the said annuity, the testators' whole estate, under deduction of debts and charges, should be divided into twelve equal shares, and apportioned and applied, *inter alia*, as follows:—"(*First*) One share to be set aside and the annual proceeds applied in the first instance in payment of the premiums on two policies of assurance, each for £300, Nos. 2563 and 4184, held by us on the life of our son William Leslie Chalmers with the Northern Assurance Company, the surplus, if any, being paid over to the said William Leslie Chalmers for the education and support of his children, and on the emergence of the claims under said policies by the death of the said William Leslie Chalmers, the contents thereof, bonuses accrued thereon, . . . shall be paid over to and divided equally amongst the lawful children of the said William Leslie Chalmers on their respectively attaining the age of twenty-one years—the annual proceeds till said period being applied for their education and maintenance." "(*Fifth*) Four shares thereof to and for the use of our said daughter Jane Elizabeth Chalmers in liferent till she attain the age of thirty-five years or is married, and on her attaining said age without being married for payment of the principal to her, or in the event of her previous marriage, for settlement of said principal on herself in liferent, exclusive always of the *jus mariti* and right of administration of her husband, free from his or her debts or deeds, and on her children in such proportions as she may appoint, and failing such appointment equally among them share and share alike. . . . As also that failing the survivance of any of our grandchildren till the period of payment of the provisions in their favour, the same shall fall to and be divided equally among their brothers and sisters, and failing these the same shall revert to and form part of our estate for division." The testators further conferred upon the survivor of them power to nominate and appoint executors or trustees for the purposes of fulfilling the mutual settlement, and reserved and granted to themselves jointly, and to the survivor of them, full power at any time to alter or revoke