they became unable to escape from the gaff, whether they previously had become entangled in the net or not.

I can discover no satisfactory distinction between the use of the hang-net and the operations complained of in the cases of *The Duke of Queensberry* v. *The Marquis of Annandale* and *Dirom* v. *Littles*, referred to in the appellant's case in *Wedderburn* v. *The Duke of Atholl*, and I think it falls within the principle and rule of law laid down by Lord Westbury in the case of *Hay* v. *The Magistrates of Perth*, with the concurrence of Lord Chelmsford, "that it is illegal to fish for salmon with any net which is a fixture, which is at all fixed or permanent even for a time in the water," a decision which met with the approval of Lord Blackburn in *The Duke of Sutherland* v. *Ross*, 3 App. Ca. 746, for although it may be said that the net in this case is not stationary in one spot for any length of time, still, used as it is chiefly in slack water, it is in a perpendicular position when first paid out, and is retained in that position for as long a time as is possible, and so long as it so floats gradually down the current it remains a continuous obstruction. I think this brings it within the spirit of the decision, having regard to the mode in which the capture of fish is effected.

I think, then, that the use of the hang-net as described is illegal, and that the judgment appealed against should be reversed, with costs.

Appeal in the case of *Wedderburn dismissed*, and judgment affirmed with costs.

Appeal in the case of the *Glover Incorporation of Perth allowed*, and judgment, so far as appealed from, *reversed* with costs.

Counsel for the Pursuers the Duke of Atholl and Others—Lord Advocate (Graham Murray, Q.C.)—Solicitor-General (Dickson, Q.C.)—C. N. Johnston. Agents—Stibbard, Gibson, & Co., for Thomson, Dickson, & Shaw, W.S.

Counsel for the Defenders Wedderburn and Others, and Glover Incorporation of Perth and Others—Dean of Faculty (Asher, Q.C.)—Dundas, Q.C.—Blackburn. Agents—Grahames, Currey, & Spens, for Dundas & Wilson, C.S.

Monday, May 28.

(Before the Lord Chancellor (Halsbury), Lord Macnaghten, Lord Davey, and Lord Brampton.)

GRANT *v.* LANGSTON (SURVEYOR OF TAXES.)

(*Ante* June 24, 1898, 35 S.L.R. 815, and 25 R. 1040.)

Revenue—Inhabited-House-Duty—Stat. 48 *Geo. III. cap.* 55, *Schedule B—Stat.* 57 *Geo. III. cap.* 25, *sec.* 1—*Stat.* 5 *Geo. IV. cap.* 44, *sec.* 4—*Stat.* 14 *and* 15 *Vict. cap.* 36, *secs.* 1 *and* 2 *of Schedule—Stat.* 41 *and* 42 *Vict. cap.* 15, *sec.* 13, *sub-sec.* (2).

The proprietor of premises consisting of two storeys occupied the upper storey as a dwelling-house, and in the lower storey carried on the trade of a licenced retailer of exciseable liquors. There was no internal means of communication between the two storeys, each having a separate entrance from the street. *Held* (*rev.* judgment of the First Division) that he was not liable for inhabited-house-duty in respect of the storey which was used as a public-house—*per* the Lord Chancellor and Lord Brampton, on the ground that it was not an inhabited dwelling-house within the meaning of 48 Geo. III. cap. 55, and 14 and 15 Vict. cap. 36; *per* Lord Brampton, also upon the ground that even if it was to be regarded as a tenement severed from a larger house and assessable under 48 Geo. III. cap. 55, Schedule B, it was exempted from inhabited-house-duty by 41 and 42 Vict. cap. 15, sec. 13 (2), as being solely devoted to trade; and *per* Lord Macnaghten and Lord Davey, on the ground that even if it was assessable under the Act 48 Geo. III. cap. 55, it was exempted from inhabited-house-duty as being either a separate "house" or a separate "tenement" occupied solely for the purpose of trade within the meaning of 41 and 42 Vict. cap. 15, sec. 13 (2).

The case is reported *ante, ut supra.*

Grant appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—I think this is one out of many similar cases in which the difficulty of construction arises from an alteration in things which, notwithstanding alteration, retain their original names, while the Legislature in retaining the original name in a statute legislates by using words in a wholly artificial sense.

A hundred years ago there was not much difficulty in saying what was a "house," but builders and architects have so altered the construction of houses, and the habits of people have so altered in relation to them, that the word "house" has acquired an artificial meaning, and the word is no longer the expression of a simple idea; but to ascertain its meaning one must under-

stand the subject-matter with respect to which it is used in order to arrive at the sense in which it is employed in a statute.

With the most sincere respect for the authority of Sir George Jessel, I cannot help thinking that his reasoning in the *Westminster* case is unsatisfactory. No one will doubt the soundness of the maxim which he quotes as the basis of his judgment, but as usual it is the application of it which raises the difficulty. Indeed, I think it is true to say that the judgment to which I refer proves too much for the purpose of its final conclusion. It establishes undoubtedly that the word "house" is an ambiguous word; it shows that you must search otherwise than in the word itself what is the meaning in which the Legislature has used it, since the natural and ordinary meaning of an ambiguous word cannot be ascertained without the context. Now, the instances to which the learned judge referred, such as the two temples constituting one, or houses such as Christ Church, Oxford, have as little to do with structure, architecture, form of building, or occupation, as with the complexion of the inhabitants. "House" in one sense means simply a community, ecclesiastical or secular, having common revenues, common objects, and in pre-Reformation times vows or obligations common to those who joined it. Accordingly, the word "house" has no common or ordinary meaning so fixed and definite that by the mere use of the word you can determine in what sense the Legislature has used it.

I think the original idea of an inhabited house was that of a building inhabited by one person (with his family) responsible for the tax, who was himself the inhabitant of the whole of the house. But very soon questions began to be raised as to what constituted the unity of a house; one side of a whole street is in one sense structurally one building, but the separate unity of each of the structures, with all its arrangements for occupation by one family and its head, was of course recognised as a house separately liable to the tax. Even semi-detached houses were always recognised as two houses, although they were structurally one and protected by one roof; but controversies have arisen in respect of rating for the poor, for the purposes of taxation and for the franchise, and decisions have been arrived at not always satisfactory or reconcileable with each other. An outer door and a common or separate staircase have been most commonly the tests applied, and I am not myself able to see how the case of chambers in an Inn of Court and the decision of the *Westminster* case are reconcileable with each other. But the Legislature went further in respect of artificially creating more houses than one out of a house, which was in every ordinary sense one taxable house, by giving from time to time exemptions from taxation to parts of structures which were in every sense structures adapted and probably intended originally for the occupation of one inhabitant as head of a family. Sir George Jessel himself in the *Yorkshire Fire and Life Insurance* v. *Clayton* said—"In modern times a practice has grown up of putting separate houses one above the other; they are built in separate flats or houses," but for all legal and ordinary purposes they are separate houses.

Now, it appears to me that apart from the exemption created by the Act 41 and 42 Vict. cap. 15, sec. 13, I should have great difficulty in holding this building to be one inhabited house within the various alterations which the Legislature has introduced into what it has for fiscal purposes called a "house." It appears to me that, in the language of Sir George Jessel, there are two houses built one above the other; I suppose no one would dream of calling them one house if the same conditions which are found to exist here were found to exist in the same structures built side by side and not one above the other; and if it is possible to have one house built over another house, then all that has been held to constitute a separate house exists here; there is nothing which is held in common; the one structure is superposed upon the other and that is all.

With respect to the exemption, I do not think what has been said by the Lord President in *Coutts* v. *Russell* can be made clearer than in his own words—"The word 'tenement' in the statute means part of a house so structurally divided and separated as to be capable of being a distinct property or a distinct subject of lease." There is no doubt that if this is right—and I am by no means prepared to say it is wrong—the house which is here described is undoubtedly capable of being a separate property or separately leased; but I have more difficulty in seeing that it is structurally divided if I assume that the whole building is one house.

If, as some of your Lordships seem to think, the exemption was introduced so as to alter the law as it was declared to be in the *Westminster* case, I cannot think it was very happily done. In this legislation "tenement," "attached," "property," all require definition. I am not sure that I know what is a tenement as applied to such a subject-matter, though, as I have said, I am not prepared to differ with the Lord President; nor is it perhaps very material to consider it further, since, for the reasons I have given, I think this, *i.e.*, the ground-floor house, is not an "inhabited house" within the statute, and therefore I agree with your Lordships that this appeal should be allowed and the decision of the Commissioners restored.

LORD MACNAGHTEN—I think the claim of the Crown cannot be sustained.

The question seems to me to depend entirely upon the true construction of sub-section 2 of section 13 of the Customs and Inland Revenue Act 1878. The argument on behalf of the Crown, as I understood it, was that sub-section 2 was to be treated for all practical purposes as part of sub-section 1; that the purpose of sub-section 2 in substance was to provide that in the case of premises used for professional pur-

poses, as well as in the case of trade premises, the mere circumstance that a caretaker resided therein should not make the building liable to taxation as a dwelling-house, and that the effect of reading the two sub-sections together was to limit the application of sub-section 2 to buildings chargeable as an entire house or divided into tenements, being distinct properties.

I think the two sub-sections are quite independent, distinct in origin, and diverse in operation. The object of sub-section 1 was to remedy the hardship exemplified in the case of the *Attorney-General* v. *Mutual Tontine Westminster Chambers Association*, 1876, L.R., 1 Ex. Div. 469. The association had erected blocks of buildings structurally divided into separate tenements or suites of apartments. Some had been let for residential purposes, some as offices or chambers, while others were still unlet. Under Rule VI. of the Act of 1808 the association was held to be chargeable as the occupier of these buildings, and liable for duty in respect of all the separate tenements or suites of apartments, whether let or unlet.

The evolution of sub-section 2 was a more gradual process. It was marked by successive relaxations in favour of trade. Rule III. of the Act of 1808 provided that all shops which were attached to the dwelling-house or had any communication therewith should be valued with the dwelling-house. If that rule had remained unaltered there could have been, according to the decided cases, no doubt as to the appellant's liability. The first change was made in 1817. The Act of that year (57 Geo. III. c. 25, s. 1) takes note of the fact that it had become usual for tradesmen and shopkeepers to carry on their business in one house and to reside in another. It enacts that tenements or buildings, "or parts of tenements or buildings," previously occupied as dwelling-houses by persons who since had gone to reside in taxable dwelling-houses elsewhere, should be discharged from assessment when used wholly as houses for trade, or as warehouses for goods, or as shops or counting-houses. The Act of 1824 (5 Geo. IV. c. 44) extended this exemption to persons using any house, tenement, or building, "or part of a tenement or building," for the purpose of any profession, vocation, business or calling by which they seek a livelihood or profit. A further concession was made in 1867. By section 25 of the Inland Revenue Act of that year (30 and 31 Vict. c. 90) it was enacted that in order to entitle the occupier of "any tenement or building or any part of a tenement or building" to exemption on the ground of such premises being occupied for trade purposes only, it should not be necessary to prove, nor should proof be required, that such occupier resided in a separate and distinct dwelling-house or part of a dwelling-house chargeable with the said duties. Section 11 of the Inland Revenue Act 1869 (32 and 33 Vict. c. 14) provided that "any tenement or part of a tenement" occupied as a house for the purposes of trade only should be exempt although a caretaker dwelt in it for the sake of protection.

So far the relaxations in favour of trade introduced by the Acts of 1867 and 1869 had not been extended to premises used for professional purposes. But in 1878, when the Legislature dealt with the house-tax for the purpose of remedying the hardship which occurred in the case of the *Westminster Chambers Association*, occasion was taken to put premises used for professional purposes precisely on the same footing as premises used for trade purposes, and section 11 of the Act of 1869 was then repealed.

It is to be observed that while section 11 of the Act of 1869 is repealed, section 25 of the Act of 1867, though apparently superseded, is not repealed. Now, the Act of 1867, following the language of the earlier Acts, speaks of "any tenement or building, or part of a tenement or building." The Act of 1878, section 13, sub-section 2, uses the expression "house or tenement." I do not think that it could have been intended to cut down or narrow the concession introduced by the Act of 1867. The more compendious phraseology to be found in the Act of 1878 was, I suppose, adopted because the previous sub-section shows that the word "tenement" is used as meaning a division or part of a house.

In the present case it is not necessary to consider whether there must be a structural division or physical separation when exemption is claimed for part of a building as being used for trade or professional purposes only, because the two portions of the building belonging to the appellant are divided so completely that in fact they form separate houses. It is said they are not "distinct properties." That is true. But there is not in sub-section 2 of section 13 of the Act of 1878, any more than in section 25 of the Act of 1867, anything requiring that when a tenement or part of a house used for trade purposes only is a portion of a building, the rest of which is used as a dwelling-house, the two portions must be "distinct properties" in order to enable the occupier of the trade premises to claim exemption. And certainly there is no reason why such a condition should be introduced if it is not prescribed in terms by the enactment.

I am therefore of opinion that the claim of the appellant ought to be allowed. In coming to this conclusion your Lordships will not, I think, be differing from the opinion of the learned Judges of the Court of Session, although in deference to previous rulings the actual decision was the other way.

My noble and learned friend Lord Morris desires me to express his concurrence.

LORD DAVEY—If the question on this appeal depended only on the proper construction of the rules contained in Schedule B to the Act 48 Geo. III. c. 55, I should have some difficulty (having regard to the cases already decided on these Acts both in England and in Scotland) in avoiding the conclusion that this entire building is liable to be assessed to the inhabited-house-duty as

one dwelling-house. There is this difference between the circumstance of the case decided in the English Court of Appeal in *Attorney-General* v. *Mutual Tontine Westminster Chambers Association* (1 Ex. D. 469) and the present one, viz., that in the *Westminster* case there was one door opening on the street and one staircase common to the occupiers of all the suites of rooms into which the building was divided, whereas in the case before your Lordships each portion of the building has a separate entrance from the street, and no part of the building is used in common by the occupiers of the ground floor and the first floor. Whether that difference is sufficient to make any real distinction, or whether I should have decided the *Westminster* case in the same way as it was decided by the Court of Appeal, it is not necessary for me to say, because I think that the case falls within the exemption contained in sub-section 2 of section 13 of 41 and 42 Vict. c. 15. The first sub-section applies to a house being one property which is divided into and let in different tenements. Two conditions are required. It must be both divided into and also let in different tenements. It has been decided in England that there must be physical division of the house into different tenements, and that the word tenement is used in order to comprise the different kind of things (such as shops, warehouses or offices) into which a house may be divided —*Yorkshire Insurance Co.* v. *Clayton*, 8 Q.B.D. 421), and see *Chapman* v. *Royal Bank of Scotland*, 7 Q.B.D. 136. In the Scotch case of *Russell* v. *Coutts*, 9 R. 261, the Lord President says—"Tenement in this statute means a part of a house so structurally divided and separated as to be capable of being a distinct property or a distinct subject of lease;" and Lord Shand says—"The line must simply be drawn by looking at the particular premises, and ascertaining whether they are so structurally shut off from the rest of the building occupied as to form an entirely separate tenement of themselves."

I agree with this definition of the word "tenement" in this section of the Act, and I think it must have the same meaning in sub-section 2 as it has in sub-section 1. The second sub-section exempts "every house or tenement which is occupied solely for the purposes of any trade or business or of any profession or calling by which the occupier seeks a livelihood or profit," and it also provides that the exemption shall take effect although a caretaker may dwell in such house or tenement. The words are perfectly general. There is nothing about letting. The owner may be the occupier of the tenement. It was argued that the words "house or tenement" are used pleonastically, because it was said these are so used in a section of an earlier Act. But it is a sound rule of construction that you must give to each word used in an Act of Parliament its significance if you can do so without violating other provisions of the Act. It was also said that the word "tenement" should be confined to the case when a tenement is separately assessable under section 14 of 48 Geo. III. I see no reason for cutting down the generality of the words in that manner. If that had been the intention it would have been easy to have expressed it. No difficulty is suggested in applying the words of the sub-section according to their literal meaning, and I think that the Legislature intended to exempt from the tax every "tenement" (in the sense which that word bears in this section) used for the purposes of trade or business, or professionally. This public-house is, in my opinion, clearly either a separate house, as some of your Lordships think, or a separate tenement within the meaning of the sub-section to which I have referred, and I therefore think that it should be declared that it is exempted from the tax.

LORD BRAMPTON—I also am of opinion that the tenement numbered 49 Bath Street, Portobello, in which the appellant carries on the trade or business of a licensed public-house under the Public-Houses (Scotland) Act 1862, is not liable to the duty imposed by the House-Tax Act 1851, to be assessed and levied according to the rules contained in Schedule B of the Statute 48 Geo. III. c. 55. But I feel somewhat diffident in expressing all the reasons which have influenced me, seeing that they are not entirely those which have guided my noble friend Lord Davey to the same conclusion.

By sec. 1 of the Act of 1851 it was enacted that in lieu of the duties then payable there should be assessed upon inhabited dwelling-houses throughout Great Britain the duties set forth in the schedule to that Act, with respect to which it was by sec. 2 enacted that the rules contained in Schedule B to the Act of 48 Geo. III. should be in full force as they were in regard to certain then already repealed duties.

By Rule III. of Schedule B all shops and warehouses which are attached to the dwelling-house or have any communication therewith, shall, in charging the duties, be valued together with the dwelling-house.

The Schedule to the Act of 1851 declared the duty of 6d. in the pound of the annual value to be payable for every inhabited dwelling-house which, with the household and other offices, &c., therewith occupied, is worth the annual rent of £20 or upwards —"Where such dwelling-house should be occupied by any person in trade who should expose for sale and sell any goods, &c., in any shop or warehouse being part of such dwelling-house, and in the front and on the ground or basement storey thereof. And also where such dwelling-house should be occupied by a person who should be duly licensed to sell therein by retail beer, ale, wine, or other liquors, although the room or rooms thereof in which such liquors shall be exposed to sale, sold, drunk, or consumed, should not be such shop or warehouse. And upon dwelling-houses not so occupied a duty of 9d. in the pound of the annual value."

The premises, the subject of the assessment now in question, consist of a building facing Bath Street, Portobello, of two

storeys in height, one above and supported by the other, the lower one resting upon the earth. One roof covers the whole building, but each storey is so structurally composed and arranged for permanent occupation by a separate occupier that there is no internal communication of any kind between the two storeys, nor any common staircase or access to or from the street, or from any part of the outside of the premises, each having a separate entrance or entrances therefrom. In short, it would be impossible to erect two separate houses under one roof, or to divide one building into two distinct and separate houses more completely than has been accomplished in the building now under consideration. Indeed, before the appellant opened the lower house or storey as a public-house, it was let to a separate tenant, the appellant occupying only the upper house or storey as he does now. No person resides in the licensed premises. In law I think that each of these storeys constitutes a distinct and separate house, each of which if inhabited as a dwelling should be separately assessed to the duty imposed by the statute, but neither of which could be legally so assessed unless so used. They are not the less two houses because they are both owned and occupied by one and the same person. I do not propose to cite more than one authority in support of this view, viz., that of Sir George Jessel, M.R., in the *Yorkshire Insurance Co.* v. *Clayton* (1881), 8 Q.B.D. 424—"Formerly," said that learned Judge, "houses were built so that each house occupied a particular site, but in modern times a practice has grown up of putting separate houses one above the other. They are built in separate flats or storeys, but for all legal and ordinary purposes they are separate houses. Each is separately let and separately occupied, and has no connection with those above or below, except in so far as it may derive support from those below instead of from the ground as in the case of ordinary houses. The Legislature (referring to the Act 41 Vict.) evidently intended to extend the same class of taxation to this new sort of houses as applied to houses built in the old style."

The building formed by these two storeys ought not, as I think, to be treated as one house let in different storeys within the meaning of Rule VI. of 48 Geo. 3, c. 55, Sch. B, so as to make the landlord liable to be assessed in respect of the whole building in the event of his living in the one storey and letting the other. Nor do I think that owning and occupying as he does both storeys of the building the lower floor can be treated as a shop attached to the upper floor as a dwelling-house, and valued with it in the assessment under Rule III; and this for two reasons: 1st. Because although it might for some purpose in strictness be called a shop, because goods in the shape of beer, spirits, &c. are sold therein by retail, it is not necessarily "a shop" within the meaning of the House Tax Acts. See the Schedule to 14 & 15 Vict. c. 36, which recognises that a dwelling-house may be occupied by a person licensed to sell therein exciseable liquors without the room in which the sales take place being "a shop." Moreover, even if the lower floor could be treated as a shop, it is not, in my opinion, attached to the dwelling-house in the sense contemplated by the Act; for in my judgment the Act did not intend the word "attached" to be satisfied by mere contact of some part of the two structures, but intended that it should be so attached for its use with the dwelling-house in the same way that by Rule II. offices and buildings "belonging to and occupied with the dwelling-house are for the purposes of the assessment to be valued with it." It is further to be observed that no part of the trade of the public-house could be carried on in the dwelling storey, for the licence in this case is only to sell on the ground storey, and any sale elsewhere would be illegal; though in the case of the sale by retail of ordinary goods they might be sold as well in the dwelling-house as in a shop.

The cases of the *Attorney-General* v. *The Mutual Tontine Association*, L.R., 10 Ex. 395, S.C. App., *Rusby* v. *Newson*, L.R., 10 Ex. 322, and *The Yorkshire Fire and Life Insurance* v. *Clayton*, 6 Q.B.D. 557, C.A. 8 Q.B.D. 421, have no application to this case if my view is correct, for they were all clear cases of separate houses with many rooms in each let to various occupiers, the whole house being assessable upon the landlord, the structural arrangements being very different from those of the present building. The 41 and 42 Vict. c. 15, was passed for the purpose of removing the hardship which was put upon a landlord by the existing state of the law as declared by the *Tontine* case, and to provide for the cases in which houses are let out in separate tenements, and tenements occupied solely for trade purposes. By section 13, subsection 1, it was enacted that, "Where any house, being one property, shall be "divided into and let in different tenements, and any of such tenements are occupied solely for the purpose of any trade or business, or of any profession or calling by which the occupiers seek a livelihood or profit, or are unoccupied, the person chargeable as occupier of the house shall be entitled to relief so as to confine the amount of duty to that to which it should have been assessed, if it had been a house comprising only the tenements other than such as are occupied as aforesaid or are unoccupied." This section applies only to houses being one property — structurally divided into and let in different tenements. That could not apply to premises like the present where the owners and occupiers are the same persons, and the building though formed of two separate and distinct tenements, is not let out as such. The second sub-section, however, applies to every house or tenement which is occupied solely for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit, and provides that such house or tenement shall be exempted from the duties, on proof of the facts to the satisfaction of the Com-

missioners, even although a person may dwell in such house or tenement for the protection thereof. This subsection exempts the occupier, whether he be the owner or a mere tenant of any tenement solely occupied as mentioned. The present case clearly comes within it.

As the result of a careful consideration of this case, I am of opinion that the appellant is entitled to relief from duty in respect of his restaurant premises, being No 49 in Bath Street, upon two separate grounds—1st. That he never was liable to be assessed in respect of it, because if it constituted in itself a separate and distinct house, it was never an "inhabited dwelling-house," and therefore was not assessable. 2nd. That if it ought to be treated as a tenement severed from a larger house, it is by 41 and 42 Vict. c. 15, expressly exempt from assessment to the house duty on the ground that it was and is solely devoted to trade and business, and that a trade or business which was licensed to be carried on only within the licensed area of the ground storey.

The appeal therefore ought to be allowed with costs.

Appeal *allowed*, and judgment appealed against *reversed*, and decision of the Commissioners *restored*.

Counsel for the Appellant — Asquith, Q.C. — Roskill — F. T. Cooper. Agents — Godden, Son, & Holme, for James Purves, S.S.C.

Counsel for the Respondent—Attorney-General (Sir R. Webster, Q.C.)—Lord Advocate (Graham Murray, Q.C.)—Solicitor-General for Scotland (Dickson, Q.C.) — A. J. Young. Agents—J. C. Gore, Solicitor to the Board of Inland Revenue, for P. J. Hamilton Grierson, Solicitor to the Board of Inland Revenue for Scotland.

COURT OF SESSION.

Tuesday, May 22.

SECOND DIVISION.

[Sheriff-Substitute of Lothians.

PURVES *v.* L. STERNE & COMPANY, LIMITED.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7 (1) *and* (2) — "*Factory*" — "*Undertaker*" — *Occupier of Factory—Factory and Workshop Act* 1878 (41 *Vict. c.* 16), *sec.* 93, "*Non-Textile Factory*" 3 (*a*)—*Factory and Workshop Act* 1895 (58 *and* 59 *Vict. c.* 37), *secs.* 4 *and* 23 (1) (*b*)—*Temporary Control by Engineers for Trial of Machinery.*

During the preliminary run for testing certain ice making and refrigerating machinery constructed by a firm of engineers in the premises belonging to a cold storage and ice company, the entire control of the machinery was in the hands of the engineers. The ice made incidentally in the course of the trial in terms of the contract became the property of the ice company. At the date of the trial the machinery was practically completed. During its erection no machinery driven by steam or other mechanical power had been used by the engineers as part of the apparatus for erecting it. *Held* that the engineers' control of the machinery in the premises of the ice company during the preliminary run did not make them liable in compensation, as "occupiers" of a "factory" within the meaning of the Workmen's Compensation Act 1897, for the death of one of their workmen who was killed upon the premises in question while the preliminary run was in progress.

This was an appeal upon a stated case in the matter of an arbitration under the Workmen's Compensation Act 1897 between (1) Mrs Annie Smail or Purves, widow of William Wilson Purves, engine-fitter, Leith, as an individual, and also as tutor and administrator for her pupil children, and (2) and (3) her other children, claimants and appellants, and L. Sterne & Company, Limited, engineers and machinists, the Crown Iron Works, 156 North Woodside Road, Glasgow, respondents.

The appellants claimed £273 from the respondents as compensation for the death of the said William Wilson Purves.

The facts found by the Sheriff-Substitute (HARVEY) to be admitted or proved were as follows:—"The appellant Annie Smail or Purves is the widow, and the other appellants are the children, of the said William Wilson Purves, who was on 14th September 1899 accidentally killed within the premises in Tower Street, Leith, belonging to the North British Cold Storage and Ice Company, Limited, while in the employment of the respondents, and in the course of his employment. Purves had been in the respondents' employment for two weeks and two days immediately preceding said accident, and his wages for said period were at the rate of 35s. per week. The appellants were wholly dependent on Purves at the time of his death, and there were no others dependent on him. The respondents are engineers and machinists carrying on business at the Crown Iron Works, Glasgow. At the time of the accident they were in the course of implementing the contract between them and the North British Cold Storage and Ice Company, Limited, dated 13th September 1898, for the supply, erection, testing, maintainance, and working (for the period after completion therein specified) ice making, refrigerating, and other machinery and plant necessary for carrying on the business of the said company in said premises, all in terms of the said contract, a copy of which was admitted in evidence and is submitted as part of the stated case. At the time of the accident the machinery, with the exception of an ice-crushing machine, was substantially completed, and the 'preliminary run of the plant' referred to in the first paragraph of article 62 of the