"berthing" charter. That appears to be true, and may raise a question whether the defenders are entitled to claim demurrage, and who is bound to pay it. But it has nothing to do with a claim made for ship's disbursements by the disburser.

The Sheriff-Substitute proceeds upon the ground that there was no contract between the parties. But if the captain of the vessel put himself in the hands of the pursuer, and the defenders take the benefit of his so doing, there is contract enough to make them liable. They suffer no detriment thereby, because whatever broker had been so employed their liability would, as regards amount, have been exactly the same. I therefore think the pursuer is entitled to decree.

The LORD JUSTICE-CLERK, LORD YOUNG, and LORD MONCREIFF concurred.

The Court pronounced this interlocutor—

"Sustain the appeal and recal the said interlocutor appealed against: Find in fact (1) that the pursuer was employed as shipbroker to attend to the business of the defenders' steamship 'Rocklands,' of Flensburg, and make any necessary disbursements for said ship on her arrival in Methil about the end of January 1900, and to supply her with bunker coal; (2) that as shipbroker the pursuer performed the services and made the disbursements charged for in the account sued for; and (3) that the defenders took the benefit of the pursuer's said services, and were *lucrati* to the extent of the said disbursements: Find in law that the defenders are liable to the pursuer in the sum sued for: Therefore decern against them for payment to the pursuer of the sum of £53, 3s. 6d., with interest," &c.

Counsel for the Pursuer and Appellant—Ure, K.C.—Sandeman. Agents—Wylie & Robertson, W.S.

Counsel for the Defenders and Respondents—Solicitor-General Dickson, K.C.—Spens. Agents—J. & J. Ross, W.S.

Wednesday, November 12.

SECOND DIVISION.

[Sheriff-Substitute at Kilmarnock.

FERGUSON *v.* ANDREW BARCLAY, SONS, & COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7 (1)—*Factory and Workshop Act* 1878 (41 *Vict. c.* 16), *sec.* 93 (3) — *Factory*—"*On or in or about*" *Factory—Employment on Factory Business in Shed of which Undertaker Tenant, half-a-mile from Factory.*

An engineering company were tenants of a railway shed situated about half-a-mile from a factory in which they carried on their business. The company were in use to send a squad of men from the factory to the shed for the purposes of any work requiring to be done there in connection with the business of their factory. While so employed as one of a squad of men in the shed, working at a locomotive engine the property of the company, one of their workmen was injured. No mechanical power was used in the shed. In an appeal under the Workmen's Compensation Act 1897, *held* that the injured workman was not employed "on or in or about" a factory within the meaning of section 7 (1) of the Act.

This was a case stated on appeal from a determination of the Sheriff-Substitute (D. J. MACKENZIE) at Kilmarnock, in an arbitration under the Workmen's Compensation Act 1897 between John Ferguson, Grange Knowe, Irvine Road, Kilmarnock, applicant and respondent, and Andrew Barclay, Sons, & Company, Limited, Caledonia Works, Kilmarnock, appellants, in which the applicant claimed compensation in respect of injuries sustained by him on 11th December 1901 in the course of his employment by the appellants.

The following facts were stated as admitted or proved:—"1. That the applicant and respondent was on 11th December 1901 a workman in the employment of the appellants, who are engineers at Caledonia Works, Kilmarnock, which is a factory within the meaning of section 7 of the Workmen's Compensation Act 1897. 2. That on said date the applicant and respondent was employed by the appellants as one of a squad of men working at a locomotive engine, which was the property of the appellants, in a shed belonging to the Glasgow, Barrhead, and Kilmarnock Railway Company, and used by the said Railway Company, of which shed the appellants were tenants in terms of an agreement. 3. That the shed in question is situated about half-a-mile from the appellants' works, with which it has no direct communication by rail, and had been used by them for similar purposes for several weeks at a time on many occasions before Martinmas 1901. 4. That no steam, water, or other mechanical power was used in said shed. 5. That while in the course of his employment on said 11th December 1901 the applicant and respondent was injured by an accidental explosion of naphtha which occurred when he lifted a tin of that substance in mistake for one of oil. 6. That the injuries to the applicant and respondent were such that he has been since and still is unable to work."

The Sheriff-Substitute's finding was as follows:—"On these facts, while of opinion that the shed in question was not by itself a factory in the sense of sec. 7, sub-secs. 1 and 2, of the Workmen's Compensation Act, I found that it formed part of the factory in which the applicants carry on their business, and that they were liable in compensation to the applicant and respondent at the rate of 14s. 6d. per week from the 1st

day of January 1902, being 50 per cent. of his average weekly wage for the previous twelve months, in terms of the Workmen's Compensation Act 1897."

The question of law for the opinion of the Court was—"Whether the applicant when injured was employed 'on or in or about' a factory within the meaning of section 7, sub-sections 1 and 2, of the said Act?"

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 7, enacts—"(1) This Act shall apply only to employment by the undertakers 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 1878 (41 Vict. cap. 16), sec. 93, enacts, *inter alia*—"The expression 'non-textile factory' in this Act means . . . (3) Also any premises 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."

Argued for the appellants—The shed in question was not a factory; no mechanical power was used there. Though the appellants' works were a factory, it did not follow that the shed would be held to be within the statute, even if it had been in the immediate vicinity of the factory and had been in the sole occupancy of the appellants in connection with the business of the factory—*Mooney* v. *Edinburgh and District Tramways Company*, December 20, 1901, 4 F. 390, Lord Moncreiff, 394, 39 S.L.R. 260. The words "about a factory" could not cover anything which happened half-a-mile from the factory—*Chambers* v. *Whitehaven Harbour Commissioners*, [1899], 2 Q.B. 132.

Argued for the respondent—The work done in the shed was part of the business of the appellants' factory, and the men sent there were not sent out of the factory—they remained in the appellants' premises—*Barclay, Curle, & Company* v. *M'Kinnon*, February 1, 1901, 3 F. 436, 38 S.L.R. 321. It was immaterial that the accident happened in a part of the premises where no mechanical power was used—*Petrie* v. *Weir*, June 19, 1900, 2 F. 1041, 37 S.L.R. 795. On the authority of the case of *Mooney* v. *Edinburgh and District Tramways Company*, *cit. sup.*, the respondent was entitled to prevail.

LORD JUSTICE-CLERK—If work is being carried on at a particular place in the mode described in the Act then that place is a factory, and it is of course clear that there may be a place of a considerable size in which work is carried on by steam or other mechanical power in only one part, but so as to make the whole a factory. But here workmen were sent away to a place half-a-mile off, where no mechanical power was used, and we are asked to hold that that was a factory because the workmen while there were engaged in factory work. I am quite unable so to hold. The Act is carefully framed so as to obviate the injustice which would be done by excluding a workman from the benefit of it where injury is caused in a place which is separated only a little from a factory. The words of the Act are "on or in or about" a factory. Now, that word "about" lets in interpretation of the Act in a reasonable sense. For example, if there is a narrow lane—even a public lane—dividing two parts of a factory, the part on the opposite side of the lane from the side on which the mechanical power was in operation would be properly described as "at," or if not "at" then "about" the factory. But when a place is half-a-mile away, without any connection with the factory, I cannot hold that place to be "about" a factory. In the case of shipbuilding yards there are special provisions by which a ship, though removed into the water to some little distance, may still be dealt with as a part of a factory. But there is no such provision applicable to the circumstances of this case.

I am of opinion that there is in this case no claim for compensation under the Act, and I would move your Lordships to answer the question accordingly.

LORD TRAYNER—I am of the same opinion. The Sheriff finds as matter of fact that the shed in question is not in itself a factory, but that although half-a-mile distant it formed part of the respondent's factory. On the statement of facts before us I am unable to come to the conclusion that the shed in question was either a factory or part of a factory. The result, in my opinion, is that the Sheriff has erred in giving compensation, and I am prepared to answer the question put to us in the negative.

LORD MONCREIFF—I have no difficulty about this case. The work in which this man was engaged may have been proper factory work—I am willing to assume that it was, but personally I should have liked more information as to the nature of the work upon which he was engaged in this shed. The question is not whether the work which was being done was proper factory work, but whether the place where it was done was a factory. We are familiar with cases where upholsterers or ironmongers have premises outside the towns where their shops are, in which goods are prepared for sale by machinery. Assuming any such premises to be a factory, if it was found that the goods prepared there required varnishing or any finishing operation after they were brought to the shop, could it be said that that constituted the shop a part of the factory? I do not think that could be maintained. It has been decided again and again that when factory work is carried on at the distance of half-a-mile or other substantial distance from the factory, the place where it is carried on will not be held to be within the statute merely because the work done is part of the business of the factory.

Therefore I am of opinion that the Sheriff has gone wrong, and that we should answer the question in the negative.

LORD YOUNG was absent.

The Court answered the question in the negative.

Counsel for the Applicant and Respondent—M'Clure—A. Moncrieff. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents and Appellants—Watt, K.C.—W. Thomson. Agents—Connell & Campbell, S.S.C.

Wednesday, November 12.

SECOND DIVISION.

[Sheriff Court at Perth.

CRICHTON BROTHERS *v.* CRICHTON.

Process—Caution for Expenses—Bankrupt Defenders—Process Sisted.

An action was raised against A, B, and C, in which it was sought to have them found jointly and severally or severally liable in a slump sum of damages. The ground of action was the same against all the defenders. Defences were lodged for A and joint defences were lodged for B and C. The defence was the same in each case, except that A pleaded in particular that no damage had been caused or contributed to by her. The defenders all having been rendered bankrupt A's trustee sisted himself as a party to the action, but the trustee on the sequestrated estates of B and C did not do so. On a motion by the pursuers of the action to have B and C ordained to find caution as a condition of their continuing to litigate, the Court in the circumstances *refused* the motion and *sisted* process, *hoc statu*, as against these defenders, leaving the case to proceed as between the pursuers and A's trustee.

This was an appeal from a decree pronounced in the Sheriff Court of Perth against two out of three bankrupt defenders in an action of damages in respect of their failure to obtemper an order of the Court to find caution for expenses.

In 1899 Robert Crichton and David Gentle Crichton, traction-engine and threshing-machine owners, Burrelton, near Coupar-Angus, in an action at their instance in the Court of Session against Mrs Margaret West or Crichton their mother, John Crichton and James Crichton their brothers, and others, obtained decree of declarator that the pursuers were the sole partners of the firm of Crichton Brothers, traction-engine and threshing-machine owners, Burrelton. There was also in that action a conclusion for £1000 damages, which, however, was not insisted in, and was accordingly dismissed.

In November 1901 Robert Crichton and David Gentle Crichton, as sole partners of the firm of Crichton Brothers, raised the present action in the Sheriff Court at Perth against Mrs Crichton, High Street, Burrelton, John Crichton, saw miller, Burrelton, and James Crichton, engineman there, jointly and severally or severally, for a sum of £2000 damages for loss alleged to have been sustained by reason of certain illegal acts and intromissions on the part of the defenders with the machinery and business of the pursuers' firm.

The pursuers averred—"(Cond. 12) Notwithstanding the said action in the Court of Session and protests made by the pursuers prior to the raising thereof, the defenders at and prior to May 1899, and down to the final decision in said action, represented and continued to represent to the public that the pursuers were not the partners of Crichton Brothers. They held themselves out as the sole partners, or as at least in sole right of the business and assets of said firm. They falsely represented to the authorities of the Post Office that all letters addressed to 'Crichton Brothers' ought to be delivered to them. They thus wrongously obtained possession of several such letters. In consequence of a representation by pursuers these authorities ceased to deliver such letters to defenders, but in consequence of defenders' said misrepresentations they also refused to deliver these letters to the pursuers, who thus suffered much damage in the conduct of their business. They also issued circulars throughout the country, and particularly among the customers of Crichton Brothers, purporting to be signed by Crichton Brothers, instructing that all orders should be sent to the defender Mrs Crichton, and intimating that any parties making payments to the pursuer Robert Crichton would be held liable in second payment. A copy of said circular is herewith produced. It was issued without the knowledge or authority of the pursuers or any of them. Authority was not given by the pursuers or any of them to the defenders or to any of them to append the firm name of Crichton Brothers to said circular, which was altogether false and calculated and intended to mislead the public. It is believed and averred that the defenders offered for and obtained contracts and took on orders in the name of and as representing themselves to be Crichton Brothers. In consequence of the said misrepresentations by the defenders the pursuers' business has suffered and will suffer great loss and damage, for which the defenders are responsible."

Defences were lodged in this action for Mrs Crichton, and joint defences were lodged for John Crichton and James Crichton.

The pursuers pleaded—"The pursuers having suffered damage to at least the extent sued for through the illegal acts and conduct of the defenders, decree as craved ought to be granted, with expenses."

The defender Mrs Crichton pleaded—"(1) The pursuers' averments are irrelevant to support the conclusions of the action. (2) The pursuers' averments, so far as material, being unfounded in fact, the defender is