representing the widow's liferent of the house, and (2) the deficiency of £99 on the son's expectancy in the half of the residue.

"On the death of the son's widow in April 1901 a payment of estate-duty was made which included a sum representing the interest assigned to her by her husband in the original testator's residue; but this circumstance cannot affect the question for decision except as regards amount.

"The Crown's claim is (1) for estate-duty on the balance of the value of the Oakfield Terrace house as well as on the value of the ground-annual (so far as not already accounted for), and (2) for legacy-duty on the half of the residue liferented by the widow.

"The defence is founded solely on section 5 (2) of the Finance Act 1894, which provides that 'if estate-duty has already been paid in respect of any settled property since the date of the settlement, the estate-duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof until the death of a person who was at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose of such property.'

"Now, the half of the residue liferented by the widow undoubtedly answers the description of 'settled property,' and it is true that 'since the date of the settlement' estate-duty has been paid on a small portion of it. But does this exempt the rest of the settled property from payment of either estate-duty or of the duties mentioned in Schedule I (5), including legacy-duty? I cannot think so. The meaning and intention of section 5 (2) have been explained by the House of Lords in *Priestly* [1901], App. Cas. 208. Adopting the reasoning of the late Lord Justice Rigby in *Attorney General* v. *Dodington* [1897], Q.B. 373, the Lord Chancellor said—'The whole question turns upon section 5, sub-section 2. As Rigby, L.J., has said, the manifest difficulty that was in the mind of the framers of the statute was that it would be unreasonable and improper in respect of settled property that the same whole estate should pay over and over again.'

"But this exposition affords no colour to the argument that settled property on part of which no payment either of inventory-duty or estate-duty has been made is to be exempted from duty as regards that part when the settlement comes to an end. The personal part of the settled property here is not liable to estate-duty by virtue of section 21 (1), because it has already paid inventory-duty, and the heritable part is not liable by virtue of section 5 (2) in so far as it has already paid estate-duty. But that is no reason, in my opinion, why the heritable part which has not paid estate-duty should escape payment of estate-duty now, or why the personal part which has not paid legacy-duty, to which it became liable on the death of the testator, should escape payment of legacy-duty now. Such payment will not in either case be a second payment of duty, which is the thing truly struck at by section 5 (2), but a first and only payment.

"That seems to me the short and sufficient view which supports the Crown's claim. I was referred to section 7 (6), but the sole effect of that section on the circumstances which here occurred was to give the son's executors an option (which they may not have had otherwise) either to pay estate-duty on the settled property in which his interest was only an interest in expectancy, or to delay making payment till the interest should fall into possession. For that purpose the section contains provisions as to the mode of calculating the payment. But the section does not seem to me to affect the question of liability for estate-duty, as distinguished from the question of its amount.

"I shall therefore order an account as concluded for."

The interlocutor pronounced is quoted *supra*.

Counsel for the Pursuer—C. N. Johnston, K.C.—Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defenders—H. Johnston, K.C.—Morison. Agents—Webster, Will, & Company, S.S.C.

Friday, June 2.

FIRST DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

BURNS *v.* HENDERSON & COMPANY, LIMITED.

Reparation—Master and Servant—Ship in Course of Repair—Open Hatchway—Accident Due to Pursuer's Negligence.

In an action of damages raised in the Sheriff Court by a workman against a firm of engineers and shipbuilders, the pursuer averred that he entered the employment of the defenders as a chipper and scaler; that whilst proceeding to his work along the lower deck of the vessel, which was lying in the defenders' yard, he fell into a hatchway and was injured; that the accident was due to the fault of the defenders in not having the hatchway covered or lighted; and that the fact that the hatchway was uncovered and unlighted was known to the defenders or their foreman.

On a proof it appeared that the vessel was in course of repair; that the pursuer in going to the place where his work was to be done, descended from the upper to the middle deck, and was walking along the middle deck when he fell down an open hatchway; that the hatchway had to be open so as to give light and ventilation to other workmen employed in the hold below;

that the light though dim and uncertain was sufficient to enable him to see the hatchway if he had exercised reasonable caution; and that candles were available if he had asked for one.

The pursuer conceded that he had no case under the Employers' Liability Act, but maintained that he had a claim of damages at common law.

Held that the accident was not due to any negligence on the part of the defenders, or of those for whom they were responsible, but that it was due to the want of care on the part of the pursuer, and defenders assoilzied.

This was an appeal from the Sheriff Court at Glasgow in an action of damages at the instance of Patrick Burns, chipper and scaler, 7 Grace Street, Partick, against D. & W. Henderson & Company, Limited, engineers and shipbuilders, Partick, in which he claimed the sum of £200 at common-law or otherwise under the Employers' Liability Act 1880 in respect of injury.

The pursuer averred—"(Cond. 2) On the 13th day of May 1903 the pursuer entered the employment of the defenders as a chipper and scaler. (Cond. 3) On the said date, about 10 o'clock forenoon, whilst the pursuer was proceeding in the course of his employment along the lower deck, which was dark, but should have been lighted, of the steamer 'Janetta,' which was lying in the defenders' yard at Meadowside, and on which vessel his work was situated, he fell into the hatchway and on to a cross beam and sustained severe bodily injury, particularly to his left ribs and right wrist. (Cond. 5) The pursuer sustained said injuries on account of the faulty and dangerous system adopted by the defenders in not having the said hatchway covered, fenced, or lighted. In particular, the defenders should have had the hatchway covered with planks, or a post put at the four corners with a rope from the one post to the other, or there should have been a lamp or other light at the hatchway, one or other of which is usual and necessary. (Cond. 6) The uncovered, unfenced, unlighted, and defective condition of the said hatchway was known to the defenders, or at least to the manager or foreman of the defenders, who is a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour, and whose name is unknown to the pursuer, and had not been remedied owing to the negligence of the defenders or the said manager or foreman."

In answer the defenders denied that the pursuer was at the time of the accident in their employment. They further denied the other material averments of the pursuer and that the accident was caused by any fault or negligence for which they were responsible, and explained that they took all reasonable precautions for the safety of those engaged in their works. They averred that the pursuer was working at a ship in course of construction, and undertook the risks incidental thereto.

The pursuer pleaded, *inter alia* — "(1) The pursuer having been injured through the fault, culpable negligence, and carelessness of the defenders, and the sum sued for being fair and reasonable, the pursuer is entitled to decree therefor in name of damages, with expenses. (2) The injuries sustained by the pursuer having been caused through the defective and faulty system adopted by the defenders in carrying on their work, the defenders are liable in damages to the pursuer, and decree should be granted as craved."

The defenders pleaded, *inter alia*—"(3) Defenders should be assoilzied with costs, in respect (*a*) that the accident was not caused by any fault or negligence for which they are responsible."

A proof was led. The import of the evidence sufficiently appears from the opinion of the Lord President.

On 26th July 1904 the Sheriff-Substitute (BOYD) found in fact that the pursuer was in the employment of the defenders as a chipper, and was walking along the lower deck of the s.s. "Janetta" when he fell into a hatchway, which was neither covered nor lighted, and was injured; and found in law that the pursuer's injury was caused by the fault of the defenders in failing to have the hatchway covered and lighted, and that they were liable to him in damages to the amount of £30.

The defenders appealed to the Sheriff.

On 26th October 1904 the Sheriff (GUTHRIE) pronounced the following interlocutor:—"Finds that on 13th May 1903 the pursuer was employed as a chipper in certain repairs that were being done by the defenders on the s.s. 'Janetta' at their works at Meadowside: Finds that on proceeding to his work he tripped and fell upon a hatchway on the bridge deck and was hurt: Finds that it is not proved that the defenders were in fault at common law in failing to have a light over the hatchway or in leaving it uncovered: Finds that there is no evidence that the defenders are liable under the Employers' Liability Act: Therefore recals the interlocutor of 26th July 1904: Assoilzies the defenders," &c.

Note.—[*After dealing with the question of liability under the Employers' Liability Act*]—"I do not think that the pursuer's case is better at common law. He seems to have miscarried by aiming at making an alternative case. There seems on the evidence to have been as much light between the candles and the hatchways as was to be expected in such a place, and a man going for the first time to his work in such circumstances was bound to go very cautiously and watch every footstep. If anyone was to blame except himself, it was Barrie, who engaged him, who was to provide him with tools and candle, and who showed him where to work. As I have said, Barrie must be held to be a fellow-workman. A good many witnesses say that such a hatchway ought to have its cover on, but they all appear to speak of that as being to some extent a matter depending on circumstances. This vessel was undergoing a rather thoroughgoing repair; it

appears that the hatchway itself was to be or was being repaired, and that men were working at some time on that day in the bunker below, so that it ought to have been open, if not for their access yet for ventilation. There is no such clear and positive evidence of a duty in the circumstances to have the hatchway covered as to require a verdict against the defenders. On the contrary, I think that the facts are similar to those of *Forsyth* v. *Ramage & Ferguson*, 18 R. 21, and that the later case of *Jamieson* is different."

The pursuer appealed.

At the hearing counsel for the appellant stated that they did not now maintain that the appellant was in the respondents' employment.

Argued for the appellant—The respondents were liable whether the appellant was in their employment or not. It was their duty to have had the hatchway in question lighted, or otherwise to have it either covered or enclosed by ropes so as to prevent accidents. The evidence showed that there was not sufficient light. The pursuer *quoad* this ship was in the position of an outsider and did not know the position of the hatchway. He was there on the invitation of the defenders, and they were bound in law to see that the place was in a reasonably safe condition. All the witnesses were of opinion that the place was dangerous and should have been lighted. The appellant was entitled to expect that dangerous places if dark would not be left unprotected and unlighted—*Jamieson* v. *Russell & Company*, June 18, 1892, 19 R. 898, 29 S.L.R. 790; *Indermaur* v. *Dames*, 1867, L.R., 2 C.P. 311.

Argued for the respondents—Whether or not the appellant was in the respondents' employment the respondents were not liable. The light provided was sufficient for the purpose. Moreover, candles were available, and the appellant could have got one had he wanted. The light might have been dim, but the eye soon got accustomed to it and artificial light was not required. Any fault that existed was fault either on the part of the appellant's fellow-servants or on his own part, and in either event the defenders were not responsible. No fault had been proved on the part of any foreman, so that neither at common law nor under the Act of 1880 could the defenders be held liable—*Forsyth* v. *Ramage & Ferguson*, October 25, 1890, 18 R. 21, 28 S.L.R. 26; *Johnson* v. *Lindsay & Company*, July 28, 1891, [1891] A.C. 371.

LORD PRESIDENT—In this case the pursuer, who was a chipper and scaler, was employed in May 1903 upon a job in the steamer "Janetta." He went into the steamer at ten o'clock in the forenoon, having been engaged by a person of the name of Barrie, who was a superior workman in the employment of the defenders, in order to engage in executing some chipping work on the defenders' vessel. The vessel was lying in the defenders' yard and was undergoing extensive repairs. The pursuer is a rivetter to trade and takes chipping and scaling jobs when the rivetting trade is dull, and must therefore be taken to be a person who is well acquainted with the conditions under which chipping and scaling is carried on. He had been sent by the man who employed him to sharpen some tools, and he accordingly did not enter the ship precisely at the same time as the gang of which he was a member, but went down after they had begun work. He proceeded down a hatchway from the upper to the middle deck, and then, in going forward with the view of getting to the place where his job was going to be performed, he stumbled and very nearly fell down an open hatchway. He was arrested from completely going through by falling against a bar which ran across the hatchway. If he had fallen through the hatchway he would probably have been killed, but he fell with such violence against this bar as to inflict upon himself considerable injury, for which he now sues the defenders. The case as raised contained an averment that the pursuer was in the employment of the defenders, and this was averred in order to support the alternative plea, which your Lordships find in the pursuer's pleadings, of liability under the terms of the Employers Liability Act. The case went to proof in the Sheriff Court, and the learned Sheriff-Substitute found in favour of the pursuer, the ground of his judgment being that the open hatchway, where it is admitted there was no artificial light, constituted a danger which the defenders through their servants should have avoided, and that accordingly there was liability upon the defenders. He pronounced a set of findings, one of which was that the pursuer was not in the service of the defenders, but this did not affect in his view their liability, because he considered the duty was incumbent upon the defenders to have that portion of the ship, of which they were for the time being the occupiers—if I may use such an expression—in a safe condition, and that this duty existed in a question between them and all persons who, like the pursuer, were lawfully there upon their invitation to take part in business in which they had an interest.

The case was appealed, and the Sheriff, while finding in fact that the pursuer was in the employment of the defenders, came to a different conclusion from the Sheriff-Substitute, holding that there was no case at common law, on the ground that there was no evidence of a duty to have the hatchway covered, and no evidence which showed that there was a necessity of having an artificial light there.

In opening the case before your Lordships counsel for the pursuer said that he no longer contended that the pursuer was in the employment of the defenders, and conceded that he had no case under the Employers' Liability Act. But he maintained that there was a case at common law upon the grounds indicated by the Sheriff-Substitute.

The question is, I think, a question entirely of fact, and I confess that without difficulty I have come to the conclusion that the result arrived at by the Sheriff

was right. Indeed, I can scarcely understand how the learned Sheriff-Substitute arrived at his conclusion consistently with the sentences in his opinion immediately preceding that conclusion. In these sentences the Sheriff-Substitute says this—"A certain amount of light came down the coal-shoot, but one side of the saddle-back or sheet which diverted the descending coal to both sides of the ship overhung the hatchway and intercepted the light." Then he mentions that certain people were good witnesses, and then he says—"I think it was proved that after the men had been on this deck long enough to get accustomed to the gloom he could see the hatchway"—there is an obvious mistake there, it must either be "after the man" or "they could see the hatchway"—"but when he first descended from daylight he could not see it."

I agree. I think that that is the result of the evidence. I think that it is quite clear that this is a place in which there was some light, doubtless a dim and uncertain light; but it was a place on the deck of the ship, and that ship at that time was undergoing thorough repair. Operations were being conducted all over it. Therefore it seems to me it was within the view of anybody who had any knowledge of such places that hatches would be liable to be left open, just as this hatch had been left open, for what was after all a very necessary purpose—of allowing access to the deck below. This is not the case of a man unaccustomed to such a place, and I do not think that it is of any advantage to make general observations as to what particular circumstances might create liability to an outsider. What we are dealing with here was the case of a man accustomed to this class of job, going to his job on a ship which he knew was in the hands of the repairer. He goes down into a place dimly lighted, a place where, as the learned Sheriff-Substitute finds, he could have seen well enough if he had only waited until such time as the pupils of his eyes had had time to expand. Instead of waiting he goes straight ahead in the dark, or what is the dark to him, and then he stumbles and has an accident. It seems to me that under these circumstances there is really no negligence whatsoever on the part of the defenders; and on the other hand there was clear carelessness on the part of the pursuer himself.

It seems to me that the case is really on all-fours with what was truly decided in the case of *Forsyth* v. *Ramage & Ferguson*, 18 R. 21. That decision was, I think, an absolutely proper one; but it is cited in an unfortunate way when it is cited, as it was in the case of *Jamieson*, 19 R. 898, as if it laid down a proposition about a ship in the course of construction. There is no magic in the words "in the course of construction." *Ramage & Ferguson's* case was decided on relevancy; it was not a case where there had been proof. The whole question was whether there was a relevant averment of negligence on the part of the defenders, and it was so treated by Lord President Inglis. Of course in seeing whether there was a relevant case it was of great moment to point out that it is not relevant to say that in a ship in course of construction there are a great many holes and unfenced places about, because everybody knows that in a ship in the course of construction there must so be. "In the course of construction" was simply mentioned as indicating what is the natural condition of a ship while it is being built. This is only one particular illustration of a much more general rule, and the general rule is this, that you must take a place according to its natural circumstances; and, accordingly, I think that when you go down a ship which is in the course of repair, you must expect that very likely hatches will be open, and must exercise ordinary caution. On this ground I think the Sheriff-Principal's judgment was right, and that the appeal ought to be refused.

Lord Adam—I am of the same opinion. The facts in respect of which this action was raised occurred on board a ship called the "Janetta," which at the time was I understand under repair, and for the purpose of repair had been handed over to the defenders—the contractors for the repair—and was entirely in their occupation. We were told she had been taken into their yard and was entirely in their occupation, and that various squads of workmen were about the ship doing these repairs besides the squad with which the pursuer was connected. That was the state of matters on board the ship. Now, the pursuer on the morning of the accident was hired by a man Barrie, in the employment of the defenders, who was in the use to hire men for the defenders. It is not disputed that he was hired by Barrie, who was in fact in the employment and was on the occasion in question a servant of the defenders. I do not think, with your Lordship, these being the facts, that there is any necessity of considering what might have been the case if the pursuer had been an outsider. We have to deal with the case of a servant—the pursuer—who was in the employment of the defenders. Well, unfortunately, on that morning when going down to his work he had to go down a hatchway, and, no doubt, coming out of broad daylight he did not see about him when he first came down, and in a moment or two he stumbled and fell against an open hatchway, but was saved from going down to the bottom by falling against an iron bar. But in so falling he was very considerably injured, and it is in respect of these injuries the present action is raised.

Now the fault which is alleged against the defenders is this—it is complained that this hatchway was uncovered at the time, and there is no doubt that that was so. Other workmen had been at work at the hatchway a short time before, and they had not covered the hatchway when leaving. It was said, in the first place, that that was fault—that they should have covered the hatchway—and that the defenders are

responsible for that. And it was said that, not being covered, it was insufficiently lighted, that there was no artificial light, and that it should have been artificially lighted because it was uncovered; and it is in respect of the hatchway being uncovered and in that condition, not being sufficiently lighted afterwards, that it was said that the defenders were liable. Now, I could quite have understood if it could have been said in this case that it was a duty on the defenders, or part of their system, to see that all the hatchways were constantly covered, or, if not constantly covered, were always properly lighted upon a ship of this kind, and that the neglect of that duty would have made them liable. But that is not said, and it cannot be said, because all these hatchways must necessarily be uncovered from time to time. On this particular occasion this hatchway was uncovered because the workmen who had been working there after they finished their job neglected to cover it. Surely the foreman of the gang who left it uncovered was responsible for having left it uncovered. This being a limited company cannot make any difference in the world. A company like this cannot be supposed to have a man to go about after every gang to see that no hatchways are left uncovered. There is no such duty upon limited companies or upon individual employers. If the workmen had a duty to cover the hatchway, and if the hatchway is left uncovered, it is the fault of the fellow-workmen. As there is no case here under the Employers' Liability Act, it humbly appears to me that there is no other liability.

The case we have to deal with is not a man going into a place where he was entitled to suppose that everything was secure, and that there were no traps or no hatches or no holes that he might fall down. That is not the case. We have the case of a workman who was being employed to do work with which he was acquainted, carried on in ships, and he must be presumed to have known that there must be open hatchways necessary for the accommodation of other workmen on board. It was laid down in the case of *Ramage & Ferguson* that a man must be careful and proceed with great caution if it is dark, if he cannot see, if he is in a strange place, and that he should take such care as is necessary for his safety. Accordingly, if the light was insufficient, it was, in my humble judgment, the pursuer's own fault that he met with this accident.

Lord M'Laren—I am not of opinion that it has been proved in this case that the man Barrie who engaged the pursuer was an independent contractor, so as to shift the objective of responsibility from Henderson & Company to him. But it does not appear to me that the question of fact has much if any bearing upon the decision of the case, because no intelligible case has been made of fault on the part of an employee of Henderson & Company which would raise a question of common employment. Therefore it seems to me that the question is whether the master has duly fulfilled the obligation which every master undertakes, of making reasonable provision for the safety of the workmen who are engaged in performing his work. Now that obligation in the nature of things can never be of an absolute, unqualified kind. There is hardly any employment where it is possible to secure the workman against risks which are incident to his trade; and, certainly, where a work of building—whether it be shipbuilding or masonry—is in progress, the unavoidable risks—the risks against which a master cannot guard his workpeople—are very much greater than in the case of men who are working in a completed establishment. Those others again may be exposed to risks of a different kind. When the late Lord President gave an exposition of his views on this question in the case of *Forsyth* v. *Ramage & Ferguson* he certainly did not intend to lay down an arbitrary rule confined to the case of buildings which were in the course of construction, because his Lordship there pointed out that in the case of a ship in the course of construction there were many risks against which it was impossible to guard, and especially in openings being necessarily left where they would not be in the case of a completed ship. Now, that might either be because the ship had not reached the stage at which coverings for these openings would be provided, or it might be that, cover or no cover, they were necessarily left open for the accommodation and convenience of the men engaged in the work. It was the second point which his Lordship cited as the unavoidable risk, but not, as I think, with the view of excluding the first; and of course the same proposition applies to a ship which, although not in the course of construction, is undergoing extensive repairs, on which many parts that are usually closed or covered have to be removed. The case therefore appears to me to be in point, allowing for the variations of fact which must occur in all cases that are cited for comparison. While in that case the question was relevancy, and while here we have to consider the liability resulting from the facts as proved, I can come to no other conclusion than that in this case the hatch which was left open was necessarily left open for the convenience of persons engaged in the repair work on the ship. Then as regards the lighting, there is no doubt it was necessary that some light should be provided, but it is in evidence that a number of candles were sent on board for the use of the workmen, and that each of the men had his candle before him; and it is clear that the pursuer if he had wished a candle to guide his steps in going down to the lower deck might have had one. I therefore am unable to see that there was any fault on the part of the defenders, either of the nature of failure to perform their duty by covering the hatches or by lighting them, and I agree that we should adhere to the judgment of the Sheriff.

LORD KINNEAR—I have come to the same conclusion. The pursuer's counsel in stating his case to us did not base his claim now upon the ground on which it was admittedly based in the Sheriff Court, and did not maintain that there was any liability on the part of the defenders arising out of a contract of employment, whether by the common law operating upon that contract or by virtue of the Employers' Liability Act. He made no claim as a servant in the employment of the defenders upon the ground of liabilities arising out of the contract of service at all. But he founded upon a rule of law which he says is quite established, as it probably is, that persons when resorting to business premises on the business of the owner or occupier of such premises, and using reasonable care for their own safety, are entitled to expect that the owner or occupier on his part will use reasonable care to prevent a danger to them from some unusual source of danger known to him and not known to them, or, in other words, as it is put in one of the cases, are entitled to expect that he will not allow his premises to be converted into a trap for persons who come to them upon business. Now, I think it may be very reasonable to maintain that there is such a rule, and that on the other hand it is applicable as much to a ship in dock as to houses and factories on land. But then it assumes that a man using reasonable care for himself is entitled to expect that he will be exposed to no such risk as it afterwards turns out he has been exposed to, and by which he has been injured; and I agree with your Lordship in the chair, and all your Lordships, that it is impossible to say that a man in the position of this pursuer, who says he was employed as a rivetter to go on board a ship undergoing extensive repairs, and to help in chipping the rust off the shell of the boat, is entitled to expect that there will be no such thing as an open hatchway on the ship, the hold of which is being occupied by workmen engaged in repairing, and therefore that he will run no risk from tumbling down hatchways if he does not take reasonable care of himself. The pursuer in this case was exposed to no unusual danger and to no such danger as a man taking reasonable care for himself might not have expected to meet.

The Court pronounced this interlocutor—

"Recal the interlocutor of the Sheriff dated 26th October 1904: Find that on 13th May 1903 the pursuer was employed as a chipper on certain repairs that were being done by the defenders on the s.s. "Janetta" at their works at Meadowside: Find that on proceeding to his work he tripped and fell upon a hatchway on the bridge deck and was hurt: Find that the accident was not due to any negligence on the part of the defenders or of those for whom they are responsible, but that it was due to the want of care on the part of the pursuer: Therefore assoilzie the defenders from the conclusions of the action, and decern," &c.

Counsel for the Pursuer and Appellant—Graham Stewart—Wark. Agents—J. & J. Galletly, S.S.C.

Counsel for the Defenders and Respondents—Solicitor-General (Salvesen, K.C.)—R. S. Horne. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Saturday, June 3.

FIRST DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

CAYZER, IRVINE, & COMPANY v. DICKSON.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7 *—Factory—Dry Dock—Dock Hired for Repair of Ship—Work of Repair—Unshackling Ship's Cable — Factory and Workshop Act* 1895 (58 *and* 59 *Vict. c.* 37), *sec.* 23*—Factory and Workshop Act* 1901 (1 *Edw. VII, c.* 22), *sec.* 104.

A had been employed by a firm of shipowners as a ship's carpenter on board one of their vessels during the vessel's previous voyage. He was also engaged for the vessel's next voyage, which had not yet commenced. In the interval the shipowners employed him in assisting in the work of repairing the vessel, which was then lying in a dry dock hired by the shipowners for the purpose of repair. While engaged in the work A was fatally injured. The work in which A was engaged at the time of the accident was unshackling the ship's cable with the view of turning it end for end. In emergencies that operation is done at sea, and it then forms part of the duty of a ship's carpenter.

Held that the employment in which A was engaged at the time of the accident was an employment to which the Workmen's Compensation Act 1897 applied.

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

By the Factory and Workshop Act 1895 (58 and 59 Vict. c. 37), sec. 23, certain provisions of the Factory Acts are to have effect as if "(*a*) every dock, wharf, quay, . . . were included in the word factory." . . .

In an arbitration under the Workmen's Compensation Act 1897, before the Sheriff-