found in Thiem's repositories in 1897 in company with documents of debt of comparatively recent date, which admittedly had not been paid. There is therefore nothing to indicate that Thiem had lost sight of the I O U, or that he intended to cancel it, and on this part of the case I am satisfied that the evidence is not sufficient to instruct payment.

The Court pronounced this interlocutor:—

"Recal the interlocutor appealed against: Find (1) that the pursuers are the surviving and accepting trustees of the late Ernest William Thiem, who died on 7th January 1897; (2) that on 16th September 1886 the said Ernest William Thiem lent the defender Alexander Collie the sum of £225 stg.; (3) that the defender granted and delivered to the said Ernest William Thiem the I O U which was found in the said Ernest William Thiem's repositories, and which is holograph of the defender; (4) that the defender avers but has failed to prove that the said loan was repaid; (5) that at the date of the death of the said Ernest William Thiem the defender was indebted and resting-owing to him the said sum of £225 stg., which sum he is bound to pay to the pursuers as trustees foresaid: Therefore decern against the defender for payment to the pursuers of the sum of £225 stg. with interest thereon at 4 per centum per annum from 9th December 1898."

Counsel for the Pursuers—Campbell, Q.C. —Galbraith Miller. Agents—Macrae, Flett, & Rennie, W.S.

Counsel for the Defender—C. N. Johnstone —Hunter. Agents—T. & W. A. M'Laren, S.S.C.

Thursday, March 16.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

M'LAY (M'QUEEN'S TRUSTEE) *v.* M'QUEEN AND OTHERS.

Bankruptcy—Fraudulent Alienation—Act 1621, *cap.* 18—*Marriage-Contract—Reduction quoad excessum.*

The trustee in a sequestration raised an action to reduce an antenuptial marriage-contract entered into by a bankrupt three months before the date of sequestration, whereby he conveyed his heritable property to trustees for behoof of his wife and children. Before entering into the said marriage-contract the bankrupt was solvent, but by doing so he became insolvent. It was not proved that his wife was party to any collusive scheme for defrauding the bankrupt's creditors.

Held (*aff.* the judgment of the Lord Ordinary) that the pursuer had failed to establish a ground of reduction either under the Statute 1621, cap. 18, or at common law.

Opinion reserved (by Lord Adam and Lord Kincairney) whether a reduction of a marriage-contract *quoad excessum* is competent.

By antenuptial marriage-contract dated 26th October 1896 Robert M'Queen, grocer, Milngavie, conveyed to trustees certain heritable properties for certain trust purposes. He directed the trustees, *inter alia*, to hold the same for the liferent use of his intended wife, Annie Mellon, school teacher, Johnstone, to make over to her if she survived him his whole household furniture and plenishing, and to provide that after her death the said subjects should belong to the children of the marriage. These provisions the said Annie Mellon (who brought no goods into the communion and undertook no counter-obligations) accepted in full satisfaction of her legal rights, and the children's right to legitim was also discharged.

Robert M'Queen was sequestrated by the Court of Session on 8th January 1897, and James M'Lay, C.A., Glasgow, was thereafter confirmed as trustee on his sequestrated estate. As at 5th January 1897 the bankrupt's affairs showed a dividend of 3s. 7½d. in the £, subject to expenses, the amount of the deficiency being £785.

On 18th May 1897 Mr M'Lay raised an action against Mr and Mrs M'Queen and the trustees under their marriage-contract, concluding for reduction of that deed.

The pursuer averred—"The said pretended antenuptial contract of marriage was intended to set apart for the use of the bankrupt a substantial part of his estate, and fraudulently to remove same from the diligence of his creditors. The bankrupt was then insolvent, and the said provisions in favour of his wife and children were made and granted by him in favour of persons conjunct and confident with him, and without any true, just, or necessary cause, and without any value being given therefor, with a view to defraud his lawful prior creditors represented by the pursuer. His said wife was aware of his insolvency at the date of the said pretended antenuptial contract of marriage, and the parties formed a collusive design to defraud the bankrupt's creditors. In any event, the value of the property conveyed by the bankrupt as a provision for his said wife and children in said antenuptial contract of marriage was, in view of the station of the parties and the insolvency of the bankrupt, in excess of a reasonable provision."

The defenders denied this averment.

The pursuer pleaded, *inter alia*—"(1) The provisions in question having been granted by the bankrupt in favour of conjunct and confident persons, and when in insolvent circumstances, without any value, and to the prejudice of prior creditors, the said antenuptial contract of marriage ought to be set aside. (2) The said writ sought to be reduced having been granted by the said Robert M'Queen after insolvency and without consideration therefor, and also with intent to defraud his just and lawful credi-

tors, is null and void, both under the Act 1621, chapter 18, and otherwise. (5) *Separatim*, The provisions in question having been granted during insolvency, and being excessive, the pursuer is entitled to decree, reducing them *quoad excessum*."

The defender Mrs M'Queen pleaded, *inter alia*—"(4) The conveyance to the marriage-contract trustees having been made for true, just, and necessary causes, is not liable to reduction under the Act 1621, cap. 18, or at common law. (5) The said conveyance not being excessive or exorbitant it is not challengeable to any extent. (7) The defender the said Robert M'Queen not having been insolvent when the said conveyance was granted, and in any event the defender the said Mrs Annie Mellon or M'Queen having been *in bona fide*, and having no knowledge of the said Robert M'Queen's insolvency, even if he were insolvent, the conveyance is not liable to reduction."

After sundry procedure a proof was allowed, of which the import was briefly as follows—that before the execution of the marriage-contract M'Queen was solvent, the available balance of his heritable property (amounting to about £3000) being more than sufficient to meet all his debts; that after the conveyance of his heritable estate by the marriage-contract he was insolvent, and that the pursuers failed to prove that Mrs M'Queen entered into a collusive scheme with her husband to defraud his creditors. Mrs M'Queen was called as a witness neither by the pursuer nor by the defenders.

On 21st June 1898 the Lord Ordinary (KINCAIRNEY) (1) found that at the date of the marriage-contract the debts of the bankrupt exceeded his available personal assets; (2) found it not proved that at the date of the marriage Mrs M'Queen was cognisant of the state of her husband's affairs; (3) found it not proved that Mrs M'Queen formed a collusive design to defraud his creditors; sustained the fourth and seventh pleas-in-law for the defenders and assoilzied the defenders.

Opinion.—"This is an action by the trustee of a bankrupt, Robert M'Queen, concluding for reduction of his antenuptial marriage-contract. The contract was executed on 26th October 1896, and the estates of the husband were sequestrated on 8th January 1897. The marriage-contract bears that in contemplation of the marriage, and as a provision for Mrs M'Queen and the children of the intended marriage, the husband, Robert M'Queen, conveys the heritable property therein mentioned to trustees. But there is excepted from the warrandice a bond for £950, and also a bond 'granted or about to be granted' for £1400, which latter sum the granter Robert M'Queen reserves power to borrow. The deed declares that the subjects disponed shall be held by the trustees 'for the liferent use and behoof of the said Annie Mellon (afterwards Mrs M'Queen), exclusive of the *jus mariti* and right of administration of the said Robert M'Queen, declaring that the subjects before disponed shall be in no ways answerable for the debts or deeds of the said Robert M'Queen, and that the interest and yearly produce thereof shall be paid over to the said Annie Mellon upon her own receipt alone and without the consent of the said Robert M'Queen, and shall be considered purely as an alimentary provision for herself.' I do not think it necessary to quote the further provisions of the deed in favour of children of the marriage, and of Robert M'Queen himself in the various events specified. The effect of these provisions is not in question in this action.

"The only conclusion is for the complete reduction of the marriage-contract. There is no conclusion for partial reduction or reduction *quoad excessum*. It is averred that the antenuptial marriage-contract was intended to set apart for the use of the bankrupt a substantial part of his estate, and fraudulently to remove it from the diligence of his creditors; that the bankrupt was then insolvent, that his wife was aware of his insolvency, and that 'the parties formed a collusive design to defraud the bankrupt's creditors.' Then there is a statement that the value of the property conveyed was in excess of a reasonable provision.

"The first two pleas for the pursuer bear on the conduct of the bankrupt only, and are founded on common law, and on the Statute 1621, cap. 18. The third plea is based on the collusive design of Robert M'Queen and his wife to defraud his creditors. The fifth plea is that the provisions being excessive the pursuer is 'entitled to decree reducing them *quoad excessum*.' But, as already observed, there is no conclusion for such partial reduction. No case seems made in the proof bearing on that plea. The pursuer's counsel admitted that there had been no case where decree of reduction of an antenuptial marriage-contract *quoad excessum* had been pronounced, and he confined his demand to a decree of total reduction.

"It is to be observed that there are no materials in this action for determining to what extent the bankrupt has succeeded in withdrawing his estates from his creditors; or whether or not he has retained an interest in the subjects conveyed by the marriage-contract which can be made available for payment of his creditors. No question of that kind is raised or can be decided in this action. The only question is whether the antenuptial contract, so far as it bears to convey the bankrupt's property to trustees, can be got rid of altogether.

"The question is no doubt important in law, but my view of the case admits of being shortly stated; because it does not not appear to me that there can be much doubt as to the facts as disclosed in the proof. I think that it is proved that at the date of the marriage-contract the debts of the bankrupt considerably exceeded his available personal assets, and that he was quite well aware of this. The only ground for questioning this seems to be that he had a considerable number of book debts. But it appears from the proof that almost the

whole of these were so hopelessly bad that it is impossible to consider them as actual assets, and that the bankrupt could not have considered them so. If, then, the property conveyed by the marriage-contract were left out of account, the bankrupt would have been insolvent; and, after the marriage-contract was executed, assuming that it transferred the property from himself to his trustees, he was insolvent. The marriage-contract made him so.

"It may be proper to notice that although the marriage-contract is dated 15th October yet it was drafted in June, to which date I suppose the engagement of the parties draws back. There is no evidence about the financial condition of the bankrupt in June. But I think the point to be considered is his financial condition when the contract was executed.

"It appears from the evidence of the trustee that the bankrupt's debts increased considerably after 15th October. They increased by more than £600, and the trustee has made the serious statement that he cannot discover either goods or the proceeds of goods corresponding to any such sum. The bankrupt did not think it necessary to go into the witness-box to contradict, qualify, or explain the trustee's evidence, which I think I am bound to accept, and which I cannot help regarding as disclosing fraud on the part of the bankrupt of a very serious kind. But then fraud after the date of the marriage-contract does not directly affect its validity.

"But if the question was only this, whether the conveyance of the bankrupt's property by the marriage-contract was a fraudulent act done by him with the intention of defeating his creditors, I would be inclined to hold that that was proved although not put beyond question. But I think there is no sufficient proof of the complicity of Mrs M'Queen. It is not proved that she knew of her husband's insolvency, or aided and abetted him in his fraud. One may have suspicions, but I think there is nothing like adequate proof which implicates Mrs M'Queen. The pursuer did not call her as a witness, and the defender thought it more prudent, as perhaps it was, not to offer her evidence.

"In these circumstances the first question is whether the marriage-contract is reducible under the Act 1621, cap. 18, and I think that question must be answered in the negative. So far as I know there is no case in the books in which an antenuptial contract has been reduced under that Act, and I incline to think that the Act cannot apply except in very exceptional circumstances, at least where the question is about total reduction, the reason being that an antenuptial contract is necessarily an onerous deed. There may perhaps be highly exceptional cases in which it may appear that the marriage and marriage-contracts were mere frauds, the only object of which was to defeat and defraud the husband's creditors, as in *Balmer* v. *Hunter*, 1869, L.R., 8 Eq. 46. But there seems no case of that kind here. Erskine says (iv. 1, 33) 'Provisions in marriage-contracts either by the bride to the bridegroom in name of tocher, or by the bridegroom or any of his relations to the bride, are accounted onerous deeds, because it is on the faith of suitable provisions secured to the parties in marriage-contracts that they enter into the marriage state. Such deeds, therefore, are not subject to reduction under the Act,' *i.e.*, the Act of 1621, cap. 18. I think this passage of much importance. It was quoted by the pursuer's counsel, but appears to me altogether on part of the defenders.

"In *Carphin* v. *Clapperton*, May 24, 1867, 5 Macph. 797, Lord Neaves expressed the opinion that an antenuptial contract might be reduced *quoad excessum* under the Act 1621, cap. 18, but his Lordship expresses this opinion in a very guarded manner, and it is not, so far as I am aware, borne out by any decision.

"The defenders contended that the Act could not apply, for the further reason that the parties were not conjunct and confident, and certain *dicta* in the opinions in *Watson* v. *Grant's Trustees*, May 14, 1874, 1 R. 882, seem to support this view. But while it is true that the trustees were not conjunct and confident with the bankrupt, still I cannot doubt that the intending spouses were conjunct and confident, and possibly that might be sufficient to obviate that objection.

"If this action of reduction cannot be supported under the Act 1621, cap. 18, can it be supported at common law? I am disposed to think that it cannot. This question is to be taken on the footing that the conveyance in the marriage-contract by the bankrupt was in defraud of his creditors, but that Mrs M'Queen was unconnected with the fraud, and that the marriage-contract must be regarded as an onerous contract. The pursuer referred to and founded on a well-known passage in Lord Fraser's Husband and Wife, vol. ii., 1350, in which the honesty and legal validity of marriage-contracts executed by insolvent husbands is (inferentially) impugned. Probably the observations extend to deeds which in the knowledge of the granter create insolvency as well as deeds by one who is antecedently insolvent. It appears to me, however, that the passage in question is open to exception. The learned author appears to assume the participation of the wife in the fraud of the husband; and to confine his attention to the position of the husband, and either to overlook the position of the wife or to underrate its strength and importance.

"That the money of an insolvent is not his own, but is held by him as trustee for his creditors, is not, I apprehend, an exactly correct legal proposition, but although sanctioned by high authority appears to express in somewhat figurative language rather the insolvent's moral than his legal obligation. Such language appears somewhat misleading, especially when the granter is solvent antecedently to the deed complained of, and I agree with the view submitted by the defenders' counsel, that it was more correct to say that the bankrupt incurred a new debt

than that he conveyed property which did not truly belong to him. Now, there is no contract which our law regards as more onerous than an antenuptial marriage-contract; nor does it affect the onerosity of an antenuptial marriage-contract that the whole money is provided by the husband and none by the wife. There is no reason why the right of the wife as a creditor under such a contract should be regarded as inferior to the right of any other creditor, always, of course, assuming that the wife is clear of any practices by the husband. If someone had advanced £100 to the bankrupt, and he had granted a bond over his property, it could not have been challenged by the trustee on the bankrupt's estate; and Mrs M'Queen, assuming her *bona fides*, is just as clearly a creditor as one who advanced £100 would be. There is nothing unreasonable or blameable in a woman about to marry, or her parents, taking means to secure a provision for her support, and it may be plausibly maintained that a doubt about the husband's financial position would only make it the more necessary to secure the wife's provisions. On these grounds I am of opinion that this action must fail, although, certainly, I am not surprised that the creditors should feel indignant and think that they had been tricked, and I do not say what the result might have been had they called Mrs M'Queen as a witness and elicited from her an admission that she was cognisant of her husband's financial condition, and of his designs against his creditors, assuming that at that time he had such designs.

"I express no opinion as to what my judgment would have been had it been shown that the provision was exorbitant, and had any case been made for a qualified reduction.

"The only important cases in our books which were quoted are *Carphin* v. *Clapperton*, and *Watson* v. *Grant's Trustees*, *supra*, and I consider that, so far as they go, they support the opinion which I have expressed. Perhaps, however, the passage quoted from Erskine is the most important authority on the question.

"The defender quoted the cases of *Balmer* v. *Hunter*, *supra*, *Kevan* v. *Crawford*, June 22, 1877, 6 Ch. Div. 29; *Pennington*, June 26, 1888, 5 Morel's Bankruptcy Reports, 216; *Fraser* v. *Thomson*, 1859, 4 De Gex and Jones, 659, as showing that in England an antenuptial contract will not be set aside on the ground of the husband's fraud on his creditors, where the wife is not participant in the fraud.

"There is one point of the case which appears to me to be ill cleared up. I refer to the power reserved in the marriage-contract to M'Queen to borrow £1400. If that be an existing unexhausted power, I doubt if there could have been any question at all; and if that be so, the trustee will no doubt be able to avail himself of the reserved power. But I rather understood that the power had been exhausted. The witness Keyden gave evidence about a statement on this subject, but I do not find that the statement has been produced."

The pursuer reclaimed. His argument upon the facts need not be reported. Upon the law he argued that undoubtedly by this marriage-contract M'Queen made himself insolvent. That was equivalent to his being insolvent before he entered into the contract—Bell's Com. ii. 172, and a man who was insolvent was a trustee for his creditors—Fraser, H. & W., ii. 1350; Bell's Com. ii. 170. The marriage-contract therefore was reducible, and it was not sufficient to plead against reduction that marriage was a just and necessary cause—Ersk. Inst. iv. 1, 33; Bell's Com. ii. 172, 176; Brodie's Stair, 98, *n*; Burton on Bankruptcy, 134. Marriage-contracts in fraud of creditors had frequently been reduced in England—*Columbine* v. *Penhall*, 1 Sm. & G., Chan. 255; *Fraser* v. *Thomson*, 4 De Gex & Jones, 659; *Balmer* v. *Hunter*, L.R., 8 Eq. 46. See also *Watson* v. *Grant's Trustees*, May 16, 1874, 1 R. 882, *per* Lord Ormidale, 887. Keeping in view the station of the wife and her circumstances before the marriage, it was, at all events, quite clear that the provision here made for her was exorbitant—*M'Lachlan* v. *Campbell*, June 29, 1824, 3 S. 132. There could be no doubt that an action of reduction *quoad excessum* was competent—*Duncan* v. *Sloss*, 1785, M. 987; *M'Lachlan* v. *Campbell*, June 29, 1824, 3 S. 132; *Dunlop* v. *Johnston*, March 24, 1865, 3 Macph. 758; *Carphin* v. *Clapperton*, May 24, 1867, 5 Macph. 797, *per* Lord Neaves, 804.

The defenders, after discussing the facts, argued that the Lord Ordinary was right. Up to the moment when the contract of marriage was entered into M'Queen was solvent. His wife knew he was solvent, but if she suspected that he was not doing well in business she was the more justified in getting the contract executed. Marriage had always been considered a true, just, and necessary cause in the sense of the Act of 1621—*Watson*, *ut sup.*; *Forrest* v. *Robertson's Trustee*, October 27, 1876, 4 R. 22, referred to. In the English cases cited for the pursuer the settlements were all "bogus" settlements made by men who married their mistresses for the express purpose of defrauding creditors.

At advising—

Lord Adam—This is an action of reduction brought by the trustee on the sequestrated estate of Robert M'Queen of an antenuptial contract of marriage entered into between him and the defender Mrs M'Queen dated 26th October 1896. The defenders are Mrs M'Queen and the trustees under the marriage-contract.

The Lord Ordinary has assoilzied the defenders. I agree with his Lordship, both in his interlocutor and in the grounds on which it is rested.

The first question is, whether the marriage-contract is reducible under the Act 1621, c. 18, in respect that the disposition of the bankrupt's property contained in it was made to conjunct and confident persons without true, just, and necessary cause, and after the contracting of lawful debts from true creditors?

I have no doubt that the disposition in question was made after the contracting of lawful debts to true creditors.

I agree with the Lord Ordinary that the intending spouses were conjunct and confident persons, and I share his doubt whether the mere interposition of trustees to hold property for them, seeing that the contract confers on them the beneficial interest therein, would remove the case from the operation of the statute. But it is a great deal too late to contend that an antenuptial marriage-contract is not a deed of the most onerous kind, and therefore not subject to reduction under the Act.

The next question is, whether the contract is reducible at common law on the ground of fraud. I do not think that there is any evidence that the marriage was contracted by M'Queen for the purpose of defrauding his creditors, but I think that he availed himself of the opportunity afforded by his marriage in order to defraud them. It may be doubted whether he would otherwise have been so liberal in providing for his wife. But on the other hand I think that there is no evidence that she before her marriage knew anything of or participated in the fraud. It was said that it was to be presumed that she was a party to the fraud because she did not go into the witness-box and deny it. But as I read the pursuer's evidence there was nothing proved to raise a presumption that she was a participant in the fraud, and which she was called upon to explain or deny. If she was not a party to her husband's fraud the reduction must necessarily fail.

The only other question argued to us was that the provisions to the wife in the marriage-contract were exorbitant, and ought to be reduced *quoad excessum*.

I doubt the competency of the partial reduction of an antenuptial marriage-contract, but I do not think it necessary to consider that question, because I agree with the Lord Ordinary that it is one which cannot be raised or decided in this action. The only conclusion is for total reduction of the contract. There is no conclusion for partial reduction, or for reduction *quoad excessum*.

I am of opinion that the interlocutor of the Lord Ordinary should be adhered to.

Lord M'Laren—I concur in the judgment proposed by Lord Adam, and on the same grounds. In order to have this marriage-contract annulled it must be brought into one of the known categories of dispositions which are liable to be set aside as a fraud upon the creditors of the granter. This condition is quite recognised by the pursuer, who puts his case as one of contravention of the Act of 1621, and also as a fraud under the common law

It is a sufficient answer to any argument upon the statute that it is a condition of creditors suing under it that they shall establish with respect to the deed in dispute that it was granted without true, just, and necessary cause. It would be extremely difficult in any circumstances to predicate that with reference to a contract of marriage, which according to the custom of this country is regarded as a proper protection of the interests of wife and family against the possibility of the supervening bankruptcy of the husband. I think such a deed could only be held to be granted without just or necessary cause in such a state of facts as appears to have occurred in one or two of the English cases where a marriage was entered into for no other purpose than of enabling the husband, by arrangement with his intended wife, to defraud creditors. There is no case of that kind here. Whether it would invalidate a marriage-settlement that a wife knew that upon an exact balance of her intended husband's affairs he was just solvent and no more, we need not consider, because it is not proved in the present case that the wife knew anything of her husband's affairs, and all the evidence we have rather points to the conclusion that she looked upon him as a man whom she considered wealthy relatively to her own circumstances in life.

Now, as regards reduction at common law, such a proceeding while in some respects more elastic, undoubtedly loses some of the advantages which have been held to attach to proceedings under the statute. But in this case I think the ground of action fails because it is not proved that the granter of the deed was insolvent when he made it. There are two meanings attaching to the word "insolvency" in bankruptcy cases. A man may be said to be insolvent when upon an exact balance of his capital and liabilities it appears that he has not enough in the world to meet all the claims that might be made against him by creditors. There is also another meaning, viz., when the debtor is unable to meet his current obligations. If the debtor allows a bill to be protested, his insolvency sufficiently satisfies the requirements of the Bankruptcy Act of 1856. It is perhaps hardly necessary to consider which of those two meanings should guide us in the question of a reduction of a conveyance at common-law, because when either test is applied I think the position of this debtor was sound enough. I do not think that a debtor is to be held insolvent either in the sense of the Statute of 1621 or in the other sense merely because being solvent he enters upon obligations, or disposes of his property for onerous causes, which will have the effect of diminishing his estate and reducing it below the point of solvency. Solvency must always be estimated as at the moment when the deed was executed. Upon all the grounds stated in Lord Adam's opinion I concur in his judgment.

Lord Kinnear and the Lord President concurred.

The Court adhered.

Counsel for the Pursuer—Ure, Q.C—Deas. Agents—Simpson & Marwick, W.S.

Counsel for the Defender Mrs M'Queen—Sym—W. L. Mackenzie. Agents—Sibbald & Mackenzie, W.S.

Counsel for the Defenders M'Queen's M.-C. Trustees—A. S. D. Thomson—Munro. Agents—A. Lawrie Kennaway, W.S.

Thursday, March 16.

FIRST DIVISION.

[Sheriff-Substitute of Aberdeen, Kincardine, and Banff.

THE ABERDEEN STEAM TRAWLING AND FISHING COMPANY, LIMITED *v.* PETERS.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7 (1) (2)—*Factory and Workshop Act* 1895 (58 *and* 59 *Vict. cap.* 37), *sec.* 23 (*a*)—*Factory.*

Machinery on board ship, though used in dock for loading or unloading, is not a factory within the meaning of the Factory and Workshop Act 1895, and so not within the meaning of the Workmen's Compensation Act 1897; and employment on such machinery is not an employment to which the latter Act applies.

On 27th September 1898 William Peters, a fireman in the employment of the Aberdeen Steam Trawling and Fishing Company, was engaged in working a steam-winch on board the company's trawler "Strathavon" in the operation of unloading in the harbour of Aberdeen. While Peters was so engaged his foot was caught in the machinery of the winch, and he was fatally injured.

These facts were admitted in an arbitration at the instance of the widow and pupil son of Peters under the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), before the Sheriff-Substitute at Aberdeen (BURNET), who pronounced an interlocutor on 25th January 1899 granting decree for the amount of compensation claimed, which contained the following findings in law:—"(1) That the pursuer and the said George Noble Peters are dependants of the said William Peters within the meaning of the Workmen's Compensation Act 1897; (2) that the work in which the said William Peters was engaged at the time of his death is an employment to which the said Act applies; and (3) that the personal injuries caused to the said William Peters, from which his death resulted as aforesaid, arose out of and in the course of his said employment: Therefore finds that the defenders are liable to pay compensation to the pursuer in accordance with the first schedule to the said Act."

Note.—"It was admitted for the parties, and the debate proceeded upon the footing, that the only question in dispute between them was, whether the employment in course of which the deceased William Peters received the injuries which resulted in his death was one to which the Workmen's Compensation Act 1897 applies.

"He was employed by the defenders on board a trawler belonging to them, as fireman and worker of a steam-winch which was fixed on the vessel. The winch is used for the double purpose of raising the trawl when the ship is at sea and landing the cargo when she is in port.

"At the time of the accident the vessel was in the harbour of Aberdeen, the winch was being used in the process of unloading the cargo on to the quay at which she was lying, and the deceased was actually working it when he was injured.

"The Workmen's Compensation Act 1897 is declared, section 7 (1), to apply 'only to employment by the undertakers as hereinafter defined on or in or about a . . . factory.' . . . The word 'factory' is declared, section 7 (2), to have the same meaning as in the Factory and Workshops Acts 1878 to 1891, and to include also 'any dock, wharf, quay, warehouse, machinery or plant, to which any provision of the Factory Acts is applied by the Factory and Workshops Act 1895;' and the same section 7 (2) of the Act further declares that the word 'undertakers' means in the case of a factory 'the occupier thereof within the meaning of the Factory and Workshops Acts 1878 to 1895.'

"By the Factory and Workshops Act 1895 it is declared (section 23) that certain specified provisions of the Factory Acts 1878 to 1891, 'shall have effect as if (*a*) every dock, wharf, quay, and warehouse, and so far as relates to the process of loading or unloading, therefrom or thereto, all machinery and plant used in that process . . . were included in the word factory,' . . . and further, that 'for the purpose of the enforcement of these sections the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using such machinery,' shall be deemed to be the occupier of a factory.

"The joint effect of these sections seems to be to make the defenders, using the winch in the process of unloading their vessel, 'undertakers' within the meaning of section 7 (1) of the Workmen's Compensation Act 1897, and to make their employment of the deceased 'on or in or about' the winch used in that process an employment to which the Act applies.

"This appears to be the view of the effect of these sections taken by the Court of Appeal in England in the case of *Woodham*, Nov. 19, 1897, 79 L.T. 395, under circumstances which present a remarkable similarity to the present case. The only material differences in the facts of the two cases appear to be, that on the one hand the crane at which the deceased man Woodham was employed when he was injured was fixed on the quay and not on the vessel; and on the other, that he was not engaged, as Peters was here, in actually working the crane at the time of the accident. Neither of these circumstances appear to be material to the conclusion to which the Court came as to the legal effect to be ascribed to the phraseology of the sections.

"It was argued for the defenders that as Peters' employment on board ship brought him within the definition of a seaman in the Merchant Shipping Act 1894, it was not within the purview of the Workmen's Compensation Act 1897. That Act, however, as has frequently been remarked is a remedial