Now these quantities are considerable, and the evidence was skilled. The next witness was, according to the condescendence, a miller at Old Meldrum, "who deponed to transactions in 1153½ bolls at £779, 1s.," while the third was a witness from Cruden, "who deponed to transactions in 1428 bolls, 7 stones, 9 lbs. at the price of £957, 16s. 2d." These are considerable transactions, and the condescendence, after setting forth the testimony of the third witness, goes on to make the thing more plain by saying that "the total amount of the transactions thus deponed to was 5548 bolls, 2 stones, 9 lbs. at a total price of £3672, 12s. 11d., the average price per boll according to the evidence being thus 13s. 5½d." And with that price the pursuers are satisfied.

Now, I think there is no paucity of evidence though the witnesses are few, and I doubt if the Sheriff used the word paucity as meaning that there was not sufficient evidence if believed. The jury seemed to have taken off 11½d. from the average price 13s. 5½d., but this was done in the exercise of the power and discretion which lay with them, and it is impossible to allow inquiry into the reasons why they did so.

No other case was stated to us, and I agree with your Lordship in thinking that the Lord Ordinary is right.

LORD TRAYNER—I think the Lord Ordinary is right.

LORD MONCREIFF—I also think that the Lord Ordinary is right.

The Court adhered.

Counsel for Pursuers—Balfour, Q.C.—Moffat. Agents—Alex. Morison & Company, W.S.

Counsel for Defender the Sheriff-Clerk of Aberdeenshire—C. N. Johnstone. Agent—Thomas Carmichael, S.S.C.

Counsel for Defenders the Convener of the County of Aberdeen and the County Clerk and Treasurer—W. Brown. Agents Macpherson & Mackay, S.S.C.

Tuesday, July 4.

SECOND DIVISION.

[Sheriff Court at Greenock.

JACKSON *v.* A. RODGER & COMPANY.

Reparation — Workmen's Compensation — Factory — Occupiers of Factory — Shipbuilding Yard.

A firm of shipbuilders whose shipbuilding yard was situated at Port-Glasgow, contracted to build a vessel and engines. After the vessel had been built at Port-Glasgow and launched there she was sent from Port-Glasgow to the Cessnock Dock, Glasgow, between fifteen and twenty miles away, to have her engines erected and fitted there by a firm of engineers with whom the shipbuilders had contracted for the supply of the engines. While the vessel was lying in the Cessnock Dock having her engines put in, a workman in the employment of the firm of engineers was injured while working at the undertaking. *Held* that under the Workmen's Compensation Act 1897, section 7 (2), and the Factory and Workshop Act 1895, section 23 (1) the shipbuilders were 'occupiers' of the dock as a factory at the time when the accident occurred, and were therefore liable as the "undertakers" to the injured workman.

Opinion per Lord Justice-Clerk and Lord Trayner that the place where the accident occurred was not a dock, river, or tidal water "near" the shipbuilder's yard within the meaning of section 7 (3) of the Workmen's Compensation Act.

This was an appeal from the Sheriff-Court of Renfrew and Bute at Greenock upon a case stated in an arbitration under the Workmen's Compensation Act 1897, between John Jackson, engineer, Glasgow, and A. Rodger & Company, shipbuilders, Port-Glasgow,

The case stated for the opinion of the Court by the Sheriff-Substitute (BEGG) was as follows:—[*After summarising the prayer of the petition*].—"The following are the appellant's averments raising the question of law submitted on appeal:—(1) 'The pursuer is an engineer or engine-fitter, and was employed by Hall, Brown, Buttery & Company, marine engineers and contractors, carrying on business at Helen Street, Govan, near Glasgow, at the time of and some time prior to the accident after mentioned. (2) On or about the 8th day of November 1898, while the pursuer was working at an undertaking of the defenders in Cessnock or Princes Dock, Glasgow, on s.s. "Craigneuk," a new vessel in course of construction, on which the engines and other mechanical appliances driven by steam were being erected and fitted, there fell upon the side of his head, in the region of the right temple, a carpenter's wedge or other piece of timber, which penetrated the right eye of the pursuer, causing severe injuries.' (It was admitted that this averment did not mean that, in the erection and fitting of the engines, &c., any machinery driven by steam, water, or other mechanical power, was used in the work on which he was engaged at the time of the accident.")

[*The Sheriff-Substitute then quoted the pursuer's averment as to the result of the injuries.*]

"Further, the appellant narrates and founds upon two agreements, produced by the respondents at the debate before me, viz.:—(1) agreement between the respondents of the one part and Messrs Russell, Huskie, & Company of Leith of the other part (thereinafter called the purchasers), dated 13th January 1898, whereby the respondents agree that they 'will build for the purchasers, of the best materials and

workmanship, a vessel and engines' of certain dimensions, &c. (admittedly the said s.s. 'Craigneuk'), and (2) minute of agreement between the respondents on the one part and the said Messrs Hall, Brown, Buttery, & Company (thereinafter termed the engineers) on the other part, whereby it was agreed that the latter company should 'supply the engines and machinery, including steam winches and boilers, with their connections, required for said vessel.' It was admitted that after the said vessel had been launched at the respondents' shipbuilding yard in Port-Glasgow, she was taken to the Cessnock or Prince's Dock at Glasgow, there to have her engines erected and fitted.

"Having heard parties' procurators, I dismissed appellant's petition on 24th April 1899, being of opinion that he had not set forth a relevant case as against the respondents. I considered it unnecessary to have a proof as to the precise distance between Glasgow and Port-Glasgow, it being a matter of common knowledge that the two towns are both situated on the tidal river Clyde, and are between fifteen and twenty miles apart by water, and rather less in a straight line.

"Assuming the appellant's averments to be true, the questions of law, decided by me in the negative, and now submitted for the opinion of the Court, are:—(1) Whether the place where the accident occurred, viz., the Cessnock or Prince's Dock, Glasgow, was a dock, river, or tidal water, near the shipbuilding yard of the respondents, within the meaning of section 7, sub-section 3, of the said Act? (2) Whether the respondents were, within the meaning of section 7 of the said Act, occupiers of the said Cessnock or Prince's Dock as a factory, which is a shipbuilding yard, on the occasion libelled."

There were two other questions of law, but no argument was stated upon them to the Court, and they are therefore omitted.

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), enacts as follows:—"Section 7 (1)—"This Act shall apply only to employment by the undertakers, as hereinafter defined on or in or about a railway, factory [then follows an enumeration of certain other employments]. (2) In this Act . . . 'factory' has the same meaning as in the Factory and Workshop Acts 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant to which any provision of the Factory Acts is applied by the Factory and Workshop Act 1895, . . . 'undertakers,' . . . in the case of a factory, . . . means the occupier thereof within the meaning of the Factory and Workshop Acts 1878 to 1895. . . . (3) A workman employed in a factory which is a shipbuilding yard shall not be excluded from this Act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard."

The Factory and Workshop Act 1895 (58 and 59 Vict. cap. 37) enacts as follows:—section 23 (1)—"The following provisions, namely [certain sections of the Factory and Workshop Acts enumerated] 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 for the purpose of the enforcement of those 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 any such machinery, shall be deemed to be the occupier of a factory."

The Factory and Workshop Act 1878 (41 Vict. c. 16) enacts as follows:—Section 93 . . . "The expression 'non-textile factory' in this Act means— . . . (2) also any premises or places named in part Two of the said schedule (*i.e.*, the Fourth Schedule), 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." Fourth Schedule — List of Factories and Workshops. . . . Part Two—*Non-Textile Factories and Workshops.* . . . (24) "Shipbuilding yards"—that is to say, any premises in which any ships, boats, or vessels used in navigation are made, finished, or repaired."

Argued for the appellants—*On the first question* — Ships were always launched before they were finished, and very often they were sent to some place other than the water in the immediate vicinity of the shipbuilders' yard to have their engines put in, or to have some other part of their equipment supplied, and the workmen necessarily followed them. This was the state of facts which section 7 (3) of the Workmen's Compensation Act was designed to meet. Here the accident occurred in the course of work to which the Act applied, and it occurred at a place within the same shipbuilding district to which the vessel had been sent for completion in ordinary course. Provided the place to which the vessel was sent for completion was in the same shipbuilding district, it was sufficiently "near" to bring the case within the provisions of the Act. The cases of *Whitton* v. *Bell & Sime, Limited*, June 17, 1899, 36 S.L.R. 754; and *Powell* v. *Brown* [1899], 1 Q.B. 157, were decisions upon the meaning of the words "on or in or about." The word "near" in section 7 (3) must have been intended to apply to accidents happening at some distance, because the word "about" in sub-section (1) of section 7 covered accidents happening "near" the factory in the narrower interpretation of that word adopted by the Sheriff-Substitute—See *Powell* v. *Brown*, *cit.*, *per* Smith, L.J., at p. 159. Apart from this, however, whether Cessnock Dock was "near" Port-Glasgow or not, there could be no doubt that this accident occurred upon a vessel in a river or tidal water which was near the respondents' yard, because the Clyde flowed past both Cessnock Dock and Port-Glasgow. (2) *Upon the second question*—The respondents here were "occupiers" of the Ces-

nock Dock as a factory which was a shipbuilding yard. Docks were included under the definition of the word "factory" in the Workmen's Compensation Act 1897, sec. 7 (2), read along with the Factory and Workshop Act 1895, sec. 23 (1), and under the latter section the person having the use or occupation of a dock was the "occupier" of a factory. This dock at the time of the accident was being occupied and used by the respondents as a shipbuilding yard for the purpose of completing this ship. Under the Factory and Workshop Act 1895, section 23 (1), a dock was a factory, and the machinery and plant, in so far as related to the process of loading or unloading therefrom or thereto, was also a factory. The two parts of the clause were separate—*Woodham* v. *Atlantic Transport Company, Limited* [1899], 1 Q.B. 15, where the clause was so interpreted, and the present question was expressly left open. It was not necessary that the place where the accident occurred should satisfy the definition of "shipbuilding yards" in the Factory and Workshop Act 1878. But if it were, this dock was a "shipbuilding yard" within the meaning of that Act. The admission as to the interpretation of the claimant's averment (2) only meant that mechanical power was not being used in fitting the machinery, and it did not mean that mechanical power was not being used to put the engines on board the ship. In fact mechanical power was being used for that purpose. But apart from that, even if mechanical power were not being so used, it was submitted that this dock was a "shipbuilding yard" within the meaning of that Act. The case of *The Aberdeen Steam Trawling Company, Limited* v. *Peters*, March 16, 1899, 36 S.L.R. 573, had no bearing upon the present. That case decided that the Workmen's Compensation Act 1897 did not apply to a seaman working as such on board a ship in dock.

Argued for the respondents—(1) The questions of law stated here were really questions of fact, upon which the Sheriff-Substitute's decision was final. (2) As regards the first question, Cessnock Dock, which was 15 miles from the respondent's yard, could not be said to be "near" it. Apart from sub-section (3) of section 7 of the Workmen's Compensation Act, this accident could not be held to come within the Act, which in the ordinary case only covered accidents happening "in close propinquity" to the factory—*Powell* v. *Brown, cit.*, and *Whitton* v. *Bell & Sime, Limited, cit.* The word "near" in sub-section (3) did not really cover much more than the word "about" in sub-section (1), and certainly did not cover a place 15 miles distant. (3) The respondents were not occupiers of the dock as a factory which was a shipbuilding yard. A ship in a dock was not a "factory" within the meaning of the Factory and Workshop Act 1895, section 23 (1). —*Aberdeen Steam Trawling and Fishing Company* v. *Peters, cit.* That case did not proceed upon the fact that the man injured was a seaman and was working as such when he was injured, but upon the ground now stated. It would have been easy for the Legislature to have specially included ships in docks, but that had not been done. If the appellant's contention upon this question were sustained, then this Act would extend to all accidents occurring upon ships when in dock, and in *Peters, cit.*, it had been decided that it did not. A dock and a ship in a dock were different things, and it did not follow that because a dock was a factory a ship in a dock was a factory likewise.—See *Peters, cit.*, *per* Lord President, at p. 576. This dock was not a "shipbuilding yard" within the meaning of the Factory Act 1878. See that Act, section 93 (2), and Schedule 4, part 2 (24). Admittedly no mechanical power was being used in aid of the manufacturing process being carried on in the ship.

At advising—

LORD JUSTICE-CLERK—The material facts in this case are that the respondents contracted to build a vessel and engines for Russell, Huskie, & Company of Leith, that the hulk was built in their yard and was after being launched conveyed from Port-Glasgow to Glasgow and there placed in the Cessnock Dock to have her engines erected and fitted. I agree with the Sheriff in holding that that dock was not a place "near" the shipbuilding yard of the respondents in the sense of sub-section 3 of section 7 of the Workmen's Compensation Act. That sub-section was intended to cover the removal of a vessel outside a yard while the work on it was still being done from the yard, as in the case of a vessel being launched and work done on her while lying in the water near the yard. I do not think the clause applies to this case.

But upon the second question, which is—[*his Lordship quoted the question*]—I have come to a different opinion from that which has been arrived at by the Sheriff. I am of opinion that when the respondents placed the vessel in the Cessnock Dock, and the work of putting in and fitting the engines proceeded there, they were occupiers of that dock as a factory within the meaning of section 7 of the Act, in terms of which the Factory and Workshops Act of 1895 applies to a dock. By section 23 of that Act it is enacted that "the person having the actual use and occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, ... shall be deemed to be the occupier of a factory."

I feel constrained to hold that when the respondents placed the vessel in that dock, in order to have the work of putting in and fitting the engines done there, they became the occupiers of that dock, and so were brought under the provisions of the Act of 1897, which applies, *inter alia*, to employment in or about a factory, including a dock.

I therefore think that the second question should be answered in the affirmative, and the case remitted back to the Sheriff Court for further procedure.

In this view, the 3rd and 4th questions do not require to be answered.

LORD YOUNG concurred.

LORD TRAYNER—I think that the second question put to us in this case should be answered in the affirmative. The Cessnock Dock, where the appellant was injured in the course of his employment, comes within the definition of "factory," as given in the Workmen's Compensation Act 1897 and Factory and Workshops Act 1895. That the respondents were the occupiers of the "factory" I do not doubt. They were occupying and using it, or such part of it as was required by them, for the purpose of executing their contract. It was as much in their occupation for the time being (so far as their work was concerned) as if it had been their own shipbuilding yard

If necessary, I should answer the first question in the negative.

LORD MONCREIFF—It is somewhat startling to be told that Cessnock or Prince's Dock at Glasgow is a "factory" occupied by Port-Glasgow shipbuilders, but such appears to be its legal position according to the series of statutory provisions and definitions to which we were referred. I am therefore of opinion that the second question put to us, viz., "2. Whether the respondents were, within the meaning of section 7 of the said Act, occupiers of the said Cessnock or Prince's Dock as a factory, which is a shipbuilding yard, on the occasion libelled?" should be answered in the affirmative.

The matter seems to stand thus. The Workmen's Compensation Act of 1897 applies, *inter alia*, to a "factory," section 7 (1). By section 7 (2), "Factory" is thus defined:—"Factory has the same meaning as in the Factory and Workshop Acts 1878 to 1891, and also includes 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 every laundry worked by steam, water, or other mechanical power.'

Under 41 Vict. cap. 16 (1878), 4th Schedule, section 24, "shipbuilding yards" are defined to mean "Any premises in which any ships, boats, or vessels used in navigation are made, finished, or repaired."

By section 23 of 58 and 59 Vict. c. 27 (1895) it is provided that certain of the provisions of the earlier Factory and Workshop Acts should apply, *inter alia*, to every "dock, wharf, and quay;" "and for the purpose of the enforcement of those sections the persons having actual use or occupation of a dock, wharf, or quay . . . shall be deemed to be the *occupier of a factory*."

Thus a dock is a "factory" in the sense of the Workmen's Compensation Act, and it is also a "shipbuilding yard" in the sense of the Act of 1878, "being premises in which ships, boats, or vessels are made, finished, or repaired."

Now, for the purpose of getting the engines fitted into the vessel "Craigneuk,' 'which Rodger & Company, the respondents, had undertaken to construct and supply with engines and machinery, they sent it from their own shipbuilding yard at Port-Glasgow to Cessnock or Prince's Dock at Glasgow, where the accident to the appellant occurred. Therefore under section 23 of the Factory and Workshop Act of 1895 the respondents at the time of the accident were the occupiers of the dock, and therefore occupiers of a "factory" in the sense of the Act, and they were the "undertakers" in the sense of the 4th section of the Act of 1897.

On these grounds I think the Sheriff-Substitute was wrong in dismissing the action, and that we should answer the second question in the affirmative and remit to him to proceed.

The Court pronounced this interlocutor—

"The Lords having heard counsel for the parties to the stated case, Answer the second question therein stated in the affirmative: Find it unnecessary to answer the other questions therein stated: Find and declare accordingly, and decern: Remit to the arbitrator to proceed in the arbitration: Find the appellant entitled to the expenses of his appeal, and remit," &c.

Counsel for the Claimant—Younger—Chree. Agent—Harry H. Macbean, W.S.

Counsel for the Respondents—Sol.-Gen. Dickson, Q.C—John Wilson. Agents—Morton, Smart, & Macdonald, W.S.

Thursday, July 6.

FIRST DIVISION.

[Lord Pearson, Ordinary.

MACQUEEN (WHARTON DUFF'S CURATOR BONIS) *v.* TOD.

(*Ante*, May 18, 1899, p. 469).

Judicial Factor—Curator Bonis—Special Powers—Power to Cut Timber on Entailed Estate of Ward.

"The most general principle of the law of guardianship is that the curator of an insane person is there to preserve the estate. He is to do so in the spirit of one whose ward may at any time come back to his full legal rights. He is therefore to keep things going rather than to change; he is to do nothing that is irretrievable unless in case of necessity; and he is to preserve as far as possible such options as are open in the management of the estate, preserving them for his ward if he convalesces, or, if not, then for his heirs. Moreover, one of his specific duties is not by any voluntary act to change the succession of the ward. The policy of the guardian will be specially conservative where the ward is of great age."—*Per* Lord President.

The *curator bonis* of the imbecile heir in possession of an entailed estate presented a note for power to cut all the timber on the property which was mature and ready for market, excepting