debt. A contract such as this might not be assignable to the effect of entitling the assignee to sue for performance of it, or for damages for breach of it, but it was assignable to the effect of entitling him to sue for a sum due in respect of something supplied under it—*Brice* v. *Bannister* (1878), 3 Q.B.D. 569; *Buck* v. *Robson* (1878), 3 Q.B.D. 686; *Wilmot* v. *Alton* [1896], 2 Q.B. 254, *per* Lord Russell, C.-J., at p. 258. The case of *Grierson, Oldham, & Company, Limited* v. *Forbes, Maxwell, & Company, Limited*, June 27, 1895, 22 R. 812, was distinguished from the present. That was an action for implement of the contract assigned, and not merely for payment of a debt due under it.

Counsel for the defender were not called upon.

LORD JUSTICE-CLERK — There are two points here. I doubt very much whether this contract was in fact assigned. But whether that was so or not, I think it was not assignable. I agree with the Lord Ordinary, and concur in the grounds which he has stated for his judgment.

LORD YOUNG—I agree with your Lordship and the Lord Ordinary. With his Lordship I doubt whether the contract was assigned, but I agree that here there was *delectus personæ*, and that the contract was not assignable.

LORD TRAYNER concurred.

LORD MONCREIFF was absent.

The Court adhered.

Counsel for the Pursuers—Dundas, Q.C. —J. C. Watt. Agent—William Geddes, Solicitor.

Counsel for the Defender — M'Clure — Younger. Agents — Shiell & Smith, S.S.C.

Tuesday, February 20.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

HEALY *v.* JAMES MACGREGOR & FERGUSON.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7 (1) *and* (2)—*Factory—Dock.*

A dock labourer in the employment of a firm of stevedores was injured while engaged in stowing cargo on board a ship which was being loaded at a dock in the harbour of Glasgow. For the purpose of loading this vessel the stevedores used the steam winch on board the ship, but did not use the machinery which was on the dock.

The dock labourer claimed compensation under the Workmen's Compensation Act 1897 from the stevedores as occupiers of a dock which was a factory. *Held* that they were not liable.

This was an appeal upon a stated case in the matter of an arbitration brought before the Sheriff of Lanarkshire at Glasgow under the Workmen's Compensation Act 1897, between Patrick Healy, dock labourer, Govan, claimant and appellant, and James MacGregor & Ferguson, stevedores, Glasgow, respondents. The claimant asked an award of twenty shillings per week from 27th June 1899 during his lifetime, or until altered or terminated by the Court.

The following facts were admitted:—(1) That the appellant is a dock labourer, and was, while in the employment of the respondents, who are stevedores, engaged on 4th October 1898 in loading a steamboat at a dock in the harbour of Glasgow; (2) that while stowing away a large pinion wheel on board said vessel the same fell on the appellant, causing injuries to his left leg; (3) that there are a number of steam cranes attached to the quays of said harbour which the respondents are entitled to use when loading and unloading vessels, but which cranes were not used in loading the vessel in question; (4) that in the course of loading said vessel a steam winch on board thereof was used by the respondents for the purpose of loading.

In these circumstances the Sheriff-Substitute (GUTHRIE) held (1) that the employment in which the appellant was engaged at the time of the accident was not within the Workmen's Compensation Act; and (2) that the respondents were not, according to the appellant's averments and the facts admitted, undertakers in the sense of Act. He accordingly dismissed the application, and found the appellant liable to the respondents in the sum of £2, 2s. of expenses.

The questions of law for the opinion of the Court were:—"(1) Whether the appellant, who was a dock labourer, having been injured when employed by stevedores in loading a vessel at a dock in the harbour of Glasgow, attached to which dock there were steam cranes used for the purpose of loading and unloading vessels, but which cranes were not used in loading the vessel in question, is entitled to compensation under the Workmen's Compensation Act 1897. (2) Whether the appellant, having been employed as aforesaid, is entitled to compensation under the said Act in respect that the steam winch on board said vessel was used by the respondents for the purpose of loading the vessel. (3) Whether the employment in the course of which the appellant received his injuries is an employment to which the said Act applies."

Argued for the appellant—In terms of the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), section 7 (1) and (2), and of the Factory and Workshop Act 1895 (58 and 59 Vict. cap. 37), section 23 (1), the respondents were the occupiers of a dock which was a factory. The opinions in the case of *Jackson* v. *Rodger & Company*, July 4, 1899, 1 F. 1053, 36. S.L.R. 851 (first case) supported this view. [The Court inti-

mated that the first case of *Jackson* was only a decision upon relevancy, and adjourned the case to enable counsel to consider the opinions delivered in the second case of *Jackson* on 30th January last.] The second case of *Jackson* v. *Rodger & Company*, January 30, 1900, 37 S.L.R. 390, was complicated by the question whether the dock there was a factory which was a shipbuilding yard under the Factory and Workshop Act 1878 (41 and 42 Vict. cap. 16), section 93 (2), and fourth schedule, part two (24). A dock could not be a shipbuilding yard unless steam, water, or other mechanical power was used in aid of the manufacturing process. That complication was not present in this case. The effect of the clauses referred to in the Acts of 1897 and 1895 was, that that all docks were "factories" for the purposes of the Act of 1897. The provisions of the Factory Acts in so far as applied to docks by the Act of 1895 were applied by that Act itself, and did not require to be applied by the action of any authority. It did not signify here whether the machinery on the dock was being used or not, because for the purposes of the 1897 Act a dock was a "factory," whether the machinery was being used or not, and the machinery used for loading or unloading to or from a dock was also a "factory." In such circumstances as were present here, the workman must be held to have been employed "on or in or about" a dock. This was decided by implication in the first case of *Jackson*, *cit.*, because if this were not so the Court in that case would not have allowed proof. The appellant was therefore entitled to compensation from the respondents under the Act of 1897. The case of *Aberdeen Steam Trawling and Fishing Company* v. *Peters*, March 16, 1899, 1 F. 786, did not apply, because the workman there was a seaman, and employed as such.

The sections of the Acts referred to are quoted *ante*, page 391.

Counsel for the respondents were not called upon.

LORD JUSTICE-CLERK—I have no difficulty in holding that the Sheriff was right. That a dock is not always a factory is clear, for whatever is said in the 1895 Act refers back to other provisions. It is only in certain circumstances that a dock is a factory. It is not necessary now to go into details as to what is needful before a dock can be held to be a factory, as here all the circumstances which are required are absent.

The facts here are that a ship was being loaded solely by the steam winches on board the vessel itself, and no power machinery in the dock was being used, and in these circumstances it does not appear to me that the dock was a "factory" in the sense of the Act. No doubt the dock was one on which there were steam cranes, which were probably used daily for the purpose of loading and unloading vessels. If these cranes had been used here the case would have been different. As the whole work was being done by those on board the ship by means of the machinery on board the ship itself, I think the Sheriff-Substitute's judgment was sound and should be affirmed.

LORD YOUNG—I am of the same opinion.

LORD TRAYNER—The questions raised in this case are concluded by previous decisions, and I think the Sheriff-Substitute has arrived at a right conclusion, having these decisions in view.

LORD MONCREIFF was absent.

The Court pronounced this interlocutor—

"Answer the questions of law therein stated in the negative: Therefore affirm the dismissal of the application, and decern: Find the respondents entitled to their expenses of the stated case, and remit," &c.

Counsel for the Claimant—G. Watt—Munro. Agent—William Cowan, W.S.

Counsel for the Respondents—W. Campbell, Q.C.—Sandeman. Agents—Anderson & Chisholm, S.S.C.

Friday, February 2.

TEIND COURT.

[FIRST DIVISION.

PRESBYTERY OF STIRLING AND OTHERS *v.* GRAHAM AND OTHERS.

Teinds — Jurisdiction — Competency — Act 1707, *c.* 9—*Judicature Act* 1825 (6 *Geo. IV. c.* 120), *sec.* 54.

In an action raised by a presbytery against the heritors of two contiguous parishes, the pursuers craved declarator (1) that the said parishes had never been legally united, and that it was expedient that each should be served by a separate minister; (2) that an arrangement by which both parishes had for more than 300 years been served by one minister should be terminated; and (3) they concluded for modification of a constant local stipend to the minister of each parish out of the separate teinds thereof.

Held (1) that whether the Parliamentary Commissioners prior to the Act 1707, c. 9, would have had jurisdiction, the Court of Teinds, as constituted by that statute, had jurisdiction to entertain the declaratory conclusions of the action, and (2) that an action of declarator connected with teinds, which by sec. 54 of the Judicature Act is appropriated to the Division as a quorum of the Court of Teinds, may competently include conclusions for modification of stipend, although the latter, being by the same section appropriated to a quorum of the Whole Court, may have to be remitted to such a quorum after the declaratory conclusions are disposed of.