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-

Substitute of Lanarkshire at Glasgow, between Cayzer, Irvine, & Company, shipowners, Glasgow, and Mrs Rachel Kennedy or Dickson, widow, residing at 6 Chapel Street, Greenock, as an individual and as tutrix and administratrix-in-law for her pupil children, the Sheriff-Substitute (BOYD) awarded compensation.

A case for appeal was stated.

The case stated—"(1) That the respondent is the widow of James Dickson, ship carpenter; that she was married on 10th February 1899 and has three children of the marriage, viz., Catherine M'Leod Dickson, born 9th November 1899; Isabella M'Dougall Pollock Dickson, born 15th May 1901; and Helen Black Dickson, born 21st May 1903; and that she and her children were wholly dependent upon the earnings of the deceased. (2) That on 11th March 1904 the appellants, between voyages, for cleaning and repairs docked their s.s. 'Clan Fraser' in No. 3 Graving Dry Dock, Govan, which they had hired from the Clyde Navigation Trustees. (3) That James Dickson was engaged by the appellants as ship's carpenter on board this vessel. (4) That he had served during the previous voyage and was engaged for the voyage for which the vessel was preparing, and in the interval in dock he was employed by the appellants on board in the work of repair. (5) That on 11th March 1904 he was engaged on the forecastlehead in turning the ship's cable end for end, and while removing the shackle of the cable which passed through the ring of the anchor he overbalanced and fell to the bottom of the dock and sustained injuries from which he died on the same day. (6) That the operation of unshackling the ship's cable on which the deceased was engaged at the time of the accident is as a rule done in dry dock, but that in emergencies it is done at sea, and it forms part of the duty of a ship's carpenter. (7) That the deceased's average weekly earnings in the employment of the appellants were 36s.

"On these facts I found in law that the accident happened to the deceased James Dickson when employed on in or about a factory within the meaning of the Workmen's Compensation Act 1897; that the accident arose out of and in the course of his employment; that the appellants were the undertakers of the employment in the sense of said Act and were liable in compensation to the respondents, and fixed the sum at £280, 13s.

"I therefore awarded to the respondent Mrs Rachel Kennedy or Dickson the sum of £100, 13s., and to each of her three children the sum of £60. I also found the appellants liable in expenses."

The question of law was—"Was the employment in which the deceased James Dickson was engaged at the time of his death an employment to which the Workmen's Compensation Act applies?"

Argued for the appellants—*Esto* that on the authority of *Raine* v. *Jobson* (cit. *infra*) the dock in question was a factory, the work in which Dickson was engaged, viz., unshackling the ship's cable with the view of turning it end for end, was not part of the ordinary work of this constructive factory. The work of this factory was the repair of ships, but Dickson was not engaged in work of that kind. He was doing the ordinary work of a seaman at the time, and seamen were not within the Act. "Seaman" included every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship. The following cases were cited:—(1) As to the dock being a factory—*Merrill* v. *Wilson & Company, Limited*, [1901] 1 K.B. 35; *Raine* v. *Jobson & Company*, [1901] A.C. 404; *Griffin* v. *Houlder Line, Limited*, [1904] 1 K.B. 510, *rev.* 21 T.L.R. 436; *Barrett* v. *Kemp Brothers*, [1904] 1 K.B. 517; *Owens* v. *Campbell, Limited*, [1904] 2 K.B. 60; *Stevens* v. *General Steam Navigation Company*, [1903] 1 K.B. 890; *Reid* v. *Anchor Line*, February 6, 1903, 5 F. 435, 40 S.L.R. 352. (2) As to meaning of "seaman"—Merchant Shipping Act 1894 (57 and 58 Vict. cap. 60), sec. 742; *The Queen* v. *Judge of City of London Court*, L.R., 25 Q.B.D. 339, *per* Lord Coleridge at p. 342; *Thomson* v. *Hart*, October 27, 1896, 28 S.L.R. 28.

Counsel for the respondent were not called upon.

LORD PRESIDENT—This is a very short point. It is stated by the learned Sheriff-Substitute that James Dickson, the man who was injured, had been employed during the previous voyage as a ship's carpenter on board the vessel, and that the voyage had come to an end. He was also engaged for the 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 No. 3 Graving Dry Dock, Govan, hired for the purpose from the Clyde Navigation Trustees. Under these circumstances it is clear that the dock became for the purposes of the Act "constructively" a factory. The deceased man was engaged in work in or about this constructive factory, and therefore as he was injured in the course of his work the case is ruled by the decision in *Raine* v. *Jobson*, [1901] A.C. 404, in the House of Lords, unless it can be made out that the work in which he was engaged was not connected with the ordinary and usual work of this constructive factory.

The Sheriff finds that the work in which he was engaged was unshackling the ship's cable in order to turn it end for end. He also finds that Dickson was employed in the work "of repair."

I find no difficulty in holding that the operation of unshackling the cable with a view to turn it end for end was a work of "repair." I see no reason to limit the meaning of repair to the supply or mending of something broken. We are told, it is true, by the Sheriff that unshackling the ship's cable is an operation which may take place in emergencies at sea, and that if done at sea such repair would be part of the proper work of the ship's carpenter. The Sheriff has found, however, that he was engaged

in "the repair" of the ship, and that being so I think no distinction can be drawn between this case and that of *Raine* v. *Jobson*, and that it is governed by that decision.

LORD ADAM—I concur.

LORD M'LAREN—Comparing the case of *Raine* v. *Jobson*, [1901] A.C. 404, with the more recent authority cited (*The Houlder Line, Ltd.* v. *Griffin*, April 14, 1905, 21 T.L.R. 436), but which has not yet appeared in the official reports, it is quite plain that the Supreme Court of Appeal has kept clearly in view the distinction between the case where the dock is hired by the shipowner for the purposes of repairing a ship and the case where a ship is being repaired while lying in the water-space of the dock and surrounded by the structure of a dock which is under the administration of a company or public body.

In the present case the dock was at the exclusive disposal of the shipowners, by whom it had been hired, and the repairs were being executed by workmen employed by them. One of these was a ship's carpenter who had been employed on the vessel during the previous voyage, but who at the time when he met with the accident was not engaged as a seaman but as a workman employed to execute repairs.

The fact that the particular operation on which he was engaged, viz., turning the ship's cable end for end, was such work as a ship's carpenter might be required to do at sea under his contract as a seaman cannot be held to exclude him from the benefit of the Act unless the mere fact of his being a seaman is sufficient to debar him, even although he may happen to be employed at the time as a landsman under a contract of a different description.

LORD KINNEAR—I agree with your Lordships that it is quite clear that the dock in this case was constructively a factory.

It is not disputed that the deceased was employed in this factory, but it is said that the operation in which he was actually engaged was not work concerned with the business of the factory. The Sheriff states, however, that as matter of fact he was employed in the work of repair, which is the very business of this so-called factory, for the work of the factory is the repair of the ship.

If so, the only point is that the deceased was doing work which he might have been required to do while at sea and in an emergency; but the mere fact that he might on some other occasion have to do elsewhere in a different capacity—that of a seaman—the work which he was doing when the accident happened to him in the capacity of a workman employed by the undertakers cannot be held to exclude him from the provisions of the Act.

The Court answered the question of law in the affirmative.

Counsel for the Appellants—The Solicitor-General (Salvesen, K.C.)—R. S. Horne. Agents—Webster, Will, & Co., S.S.C.

Counsel for the Respondent—Watt, K.C.—Wark. Agents—M. J. Brown, Son, & Co., S.S.C.

Tuesday, June 6.

SECOND DIVISION.

[Lord Low, Ordinary.

PLAYFAIR *v.* KELSO RAGGED INDUSTRIAL SCHOOL.

Succession—Legacy—Legacy to Charitable Institution Existing for Object Specified in Constitution—Alteration of Constitution before Legacy Payable—Identity of Legatee—Whether Legacy Lapsed.

A testator who died in 1888 directed his trustees in a certain event which did not occur until 1903 to pay a share of the residue of his estate to a certain institution, the objects of which, as described in its constitution, were, *inter alia*, "to rescue destitute and morally deserted children." The constitution of the institution at the date of the testator's death made provision for a daily allowance of food to the children, and for their elementary education in a school. The school was closed in 1889 after the introduction of free education, and in 1891 the constitution of the institution was altered. In the new constitution certain changes were made in the appointment of directors, and it was provided that the object of the institution should be the provision of clothing and food for destitute or poor children attending the board schools. When the testator's residue became divisible his heirs *in mobilibus* maintained that the bequest in question had fallen into intestacy by reason of the institution named having ceased to exist or having materially changed in scope and character. *Held* (*aff.* judgment of Lord Low) that the institution which the testator intended to benefit had not ceased to exist by reason of the changed methods of carrying out its objects and the change in the mode of appointing the directors.

This was an action of multiplepoinding at the instance of the testamentary trustees of Thomas Johnston, grocer and wine merchant, Kelso, who died on 26th March 1888.

By his trust-disposition and settlement Mr Johnston directed his trustees to pay the income of the residue of his estate to Eliza M'Dougal, his housekeeper, and at her death to divide the residue among certain institutions and individual beneficiaries. The liferentrix died in 1903.

One of the testator's residuary bequests which vested and became payable on the death of the liferentrix was as follows:—"Two-eighth parts thereof to the Kelso