omitting to take notice of a point of law, or has he decided a point of law and refused to state a case raising that point. Our power to require a case extends to the second case, but not, as I think, to the first. The Workmen's Compensation Act in the second schedule 14 (*c*) provides that "it shall be competent to either party . . . to require the Sheriff to state a case on any question of law determined by him." The duty of the Sheriff, then, in acting as arbitrator is to grant a case on the question of law which he has determined, and which presumably he thinks is necessary for the decision of the case. Without wishing to lay down any absolute rule, one would not be inclined to direct an arbitrator to state a case unless it could be shown that he had determined some question of law and had refused to grant a case, thus precluding the consideration of the question of law by the court of review. While I do not say that there might not be special circumstances for directing a case, as where the arbitrator had taken a one-sided view or omitted to notice some legal point which he ought to have noticed, yet the rule in ordinary cases being as I have stated, the present application must fail because the Sheriff has not decided any such question of law as the Railway Company now desires to raise. On the contrary, the Sheriff says that according to his view of the facts no such question of law is raised by the facts. It may possibly be that another arbitrator might have so stated the facts as to present a question of law for the decision of the Superior Court, but according to the facts as found there is no question on the construction of the statute raised, and I think that it would be a very strong thing to require a judge or arbitrator to state a case which, on the view which he has taken of the evidence, would be a purely hypothetical case, not arising on the facts which he considers essential to the decision.

LORD KINNEAR concurred.

The Court refused the note.

Counsel for the Appellants — Guthrie, Q.C.—Spens. Agents—John C. Brodie & Sons, W.S.

Counsel for the Respondent—Baxter—W. Thomson. Agents — Sturrock & Sturrock, S.S.C.

Thursday, March 8.

FIRST DIVISION.

[Sheriff of Aberdeenshire.

ABERNETHY & COMPANY *v*, LOW.

Reparation — Workmen's Compensation Act 1897, *sec.* 7—*Factory—Dock—Ship in Repairing Dock—Undertaker.*

A workman in the employment of a firm of ship-engineers met with an accident while engaged in repairing the boiler of a ship which was lying in the repairing dock of Aberdeen Harbour, and claimed from his employers compensation under the Workmen's Compensation Act. In a case stated for appeal, *held* (1) that a workman employed on a ship in a dock is not employed "on or in or about" a dock within the meaning of section 7, sub-section 1, of the Act; (2) that the repairing dock was not a factory within the meaning of section 7, sub-section 2; and (3) that the ship-engineers were not the occupiers of the dock in the sense of the Factory and Workshop Acts 1878 and 1895, and consequently were not the undertakers under section 7, sub-section 1, of the Workmen's Compensation Act. *Held*, accordingly, that the workman was not entitled to compensation.

By section 7 of the Workmen's Compensation Act 1897 it is provided, *inter alia*, "(1) This Act shall apply only to employment by the undertakers, as hereinafter defined, on or in or about a railway, factory, mine, quarry, or engineering work. (2) '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, quarry, or laundry means the occupiers thereof within the meaning of the Factory and Workshop Acts 1878 to 1895." The provisions of the Factory and Workshop Acts referred to in these sections are quoted in the opinion of the Lord President, *infra*.

This was a case stated for appeal by the Sheriff-Substitute of Aberdeen (BURNET) on a claim under the Workmen's Compensation Act at the instance of William Low, apprentice boilermaker, against James Abernethy & Company, Ferryhill Foundry, Aberdeen. The facts of the case as stated by the Sheriff were as follows:—"That on the morning of Wednesday 19th July 1899 the respondent William Low, who is an apprentice boilermaker in the employment of the appellants, who carry on business as ironfounders, engineers, &c., in Aberdeen, was employed by them on what is termed the 'night shift,' in repairing the boiler of the s.s. 'St Ola,' belonging to the Orkney and Shetland Steam Navigation Company, Limited, which was then lying in the repairing dock of Aberdeen Harbour. That said repairing dock is the property of the Aberdeen Harbour Commissioners, and the rates for the occupation by the s.s. 'St Ola' were paid by the Orkney and Shetland Steam Navigation Company. That the said dock is about a mile distant from the appellants' works. That on the date mentioned, while engaged cutting out old rivets inside the fire-box of the boiler of said vessel a piece of rivet struck said respondent's right eye. That in consequence of said accident he has meantime suffered total disablement, having temporarily lost the use of his right eye, and since the date of said accident having been unable to earn any wages."

On these facts the Sheriff pronounced the following judgment:—"Finds that on 19th July 1899, the pursuer was in the employment of the defenders, and engaged in cutting out old rivets inside the fire-box of the boiler of s.s. 'St Ola,' which was then lying and being repaired in the repairing dock of Aberdeen harbour: Finds that while so engaged he was accidentally injured by being struck by a piece of rivet on the right eye: Finds that he has lost the use of his right eye in consequence of said accident, and has meantime suffered total disablement thereby: Finds that the employment in which he was engaged as aforesaid is one to which the Workmen's Compensation Act 1897 applies, and that the pursuer is entitled to compensation in terms of the Act: Therefore ordains the defenders to pay to the pursuer the sum of 4s. 9d. weekly from and after 4th August 1899, as craved."

The following question of law was stated —"Whether the employment of the respondent, in the course of which he received personal injury by accident as libelled, is an employment to which the Workmen's Compensation Act 1897 applies?"

Argued for appellant — The question should be answered in the negative, because (1) a ship was not a dock, and therefore an accident occurring in a ship did not occur "on or in or about" a dock. The ship might be in the dock, the workman inside the ship was not. This was considered in *Woodham* v. *Atlantic Transport Company* [1899], 1 Q.B. 15, and expressly decided in *Flowers* v. *Chambers* [1899], 2 Q.B. 142, and an opinion to the same effect was expressed by Lord President Robertson in *Aberdeen Steam Trawling Company* v. *Peters*, March 16, 1899, 1 F. 786. It was merely an accident that the ship happened to be in a dock when her boilers were being repaired, the operation might have been quite well performed when she was afloat. (2) The dock in question was not a factory within the meaning of section 7. That section did not declare that the provisions of the Act should apply to every dock, but only when the dock was a factory—that is to say, under sec. 93 of the Factory and Workshops Act 1878 (quoted in the opinion of the Lord President), only when steam or other mechanial power was used in the manufacture carried on there. There was no finding that steam or mechanical power was used in the repairing dock in the present case, and in the absence of such a finding it must be assumed that it was not. To make a dock a factory, it must be shewn that some particular provision of the Factory and Workshops Act applied to that particular dock—*Hall* v. *Snowden, Hubbard, & Company* [1899], 2 Q.B. 136. The decision in *Jackson* v. *Rodger*, July 4, 1899, 1 F. 1053 was explained when the case came up again for decision (30th January 1900, 37 S. L. R. 390) to have been merely that the workman had stated a relevant case for inquiry. As now finally decided that case was directly in point and in the appellant's favour. (3) The appellants were not the undertakers, because they were not the occupiers of the dock. The meaning of "occupier" in this connection was defined by section 23 (1) (v) (b) of the Factory and Workshops Act 1895 (quoted in the opinion of the Lord President), and the appellants were not within it. Any number of different firms might be employed at the same time in executing repairs on a ship, but even although that ship might happen to be in a dock, it did not make them the occupiers of the dock. If a man was sent in to repair a kitchen boiler his employer did not thereby become the occupier of the house. When a workman leaves his employers' premises to work for his employer somewhere else, the employer ceases to be an "undertaker" and is not liable in compensation—*Malcolm* v. *Macmillan*, January 31, 1900, 37 S.L.R. 383; *Spencer* v. *Livett, Frank, & Son*, February 5, 1900, 16 *Times* L.R. 179.

Argued for respondent—The Sheriff was right. (1) The ship was in the dock, and therefore the workman in the ship was "on or in or about" the dock. (2) The dock in question was a "factory." Although there was no direct finding as to the use of steam or mechanical power, it was a well-known fact that the work of repairing ships could not be carried on without such aids, and if mechanical power was used in the dock it did not matter whether it was used on the particular ship or not. The first case of *Jackson* v. *Rodger*, July 4, 1899, 1 F. 1053, decided this point in the respondent's favour, and in the later case the Judges professed to adhere to their former opinion. (3) The respondents were the "undertakers" because they were the occupiers of the dock. They had the "actual use" of the dock, which satisfied the definition of occupier in section 23 of the Factory and Workshops Act 1895. There might be many concurrent occupiers of the dock in this technical sense—in fact, every person who undertook work to which the existence of the dock was essential was *pro tempore* an occupier.

At advising—

LORD PRESIDENT—The respondent was, when he suffered the injury in respect of which he claims compensation, engaged as an apprentice boiler-maker in the employment of the appellants in repairing the boiler of the s.s. "St. Ola," which was then lying in the repairing dock of Aberdeen harbour. He was cutting out old rivets inside the fire-box of the boiler when a piece of a rivet struck and seriously injured his right eye. It does not appear that in connection with the work of repairing the boiler any machinery upon the dock was used, or that any materials connected with the work were brought from the dock or landed upon it. So far as appears the work was entirely confined to the ship.

This being so, the first question seems to me to be whether the provisions of the Workmen's Compensation Act 1897 relative to a dock apply to a ship in a dock, or in other words, whether a ship is a dock

for the purposes of the Act, and I consider that this question should be answered in the negative.

The point was raised in the case of *Woodham* v. *Atlantic Transport Company, Limited* [1899], 1 Q.B. 15, but it was not found necessary to decide it, and it again arose in this Court in the case of *The Aberdeen Steam Trawling and Fishing Company, Limited* v. *Peters*, 1 F. 786, when the Lord President said—"Before leaving the Act of 1895 I ought to say that the argument that the word "dock" includes ships in the dock seems to me to be entirely untenable, and much of what has already been said applies to it." And it was decided in the case of *Flowers* v. *Chambers* [1899], 11 Q.B. 142, that a workman employed on board a ship lying in a dock is not employed on, in, or about a dock, and is therefore not employed on, in, or about a factory within the meaning of section 7 (1) of the Workmen's Compensation Act 1897, whether the dock itself is a factory within the meaning of sub-section 2 of that section or not. I consider that this decision is sound, and it appears to me directly applicable to the present case. The view that employment on a ship in a dock generally does not fall within the scope of the Act is confirmed by the special provision for a particular case contained in section 7 (3).

It was, however, contended by the respondent in the second place that as the word "factory" in section 7 (2) of the Act 1897 is declared to have the same meaning as in the Factory and Workshops Acts 1878 to 1891, it includes the dock in question under the denomination of "shipbuilding yard." It is declared by section 93 of the Act of 1878 that the expression "non-textile factory" in the Act means, *inter alia*, any premises or places named in part two of the fourth schedule to the Act, "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," and one of the places named in part two of the fourth schedule is (24) shipbuilding yards, "that is to say, any premises in which any ships, boats, or vessels used in navigation are made, finished, or repaired." The result of these provisions is that a shipbuilding yard is not a "factory" in the sense of the Act of 1878, unless steam, water, or other mechanical power is used in the manufacturing process carried on in it, and there is no statement in the case that any of these agencies is used in the dock in which the accident occurred. It may be a question whether the words defining "shipbuilding yards" in part two of the fourth schedule to the Act of 1878, although expressed alternatively, do not require that the place shall be one in which ships are built, as well as furnished or repaired—in short, a shipbuilding yard in a proper sense. In the case of *Spencer* v. *Livett and Others* (16 *Times* Law Reps. 199) Lord Justice Romer said with regard to the definition of the shipbuilding yard in question that "in his opinion the Legislature contemplated premises where the business of making, finishing, and repairing ships was carried on." But however this may be, the statement in the case does not appear to me to establish that the repairing dock of Aberdeen Harbour is a shipbuilding yard either in the larger or in the more restricted sense.

There is a third ground upon which the question put in the case should, in my judgment, be answered in the negative, viz., that it does not appear that the appellants were the occupiers of the dock in the sense of the Factory and Workshops Acts 1878 to 1895, so as to make them "undertakers" within the meaning of section 7 (1) of the Act of 1897.

By section 7 (1) of the Act of 1897 it is declared that the Act shall apply only to employment by the "undertakers" as thereinafter defined, on, in, or about, amongst other things, a factory; by section 7 (2) it is declared that "undertakers" in the case of, amongst other things, a factory, means the occupier thereof within the meaning of the Factory and Workshops Acts 1878 and 1895; and section 23 (1) (v) (b) of the Factory and Workshops Act 1895 declares that "the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same, or forming a part thereof, and the person so using any such machinery shall be deemed to be the occupier of a factory."

It is not stated that the s.s. "St Ola" had been put into the hands of the appellants, or that they had placed her in the dock, or that they were in the possession and charge of her there, or that it was requisite that for the repairing of the boiler that she should be put into a dock at all. It is stated that the rates for the occupation of the dock by the s.s. "St Ola" were paid by her owners, which would suggest that they had placed her and were in charge of her there, although the appellants were repairing her boilers, while possibly other persons may have been executing other repairs upon her.

It therefore appears to me that the appellants cannot be taken to have been the occupiers of the dock in such a sense as to make the Act of 1897 apply to them.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court answered the question in the case in the negative.

Counsel for the Appellants—Campbell, Q.C.—Glegg. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for the Respondent—Salvesen, Q.C.—T. B. Morison. Agents—P. Morison & Son, S.S.C.