for whose benefit and on whose premises the work is being done in the course of which injury is sustained by the workmen; the scheme of the Act being that they shall be liable whether the workman is employed by themselves or (under section 4) by a contractor, but in the latter case with right to indemnification if the contractor himself is liable in respect of personal or imputed fault.

I would therefore answer both questions in the negative.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties on the stated case, Answer the questions of law therein stated in the negative: Therefore affirm the dismissal of the claim and decern: Find the respondent entitled to his expenses of the stated case on appeal, and remit," &c.

Counsel for the Appellants — Craigie — Bartholomew. Agent — James Russell, S.S.C.

Counsel for the Respondent—Younger. Agents—Simpson & Marwick, W.S.

Tuesday, January 30.

SECOND DIVISION.

HONEYMAN'S TRUSTEE *v.* DONALDSON.

Succession — Next-of-Kin — Whether Next-of-Kin includes Mother.

A testatrix in a formal deed directed her trustees, on the occurrence of events which happened, to pay and convey the capital of her estate to her "next-of-kin."

She was survived by her mother and a paternal uncle and aunt.

Held that the mother had no claim, not being one of the next-of-kin of her child, and that the paternal uncle and aunt were entitled to the estate.

Isabella Euphemia Donaldson, only child of George Donaldson and Mrs Isabella Stirling or Donaldson, was married to Robert Honeyman junior in 1890. By the antenuptial contract of marriage, dated 11th March 1890, Miss Donaldson, in contemplation of her marriage, conveyed to trustees various estates or effects then belonging to her or that might subsequently belong to her.

The purposes of the trust were (1) to secure to herself the liferent alimentary use of the said estate and effects; (2) on her death survived by Robert Honeyman junior, and by a child or children of the said intended marriage, she directed her trustees to hold, retain, and manage the said estate for behoof of Robert Honeyman junior for his liferent alimentary use, and to pay and make over to him the free annual income and produce thereof during all the days of his life, and upon his death to pay to or for behoof of said child or children equally, share and share alike, the annual income or produce of said estate till they respectively should attain majority, when the trustees were directed to pay or divide the fee or capital of said estate to said child or equally among said children.

By the third trust purpose she directed as follows:—"*Third*, In the event of there being no child or children of the said intended marriage alive at the dissolution thereof by the death of the said Isabella Euphemia Donaldson, survived by the said Robert Honeyman junior, the trustees shall pay to the said Robert Honeyman junior the annual income or produce of said estate from and after said dissolution, and that during all the days of his life, and upon his death the trustees shall pay or convey the capital of the said estate to the next-of-kin of the said Isabella Euphemia Donaldson."

Isabella Euphemia Donaldson or Honeyman died intestate on 1st September 1893. After her death the income of the trust-estate was paid, in terms of the third trust purpose, to Robert Honeyman junior until his death, which took place on 15th April 1899. No children were born of the marriage.

The nearest relatives of Mrs Honeyman who survived her were (1) her mother Mrs Isabella Stirling or Donaldson, and (2) James Thomson Donaldson, a paternal uncle, and Mrs Jane Donaldson or Henderson, a paternal aunt.

Thereafter questions arose with reference to the disposal of the trust-estate, which amounted to £650. For their settlement a special case was presented by (1) the marriage-contract trustees; (2) Mrs Donaldson the mother; and (3) James Thomson Donaldson and Mrs Henderson.

The questions of law were—"(1) Is the second party entitled to take in virtue of the destination to 'next-of-kin' in the third trust purpose of said antenuptial contract of marriage? (2) In the event of the foregoing question being answered affirmatively, is the second party entitled to (*a*) the whole of said estate, (*b*) one-half thereof, or (*c*) one-third thereof?"

Argued for second party—It was contrary to reason to think that the intention of the daughter was to prevent her mother succeeding to her estate in preference to her paternal uncle and aunt. On the contrary, it was clearly her intention to benefit her mother in preference to relatives so remote in degree. A mother was now one of the heirs *in mobilibus* of her child under the Intestate Moveable Succession Act 1855. The bequest might, if the Court were satisfied as to the intention of the testator, be construed as a bequest to heirs *in mobilibus*—*Tronsons* v. *Tronsons*, Nov. 21, 1884, 12 R. 155, or as a bequest to the nearest relatives of the testator—*Gregory's Trustees* v. *Alison*, April 8, 1889, 16 R. (H.L.) 10; *Young's Trustees* v. *Jones*, Dec. 10, 1880, 8 R. 242. In the words of Lord Deas, in the case of *Muir*, Nov. 3, 1876, 4 R. 74, "it is no great stretch to say that a mother is one of the next-of-kin of her children."

Argued for the third party—Under the law of Scotland the next-of-kin or nearest in blood of the testator were the deceased's agnates, being the kinsmen of the deceased on the father's side, and thus the term never could include the mother—Stair, iii. 8, 31; Erskine's Institutes, iii. 9, 2. The Intestate Succession Act had made no change in the law of Scotland as far as the definition of next-of-kin was concerned, and the mother, although she might be entitled to share in the distribution of intestate succession under the Moveable Succession Act, had clearly no claim under a legacy limited to next-of-kin — M'Laren on Wills (3rd edition) ii. 765; opinion of Lord Justice-Clerk Moncreiff in *Webster* v. *Shiress*, Oct. 25, 1878, 6 R. 106; opinion of Lord Kinloch in *Connell* v. *Grierson*, Feb. 14, 1867, 5 Macph. 387. In section 4 of the Act itself the mother was clearly distinguished from the next-of-kin. If the context of the deed showed that the testator had attached a meaning to the term different from that given by law, that meaning would be given effect to, but there was nothing in the present deed showing that the testator had used it in a different sense from the legal meaning—opinion of Lord Watson in *Gregory's Trustees, supra*, 16 R. (H.L.) 13.

At advising—

LORD JUSTICE-CLERK—I am of opinion that the first question in this special case must be answered in the negative. The expression next-of-kin is one in constant technical use, and I know of no authority for holding that where a testator bequeaths to his next-of-kin, the bequest can be held to be a gift to a surviving mother. Here the gift is contained in a contract of marriage drawn up by a man of business to express the intentions of the contracting parties, and it must be held to express that intention according to the ordinary legal interpretation of the words used in it. If there was an intention to benefit the mother of Isabella Euphemia Donaldson, the use of the expression "next-of-kin" would be most inapt, and therefore it is impossible to gather any such intention from the words.

LORD YOUNG—I concur.

LORD TRAYNER—This question does not appear to me to be attended with any difficulty. The late Mrs Honeyman directed her trustees under her marriage-contract, in the events which have happened, to pay and convey the capital of her estate to her "next-of-kin." Her mother claims that the whole of that estate should be conveyed to her as the "next-of kin" and nearest in blood to her daughter, or otherwise that she should share in the estate with others who are of the next-of-kin to Mrs Honeyman. I think the second party (the mother) has no right to any part of the estate. The words "next-of-kin" are *voces signatæ* in the law of Scotland, and mean only the heirs *in mobilibus* entitled to succeed to moveables in the event of intestacy. A mother was never recognised in our law as of the next-of-kin of her child. But the Intestate Succession Act of 1855 has been appealed to as showing that a mother is now entitled to a share of her child's intestate succession. I fail to see how this can avail the second party. In the first place, we are here dealing with testate succession, to which the Act has no application; and in the second place, the Act does not make the mother of an intestate child one of that child's next-of-kin, but distinguishes her preferentially from the next-of-kin. I therefore think the first question should be negatived.

LORD MONCREIFF—The correct meaning of the expression "next-of-kin" is "nearest in blood." Before the passing of the Intestate Succession Act 1855 the words were sometimes given the secondary meaning of "heirs *in mobilibus*," because then the nearest of blood or next-of-kin succeeded equally to moveable estate in the event of intestacy, the nearest line excluding the more remote.

Since the passing of that Act the expression "next-of-kin" is no longer synonymous with heirs *in mobilibus*, because under the Act persons who are not among the next-of-kin, and amongst them the mother of the deceased, are admitted to share the succession with them.

But such persons are not next-of-kin, and in the Act are distinguished from the next-of-kin. For instance, it is provided that the mother shall, in a certain event, "have right to one-third of his moveable estate in preference to his brothers and sisters or their descendants or other next-of-kin of such intestate."

Before the Act 1855 a mother was in no case regarded as one of the next-of-kin of her child, and the Act, while it gives her a third of the moveable estate in the event contemplated, does not describe her as one of the next-of-kin.

I am therefore of opinion that the expression still bears the same meaning which it bore before the passing of the Act—that is to say, in the absence of anything in the deed in which it occurs which indicates that it is not used in the ordinary sense. Now, in this marriage-contract, which is a formal deed, I find nothing to indicate that the words are used in other than their ordinary sense, and therefore I am of opinion that they must be construed as meaning the nearest in blood—that is, the paternal uncle and aunt of Mrs Honeyman, who are the third parties in the case.

I therefore answer the first question in the negative.

The Court answered the first question in the negative.

Counsel for the First Parties—A. M. Anderson. Agents—Donaldson & Nisbet, Solicitors.

Counsel for the Second Parties — W. Campbell, Q.C. — M'Lennan. Agents — Donaldson & Nisbet, Solicitors.

Counsel for the Third Parties—Lees—Cullen. Agent—F. J. Martin, W.S.