arrive and depart without causing some danger. But I must assume that the pursuer was where he had a right to be, and that he was taking ordinary care of his own safety.

LORD TRAYNER—I am unable to see any good ground for dismissing this action as irrelevant. The pursuer alleges certain faults on the part of the defenders, which he says resulted in an injury to him for which he claims compensation. The defenders say that the pursuer contributed by his own fault to the cause of his injuries. But that is a defence, not a plea against relevancy.

I agree with what your Lordship has said as to the case cited for the defenders. I think that case has no application. There the boy had no right to be where he was. Here the pursuer had, *prima facie*, a perfect right to be on the pier, and the defenders do not aver on record that he had no right to be there.

LORD MONCREIFF—As all your Lordships are of opinion that the case should go to trial, I do not think that it would serve any good purpose for me to say more than that I greatly doubt the relevancy of the pursuer's averments.

The Court recalled the interlocutor reclaimed against, approved of an issue for the trial of the cause, and remitted to the Lord Ordinary to proceed.

Counsel for the Pursuer and Reclaimer—A. S. D. Thomson. Agents — Emslie & Guthrie, S.S.C.

Counsel for the Defenders and Respondents—W. Campbell, K.C.—Spens. Agents —Boyd, Jameson, & Kelly, W.S.

Tuesday, June 25.

FIRST DIVISION.

[Sheriff Court at Glasgow.

REID *v.* P. R. FLEMING & COMPANY.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7—*Engineering Work — Construction of Work—Mechanical Power Employed in Testing Hay-Cutter.*

A firm of engineers undertook to supply a hay-cutting machine and to fit it up in their customer's premises. The erection of the machine was done solely by manual labour, but in testing it mechanical power was used. A workman employed in fitting up the machine met with an accident while engaged in testing it, and made a claim against the engineers under the Workmen's Compensation Act 1897.

Held that the engineers were liable, in respect that the workman was when he met with the accident engaged in an "engineering work" of which they were the "undertakers" within the meaning of those terms as defined by section 7 of the Act.

The Workmen's Compensation Act 1897 enacts, section 7 (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) In this Act . . . 'engineering work' means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used. 'Undertakers' . . . in the case of an engineering work means the person undertaking the construction, alteration, or repair." . . .

This was an appeal on a case stated by the Sheriff-Substitute of Lanarkshire (BOYD) in an application under the Workmen's Compensation Act 1897 at the instance of Andrew Reid, engineer, Bellgrove Street, Glasgow, claimant and appellant, against Messrs P. R. Fleming & Company, engineers, Argyll Street, Glasgow, respondents.

The case set forth that the following facts were admitted or proved—"(1) That the appellant is an engineer and was in the service of the respondents, and for three months prior to 5th October 1900 he earned wages at the rate of 38s. per week. (2) That the respondents' business includes the making of machines in their own premises and fitting them up in the premises of their customers, where the machines must be shown to work satisfactorily before delivery is accepted. (3) That the respondents sold certain machines, including a hay-cutter, to the St George's Co-operative Society, Port Dundas, Glasgow, and undertook to fit these machines and leave them in working order in their customers' premises at Port Dundas. (4) That the appellant was engaged on 5th October 1900 in fitting up the hay-cutter in the premises of the respondents' customers. (5) That in erecting the machine the appellant only used manual labour assisted by blocks and tackle for raising the heavier parts to their position. (6) That from time to time as the appellant built the machine it was necessary for him to test it by applying mechanical power in order to ascertain whether the machine was so far properly fitted and ran smoothly. (7) That the machine was partially constructed, and the appellant was engaged in so testing it with mechanical power derived from a shaft which ran in the apartment in which the machine was being erected, and which was driven by electrical power belonging to the said St George's Co-operative Society, when his left hand was caught in the hay-cutting machine, and so injured that he lost two and a-half fingers of that hand. When the machine was ultimately completed it was driven by motive power derived from the shaft mentioned above."

On these facts the Sheriff found in law "that at the time of the accident the hay-cutting machine was still the property of the respondents; that the said premises of the St George's Co-operative Society were at that time a factory within the

meaning of the said Workmen's Compensation Act; that the respondents were not at the date of the accident occupiers of the said factory within the meaning of the said Act, and therefore that they are not liable in compensation to the appellant."

The questions of law were—"(1) Whether the respondents were undertakers in the sense of the Workmen's Compensation Act 1897; and (2) Whether the employment at which the appellant was injured was an employment within the meaning of the said Act?"

Argued for the appellant—Admitting that the Sheriff was right in holding that the respondents were not the undertakers of a "factory," yet they were liable as undertakers of an "engineering work" as defined by section 7 of the Act (quoted *supra*)—*Wrigley* v. *Bayley & Wright*, 1901, 1 K.B. 780. Erecting a hay-cutting machine fell within the phrase "other work" used in that section. "Work" there meant employment, not a place. Testing a machine was part of its construction—*Middlemiss* v. *Berwickshire District Committee*, January 17, 1900, 2 F. 392; *Hoddinott* v. *Newton, Chambers, & Company*, 1901, A.C. 49.

Argued for the respondents—This was not an "engineering work." The phrase "other work" in section 7 of the Act (quoted *supra*), must be read in connection with the rest of the section, and meant a work *ejusdem generis* to railway, canal, or sewer. The construction proposed by the appellant would involve the use of the word "work" in two different meanings in the same section—in the first clause an employment, in the second a product. Secondly, mechanical power was not used here in the construction of the machine. Testing was not a part of construction, but a separate and independent process—*Purves* v. *Sterne & Company*, May 22, 1900, 2 F. 887.

LORD PRESIDENT — The appellant is a mechanical engineer, and he was for thre months prior to 5th October 1900 in the employment of the respondents, whose business includes the making of machines in their own premises and fitting them up in the premises of their customers, where the machines must be proved to work satisfactorily before delivery is accepted.

The respondents had sold a hay-cutter to the St George's Co-operative Society, Port Dundas, Glasgow, and had undertaken to fit it up and leave it in working order in the Society's premises there. The appellant was on 5th October 1900 engaged in fitting up the hay-cutter in the Society's premises. In doing so the appellant only used manual labour, assisted by blocks and tackle for raising the heavier parts to their position, but from time to time as the erection of the hay-cutter proceeded it was necessary for him to test it, and he did test it by applying mechanical power, in order to ascertain whether it was so far properly fitted and ran smoothly.

When the hay-cutter was partially erected and the appellant was engaged in so testing it by mechanical power derived from a shaft which ran in the apartment in which it was being erected, and which was driven by electrical power belonging to the Society, his left hand was caught in it and so injured that he lost two and a-half fingers of that hand. When the erection of the hay-cutter was completed it was driven by motive power derived from the shaft just mentioned.

Upon these facts the Sheriff-Substitute has found in law that at the time of the accident the hay-cutter was still the property of the respondents; that the premises of the Society were at that time a factory within the meaning of the Workmen's Compensation Act; but that the respondents were not at the date of the accident occupiers of the factory within the meaning of that Act, and therefore that they are not liable in compensation to the appellant.

It appears to me that these findings are correct except in so far as they declare that the respondents are not liable in compensation to the appellant, and I am of opinion that the respondents are liable to make compensation to the appellant under the Act, upon a ground not adverted to by the Sheriff-Substitute.

By section 7, sub-section (1), of the Act it is declared that it shall apply only to employment by the "undertakers," as thereinafter defined, on in or about, *inter alia*, an "engineering work," and by sub-section (2) it is declared that "engineering work" means any work of construction or alteration or repair of a railway, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used. By the same sub-section it is provided that "undertakers" in the case of an engineering work means the person undertaking the construction, alteration, or repair. The respondents maintain that the erection of the hay-cutter was not an "engineering work" within the meaning of section 7, but I am unable to concur in this view. Even if it were held that an "engineering work" means exclusively a physical product as distinguished from an operation, I would be of opinion that the erection of the hay-cutter satisfied the definition. The "construction" of a "railroad" or of any of the other works mentioned in the sub-section consists in putting together *in situ* the materials of which it is composed, and in like manner the putting together *in situ* of the different pieces of the hay-cutter seems to me to have constituted the "construction" of it in the sense of the Act. While the erection of the hay-cutter thus seems to me to satisfy the definition in section 7, sub-section 2, upon its most restricted interpretation, I may add that there seem to me to be strong grounds for holding that the words "engineering work" include an engineering operation in which machinery driven by steam, water, or other mechanical power is used. In the case of *Middlemiss* v. *Middle District Committee of the County Council of Berwick*, 2 F. 392, we held that the operation of road repair, in which a steam-roller was employed, was

an engineering work in the sense of sub-section (2) of section 7 of the Act. In either view, what the appellant was doing when he sustained the injury seems to me to have been a work for the "construction" of which machinery driven by mechanical power was used in the sense of section 7, sub-section (2) of the Act. The respondents were the "undertakers" of that work when the accident happened, and I am therefore of opinion that they are liable to make compensation to him under the Act.

LORD ADAM—There are two questions in this stated case. The first question is, whether the respondents were undertakers in the sense of the Workmen's Compensation Act 1897, and on that question I understand that there is no serious dispute in the sense in which the Sheriff considered the question, viz., that they were not at the time the occupiers of the factory in which the accident occurred. The second question is, whether the employment at which the appellant was injured was an employment within the meaning of the said Act. Now, the question whether an employment is an employment within the meaning of the Act means whether it is an employment in respect of which compensation will be given under the Act. The Sheriff-Substitute has not given his reasons for holding that the employment was not an employment within the meaning of the Act, but he must already have been of that opinion, for otherwise he would not have refused compensation. Accordingly, the question before us now is, whether the employment is one in respect to which this right to compensation is given. Now, these employments are specified by section 7, sub-section 1, as follows—"A railway, factory, mine, quarry, or engineering work," and the second sub-section gives the meaning which each of these words is to bear in the construction of the Act. The meaning of "engineering work" is there defined as "any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used." Now, of course the work on which the appellant was employed does not fall under the employments enumerated in the first head of this sub-section, for he was employed in the construction of a hay-cutting machine, but the question appears to be whether the construction of such a machine does not fall within the phrase "other work," which becomes an engineering work when in the construction of it machinery driven by mechanical power is used. Now, I think "work" is a word of most comprehensive meaning; in ordinary language we talk of a book or a picture, as well as of a railway, or a bridge, or a steam-engine, as a work, and I think "a haycutter" falls under it; nor do I think that the construction of a machine is completed although all the parts of which it is composed may be completed. If so, there is no doubt from the facts set forth by the Sheriff-Substitute, that the appellant was engaged in the construction, that is, the building up or erecting of that "work," when he met with the accident; and the only remaining question is, whether machinery was used in the construction of that work. Now, as to that the Sheriff leaves us in no doubt, because he states not only that mechanical power was necessary and was being used, but that it was being used at the time of the accident, and was the cause of the accident. Accordingly, it appears to me that the appellant was engaged in a work to which the Act applies, and I therefore agree with your Lordship.

LORD M'LAREN concurred.

LORD KINNEAR—I agree. I think this hay-cutting machine was a work in the sense of *opus manufactum;* that in its construction machinery was used driven by electrical power, and that therefore it falls within the definition of engineering work in the Workmen's Compensation Act. I am not surprised, however, that the attention of the Sheriff-Substitute was not directed to this view of the case, because in ordinary language an engineering work might probably be supposed to mean a more extensive structure than a hay-cutting machine. But that is not a sufficient reason for excluding from such a comprehensive term as "work" one very legitimate signification, nor for refusing effect to the statutory definition of the specific kinds of work which it means to describe as an "engineering" work. I am not moved by the argument that if this is the meaning to be attached to the term "work," it is different from its meaning in the earlier part of the clause, where it seems to mean an operation rather than a product of labour. But the use of one word in two different senses in the same passage is a method which is not confined to Acts of Parliament. It would be easy to find illustrations both in modern and classical writers. It seems to me, therefore, a mistake in the interpretation of written language to insist on a perfectly uniform and unvarying consistency in the use of particular words, because that is to fail to take account of the transition from one aspect of a complex idea to another. But however that may be, we ought, in my opinion, to construe this statute in a liberal spirit, and we must not sacrifice the substantial intention of this clause to an over-minute analysis of specific words.

The Court pronounced this interlocutor—

"Find that the respondents were the persons undertaking the construction of the haycutter in question: Find that the haycutter was an engineering work in the sense of the Workmen's Compensation Act 1897, and that the appellant having been injured by accident while employed by the respondents in the course of the construction of the said haycutter, the respondents are liable to him under said Act, and remit to the arbitrator to make an award of compensation accordingly."

Counsel for the Appellant—T. B. Morison. Agents—Sibbald & Mackenzie, W.S.

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

Tuesday, June 18.

FIRST DIVISION.

CORBETT'S TRUSTEES *v.* POLLOCK.

Succession—Vesting—Vesting Postponed—Vesting Subject to Defeasance—Persons to whom Fee Given not Ascertainable Till Death of Liferenter—Destination-over—Intestacy.

A testator who was survived by five children—A, B, C, D, and E, after directing his trustees to divide the nett annual proceeds of the residue in certain proportions among his son C and his daughters B and E, and the survivors, during their respective lives, subject to certain provisions in favour of the issue of deceasers, and certain contingent liferent provisions in favour of his son A and his daughter D, directed his trustees, on the death of the longest liver of C, B, and E, to realise his estate, and to divide the capital of the residue equally among the children respectively of C, B, & E—one share to each family—but declaring that in the event of the death of any of C, B, and E without leaving issue, his son A and his daughter D, or in the event of their death leaving issue, their said issue, should be entitled to an equal share along with the issue of C, B, and E *per stirpes* of the share of residue of which such child so deceasing had or would have had the interest. B died without issue. She was predeceased by A. He left a son who survived B, but predeceased E, the longest liver of B, C, and E, without leaving issue. E was predeceased by D. C, D, and E all had issue who survived E. The representatives of A's son claimed one-fourth of the share of residue of which B, who died without issue, had enjoyed the interest, and alternatively maintained that the said fourth had fallen into intestacy. *Held* (1) that the said fourth did not vest subject to defeasance in the event of B having issue either *a morte testatoris* in A or in A's son at A's death, and that it did not vest in A's son at B's death: but (2) that vesting in said fourth was suspended till the death of E, the longest liver of C, B, and E; (3) that said fourth did not fall into intestacy; and (4) that those of C, D, and E's children who survived E were entitled thereto *per stirpes*, to the exclusion of the representatives of A's son, who had predeceased her.

Thomas Corbett, surgeon, Pollokshaws, died on 19th August 1855, leaving a trust disposition and settlement whereby he conveyed his whole heritable estate (excepting certain heritable subjects in Bridgeton then about to be conveyed by him to his son John Campbell Corbett, and also excepting a plot of ground at the corner of Vennel and Main Street, then about to be conveyed to his daughter Susan Corbett or Steel), and his whole moveable estate, to the trustees and for the trust purposes therein mentioned. By the fourth purpose he directed his trustees to hold the whole remaining residue of his estate, and to divide the nett annual proceeds thereof as follows, namely, "into sixteen equal shares, and to pay or deliver six shares thereof to" his son "Robert Corbett, and five shares thereof to each of my daughters Margaret Corbett and Agnes Corbett or Gilroy . . . during all the days and years of their respective lives: Declaring that on the death of any of these my said children leaving lawful issue, my said trustees shall pay to such issue equally among them if more than one, and if only one then to him or her, the sum of Eight hundred pounds sterling, and thereafter divide and pay or deliver the annual interest or produce of my said means and estate amongst the survivors of my said children (excepting my said son John Campbell Corbett and my daughter Susan Corbett or Steel) in the like proportions before mentioned: Declaring, however, that on the death of any of my said children without leaving lawful issue, the share of the annual interest or produce of my said estate falling or that would have fallen and belonged to such child shall be divided and paid or delivered equally to or amongst my surviving children, including my son John Campbell Corbett and my daughter Susan Corbett or Steel: Declaring also that on the death of the longest liver of my said children Robert Corbett, Margaret Corbett, and Agnes Corbett or Gilroy, my said trustees shall realise the whole of my estates, and after the foregoing provisions of Eight hundred pounds are paid shall divide, pay, or convey the residue in equal portions to and amongst the children respectively of my said son Robert and of my daughters Margaret and Agnes—that is to say, one share to and amongst the children of each family: Declaring, however, that in the event of the death of any of my said children without leaving lawful issue, my said son John Campbell Corbett and my said daughter Mrs Susan Corbett or Steel, or in the event of their death leaving lawful issue, their said issue, shall be entitled to an equal share alongst with the issue of my other children, and that *per stirpes* and not *in capita*, of the share of the residue of my said estates of which such child or children so deceasing without issue had or would have had the interest, and my said trustees are in that event directed so to divide, pay, or convey the same accordingly."

The testator was survived by five children, namely, (1) John Campbell Corbett, who died in 1864 leaving one child William Curr Corbett who died without issue in 1885; (2) Margaret, Mrs Waddell, who