clients and sustain the claim of the Kelso Ragged Industrial School."

The claimants, Mrs Playfair and another, reclaimed, and argued—A bequest to a charity which had ceased to exist was lapsed if the object of the gift could no longer be effected, just as in the case of an individual who had died—*Marsh* v. *Attorney-General*, 1861, 30 L.J. Ch. 233; *Clark* v. *Taylor*, 1853, 1 Drewry Ch. Rep. 642. The object which the testator desired to benefit could not be effected by the claimants, the Ragged Industrial School, as that object required a fully equipped school. The amended constitution supplied a suitable scheme for the application of the price obtained for school buildings, but it involved a departure from the objects for which the original constitution was framed and a consequent loss of the identity of the legatee specified by the testator. The bequest was not to charitable purposes of a specified nature but to a specified institution. The share of residue in question had fallen into intestacy—*Young's Trustees* v. *Deacons of the Eight Incorporated Trades of Perth*, June 9, 1893, 20 R. 778, 30 S.L.R. 704; *in re White's Trustee*, 1886, 33 Ch. D 449.

Argued for the respondents, Kelso Ragged Industrial School—There had been no departure from the fundamental object of the institution, which was rescue, though the method by which that object was attained was altered. The original constitution had not been repealed; it contained power to alter any article thereof, and that power had been competently and constitutionally exercised—*Free Church of Scotland* v. *Lord Overtoun and Others*, August 1, 1904, 41 S.L.R. 742. The change in the means of attaining the object of the institution was rendered necessary by circumstances—*Ferguson Bequest Fund* v. *Commissioners on Educational Endowments*, March 15, 1887, 14 R. 627, 24 S.L.R. 441. The identity of the institution was preserved, and the object of the bequest would still be effected—*Marsh* v. *Attorney-General*, *cit. sup.*

LORD KYLLACHY—I am quite satisfied with the Lord Ordinary's judgment. He puts the decision, I think, upon the right ground when he says that this is not a bequest generally for charitable purposes, but a bequest to a particular institution, the only question really being whether since the date of the will this institution has lost its identity by reason of certain changes which have occurred. I agree with the Lord Ordinary that the question falls to be answered in the negative. The constitution is the same and the objects are the same. The only changes arise (1) with respect to the persons charged with the management, and (2) with respect to the ways and methods by which the funds are applied in carrying out the objects of the institution. I think the interlocutor is right, and should be adhered to.

LORD KINCAIRNEY—I agree, and have nothing to add.

LORD STORMONTH DARLING—I agree with your Lordships and with the Lord Ordinary.

LORD JUSTICE-CLERK—I am of the same opinion.

The Court adhered.

Agents for the Pursuers and Real Raisers—A. S. Douglas, W.S.

Counsel for the Claimants and Reclaimers, Mrs Playfair and Another—Wilson, K.C.—Constable. Agents—J. & J. Turnbull, W.S.

Counsel for the Claimants and Respondents, Kelso Ragged Industrial School—Chree—Hamilton. Agents—W. & J. Burness, W.S.

Tuesday, June 6.

SECOND DIVISION.

THE COYLTON COAL COMPANY *v.* DAVIDSON.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7—"*On or in or about*" *a Mine—Accident on Railway Premises a Quarter of a Mile from Pit.*

A carter in the employment of a coal company at one of the pits went with his cart along a private road belonging to the company to the point at which it joined a public road, a distance of 259 yards from the pit, crossed the public road 22 yards in width, passed through a gate into a railway company's premises, and at a point 123 yards from the gate proceeded to load on to his cart from a railway waggon a quantity of timber. While engaged in this work he was accidentally injured. *Held* that the accident did not happen "on or in or about" a mine within the meaning of section 7 of the Workmen's Compensation Act 1897.

Opinion (*per* Lord Stormonth Darling) that had the question still been open there would have been much force in the argument that section 7 referred not to the locality of the accident but to the kind of employment which was to give a right to compensation.

Section 1 of the Workmen's Compensation Act 1897 provides—"(1) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman his employers shall, subject as hereinafter mentioned, be liable to pay compensation." . . . Section 7—"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." . . .

In an arbitration under the Workmen's Compensation Act 1897 Mrs Jane Brown or Davidson claimed compensation from the Coylton Coal Company, and James Morton as the only known partner thereof, in respect of the death of her husband William

Davidson, a workman in the employment of the company.

The Sheriff-Substitute (SHAIRP) having awarded compensation, the Coylton Coal Company and James Morton claimed and obtained a case on appeal, which set forth the the following facts as admitted or proved:—"That the said Jane Brown or Davidson is widow of the said William Davidson; that he died on the 28th day of November 1903; that on the previous day, when he met with the accident after mentioned, he was in the employment of the said Coylton Coal Company as a carter at their said pit at Littlemill; that he worked for 42½ weeks continuously for the said company prior to said accident, and that his average weekly wage was £1, 3s. 3d.; that his widow, the said Jane Brown or Davidson, was the only person dependent upon his earnings at the time of his death; that his death resulted from the personal injury caused to him on or about 27th November 1903, when he was knocked to the ground by a beam of timber while he in the course of his said employment, and acting under the instructions of the defenders, was unloading timber on to the said Coylton Coal Company's cart from a railway waggon standing in a lye belonging to and in the occupation of the Glasgow and South-Western Railway Company at the point marked with a red cross on the plans; that the said lye was in the proximity of and about a quarter of a mile from the said Coylton Coal Company's No. 1 Pit, and that entry to said lye from the highway was obtained through the Railway Company's gate, as shown in said plans; that although it was not proved that the said Coylton Coal Company had any special arrangement with the Railway Company in regard to said lye, all the said Coylton Coal Company's carting to and from said pit, except 'two or three carts that went up to the householders in the Rows,' was done to said lye along the Coal Company's private road, and the exit of that road on to the highway was opposite the entrance to said lye as shown in said plans." . . .

According to the plans the private road was 259 yards long, the public road 22 yards wide, the point within the railway premises at which the accident happened 123 yards from the gate.

Upon these admitted or proved facts, and having in view the opinion expressed by Lord President Robertson in the case of *Bell & Syme, Limited* v. *Whitton*, June 16, 1899, 1 F. 943, the Sheriff-Substitute found that the place where William Davidson was in the course of his employment accidentally injured was "specially connected by use" with the Coylton Coal Company's No. 1 Pit, was "at no considerable distance" therefrom, and was thus "about" the pit within the meaning of section 7 of the Workmen's Compensation Act 1897.

The question of law for the opinion of the Court was—"Whether in the circumstances stated the said place where the said William Davidson was, in the course of his said employment, accidentally injured as aforesaid, was 'about' the said Coylton Coal Company's No. 1 Pit or mine within the meaning of section 7 of the said Workmen's Compensation Act 1897?"

Argued for the appellants—The accident had not happened "about" the mine within the meaning of section 7 of the Workmen's Compensation Act 1897. "About" postulated some degree of physical contiguity—*Powell* v. *Brown and Another*, [1899] 1 Q.B. 157; *Fenn* v. *Miller*, [1900] 1 Q.B. 788; *Louth* v. *Ibbotson*, [1899] 1 Q.B. 1003; *Caton* v. *Summerlee and Mossend Iron and Coal Company, Limited*, July 11, 1902, 4 F. 989, 39 S.L.R. 762; *Brodie* v. *North British Railway Company*, November 6, 1900, 3 F. 75, 38 S.L.R. 38; *Ferguson* v. *Barclay, Sons, & Company, Limited*, November 12, 1902, 5 F. 105, 40 S.L.R. 58; *Barclay, Curle, & Company* v. *M'Kinnon*, February 1, 1901, 3 F. 436, 38 S.L.R. 321; *Turnbull* v. *Lambton Collieries, Limited*, May 7, 1900, 16 T.L.R. 369; *Pattison* v. *White & Company, Limited*, August 5, 1904, 20 T.L.R. 775. Here there was no such physical contiguity, the accident having happened a quarter of a mile from the mine. The private road was not part of the mine under the definition of "mine" given in section 75 of the Coal Mines Regulation Act 1887 and adopted by the Workmen's Compensation Act, section 7 (2). "About" never covered more than a few yards. Such a case as *Anderson* v. *Lochgelly Iron and Coal Company, Limited*, December 6, 1904, 42 S.L.R. 147, where the accident happened 800 yards from the pit, was explained by the fact that the spot was on or close to a siding, which by the Coal Mines Regulation Act definition was itself part of the mine. Further, the *locus* of the accident was in this case cut off from the private road by a public road and gates, and was itself within a factory belonging to a third party—the railway company—a fact *per se* sufficient to exonerate the workman's employers, who had no control there—*Francis* v. *Turner Brothers*, [1900] 1 Q.B. 478.

Argued for the respondent—The accident had happened "about" the mine, using the word "about" in a reasonably liberal way—*Monaghan* v. *United Collieries, Limited*, November 27, 1900, 3 F. 149, 38 S.L.R. 92, Lord Kinnear at 154 and 155; *Middlemiss* v. *Middle District Committee of the County Council of Berwickshire*, January 17, 1900, 2 F. 392, 37 S.L.R. 297; *Anderson* v. *Lochgelly Iron and Coal Company*, quoted *supra*. The last case involved the decision that a siding 800 yards from a mine was "adjacent" to it (only "adjacent" sidings being included in the definition of "mine" in the Coal Mines Regulation Act), and was therefore an authority for the proposition that the *locus* of an accident a quarter of a mile from a mine was "about" the mine. But the distance was not as a matter of fact so great, as the whole of the private road was included in the mine falling under the term "works" used in the definition. The fact that the place of the accident was on a railway did not prevent it from being "about" a mine—*Monaghan*, quoted *supra*. Further, however, section 7 of the Workmen's Compensation Act did not refer to

the locality of the accident but to the kind of employment which was to give a right to compensation. The question therefore was not whether the workman was injured "about" the mine, but did he belong to the class of workmen the *locus* of whose ordinary employment was "about" the mine. Section 7 was merely explanatory of and complementary to section 1, "the affirmative or leading enactment"—*Lysons* v. *Knowles & Sons, Limited*, [1901] A.C. 79, at 85. This view of section 7 had until now never been submitted to the Court of Session.

At advising—

LORD JUSTICE-CLERK—The facts in this case in regard to the accident for which compensation is claimed are that the deceased man was a carter in the employment of the appellants, that he had taken his cart to a lye of the Glasgow and South-Western Railway, there to load wood on to his cart from railway waggons, and that while so engaged a beam of timber struck him, knocked him down, and killed him. The question whether compensation is due depends upon whether, the employment being in connection with the business of a mine, the accident happened "on or in or about" a mine, according to the words of the statute. The facts upon which the answer to that question depends are that the deceased had brought his cart along a private road of the appellants for a distance of a quarter of a mile, that then it was taken on to a public road, crossed that road and entered the premises of the railway company. The stated case refers to the plans lodged, and according to these plans it appears that the length of the private road is 259 yards, that the road is 22 yards wide, and that after crossing the road the cart was taken to a place in the railway company's premises, a distance of 123 yards, to the place of the accident.

It can scarcely be disputed that the place of the accident was not "on or in" a mine. It did not belong to or was occupied by the appellants, and they had no control over it, or any right to interfere in any way with it. It must therefore be under the words "or about" that this claim for compensation must be maintained.

I have considered this case with care, recognising how wide an interpretation has been given in certain decided cases to the words "or about." In one case at least it has been given a wider interpretation than accords with my view of what is reasonable, and in dealing with so vague an expression as "about" the only test is one of reasonableness in the circumstances. I bow to what has been already done, and if I could see that any of the decided cases ruled the present I should not resist their application whatever misgivings I might have as to the propriety of the determination in the previous cases. Apart from decisions I should myself have no hesitation in holding that in no reasonable sense could the word "about" in the statute be held to apply in the present case, and that the question put by the learned Sheriff must be answered in the negative. The carter had left the mine, and although still on business for the mine-owner was doing the ordinary work of a carter at a place where no dangers connected with a mine were to be encountered. He had not only left the neighbourhood of the mine, but he had left the property of the mineowner, had gone to the other side of the road and entered a place which belonged to another owner, and which was itself a place to which the Act applied in respect that the owners of that place carried on another dangerous business, for any accident in which the owners were liable to their own employees. How in these circumstances it could possibly be held that he was still at a place which was "about" the mine which he had left I am unable to understand. He would have been a trespasser where he was, unless he had gone there on business connected with the railway company, and could not have said, if asked to state his business or to quit the premises, that he was about his master's mine. His only right to stay could be because his master had business with the railway company. But this might equally apply ten miles off or twenty miles off from his master's premises.

Turning to the decided cases, as I have said already, they have certainly gone very far in holding that places some distance off from the actual mine may be held to be "about" a mine, particularly where they are on or connected with rails running in direct continuation with rails at the mine itself. In one case where on such a line an accident happened a long distance from the mine it was held that the words of the Act applied. I expressed my dissent in that case, and have no cause to change my view, but as I have said if this case could be held to be similar I would willingly yield to a decision which expressly ruled the case under consideration. But I cannot hold that it does. That was a case where the accident took place on the property of the mine owner, and I know of no other case which goes so far in the direction of holding that a place not in any true proximity to the mine may still be held to be "about" the mine. In this case my view is that in no true sense can the place of the accident be held to be "about" the mine. It happened on premises cut off from the mine by a broad public road and more than a hundred yards within the entrance of the premises of a railway company. It seems to me to be impossible to give such an elastic interpretation to the word "about" as would bring the case within the statute.

I would therefore propose that the question in the case be answered in the negative.

LORD KYLLACHY concurred.

LORD KINCAIRNEY—The man who was killed in this case was a workman in the employment of the Coylton Coal Company, and at the time of the accident was engaged in the work of the company. The question for us is whether the place of the accident was about the company's mine in the sense of the 7th section of the Workmen's Compensation Act. It happened on a railway

close to a turnpike road, and at a place to which he was in use to cart materials to and from the pit, to which there was access by a gate. Opposite that gate, and on the other side of the road, there was another gate opening on a private road leading to the mine. The road was 259 yards in length. The turnpike road was 25 yards broad, and the distance between the gate opening on the lye was 123 yards. Thus the distance of the place of accident from the pit was 407 yards, or nearly a quarter of a mile. The case is somewhat narrow, but I am of opinion that the place was not about the mine. It was separated from it by a distance of a quarter of a mile and also by a turnpike road.

None of the dangers incident to a mine could be said to attach to the place of the accident.

The Sheriff-Substitute has decided on the ground that the place was connected by use with the pit, but although without such connection it is possible that the statute might not have applied, still it was necessary that the workman should not only be engaged in the course of his employment but also that he should be engaged about his mine. The cases of *Fenn* v. *Miller*, 1 Q.B. 1900, 788; *Brodie* v. *North British Railway Company*, March 6, 1900, 3 Fr. 75; *Caton*, 4 Fr. 989; and *Ferguson* v. *Barclays, Sons, & Company, Limited*, November 12, 1902, 5 R. 105, in which there was but a short distance between the place of the accident and the mine, may be referred to.

LORD STORMONTH DARLING—Speaking solely for myself I should have thought, if the question had been open, that there was much force in the argument urged by Mr Campbell to the effect that section 7 of the Act refers not to the locality of the accident but to the kind of employment which is to give a right to compensation. The 1st section has been described by the House of Lords in *Lyson's* case (1901), App. Ca., at p. 85, as "the affirmative or leading enactment," and it declares that "if in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation." The leading idea of the statute, therefore, is to give compensation to workmen for injury arising out of their employment, even when the employer is entirely free from blame. But inasmuch as the Act was not intended to apply to every kind of employment, it became necessary to define the employment to which it did apply, and I should have thought that the sole purpose of section 7 was to do so. When the section speaks of employment "on or in or about" a railway, factory, mine, quarry, and so on, I should have thought that it introduced the idea of locality only as a means of describing particular trades or occupations, and not in order to restrict the area within which accidents occurring in the course of these particular trades were to give rise to a right of compensation. Such a construction of the statute would undoubtedly have enlarged its scope, but it would at least have avoided the obvious anomaly of allowing compensation for injury when sustained by a workman at one part of a job and refusing it when sustained at another part although the whole job was ordered by his employer and the employer was equally free from blame throughout. Why so much importance should have been attached to the *locus* of the accident itself I do not know, for a workman is just as much in his master's employment, acting in the course of that employment, when he is loading goods for him at a distance from his master's premises as when he is delivering the goods at his master's door.

But I am convinced that it is now too late to go back on the series of cases both here and in England, where the words "on or in or about" in section 7 have been read as referring to the workman's actual presence at the time of the accident, and so reading the section I must concur with your Lordships in answering the question of law in the negative

The Court answered the question in the negative.

Counsel for the Appellants—The Solicitor-General (Salvesen, K.C.)—Munro. Agent—William C. Dudgeon, W.S.

Counsel for the Respondent—Campbell, K.C. — Hunter. Agents — Dalgleish & Dobbie, W.S.

Tuesday, March 21.

BILL CHAMBER.

[Lord Dundas, Ordinary.

SIR MICHAEL HUGH SHAW STEWART, BART., PETITIONER.

Jurisdiction—Money Consigned under Defence Act 1842 (5 *and* 6 *Vict. cap.* 94), *sec.* 25 *—Competency of Petition to Uplift Presented to Junior Lord Ordinary under Entail Act* 1848 (11 *and* 12 *Vict. cap.* 36), *sec.* 26 *— Lord Ordinary in Exchequer Causes — Distribution of Business Act* 1857 (20 *and* 21 *Vict. cap.* 56), *sec.* 4.

A sum of money was consigned in terms of sec. 25 of the Defence Act 1842 as compensation for certain lands acquired by the War Department under powers granted by that Act.

In a petition, presented to the Junior Lord Ordinary, under the Entail (Rutherfurd) Act 1848 by the heir of entail in possession to uplift the consigned money, *held* that the Junior Lord Ordinary had no jurisdiction to deal with the fund, and that the application ought to be made to the Lord Ordinary in Exchequer Causes.

This was a petition of Sir Michael Hugh Shaw Stewart, Bart., of Greenock and Blackhall, under the Rutherfurd Act 1848, craving the Court to authorise him to uplift