

admitted that in Scots law there was no lien for necessities supplied in a home port, but argued that Scotland always had recognised a maritime lien for necessities supplied in a foreign port, and I was referred to the cases of *Maxwell*, M. 6266; *Rope-work Company of Glasgow v. Crosses*, M. 6268; and *Hamilton v. Wood*, M. 6269. But these decisions do not appear to support the defender's contention. In *Maxwell's* case, which was decided in 1726, a claim was made for a hypothec in respect of material furnished for building a ship which was sold before completion. It was pled for the other creditors that "time and experience, the great reformers of laws, have taught us that most part of the conventional and tacit hypothecs introduced by the common law were a burdensome nuisance of great hindrance to commerce." This plea received effect and the claim to establish a hypothec was rejected. In the *Rope-work Company* case, decided in 1761, ropes had been supplied at Port-Glasgow to a ship going to Virginia, and it was held that the claim of the company who supplied the ropes was preferable. But this decision was not followed in the later case of *Hamilton v. Wood*, decided in 1788. Wood repaired a ship belonging to a bankrupt at Port-Glasgow and claimed a right of hypothec and the trustee for other creditors objected. The Lord Ordinary decided in favour of Wood, but on a reclaiming note being presented the Court transmitted the case for the opinion of English counsel on the law and practice of England, and after obtaining an opinion recalled the Lord Ordinary's judgment, and decided that the furnishers had no hypothec or right of bottomry on the ship, and on 15th June 1789 the House of Lords approved the decision and dismissed the appeal. Those cases appear only to decide that there is no maritime lien for necessities or repairs supplied to a vessel in a homeport. I cannot find anything in them or in the text-writers to which I was referred—viz., Stair, i, 12, 18; Erskine, iii, 1, 34; Bell's Com., i, 573—to suggest that there is any peculiarity in the law of Scotland which distinguishes it from the Admiralty law of England. On the contrary, the case of *Wood v. Hamilton*, followed later by *Hay v. Le Neve*, 2 Sh. App. 395, and *Boettcher v. Carron Company*, 23 D. 322, show that there is no distinction between English and Scottish law in this branch of jurisprudence. The maritime code is neither English nor Scottish but British law. This was very clearly set forth in the case of *Currie v. M'Knight*, [1897] A.C. 97, where Lord Watson said—"From the earliest times the Courts of Scotland exercising jurisdiction in Admiralty causes have disregarded the municipal rules of Scottish law, and have invariably professed to administer the law and customs of the sea generally prevailing among maritime States. In later times, with the growth of British shipping, the Admiralty law of England has gradually acquired predominance, and resort has seldom been

had to the laws of other States for the guidance of the Courts."

I am accordingly of opinion that the claim of the pursuer falls to be sustained.

The Lord Ordinary sustained the claim for the pursuer as mortgagee and repelled the claim for the claimant Christensen.

Counsel for the Pursuer—Sandeman, K.C.—C. H. Brown. Agents—J. & J. Ross, W.S.

Counsel for Claimant (Christensen)—Dean of Faculty (Dickson, K.C.)—Armit. Agents—Beveridge, Sutherland, & Smith, W.S.

Saturday, October 26.

FIRST DIVISION.

[Sheriff Court at Lanark.

WADDELL v. THE COLTNESS IRON COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (2) (c)—Serious and Wilful Misconduct—Coal Mines Regulation Act 1887 (50 and 51 Vict. cap. 58), sec. 51—Contravention of Special Rule.

By the special rules in force in a coal mine, under the provisions of the Coal Mines Regulation Act 1887, it was provided (rule 95)—"If a shot has been lighted and does not explode, no person shall enter the place where it was lighted until thirty minutes shall have elapsed."

A miner, who was engaged in a blasting operation for which he used two cartridges, applied a light to the fuses attached to each and retired to a place of safety. After hearing only one cartridge explode he returned to the scene of the blast in the belief that he had failed to ignite the fuse of the second cartridge. He had, however, ignited it, and the cartridge exploding he was injured.

In a stated case under the Workmen's Compensation Act 1906, held that the arbiter was right in holding that the workman had been guilty of serious and wilful misconduct.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (2) (c), provides—"If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed."

Hugh Waddell, miner, Forth, claimed compensation under the Workmen's Compensation Act 1906 from the Coltness Iron Company, Limited, Climpy Colliery, Climpy, Forth, in respect of injuries sustained by him while employed in one of the defenders' pits.

The matter was referred to the arbitration of the Sheriff-Substitute at Lanark (SCOTT MONCRIEFF), who refused the claim for compensation, and at the request of the pursuer stated a Case.

The facts proved, as stated by the Sheriff-Substitute, were—"1. That upon the 26th day of January 1912 the appellant, a miner in the respondents' employment at Climpy Colliery, Forth, and who had been in said employment for a period of four years, was preparing for a blasting operation, and was dealing with two cartridges of gunpowder, to each of which he had attached a fuse or 'strum.' 2. That he lit one of the fuses and attempted to light the other, and then retired to a safe distance, but remained only until he heard one shot take effect, when he returned about three minutes after the explosion under the impression that the attempt he had made to light the fuse attached to the second cartridge had failed. That the reason for this impression was the appearance of the strum after applying the light, said strum not having 'fizzed out.' He admitted, however, that the light might catch on although the strum had not fizzed out, and therefore there was a risk in going back as he did. 3. That when the appellant got into his place he saw at once that smoke was proceeding from the second fuse and attempted to retire, but before he could do so the second shot exploded. 4. That appellant admitted being acquainted with No. 95 of the Special Rules of the Coal Mines Regulation Act, which provides that 'if a shot has been lighted and does not explode, no person shall enter the place where it was lighted until thirty minutes shall have elapsed,' but did not admit that he knew that by a notice printed in large type and hung in a glass case along with the rules made under the Coal Mines Act at the pithead for four years prior to the accident this rule had been made by the respondents applicable to all cases where the lighting of a shot had been attempted and the men had retired. The attention of the appellant had not been specially called to this notice. 5. That as a result of the second shot exploding the appellant sustained severe injury to his head and other parts of his body, and has practically lost the sight of his right eye, but that he has otherwise now recovered and is not seriously and permanently disabled."

The Sheriff-Substitute further stated—"I found in law that the accident to the appellant was directly attributable to his serious and wilful misconduct, in having committed a breach of a rule duly intimated and with which it was his duty to be acquainted, and I accordingly refused his claim for compensation, and in the circumstances found no expenses due to or by either party."

The question of law was—"In the circumstances stated was I right in holding that the appellant had been guilty of 'serious and wilful misconduct?'"

Argued for the appellant—In the view of the Sheriff it was not rule 95 itself that the appellant had contravened, but only

the respondents' notice making rule 95 applicable to all cases where the lighting of a shot had been attempted and the men had retired. Breach of a mere local rule such as this would not amount to serious and wilful misconduct where, as here, the rule was not known to the workman. The judgment of the Sheriff was therefore wrong. The case should accordingly be remitted back to him, as it was not for the Court, but for the arbiter, to consider in the first instance whether there had been a breach of rule 95. In any event there had been no breach. A shot was not "lighted" within the meaning of rule 95 unless there had been successful ignition of the fuse. In view of the behaviour of one of the fuses the pursuer had reasonable grounds for believing that there had not been successful ignition thereof. His premature return was therefore due to a mere error of judgment, and did not constitute serious and wilful misconduct.

Counsel for the respondents was not called on.

LORD PRESIDENT—Everything has been said in this case that can be said, but I have come to the conclusion that the judgment of the Sheriff-Substitute upon the facts is perfectly right.

The appellant here is a miner, and was engaged in a blasting operation. The blasting operation was being conducted with two cartridges, to each of which was attached a fuse. The appellant applied a light to both fuses. After a little one of the fuses exploded the cartridge with which it was connected, but the other did not. The appellant then, in about three minutes' time after that explosion, went into the place, and there saw the fuse of the second cartridge still smoking. He tried to make good his retreat but was not in time, and was injured by the second explosion. He brings this application under the Workmen's Compensation Act for compensation. To it the employers reply—he not having been killed or seriously and permanently disabled by the accident—that the accident was due to his own serious and wilful misconduct.

The appellant admits that he knew when he lit the two fuses that the effect of that light might be to cause two explosions. But whereas one fuse behaved as fuses generally do, and "fizzed out," the second did not so behave; and therefore he was in doubt whether the second cartridge would explode or not. But he admits that he knew that his action in lighting it, though it did not produce "fizzing out," might produce an explosion, and that there was danger in his going back.

Rule 95 of the Special Rules of the Coal Mines Regulation Act provides that "If a shot has been lighted and does not explode, no person shall enter the place where it was lighted until thirty minutes shall have elapsed." I think that that rule was indubitably broken here. It is true that the word "light" in common language is sometimes used to denote two things which are not precisely the same. You may talk

of lighting a thing when you apply a light to it. You may talk of lighting a thing when you effectively cause that thing to begin to burn. In my view the true meaning of the word "light" in rule 95 is the first of these, because, in the only common-sense view of it, the object of the rule is to prevent people prematurely returning when it is still uncertain whether there will be an explosion or not, and subjecting themselves and others to danger—because if one man returns others will follow him. But nobody can tell, if a light is once applied, whether effectual lighting will follow or not. Accordingly I think here that there was an undoubted breach of the rule as it stood.

It is true that the Sheriff-Substitute goes on to say that there was another rule which was not a special rule of the Coal Mines Regulation Act, but was only a rule of the colliery itself, of the existence of which rule the man does not admit that he was aware, which said that rule 95 was "applicable to all cases where the lighting of a shot had been attempted and the men had retired." I take it that that second rule added nothing to rule 95, but was merely a way of expressing what I have been expressing, that the meaning of "lighting" in that rule is as I have explained it. It is true that the Sheriff-Substitute puts his judgment upon the second rule. I think that it is much safer to put it upon rule 95 itself, and as the question is put, in my opinion, it must be answered in the affirmative, although the precise reason for answering it in that way is rather different from the reason upon which the Sheriff-Substitute proceeded.

LORD JOHNSTON—I agree. I do not think it is necessary to decide whether the Sheriff-Substitute is ill-founded in arriving at his decision in proceeding upon the additional rule, if, as we hold, the decision itself is well-founded on the statutory rule.

LORD CULLEN—I concur.

The Court answered the question in the affirmative.

Counsel for the Pursuer (Appellant)—Moncrieff, K.C.—Keith. Agents—Simpson & Marwick, W.S.

Counsel for the Defenders (Respondents)—Horne, K.C.—Hon. William Watson. Agents—W. & J. Burness, W.S.

HOUSE OF LORDS.

Tuesday, October 29.

(Before the Lord Chancellor (Haldane), Earl of Halsbury, Lord Atkinson, and Lord Shaw.)

BRITISH LINEN BANK v. CITY OF EDINBURGH.

(In the Court of Session, November 18, 1911, 49 S.L.R. 127, and 1912 S.C. 139.)

Loan — Burgh — Statute — "Redeemable" Stock — Edinburgh Improvement and Tramways Act 1896 (59 and 60 Vict. cap. cccxxiv), sec. 83.

The Edinburgh Improvement and Tramways Act 1896, sec. 83, enacts—"The Corporation, in addition to the powers contained in the Edinburgh Corporation Stock Act 1894, may, and they are hereby authorised, at any time to create and issue a new class of stock for all or any of the purposes for which the Corporation may create and issue stock, to bear any rate of dividend which the Corporation may fix, and all stock of such class shall be redeemable at the option of the Corporation at one and the same period to be fixed by the Corporation, but not exceeding sixty years from the first issue of such stock."

The Corporation resolved to issue under its 1894 and 1896 Acts a stock "redeemable at par after the expiration of a period of thirty years from 15th May 1897." The certificate of such stock bore "redeemable at par after Whitsunday 1927. Interest payable half-yearly on 15th May and 11th November."

Held (rev. judgment of the Extra Division), on a consideration of the whole statutes, that the Corporation was not bound to redeem at Whitsunday 1927, but merely had an option so to do.

[The case is reported *ante ut supra*, where will be found the relevant sections of the statutes.]

The defenders the City of Edinburgh appealed to the House of Lords.

At the conclusion of the arguments—

LORD CHANCELLOR—This appeal raises a question of construction on a section in one of a series of private Acts, and as is often the case in the construction of a private Act of this kind, the relation to each other of the sections in the various Acts which have to be considered is attended with some obscurity. But although the question is an important one, and although in the view which I have to express I am differing from Judges, including Lord Kinnear, for whose opinion I have a very great respect, yet so fully and ably has the question been argued before us on both sides, and so unhesitating is the conclusion to which I have come, that I feel no hesitation in dealing with the case