

HOUSE OF LORDS.

Monday, January 24, 1916.

(Before Earl Loreburn, Lords Atkinson,
Shaw, Parmoor, and Wrenbury.)HERBERT v. SAMUEL FOX &
COMPANY, LIMITED.(ON APPEAL FROM THE COURT OF APPEAL
IN ENGLAND.)*Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1*—*"Accident Arising Out of and in the Course of the Employment."*

Contrary to his employers' rules a railway shunter rode on the buffer of a waggon, fell off, and was seriously injured.

Held (diss. Lords Loreburn and Parmoor) that the accident did not arise "out of and in the course of the employment," and the workman was not entitled to compensation.

Barnes v. Nunnery Colliery Company, 1912 A.C. 44, 49 S.L.R. 688, and *Plumb v. Cobden Flour Company, Limited*, 1914 A.C. 62, 51 S.L.R. 861, *examined and approved*.

The facts are given in the considered judgment as follows:—

EARL LOREBURN—In this case a youth was employed as a shunter. He ought to have walked in front of an engine and some waggons which were being shunted. Instead of doing this he got on to one of the buffers, contrary to orders, and either in getting there or while sitting there, it cannot matter which, fell and suffered frightful injuries. The County Court Judge held that the injury by accident was one arising out of the employment. The Court of Appeal by a majority decided otherwise; they thought that there was no evidence that could support the County Court Judge's decision.

I fear it is inevitable that different minds should reach different conclusions in cases of this kind. Precedents are of little value on such points, for the facts are almost always distinguishable and reasoning by analogy is dangerous, and the efforts made by courts of law, including this House, to throw light on this difficult Act have often proved disappointing, because there has arisen a tendency to treat judicial dicta delivered *secundum subjectam materiam* as though they qualified the statutory language.

I can only look at what happened and ask myself, might not the County Court Judge reasonably say that this injury arose out of the employment? I think he might. He might conclude that this unfortunate youth was doing his work in a wrong and forbidden way, but still doing his work as shunter. It appears to me a case of serious and wilful misconduct which might fairly be regarded as within the terms of the Act. That was a conclusion of fact for the judge

alone, just as it is a conclusion of fact for a jury in an action for negligence when they are asked whether on the facts proved or it may be admitted there was or was not negligence. I cannot agree to the view that whenever facts are undisputed the proper conclusion from them is necessarily a matter of law. That would dangerously enlarge our jurisdiction.

LORD ATKINSON—This is an appeal against the order of His Majesty's Court of Appeal pronounced on the 21st January 1915, which ordered that an award made in favour of the appellant by His Honour Judge Benson sitting in the County Court of Sheffield on the 13th August 1914 be wholly set aside, and that an award be entered in favour of the respondents.

I confess that but for the difference of opinion in the Court of Appeal and in this House I should have thought that this was an absolutely plain case. Everyone must have great sympathy with the unfortunate appellant, but human sympathy can never work less worthily than in warping the judgments of judicial tribunals. I therefore put it entirely aside and permit myself to be influenced solely by the desire to do absolute justice to each of the parties litigant.

Phillimore, L.J., apparently justifies his dissent from the conclusions at which his two colleagues arrived by the discovery he has made that the members of the House who decided the ruling case of *Barnes v. Nunnery Colliery Company*, 1912 A.C. 44, 49 S.L.R. 688, based, as I understand him, their judgments upon the view that the boy who was in that case injured got into the colliery tub to amuse himself, and not to save himself from fatigue or for any other reason. At p. 22 of the report of this case in 1915, 2 K.B. 81, he is represented as having expressed himself thus—"In *Barnes v. Nunnery Colliery Company*, if the view had been accepted which the learned County Court Judge took, the case would have been a very strong one indeed, but if the headnote is right it is clear, I think, that the House of Lords found there was no evidence to justify his finding. If that is so, what view did the House of Lords take? Did they take the view that the boys were merely saving themselves from fatigue by riding in the tubs, or did they take the view that the boys were doing it for amusement? It seems to me it is open to the latter construction, and, knowing the views of the learned Lords as I do, I cannot help thinking that they did take the view that the boys were amusing themselves, and that this view underlies their 'decision.'"

The finding of the County Court Judge, which the House decided there was no evidence to support, was, as appears from this very headnote, this—"That the accident arose out of the injured boy's employment." I had the honour of being one of the members of the House who took part in the decision of that case. I did not trouble myself to form any opinion whatever upon the question whether the boys had ridden

in tubs for amusement or from laziness or from a desire to avoid fatigue, for two reasons—First, because in order to decide any of these questions I should have to usurp an authority which did not belong to me, since they were questions of pure fact, of which the County Court Judge was the sole and absolute judge; and secondly, because the question for decision being in effect whether the act done by the boy by which he met his death fell within or without the sphere of his employment, I considered that no topic could be more irrelevant than the nature or state of his emotions, feelings, intentions, or desires when riding in this tub. The County Court Judge had found—“That the deceased did not ride in the tub for his own pleasure but for the objects of his employers.” The House never decided that there was no evidence to support this particular finding.

There is not a word in the judgment of Lord Loreburn referring to it in the most remote degree. In the judgment which I had the honour to deliver I accepted the finding of the County Court Judge that the deceased did not ride in the tub for his own pleasure but for the objects of his employers, and at pp. 49 and 50 endeavoured to point out that this might be so and yet his act be outside the sphere of his employment. Lord Mersey at p. 51 said—“The learned Judge also finds the boy was not riding for his own pleasure, but for the object of his employers. For my part I think he was riding for his own pleasure, but this is immaterial for the same reason.”

By what process of reasoning the conclusion can be reached that a judge bases his decision on a matter which he himself declares is immaterial passes my comprehension. With all respect to the learned Lord Justice, his assumption on this point is entirely erroneous, and is unsupported by anything to be found in the only place in which support for it can legitimately be sought, namely, the authorised report of the case. I think it well to correct this error as the case is frequently cited as an authority.

I concur with the majority of the Court of Appeal in thinking that the present case is governed by the decisions of this House in *Barnes v. Nunnery Colliery Company*, and *Plumb v. Cobden Flour Mills Company*. The principle laid down in them was, in my view, this—that where a workman meets with an accident while doing something actually outside the sphere of his employment, that accident does not arise, and cannot be held to arise, out of his employment, and that this is so whether he did that act from a desire for amusement, from feelings of fatigue, or to forward the object of his employer. Of course an accident occurring to a man while he is in fact resting may well arise out of his employment, as, for instance, if a sailor should be thrown from his bunk while asleep or is resting, by the rolling and pitching of his vessel in a heavy sea; but once the limits of the workman's sphere of employment have been ascertained and determined they cannot be expanded or

contracted according to the state of his own feeling, desires, or intentions.

The workman in this case was very candid. He gave his evidence truthfully, with courage and frankness. He says he was engaged shunting waggons at 12:30 on the day of the accident. The waggons had to be pushed into a certain shed by an engine which was running tender first. He picked up and coupled fifteen or twenty loose waggons standing on the rails between Siemens and this shed. These were being pushed towards the shed. Some of them, including that farthest from the engine and nearest to the shed—the foremost as he styled it—was high sided. He did not get into it; he mounted its right-hand buffer; sat upon the buffer, balancing himself with his shunting pole, his legs hanging out on the right-hand side of the line; the pole slipped; he fell and was injured.

A good deal of the argument was addressed to the House such as might have been addressed to it if it had been the appellant's duty to be upon this buffer, and that his only error consisted in not taking due and proper care while there not to fall off. He would then be doing negligently and carelessly something within the scope of his employment. But his own evidence shows conclusively that it was not his duty to be on the buffer—that, on the contrary, it was his duty not to be upon it. He was employed to do a particular work away from it, and was expressly forbidden while engaged on that work to be anywhere but on the ground walking in front of the foremost waggon. He says he got on the front waggon to keep a look-out. He admits that his proper duty was to walk in front of the waggon to keep a look-out; that it was no part of his duty to get on the waggon; that it is a dangerous thing to ride on the buffer; that it is against the rules to do so; that if the manager saw him riding on the buffer he would be dismissed; that notices were put up in the locomotive shed to this effect. The notice referred to runs as follows—“When railway waggons are being moved by hand or engine a look-out man must be in front of the waggons. Any person not obeying this order will be dismissed.” As the appellant was the look-out man on this occasion, his proper place was, according to this rule, in front of the waggons, not upon the buffer of one of them. That rule he admits was not winked at. It was rigidly enforced. Rules such as this are, I think, made more to save the lives and limbs of workmen than the pockets of employers. And speaking entirely for myself I may say that I think an ill-service is done to the working classes in permitting such rules as these to be disregarded, in that it slackens discipline and encourages to carelessness and rashness, from which they themselves are the greatest sufferers.

In the present case it is quite plain to me that the learned County Court Judge entirely misunderstood the force and effect of this rule. He regarded it solely as a rule the violation of which might possibly amount to wilful misconduct within the

meaning of section 1 (c) of the Statute of 1906, depriving a man whose case came within section 1 (l) of the compensation to which he would otherwise be entitled. But the rule has another and an entirely different function, namely, this, to fix the limits of the workman's sphere of employment. If an employer employs a workman to do a particular kind of work in an indicated place, and prohibits him from doing a different kind of work in quite another place, the doing of the prohibited work in the prohibited place is not merely wilful misconduct but deprives him of the right to compensation, for the simple reason that he never had any right to compensation at all, since the prohibition placed the latter work outside the sphere of his employment. If there ever was a case in which the act, in the doing of which the accident occurred, was outside the sphere of the workman's employment, it was, I think, this case. He was in a place in which he had been forbidden to be and had no right to be. He was thereby knowingly exposing himself to risks not reasonably incidental to his employment—risks which neither he nor his employers contemplated that he should run—risks which the employer forbade him to run—new perils added by his own rashness.

This case has no resemblance whatever, in my view, to *Mawdsley v. West Leigh Colliery Company*, 5 B.W.C.C. 80. There a workman did the very thing he was employed to do, and it was his duty to do, but did it in a rash and prohibited manner. It is equally distinguishable from *Blair & Company v. Chilton*, *supra*. There a boy was employed to turn a certain machine. The posture he ought to have assumed was a standing posture. He sat down on a ledge attached to the machine, where boys, if they thought they could escape the eye of the master, were in the habit of sitting, but he kept on turning the machine—his posture alone was changed. A boy who was passing spoke to him, he turned round to reply, his foot slipped, and he was injured. Here again the act in the doing of which the accident occurred was within the workman's sphere of employment. It was the rather rash manner of doing it that was alone prohibited.

The County Court Judge has adopted the somewhat bald but now rather fashionable form of finding—"That the accident arose in the course of and out of the employment." I presume he means the appellant's employment. And your Lordships were pressed with the usual argument that as the County Court Judge, though a judge of law and fact, is the sole judge of fact, his findings cannot be disturbed if there be any evidence before him upon which he as a reasonable man could find as he has found. That argument is quite sound if it be applied to pure findings of fact. It is utterly unsound if it be applied either to findings on pure questions of law or on mixed questions of law and fact.

The rule is analogous to that followed in setting aside the verdicts of juries. There is, however, this vital difference between the two cases. Juries can only decide

questions of fact. The arbitrators in these cases can decide questions both of law and fact. There is no danger in trials by juries that they will return composite findings of law and fact. It is wholly illegitimate, in my view, in cases such as the present, by finding in the words of the statute to endeavour to secure for a finding on a pure question of law, or on a mixed question of law and fact, that unassailability which properly belongs only to a finding on a question of pure fact. Numberless instances could be given where the statutory finding involves a finding on a question of law. For instance, if the workman be employed under an agreement in writing, and that writing, either by itself or supplemented by rules published in the works and enforced, marks out the nature and limits of the workman's employment.

If the County Court Judge desires to try the case properly he must first ascertain the sphere of the workman's employment; but that involves the construction of written documents. That is a question of pure law. The County Court Judge having ascertained the sphere of the workman's employment must next determine how the accident occurred. That is invariably, I should think, a question of fact. He has then to apply the written document to the facts so found, and decide whether the accident causing the injury arose out of some act or event within the sphere of the workman's employment. That in my view is also a question of law, since it involves determining the meaning of a written document. However that may be, there is no doubt as to the first question. If the Court which reviews the decision of the County Court Judge disagrees with his findings on matters of law, it can overrule them without being hampered by the rule touching his findings on matters of fact.

It is quite true that to entitle the appellant to recover his case must come within the words of the statute, and that no test can oust the words; but that is no reason whatever for the arbitrator mixing up the decision which he must make on questions of law in order to decide whether the workman's case comes within the statute, with decisions on questions of fact which he must also make for the same purpose. When he rules a question of law that fact should appear on the face of his award. If his ruling be erroneous the award can be set aside from error on its face, and one can at once determine whether the arbitrator has, as it is styled, misdirected himself. If the award takes this form, "I find that the accident arose out of and in the course of the employment of the plaintiff, and award him so many shillings per week," I fail to see how error in law can appeal on the face of such an award as that. In the formal award in this case, in the appendix, no finding of any kind is set forth. The arbitrator's note of the evidence is not any part of his award. In the present case there is no conflict of evidence.

The County Court Judge's finding "that the accident arose in the course of and out of the employment" is in my opinion a

determination that the facts proved by the appellant, which are as against him taken to be true, bring the case within section 1, sub-section 1, of the statutes. To determine that he must construe the statute—that is, determine its meaning. This is, I think, a question of law not of fact. In *Moore v. Naval Collier Company*, 1912, 1 K.B. 28, the workman, a collier afflicted with disease of the eye, had not made his claim within the time required. The question was whether the delay was due to a “reasonable cause” within sections 2 (b) and 8 of the Act of 1906. Farwell, L.J., in the report, expressed himself thus—“The question for us is a question of law, whether the failure to make the claim within the period was due to a reasonable cause. The facts which go to show that the cause is or is not a reasonable cause are for the judge of first instance, and are not reversible by us. Whether these facts constitute a reasonable cause or not is a question of law for us.” This was because it involved the construction of the section of the statute, the ascertainment of its meaning. That is, I think, the true principle, and is applicable to the present case.

In my opinion the ruling of the County Court Judge was erroneous. The order appealed from was right and should be affirmed, and this appeal be dismissed with costs.

LORD SHAW—The question to be determined is a familiar one. It is whether there was any evidence in this case from which it could be affirmed that the accident arose out of the shunter’s employment. He has been injured so very seriously that his case must evoke unfeigned compassion. He was a witness of manifest truthfulness and candour.

Upon this question the entire evidence is given by the appellant. It is as follows:—“I knew that to get on a waggon when moving was a very dangerous and forbidden thing. It was rather a dangerous thing to ride on the buffer. It is against the rules. It is not part of my work to get on to the waggons, but many shunters do so in order to keep a look-out. My proper duty is to walk in front of the waggon to keep a look-out. If a manager saw a man riding on the buffer of a waggon he would be dismissed. There are notices put in the loco. shed to this effect.”

I cannot bring my mind to affirm that these premises formed any warrant for the conclusion that the accident arose out of the employment. The act which brought it about did not arise out of the employment; the act was dangerous and forbidden in the employment, subjecting any workman who did it to dismissal; it was not part of the course of the employment but a going outside of it. So long accordingly as the words of the Legislature remain, viz., that in order to infer liability upon the employer it must be found that the act arose not only in the course of but out of the employment, I cannot bring the facts, nor do I think it reasonably possible to bring them, up to a justification of liability.

In my view this case is not one of making a mistake or even of doing a wrong in a mere breach of rules affecting the service. It is outside the scope of the service altogether, and it was that, and that alone, and not the employment which brought about the special danger from which the man performing the act suffered. I may add that if it were held that this was an accident arising out of the employment and that compensation was due, then in my humble opinion a real and damaging blow would have been delivered to the whole system of safeguards and protections under which, in many industrial employments, so much may be effected for the safety of life and of limb of the workers engaged.

The statute is sufficient for the case; authority cannot warp the Act, as has been over and over again said in these recent years. But if authority were invoked, I think the cases of *Plumb*, 1914 A.C. 62, and of *Barnes*, 1912 A.C. 44, would be the most helpful upon analogy.

With much regret I think that this appeal should be dismissed.

LORD PARMOOR—In this case the County Court Judge has decided that there is a liability to pay compensation to the appellant. This decision is final subject to an error of law.

The notice of appeal to the Court of Appeal formulates the grounds of appeal on which the respondents rely. These grounds are, that the applicant failed to show any circumstances which would justify a finding that the accident to him arose out of his employment, and that the learned Judge misdirected himself in not holding that the applicant in boarding or attempting to board a waggon in motion, or in riding or attempting to ride on the buffer of the waggon, was acting outside the sphere of his employment, and that by such conduct he brought upon himself a new and added peril, and not incidental to his employment. If either of these grounds can be maintained the appeal fails.

It will be convenient to deal in the first instance with the allegation of misdirection. Neither the breach of a rule nor serious or wilful misconduct in the case of death or permanent disablement disentitle an applicant to claim compensation, although they bring upon him a new and added peril, and the injury results from such new and added peril, so long as the accident which caused the injury arises out of and in the course of the employment. I think that there was no misdirection, and that it was the duty of the learned Judge to consider on the evidence before him whether the applicant proved that the injury did arise out of his employment.

I come, then, to the second ground in the notice of appeal, that the applicant failed to show any circumstances which would justify a finding that the accident to him arose out of and in the course of his employment. The evidence shows that the accident did take place during the shunting of certain waggons by engine power. The applicant, under the orders of the engine driver, and

in the ordinary work of a shunter, coupled certain waggons to the engine, which was running tender first and pushing the waggons. There was a rule that when railway waggons were being moved by hand or engine a look-out man must be in front of the waggons. This rule was an important one, and any person not obeying the rule was subject to instant dismissal. It was obviously in the main intended to protect persons who might be on or about the line while shunting work was going on, but as found by the learned County Court Judge it was binding on the applicant. The applicant did not comply with the rule, but after coupling the waggons either got on a buffer with his shunting pole in his hand, or boarded, or attempted to board, a wagon in motion. It is not material to determine here exactly what the applicant did or attempted to do. Assuming that his actions amounted to serious and wilful misconduct, this would not under the circumstances of this case afford any answer to the claim.

On this evidence I think it was clearly competent for the learned Judge to find that the accident did arise out of and in the course of the employment of the applicant. It is not necessary to say that the learned Judge might have come to the conclusion that the applicant had exposed himself to a risk unconnected with his employment and therefore outside the range of his service. The answer is that he did not come to this conclusion, and that there is evidence in support of his finding. The accident happened to a shunter during a shunting operation, within the area to which his service extended, subject to a rule applicable to a shunting operation, and which he ought to have observed, because he was performing a shunting operation. I cannot say as a matter of law that an injury so caused did not arise out of the employment of the appellant. On the contrary it appears to me that the rule was imposed for the purpose of minimising a risk reasonably to be regarded as incidental to the employment of a person engaged in a dangerous service.

I agree in the opinions expressed during the hearing of this case, that there is little use in referring to previous cases, and that there is a tendency to overload the words of the statute by refinements based on case law. There were two cases to which special reference was made—*Barnes v. Nunnery Colliery Company* and *Blair & Company v. Chilton (supra)*. In the first case it was held that a boy, riding to his work on a tub, was not injured from an accident arising out of his employment; in the second case it was held that a boy who was forbidden to sit while at work was not outside the range of his service though doing his work in the wrong way. These decisions simply illustrate the principle that whether a particular case is on one side of the line or the other can only be determined in reference to the special circumstances.

In my opinion each case depends on the special circumstances, and so long as there is evidence the decision is for the statutory tribunal. It makes no difference that the

conclusion of the statutory tribunal is drawn from facts not in dispute. This factor neither diminishes the area of the jurisdiction of the statutory tribunal nor enlarges the area of the jurisdiction of the Court of Appeal. I concur in the opinion of the noble earl on the Woolsack, and think that the appeal should be allowed with costs here and below.

LORD WRENBURY—I agree in the view taken by Lord Atkinson and Lord Shaw and am unable to concur in the opinion of the other two of your Lordships who have preceded me. No recent Act has provoked a larger amount of litigation than the Workmen's Compensation Act. The few and seemingly simple words, "arising out of and in the course of the employment," have been the fruitful (or fruitless) source of a mass of decisions turning upon nice distinctions and supported by refinements so subtle as to leave the mind of the reader in a maze of confusion. From their number counsel can in most cases cite what seems to be an authority for resolving in his favour, on whichever side he may be, the question in dispute. To my mind this is labour thrown away. I prefer to go back to the words of the statute, and guided by certain broad principles which must be taken to be established seek to apply those words to the particular case before me.

The case before the House is one in which the workman was seriously and permanently disabled. It is therefore no defence to his claim that he was guilty of serious and wilful misconduct. I have to see upon the facts found by the County Court Judge whether within the meaning of the statute the accident arose out of and in the course of the employment. The first questions are, what are the facts which the County Court Judge has found, and was the sentence I will read in a moment a finding simply of fact? The Judge does not state the law as he understands it and is about to apply it, but says simply, "I find the accident arose in course of and out of employment." In that sentence he is not finding simply a fact; he is finding that from certain facts there results a certain conclusion of law. If there is no evidence to support the findings of fact, or if the facts found do not support the conclusion of law, the decision is appealable.

The facts here found are (a) that this man was employed in shunting, (b) that he was bound to keep a look-out in the front of the trucks, and (c) that doing so on the buffer or on the side of the truck was a breach of rule. Upon these facts the conclusion of the learned Judge was in my opinion wrong in law.

I have to determine whether in placing himself in peril on the buffer he was acting within the scope or sphere of his employment, or whether (assuming that a buffer can be called a territory, and using Lord Dunedin's words in *Plumb v. Cobden Flour Company*, 1914, A.C. 62, at p. 66) he when he seated himself upon the buffer "went into a territory with which he had nothing to do."

The same proposition, regarded from a somewhat different point of view, may be illustrated by using Lord Atkinson's words in *Barnes v. Nunnery Colliery Company*, 1912 A.C. at p. 50. Speaking of the servant, Lord Atkinson said—"He exposed himself to a risk he was not employed to expose himself to—a risk unconnected with that employment—and which neither of the parties to his contract of service could ever be reasonably supposed to have contemplated as properly belonging or incidental to it." For the present case this has to be read "a risk to which he was by order expressly forbidden to expose himself, and a breach of which order would involve instant dismissal."

In my opinion the thing done, irrespective of misconduct, was outside the scope of his employment. It is comparable to the act of a miner employed to work in level A, which is safe, who goes to work in level B, which is dangerous, and there sustains personal injury. It was an act "different in kind from anything he was required or expected to do, and also is put outside the range of his service by a genuine prohibition" (the words are Lord Loreburn's words in *Barnes v. Nunnery Colliery Company*, at p. 47). The risk was "an added peril due to the conduct of the servant himself" (*per* Lord Dunedin, 1914 A.C. at p. 68). He was not doing a permitted act carelessly, but doing an act which he was prohibited from doing at all (see *per* Lord Mersey, 1912 A.C. at p. 51). It results, in my judgment, that the accident here did not arise out of and in the course of the employment.

For these reasons I think that the decision of the majority of the Court of Appeal was right, and that this appeal should be dismissed.

Appeal dismissed.

Counsel for the Appellant—Waddy—Scott. Agents—Pitman & Sons, for Chambers & Son, Sheffield, Solicitors.

Counsel for the Respondents—Rigby Swift, K.C.—Ellison. Agents—James B. Somerville, for F. G. and H. E. Smith, Bradford, Solicitors.

HOUSE OF LORDS.

Friday, January 28, 1916.

(Before Lord Chancellor (Buckmaster), Lords Atkinson, Shaw, Parker, and Sumner.)

CHURM v. DALTON MAIN COLLIERIES, LIMITED.

(ON APPEAL FROM THE COURT OF APPEAL
IN ENGLAND.)

Master and Servant—Coal Mine—Wages—Coal Mines (Minimum Wage) Act 1912 (2 Geo. V, cap. 2), sec. 1 (1).

By contract in the respondents' colliery, fillers, *i.e.*, drawers, received their wages from the colliers with whom they

worked. The respondents maintained that the appellant, a filler, was employed and paid by the collier with whom he worked and that they were not responsible for the fact that one week his wage was below the minimum.

Held that the obligation imposed by the Coal Mines (Minimum Wage) Act 1912 obtained irrespective of who actually paid the wages, and that in fact the appellant was employed by the respondents and entitled to demand from them the balance between the wage paid and the minimum rate.

he *facts* appear from their Lordships' considered judgment, which was delivered by

LORD CHANCELLOR (BUCKMASTER)—The simple question in this case is whether the appellant Isaac Churm was, for the week ending the 23rd July 1913, in the employment of the respondents within the meaning of the Coal Mines (Minimum Wage) Act 1912. It arises in this way. The appellant, who is what is known as a "filler" in the Silverwood Colliery, received for his week's work ending the 23rd July 1913 a sum of £1, 1s. 9d., while according to the minimum wage rate for that mine at that time he was entitled to receive £1, 12s. 11d., and he accordingly sued the respondents for the balance. The respondents deny that they are responsible to make up the balance of the wage, but they admit—and, indeed, it would be difficult to avoid the admission—that the appellant is entitled to the minimum wage from some one. They say, however, that he must demand it from the collier at the stall with whom he worked. In other words, they contend that it is the collier by whom the appellant was employed within the meaning of the statute.

Now it appears that before any person enters to work in the respondents' mine he is required to sign three documents. One is called "the signing-on book," in which the name and occupation of the signatory is contained, together with a statement as to whether he is competent to work by himself under one of the general rules. The next is a document which entitles the colliery company to make deductions from wages due to any of the persons who sign the agreement in respect of rent and certain specified matters which are set out in the schedule. The third document contains the bye-laws of the respondent colliery, and is headed "Contract."

Isaac Churm, the appellant, signed all these documents, described himself as a filler, and stated that he was not fit to work alone. At the time when the appellant signed these documents there was another man admittedly employed by the respondents in the mine within the meaning of the Minimum Wage Act. He was a collier, and his name was John Fuller. He also had signed precisely the same documents as the appellant. In the mine it is the practice for the respondents to pay wages on the footing of so much per ton on the coal gotten and sent up the pit, and this sum is paid to the collier, and by him divided between himself and the filler according to various schemes