February 27, 1845, 7 D. 539. [The LORD PRESIDENT referred to the case of *Livingstone* v. *Dinwoodie*, June 28, 1860, 22 D. 1333.] [LORD KINNEAR—You may cross-examine on these facts but you would be bound by the answer.] *Verry* v. *Watkins*, 1836, 7 C. & P. 308. *Tolman* v. *Johnstone*, (1860) 2 F. & F. 66, was also referred to.

Counsel for the pursuer and respondent were not called on.

LORD PRESIDENT—I am of opinion that the Lord Ordinary has come to the right conclusion in this case, and I should be sorry if the law of Scotland obliged us to come to any other. I refrain from expressing the views which are very near to one's lips as to the propriety of putting on record, in a case of this kind such averments as are here put relating to third parties, and I content myself with saying that I entirely concur and agree with what was said with the greatest felicity by Lord President Robertson in the case of *A* v. *B* (22 R. 402). The present case seems to me to be *a fortiori* of that case, for if it be true in a case of rape that averments having to do with third parties are irrelevant, it is much more true in the present case.

I should like also to say, as to the case of *Whyte* v. *Whyte* (11 R. 710), with which I am very familiar, that the principle laid down there is limited to matrimonial cases, and for this reason, that it being the duty of the Court to protect the matrimonial bond against grievous injury, the very strict rule has been in such cases somewhat relaxed.

I therefore propose that the Lord Ordinary's interlocutor should be adhered to.

LORD M'LAREN—I concur.

LORD KINNEAR—I agree, and think the cases cited are directly in point. The Lord Ordinary was perfectly right in striking out the averments objected to, because the proof proposed is as to matters entirely collateral to the issue, and involves unnecessarily the character and reputation of third parties. The circumstance that the strictest rule of relevancy has been relaxed in matrimonial cases is no ground for relaxing it in other cases.

The Court adhered.

Counsel for the Pursuer and Respondent—George Watt, K.C.—Ingram. Agents—Graham Pole & Lawrence, S.S.C.

Counsel for the Defender and Reclaimer—The Lord Advocate (Shaw, K.C.)—Constable. Agent—J. Ferguson Reekie, Solicitor.

Saturday, December 16.

FIRST DIVISION.

(Before Seven Judges.)

[Sheriff-Substitute at Airdrie.

DOBSON *v.* THE UNITED COLLIERIES LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1 (2) (*c*)—"*Serious and Wilful Misconduct*"—*Acting in Breach of a duly Published Statutory Rule—De facto Ignorance of Statutory Rule duly Published—Coal Mines Regulation Act* 1887 (50 *and* 51 *Vict. c.* 58)—*Permitting Naked Light to be in such a Position as to Ignite an Explosive.*

Rule 1 of the additional special rules framed for a mine in pursuance of the Coal Mines Regulation Act 1887 provided—"While charging shotholes or handling any explosives not contained in a securely closed case or canister a workman shall not smoke or permit a naked light to remain in his cap or in such a position that it could ignite the explosive."

A miner having drilled a shothole went to his powder-box for a cartridge, and having got the cartridge, which was not in a closed case or canister, was returning to his working-place with the cartridge in his hand and his lamp in his cap. In getting back he had to crawl through a narrow road only 2 feet in height, and while he was doing so the naked light in his cap came in contact with the powder in the cartridge, an explosion ensued, and he was injured. The conditions of exhibition at the mine of the special rules satisfied the requirements of sub-sec. 1 of sec. 57 of the Coal Mines Regulation Act 1887. The workman, however, did not *de facto* know the rule, having neither read it nor seen it, and in acting as he did he was following his own practice and that of other miners in the mine.

Held that the accident having been caused through the workman's breach of a duly published statutory rule, his injury was attributable to his serious and wilful misconduct in the sense of sec. 1, sub-sec. 2 (*c*), of the Act.

M'Nicol v. *Speirs, Gibb, & Co.*, Feb. 24, 1899, 1 F. 604, 36 S.L.R. 428, *commented on.*

Opinion (*per* Lord President and Lord Kyllachy) that acting in breach of a duly published statutory rule, where there was no dominant reason for so doing, was serious and wilful misconduct, for which ignorance of the rule could in no circumstances be an excuse. *Opinion* (*per* Lord M'Laren) that circumstances were conceivable where the workman might be excusably ignorant. *Opinion* of Lords Kinnear and Stormonth-Darling *reserved.*

Opinion of Lord President and Lord

Kinnear that, apart from the breach of the statutory rule, the act of the workman was serious and wilful misconduct in the sense of the statute, and that this was a mixed question of fact and law on which the Court might review the decision of the arbitrator.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 1, enacts, sub-sec. 2 (c)—"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 be disallowed."

Clydeside Colliery additional special rule No. 1, framed in pursuance of the Coal Mines Regulation Act 1887 (50 and 51 Vict. cap. 58), is quoted in the rubric.

This was a stated case on appeal from the Sheriff Court of Lanarkshire at Airdrie in an arbitration under the Workmen's Compensation Act 1897, brought by William Dobson, miner, Crosshill Cottage Rows, Baillieston, against the United Collieries Limited, mine-owners, Clydesdale Collieries, Broomhouse, who appealed.

The following were the facts as given in the stated case—"(1) That on 14th November 1904 the applicant was employed as a miner at the respondents' Clydeside Colliery.

"(2) That about 1 p.m. on the said date the applicant having drilled a shothole went to his powder-box for a cartridge.

"(3) That before opening his powder-box he placed his lamp on the ground at a distance of 6 feet from the box, but after getting a cartridge from the canister in said box and closing the box, he replaced his lamp on his cap and proceeded to return to his working-place with his lamp on his cap and the cartridge in his hand, the cartridge not being contained in any case or canister.

"(4) That in order to get back to his working-place he had to crawl through a road about 2 feet in height, and as he was doing so the cartridge exploded and injured his hand.

"(5) That the cause of the explosion was the ignition of the powder by a spark from the applicant's lamp.

"(6) That in carrying the powder as he did the applicant contravened additional special rule No. 1, established for the pit under the Coal Mines Regulation Act, which special rule enacts . . . [the additional special rule was here given, *v. sup.*] . . .

"(7) That the special rules originally established for the colliery are kept at the pithead in a wooden box with folding doors supported on a stand, but the additional special rules are not kept in that box but in a glass case which is hung in the shed at the pithead.

"(8) That the applicant, although aware that there was a rule forbidding a miner to have a lamp on his cap when taking powder out of a canister or charging a shothole, did not know of the said additional special rule, or that there was any rule against a miner having his lamp on his cap while carrying in his hand a cartridge not enclosed in a case.

"(9) That in carrying a cartridge as he did with his lamp on his cap the applicant acted in accordance with his usual practice, which he had followed for a number of years, and that the same practice was followed by some other miners in the pit.

"(10) That although the said additional special rule has been established at the pit for about two years, it does not appear to be universally known among the miners.

"(11) That as a result of the injury he sustained the applicant was off work for eight weeks, but resumed work at the end of that period.

"(12) That his average weekly wage in the respondents' service during the twelve months preceding the accident was £1, 4s. 2d."

On these facts the Sheriff-Substitute (MACKENZIE) found in law—"(1) That the injury sustained by the applicant was received by accident arising out of and in the course of his employment, and (2) that the accident was not attributable to serious and wilful misconduct on his part in the sense of sec. 1, sub-sec. 2 (c), of the Workmen's Compensation Act 1897. I therefore awarded the applicant the sum of £7, 5s., for which I decerned against the respondents, and found him entitled to expenses."

The question of law for the opinion of the Court was—"Was the accident to the applicant attributable to his own serious and wilful misconduct within the meaning of sec. 1, sub-sec. 2 (c), of the Workmen's Compensation Act 1897?"

On 19th May 1905 the First Division remitted to the Sheriff-Substitute to report—"(1) Whether the additional special rule No. 1, quoted in paragraph 6 of the case, was the only special rule dealing with the handling of explosives, or whether there were other rules dealing with that subject, either in the special rules originally established or in the additional special rules both alluded to in paragraph 7, and, if so, what were the terms of said rules; (2) whether the conditions of exhibition of (*a*) the original special rules, and (*b*) the additional special rules particularly described in paragraph 7, were sufficient to meet the requirements of sec. 57, sub-sec. (1), of the Coal Mines Regulation Act 1887; (3) whether, apart from the question of rules, the act of the applicant . . . was, looking to the nature of the cartridges as proved, an act of serious and wilful misconduct on his part."

On 9th June 1905 the Sheriff-Substitute (MACKENZIE) reported—"(1) Additional special rule No. 1, quoted in paragraph 6 of the stated case, was the only special rule dealing with the handling of explosives established for the pit. In this connection, and in explanation of my findings in paragraph 8 of the case, I should add that the conclusion I came to on the evidence was that the applicant's knowledge that there was a rule against a miner having a lamp on his cap when taking powder out of a canister or charging a shothole, had been obtained from other miners or from officials in the pit, and that he had no knowledge of the special rule itself, or, except to the

extent stated, of the regulations embodied in it. (2) The original special rules and the additional special rules were both exhibited in conspicuous places near the pithead, where they might conveniently be read by the persons employed in the mine, and in my opinion the conditions of exhibition were in each case sufficient to satisfy the requirements of sub-sec. 1 of sec. 57 of the Coal Mines Regulation Act 1887. (3) The cartridge carried by the applicant was a two ounce cartridge of compressed gunpowder. It was proved that such cartridges are covered with a paper wrapper. There was no further evidence as to its nature. In my opinion the act of the applicant, as described in the case, exposed him to considerable danger, but I was satisfied that he did not appreciate the danger or think that he was incurring any serious risk. In these circumstances, and apart from the question arising on the special rule, his act did not in my opinion amount to serious and wilful misconduct."

Thereafter, on 13th July, the First Division remitted the case to Seven Judges, and it was heard on 24th November 1905.

Argued for appellants—A mine-owner was bound to have the special rules for the mine posted up in such a way as to be easily read by those employed in the mine (Coal Mines Regulation Act 1887, 50 and 51 Vict. c. 58, secs. 51, 52, 54, 57, and 58). That had been done at this mine, and the Sheriff's findings and the statements in his report showed that the respondent was aware of the existence of the regulations as to naked lights, though he may not have actually read them. That being so, his failure to observe them was "serious and wilful misconduct" in the sense of the Act —*Dailly* v. *John Watson, Limited*, June 19, 1900, 2 F. 1044, 37 S.L.R. 782; *O'Hara* v. *Cadzow Coal Company, Limited*, February 6, 1903, 5 F. 439, 40 S.L.R. 355; *Condron* v. *Gavin Paul & Sons, Limited*, November 5, 1903, 6 F. 29, 41 S.L.R. 33; *United Collieries, Limited*, v. *M'Ghie*, June 7, 1904, 6 F. 808, 41 S.L.R. 705. In *M'Nicol* v. *Speirs, Gibb, & Company*, February 24, 1899, 1 F. 604, 36 S.L.R. 428, the rule did not appear to have been properly published, but that was not so here, for the appellants had taken the best available means of making it known. [LORD PRESIDENT—There are dicta in *M'Nicol's* case which seem to indicate that even if the rules were properly published a workman who failed to observe them might only be guilty of negligence, as distinguished from serious and wilful misconduct.] If the rules were published the workman was bound to know them, and it was enough if he contravened them. The breaking of a statutory rule could not be anything else than wilful. *De facto* ignorance was no excuse for failure to obey a statutory rule. The breach of a statutory rule was different from the failure to obey the ordinary regulations of the employment. The workman must have known there was danger in doing what he did. That made his misconduct "wilful," and as the rule violated was a statutory one that made it "serious."

Argued for respondent—The purpose of the Workmen's Compensation Act was to give compensation for the ordinary risks of the employment. Mere negligence therefore was not a bar to relief. Whether the negligence was excusable or not was a question of circumstances in each case. It was therefore a question of fact. The arbiter had found (1) that the respondent did not in point of fact know the rule, and (2) that he did not appreciate the risk. [LORD M'LAREN—"Serious" depends on the quality of the act, not on what the workman may think of it.] The respondent did not know the rule, and therefore could not be guilty of wilful misconduct. The mere fact that the rule was broken did not make his offence serious and wilful misconduct—*M'Nicol* v. *Speirs, Gibb, & Company* (*cit. sup.*). Whether misconduct was wilful or not was a personal matter, for it required a conscious act, as distinquished from the mere following of the customary practice—*Todd* v. *Caledonian Railway Company*, June 29, 1899, 1 F. 1047, 36 S.L.R. 784; *Lewis* v. *Great Western Railway Company*, 1877, L.R. 3 Q.B.D. 195, per L. J. Bramwell, at p. 206; *in re Young & Harston's Contract*, L.R., 31 Ch.D. 168, at p. 175, Bowen L.J.; *Smith* v. *Baker & Sons*, [1891] A.C. 325. In all the earlier cases (except that of *M'Nicol, cit. supra*) actual knowledge was either proved or implied, and in all the cases (except that of *Dailly, cit. supra*) the risk was obvious.

At advising—

LORD PRESIDENT—This is a stated case in an arbitration under the Workmen's Compensation Act. The facts which are given in the case, which has been drawn by the learned Sheriff, are these. The applicant was a miner and employed as such in the respondents' Clydeside Colliery. On a certain occasion he, having drilled a shothole, went to his powder box for a cartridge. Having got the cartridge, he returned to his working-place with the cartridge in his hand and his lamp on his cap. In getting back to his working-place he had to crawl through a narrow road only two feet in height. While he was doing so, the naked light on his cap came in some way in contact with the powder in the cartridge, an explosion ensued, and he was injured in the hand. Now, in doing what he did there is no question that he was contravening additional special rule No. 1, established under the Coal Mines Regulation Act, which rule enacts that "while charging shotholes or handling any explosive not contained in a securely closed case or canister, a workman shall not smoke or permit a naked light to remain on his cap." The learned Sheriff, acting as arbitrator upon these facts, and in respect of the further fact established, viz., that the applicant did not *de facto* know the rule, having neither heard of it nor read it, found that the accident was not attributable to serious and wilful misconduct in the sense of sec. 1, sub-sec. 2 (*c*), of the Workmen's Compensation Act. That is the point upon which the special case is

stated. When the case first came before us we were of opinion that there were still some facts which had not been stated in the case which were necessary for its proper determination, and accordingly your Lordships remitted the case to the Sheriff and asked him to answer certain specific questions, amongst others, these—whether the conditions of the exhibition of the special rule were sufficient to meet the requirements of sec. 57, sub-sec. 1, of the Coal Mines Regulation Act, and also whether, apart from the question of rules, the act of the applicant as described was, looking to the nature of the cartridges as proved, an act of serious and wilful misconduct on his part. We had before us the report of the learned Sheriff-Substitute in answer to that remit, in which he tells us that in his opinion the conditions of exhibition of the special rules were such as to satisfy the requirements of the Coal Mines Regulation Act. He then sets forth the nature of the cartridge, a two-ounce cartridge of compressed gunpowder covered with a paper wrapper. He states that in his opinion the act of the applicant, as described in the case, exposed him to considerable danger, but that he was satisfied that he did not appreciate the danger or think that he was incurring any serious risk, and in these circumstances, and apart from the question arising on the special rule, the learned Sheriff-Substitute adds that "his act did not in my opinion amount to serious and wilful misconduct." Now, the section of the Act on which the question turns is in these words—"If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation shall be disallowed." I am of opinion that when, as here, it is proved that an accident happened through the disregard of one of the proper statutory colliery rules, that is in itself an act of serious and wilful misconduct. After all, what are these rules? They are a set of rules which are made for the safety of the mine and all the workers therein. I need not go through the sections in the Coal Mines Regulation Act, because it is quite sufficient to say, as your Lordships are well aware, that there are anxious provisions for the way in which the rules are to be exhibited, and that it is made, among other things, a general offence if the rules are then disregarded. Now, that seems to me to end the matter. Of course it is perfectly evident that a man might transgress a rule and yet that that might not amount to serious and wilful misconduct, because the accident might not be attributable to his transgression of the rule. It would not do, if an accident happened, to simply prove that the man had transgressed some rule or other, and to say "therefore you forfeit your right to compensation because you are a breaker of rules." The transgression of the rule must be associated with the cause of the accident. As to the application of that to the present facts, I do not enlarge upon it, because there is obviously no doubt that the reason this accident happened was that the man did what the rule told him not to do, namely, keep an open light in his cap near a cartridge which was not properly protected. There have been four cases in this Court all dealing with the transgression of these rules, and upon the same question in the section of the Compensation Act, viz., whether the breach was serious and wilful misconduct. There is the case of *Dailly* v. *John Watson, Limited* (2 F. 1044), which had reference to the same rule as here (it was the carrying of a naked light), and that would be an absolute decision in point were it not for the fact that this man did not *de facto* know the rule. He had never read it or seen it. Now, in *Dailly's* case the report bears that, there being no proof one way or the other, the man was presumed to know the rule. No doubt there is an expression of the Lord Justice-Clerk in *Dailly's* case that he still held his judgment open when a case would occur where the man did not *de facto* know the rule. The next case was that of *O'Hara* v. *The Cadzow Coal Company, Limited* (5 F. 439). That was a case having to do with the omission to sprag. In that case also the man knew the rule. In the case of the *United Collieries, Limited* v. *M'Ghie* (6 F. 808), which was the case of a bottomer going through the gate near the bottom of the pit, there again, so far as the report bears, the applicant knew the rule. But at the same time all those cases are so far decisions in point that they certainly give countenance to the idea that the breaking of one of these colliery rules is serious, and doing something in contravention of them which causes an accident is serious and wilful misconduct. There is only one other case, which, of course, was naturally relied upon by counsel at the bar as going the other way, and that is the case of *M'Nicol* v. *Speirs, Gibb, & Company* (1 F. 604). I am bound to say that, so far as I myself am concerned, I could not have concurred in the judgment of that case, and I am free to say so because we are here sitting as a Court of Seven Judges. If that case can be explained upon the ground that the rules in that case were not proved to have been properly posted, then I should have concurred in the judgment, because I think it goes without saying that a rule not properly posted is really no rule at all; it is merely a piece of paper in the employer's pocket, so to speak, and no question of breach can arise until the rule is posted. But where I humbly disagree with the dicta in that case I may explain thus. There was certainly a discussion in that case whether, assuming the rule to be properly posted, you yet may not have a further question—whether there was in each particular case serious and wilful misconduct in the man's not knowing the rule. Now in my opinion that does not admit of any exception. The man is bound to know the rule, and of course the question under the Act of Parliament is not whether there has been serious and wilful misconduct, but whether the injury is attributable to serious and wilful misconduct. In other words,

the question of serious and wilful misconduct is always a question of something the man does. Whether he knew the rule—whether it was serious or wilful misconduct not to know the rule, does not seem to me to enter the discussion, because if he had known the rule there would then have been the further question, what he would have done in consequence—a thing that of course in the case of a man not knowing the rule you never can tell. But it seems to me that, viewing these rules as I do under the Act of Parliament, there is no possible exception to the duty of knowing the rule. When a person knows the rule I could conceive that there might be a possible exception which would excuse him from breaking it. That is another matter. For instance, to put one case, supposing there had been an explosion in the mine, and in order to save the lives of many other people a man temporarily broke the rule, that would seem to me to be a proper excuse, and would then turn what is generally termed serious and wilful misconduct into something which is not misconduct; but that would be an excuse in fact, and would have nothing to do with the question of not knowing the rule. I do not hesitate to say that whenever a man breaks a colliery rule which has been properly posted, and an accident happens in consequence, that is serious and wilful misconduct, unless he can show that there was some dominant reason for his breaking the rule on that particular occasion. Of course there was nothing of that sort here, and therefore I am of opinion that there was serious and wilful misconduct. I ought to say, further, that although this case was sent to Seven Judges in order to consider this very important question on the rule, really on the facts of this case I should be prepared to hold that there was serious and wilful misconduct. No doubt the learned Sheriff says that it is not so in his opinion, but I do not think that his opinion on that matter is an opinion on a question of fact. I think it is on a mixed question of fact and law, and that allows us to review it, and if I am allowed to review it, then I find that he tells me that what the workman here did was a dangerous thing, but that he considers that particular workman did not appreciate the risk. Now, I entirely demur to the idea that you are to measure these things by a subjective standard which varies with every workman employed. The only result is that the more foolhardy a person is the less can he be guilty of serious and wilful misconduct. I think you must judge all these things as all other things are judged—by the general standard of mankind, and therefore I would be prepared to hold, if necessary, that on the facts alone there was serious and wilful misconduct here, but the case is more important on the other matter, and my opinion therefore is that we should answer the question in the way I have suggested.

Lord M'Laren—I concur in the opinion of your Lordship in the chair, except that I do not wish to be understood as expressing a doubt as to the soundness of the decision in *M'Nicol's* case. It is not of very much consequence whether that decision was right or wrong once the question has been determined, as I think it is now determined, that the infraction of a mining rule amounts to serious and wilful misconduct where it is the cause of the accident, but I think there may be an exception to that principle where the workman is either excusably ignorant of the rule or where he breaks the rule through some paramount necessity. Now, in *M'Nicol's* case, the rule in question was to the effect that after a shot had been lighted, if it did not explode, the workman was to wait half an hour before going to look at the charge, and there was evidence that the letter of the rule had been generally disregarded, and that the practice was to wait for what was considered a reasonable and sufficient time. We thought that the workman might excusably hold the rule to be no longer in observance because in point of fact it was not observed in the pit, and that seems to me to be one of the exceptions that may be admitted to what is otherwise a principle of universal application. I think it will always be very difficult to establish an exception, because the very purpose of those rules is to guard against accident and injury to life and property, and whoever undertakes to disregard them undertakes a very heavy responsibility.

Lord Kinnear—I agree with your Lordship, but with one qualification, because I desire to reserve my opinion on a point which I think is not necessary to the judgment, namely, whether it is or is not possible that there may be a reasonable answer to a case alleging wilful and serious misconduct when rules at a mine have been published and the miner has transgressed them—alleging what your Lordship has called some dominant cause, or even alleging ignorance of their existence. The question is not whether ignorance of a bye-law is excusable, but whether an act done in such ignorance is wilful misconduct. I should rather decide that question when the case arises, and I do not think it has yet arisen. I do not think it arose in the case of *M'Nicol* v. *Speirs, Gibb & Company*, because the judgment in that case proceeded upon the hypothesis that the rules had not been properly published. The opinion of the Court was that the facts before them did not show proper publication of the rule, and at the same time that they did show that the ordinary course of working in the mine, with the knowledge and sanction of the owners and managers of the mine, involved a departure from the rules, and that was thought relevant both because it tended to prove ignorance consequent upon the failure to publish, and because, as between master and servant the former can hardly maintain that a method of working amounts to wilful misconduct when he has himself authorised and encouraged it. I do not see therefore that that decision is in point, since we hold that the accident to the pursuer happened through a disregard of a duly published rule

which he must or ought to have known. I of course assent to the observation which fell from your Lordship that ignorance of the rule will not and cannot in itself be the wilful and serious misconduct which causes the accident. I agree also upon the second point which arises, apart from the rules and from the publication of the rules. I have very much the same difficulty as I think your Lordship has in interfering with a judgment of the arbitrator which appears to involve only a question of fact, and the question of serious and wilful misconduct is primarily a question of fact. But then it is a question of mixed fact and law, and I think the report of the learned Sheriff in this case enables us to distinguish between the fact and the law involved in this decision, so as to raise the true point for our own judgment, because he sets out certain facts as proved which undoubtedly involve extremely reckless conduct on the part of the miner. The Sheriff finds that he carried a naked light in his cap, having at the same time in his hand a cartridge of powder very insufficiently protected, and did so while he was going through the low passages of a mine. That that was a piece of serious and wilful misconduct, as exposing both himself and all the other workmen in the mine to a very serious danger, seems to me to be beyond doubt, and I quite agree that to say that the man himself did not exactly appreciate the amount of danger to himself in no way tends to show that this misconduct was not serious, and does tend to show that it was wilful.

LORD KYLLACHY — I agree with your Lordship in the chair. It appears to me that to disobey a special rule such as that here in question is serious and wilful misconduct in the sense of the statute; and it does not seem to me to be any excuse or to make any difference that, the rule being duly published, the particular miner does not choose to read it or make himself acquainted with its terms. I should perhaps add that I do not myself see how it could be any excuse or make any difference although the rule should have been commonly disobeyed, or even disobeyed with the knowledge of the employers.

LORD STORMONTH-DARLING—It seems to me that the question, whether the injury to a workman is attributable to his own "serious and wilful misconduct" within the meaning of section 1 (2) (*c*) of the Workmen's Compensation Act 1897, so as to disentitle him to compensation in respect of that injury, is in general a question of mixed law and fact. I can quite imagine cases in which it may be a question of fact alone, and in which the finding of the Sheriff as arbitrator on the facts would therefore be final. But in this case I think the Sheriff is right in stating the question as one of law.

Accepting it as such, and taking the stated case along with the Sheriff's report of 9th June 1905 in answer to the remit of the First Division, we are told that the injury was attributable to the act of the workman in carrying an unenclosed cartridge in his hand and crawling through a road about two feet in height while his lamp was on his cap, with the result that a spark from the lamp ignited the cartridge; that this act constituted a contravention of a special rule established for the pit under the Coal Mines Regulation Act 1887; and that the rule was exhibited in such a manner as to satisfy the requirements of that Act. It is true that the Sheriff has also found that the workman was ignorant of the rule, and that in acting contrary to it he followed his own usual practice and the practice of some other miners in the pit. But this, as it seems to me, cannot excuse him if he was bound to know the rule, and that he was so bound follows necessarily from the fact of its due publication.

His act, therefore, was clearly "misconduct." But the question remains, was it "serious and wilful misconduct?" I should not like to say that there may not conceivably be some contravention of a rule having statutory force, when arising from ignorance of the rule, which could not be so described. A contravention must generally be "serious" if injury results from it, which it must do before the question can arise; but it must also be shown to be "serious and wilful." Where, however, you have a duly published rule contravened, and the only excuse for the person contravening it is that he did not take the trouble to make himself acquainted with its terms, the serious and wilful character of the misconduct, in my opinion, consists in his not informing himself of what he ought to know, and has the means of knowing, for the safety both of himself and others.

I therefore concur with your Lordships that the question of law ought to be answered in the affirmative, and that the award of the Sheriff-Substitute should be recalled.

LORD LOW—I agree with all your Lordships that the accident to the workman in this case is attributable to serious and wilful misconduct, and I adopt the grounds stated by your Lordship in the chair for arriving at that conclusion.

LORD ADAM, who was present at the hearing, had resigned before the case was advised.

The Court answered the question of law in the affirmative, recalled the award of the arbitrator, and remitted to him to dismiss the claim.

Counsel for Claimant and Respondent—M'Clure, K.C.—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for Respondents and Appellants—The Dean of Faculty (Campbell, K.C.)—R. S. Horne. Agents—W. & J. Burness, W.S.