decision of *Dobson* that in the general case the infraction of a statutory rule by a miner comes within the category of serious and wilful misconduct, and disentitles the sufferer or his relatives to compensation.

But then there are rules of a different kind to which our decision is not directly applicable, perhaps not applicable at all. In the case of *Johnston* v. *Marshall*, [1906] A.C. 409, the sufferer was found fatally injured in a lift, and no one could tell when or how he died. The rule which was founded on in that case was a printed rule attached to the lift, stating that the lift was only to be used by persons in charge of a load—in other words, it was not to be used for the personal convenience of workmen wishing to go up and down. It is not stated in the report, and I do not know how it could be stated, that that was a rule intended for the protection of the lives and personal safety of the employees, for it is quite evident that whatever may be the risk in going up and down a lift, the risk is the same whether one is going on the lift with a load or without a load. The rule was evidently merely an indication by the employers that they did not wish the lift to be used for purposes for which it was not provided. A breach of such a rule as between master and servant would not necessarily, nor I think in any reasonable sense, be an act of serious and wilful misconduct. Such a breach of rules, as one of the Judges says, is an act for which a man might be reprimanded, but would not justify his immediate dismissal. Therefore I cannot look on the decision in *Johnston* v. *Marshall* as having any bearing on cases like the present.

I also concur with the observations of your Lordship in the chair in regard to Lord Atkinson's opinion, which, so far as I can see, was not intended to have any bearing on such a state of facts as we have here to deal with.

Now coming to this particular case, it appears to me that whether the rule about propping the strata while holing was in progress was or was not applicable, is of very little consequence in this case, because the operation of holing was completed, I cannot say without risk, but without any accident intervening; and this accident resulted from the second step, which was the propping of the roof as preparatory to bringing down the upper strata. Well, I think that the same considerations which led the framers of these mining rules to provide for propping during holing would also imply—at any rate the spirit of the rule would imply—that after the operation had been finished and the props withdrawn the miners should not go into the hole, as I may call it—the result of the operation of holing—not even for the laudable and necessary purpose of fixing the props that were necessary for safety in the next stage of the operation. But then, I am unable to say that in the cases to which the rule does not plainly and admittedly apply, a man is to be taken as guilty of serious and wilful misconduct because he does not find out for himself that this was a case where he ought to have avoided exposure to danger. I think that where the matter is not regulated by written rule everything is more elastic—more is left to the judgment of the workmen, and in endeavouring to ascertain the measurement I think the probability is that this unfortunate man took a look at the roof and seeing no appearance of it giving way, he thought for a mere momentary purpose there was no harm in resting his foot on this ledge while he took the measurement of the roof. Now, if the matter was left in his judgment, and he thought he was in safety to do the thing, I do not see where moral blame can be imputed to him, and certainly if there is no moral blame he does not come within the scope of the statutory exception.

I therefore concur in the judgment proposed, and agree that compensation be given in terms of the Sheriff's award.

LORD PEARSON—I am of the same opinion and have nothing to add.

LORD KINNEAR was absent.

The Court answered the question of law in the case in the negative.

Counsel for the Claimant and Respondent—Hunter, K.C.—William Thomson. Agents—J. Douglas Gardiner & Mill, S.S.C.

Counsel for the Respondents and Appellants — Clyde, K.C. — Horne. Agent — William C. Dudgeon, W.S.

Wednesday, February 27.

SECOND DIVISION.

DICK AND ANOTHER (CLELAND'S TRUSTEES) *v.* CLELANDS.

Succession — Trust — Charitable Trust — Uncertainty.

Held that a testator's direction to his trustees to divide and apportion the residue of his estate in such proportions as they might consider proper amongst "such charitable institutions connected with the county of Lanark as they may consider expedient" was not void from uncertainty.

This special case was brought for determining whether the directions of James Cleland, who died on 9th September 1900, for the disposal of the residue of his estate, were valid and effectual or whether they were void from uncertainty.

By trust-disposition and settlement dated 16th September 1898 and registered in the Books of Council and Session 15th September 1900, the testator, *inter alia*, after making provision for his wife Mrs Isabella Jackson or Cleland, in full of the whole claims, legal and conventional, competent to her against his estate in the event of her surviving him, and after granting certain specific legacies, directed and appointed his trustees as follows, viz.—"To divide and

apportion the whole residue and remainder of my means and estate, in such proportions as they may consider proper, amongst such charitable institutions connected with the county of Lanark as they may consider expedient, and of which they in their discretion shall be the sole judges, with power, if they think fit, to pay over the whole to one such institution: Declaring always, as it is hereby specially provided and declared, that no one shall be entitled to interfere with my said trustees in the exercise of the above discretion, or to object in any manner of way to the selection which they make of such institutions as are to be the recipients of any portion of the residue and remainder of my means and estate hereby bequeathed."

The testator was survived by his wife who accepted of her provisions under the said trust-disposition and settlement. His estate amounted to nearly £3000, of which about £900 was heritage. There were no children of the marriage.

The *first parties* to this case were the trustees acting under the trust-disposition and settlement, the *second party* was a nephew and heir-at-law of the testator, and the *third parties* were the nephews and nieces of the testator, his heirs *in mobilibus*.

The *questions of law* were as follows:—"(1) Are the said directions in James Cleland's trust-disposition and deed of settlement as to the disposal of the residue and remainder of his estate valid and effectual, or (2) Are the said directions void from uncertainty and invalid and ineffectual to dispose of said residue and remainder of James Cleland's estate, and does said residue and remainder form intestate succession of James Cleland falling to the second and third parties as his whole heirs in intestacy."

The first parties *maintained*, and *argued*—The directions for the disposal of the residue were valid and effectual. There was no difficulty or uncertainty in carrying out the bequest, for there was no alternative to charitable institutions as there had been in *Grimond or Macintyre* v. *Grimond's Trustees*, March 6, 1905, 7 F. (H.L.) 90, 42 S.L.R. 466. A direction to trustees to pay to such charitable institutions as they might think proper was valid and effectual—*Cobb* v. *Cobb's Trustees*, March 9, 1894, 21 R. 638, 31 S.L.R. 506; *Blair* v. *Duncan*, December 17, 1901, 4 F. (H.L.) 1, 39 S.L.R. 212, and the addition of a territorial limitation could not render invalid what otherwise would have been valid.

The second and third parties maintained, and argued—The bequest was void from uncertainty. "Charitable institutions" would have been effectual, but the addition of the qualification "connected with the county of Lanark" made the bequest void from uncertainty. That was not a geographical limitation, for a person resident anywhere might have some connection with that county. What the nature of the connection must be was impossible to discover. The following authorities were referred to—*Murdoch's Trustees* v. *Weir &c.*, December 7, 1906, 44 S.L.R. 171; *Dick's Trustees* v. *Dick*, July 28, 1906, 14 S.L.T. 325; *Shaw's Trustees* v. *Esson's Trustees*, November 2, 1905, 8 F. 52, 43 S.L.R. 21; *Hill, &c.* v. *Burns*, April 14, 1826, 2 W. & S. 80.

LORD JUSTICE-CLERK—I have no doubt whatever that the first question in this case should be answered in the affirmative. It is well settled that if a testator says that his trustees are to divide a bequest amongst such charitable institutions as they might consider expedient, such a direction would be held valid. The question is whether such a bequest becomes void because the testator has said that the institutions to be so benefited must be connected with the County of Lanark. I am unable to see that such a direction is so vague as to require that the bequest should be held to be void. These cases must be dealt with in the most liberal manner. The only grounds on which such bequests have been held to be void are that there has been uncertainty as to the direct objects of the benefit, and that there has been no restriction as to a definite area. In some cases there was difficulty because it could not be held that the objects were all charitable institutions, as where the bequest was to "charitable or public" institutions. Here all the objects are charitable institutions, and the bequest is not to be held vague and therefore void from uncertainty because the testator wishes to limit these objects to such as are connected with the County of Lanark. The discretion as to this matter he has left with his trustees, and he was, in my opinion, able to do so without voiding his expressed intention, which is to give benefits to charities in Lanarkshire or connected with that county.

LORD LOW—I am of the same opinion. Very great favour has always been shown by the law of Scotland to bequests of a charitable nature; so much so that the Court will give effect to such a bequest if upon a reasonable construction of the language used it is possible to do so. In this case I think the direction to the trustees is extremely distinct, and therefore I agree with your Lordship that the first question should be answered in the affirmative.

LORD ARDWALL—In the case of *Cobb* v. *Cobb's Trustees* (1894), 21 R. 638, it was held that a direction to trustees to pay and apply the residue of the testator's estate "to such useful, benevolent, and charitable institutions" as the trustees in their discretion might think proper, was not void from uncertainty but constituted a valid bequest. That being so, I concur in holding that the further specification which is present in this case, viz., "connected with the County of Lanark," cannot have the effect of making this bequest void from uncertainty. On the contrary, it seems to me to render the bequest before us more definite and specific than that in *Cobb's* case.

LORD STORMONTH DARLING was absent.

The Court answered the first question in the affirmative and the second in the negative.

Counsel for the First Parties — King. Agents—Ronald & Ritchie, S.S.C.

Counsel for the Second and Third Parties — Hon. W. Watson. Agents — Guild & Guild, W.S.

Friday, March 1.

SECOND DIVISION.

SMITH *v.* AYR COUNTY COUNCIL.

Burgh—County Council—Police—Licensing Acts—Burgh Police Act Offence or Licensing Act Offence—Expenses of Prosecuting Offences under Licensing (Scotland) Act 1903, *sec.* 70, *in Police Burghs to which Burgh Police (Scotland) Act* 1892 *Applies—Licensing (Scotland) Act* 1903 (3 *Edw. VII, cap.* 25), *secs.* 70, 91, 110.

Section 70 of the Licensing (Scotland) Act 1903 sets forth certain offences in which drunkenness is an element, and sub-section 4 thereof provides that the provisions of this section shall, in the burghs to which certain Police Acts, including the Burgh Police Act 1892, apply, "have effect as if they were provisions of and enacted in such Acts," which "shall be construed accordingly both as regards the application of penalties and in all other respects." Section 91, sub-section (1), provides that offenders against the Act shall be prosecuted and penalties shall be recovered "unless by this Act otherwise specially directed or authorised" by certain procedure, and the fees of the prosecutor and other expenses of such prosecutions shall, except in Royal or Parliamentary Burghs, "be paid annually out of the fund of the county out of which the expenses of criminal prosecutors are in use to be paid."

The Burgh Prosecutor of a police burgh, to which the Burgh Police Act of 1892 applied, was also appointed to prosecute offences within the burgh under the Licensing (Scotland) Act 1903.

Held that he was not entitled under section 91 (1) of the Licensing Act to be remunerated by the County Council in respect of prosecutions by him for offences specified in section 70 of that Act, such offences being in virtue of sub-section 4 of that section offences against the Police Acts and not against the Licensing Act.

The Licensing (Scotland) Act 1903 (3 Edw. VII, cap. 25) enacts—Section 70—"(1) Every person found in a state of intoxication, and incapable of taking care of himself, and not under the care or protection of some suitable person, in any street, thoroughfare, or public place, whether a building or not, or on any licensed premises, and every person who is drunk while in charge in any street or other place of any carriage, horse, cattle, or steam engine, or when in the possession of any loaded firearms, shall be thereby guilty of an offence, and may be taken into custody by any constable and detained in any police office or police cells or other convenient place, and not later than in the course of the first lawful day after he shall have been so taken into custody shall be brought before a sheriff or any one justice of the peace or magistrate, or if not so taken into custody, may be summoned to appear before a sheriff, justice of the peace, or magistrate, and on being convicted of such offence shall be liable to a fine not exceeding forty shillings and failing payment to imprisonment for a period not exceeding thirty days. Every person who in any street, thoroughfare, or public place, whether a building or not, or on any licensed premises, behaves while drunk in a riotous or disorderly manner, or while drunk uses obscene or indecent language to the annoyance of any person, shall be liable on summary conviction to a fine not exceeding forty shillings, and failing payment to imprisonment for a period not exceeding thirty days, or in the discretion of the Court to imprisonment for a period not exceeding thirty days. . . . (4) The provisions of this section shall, in the burghs to which the general or local Police Acts specified in Part II of the Twelfth Schedule annexed hereto respectively apply, have effect as if they were provisions of and enacted in such Acts, and where enactments dealing with the same matter are mentioned in such Part, in lieu of such enactments, and such Acts and references therein shall be construed accordingly, both as regards the application of penalties and in all other respects."

Section 91—"(1) Every person who shall commit any breach of certificate, or who shall in any other manner offend against this Act, shall be prosecuted, and all penalties together with the expenses of prosecution and conviction to be ascertained on conviction shall be recovered, unless by this Act otherwise specially directed or authorised, before the sheriff or any two or more justices of the peace of a county or any magistrate of a royal, parliamentary, or police burgh having jurisdiction in the county or burgh, as the case may be, in which such offender shall reside or such offence shall have been committed, at the instance of the procurator-fiscal, or other prosecutor ordinarily acting in such respective courts, or in the case of a justice of the peace or burgh police court at the instance of such other party as shall be specially appointed to prosecute such class of offences, by the justices of the peace of the county in general quarter sessions assembled, or the town council of the burgh, as the case may be, and which appointment they are hereby specially authorised to make, and such justices of the peace in general quarter sessions, or town council, as the case may be, may from time to time fix a reasonable sum in name of salary, or a reasonable rate of remuneration by fees for prosecutions, and all other business under this Act, to be paid annually to such procurator-fiscal or