ignited his strum." Your Lordships held that under this circumstance when Colville returned before the allowed time he was guilty of a contravention of the Order and was acting outwith the scope of his employment. It is true that the point was not specially argued, but if the appellant's argument in the present case was right that case would be wrongly decided. I am therefore of opinion that the appeal fails and should be dismissed with costs.

LORD SHAW—I entirely agree.

Their Lordships ordered that the interlocutor of the Court below be affirmed and the appeal dismissed with costs.

Counsel for Appellant—Solicitor-General for Scotland (Murray, K.C.) — Fenton — Brightman. Agents—Hay, Cassels, & Frame, Hamilton—Simpson & Marwick, W.S., Edinburgh—Deacon & Company, London.

Counsel for Respondents — Sandeman, K.C.—Beveridge. Agents—W. & T. Craig, Glasgow — W. & J. Burness, W.S., Edinburgh — Beveridge & Company, Westminster.

Friday, January 20.

(Before Viscount Haldane, Viscount Finlay, Lord Dunedin, Lord Shaw and Lord Sumner.)

COLTNESS IRON COMPANY, LIMITED *v.* BAILLIE.

(In the Court of Session, March 11, 1921, S.C. 505, 58 S.L.R. 331.)

Workmen's Compensation—"Out of and in the Course of the Employment"—Miner Returning to Shot-hole within Prohibited Time—"Person Firing the Shot"—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—*Explosives in Coal Mines Order of* 1*st September* 1913, *sec.* 3(*a*).

Paragraph 3 (*a*) of the Explosives in Coal Mines Order of 1st September 1913 provides:—"If a shot misses fire the person firing the shot shall not approach, or allow anyone to approach, the shot-hole until an interval has elapsed of not less than ten minutes in the case of shots fired by electricity or by a squib, and not less than an hour in the case of shots fired by other means."

In a mine to which the above regulation applied a shot missed fire, and a miner who was not the person who had actually applied the light to the fuse returned to the working-face within an hour in order to light the fuse, which he believed had not been ignited, and was injured in consequence of the shot then going off. *Held* (*aff.* judgment of the Second Division) that as he was not the person who had applied the light to the fuse, he was not the person firing the shot, and that accordingly he had not acted in breach of the Order in returning to the shot-hole.

The Case is reported *ante ut supra.*

The Company appealed to the House of Lords.

At delivering judgment—

VISCOUNT HALDANE—In this case also I have had the opportunity of perusing the judgment which has been prepared by my noble and learned friend Lord Dunedin, and I am entirely satisfied with the conclusions as he has expressed them.

Lord Sumner, my noble and learned friend, desires me to say that he concurs.

VISCOUNT FINLAY—I also concur in the judgment which has been prepared by my noble and learned friend Lord Dunedin.

LORD DUNEDIN—In this case, as in the preceding, two contiguous shots were arranged, though the distance between them was about 20 instead of 3½ feet. The one was arranged by a man called Muncie. The other was arranged by a gang working together composed of the respondent and his two sons William and John Baillie. William bored the shot-hole, the respondent put in the explosives, did the packing, and arranged the fuse. Muncie having indicated that he was ready and proposed to fire, William Baillie applied his naked light to the fuse. He was under the impression that it had failed to light, but as Muncie's fuse was burning the party retired. Muncie's shot exploded, when without waiting for the prescribed period the respondent returned and his own shot exploded and injured him permanently.

The learned Sheriff-Substitute as arbiter found that the shot did not miss fire, and that consequently the rule did not apply. He also expressed the opinion that even if that was not so, yet in accordance with the decision in *Donelly's* case (57 S.L.R. 380, *rev.* 58 S.L.R. 85) in the Court of Session (for this award was issued before *Donelly's* case was reversed in your Lordships' House), the respondent was not disentitled to receive compensation. In the Inner House the point as to missing fire was given up by the respondent's counsel, who admitted that there was a missfire in the sense of the Order. Your Lordships are absolved from the consideration of whether such an admission should hold good because in accordance with the judgment in the preceding case there was a missfire. *Donelly's* case being by this time decided in your Lordships' House, the learned Judges of the Second Division held that though not absolved in respect of that case, the respondent was not disentitled in respect that the rule did not apply to him, he not being the firer of the shot.

The appellants, the employer company, argued that the respondent was the firer of the shot, inasmuch as he was in charge of the gang composed of himself and his two sons, and that a firing by the son was equivalent to a firing by himself. Alternatively they argued that the provisions of the Order as a whole made the neighbourhood of the shot a prohibited territory till after the expiry of the prescribed time, and that consequently the respondent in going into that territory within the prescribed time was acting outwith the scope of his employment.

As to the first of these contentions, it is impossible to read the order without seeing that it is framed primarily with the intuitus of the duties of firing being performed by a regularly appointed shot firer. Such an appointment is prescribed as a necessity in many cases, but there are exceptions, and the position in this mine was admittedly one of them. The framers of the order have thought it sufficient to put an embargo on the firer of the shot himself, and to entrust to him the duty of keeping others away. This being so, I do not think that we as Judges are entitled to spell out of the terms of the Order a further restriction which may be truly according to the spirit but is certainly not in any way expressed in the letter. The only person actually prohibited from approaching is the firer of the shot, and the respondent was not the firer of the shot.

As regards the second argument, it was pointed out by myself in *Conway's* case (48 S.L.R. 632) that there may be a prohibition as to entering a territory which would operate to make any action by the workmen within that territory an action outwith the scope of his employment. And though *Conway's* case was held by your Lordships in *Donelly's* case to have been an erroneous determination in its application of the law to the facts, none the less the law as laid down in it was approved by your Lordships as was expressed in the opinions delivered, especially that of the Lord Chancellor. But such a prohibition must, I take it, be clear and express. At any rate I do not think it may be gathered from such implications as would here be necessary in order to find it.

Prohibition is laid on one man alone, viz., the shot firer. It would be easy to frame the order in such terms as "No one shall approach," &c. It is not so framed, and until it is so I do not think we can find a universal prohibition. I am therefore of opinion that the decision of the Court of Session was right and the appeal fails and should be dismissed with costs.

LORD SHAW—I entirely agree.

Their Lordships ordered that the interlocutor of the Court below be affirmed, and the appeal dismissed with costs.

Counsel for Appellants—Sandeman, K.C. —Beveridge. Agents—W. T. Craig, Solicitor, Glasgow—W. & J. Burness, W.S., Edinburgh—Beveridge & Company, Solicitors, Westminster.

Counsel for Respondent—The Solicitor-General for Scotland (Murray, K.C.) —Fenton—Brightman. Agents—Hay, Cassels, & Frame, Solicitors, Hamilton—Simpson, & Marwick, W.S. Edinburgh—Deacon & Company, Solicitors, London.

Tuesday, January 24.

(Before Viscount Haldane, Viscount Finlay, Viscount Cave, Lord Dunedin, and Lord Shaw.)

I.—ANCHOR LINE (HENDERSON BROTHERS), LIMITED (S.S. "CIRCASSIA") *v.* TRUSTEES OF HARBOUR OF DUNDEE.

(In the Court of Session, March 18, 1921 S.C. 547, 58 S.L.R. 440.)

II.—ELLERMAN LINES, LIMITED (S.S. "CITY OF NAPLES") *v.* TRUSTEES OF HARBOUR OF DUNDEE.

(In the Court of Session, November 27, 1920, 1921 S.C. 169, 58 S.L.R. 186.)

THE "CIRCASSIA."

Ship — Collision with Sunken Wreck in Navigable Channel Leading to Harbour — Whether Due to Fault of Master or of Harbour Trustees.

Harbour — Defective Buoyage — Misleading Use of Buoys—Liability of Harbour Trustees.

Harbour — Duty of Harbour Trustees — Pilotage—Failure of Trustees to Enforce Bye-laws as to Attendance of Pilots at Station — Absence of Pilots — Injury to Vessel Approaching Harbour—Liability of Harbour Trustees.

A vessel under Government requisition, and which had been ordered to proceed to Dundee, arrived in March 1919 off the estuary of the Tay. Neither the master nor anyone on board had any personal knowledge of the estuary, and the latest sources of information in the master's possession regarding it were a chart dated 1915, a copy of the North Sea Pilot dated 1914, and a collection of Notices to Mariners, the latest of which was dated December 1918. In these he found a recommendation to take a pilot obtainable from a pilot cutter stationed in the immediate vicinity of the buoy marking the entrance to the channel and known as the Fairway Buoy. It was the duty of the pilots under the bye-laws made by the Harbour Trustees to be at their station, but during the war they had been in the habit of anchoring inside the entrance to the river, some miles above the Fairway Buoy—a practice which the Trustees (the pilotage authority) though aware of it had taken no active measures to stop. In the master's chart the Fairway Buoy was described as a light-and-bell buoy exhibiting a white light occulting every ten seconds, surmounted by a top mark, and painted in black and red horizontal stripes. During the war, when navigation lights were extinguished, the Trustees had removed the buoy described in the master's chart from its position at the entrance to the fairway, and replaced it with a dumb buoy marked with black and red horizontal stripes, and having