Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of William Humble v. *Hugh Humphreys from the Supreme Court of New South Wales, delivered* 30*th November* 1901.

Present at the Hearing:

LORD MACNAGHTEN.

LORD SHAND.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by Lord Robertson.*]

On 29th December 1899, Mr. Charles Newton Payten, a Stipendiary Magistrate for the police district of Newcastle, in the State of New South Wales, on two informations by the Appellant, who is Inspector of Collieries, convicted the Respondent of having contravened the 38th Section of the Coal Mines Regulation Act 1896, of New South Wales. Special cases, having been required by the Appellant, were stated by the Stipendiary Magistrate, for the opinion of the Supreme Court. The cases were remitted to the magistrate with the opinion of the Court thereon that his determination was erroneous in point of law. The determinations on both the two informations, (of which one applied to one pair of workmen and another to another,) were the same, the questions determined being identical.

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The offence charged was that the men named in the informations having been on the dates alleged persons employed in a mine to which the Coal Mines Regulation Act of 1896 applied, to wit the Dudley Colliery in the State of New South Wales, and in which mine the amount of wages paid to those persons did on those dates depend on the amount of mineral gotten by them, did fail to comply with the provisions of the 38th Section sub-section 1 of the Act, in that those persons were not paid according to the actual weight gotten by them of the mineral contracted to be gotten, contrary to the Act in such case made and provided. The New South Wales Act thus founded on is, so far as its enactments bear on the present question, an exact reproduction of the (British) Coal Mines Regulation Act 1887. The question upon which this Appeal turns is really whether, in the case of the miners named in the information, the amount of wages paid to them depended on the amount of the mineral gotten by them.

The facts are entirely undisputed. The men were employed in a coal mine. The agreement under which the men worked was in the following terms, "That they should receive pay-"ment by measurement for work done by them "as miners in the said mine at the following "rates viz. 28*s*. per lineal yard for a bore of "8 yards, and 5 feet 10 inches high, rising or "falling 3 pence per yard for every inch in "thickness, wages to be paid fortnightly."

Primâ facie and according to the terms of this agreement, the remuneration of the men depends on the yard of excavation. It is important to observe what was excavated and how the material excavated was dealt with; and the following propositions are established, in so many words, in the evidence. The excavation

went straight through the material encountered, taking everything that came on. The line of excavation is a direct line, minerals or no minerals. The same wages were paid through stone or other material. The men are paid the same rate, irrespective of what is hewn or taken out. "There is no difference, it would be the "same as sinking a well." The material thus excavated and thus paid for was dealt with in the following manner,—the dirt was thrown back into the bords and the coal filled into the skips by the men and sent out of the mine by them. But the mineral thus sent out of the mine by the men was not weighed at all, nor is coal ever weighed at this colliery for fixing wages.

On these facts, their Lordships find it impossible to hold that the amount of wages paid to these men depended on the amount of the mineral gotten by them. The amount of their wages depended on what is, in substance as well as in conception, a different criterion, viz. the amount of work done; and it was independent of the amount of mineral gotten by them. It is quite true that there is a relation between the amount of mineral and the amount of excavation, inasmuch as, more or less certainly, in greater or less degree, the more excavation the more mineral. But precisely the same reasoning would prove that payment by time was payment dependent on the amount of mineral gotten; for, again, the more time spent the more mineral gotten.

It was argued that in this particular colliery the proportion of stone to coal was very small, being only about 6 per cent. of stone to 94 per cent. of coal in the total output. But this is of course an average, and not a constant proportion;

and the evidence showed that men producing the most coal often get the smaller wages.

It is plain on the face of the section alleged to have been contravened and the relative sections that they are enacted for the protection of the miners against systems of calculating the amount of mineral gotten which involved risk of unfairness to men whose wages depended on such calculation. Their Lordships' ground of decision being that the section does not apply, it is unnecessary to say more than that it is satisfactory to observe that the system in force in this colliery does not seem to give occasion for any of the evils sought to be provided against. The measurement by yard is necessarily done, not above ground and in the absence of the miner, but in the mine, with themselves looking on and checking the measurement. No controversy can arise as to the material proper to be computed, for everything excavated is equally computed.

From the facts of the case it is manifest that the question now decided is wholly different and apart from those which have been under consideration in the several cases cited at the bar. In all those cases the men were paid by weight and the dispute was about the mode of computing the weight and the proper deductions. The only bearing of the decisions on the present case is in the observations of the eminent judges on the true meaning of the section taken as a whole, and their Lordships have the satisfaction of finding that these remarks are entirely in harmony with the conclusion now arrived at.

Their Lordships have only further to observe that the argument of the Appellant is in no wise furthered by the exemption clauses 38 (iv.) and 40 (vii.), for these are on the face of them merely exceptions from the enacting part of Section 38. If the hypothesis fails on which the

enactment proceeds, the whole argument comes to the ground.

Their Lordships will humbly advise His Majesty that the appeal ought in each case to be dismissed and the orders of the Supreme Court be affirmed. The Appellant will pay the costs of the appeal.