sives. The lamp falling off through the miner's cap coming in contact with the roof might fall on the explosives and thus cause an explosion, involving frightful calamity to the pit, and the life of the man himself and of others in the pit. Accordingly, as one would expect, there is a rule in this pit that a canister with a cover should be provided, and that no workman should permit a naked light to remain in his cap while handling any explosive which is not contained in such a closed canister. The Sheriff-Substitute has found that the deceased must be assumed to have known of this special rule; and I think that miners must be assumed to know the rules of the mine. Whether in a case where the rules, although properly posted in the pit, were not in fact known to a person coming into the pit, it might not be held in these circumstances that such a person was not guilty of serious and wilful misconduct is another question, and a question which would depend for its decision on the particular facts. No such case is made here. It is not suggested by the Sheriff that any such practice was sanctioned or even winked at in this pit. I am unable to come to any other conclusion than that this was serious and wilful misconduct, and I therefore think that the determination of the Sheriff-Substitute must be set aside.

LORD YOUNG—The question of law put to us is, whether the injuries received by the deceased were attributable to serious and wilful misconduct within the meaning of the Act. The Sheriff-Substitute has determined that his conduct, which was the cause of the injuries, was not serious and wilful misconduct, and we have to say whether we agree in that opinion. We must take the case on the facts stated by the Sheriff-Substitute, and so taking it, it is argued on behalf of the respondent that the question whether these facts amount to serious and wilful misconduct is itself a question of fact; and *prima facie* there may be some difficulty about that. I am disposed to think, however, that it is a question of law. The language "serious and wilful misconduct" is language characterising conduct. The circumstances are matter of fact. Whether his conduct is to be characterised as serious and wilful misconduct in the sense of the statute is not necessarily a question of fact. Suppose in addition to his findings in fact the Sheriff-Substitute had added a finding in fact that it was proved that the deceased was warned on this occasion that he was violating the rule and incurring danger, and that he had said that he would take the risk. That would have been matter of fact. The present case is not so strong as that. But the question is, is it not strong enough to lead us to say that this misconduct ought to be characterised as serious and wilful. I am of opinion that it is.

LORD TRAYNER—I agree. The question to be decided is a question of law; we can decide no other kind of question under this stated case. We are asked to decide whether the injury to the deceased was attributable to "serious and wilful misconduct on his part" within the meaning of the Act. That puts upon the Court the duty of construing the words of the statute, and the construction of a statute is always a question of law. I think the question put to us should be answered in the affirmative.

LORD MONCREIFF — I agree that this appeal raises a question of law; the Sheriff-Substitute rightly so states it. There is here no doubtful question of fact. The whole material facts are stated by the Sheriff-Substitute—the immediate cause of the accident, the existence of the rule which prohibits the handling of explosives while carrying a naked light, and the deceased's knowledge of the rule. On these facts I think the only legitimate inference is that there was "serious and wilful misconduct" on the part of the deceased which led to his death. It is no answer that other workmen were in the habit of breaking the rule. Therefore I am of opinion that the judgment of the Sheriff-Substitute is erroneous.

The Court answered the question in the affirmative, recalled the award, and remitted to the Sheriff-Substitute to dismiss the application.

Counsel for the Claimant and Respondent — Jameson, Q.C. — Orr. Agents — George Inglis & Orr, S.S.C.

Counsel for the Appellants — Chree. Agents—W. & J. Burness, W.S.

Tuesday, June 19.

FIRST DIVISION.

[Lord Pearson, Ordinary.

WHYTE'S JUDICIAL FACTOR *v.* WHYTE.

Process — Reclaiming-Note — Reclaiming-Note Signed by Party only—Competency.

The rule of practice under which a reclaiming-note requires to be signed by counsel was not established by any statute or Act of Sederunt or positive decision, but rests solely upon practice, and accordingly the Court will depart from it in special circumstances.

Objection was taken to the competency of a reclaiming-note on the ground that it was signed by the party reclaiming and not by counsel. It appeared that there had been previous reclaiming-notes in the process which had been signed by the party only, and which had been entertained by the Court without objection having been taken to their competency. The party also stated that he had endeavoured, though unsuccessfully, to obtain the signature of counsel.

The Court in the circumstances *repelled* the objection.

Mr Richard Brown, C.A., Edinburgh, interim factor on the estate of the deceased George Whyte, presented a petition for exoneration and discharge. Objections were lodged by Mr George Whyte, 25 Cazenove Road, London.

The Lord Ordinary (PEARSON) on 6th June 1900 pronounced an interlocutor whereby he repelled these objections and found that on certain things being done the petitioner's appointment would fall to be recalled and the petitioner exonered and discharged.

The respondent presented a reclaiming-note signed by himself and not by counsel.

The petitioner objected to the competency of the reclaiming-note, in respect that it had not been signed by counsel but by the party himself, and founded upon the cases of *Hawks* v. *Donaldson*, Nov. 16, 1899, 2 F. 95; *Smith* v. *Lord Advocate*, June 16, 1897, 5 S.L.T. 76; *Jaffray* v. *Jaffray*, Dec. 19, 1863, 2 Macph. 355; *Watt* v. *Johnston*, 1863, 1 Macph. 269 (note).

The reclaimer stated that he had done his best to obtain the signature of counsel, but that he had been unable to do so, and that he had already presented three reclaiming-notes signed by himself, the competency of which had not been disputed. He maintained that it was unnecessary to obtain the signature of counsel.

It appeared that in the course of these proceedings several reclaiming-notes had been presented by the respondent which were signed by himself and not by counsel, to which no objection had been taken, and, in particular, that he had presented a reclaiming-note signed only by himself against an interlocutor pronounced by the Lord Ordinary on 27th October 1898, which had not been objected to, and upon which the Court, upon 17th December 1898, pronounced an interlocutor which bore that the Lords, having considered the reclaiming-note, . . . recalled the said interlocutor.

LORD PRESIDENT—There is no doubt that as a rule of practice this Court requires that reclaiming-notes shall be signed by counsel, but, as I understand and as I think it was admitted at the bar, the rule was not established by any Act of Parliament or Act of Sederunt or positive decision. This being so it would be unfortunate if it was not in the power of the Court to dispense with a rule founded only on practice, upon special cause for doing so being shown on any fitting occasion. Now, a striking peculiarity of the present case is that the reclaimer has in the course of these proceedings presented several reclaiming-notes not signed by counsel but only by himself, all of which have been entertained, the case on each occasion having been sent to the roll and afterwards considered. In particular, the last of these reclaiming-notes presented on 29th October 1898 was signed only by the reclaimer, not by counsel, and this Division of the Court by interlocutor of 5th November 1898 sent the case to the summar roll. The case was afterwards heard, and an interlocutor was pronounced on 17th December 1898, which refers to the reclaiming-note in these terms—[*His Lordship quoted the material part of the interlocutor, ut supra*]. Lord Pearson afterwards heard parties in the Outer House, and pronounced the interlocutor which it is now proposed to submit to review. It would be anomalous that a reclaiming-note should be entertained by the Court though signed only by the party at an earlier stage of the proceedings, and the same Court should be obliged to refuse to entertain a later reclaiming-note so signed when the reclaimer comes again with the object of following out the same proceeding to its completion after an interlocutor had been pronounced by the Lord Ordinary. If it is within the power of the Court on special cause shown to dispense with its own rule of practice, this seems to me to be a case in which we should do so. Accordingly, without giving any countenance to a general practice of entertaining reclaiming-notes which are not signed by counsel, and having regard to the very special circumstances of the case, including the statement made by the reclaimer at the bar that after doing his best he has been unable to obtain the signature of counsel, I think we may dispense with the necessity of having the reclaiming-note signed by counsel on this occasion.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court pronounced this interlocutor:—

"The Lords in the circumstances dispense with the signature of counsel to the reclaiming-note, and appoint the case to be put to the summar roll."

Counsel for the Petitioner—C. K. Mackenzie. Agents—Welsh & Forbes, S.S.C.

Counsel for the Respondent — Party. Agent—Party.

Tuesday, June 12.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

BOOTLAND *v.* M'FARLANE.

Public-House — Certificate — Reduction of Certificate—Application—Untrue Answer to Question in Application—Application not Fulfilling Statutory Requirements—Public Houses Acts Amendment (Scotland) Act 1862 (25 *and* 26 *Vict. c.* 35), *sec.* 8.

By section 8 of the Public-Houses Acts Amendment (Scotland) Act 1862 an applicant for a licence is required "truly to fill up an application" for a certificate, and it is directed that he "shall truly answer the several queries" contained in the schedule form, among these queries being the following:—