

sent by the Sheriff-Clerk on 12th November 1912 to Dr Freeland Fergus, Glasgow, being a medical referee under said Act, who reported on 18th November 1912 as follows:—“I hereby certify as follows—1. The said Charles Kennedy is now recovered from a serious injury to the right eye which has completely and permanently deprived him of the use of the eye. The injured organ is now quite quiet, and there is no pain even on deep pressure, and his condition is such that he is fit for any work which can be done on the surface by a man with one eye. 2. The incapacity of the said Charles Kennedy is not now due to the accident although it has been so probably till now. There is a distinct colour scotoma present, which I believe is due to his use of strong tobacco.”

“I was of opinion that, this being a reference by agreement under Schedule I (15) of the Workmen’s Compensation Act 1906, the second answer by the medical referee was conclusive on the question of the cause of the appellant’s existing incapacity, and that I was bound to end the appellant’s compensation. While my impression from reading the combined findings was that possibly the medical referee intended by the second answer merely to find that the physiological effects of the accident had ceased and determined, I was of opinion that looking to the absolute terms of the second finding I was not entitled to submit it to construction. Further, I was of opinion that in the case of such a reference I had no power to send the report back to the medical referee for explanation. Accordingly on 5th November 1912 I ended the compensation as from 18th November 1912.”

The question of law, *inter alia*, was—“Had I power to send the report back to the medical referee for explanation?”

LORD DUNDAS — [After dealing with questions with which this report is not concerned]—I should like to add a single word—though it is not necessary to do so, looking to the way in which the case is to be disposed of—in regard to the third question put to us. The learned arbiter expresses the opinion that in the case of a reference like this he had no power to send the report back to the medical referee for explanation. I do not agree with that view. Where the report of a referee is unintelligible to the arbiter, or ambiguous, or open to construction, I can see nothing to prevent him sending back the report for an explanation as to its meaning.

LORD SALVESEN — [After dealing with questions with which this report is not concerned]—I entirely agree with what Lord Dundas has said, and I think it is quite necessary that we should express our opinion because of the view which the Sheriff-Substitute has taken. I cannot lend any countenance to the view that when there is a living man who has given a report, and there seems to be great difficulty in getting at his meaning, one should be compelled to solve that difficulty on a

construction of the language he has used when the readiest method of getting at his meaning is to ask the man himself. I therefore disagree with the learned Sheriff in holding that his hands are tied by the statute or by any other consideration from asking the medical referee what he meant if there is an obvious ambiguity in his report.

LORD GUTHRIE — [After dealing with questions with which this report is not concerned]—I agree also in the view expressed by Lord Dundas and by Lord Salvesen that the Sheriff was wrong in thinking that, the medical referee’s findings being ambiguous, he was not entitled to send them back to ascertain exactly what was meant.

The LORD JUSTICE-CLERK concurred.

The Court answered the question of law in the affirmative.

Counsel for the Appellant—Crabbe Watt, K.C.—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Respondents—Horne, K.C.—Strain. Agents—W. & J. Burness, W.S.

Wednesday, February 19.

FIRST DIVISION.

(SINGLE BILLS.)

BRITISH ASSETS TRUST, LIMITED, PETITIONERS.

Company—Process—Capital—Petition—Re-organisation of Share Capital—Advertisement—Companies Consolidation Act 1908 (8 Edw. VII, cap. 69), sec. 45.

In a petition presented under section 45 of the Companies Consolidation Act 1908 for the confirmation of special resolutions which modified the conditions contained in the company’s memorandum so as to re-organise its share capital, the petitioners having moved for intimation of the petition without advertisement, the Court ordered intimation as craved.

The Companies Consolidation Act 1908 (8 Edw. VII, cap. 69), section 45, enacts—

“(1) A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to re-organise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes. . . . (2) Where an order is made under this section an office copy thereof shall be filed with the Registrar of Companies within seven days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed.”

The British Assets Trust, Limited, Edinburgh, petitioners, presented a petition

under section 45 of the Companies Consolidation Act 1908 for confirmation of certain special resolutions duly passed which, *inter alia*, purported to modify the conditions contained in the company's memorandum so as to re-organise its share capital by the division of its shares into shares of different classes. In moving for intimation of the petition on the walls and in the minute book, counsel for the petitioners submitted that advertisement of a petition for re-organisation of the share capital of a company was unnecessary in respect that it was a purely domestic matter, that it involved no reduction or alteration of amount of capital, and that by it the rights of creditors could not be affected. Reference was made to *in re Ashanti Development, Limited*, 1911, W.N. 144, 27 T.L.R. 498, and *Robert A. Munro & Company, Limited*, December 18, 1912, 50 S.L.R. 274.

The Court (LORD PRESIDENT, LORD JOHNSTON, and LORD MACKENZIE) ordered intimation as craved.

Counsel for Petitioners—Lord Kinross.
Agents—Guild & Shepherd, W.S.

Friday, February 21.

SECOND DIVISION.

[Sheriff Court at Dunfermline.]

SMITH v. FIFE COAL COMPANY LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (1)—Accident Arising out of and in the Course of the Employment—Breach of Rule by Miner—Miner Contrary to Rule Undertaking Duty Exclusively Reserved to Shot-Firer.

The use of explosives in a mine was regulated by certain statutory rules which provided, *inter alia*—“(a) Every charge shall be fired by a competent person (hereinafter called the shot-firer) appointed in writing for this duty by the owner, agent, or manager of the mine, and not being a person whose wages depend on the amount of mineral to be gotten. . . . (e) Where the charge is fired by an electrical apparatus the shot-firer shall not use a cable for the purpose which is less than 20 yards in length. He shall himself couple up the cable to the charge, and shall do so before coupling the cable to the firing apparatus. He shall also himself couple the cable to the firing apparatus. Before doing so he shall see that all persons in the vicinity have taken proper shelter.”

A duly appointed shot-firer was in the habit, unknown to the management and in breach of the regulations, of delegating to the miners working in his shift the duty of coupling the cable to the charge. No such prac-

tice was proved to exist so far as regarded the other shot-firers in the mine. A miner who worked in the shift where the practice obtained, having coupled the cable to the firing apparatus, was about to retire, when the shot-firer fired the shot and injured the miner.

Held that the accident happened while the miner was undertaking a duty outwith the sphere of his employment, and accordingly did not arise out of it.

Kerr v. William Baird & Company, Limited, 1911 S.C. 701, 48 S.L.R. 646, followed.

This was an appeal by way of Stated Case from a decision of the Sheriff-Substitute (UMPHERSTON) at Dunfermline in an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between James Smith, miner, Kelty, respondent, and the Fife Coal Company, Limited, Leven, appellants.

The Case stated—“This is an arbitration is an application to award compensation under the Workmen's Compensation Act 1906.

“The facts are as follows:—1. The respondent was a miner in Benarty Pit, which belongs to the appellants, and the Explosives in Coal Mines Order of 21st February 1910, made by the Secretary of State for the Home Department, under section 6 of the Coal Mines Act 1896, applied to the pit at the date of the accident after mentioned and was duly posted at the pithead. Said Order provides, *inter alia*, as follows—(a) . . . [quoted *supra* in rubric] . . . (b) Every charge of the explosive shall be placed in a properly drilled shot-hole and shall have sufficient stemming, and each such charge shall consist of a cartridge or cartridges of not more than one description of explosive. . . . (d) No charge shall be fired except by means of an efficient electrical apparatus so enclosed as to afford reasonable security against the ignition of inflammable gas or by a permitted igniter-fuse as hereinafter defined. (e) . . . [quoted *supra* in rubric]. . . .”

“In terms of section 2 (a) of said Order the appellants had duly appointed a man called Robert Howard to act as one of the shot-firers in the section in which pursuer worked, and at the time of the said accident Howard was so acting. The pursuer was not authorised to act as shot-firer. The shots in this pit were fired by the shot-firers by means of an electrical apparatus.

“2. The method of firing a shot is (1) to place the detonator in the hole prepared by the miner and to stem it, (2) to connect the detonator wire to the cable, (3) to connect the cable to the electric battery, and (4) to turn the handle on the battery. The placing of the detonator in the hole and stemming of the charge are always done by the miner, not by the shot-firer. The rest of the operation is, under the Explosives in Coal Mines Order above mentioned, the duty of the shot-firer. It was part of the respondent's duty to bore a hole for each shot and to charge the shot-