

law in the affirmative and found it unnecessary to answer the other questions.

Counsel for the Appellant—D. F. Clyde, K.C. — MacRobert. Agents — J. Douglas Gardiner & Mill, S.S.C.

Counsel for the Respondent—Macmillan, K.C.—Hamilton. Agents—Thomson, Dickson, & Shaw, W.S.

Friday, June 9.

## FIRST DIVISION.

[Lord Hunter, Ordinary.

ROBERT ADDIE & SONS' COLLIERIES,  
LIMITED v. SULLIVAN.

*Mines and Minerals—Statutory Regulation of Mines—Timechecker—Procedure for Appointment—Coal Mines (Weighing of Minerals) Act 1905 (5 Edw. VII, cap. 9), sec. 1 (2), (3).*

The Coal Mines (Weighing of Minerals) Act 1905 enacts—Section 1—“(2) A statutory declaration made by the person who presided at a meeting for the purpose of appointing a checkweigher . . . to the effect that he presided at that meeting, and that the person named in the declaration was duly appointed checkweigher . . . by that meeting, shall be forthwith delivered to the owner, agent, or manager of the mine, and shall be *prima facie* evidence of that appointment. (3) Where the checkweigher . . . was appointed by a majority ascertained by ballot . . . the declaration shall so state, and if he was not so appointed, then it shall state the names of the persons by whom or on whose behalf the checkweigher . . . was appointed.”

The foregoing enactments are made applicable to the appointment of a timechecker under the Coal Mines Regulation Act 1908 by section 2 (2) thereof.

A meeting was held for the appointment of a timechecker, when it was decided to have a ballot. No further meeting was held, but after the ballot the person who had presided signed a declaration in which the candidate successful at the ballot was stated to have been appointed.

*Held (dub.* Lord Skerrington) that the procedure had been irregular, and that mineowners were entitled to refuse to recognise the appointee.

The Coal Mines (Weighing of Minerals) Act 1905 (5 Edw. VII, cap. 9), sec. 1 (2), (3), is quoted *supra in rubric*.

The Coal Mines Regulation Act 1908 (8 Edw. VII, cap. 57) enacts—Section 2 (2)—“The workmen in a mine may . . . appoint . . . one or more persons, whether holding the office of checkweigher or not, to be at the pit-head at all times when workmen are to be lowered or raised, for the purpose of observing the times of lowering and raising and the provisions of the Coal Mines Regulation Acts 1887 to 1905 relating to the

checkweigher, and to the relations between the owner, agent, or manager of the mine, and the checkweigher shall, so far as applicable, apply to any person so appointed, as they apply to the checkweigher, with the substitution as regards appointment of the workmen in the mine for the persons who under those Acts are entitled to appoint a checkweigher.” Section 1 (7)—“For the purposes of this Act the expression ‘workman’ means any person employed in a mine below the ground who is not an official of the mine (other than a fireman, examiner, or deputy), or a mechanic or horsekeeper, or a person engaged solely in surveying or measuring.”

Robert Addie & Sons' Collieries, Limited, *complainers*, brought a note of suspension and interdict against Thomas Sullivan, 4 Crofthead Street, Uddingston, *respondent*, craving the Court to interdict him from “(first) entering upon the pit-head at the colliery known as the Viewpark Colliery of the *complainers*, situate in the parish of Bothwell and county of Lanark, and from taking part in or interfering in any way with the weighing of the output of the minerals at the said colliery, and from interfering with the hutches by which the minerals are raised at the said colliery, or with the weighing machines or apparatus for weighing the minerals thereat, and from exercising or pretending to exercise the office of checkweigher at said colliery, or doing any act as checkweigher or pretended checkweigher of the miners employed by the *complainers* thereat; and (second) from entering upon any part of the property or premises or works of the *complainers* at or near their said Viewpark Colliery.”

The respondent pleaded, *inter alia*—“2. The respondent being entitled (a) as timechecker and (b) as inspector to enter upon the *complainers'* premises, the crave of the note should be refused and interim interdict recalled.”

On 24th March 1915 the respondent was removed from the office of checkweigher by the Sheriff-Substitute at Hamilton (HAY SHENNAN), and he acquiesced in his removal, and did not now resist the first crave of the interdict.

The *facts* of the case appear from the opinion of the Lord Ordinary (HUNTER), who on 18th February 1916 granted interdict against the respondent as checkweigher, and “(second) from entering upon any part of the property or premises or works of the *complainers* at or near their said Viewpark Colliery, except in so far as is necessary for exercising the functions of inspector on behalf of the workmen at said colliery, under section 16 of the Coal Mines Act 1911, and decerns.”

*Opinion.*—“What I have to consider on the evidence is whether the respondent is timechecker at Viewpark Colliery and also inspector on behalf of the workmen in said colliery, or holds one or other of these offices. The respondent says that he was first appointed timechecker in 1910 by a meeting of the miners, and that although he never received any separate remuneration for so acting, he in the knowledge of the

complainers from that date discharged the duties of timechecker as well as of checkweigher. In my opinion there is no sufficient evidence of the respondent's having so acted. On 13th May 1915 a meeting of the workmen of the Viewpark Colliery was held in the Royal Hotel Hall, Uddingston. Notice of the meeting was given by a paper distributed among the workmen. According to the notice the business to be transacted at the meeting was the appointment of a checker under the Eight Hours Act 1908 and two local inspectors under the Mines Act 1911. It is proved that some of the workmen did not receive a copy of the notice calling the meeting and were ignorant of the fact that it was to be held. The number of workmen, including both surface and underground workers, employed at the colliery is 636, of whom about 100 attended the meeting. A motion that a checker be appointed was proposed and carried by thirty votes to sixteen in favour of an amendment against an appointment. On names of nominees being called for only the respondent's name was put forward, and it was decided that a ballot vote for or against should be taken on Monday, 17th May. Three men were appointed to take the ballot. This appears from the excerpt from the minute-book of the Lanarkshire Miners' County Union. That part of the minute dealing with the appointment of inspectors which was then made has been omitted from the excerpt. Notices as to the taking of a ballot were placed at the regular entrances to the mine, and on 17th May 1915 ballot boxes were placed at these entrances and ballot papers were distributed among the workmen. As a number of the workmen enter the mine by irregular entrances I think that some of the men entitled to vote did not receive voting papers. On a count being taken it was found that 336 had voted for the respondent and 132 had voted against him, while there were 6 spoiled papers. Only the underground workers, who number 523, are entitled to vote. It was not proved that anyone not entitled to vote had in fact voted.

"[His Lordship here dealt with the respondent's appointment as inspector, which was not challenged.]

"The question of the respondent's appointment as timechecker is more difficult and complicated. By section 2(2) of the Coal Mines Regulation Act 1908 (8 Edw. VII, cap. 57) an Act which limited the number of hours that men might be employed underground, it is provided—[His Lordship quoted the section, *v. sup.*]. It is necessary therefore to examine the statutory provisions as to the appointment of a checkweigher. That office was created under the Coal Mines Regulation Act 1887 (50 and 51 Vict. cap. 58). Section 13 of that Act deals with the appointment, duties, and removal of a checkweigher. Section 14 deals with the remuneration of a checkweigher who has been appointed by a majority ascertained by ballot of the persons employed at the mine who are paid according to weight. Nothing, however, is said as to the procedure to be adopted in making the appoint-

ment, or the giving notice to the owner or manager of the mine of the appointment. The Coal Mines (Weighing of Minerals) Act 1905 (5 Edw. VII, cap. 9) deals with these matters. By section 1(2) of that Act it is provided that a statutory declaration made by the person who presided at a meeting of the workers held for the purpose of appointing a checkweigher shall be forthwith delivered to the owner, agent, or manager of the mine, and shall be *prima facie* evidence of that appointment. (3) of the same section provides that where the checkweigher was appointed 'by ballot of the persons employed in the mine and paid according to the mineral gotten, the declaration shall so state, and if he was not so appointed, then it shall state the name of the persons by whom or on whose behalf the checkweigher . . . was appointed.' It appears clear, though it is not so expressed, that the Legislature contemplates the appointment being made by the men at a meeting held for the purpose. Under the Coal Mines (Checkweigher) Act 1894 (57 and 58 Vict. cap. 52) a penalty is imposed upon the owner, agent, or manager of a mine who refuses to offer proper facilities for the holding of any meeting for the purpose of making the appointment of a checkweigher. Section 3 of the Act of 1905 also provides that all persons 'who are entitled by the principal Act or this Act to appoint a checkweigher or deputy checkweigher shall have due notice given to them of the intention to appoint a checkweigher or deputy checkweigher, by a notice posted at the pithead or otherwise, specifying the time and place of the meeting, and have the same facilities given to each of them for the purpose of recording their votes either by ballot or otherwise in such appointment.'

"A great deal of the evidence laid before me dealt with the facilities afforded for voting and the want of knowledge on the part of some of the workers that a ballot was taking place. As these objections were not taken by those entitled to vote, who are not challenging the respondent's appointment, and as the ballot showed a clear majority in the respondent's favour, I should not be disposed to give effect to these grounds of challenge taken by the complainers. It appears to me equally clear that the complainers cannot object to the appointment on the ground that a timechecker may be removed upon the same grounds as a checkweigher. I am not entitled to assume, though it may be possible, that the Sheriff would have removed the respondent from both offices on account of the acts in respect of which he was removed from the office of checkweigher. I could only give effect to this contention if a checkweigher who had been removed from office were disqualified by statute from acting as timechecker. I have been unable to find such a disqualification in any of the statutory provisions to which I was referred. On the other hand, the owners of a mine appear to me to be entitled to insist on a statutory declaration being handed to them as a condition of their admitting anyone to the mine to act as checker. In the present case they have

received no such declaration as regards the respondent's appointment. There was no ballot taken on the 13th of May, and that meeting was not adjourned for the purpose of receiving the result of the ballot and making the appointment. The respondent maintains that he was validly appointed on 13th May by the meeting, apart from the ballot, but in that case the declaration would require to state the names of the persons by whom he was appointed. The declaration, however, does not contain these names, the reason being that the meeting only resolved to hold a ballot, but did not in fact appoint. [*The declaration sent is quoted by Lord Mackenzie infra.*]

"I propose to qualify the interim interdict so as to allow the respondent to discharge his duties as inspector, and *quoad ultra* to make the interdict perpetual."

The respondent reclaimed, and argued—The Coal Mines Regulation Act 1908 (8 Edw. VII, cap. 57), sec. 2(2), gave the workmen in a mine, in the sense of section (1) (7), the option to appoint a timechecker, and applied the existing machinery relating to checkweighmen to the timechecker as regards appointment, &c. That machinery was found in the Coal Mines Regulation Act 1887 (50 and 51 Vict. cap. 58), secs. 13 and 14 (1). By these sections a meeting of the workmen was not one of the essential steps in the procedure for the appointment. The Coal Mines (Weighing of Minerals) Act 1905 (5 Edw. VII, cap. 9), sec. 1 (2), dealt with notification of the appointment of a checkweighman and therefore of a timechecker to the employers. That was the purpose of the section, for the employers had an interest to have certain knowledge of the appointment, as it resulted in interference with their absolute rights. That section merely enacted that a declaration in terms of the statute should be *prima facie* evidence of an appointment, but not that it should be the only evidence. If, however, the declaration was the only evidence possible, the present declaration was in all its essentials—and certainly in so far as the employer's interests were concerned—unexceptionable, and in terms of the statute any defect in it was merely formal and without prejudice to anyone. That section did not make a meeting a prerequisite of a valid appointment. The Coal Mines Regulation Act 1887, sec. 14, dealt with the holding of a ballot, one of the methods of appointment, long before there was any reference to a meeting being held at all. If it, the declaration, was not essential as proof, the evidence disclosed that all the statutory requirements had been complied with. Equal facilities had been given to all who were entitled to vote—(Coal Mines (Weighing of Minerals) Act 1903, sec. 3—and no one not qualified to vote had been shown to have voted. But even if the appointment as timechecker was invalid, the interdict granted by the Lord Ordinary was too wide, for if elected to the office of timechecker validly, the claimer would still be debarred from exercising these functions by the interlocutor as it at present stood.

Argued for the complainers—The Lord Ordinary was right. The statute prescribed formalities which must be observed, as the result of this liberty to the employees was an encroachment on the rights of the complainers. If there was a meeting it was not properly convened. The notice called to the meeting all the workmen, whereas only underground workmen were entitled to appoint a timechecker. The business was not solely that of appointing a timechecker, but there was other business with which a different electorate was entitled to deal. It was proved that some of those entitled to vote had no notice of the ballot or ballot-paper, and it must be inferred that others in a similar position to these did not get either also—*i.e.*, those coming in by irregular entrances. Consequently equal facilities were not given to all. The declaration bore that a meeting was duly convened; that was disproved. It was not as the declaration stated a meeting of the workmen; no ballot took place at the meeting; and there was no appointment made by the meeting. The result of the ballot was not communicated to any meeting which could then have made the appointment. Hence, even if the declaration was not an essential formality, the respondent had failed to prove a valid appointment; but if the declaration was essential, then it misstated the facts which it recorded.

At advising—

LORD PRESIDENT—In this action the complainers seek interdict against the respondent entering upon any part of their property or premises or works at or near their Viewpark Colliery. The respondent maintains the right to be there by virtue of his appointment, by the workers at the colliery, to the office of timechecker—an office created by the Coal Mines Regulation Act 1908 (8 Edw. VII, cap. 57). The complainers contend that the respondent holds no valid appointment as timechecker in terms of the statute, and that even if he does they have not received the notice of the appointment to which the statute entitles them. I am of opinion that the complainers' contention is sound.

The procedure to be followed in the appointment of a timechecker is by statute declared to be the same as the procedure to be followed in the appointment of a checkweigher. No express statutory procedure is enjoined. It is very easy to infer from the provisions of section 1, subsections (2) and (3), of the Coal Mines (Weighing of Minerals) Act 1905 (5 Edw. VII., cap. 9), what the essential steps must be. There must be a meeting of those entitled to appoint, at which the appointment is made. Of that meeting due notice must be given to all those who are entitled to make the appointment. The appointment may be made by the persons present at the meeting, whose names must subsequently be given, or it may be made by a majority of those in the mine entitled to appoint, that majority to be ascertained by ballot. When the appointment at a meeting has been made, the person who presided at the meeting

must forthwith deliver to the mineowners a statutory declaration to the effect that he presided at the meeting at which the person named was appointed timechecker. If the appointment was made by majority, the statutory declaration must so say. If it was made by the persons present, the names of those persons must be given. And I ought to add that when a ballot is taken, equal facilities for recording their votes must be given to all those entitled to vote.

Now in the present case unquestionably a meeting was held on 13th May 1915. I assume that due notice in terms of the statute was given of that meeting. But it did not proceed to the appointment of a timechecker. As the minutes expressly bear, it considered in the first place whether or no a timechecker should be appointed, and, that question having been answered in the affirmative, nominations were called for. The respondent alone was nominated, and thereupon it was determined that a ballot should be taken for or against his appointment in terms of the statute, on 17th May.

On 17th May a ballot was taken. Equal facilities, I assume, were given to all those who were entitled to vote to record their votes, and it appears that a majority recorded their votes in favour of the respondent. But there and then the procedure abruptly terminated. On the following day a declaration was handed to the mineowners by the person who presided at the meeting on 13th May, to the effect that he presided at a meeting of the workmen employed in the Viewpark Colliery; that the meeting was held on 13th May 1915; that it was called for the purpose of appointing a timechecker for the said mine; and that, by a majority ascertained by ballot of the persons employed in said mine, Thomas Sullivan was duly appointed checker for the said mine, all in terms of the Coal Mines Regulation Acts, 1897 to 1911.

That intimation was *ex concessis* all wrong, for there was no meeting held on 13th May 1915 at which the respondent was appointed timechecker. There was no meeting at all held at which he was appointed timechecker, and none, of course, at which the person required to make the statutory declaration presided. Accordingly I come without hesitation to the conclusion that there was no appointment of the respondent as timechecker in terms of the statute, and consequently that he cannot resist decree going out against him. But if, contrary to my opinion, it be held that the respondent was on 17th May 1915 appointed to the office of timechecker, then no intimation of that appointment was ever made by the person who presided at that meeting, and as the statutory declaration is imperative, once more the respondent is unable to resist interdict going out against him.

The conclusion I reach therefore is this—(first) that the respondent never was appointed timechecker at this colliery; and (second) on the assumption that he was,

the statutory intimation, which is imperative, was never given to the complainers, and on these grounds I agree with the conclusion reached by the Lord Ordinary.

It was pointed out to us by Mr Moncrieff at the close of the discussion that if interdict went out in the terms expressed by the Lord Ordinary's interlocutor then the effect would be that even if the respondent at some subsequent meeting where the statutory procedure was observed was appointed timechecker at this colliery he would be unable to discharge the functions of that office. Mr Horne frankly conceded that this would be the effect, and that this effect was not intended. He suggested a variation on the terms of the interlocutor before us which would obviate the objection raised by Mr Moncrieff. With that variation I propose to your Lordships that we should adhere to the Lord Ordinary's interlocutor.

LORD JOHNSTON—I agree with your Lordship that the reclamer here has not been appointed timechecker of this mine. I do so upon these grounds, that the statutory declaration on which he is obliged to found is not consistent with fact, and could not be made consistent with fact, and at the same time satisfy under the statute. I adopt what your Lordship has said in explaining the case more fully.

LORD MACKENZIE—The respondent in this case maintains that he was validly appointed timechecker at Viewpark Colliery, one of the complainers' pits. If he was, then the complainers are not entitled to the interdict they ask. If he was not, then, subject to the modification proposed, the interlocutor of the Lord Ordinary ought to stand.

I am of opinion that the statutory requisites have not been observed. The regulations for the appointment of checkweighers are by reference made applicable to timecheckers. Timecheckers were introduced as the result of the legislation embodied in the Coal Mines Regulation Act of 1908, and by section 2 the statutory provisions relating to checkweighers apply to timecheckers. It is therefore necessary to see what these are. The Coal Mines Regulation Act 1887 by sections 13 and 14 makes provision for the appointment of checkweighers, including appointment by a majority ascertained by ballot. In this Act there is no provision for holding a meeting. In 1905 an Act to amend the provisions of section 13 of the Act of 1887 was passed. From its provisions it may be inferred that it had been found necessary to define more precisely by Act of Parliament the procedure to be observed in appointing checkweighers. The enactments material to the present question are section 1 (2) and (3) and section 3. The important points are that on a sound construction of section 1 (2) and (3) it is essential that the appointment should be made at a meeting of the workmen (section 1 (7) of the 1908 Act defines "workman" in this connection as "any person employed in a mine below ground"), and that as a statutory requisite the person presiding at such

meeting shall deliver to the owner, agent, or manager of the mine a declaration to the effect that he presided at the meeting, and that the person named in the declaration was duly appointed by that meeting. The declaration may state either that the appointment was made by a majority ascertained by ballot, or that the appointment was made by the persons whose names are stated in the declaration. The authority for the appointment is, in either case, derived from the meeting, and the *prima facie* evidence of the appointment is the statutory declaration. Section 3 deals with the notices to be given of the intention to appoint and the facilities to be given for recording votes. Questions are raised in the case upon this, but in the view I take it is not necessary to consider them.

What happened was that on 13th May 1915 there was a meeting of the men of Viewpark Colliery when by a majority of those present it was decided to appoint a checker, *i.e.*, a timechecker. The respondent was then nominated and was the only nominee. The minute of the meeting then bears—"it was decided that a ballot for or against be taken on Monday May 17th." It was decided that three men were to take the ballot. The ballot was taken and resulted in 336 voting for the respondent and 132 against. What purports to be the declaration in terms of the Act of 1905 is in the following terms—"I, Allan Roy, residing at 4 Crofthead Street, Uddingston, do solemnly and sincerely declare that I presided at a meeting, duly convened, of the workmen employed in the mine known as Viewpark Colliery, situated at Uddingston, and which meeting was held on the 13th day of May 1915, in Hotel Hall at Uddingston, and was called for the purpose of appointing a checker for said mine, and by a majority ascertained by ballot of the persons employed in said mine, Thomas Sullivan, residing at 4 Crofthead Street, Uddingston, was duly appointed checker for said mine, all in terms of the Coal Mines Regulation Acts, 1897 to 1905, 1911. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835. ALLAN ROY. Declared at Uddingston before me, James Hamilton, one of His Majesty's Justices of the Peace for the county of Lanark, this 17th day of May 1915." The criticisms upon this are that the respondent was not appointed on 13th May nor at any subsequent meeting. There was no ballot on 13th May, nor are the names of the persons by whom he is said to have been appointed stated in the declaration. The meeting on 13th May resolved to hold a ballot, but the result of this required to be reported to a subsequent meeting, if I am correct in my interpretation of the statute. This was never done, and the consequence is that the respondent has never been validly appointed. I therefore agree with the conclusion the Lord Ordinary has reached.

LORD SKERRINGTON—It would not have occurred to me, I confess, that there was anything substantially wrong either in the

statutory declaration or in the procedure by which this man claims to have been appointed to the office of timechecker at Viewpark Colliery. But, as your Lordships are unanimous in taking a different view, I do not think it would serve any good purpose for me to state my reasons.

The one important thing is that workmen in mines should know the procedure which they ought to follow in order to make an effectual appointment, and I assume that they will have no difficulty in following the course which your Lordships have pointed out.

The Court varied the interlocutor of the Lord Ordinary by adding thereto after the words "Viewpark Colliery" the words "so long as the respondent does not hold any valid appointment as timechecker at said colliery."

Counsel for the Complainers (Respondents)—Horne, K.C.—D. Jamieson. Agents—Drummond & Reid, W.S.

Counsel for the Respondent (Reclaimant)—Moncrieff, K.C.—Burnet. Agents—Simpson & Marwick, W.S.

Friday, June 9.

## SECOND DIVISION.

### MORISON v. KIDD.

*Landlord and Tenant—Small Holder—Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), sec. 2 (1) (ii) and (iii) proviso, and sec. 21—"Predecessor in the Same Family"—Assignment.*

In a proviso to section 2 (1) (ii) and (iii) of the Small Landholders (Scotland) Act 1911 it is provided that a tenant from year to year or a leaseholder shall be held an existing yearly tenant or qualified leaseholder where such tenant or leaseholder or "his predecessor in the same family" has provided or paid for the whole or the greater part of the buildings or other permanent improvements on the holding.

*Held* (1) that neither a father-in-law nor a brother-in-law could be a predecessor "in the same family," and (2) that an assignment by them was of no effect in this matter.

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), sec. 2, which enacts who are to be landholders, contains regarding (1), (ii), and (iii), which deal with the tenants who are eligible, the following proviso—" (a) Provided that such tenant from year to year or leaseholder (a) shall (unless disqualified under section 26 of this Act) be held an existing yearly tenant or a qualified leaseholder within the meaning of this section in every case where it is agreed between the landlord and tenant or leaseholder, or in the event of dispute, proved to the satisfaction of the Land Court, that such tenant or leaseholder, or his predecessor in the same family, has provided or paid for the whole or the greater part of the buildings