HOUSE OF LORDS.

Monday, November 9.

(Before the Lord Chancellor (Loreburn), Lord Robertson and Lord Collins.)

GEORGE *v.* GLASGOW COAL COMPANY, LIMITED.

(In the Court of Session May 27, 1908, 45 S.L.R. 686, 1908 S.C. 846.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (2) (*c*)—"*Serious and Wilful Misconduct*"—*Contravention of Special Rule in a Mine—Coal Mines Regulation Act* 1887 (50 *and* 51 *Vict. cap.* 58).

Under the Coal Mines Regulation Act 1887 an additional special rule was in force in a mine which provided—"The bottomer at a mid-working . . . . shall not open the gate fencing the shaft until the cage is stopped at such mid-working . . . . ."

A bottomer at a mid-working, in need of the cage, signalled for it by calling down the shaft to the bottomer at the foot, who again signalled to the engineer at the surface to raise the cage which was then at the foot. This was the usual mode of signalling, and the engineer on receipt of the signal, generally, without further signal, stopped the cage at the mid-working, but he did not invariably do so. On the occasion in question he did not stop the cage at the mid-working. The bottomer there after having heard the signal given to the engineer, without ascertaining whether the cage had stopped, in breach of the additional special rule, opened the gate fencing the shaft, and then went behind his hutch and pushed it into the shaft. The hutch fell to the bottom of the shaft dragging the miner with it, and he received injuries, which however were not serious or permanent. A few days prior to the accident he had been warned as to non-observance of the rule. In an arbitration under the Workmen's Compensation Act 1906 the arbiter found that the bottomer's injuries were due to his own "serious and wilful misconduct," and refused compensation.

Held that there was evidence upon which the arbiter might so find.

Observations (*per* Lord Chancellor and Lord Robertson) upon the effect towards establishing "serious and wilful misconduct" of an admitted or proved breach of a statutory rule by the workman.

This case is reported *ante ut supra.*

George, the claimant (pursuer), appealed to the House of Lords.

At the conclusion of the argument for the appellant, counsel for the respondents not being called upon—

Lord Chancellor—The only question between the parties in this appeal was whether or not what the workman did or omitted to do amounted to serious and wilful misconduct. The only point for your Lordships is whether or not there was evidence on which any reasonable man could answer, as the Sheriff here answered, the question in the affirmative. In my opinion there was such evidence, and that being so this appeal should be dismissed; for we cannot review the finding.

I desire to add but a very few words. In my opinion it is not the province of a Court to lay down that the breach of a rule is *prima facie* evidence of serious and wilful misconduct. That is a question purely of fact to be determined by the arbitrators as such. The arbitrator must decide for himself, and ought not to be fettered by artificial presumptions of fact prescribed by a court of law.

Lord Robertson—I concur. The scope of the present discussion is determined by the 14th section of the statute, and what we are in search of is a question of law. Unless a question of law be discovered we have no jurisdiction in the matter.

Now, that consideration imposes, I think, a certain reserve on the tribunal of appeal in discussing what is really a matter of inference from evidence; and I do not propose to dogmatise or to express any definite opinion as to the materials which the arbitrator here had before him. I shall, as your Lordship has done, add merely one or two words which I think will be found to be in harmony with the authoritative decisions on this subject, and which may help in the subsequent consideration or administration of this Act.

First of all, I entirely agree with what your Lordship has said, that the composite question whether there is anywhere serious and wilful misconduct cannot be determined by any cut-and-dry rules or even rules of presumption. I do not think, however, it is rash to say, in reference to the statutory rules, that we are here considering in the first place the word "misconduct," and we have to dismiss from our minds altogether the prejudiced and inflamed meaning of the word "misconduct" which sometimes arises. The question here is not whether you could call it moral misconduct. You are dealing here with the conduct of a miner, and what you are in search of is misconduct on his part in regard to his business; and I do not think it is rash to say, if the rule tells him not to do something, that may be *prima facie* evidence of misconduct. It is a very different question whether it is serious and wilful misconduct. The determination whether those epithets are justified depends upon more complex considerations.

In the present instance, however, I think there are one or two considerations which are completely sufficient to vindicate the arbitrator as having been within his province in deciding that this was serious and wilful misconduct. The first is this—This man not merely must be held to have

known perfectly well the rule which categorically forbade him to do what he did do, but it had been brought home to his business and bosom, because in the twenty-first finding the arbitrator has found that a day or two prior to this very accident this man had been warned in consequence of previous transgressions in this very matter. Now, after that, I must say I think it is very difficult to say that the arbitrator had no ground on which he could legally proceed in finding that there was wilful misconduct.

The other question, as to whether it was serious misconduct, seems to me again to derive very great help from the broadest facts of this case. It was in consequence of his breach of this rule that this man was pitched down this shaft, and a rule which is directed to prevent that occurrence seems to me to be in its nature, in its subject-matter, of a serious character, and by consequence a breach of it to be serious. Now, in saying that I am not in the least traversing or going against what has been said in previous cases; because all that was said in previous cases about the relation of the word "serious" to the consequences is that you are not to judge by the event in that particular case whether it is serious or not. I supplement that by saying that you are to judge of the question of seriousness by reference to the subject-matter, if it touches life and limb.

LORD COLLINS—I am entirely of the same opinion.

Their Lordships dismissed the appeal with expenses.

Counsel for the Appellant (Pursuer)—Dean of Faculty (Scott Dickson, K.C.) — Atherley Jones, K.C. — A. Moncrieff. Agents—Simpson & Marwick, W.S., Edinburgh—Smiles & Company, London.

Counsel for the Respondents (Defenders)—Wm. Hunter, K.C.—Carmont. Agents—W. & J. Burness, W.S., Edinburgh—A. & W. Beveridge, London.

Tuesday, November 10.

(Before the Lord Chancellor (Loreburn), Lord Ashbourne, Lord Macnaghten, Lord Robertson, Lord Atkinson, and Lord Collins.)

GILLESPIE *v.* RIDDELL.

(In the Court of Session, February 20, 1908, 45 S.L.R. 514, and 1908 S.C. 628.)

Entail—Lease—Powers of Heir of Entail in Possession—Obligation to Take over Sheep Stock on Expiry of Lease—Transmissibility of Obligation Undertaken by One Heir of Entail in Possession against a Succeeding Heir of Entail in Possession.

A succeeding heir of entail in possession, in that character, is not bound by the obligation, undertaken by a preceding heir of entail in possession in a lease granted by him of a sheep farm on the entailed estate, that the sheep stock on the farm will be taken over by the landlord on the expiry of the lease, such an obligation, if attempted to be made a real burden on the entailed estate, constituting a contravention of the entail.

Per Lord Robertson—"No act of administration has ever been held binding on a succeeding heir which did not stand the test of complying in its nature and consequences with the conditions of the entail."

This case is reported *ante ut supra.*

The pursuer (respondent in the Inner House) appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—I have had the advantage of reading the opinion which my noble and learned friend Lord Robertson has written, and I entirely agree with it, as also do my noble and learned friends Lord Macnaghten and Lord Atkinson.

LORD ASHBOURNE—I also entirely concur.

LORD ROBERTSON—I cannot profess to entertain any doubt of the soundness of this decision.

Each of the learned Judges of the First Division has delivered a careful judgment, discussing the authorities which bear upon the subject and tracing those authorities to indisputable principles of entail law. So convincing have I found this exposition of the question that I regard those three opinions as constituting a compendious account of this branch of the law which must hereafter be studied as of the highest authority.

This being so, I content myself with reminding your Lordships that the object of the present action was to compel the respondent to pay to a sheep farmer the price of his stock of sheep on a farm on this entailed estate. The respondent takes the estate not from the late heir of entail (who granted the lease out of which this claim arises), but from the maker of the entail (she being the person designated in the entail as the heir now entitled to take). The respondent does not represent the granter of this lease, and is not liable for his debts. She says that this money claim could not in any manner of way be made to affect the estate as a real burden without a manifest infringement of the conditions of the entail. She goes on to say that no heir of entail can be liable to pay a debt of a previous heir which could not be made to affect the estate itself. These propositions are supported by various authorities, cited by the learned Judges, which apply to the present question, not by analogy or construction, but directly.

Your Lordships will remember that the facts of the present case point the application very clearly. Sir Rodney Riddell, the late heir, grants this lease of a sheep farm which stipulates for a fixed annual rent, and then engages that the sheep shall be taken over at the end of the lease at the