jurious as those inevitably connected with the former system, that some provision should not have been made regulating the mode in which the latter mines were to be worked. That, however, is not done. On the contrary, a reservation clause is introduced in general terms, not specifying any particular mode of user or imposing any limit on output, but contemplating injury of some kind to the mine demised, and providing for the payment of compensation to the lessees in respect of it. By the clause dealing with the underlying mines the option of taking a lease of them is given to the appellants, and it is then provided that it shall be lawful for the reversioner or his under-tenants to enter upon any part of the mining area demised and "to sink to, work, get, and carry away all or any of the said underlying mines, and for the purposes aforesaid or any of them to sink, make, erect, and use all such pits, buildings, engines, machinery, roads, works, and conveniences, upon, through, or under all or any of the same lands, and over, under, or across ways, levels, and workings of the lessees or their executors, administrators, or assigns as shall be necessary or expedient, so that such roads, ways, levels, and workings be not thereby unnecessarily injured." It then provides that the lessees shall leave such pillars or ribs of coal and other minerals as the lessor or his agent shall require on account of the shafts, buildings, and other works necessary or proper for working the underlying mines, no royalty being charged in respect of the pillars and ribs of mineral so left. There is no provision that pillars shall be left in the underlying mine to sustain the "Top Hard Seam," while the reservation of a power to work and carry away all the underlying mines is entirely inconsistent with the notion that a system was to be adopted which, if subsidence was to be prevented, would necessitate leaving over 75 per cent. of the minerals *in situ*. It is further provided that in such case the beneficial reversioner shall indemnify the lessees against any physical damage which may be caused by the operations of the tenants of the underlying mines to mines or mining operations of the lessees. This is followed by an arbitration clause. I think that the word "damage" is qualified by the adjective "physical" in order to exclude consequential damage, such as the loss of profit or the like. It would appear to me, therefore, that, having regard to the evidence, this clause must, in order to carry out the intention of the parties, be held impliedly to authorise the adoption by the reversioner or his future tenants of the "long wall" system of mining with its inevitable consequences in the "Deep Soft Mine," nor do I think that there is anything in the judgment of Lord Macnaghten in the case of *Butterknowle Colliery Company* v. *Bishop Auckland Co-operative Society* (*cit.*) which forbids such a construction. One of the things which differentiates that case from the present is, to use the language of Farwell, L.J., "the impossibility, to the knowledge of both parties, of getting the lower seam without letting down the upper seam, and the possibility of letting down the upper seam without totally destroying it." The construction of the lease of the lower strata which would mean derogating from the grantor's grant to such an extent as to make the thing granted comparatively valueless would be that which required that 75 per cent. of that seam should be left unworked. Past experience has shown that the mine can be worked on the "long wall" system without any loss comparable to this. The instrument of severance, in this case the first lease, has, it would appear to me, authorised by necessary implication the interference with and disturbance of the upper mine which is complained of, in that it has authorised the system of mining of which that disturbance is the inevitable consequence, and thus it comes within the exception mentioned by Lord Macnaghten. There is, therefore, no room for a presumption such as that which is taken to apply to cases between the owner of the surface and the owner of a subjacent mine —namely, that the parties to the document of severance could not have intended that the surface should be destroyed when effect can be given to the rights of both parties by restricting the mine owner to working his mine "so far as is possible without letting down the surface." I am therefore of opinion that the judgment of the Court of Appeal was right, and should be affirmed, and the appeal dismissed with costs.

LORD COLLINS—I agree.

Appeal dismissed.

Counsel for Appellants—C. A. Russell, K.C.—Upjohn, K.C.—MacSwinney. Agents —Thicknesse & Hull, Solicitors.

Counsel for Respondents—Sir R. B. Finlay, K.C.—Astbury, K.C.—Waddy. Agent—J. P. Garrett, Solicitor.

HOUSE OF LORDS.

Thursday, April 21, 1910.

(Before the Lord Chancellor (Loreburn), Lords James of Hereford, Atkinson, Shaw, and Mersey.)

GRANT *v.* OWNERS OF S.S. "EGYPTIAN."

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Ship—Collision—Remoteness of Damage—Subsequent Negligence on Part of Injured Ship—Negligence of Common Servant of Both Parties.

The "Egyptian" was negligently navigated by her temporary master B., whereby the "Nelson" was damaged while at anchor in harbour. B. was also the watchman in charge of the "Nelson" but he negligently failed to discover her injuries and stop a leak, owing to which the "Nelson" sank.

Held that the owners of the "Egyptian" were not liable for the whole loss of the "Nelson," but only for the injuries originally caused.

Under the circumstances stated *supra*, the trawler "Nelson" was injured and sunk in harbour. Her owner (appellant) obtained judgment for the whole amount of damage, but this was reversed by the Court of Appeal (LORD ALVERSTONE, C.J., BUCKLEY and KENNEDY, L.JJ.).

At the conclusion of the argument for the appellant their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In this case it is admitted that the "Egyptian" was to blame for causing damage to the "Nelson," but the question is whether the "Egyptian" can show that the damage naturally flowing from the injury has been increased beyond what it would otherwise have been by reason of the negligence of the owners of the "Nelson" or their servants. Now I for one should always scrutinise closely any contention by which a wrongdoer seeks to throw upon an innocent party any portion of the consequences which flow from the wrong. An admitted fault of the "Egyptian" does not place her in a very favourable position for escaping the actual consequences of the collision which took place. But in this instance two Courts—in particular the Court of first instance which saw the witnesses—have found, with the concurrence of the Elder Brethren, that there was negligence by a servant of the owners of the "Nelson," by one Barron, whose neglect increased the damage and led to the sinking of the ship. It is a circumstance of importance that both Courts have found in the same way upon a question of fact, and that would naturally have very great weight with your Lordships according to your familiar practice. But I must say that I think that it is the case also—and I concur in that view of the facts with the learned Judges in both the Courts below—that the watchman, knowing of the collision, did not take proper and reasonable steps for the purpose of examining the part of the ship where the impact took place. Now I agree with the Court of Appeal that this duty was owed by Barron, the watchman, to his employers, and when he was required to examine the "Nelson," knowing that she had been struck, he was required to do so within the scope of, and by reason of, his duty to his employers the owners of the "Nelson," and I cannot agree with the view that Deane, J., took of the law. I cannot see how it can be said that he the less neglected his duty to the owners of the "Nelson" by reason of the fact that he had been guilty of a prior act of neglect towards them in taking control of the "Egyptian" and bringing her into dock. Accordingly I think that this appeal must be dismissed. But after the argument on the merits had been heard, I put to the counsel for the respondents a view, which I certainly entertain decidedly myself, that in this particular case it was extremely hard upon the owners of the "Nelson," and that had it not been for the fact that the "Egyptian" had employed this man, while acting in service to others, to bring their vessel into the dock, the accident presumably would not have taken place at all. I put that view to Mr Batten with regard to the question of costs, and he has indicated on behalf of his clients that he would desire that the House rather should deal with that point. I have not suggested, and I do not desire to suggest, anything in the nature of moral obliquity on the part of the owners of the "Egyptian," but I think that it is rather hard that they employed a servant of the "Nelson," in effect, to ram the "Nelson," and then seek to escape the consequences by saying that that same person failed also, in the subsequent hours, in his duty to the owners of the "Nelson" itself. Under all the circumstances, while your Lordships ought, I think, to dismiss this appeal, I think that there ought not to be any costs of this appeal upon either side.

LORD JAMES OF HEREFORD—I concur.

LORD ATKINSON—My view of this case is, shortly, this:—It is admitted that the collision occurred through the negligence of those for the time being in charge of the "Egyptian" on behalf of her owners. It so happens that the person who was in charge, one Barron, was the plaintiffs' watchman. Some confusion has, I think, been caused in the case by reason of this double position which Barron occupied. In my view the case must be decided in point of law as if Barron had never been on board the "Egyptian," with this qualification, that his position there fixed him with full knowledge of the fact that the collision had occurred, and of its nature. The defendants have pleaded that the plaintiffs could by the exercise of ordinary care have avoided the consequence of the defendants' negligence. The question as it appears to me is, Have they proved that plea? In my opinion they have. Barron, as watchman of the plaintiffs' ship, with the full knowledge that he had of the collision, was bound I think to exercise ordinary care to ascertain the nature of the injury done. He failed to exercise such ordinary care. Had he exercised it he must, I think, on the evidence, have ascertained this injury, what it was, and its true nature; and had he ascertained it, it is practically admitted that the mischief could have been remedied or prevented by plugging this hole. I fully concur in the announcement which the Lord Chancellor has made as regards the costs, because it is undoubted that the defendants in this action have inflicted serious injury upon the plaintiffs, and yet they escape from the consequences of that injury by reason of the negligence of the plaintiffs' servant, whom they had—I think it is not using an extreme expression to say—decoyed away from his proper business and used for their own purposes. I am very glad that the costs of this appeal should not be given to

those who have been successful under such conditions.

LORD SHAW—In this case a slight injury was done to the steamship "Nelson" by drawing a rivet eyehole in her starboard quarter out of its position and into the body of the ship. That was a slight injury, the responsibility for which is acknowledged by the defendants, and that has been the subject of no litigation. Following it, however, another and more serious occurrence took place, viz., the sinking of the vessel. In these cases two principles, too often put separately but really conjoined, may be stated, viz., that the defendants are liable for the damage which is the natural and direct consequence of their wrongful act; that would cover the slight injury to which I referred. The second principle is, that the defendants are not liable for any further damage which could have been avoided or minimised by the exercise of reasonable care on the part of the plaintiffs. This is really not a separable proposition from the other in the sense of being independent of it; it is only a development or corollary of the former proposition, because the latter further damage is caused not as the natural and direct consequence of the defendants' act but by reason of the neglect of that care which was reasonable in the circumstances on the part of the owners of the "Nelson." That neglect is found to be established in fact. It led—and casually considered it alone led—to the sinking of the ship, and accordingly the responsibility for it cannot be placed upon the defendants. These two things have been properly distinguished by the owners of the "Egyptian" throughout. Their offer of compensation, limited to the slight injury which was the result of their negligence, has been justified by the result of this litigation, but the further damage now claimed has not been found due. In my opinion this result is correct, as the further damage fell on the plaintiffs' ship by reason of the plaintiffs' own neglect already referred to. On the matter of costs, I agree that the attitude taken very properly by the respondents' counsel at your Lordship's Bar has enabled us to do what, underneath all these transactions, may be considered to be a substantial act of justice.

LORD MERSEY—I concur.

Appeal dismissed.

Counsel for Appellants—Laing, K.C.—Balloch. Agents—Woodhouse & Davidson, Solicitors.

Counsel for Respondents—Batten, K.C.—Bateson. Agents—Deacon & Company, Solicitors.

HOUSE OF LORDS.

Thursday, April 28, 1910.

(Before the Lord Chancellor (Loreburn), Lords Atkinson and Mersey).

CATT *v.* WOOD.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Friendly Society — Friendly Societies Act 1896 (59 *and* 60 *Vict. cap.* 25), *sec.* 68—*Expulsion of Member—Action of Damages for Wrongous Expulsion—Competency—Jurisdiction.*

The Friendly Societies Act 1896, section 68 (1), enacts — "Every dispute between a member . . . and the society or branch, or an officer thereof, . . . shall be decided in manner directed by the rules of the society or branch, and the decision so given shall be binding and conclusive on all parties without appeal, and shall not be removeable into any court of law or restrainable by injunction, and application for the enforcement thereof may be made to the County Court."

The appellant was a member of a friendly society and had a dispute with them as to his right to sick pay. The arbitration committee decided against his claim. The appellant appealed successively to the executive committee and the district arbitration committee of the head district, who also disallowed his claim, and under the rules ordered him to pay the costs. He refused to pay, and on the expiry of a year he was suspended and then expelled, all in accordance with the rules. He brought an action against the society for injunction and damages.

Held that the proceedings of the society complained of were not *ultra vires*, and being in accordance with the rules of the society were not within the jurisdiction of a court of law.

Andrews v. *Mitchell* (1904, 42 S.L.R. 474, [1905] A.C. 78) *distinguished.*

The appellant raised an action of injunction and damages against the respondents under circumstances stated *supra* in rubric and in the judgment of the Lord Chancellor.

Judgment against the appellant was affirmed by the Court of Appeal (VAUGHAN WILLIAMS, FARWELL, and KENNEDY, L.JJ.).

At the conclusion of the arguments their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I am glad to learn from the learned counsel who appeared for the appellant in this case that he does not complain of any hardship if he be wrong in the legal contentions which he has advanced before this House. I must say that I do not share any of the doubts which seem to have been expressed in the Courts below as to the decision at which your Lordships should arrive. There is no