is not to defer to the opinion of foreign experts. It is true that in that case the Court first ascertained by reference to English counsel that there was no technical rule of English law to govern the interpretation of the will; but then every reference to foreign counsel or to an English court necessarily involves a preliminary decision that there is matter which falls to be determined by foreign law and is not capable of construction in this Court. This was clearly the case in *Trotter* v. *Trotter* (3 W. & S. 407), on which the reclaimers' counsel relied. The question was as to the sufficiency of words of conveyance in an Indian will to carry real property in India, and Lord Cunninghame says—"No one who looks at the case could doubt that the legal construction of Colonel Trotter's will was unintelligible to any but an English lawyer. It was as purely a technical question of English law as ever was submitted to a court." I agree with Lord M'Laren that if there had been in this case any relevant averment of any technical rule of construction peculiar to the law of British Guiana inquiry might have been necessary, but nothing of that kind is suggested. I cannot agree with the reclaimers' argument that the word effects has a technical meaning peculiar to the law of Scotland or that any such technical meaning has been recognised by the decision in this Court. The word is one of ordinary language and has been construed in the decisions according to its ordinary meaning. I agree with the Lord Ordinary that this will is expressed in ordinary language, and that there is no relevant averment that it contains any technical terms or that it must be construed in accordance with any technical canon of construction peculiar to the place where it was made. I think we are bound to construe the will according to its plain meaning, and so construing it I agree with the Lord Ordinary and Lord M'Laren.

LORD ADAM concurred.

The Court adhered.

Counsel for the Claimants and Reclaimers—William Campbell, K.C.—Munro. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Claimant and Respondent—The Solicitor-General (Dundas, K.C.)—C. N. Johnston, K.C.—Howden. Agent—W. G. L. Winchester, W.S.

Counsel for the Real Raiser—J. A Christie. Agents—St Clair Swanson & Manson, W.S.

Friday, February 3.

FIRST DIVISION.

HEPBURN, PETITIONER.

Burgh — Burgh Register of Sasines — Authentication of Minutes in Minute Book of Burgh Register of Sasines—Town-Clerk.

A town-clerk on entering upon the duties of his office found that certain minutes in the minute book of the burgh register of sasines had not been authenticated by the signature of his predecesssors. He presented a petition in which he asked authority to authenticate and subscribe all such unsigned minutes. The Court *granted* the prayer of the petition.

John Scrymgeour Hepburn was appointed town-clerk of Rothesay upon the 7th December 1903. On entering upon the duties of his office he discovered that the minute of a deed presented for registration in the burgh register of sasines on the 19th March 1896, and all the minutes of deeds presented for registration between and including 1st April 1896 and 7th February 1901, and between and including 3rd March 1902 and 10th March 1902, although entered in the minute books, had not been authenticated by the signature of the town-clerk for the time being, as it was his duty to have done. The deeds so unauthenticated numbered 434.

Hepburn presented a petition in which he asked the Court "to authorise the petitioner to authenticate and subscribe the minutes entered in the minute books of the burgh register of sasines of the royal burgh of Rothesay on the 19th day of March 1896, and between and including the 1st day of April 1896, and the 7th day of February 1901, and between and including the 3rd day of March 1902, and the 10th day of March 1902, and any other minute or minutes which may hereafter be discovered not to have been subscribed by the town-clerk for the time being, to the same effect as the said town-clerk for the time being might have done himself; and to authorise the petitioner to record this petition, and any warrant following thereon, in the said burgh register of sasines."

The Court granted the prayer of the petition.

Counsel for the Petitioner — Morton. Agents—Scott & Glover, W.S.

Tuesday, February 14.

SECOND DIVISION.

[Sheriff-Substitute at Hamilton.

SNEDDON *v.* GLASGOW COAL COMPANY, LIMITED.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1 (2)—*Injury Attributable to Serious and Wilful Misconduct — Meaning of "Attributable."*

A stated case in an appeal under the Workmen's Compensation Act 1897 set forth that four miners, in direct contravention of the regulations of the mine, were riding upon the top of loaded hutches in a tunnel of the mine; that in so doing they were guilty of serious and wilful misconduct; and that one of

them was killed by a stone which fell from the roof of the tunnel on the hutch upon which he was riding. There was no evidence that the fact of the men being upon the hutches caused the fall of the stone.

Held that the injury to the workman was not "attributable" to his misconduct within the meaning of sec. 1, sub-sec. 2 (c), of the Act, in respect that there was no causal relation between his misconduct and the injury which he suffered.

Section 1, sub-sec. 2 (c), of the Workmen's Compensation Act 1897 provides as follows:—"If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman any compensation claimed in respect of that injury shall be disallowed."

In an arbitration under the Workmen's Compensation Act 1897 between Mrs Margaret M'Lean M'Lay or Sneddon, widow of the deceased John Miller Sneddon, miner, as an individual and as tutrix-at-law of her pupil children, and the Glasgow Coal Company, Limited, the Sheriff-Substitute of Lanarkshire, at Hamilton (A. S. D. THOMSON) awarded the claimant compensation for the death of her husband.

At the request of the Glasgow Coal Company, Limited, the Sheriff-Substitute stated a case for appeal, which set forth—"(1) That on 4th May 1904 the said deceased John Miller Sneddon was a miner in respondents' Kenmuirhill Colliery, and a workman in terms of the Workmen's Compensation Act 1897. (2) That on said date, at the close of their day's work, he and three other workmen, including the assistant oversman, got on top of a rake of loaded hutches drawn by a pony, for the purpose of being conveyed to the pit bottom on their way home. (3) That they had no permission from the manager to do so, and that in doing so they contravened Special Rule No. 72, which is in force in said pit, and is duly enforced in terms of the Coal Mines Regulation Act 1887. (4) That they were thereby guilty of serious and wilful misconduct. (5) That as the hutches were being drawn to the pit bottom a large stone about 15 feet in length and weighing several tons fell from the roof, with the result that he was instantaneously killed. (6) That the roof of the roadway is about 5 feet above the pavement, and the top of the coal in the hutches was about 3 feet 9 inches above the pavement, and that there was plenty of room (30 inches on one side and 24 inches on the other) between the hutches and the walls for men to walk. (7) That the deceased's wages were £1, 8s. 7d. a-week, entitling his dependants to compensation under said Act to the extent of £222, 19s. (8) That the applicant and her pupil children before mentioned were dependent upon the deceased within the meaning of said Act, and were entitled to said sum of £222, 19s. as compensation accordingly.

"In these circumstances I found that, although by lying on the hutches the deceased contravened Special Rule No. 72, and was thus guilty of serious and wilful misconduct, his death was not 'attributable' to such misconduct, and that the accident arose out of and in the course of deceased's employment, and I awarded the said Mrs Margaret M'Lean M'Lay or Sneddon as compensation £74, 6s. 4d., and as tutrix for her said children £148, 12s. 8d."

The question of law for the opinion of the Court was—"Was the death of the said John Miller Sneddon, occurring as it did under the circumstances above set forth, 'attributable' within the meaning of the Act to his serious and wilful misconduct in contravening said special rule, so as to bar the claimants from recovering compensation under said Act in respect of his death?"

Argued for the appellants—There was here a question of law for the opinion of the Court, viz., what was included under the word "attributable"—*Dailly* v. *John Watson, Limited*, June 19, 1900, 2 F. 1044, 37 S.L.R. 782; *Condron* v. *Gavin Paul & Sons, Limited*, November 5, 1903, 6 F. 29, 41 S.L.R. 33. The fact that the workman could not have been killed had he not been on the hutch at the time when the stone fell was sufficient to prove that the accident was "attributable" to his misconduct in being there.

Argued for the respondent—The question stated by the Sheriff was one of fact and not of law and should not therefore be considered by the Court. In any event, however, the accident was not "attributable" to the deceased's misconduct, as the fact of his being on the hutch was in no way the cause of the stone falling from the roof. There was no causal relation between the misconduct and the accident.

LORD M'LAREN—The case relates to an accident which occurred to a miner when he was on his way homewards in an underground passage of the mine. According to one of the rules, No. 72, which is in force in the pit, and which is found to be a lawful rule in terms of the Coal Mines Regulation Act 1887, miners are prohibited from riding on the hutches employed for carrying coal along the underground passages. In this case the miner, whose death resulted from the fall of a stone, was along with other miners riding on one of the hutches indisputably in contravention of the rule. While the "rake" of hutches was on its way a large stone fell from the roof and instantaneously killed the miner, whose family are now suing for compensation. The Sheriff has found as matter of fact that riding on the hutch was serious misconduct on the part of the workman—not simple misconduct but serious misconduct. I take it that means that he was exposing either himself or his master's property to danger, and that this was not a trivial contravention of a rule. Then he comes to the conclusion that "although by lying on the hutches the deceased contravened Special Rule No. 72, and was thus guilty of serious and wilful misconduct, his death was not "attributable" to such misconduct, and that the accident arose out and in the course of deceased's employment.

I think the question whether the death of Sneddon was attributable within the meaning of the Act to his own misconduct is a proper question for the consideration of a court of appeal. It has been held in both Divisions of this Court, and also in the English judicatories, that every question of the construction of a statute is a proper subject of appeal to the higher court, and I think the question of law which the Sheriff here puts to us is neither more or less than this—What is included under the word "attributable?" I think that under that word there must be some causal relation between the misconduct of a workman and the injury which he suffers. It would not do to say that he was carrying a naked light on his person at the time when the stone came down, because although that would be a very serious act of misconduct in a mine where naked lights are not permitted, it has nothing to do with the accident or the consequent injury. It does not follow, however, that we are to interpret the word "attributable" as meaning that misconduct is the sole and only cause of the man's death or injury. It is enough that it is a material cause that in some way contributes to the unfortunate result. Therefore I think that the question to be considered under the word "attributable" is very much the same as we have to consider in cases at common law where there is fault on the part of the employer or his servant, and the question is, whether the word means that the injury was either caused solely by the workman's own fault, or was contributed to materially by his act or fault.

Now, in this case the Sheriff has come to the conclusion that the fall of the roof was not attributable to the miner's contravention of the rule by mounting the waggon, and it is, or at least includes, a question of fact, because I can well believe that there might be cases where if a considerable number of men, for example, got into a train of empty hutches, and in the opinion of experts the total weight upon the train of hutches and the consequent vibration was the cause of dislodging loose stones in the roof at the moment when the train was passing, if that were proved or inferred from sound scientific and technical evidence, then the conclusion would be irresistible that the injury was attributable to the contravention of the rule. But then in the present case the Sheriff has found that the fall of stone and the consequent death of the workman were not attributable to his having mounted the waggon, and apparently his view is that the man might have met his death just the same if he had been walking behind the waggon instead of lying on the top of it. In the absence of scientific evidence to establish that additional weight put on this waggon was the cause of the stone coming down I am unable to differ from the Sheriff. I do not know that on the matter of fact it would have signified whether I differed or not, for we are only a Court of Appeal as to matters of law, but so far as I understand the facts I think the Sheriff was perfectly justified in coming to the conclusion he did and if he was of opinion that there was no connection between the falling of the stone that caused the accident and the men mounting on the hutch, I think he rightly decided that this was an accident in the course of the workman's employment, and for which his wife and children are entitled to compensation.

LORD KYLLACHY—I entirely concur. As I read the case, the Sheriff has not found himself on the evidence able to affirm that the misconduct of the deceased was either the sole or a materially contributing cause of the accident. Upon the statement in the case I find myself in the same position; and therefore I am unable to hold that in the sense of the statute the deceased's death was "attributable" to his own misconduct.

LORD JUSTICE-CLERK—I am of the same opinion and having nothing to add.

The Court answered the question of law in the negative, and affirmed the award of the arbitrator.

Counsel for the Appellants—Wilson, K.C. —Horne. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—G. Watt, K.C.—A. Moncrieff. Agents — Simpson & Marwick, W.S.

Friday, February 17.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

MUIRHEAD'S TRUSTEES *v.* MUIRHEAD.

Public-House — Goodwill — Heritable or Moveable—Terce—Jus Relictæ.

In a question between testamentary trustees and a widow claiming her legal rights in the estate of her deceased husband who at the date of his death carried on business in two licensed houses in Glasgow—occupying one of the houses as tenant and being the proprietor of the other—*held*, following *Graham* v. *Graham's Trustees*, July 20, 1904, 41 S.L.R. 846, that, for the purpose of fixing the widow's legal rights, the price received by the trustees for the goodwill of both businesses was to be regarded as heritable in its character.

James Muirhead, who carried on business as a wine and spirit merchant at 439-441 Keppochhill Road, and 380-382 Springburn Road, Glasgow, being tenant of the former premises and owner of the latter, died on 6th March 1900, leaving a trust-disposition and settlement dated 16th August 1898, and recorded in the Books of Council and Session 14th April 1900, by which he conveyed to William Honour, wine and spirit merchant in Glasgow, and others, as trustees, all his means and estate for certain purposes therein mentioned, and *inter alia*, as regards