shall be "actually paid to such artificer in the current coin of this realm, and not otherwise." It cannot, I think, be contended that the withholding by the master from the workman of a portion of the wages earned by the latter against his consent is, or could be held to be, a payment by the master to the workman of that very same portion. It is, in fact, the very opposite of payment. It is a refusal to pay, for the not unnatural reason that an equivalent sum is due to the master from the workman. The requirements of the statutes have therefore not been observed in this case. The wages earned have not been paid. The drawback, or stoppage, or deduction, or whatever it may be termed, is not one of those authorised by section 23 or 24, yet it is sought to justify the course taken on this ground, that inasmuch as in any action brought by the workman to recover his wages the master would be entitled to set off the debt due to him in reduction of the workman's claim, it is absurd and anomalous to hold that the master cannot, before action brought, make a deduction in respect of the claim which, after action brought, he can successfully rely upon by way of set-off. No doubt at first sight there would seem to be much force in this argument, but a little reflection will show that there may be good reason even for this anomaly. The whole principle upon which this legislation is based is that the workman requires protection, that if not protected he may be overreached; and it is quite consistent with that principle to hold that in any such action brought by him to recover his wages he may be liable to have the sum found on investigation before the legal tribunal to be due to him by his master diminished by the sum found by the same tribunal on the same occasion to be due by him to his master, and yet at the same time prohibit the master from, as it were, substituting himself for the legal tribunal, investigating his own claim against his workman in his own office and deciding in his own favour. In this particular case, no doubt, the sum which it is sought to deduct is the amount of a judgment debt, and the danger referred to could not arise; but the argument as to the anomaly which I have mentioned dealt with the general scheme and machinery of the statute, and it is in respect of its general application that I consider it open to criticism. The several authorities cited appear to me to support rather than refute the contention of the appellants. They may, I think, be roughly divided into two classes—namely, those cases like *Chawner* v. *Cummings* (*ubi sup.*), in which charges were made by the employer for the use of the instruments by which the workman did his work and earned his wage; and those like *Hewlett* v. *Allen* (*ubi sup.*), in which payments were in effect made by the master out of the wages by the authority of the workman for certain purposes not prohibited by the Truck Acts. In none of those cases was it contended that the master had the right to deduct which is relied upon here. On the contrary, the effort of the master in each of these cases was to justify the drawback on grounds entirely different from, and inconsistent with, those relied upon in this case. In the first class of cases it was successfully contended that the charges made by the master were not deductions properly so-called from sums due for wages earned, but were sums to be taken into account in ascertaining the amount of wages actually earned; and in the second class of cases the so-called drawbacks or deductions were justified on the ground that these sums in truth and in fact represented portions of the wages earned, paid in current coin of the realm, at the request of the workman, to his duly appointed agent. All the reasoning upon which the several tribunals in the cases cited based their respective decisions would have been unnecessary, and, indeed, beside the point, if the Truck Act had conferred upon the master the right here contended for—namely, the right to deduct from the workman's wages whatever the master could set off in a suit brought by the workman against him to recover those wages. It may well be that the appellant has no merits; that a decision in his favour will enable him to violate his duty with impunity, and evade the payment of his just and legally established liabilities; but if that be so, the fault must lie on that "tutelary shelter," to use the words of Bowen, L.J., which the Legislature has thrown around him, without, possibly, taking sufficient care so to mould and fashion it that it could not be open to abuse. I think that this appeal must be allowed with the declaration in the sense prayed for.

Judgment appealed from reversed.

Counsel for the Appellants—Evans, K.C. —Bailhache—J. Sankey. Agents—Smith, Rundell, & Dods, Solicitors.

Counsel for the Respondents — Eldon Bankes, K.C.—M. Lush, K.C.—A. J. Ashton. Agents—Bell, Brodrick, & Gray, Solicitors.

HOUSE OF LORDS.

Tuesday, May 15.

(Before the Lord Chancellor (Loreburn), Lords Davey, James of Hereford, Robertson, and Atkinson.)

BACK *v.* DICK, KERR, & COMPANY.

(On Appeal from the Court of Appeal in England.)

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37)—*Employment "on or in or about" an "Engineering Work"—Sec.* 7, *sub-sec.* 1.

A firm of contractors who were engaged in substituting electric for horse tramway lines in the streets of a town stored the new rails when unloaded from the railway trucks in

the railway company's yard by arrangement with the railway company. An employee of the contractors was injured while stacking the rails. The yard abutted upon a street through which the electric tramway would ultimately run, but at the time of the accident operations had not extended beyond a point distant over a quarter of a mile from the yard.

Held (*aff.* the judgment of the Court of Appeal, *diss.* Lord Loreburn, L.C., and Lord James of Hereford) that the injured man was not at the time of the accident employed on or in or about an engineering work within the meaning of section 7 of the Workmen's Compensation Act 1897.

This was an appeal from a judgment of the Court of Appeal (COLLINS, M.R., MATHEW and COZENS-HARDY, L.JJ.), who had reversed a decision of the County Court Judge at Exeter.

The appellant, a labourer in the respondents' employment, on the 17th August 1904 was injured whilst engaged in unloading and stacking certain rails.

The respondents were contractors engaged in taking up horse tramway lines and laying down electric tramway lines in certain streets and roads of the city of Exeter, including the road from St David's Station to the Clock Tower and along Queen Street. The rails in question were brought to Exeter for the purpose of the respondents' contract, and were by arrangement between the respondents and the London and South-Western Railway Company stacked and stored when unloaded from the trucks at Exeter in the London and South-Western Railway yard situated in Queen Street, at a distance of fifty yards or thereabouts from the Clock Tower. The yard abutted on Queen Street and was separated from it only by a gateway, and the rails stacked and stored in the yard were taken directly on to the tramway lines by the respondents in the performance of their contract. At the time of the accident the respondents were engaged in taking up the old horse tramway lines, at a distance of about 700 yards from the scene of the accident on the St David's Station side of the Clock Tower.

The County Court Judge found that the site upon which the rails were stacked in the yard was "on or in or about an engineering work," and he accordingly made an award in favour of the appellant.

At delivering judgment—

LORD CHANCELLOR (LOREBURN)—I have always some misgivings in differing from the opinions of the Court of Appeal, and these misgivings are doubled when I find myself differing also from the majority of your Lordships' House. But I must say that the argument of the learned counsel for the appellant—which was an argument of conspicuous ability—has led me to the opinion that this appeal ought to be allowed. There was in this case a horse tramway which was being converted into an electric system. That is, I think, an engineering work within the meaning of the Workmen's Compensation Act. Within a few yards of the line of rail of this tramway is a railway yard, part of which, by arrangement, was appropriated for stacking rails for the use of this work. In unloading there some rails the appellant was injured. The learned County Court Judge found that he was injured "on or in or about" the engineering work referred to. The Court of Appeal thought that there was no evidence of that. I cannot myself think as a matter of law that this stacking ground was not a part of an engineering work. The County Court Judge found that it was so as a matter of fact upon which he was entitled so to find. That is the ground upon which my view is based. I will only say two things therefore. One of them is that I agree that when in the 7th section of the Act the section speaks of the employment as being "on or in or about" an engineering work, it means, as in the case of a factory, "in, on, or about" some place, that is, the place or places where the engineering work is carried on. The other observation which I have to make is that in my view the 7th section prescribes the character of the employment in which the man must be employed if he is to come within the Act. When that is ascertained then you must ascertain whether the accident arises "out of and in the course of such" employment, as is pointed out by the 1st section of the Act. I am myself of opinion that this judgment ought to be reversed, but inasmuch as I believe that the majority of your Lordships think otherwise the appeal will be dismissed.

LORD DAVEY—It has been decided by a series of cases in the Court of Appeal, with some support in this House, that the words "engineering work" in sec. 7, sub-sec. 11, of the Workmen's Compensation Act 1897 are to be construed as defining the locality within which the workman must be employed in order to give him a right to compensation under the Act as well as the character of the employment. This construction receives some support from the provisions of sec. 7, sub-sec. 3, and I am not prepared to say that it is wrong. The question therefore is whether the appellant was employed on or in or about an area in which an engineering work as defined by sub-sec. 2 was being carried on when he met with his accident. There is no doubt that the conversion or extension of the tramways on which his employers were engaged was an "engineering work" within the definition, "railroad" having been decided to include "tramway." And the question divides itself into two branches —(1) Was the station yard within which the rails were being stacked for the time being made part of the area on or in which the engineering work was carried on; or (2) was the station yard within such proximity to the engineering work that the employment there may properly be said to be "about" the engineering work within the meaning of the section? In answer to the first question I am of opinion that the

work of stacking the rails cannot properly be described as engineering work within the definition. It may be said to be preparatory or ancillary to it but not, I think, a part of it. The appellant was employed in unloading the truck and stacking the rails in the station yard by the licence of the railway company, but the rails might as well have been loaded in a cart and hauled to the "work," or they might have been stacked at the ironworks where they were made until they were required for use. Nor do I think that the employment can properly be said to be "about" an engineering work. I do not think that this is a mere question of comparative proximity. It is difficult to give any very definite meaning to this word, and I doubt whether it adds anything to the description which the Court would not have included by construction. I can, however, imagine a case where the man might actually be outside the ambit of the railway, factory, mine, quarry, engineering work, or building, but assisting in an operation carried on within the ambit. The case where the man fell from the tower waggon when engaged in repairing the overhead wires was perhaps such a case—*Rogers* v. *Corporation of Cardiff*, [1905] 2 K.B. 832. At any rate I do not think that in this case a County Court judge could properly find that the accident took place in the course of an employment about the locality of the engineering work. The decisions of the Court on this Act inevitably lead to results which must appear arbitrary and capricious. It is hard for those who suffer to understand why some accidents give a right to compensation and others do not. The Act does not pretend to logical consistency, and perhaps it was too much to expect that a tentative experiment should attain it. I am of opinion, though I confess that I express it with some regret, that the appeal fails and should be dismissed, and I move your Lordships accordingly.

LORD JAMES OF HEREFORD—I concur in the judgment of the Lord Chancellor and in the reasons which he has given in support of that judgment. It seems to me that upon these facts it was well within the competency of the learned County Court Judge as a matter of law to find that the accident occurred "on or in or about" an "engineering work." I do not think that the "engineering work" need be, if I may use the term, the headquarters of the undertaker; it may be, no doubt, a work with a limited physical area, but apart from the work of his factory, or apart from the place where he carries on the main part of his business. If that construction be right, it then becomes a question of fact whether, in the circumstances of this case, this was an accident occurring "on or in or about" an "engineering work." The learned County Court Judge has so found, and I do not think that there is material enough here to cause your Lordships to differ from that finding. I would add that I do not quite follow the view which the Lord Chancellor has expressed in relation to limiting "engineering work" to the definition of a physical area, as in the case of a factory. There has been, so far as I know, no direct authority, at all events not in this House, for saying that an "engineering work" means a physical area. Of course I am aware that there have been many decisions of the Court of Appeal to that effect in relation to factories, and there is a direct judgment too binding upon your Lordships in the case of *Wrigley* v. *Whittaker*, [1902] A.C. 299, decided in the year 1902, which was also with reference to a factory. It may be that that judgment was intended to cover an engineering work, but it does not say so in terms. It would have been more satisfactory if the noble and learned Lords who took part in that carefully considered judgment had said whether it was so or not. That judgment does not decide whether the statute when it speaks of "engineering work" means a physical area. I think that there is a great deal to be said to show that it does not, and that the case of an "engineering work" differs from that of a factory, which was undoubtedly considered to be an undertaking within a physical area. The reason of that difference is that "engineering work" has a definition which leads us away from the physical area and does not apply to the case of a factory or to the other works mentioned in sec. 7. But if this case is to be determined on the ground that the County Court Judge was not entitled to find that where the injury occurred was "on or in or about" an "engineering work" as a matter of fact then the consideration of the second point becomes somewhat academic. I only express my doubt whether the view which the Lord Chancellor has stated has yet been determined to be correct.

LORD ROBERTSON—I hold that when the statute uses the words "on or in or about" an "engineering work" the "work" spoken of is something having geographical boundaries. It was not in the end disputed at the bar that this is so in the case of a factory and the other things mentioned side by side with factory and "engineering work," to which in common with "engineering work" the prepositions of locality "in, on, or about" are made to apply. How, then, the word for instance "about" can apply to the words "engineering work" unless those words connote some place I do not see, unless indeed the word "about" were used in a shifting sense and when applied to engineering work is turned into the sense of "concerning" or "relating to." This is clearly untenable. I think that the decision of this House on a case about a factory is equally applicable to that now before your Lordships on the associated term "engineering work"—*Wrigley* v. *Whittaker*, [1902] A.C. 299. It must, however, I think, be conceded to the appellant that ascertaining the geographical limits of an engineering work is not nearly so easy as ascertaining the geographical limits of a factory. In the case of an engineering work such as the

repairing a tramway you deal, not with a place set apart for the particular business like a factory, but with, to begin with, some part or parts of an open street, and it is only by the user actually made by the undertakers that you find out the "engineering work." Accordingly, I accede to the appellant's argument thus far that it is a question of fact whether the use made of it by the undertaker has by use constituted the place in dispute a part of the engineering work. Again, I think it quite fallacious to say that because one particular place is ascertained to be a locus of engineering work, no other place can be held to be also such a locus of the same work. The view of the learned Judge seems to me sound enough in so far as he proceeds to consider whether this part of the railway ground was not part of the engineering work as well as the street where operations were proceeding. But where I think he goes wrong is in holding that in fact this place at the railway was one where this engineering work was being carried on. I think that he has exaggerated the importance of the "stacking" at the railway station. This place, *primâ facie*, is the seat of railway and not of engineering operations, and therefore we require some distinctively engineering operations as distinguished from work incident to transit. If this man had simply carted the rails from the station, an accident in the station would not have been an accident in or on the engineering work. How does the mere circumstance that instead of the rails being taken cartload by cartload from station to street, it was found convenient to stack them, make the railway station the locus of engineering work? I think that it does not. The undertakers of the engineering work were at the railway station as customers of the railway company, and the stacking was merely an operation similar to leaving smaller articles at the left luggage office. It was not in any sense distinctively engineering work. What the County Court Judge says about the operation being essential is accurate in the same sense in which the operation of simply taking delivery of the rails is essential, the essentiality being that of the rails. If, then, the railway yard was not part of the engineering work, the appellant fails, for the seat of the work in the street is too remote to admit of the application of the word "about." I think that the judgment appealed from should be affirmed.

LORD ATKINSON—As I find that I differ from some of my noble and learned friends, I naturally entertain the opinion which I have formed with considerable doubt. The question for discussion in this appeal is whether there was evidence before the County Court Judge on which he could legitimately find that the appellant was at the time of the accident in respect of which he claims compensation employed "on or in or about" an "engineering work" within the meaning of section 7 of the Workmen's Compensation Act 1897. The appellant was, when the accident occurred, engaged for the respondents, his employers, in stacking in the yard of the South-Western Railway Company at Exeter certain rails consigned to those employers, and there delivered to them. These rails were obtained in order that they might be used in certain work which the employers had contracted to execute, and were actually engaged in executing, namely, the tearing up of the rails of an old tramway laid in Exeter worked by horse power, and replacing them by rails to be used for an electric tramway to be laid down from St David's Station to the Clock Tower and along Queen Street. The place where the accident occurred was fifty yards distant from the Clock Tower, and 700 yards distant from the nearest point at which the tearing up of the old line of rails was then being carried on. But the yard abutted upon Queen Street, and was only separated from it by a gateway, and the projected works, if carried out completely as proposed, would at some portion of their progress have been actually carried on in close proximity to this yard. Our attention has been called to numerous authorities, including *Wrigley* v. *Whittaker*, [1902] A.C. 299, decided in this House. The view of the statute apparently taken in all the cases was that the Legislature had intended to select certain fields of operation in which, owing to the nature of the work done there, danger to the workman employed in doing it might be supposed to exist, and to confine the benefits conferred by the statute to injuries sustained in those physical areas or in close proximity to them. And accordingly these cases seem to have established that it is necessary in order to satisfy the words of section 7, sub-section 1, to hold that the employment in which the workman must be engaged in order to entitle him to recover must be carried on in some defined or ascertainable physical area, and that at the time of the accident he must have been working "on or in or about" that area, the word "about" being held to be equivalent at best to "in close proximity to." In *Wrigley* v. *Whittaker* the workman was admittedly at the time of the accident engaged in doing his employer's business, namely, erecting in the factory of a certain company a wheel forged in his employer's factory, and by his employer contracted to be put up in the factory in which it was being placed when the accident occurred. Yet the workman was held not to be entitled to compensation, though it was not questioned that if a similar accident had happened to him before the wheel had left his employer's factory he would have been so entitled. I think that these cases were properly decided. Whether the decisions are sound or unsound, whether they lead or do not lead to irrational results, it is, I think, almost too late to inquire. The principle underlying them must now, I think, be taken to be firmly established, and the test laid down by them must be applied. To disturb them would cause the utmost confusion and perplexity, and, moreover, the Act is so worded that if the test thus stated were rejected it would

be difficult to see what other could be adopted. I assume, therefore, for the purposes of this case, that the "engineering work" in which the appellant must have been engaged if he is to recover must be work confined to some physical area, and that he must when injured have been working "on or in or about" that area. It is obvious, however, that there is a difficulty in ascertaining what is the extent and what are the limits of an "engineering work" which does not occur in the case of factories, docks, &c. In these latter causes the walls or fences built round the factory or dock, as the case may be, fix the boundaries and determine the area. In the case of an "engineering work" there is no structural boundary. The area cannot, I think, be confined to the soil on which the rails are actually laid, nor, in all cases, to the street through which the tramway runs, nor even to places immediately abutting on that street. The area must, I think, in the case of a railroad or tramway, or other undertakings of that sort, be fixed by user —that is to say, by the carrying on of some portion of the general operation of construction, alteration, or repair which the employer is engaged in carrying out. In the construction of such a huge undertaking as the Tay Bridge, for instance, various difficult and dangerous operations, all in character "engineering work," and each leading up to the accomplishment of the ultimate object, the construction of the bridge, must be carried on over a widely extended area. It would, in my opinion, be irrational to hold that the entire area so occupied, whether it be continuous or composed of several separated smaller areas, was not an area of "engineering work," and if I could come to the conclusion that the stacking of the rails in the railway yard in this case could in any sense be regarded as part or portion of the general engineering operation which the respondents were employed to carry out, I should be inclined to hold that the appellant was at the time of the accident employed "on or in or about" an "engineering work," and that the yard of the railway company was an area of "engineering work." But in my opinion the stacking of the rails in the yard was only a mode of accepting delivery of them, and was no more a part or portion of the engineering operations than was the dispatch of the rails from the place at which they were loaded. I think, therefore, that the appellant was not engaged in an "engineering work," and that the railway yard was not the area of an "engineering work," or a portion of that area, or about or in close proximity to such an area. I think, therefore, that the decision of the Court of Appeal was right and that the appeal should be dismissed.

Appeal dismissed.

Counsel for the Appellant—Gutteridge—Hemmant. Agents—Baylis, Pearce, & Company, Solicitors.

Counsel for the Respondents—Ruegg, K.C.—W. Shakespeare. Agents—William Hurd & Son, Solicitors.

HOUSE OF LORDS.

Wednesday, May 17.

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

JOHNSON *v.* MARSHALL, SONS, & COMPANY.

(On Appeal from the Court of Appeal in England.)

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37)—"*Serious and Wilful Misconduct*"—*Workman Using Hoist in Violation of Rules—Sec.* 1 (2) (*c*).

The rules of a workshop provided that workmen were only to use a certain hoist when they were in charge of a load. There was nothing particularly mysterious or dangerous about the working of the hoist, and, unknown to their employers, the workmen often used it when not in charge of any load. A workman was injured while thus using it. *Held* that he had not been guilty of "serious and wilful misconduct" in the sense of the Act.

Opinions that "wilful" imports that the misconduct was deliberate and not merely thoughtless, and that "serious" applies to the misconduct itself and not to its consequences.

On the morning of the 20th August 1904 Johnson was working as a joiner in the gallery of the erecting shop in the respondents' works. The gallery ran round all four sides of the erecting shop, and a large number of men were employed there. Access to the gallery from the floor below was gained by two wide and convenient staircases in the south and east sides thereof. At or about the centre of the east side of the gallery there was a lift and two steep and narrow spiral staircases communicating with the floor above. On the lift was a notice as follows:—"No one is allowed to use this hoist except in charge of a load." The breakfast hour was eight o'clock, and shortly before eight o'clock Johnson was seen at work with his coat off. At a minute or two before eight o'clock Johnson was found in the lift with his coat on and without a load. The lift had descended below the floor of the gallery, and Johnson was crushed between the floor of the lift and the top of the doorway by which the lift was reached from the floor below. He died from his injuries on the 23rd August 1904. His widow claimed compensation under the Workmen's Compensation Act 1897. This was refused by the County Court Judge of Lincolnshire and by the Court of Appeal, who ordered a new trial.

Johnson's widow appealed to the House of Lords.

At delivering judgment—

Lord Chancellor (Loreburn)—I agree with the Court of Appeal that the result