as trustees—that is agreed—but at the same time you, the Austrian company, owe us a sum of money which we estimate at £9000 to compensate us for the period during which your ship occupied our dock." To the extent of such part of that claim as they succeeded in establishing they would be completely protected if they were in a position to retain this money. They will not be in a position so to protect themselves if this money is unreservedly handed over to the Custodian, and all your Lordships are, I think, of opinion that this degree of protection ought to be accorded to them.

When the impression thus formed by your Lordships was made clear to the learned counsel for the respondent, they, representing a public authority, took a reasonable view, and have acquiesced in an arrangement which recommends itself to your Lordships, which I think may take the following form, and I shall move formally—To reverse the interlocutors: To remit the cause to the Court of Session with a declaration that the defenders be allowed proof of their averments in statement 4 of their statement of facts: That the pursuer be allowed a conjunct probation, and that thereafter decree be pronounced in favour of the pursuer for the sum of £79,732, 16s. 4d., with interest from the interlocutor of February 20th, and deduction of the sum, if any, found due in respect of the averments of the defenders in statement 4 aforesaid.

It is proper that I should add an observation upon the subject of costs. Their Lordships have given very careful consideration to the points which are here involved, and they have reached the conclusion that it would be wrong to ignore the circumstance that the main and principal contention in fact of the appellants related to the whole sum, and not merely to the comparatively small question of the protection of their claim against the Austrian company. Having regard to the time which must have been consumed in each of the stages in the subordinate Courts in dealing with this main contention which has been withdrawn, and which I say plainly I am satisfied if it had been persisted in would have completely failed, their Lordships have reached the conclusion that neither here nor below should there be any costs, and I move your Lordships accordingly.

VISCOUNT HALDANE—I agree.

VISCOUNT FINLAY—I agree.

VISCOUNT CAVE—I also agree.

LORD DUNEDIN—I concur.

Their Lordships, without expenses to either party, reversed the interlocutors appealed, and remitted the cause to the Court of Session with the declaration given in the Lord Chancellor's opinion.

Counsel for the Pursuer (Respondent)—Lord Advocate (J. A. Clyde, K.C.)—Austen Cartmell, K.C.—Hunter. Agents—Thomas Carmichael, S.S.C., Edinburgh — Solicitor to the Treasury, Law Courts Branch.

Counsel for the Defenders (Appellants)—Sir John Simon, K.C.—Condie Sandeman, K.C.—Sir Hugh Fraser. Agents—Wright, Johnston, & Mackenzie, Glasgow—Webster, Will, & Company, W.S., Edinburgh—J. D. Langton & Passmore, London.

Monday, March 22.

(Before Viscount Finlay, Viscount Cave, and Lords Dunedin, Atkinson, and Moulton.)

WOODIELEE COAL AND COKE COMPANY, LIMITED *v.* ROBERTSON.

(In the Court of Session, June 20, 1919, 56 S.L.R. 498.)

Master and Servant—Workmen's Compensation—Arising out of and in the Course of Employment — Serious and Wilful Misconduct — Added Peril — Breach of Statutory Rule—Coal Mines Regulation Act 1911 (1 *and* 2 *Geo. IV, cap.* 50), *secs.* 32 *and* 35—*Workmen's Compensation Act* 1906 (6 *Edw. VII, cap.* 58), *secs.* 1 (1) *and* (2) (c).

In a fiery mine, a miner, at the customary knock-off in the middle of the shift, struck a match to light a pipe. An explosion occurred and he received injuries from which he died. It was, as he knew, an offence under the Coal Mines Regulation Act 1911 to light or to be in possession of a match. *Held* that the miner's injuries were not "arising out of" the employment but out of an added peril, and consequently that his dependants could not recover compensation.

This case is reported *ante ut supra.*

The respondent, Mrs Annie Campbell or Robertson, appealed to the House of Lords.

At the conclusion of the argument on behalf of the appellant, counsel for the respondents being present but not being called upon, their Lordships delivered judgment as follows:—

VISCOUNT FINLAY—I believe that all your Lordships are agreed that it is not necessary in this case to call upon the respondents; every possible point has been put and very fully argued. The facts of the case lie in a very small compass indeed; they are stated in the appellant's case in the Stated Case in which the points were raised for the opinion of the Court—"Kenneth Robertson was a miner in the employment of the Woodilee Coal and Coke Company, Limited. On Friday, 27th September 1918, while on the back (afternoon) shift in the Meiklehill Colliery of the said company he was personally injured by an explosion which occurred about 6 o'clock. The said explosion occurred on his striking a match to light his pipe, after finishing his piece at the customary knock-off in the middle of the shift. To have matches in the said pit was an offence under section 35 of the Coal Mines Act 1911 (1 and 2 Geo. V, cap. 50), and the lighting of a match an offence under section 32 of the said Act, which was posted

up and in force at the said colliery." The man died as the result of personal injuries received through the explosion, and the prohibition against the possession and use of matches in the mine was known to Robertson.

Now, under these circumstances, it appears to me that beyond all question the conduct of the deceased added a peril which was really not incident to the employment. In my opinion he did not suffer these injuries from anything arising out of the employment; he suffered them because he did something which was extraneous to his employment, and created a danger which would not have materialised but for what he did.

It was said that the risk of his employment arose from the gas which was there, that this was known to everyone, and it was part of his employment to face the risk of gas. That is perfectly true, but then the explosion took place owing to the fact that after having partaken of his meal, with full knowledge of the prohibition against it and with full knowledge of the danger being incurred, he lighted his pipe in order to have a smoke before returning to his work. Under these circumstances it appears to me that this is a typical example of the doctrine of added risk which has been thoroughly established by decisions of your Lordships' House, and, indeed, is based upon the necessity of bringing the case within the words of the Act in order to recover compensation. I do not feel that I can profitably add anything to what is said in the judgment of Lord Mackenzie. I desire to adopt what Lord Mackenzie said in this case as the reasons for my judgment.

Something was said, not very much but still something, as to whether the act of the deceased in striking the match was the proximate cause of the accident. It seems to me that no connection could be closer. The gas was there, and when the match was struck the explosion inevitably occurred.

Under these circumstances it appears to me that the appeal must be dismissed, with costs.

VISCOUNT CAVE—I entirely agree, and I do not think I could express my opinion better than by quoting a short passage from the opinion of Lord Skerrington. He says—"One must ask oneself—What was the man doing at the time when he was injured? Was he doing anything which he was employed to do or which he was entitled to do, or which he mistakenly thought that it was for the interests of his employers that he should do, or which was reasonably incidental to what he was employed to do? The answer to all these questions is in the negative. The man was doing something purely for his own purpose, something which he was not entitled to do in any shape or form, and which he was absolutely forbidden to do not merely by the rules of the pit but by an Act of Parliament. In these circumstances the arbiter ought, I think, to have found that the accident did not arise out of the employment." I agree with every word of that opinion, and I think the appeal should be dismissed.

LORD DUNEDIN—I concur.

LORD ATKINSON—I concur, and I agree also, as my noble and learned friend opposite has done, with what is said in Lord Skerrington's judgment, which I think puts the question as well and as clearly as it is possible to put it.

LORD MOULTON—I concur.

Their Lordships dismissed the appeal.

Counsel for the Appellant—M. P. Fraser, K.C.—W. D. Patrick. Agents—Cormack & Roxburgh, Dumbarton—Warden, Weir, & Macgregor, S.S.C., Edinburgh—D. Graham Pole, S.S.C., London.

Counsel for the Respondents—MacRobert, K.C.—Harold W. Beveridge. Agents—W. T. Craig, Glasgow—W. & J. Burness, W.S., Edinburgh—Beveridge & Company, Westminster.

COURT OF SESSION.

Friday, March 12.

FIRST DIVISION.

[Lord Blackburn Ordinary.

NORTH BRITISH RAILWAY COMPANY *v.* LORD PROVOST, MAGISTRATES, AND COUNCIL OF CITY OF EDINBURGH.

Superior and Vassal—Rates—Assessments—Relief—Construction of Clause of Relief—Usage.

Feu-charters granted by a city conveyed to the vassals certain subjects "free of all the town's burdens, burrow and county cess, stents, taxations, and all other public burdens of whatever kind now imposed or hereafter to be imposed, and all feu and blench duties, ministers' stipends, and schoolmasters' salaries imposed or to be imposed, due and payable for or furth of the same in all time coming, and to relieve the [vassals] . . . of all the burdens generally and particularly before mentioned excepting" an illusory feu-duty. The charters were granted in 1769 and 1770. Down to 1915-16 the superiors in fact exempted the lands from rating, first by omitting the subjects from the stent rolls, and later by inserting them in the valuation rolls but assessing themselves for the rates both of the vassals and of their tenants. The rates and assessments imposed in 1915 had come to include some imposed for the first time by supervenient legislation, *i.e.*, legislation later in date than the charters. *Held* (1) that the usage of parties fixed the meaning of the clauses as applicable to burdens imposed by supervenient legislation, and redargued the presumption to the