—and the issue should always be so stated, whether the employer has proved that the respondent's (the workman's) incapacity was due to unreasonable refusal to undergo a surgical operation. If that is proved, the *onus* resting upon the employer, then the result is one way; if he fails to discharge that *onus* the result is the other way.

There is one other element in this case I desire to comment upon. It may not be sufficient for a workman to say that he was so advised. I think it is quite possible to figure advice given of a reckless, careless, peculiar, or indefensible nature by the workman's own medical adviser. But in the present case the remarkable fact is that the workman's adviser having been put into the box (as was most proper) he left it without apparently one word of cross-examination as to whether the opinion he had given to his client was a sound one.

In these circumstances, were there any question of balance of proof, it might be settled by this elementary consideration, that the employers' two medical advisers differed among themselves, and that the workman's medical adviser was not subject to a word of cross-examination directed to shake his opinion. I entirely agree with the conclusion which the learned Sheriff reached.

Their Lordships ordered that the interlocutor appealed from be affirmed and the appeal dismissed with costs.

Counsel for the Appellants — Sandeman, K.C. — Beveridge. Agents — W. T. Craig, Glasgow — Wallace & Begg, W.S., Edinburgh — Beveridge & Company, Westminster.

Counsel for the Respondent — Solicitor-General for Scotland (Murray, K.C.) — Crawford. Agents — A. C. Baird & Company, Glasgow — W. & W. Finlay, W.S., Edinburgh—Turner & Company, London.

Friday, December 17.

(Before the Lord Chancellor, Viscount Finlay, Lord Dunedin, Lord Atkinson, and Lord Shaw.)

CORSAR *v.* ARCHIBALD RUSSELL LIMITED.

(In the Court of Session, June 10, 1920, 57 S.L.R. 524.)

Master and Servant—Workmen's Compensation—Industrial Disease—Certificate of Certifying Surgeon — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 8.

A workman on 21st April 1919 sustained injuries to his eyes and was admitted to hospital. On 9th June 1919 his right eye was removed. On 3rd July 1919 the certifying surgeon granted a certificate in which he stated that the workman was then suffering from ulceration of the corneal surface of the eye. He further stated in the certificate as a leading symptom of the disease that the workman had lost his eye as the result of corneal ulceration. An appeal to the medical referee was on 15th July 1919 dismissed by him on the ground that as the injured eye had been removed he could not say for what purpose the enucleation was performed. The arbiter, holding that the certificate was self-contradictory, and not such a certificate as was required by section 8 (1) of the Workmen's Compensation Act 1906, refused compensation. *Held (affirming* the judgment of the First Division, *diss.* Lord Cullen) that the certificate was valid for the purpose of entitling the workman to compensation under section 8, sub-section (1), of the Act.

Opinion per Lord Shaw that *Mapp* v. *Straker & Son, Smith Bros. Limited*, 1914, 7 B.W.C.C. 18, was not a decision which ought to be followed.

This case is reported *ante ut supra.*

Archibald Russell Limited appealed.

At delivering judgment—

LORD CHANCELLOR — This is an appeal under the Workmen's Compensation Act 1906 by Archibald Russell Limited against the judgment of the First Division of the Court of Session in Scotland, pronounced upon a Stated Case in an arbitration between the respondents and the appellants, in the course of which a Stated Case was prepared by the arbitrator upon the requisition of the appellants.

The facts are extremely simple, and may be shortly stated:—James Corsar, a labourer, forty-one years old, was on the 21st April 1919 employed by the respondents in breaking up blocks of pitch for the manufacture of briquettes. On that day, alarmed by eye trouble, he left his work. He went as an inmate to the Glasgow Eye Infirmary, remained there for five weeks, and on the 9th June 1919 his eye was removed. On the 3rd July 1919 he obtained from Dr J. H. Murray, the certifying surgeon appointed under the Factory and Workshop Act 1901, the following certificate:—"I, ... hereby certify that, having personally examined James Corsar on the 3rd July 1919, I am satisfied that he is suffering from a disease to which the Workmen's Compensation Act applies, namely, the disease mentioned in the schedule below against which I have placed my initials, and is thereby disabled from earning full wages at the work at which he has been employed, and I certify that the disablement commenced on the twenty-first day of April 1919."

The disease in the schedule against which the certifying surgeon's initials are placed is "ulceration of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound product or residue of any of these substances." Under the heading "Symptoms of Disease" the surgeon certified — "He has lost his right eye as the result of corneal ulceration."

The respondents appealed to the medical referee against the certificate of the certifying surgeon.

On the 15th July the medical referee wrote to the Sheriff-Clerk in these terms:—"Dear Sir—James Corsar appeared before me yesterday. I regret, however, that I am not in a position to give a decision regarding the certificate of disablement given him by Dr J. H. Murray on the 3rd July 1919. The certificate bears that Corsar is suffering from ulceration of the corneal surface of the eye, but as his right eye (the one affected) has been removed by operation, I cannot, of course, say whether the enucleation was performed for ulceration of the cornea. It seems to be a matter for proof.—Yours faithfully, (Sgd.) A. Maitland Ramsay."

On the 11th August the medical referee dismissed the appeal. Your Lordships are well aware that under the terms of the Act the decision of the medical referee is final.

The arbitrator found the following facts:—(1) That the certificate of the 3rd July was not a certificate of the alleged disablement, as required by section 8 (1) of the Workmen's Compensation Act 1906. (2) That the decision of the medical referee did not make the certificate effective.

Having reached these conclusions he naturally dismissed the application in a note, of which the following are the material parts:—"The certificate on which the pursuer founds his claim is on the face of it self-contradictory. A man who on the 3rd July had no right eye could not on that date be suffering from ulceration of the right eye—*Mapp* v. *Straker*, 7 Butt. 18. I allowed medical evidence to the effect that without an eye there could not, from personal examination by a diagnosis, be ulceration. But such evidence was unnecessary for the formation of an opinion on the certificate. It was contended for the pursuer that an appeal having been taken to the medical referee and dismissed there was an end to all challenge of the certificate. But the appeal does no more than confirm the original certificate. It cannot make good what really was not a certificate."

Finally the arbitrator submitted the following questions for the opinion of the Court:—Was I justified in finding that the certificate of the 3rd July was not a certificate of disablement as required by section 8 (1) of the statute? 2. If the first question is answered in the affirmative, was I justified in finding that the decision of the medical referee did not make the certificate effective?

Such is the question which requires decision.

The effect of section 8 (1) of the Workmen's Compensation Act 1906 is to apply to certain industrial diseases the general provisions of the Act relating to compensation for personal injuries by accident. Where the conditions of the Act are satisfied the workman becomes entitled to compensation "as if the disease were a personal injury by accident arising out of and in the course of that employment." Under the same conditions the disablement is "treated as the happening of the accident."

The unusual feature of this case is that the eye was removed on the 9th June, while the certificate is dated 3rd July. Nearly a month therefore after the applicant lost his eye altogether the certificate affirms at its date that the applicant "is suffering from the disease" described in the schedule as "ulceration of the corneal surface of the eye." It is contended that the certificate is on the face of it contradictory, and that it cannot be admitted to affirm at its date that the applicant is "suffering from the disease," inasmuch as a man who on the 3rd July had no right eye could not on that date be suffering from ulceration of the right eye.

I find myself unable to accept the conclusion of the Sheriff-Substitute, and am in agreement with the majority of the Judges of the First Division.

It is quite true that the words of the Act are "is suffering from an industrial disease." But these words are not to be construed too literally or too technically. The consequence of doing so would indeed be startling. Indeed, Mr Sandeman admitted to me that the effect of such a construction in the case of an emergency operation involving the amputation of a limb might easily be to deprive the workman of all remedy where the amputated limb was the headquarters of the industrial disease. I imagine that your Lordships would be very reluctant, unless compelled to do so, to adopt such a construction of the Act as would produce a consequence so inhumane. I am much struck by the observations of the Lord President upon this point. He says—"Removal of the diseased organ is not the same thing as the cure of the disease. The disease may, no doubt, be removed along with the organ, but only at the price of enucleation." The Lord President, without so deciding, points out that the expression "suffering from an industrial disease may be construed so as to include suffering from the results of surgical operation properly incident to the treatment of the industrial disease." I am of opinion that it is necessary so to construe the words under discussion.

The view which I have reached upon this point makes it unnecessary for me to examine the conclusions, very ingeniously presented, which the Lord President himself reached. But I by no means wish it to be supposed, speaking for myself, that I reject his view that the removal of an ulcerated eye is pathologically inconsistent with the existence thereafter in the patient's body of the disease known as ulceration of the eye. Certainly there is no medical evidence before me in this case which either requires or justifies such a conclusion. Suppose, for instance, that a symptom of ulceration of the eye were acute local neuralgia, and that such neuralgia survived for a period long of short the removal of the organ, would it in such a case be an abuse of language to say that the patient continued to suffer from ulceration of the eye? Illustrations of this kind are, of course, speculative so long as they are uninformed by medical opinion, but they show in my opinion that it would be quite impossible, in reliance upon such evidence as is available in this case, to justify the conclusion reached by the Sheriff-Substitute.

I am therefore of opinion that the certificate of 3rd July has not been successfully impeached. I am of opinion that the decision on appeal of the medical referee cannot be effectively challenged. The record is a little meagre at this part of the case. We are not informed what inquiries, if any, the medical referee made in the interval between his letter of the 15th July and the 11th August when he dismissed the appeal. But it is, of course, clear that, with the guidance supplied by the opinion which I understand your Lordships to have formed, he would have reached the conclusion which in fact he formed, and, as I have already pointed out, there is no appeal from his judgment.

For all these reasons I am of opinion that the appeal fails, and I move your Lordships accordingly.

VISCOUNT FINLAY—A workman has now the right to recover compensation in respect of certain diseases contracted in the course of his employment. One of these is "ulceration of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound product or residue of any of these substances." A condition of the right to compensation is that the workman should obtain a certificate from the certifying surgeon for the district that the workman is suffering from the disease (Workmen's Compensation Act 1906, sec. 8, sub-sec. 1). There is an appeal to the medical referee, but subject to the result of such an appeal the certificate is conclusive.

The workman in the present case was in the employment of the appellants as a labourer at their colliery, and worked at breaking up blocks of pitch for the manufacture of briquettes. He left his employment on the 21st April 1919 because of the condition of his eyes arising from his work. He went to the Glasgow Eye Infirmary and his right eye was removed on 9th June 1919 in consequence of the disease.

On the 3rd July 1919 he obtained from the certifying surgeon for the district the following certificate—"I.....hereby certify that having personally examined James Corsar on 3rd July 1919, I am satisfied that he is suffering from a disease to which the Workmen's Compensation Act applies, namely, the disease mentioned in the schedule below, against which I have placed my initials, and is thereby disabled from earning full wages at the work at which he has been employed, and I certify that the disablement commenced on the 21st day of April 1919."

The disease in the schedule against which the certifying surgeon's initials are placed is "ulceration of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances." As leading "symptoms of disease," the surgeon certified, "he has lost his right eye as the result of corneal ulceration."

The employers appealed against this certificate to the medical referee, who on the 15th July 1919 sent the following letter to the Sheriff-Clerk, who communicated it to the parties — "Dear Sir — James Corsar appeared before me yesterday. I regret, however, that I am not in a position to give a decision regarding the certificate of disablement given him by Dr J. H. Murray on the 3rd July 1919. The certificate bears that Corsar is suffering from ulceration of the corneal surface of the eye, but as his right eye (the one affected) has been removed by operation, I cannot, of course, say whether the enucleation was performed for ulceration of the cornea. It seems to be a matter for proof. — Yours faithfully, A. Maitland Ramsay."

The appeal to the medical referee was dismissed by him on the 11th August.

The workman applied for compensation under the Act to the Sheriff-Substitute at Stirling, who as arbiter found that the certificate of the certifying surgeon was not a certificate of disablement as required by the Act, on the ground that as the eye had been removed it was impossible that the workman should at the date of the certificate be suffering from ulceration of that eye, and that as the eye had ceased to exist there could have been no personal examination of it.

That decision was reversed in the Court of Session, and the employer now asks in this appeal that the judgment of the Court of Session should be set aside, and that of the Sheriff-Substitute as arbiter restored.

The questions are whether the certificate is bad, on the ground that as the eye had been removed it was impossible that the workman could at the date of the certificate be suffering from ulceration of its corneal surface, and whether the certificate is vitiated by the fact that on the face of it it could not have been given upon personal examination of the eye, as that had been removed?

In my opinion both these objections fail.

The workman had lost his right eye in consequence of the disease. It is said that at the date of the certificate he was not suffering from an industrial disease, but from the loss of the eye which had been removed in consequence of the disease. In my opinion this objection could be sustained only upon far too narrow a reading of the Act and rule. The words "suffering from an industrial disease" in their fair reading must be held to include a case in which the workman is suffering from the result of a surgical operation which the disease rendered necessary.

The second objection is also, in my opinion, unfounded. Though the form of the certificate under the rules shows that a personal examination of the workman is necessary, there is nothing to show that there must have been an examination of the diseased organ. Such an examination is impossible if the diseased organ had been removed in consequence of the disease before the examination. The certifying surgeon is quite entitled to take into account any other evidence which a medical man would take into account in making up his mind as to what had been the nature of the disease in the eye. He is entitled to hear the statements of the man himself, and

to inquire of the surgeon who had removed the organ the facts as to the conditions which rendered its removal necessary. In all probability the certifying surgeon did make such inquiries before he gave the certificate.

The objections taken are not only of a highly technical nature, but in my opinion, are also quite unfounded. If there had been any room for doubt as to the facts, the case would, no doubt, have been brought before the medical referee for decision by him. The medical referee is not confined any more than the certifying surgeon to the results of a personal examination, and he could by inquiry at the hospital have satisfied himself beyond all doubt.

I am unable to agree with that part of the Lord President's judgment in which he says that though the eye had been removed there may have remained physical symptoms which would indicate what the nature of the disease had been, and that the certificate may have proceeded upon such symptoms. This seems to me to be extremely improbable in the present case, and if there had been anything of the kind it ought to have been stated, and would have been stated in the certificate under the heading "leading symptoms of the disease." I do not think it would be proper to base any decision in favour of the workman upon a speculation of this sort.

The true answer is that the certifying surgeon is not confined in giving his certificate to the result of the personal examination. He adopted the statutory form for his certificate. I agree that the language of the form is not that which any person who felt himself at liberty to word the certificate for himself in such a case as the present would have adopted, but the certificate that the workman is suffering from the disease in question may quite fairly be read as applicable to the case of a man who had lost his eye in consequence of the disease. He is still suffering from the disease. The employers elected to rest their case purely upon verbal criticism of the form of the certificate instead of taking steps to get the medical referee to hear the appeal.

I have no doubt that the decision of the Court of Session in favour of the workman is correct, and should be affirmed.

LORD DUNEDIN — The function of the certificate is to assert that the man has had in the statutory sense an accident because of a disease which in a popular sense is not an accident. The actual form which has been issued by the Department is, I think, somewhat unhappily phrased, but I do not think it would be right by a slavish adherence to its literal form to defeat its proper purview under the Act.

I should say more were it not that I have had the advantage of perusing the opinion which is about to be delivered by my noble and learned friend Lord Shaw. That opinion so exactly and felicitously expresses the view I had formed that I feel I can do best by simply saying that I concur *in omnibus* in my noble friend's opinion.

LORD ATKINSON—I have had the pleasure and advantage of having a conference with my noble and learned friend Lord Finlay as to the form and the contents of the judgment he was about to frame in this case. I have had the further pleasure and advantage of reading the print of that judgment which he has just delivered. I so fully concur in every part of it that I feel I could add nothing of advantage to it, and have therefore abstained from writing any judgment myself. I concur with it in all its particulars.

LORD SHAW—I am of the same opinion.

The appellant, who is 41 years of age, was on 21st April 1919 employed by the respondents as a labourer breaking up blocks of pitch for the manufacture of bricks. He left his service on that day, and respondents' foreman knew that he was doing so because of the condition of his eyes arising from his work. He entered the Glasgow Eye Infirmary, and after five weeks there he was advised that his right eye ought to be removed. His eye was removed on 9th June. These are the admitted facts contained in the Stated Case, and by these admissions and statements this House is bound.

By section 8 of the Workmen's Compensation Act the disablement of a workman, or his suspension from work on account of an industrial disease, entitles him or his dependants, as the case may be, "to compensation under this Act as if the disease or such suspension as aforesaid were a personal injury by the accident arising out of and in the course of that employment." That is the governing or ruling enactment upon this subject. I say so purposely because it is desirable that in the consideration of a remedial statute this substantive part of the Act affirming the right to the remedy should be always and fully kept in view.

Various provisions of the section and various references to schedules are made. All of these are in my opinion executory of this main substantive enactment. None of them, unless that result be quite unavoidable, should be construed in the sense of revoking or repealing the right to compensation granted by the Act.

It is provided, for instance, in working out the section that a medical certificate should be got of disablement, and also that that certificate should, so to speak, bring the Act into play by showing that the case of disablement is one arising from industrial disease. From time to time the category of diseases may be enlarged by administrative order under sub-section 6. There is no question in the present case that the disease referred to is within the last schedule.

To apply these provisions to the present case—sub-section 1 provides that where the certifying surgeon "certifies that the workman is suffering from a disease mentioned in the Third Schedule of this Act"—that is to say, an industrial disease—"and is thereby disabled from earning full wages at the work at which he was employed," then compensation as for accident shall follow.

Acting upon that provision the surgeon in this case, Dr Murray, certified that having personally examined the appellant he was "satisfied that he is suffering from a disease to which the Act applies, *i.e.*, as per the schedule, 'ulceration of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound product or residue of any of these substances.'" Dr Murray complied to the best of his power with the provisions of the statute and the forms prescribed by the schedule. In my own opinion, looking to the admitted facts of the case, Dr Murray's certificate was entirely within the statute.

The attack made upon it is so meticulous as this—that because the eye has had to be removed in consequence of the disease mentioned, namely, ulceration of the cornea, yet, nevertheless, the patient cannot with propriety be said to be suffering from the disease, although he is suffering and must suffer all his life from the loss of the eye. Were it not for the judgments pronounced in this case and some observations in the case of *Mapp*, I should hold such a reading of a remedial statute to be incredible. To provide against false claims by requiring a certificate of disablement and its cause may be reasonable enough, but to interpret the language of that certificate in a way which would eviscerate the right of compensation, which is the substance of the thing conferred by the statute, does appear to me to be wholly unjustifiable. No doubt the Act says that the surgeon has to certify that the workman is suffering from the disease, and no doubt it is possible to say that a workman lamed by amputation or blinded by removal of his eyes is not continuing to suffer from the actual disease after the diseased limb or eye has been taken away. But the legislation surely must not have its language interpreted in this grotesque sense when the workman may through his whole life suffer from blindness or the loss of his limbs.

If I may say so, I entirely appreciate the careful approach which is made to this subject by the learned Lord President of the Court of Session, and I fully agree with the learned Judge "that while a surgical operation rendered necessary lest worse should befall may be the indispensable condition of recovery, yet the patient may still continue for the time, more or less protracted, to suffer from the disease after its headquarters have been destroyed." One could very easily figure a case of that kind in connection with ocular trouble. But that is not the ground of my judgment. The learned Lord President says that it is unnecessary to resolve the question on any more general ground. In view of what has happened and been argued in this case I think it to be expedient and necessary to do so.

So dealing with the case, I am of opinion that the expression "is suffering from a disease" is well resolved and in no way unduly amplified by the Lord President thus—"The expression 'suffering from an industrial disease' can be or ought to be construed so as to include all suffering from the results of surgical operation properly incident to the treatment of the industrial disease." In no other way can absurd results be avoided. As Lord Mackenzie truly says—"The argument for the respondents involves this, that though the workman is told his eye must instantly be removed, yet if he submits to this he loses his right to apply for a certificate under section 8." The learned Judge does not think that reasonable, nor do I.

This broad view that I have ventured to take seems to me to be in entire accordance with the principles of compensation law. I give this instance. The method of computing compensation by taking an average of the earnings over a certain period was in one case found to be impossible because the workman had not been in the employment for the period required for striking the necessary average. That, however, did not deprive, in the view of this House, a workman of the right to compensation; and Lord Halsbury, in *Lysons* v. *Knowles & Company* ([1901] A.C. 86), thus stated the point—"For my own part, if I came to the conclusion that there had been no mode by which the quantum should be fixed in the schedule, I should still be of the opinion that there was no repealing of the right which had first been granted, but that, by arbitration or by some other means which I think would be quite within the powers of the Act the compensation should be ascertained, because I do not look upon the provision made in respect of the compensation as one which, either in language or in the intention of the Legislature, was meant to cut down and override the primary right given to every workman to compensation, but I regard it as a mode of ascertaining what the quantum was to be." Every argument in this case which fastened upon the present tense "is suffering," or the participle "suffering," as a reason for making the Act inapplicable to the cases where the suffering from the actual disease had ceased by reason of amputation or removal of the affected part of the human body, was offered in precisely the same spirit of meticulous criticism as that offered in the case of *Lysons*. Coming from the narrow view of literal interpretation it falls to be rejected, because it produces a construction which defeats the substance of the Act.

Of course if an Act of Parliament in unmistakeable terms prescribes that this or that avenue, and no other, shall be the avenue of compensation, then it may follow that what is outside that avenue fails to be within the statute. But this rests on the assumption that the language is, as I say, unmistakeably clear, and that such a conclusion is unavoidable. I do not think that or anything like it is the case in the present instance. The fear of the learned Lord Cullen is that the words "suffering from a disease," read as including a case of "suffering from any disabling effects left by a disease no longer resident in the body," involves too wide an extension of the ordinary meaning of the Act. With all respect to the learned Judge, I cannot agree. I think that if it did not involve all this it would result in an unnatural, improper, and indefensible restriction of the meaning of the Act.

I am slow in referring to what I think were the mischances of the case before the learned arbitrator. When the medical referee was called in, what he appears to have done only requires to be quoted. He saw the applicant on the 14th July, and next day he wrote to the Sheriff-Clerk this letter:—"Dear Sir,—James Corsar appeared before me yesterday. I regret, however, that I am not in a position to give a decision regarding the certificate of disablement given him by Dr J. H. Murray on the 3rd July 1919. The certificate bears that Corsar is suffering from ulceration of the corneal surface of the eye, but as his right eye (the one affected) has been removed by operation, I cannot, of course, say whether the enucleation was performed for ulceration of the cornea. It seems to be a matter for proof.—Yours faithfully, (Signed) A. Maitland Ramsay."

The letter was communicated to the parties, and on the 11th August the medical referee dismissed the appeal. He had had the injured man before him; he had Dr Murray's certificate before him, and then he says—"I cannot, of course, say whether the enucleation was performed for ulceration of the cornea. It seems to be a matter for proof." I cannot understand why when this doctor had the man before him he did not simply inquire how he lost his eye. There was nothing to debar him from that, or to preclude him from making sensible inquiries, say, at the hospital or elsewhere. He, however, did not do so, and appeared, so to speak, to remit the case for proof to the Sheriff, and then he dismissed the appeal. I cannot hold that that procedure was in furtherance of the statute.

When, however, the case reached the Sheriff that learned judge did not ask the medical referee to get to the bottom of the truth of the case and help the Court, but he made findings that Dr Murray's certificate was not a certificate as required by the Act, and consequently that the medical referee's decision did not make it effective. By this process the procedure got entirely out of hand. It is not necessary to dwell upon the subject, for I agree with your Lordships in holding that the construction of the Act upon which the learned arbitrator proceeded is erroneous.

With reference to the case of *Mapp*, I desire to say that in my own opinion it is not a judgment which should be followed, lending, as it does, support to the view of that defeating of the Act which I think its true construction should avoid.

Their Lordships ordered that the interlocutor appealed from be affirmed and the appeal dismissed with costs.

Counsel for the Appellants — Condie Sandeman, K.C. — Harold W. Beveridge. Agents—W. P. Craig, Glasgow—W. & J. Burness, W.S., Edinburgh — Beveridge & Company, Westminster, Solicitors.

Counsel for the Respondent — Macquisten, K.C.—T. Scanlan. Agents—Thos. Scanlan & Company, Glasgow — R. D. C. M'Kechnie, Edinburgh—Herbert D. Deane, London, Solicitors.

Friday, December 17.

(Before the Lord Chancellor, Viscount Finlay, Lord Dunedin, Lord Atkinson, and Lord Shaw.)

(1) A. G. MOORE & COMPANY *v.* DONNELLY.

(2) FIFE COAL COMPANY, LIMITED *v.* COLVILLE AND OTHERS.

(3) FIFE COAL COMPANY, LIMITED *v.* GORDON AND ANOTHER.

Their Lordships' judgment, which dealt in succession with these three cases, is reported *infra* at p. 87.

(1) A. G. MOORE & COMPANY *v.* DONNELLY.

(In the Court of Session April 1, 1920, 57 S.L.R. 380.)

Master and Servant—Workmen's Compensation—Arising out of and in the Course of the Employment—Breach of Statutory Rule—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1) *and* (2) (*c*)—*Coal Mines Act* 1911 (1 *and* 2 *Geo. V, cap.* 50), *sec.* 86—*Explosives in Coal Mines Order, dated 1st September* 1913, *sec.* 3 (*a*).

A miner whose duty it was to fire a shot lit the fuse and retired to a place of safety. The shot missed fire. In direct contravention of section 3 (*a*) of the Explosives in Coal Mines Order of 1st September 1913 he returned to the place of the shot in question in less than an hour, when the shot blew off in his face and permanently disabled him. *Held* (*rev.* the judgment of the First Division) that the accident did not arise out of and in the course of his employment.

Bourton v. *Beauchamp*, [1920] A.C. 1001, *followed.*

Conway v. *Pumpherston Oil Company, Limited*, 1911 S.C. 660, 48 S.L.R. 632, *overruled.*

The case is reported *ante ut supra.*

A. G. Moore & Company appealed to the House of Lords.

Their Lordships' judgment is reported *infra* at p. 87.

(2) FIFE COAL COMPANY, LIMITED *v.* COLVILLE AND OTHERS.

Master and Servant—Workmen's Compensation—Arising out of and in the Course of the Employment—Breach of Statutory Rule—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1) *and* (2) (*c*)—*Coal Mines Act* 1911 (1 *and* 2 *Geo. V, cap.* 50), *sec.* 86—*Explosives in Coal Mines Order, dated 1st September* 1913, *sec.* 3 (*a*).

Two miners who were engaged in driving a road through sandstone in a pit were directed to bore two shot-holes and to charge and fire the shots. Each of them took the usual steps to fire his shot. One of them saw that his strum or fuse had caught fire and said it was lit. The other said he had failed to light his strum. To avoid the explosion of the former's shot they left their working-place. After it had gone off they