*Friday, May 27.*

## FIRST DIVISION.

[Sheriff of Lanarkshire.

## HEANEY *v.* GLASGOW IRON AND STEEL COMPANY.

*Reparation—Master and Servant—Known Danger—Special Rule of Mine—Relevancy.*

In an action of damages for injuries sustained by a miner while engaged on his work, owing to a fall of stone from the pit-roof, the pursuer averred that the accident was due to the failure of the defenders to see that the said roof was properly and sufficiently supported by lids or otherwise; that the pursuer and his fellow workmen had twice prior to the accident asked the fireman for a supply of such lids or props, which the fireman had promised but failed to provide; that by an examination of the roof its dangerous condition "could easily have been seen; and that it was the duty of the fireman or the manager of the pit to have prevented the pursuer from working until lids and props were supplied."

A special rule of the pit in question expressly forbade miners to remain in their working-places "if from accident or any other cause they are unable at any time to find a sufficient supply of timber at the place appointed." The pursuer did not aver that these rules had not been brought to his notice, and referred to two of them on record in reply to an answer of the defenders. *Held* that the action was irrelevant.

This was an action of damages for £500 raised by John Heaney, miner, against the Glasgow Iron and Steel Company.

The pursuer averred that on the 3rd February 1897 he was in the defenders' employment in their Clydeside pit, Broomhouse, and that he had only been three days in their employment prior to that date. On the said date Dundas Simpson was manager of the pit for the defenders, and James Dolan was employed by them as fireman and superintendent. The pursuer averred that he was subject to their orders and instructions. "(Cond. 4) It was part of the duty of the said Dundas Simpson and James Dolan to see that the ways, works, and plant at the defenders' said pit were in safe and sufficient working order. Rules 73 and 74 are specially referred to."

The pursuer then narrated the occurrence of the accident whereby he was injured, the said accident being due to a fall of stone from the pit roof. He admitted that he was at work in the pit from 6·30 a.m. until 11·30 a.m., when the accident took place. "(Cond. 7) The said accident was caused through the fault or negligence of the defenders, or their said manager or fireman, in culpably failing to see that the roof of said pit was properly and sufficiently supported by lids or otherwise, as said roof was very brittle, and consequently dangerous, and in failing to supply lids and props for the use of the pursuer and other miners. No lids were supplied by defenders although they were asked for by pursuer and his fellow-workmen from the said fireman on 1st and 3rd February. The fireman promised to supply lids and props but did not do so prior to the accident. Pursuer was not working on 2nd February. By an examination the dangerous condition of said roof could easily have been seen. It is usual, necessary, and safe in works of the same description as the defenders' in the district to have lids put up, and to supply them in order that they may be put up. It is a most dangerous and unusual system to work a pit without proper timber being supplied, and particularly without lids being supplied where the roof is brittle. This was known or must have been known to the said manager and fireman, and it was the duty of one or other, or both of them, to have prevented pursuer working at the place of the accident, if there was danger, until lids and props were supplied. Pursuer was not forbidden to work." The pursuer finally detailed the injuries he had received, and stated the amount of his wages.

The defenders pleaded, *inter alia*, that the pursuer's statements were irrelevant.

The reference to rules 73 and 74 in condescendence 4 was in reply to the defenders' answer, in which the latter referred to the special rules for the pit in question established in terms of the Coal Mines Regulation Act 1887 (50 and 51 Vict. cap. 58), sec. 51. Special rule 73 was in the following terms—"Whether the operations shall be conducted by 'long-wall' or 'stoop and room' system, suitable timber being provided at the working-place, gate-end, passbye, siding, or other similar place in the mine convenient for the miners, the same shall be set up by the miners in their working-places, where the roof and sides require to be secured by them. The timber and any necessary sprags or gibs shall be set up at such times, and in such number, and at such points within the working limits as shall from time to time be necessary." Special rule 75 provided—"If from accident or any other cause miners are at any time unable to find a sufficient supply of timber at the place appointed, they are expressly forbidden to remain in their working-places."

On 3rd August 1897 the Sheriff-Substitute (MAIR) allowed a proof.

The defenders appealed to the Sheriff (BERRY), who on 22nd October 1897 dismissed the action as irrelevant.

*Note.*—"In this action at the instance of a miner against his employers, claiming damages in respect of injuries said to have been sustained by him on 3rd February 1897, through a fall from a roof of the pit in which he was working, the ground of fault alleged against the defenders is that they, or their manager or fireman, failed to

see that the roof of the pit, which was brittle and dangerous, was properly and sufficiently supported, and that they failed to supply lids and props for the use of the pursuer and other miners. It is averred that no lids were supplied, although they were asked for by the pursuer and his fellow-workmen from the fireman on 1st and 3rd February, and that the fireman promised to supply lids and props, but did not do so prior to the accident. On 3rd February, the day of the accident, the pursuer, along with another miner, had started work about six a.m., and the accident is alleged to have happened about half-past eleven. The particular place in the pit where it happened is not specified, but that it was the pursuer's working-place appears from the averments in article 6, that the fall occurred while the pursuer was engaged in work.

By special rule 73, applicable to this pit, the miners are required to set up the necessary props in their working-places, suitable timber being provided to them for the purpose. Special rule 75 provides that "if from accident or any other cause miners are at any time unable to find a sufficient supply of timber at the place appointed, they are expressly forbidden to remain in their working-places." The pursuer acted in disobedience to this rule. On his own shewing he knew that wood was required to support the roof. He asked for it, and it was not supplied. Yet he went on to work at his working-place from six till half-past eleven in face of the rule by which he was forbidden to remain there. Even if there was fault on the part of the defenders in not supplying sufficient timber, or in the fireman failing, as it is alleged, to fulfil his promise to supply it, it was the duty of the pursuer in the circumstances to abstain from going to his working-place, or to leave it if he had already gone there. The alleged fault on the part of the fireman did not excuse a disregard of the rule on the part of the pursuer. He chose to disobey it, and to work on for hours at the insufficiently supported working-place, manifestly increasing the danger of a fall the longer he continued to work. It is alleged at the end of article 7 that the pursuer was not forbidden to work either by the manager or by the fireman, but he was forbidden by the special rule, and that was enough. The pursuer by his conduct contributed to the accident, and is not, in my opinion, entitled to hold his employers responsible."

The pursuer appealed for jury trial to the Court of Session, and argued—An issue should be allowed. The mere fact that the pursuer had continued to work in the face of a seen danger did not imply that he relieved the defenders from all liability for their fault or negligence. It was always a jury question whether the danger was so obvious as to involve any such implication; and the case of *Wallace* v. *Culter Paper Mills Company, Limited*, June 23, 1892, 19 R. 915, in which *Smith* v. *Baker & Sons*, L.R. [1891] A.C. 325, had been followed, was not disposed of on relevancy, but was sent to a jury.

Argued for the defenders—The Sheriff was right. The pursuer in condescendence 6 insisted upon the obvious nature of the danger. In such circumstances the special rules left no room for doubt as to what his duty was, and he did not aver that these rules had not been brought to his notice.

At advising—

LORD PRESIDENT—In my opinion, the Sheriff's judgment is right and must be affirmed. Although the result is to throw out an action at the instance of a miner, yet the principle on which the judgment rests is eminently favourable to miners.

The Coal Mines Regulation Act 1887 authorises the establishment in every mine of special rules for the conduct and guidance of the miners, the object of those rules being to provide for the safety, convenience, and proper discipline of the miners. Those special rules, when established, are to be observed in the same manner as if they formed part of the Act of Parliament, and anyone contravening them is guilty of an offence.

Now, one of the special rules established for the mine in which the pursuer was employed was this—"If from accident, or any other cause, miners are at any time unable to find a sufficient supply of timber at the place appointed, they are expressly forbidden to remain at their working-places." The pursuer's case is that the accident from which he suffered was caused by want of sufficient timber, and that the deficiency was so fully in his knowledge that he had asked for a supply. He goes on to say that a supply was promised, but was not given prior to the accident, and that in the meantime he went on working.

In this state of the facts it is clear that the pursuer, in remaining in his working place, when unable to find a sufficient supply of timber, broke the special rules, and that he would not have been hurt if he had obeyed them. He is therefore out of Court. It is in vain for the pursuer to say that the manager or fireman ought to have prevented him from working. The manager and fireman and everybody else are entitled to assume that the miners will obey the law, and will stop working when the law bids them stop; and no one is entitled to call on other people to prevent him from disobeying the law. On the other hand, it is well that miners should distinctly understand that they are entitled and bound to obey each of those orders given them by the rules in the interests of their own safety, and that neither they themselves, nor any manager or fireman, can supersede the rules or absolve from the duty of obedience to those rules. The practical application of the doctrine in the present case is that if a miner by disobeying a rule suffers an injury which could not have been sustained if the rule had been obeyed he has no action of damages. It is a clear case of the pursuer himself causing, or materially contributing to the accident.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court affirmed the interlocutor of the Sheriff, and of new dismissed the action.

Counsel for the Pursuer—M'Clure—Hunter. Agent—Henry Robertson, S.S.C.

Counsel for the Defenders—Salvesen—Guy. Agent—W. G. L. Winchester, W.S.

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*Friday, May 27.*

## SECOND DIVISION.

## TOWN COUNCIL OF DUNDEE *v.* MILLER.

*Statute—Contract—Construction of Statutory Contract—Registrar of Births, &c.—Commutation of Fees for Fixed Salary—Registration of Births, &c. (Scotland) Act* 1854 (17 *and* 18 *Vict. cap.* 80), *sec.* 51.

By section 51 of the Registration of Births, Deaths, and Marriages (Scotland) Act 1854, it is provided "that it shall be lawful for the parochial board, with the approbation of the Registrar-General or of the Sheriff, to place the registrar and assistant-registrar upon annual salaries, the amount of which shall be fixed by the parochial board, with the like approbation; and such salaries shall be paid by the parochial board out of the assessment to be levied as hereinbefore directed, and the fees received by the registrar, which in such case shall be accounted for by him to the parochial board."

In 1894 the office of registrar of births, &c., fell vacant in a burgh district. The town council resolved that the new registrar should be paid by an annual fixed salary of £150 as authorised by the above section, and that the fees received by him as such registrar should be accounted for and paid over to him by the town council. This was approved of by the Registrar-General, and the appointment was accepted in the above-mentioned terms by the applicant chosen.

*Held* (*diss.* Lord Young) that under this contract the registrar appointed was bound to account for and pay over to the town council all fees which he collected for all duties imposed on the registrar by statute, even although the statute might be subsequent in date to the Act of 1854 or subsequent to the date of the appointment.

By the Registration of Births, Deaths, and Marriages (Scotland) Act 1854 (17 and 18 Vict. cap. 80), the registration of births, deaths, and marriages is provided for, and by section 12 it is, *inter alia*, enacted that "when there shall be a vacancy in the office of registrar the parochial board shall . . . by a majority of the votes of the members present at a meeting specially called for the purpose, elect the registrar of the parish or district." It is declared (section 66) that in burghs the town council shall possess all the powers thereby conferred on parochial boards. Dundee was duly divided into districts for the purposes of the Act, and registrars were appointed for each district.

By section 17 of said Act it is provided that "the registrar shall be entitled to demand, in respect of registration and the other duties required to be performed by him under the provisions of this Act, the several fees herein authorised to be taken, and shall keep a correct account of all sums received by him, in virtue of this Act, in the course of each year, and shall within ten days after the 31st day of July yearly deliver or transmit a copy of such account up to the said 31st day of July, authenticated by him, to the sheriff, to be preserved in the sheriff-clerk's office, and to be furnished by the sheriff to the Registrar-General, and if required to one of Her Majesty's principal Secretaries of State." Fees were authorised to be taken by the registrar from the public by sections 31, 32, and 47 for certain registrations, and by sections 56 and 57 for extracts from and searches in registers. Further, by section 50 the registrar is directed to make out twice in every year an account of the number of births, deaths, and marriages registered by him in the half-year preceding, and upon said account being verified, in terms of said Act (amended by 23 and 24 Vict. cap. 85, sec. 16), the parochial board are directed to pay the registrar, in respect of each of the first twenty entries of births, deaths, and marriages appearing in such verified account, a sum of 2s. each entry and 1s. for each subsequent entry. By said section 50 it was also enacted that the parochial board should pay the registrar, "in the event of such fees being deemed inadequate to his remuneration, such further sum as the parochial board shall think fit." Further, by said section the parochial board was empowered "to levy by assessment the sums required for payment to the registrar of the amount of his account so verified, and such further sum as may be necessary for his remuneration" and for other expenses.

By section 14 of said Act every registrar was empowered, with the approbation of the parochial board, to appoint an assistant to act in case of his illness or unavoidable absence, and with like approbation to dismiss such assistant. By section 51 of the said Act it was also provided as follows:—"Provided that it shall be lawful for the parochial board, with the approbation of the Registrar-General or of the sheriff, to place the registrar and assistant-registrar upon annual salaries, the amount of which shall be fixed by the parochial board with the like approbation; and such salaries shall be paid by the parochial board out of the assessment to be levied as hereinbefore directed, and the fees received by the registrar, which in such case shall be accounted for by him to the parochial board.'

It was by section 15 of said Act also