I agree that the penalty should be reduced to one or other of the sums proposed by your Lordship.

LORD KINCAIRNEY—I agree that the breach of the statute, if there was one, was infinitesmal, and that the penalty ought to be reduced as your Lordships have proposed. But I have some doubt whether there was any breach of the statute here—that is, whether it is proved that the appellant permitted his tenants to occupy his houses. It is not proved that he permitted them to live there, but he did permit them to put in their furniture, and they did put in at least a part of it. The statute does not define occupation. It is agreed that it is not every mode of use that would amount to occupation; some may, others may not. If that is so, the question to be solved in every instance is, whether in the circumstances of the particular case permission to put in furniture is equivalent to permission to occupy. In this case there was permission to put in furniture for the purpose of occupying it after a certificate had been granted, and the question is, whether that is permission to occupy or not. I should have been inclined to think that it was not, but as your Lordships have reduced the penalty imposed to a nominal sum I do not dissent from the judgment.

The LORD PRESIDENT and LORD M'LAREN were absent.

The Court pronounced this interlocutor:—

"Sustain the appeal: Recal the interlocutor of the Dean of Guild Court dated 3rd May 1901 appealed against: Of new find that the respondent John Downie has, in contravention of the Burgh Police (Scotland) Act 1892, sec. 180, permitted the houses or buildings described in the petition to be occupied before the certificate by the Burgh Surveyor therein referred to had been obtained by the respondent in terms of said Act as set forth in the petition: Fine and amerciate the said John Downie in the sum of two shillings and sixpence sterling of penalty payable to the Procurator-Fiscal of Court for the public interest, and decern: Find the appellant Downie entitled to expenses in this Court and in the Dean of Guild Court, but modify the same to the amount of two-thirds thereof, and remit the accounts thereof to the Auditor to tax and to report."

Counsel for the Respondent and Appellant—Younger—Cullen. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for the Petitioner and Respondent—Cooper. Agents—Buik & Henderson, W.S.

Thursday, July 11.

SECOND DIVISION.

[Sheriff-Substitute at Dundee.

THE BOASE SPINNING COMPANY, LIMITED *v.* M'AVAN.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *First Schedule, secs.* 11, *and* 12—*Review of Weekly Payments—Certificate of Medical Practitioner Appointed under the Act Conclusive Evidence of Workman's Condition.*

By section 11 of the First Schedule of the Workmen's Compensation Act it is provided that a workman receiving weekly payments thereunder may be required by his employer to submit himself for examination by a medical practitioner, and may submit himself to a medical practitioner appointed for the purposes of the Act, whose certificate as to the condition of the workman is declared to be conclusive evidence of that condition.

A workman in receipt of weekly payments under the Act was required by his employer to submit himself for medical examination, and was examined by a medical practitioner appointed for the purposes of the Act. His report bore that the workman had recovered from his injuries, that he would probably never be able for hard manual labour, but only for light employment, but that this disability was not connected with his injuries.

In an application by the employer for an order terminating the weekly payments in respect of the said certificate, *held* (*diss.* Lord Young) that the certificate of the medical practitioner was conclusive evidence under the Act not only as to the condition of the injured workman but as to the question whether his condition was due to the accident or to other causes; that consequently the workman here must be held to have recovered from his injuries, and that the Arbitrator was bound in respect of the certificate to pronounce an order terminating the weekly payments.

This was an appeal in an arbitration under the Workmen's Compensation Act 1897 before the Sheriff-Substitute (CAMPBELL SMITH) at Dundee, between the Boase Spinning Company, Limited, appellants, and Peter M'Avan, Dundee, respondent.

On 13th April 1900 the respondent, while in the appellants' employment, fell into the pit or shaft of the elevator in their works, a distance of about 24 feet, and sustained injuries to his head and groin.

On 23rd November 1900 the respondent was certified by Dr David M'Ewan, one of the medical practitioners appointed for the purposes of the Workmen's Compensation Act, to be totally unfit to work.

By interlocutor of date 25th May 1900 the Sheriff-Substitute awarded compensation

to the respondent at the rate of 6s. 9d. weekly, beginning from the 27th day of April 1900, until the further orders of Court.

The facts giving rise to the present question were stated by the Sheriff-Substitute as follows—"The appellants, on 24th April 1901, in terms of section 11 of the First Schedule to the said Act, required the respondent to submit himself for examination by Dr W. S. Malcolm, a duly qualified medical practitioner. The respondent did so, and Dr Malcolm's certificate is as follows—'*Dundee, 29th April* 1901.—I certify on soul and conscience that I this day examined Peter M'Avan, 9 Powrie Place, Forebank, Dundee, who in April 1900 had an accident whereby he sustained concussion of brain, and a fracture of his right haunch-bone. There is no evidence that he suffers from the effects of these injuries, and although weakly from age, indigestion, and absence of natural robustness, in my opinion he is able for light manual work, and has quite recovered from his said injuries.—W. S. MALCOLM, M.B., C.M.' That certificate was duly communicated to the respondent on or about 1st May 1901, and the respondent having expressed himself as dissatisfied therewith, he, at the appellants' request, submitted himself, in terms of said section 11, to Dr David M'Ewan (one of the medical practitioners appointed for the purposes of the Act), whose certificate is as follows—'I, David M'Ewan, a registered medical practitioner appointed by the Secretary of State for the purposes of the Workmen's Compensation Act 1897, have this day examined Peter M'Avan, residing at 9 Powrie Place, Forebank, Dundee, who stated that he was suffering from the effect of injuries, viz., concussion of brain and fracture of pelvis (haunch-bone), received on the 13th day of April 1900, at 21 Jamaica Street, Dundee, while in the employment of the Boase Spinning Company, Limited, as a labourer, and I hereby certify that his condition is as stated below. He has recovered from the above-mentioned injuries, and his condition is such that he is fit for light work. In my opinion he will probably never be able for hard manual labour, but only for light employment. This disability is not connected with his late injuries, but is the result of deficient natural vigour of constitution, together with advancing years.—DAVID M'EWAN, M.D., C.M. 15 South Tay Street, Dundee, May 6th, 1901.'

"On 17th May 1901 the appellants' agents lodged a minute for review of the weekly payment, along with the said certificates by Dr Malcolm and Dr M'Ewan, and moved that the appellants' liability for compensation should be reviewed by being totally ended. The Sheriff-Substitute stated his opinion that the medical certificate was not by itself sufficient ground for terminating the payment and liability for compensation, and offered to fix a diet of proof. The appellants' agents stated that they did not wish a proof, as they had no evidence to adduce except the medical certificate, and that it was the prescribed and appropriate statutory evidence, and requested the Sheriff-Substitute summarily to dispose of their motion for reviewing the award of compensation.

"The Sheriff-Substitute having heard the statements and answers to questions by the agents and by the respondent, who was present and stated his age to be 49, and being satisfied from the oral statements that the respondent had not worked since the accident, and that the appellants had never offered him work of any kind, and disclaimed all obligation to find work for him, or to prove where he could find work that he could properly perform, and being satisfied from the medical certificate, as also from his appearance (which was the appearance not of an old man but of a man of very small stature in poor muscular condition), that he was fit for light work and for no other kind of work, exhorted him to try to find work, and reduced the compensation to 5s. a-week, being of the opinion that he was not totally incapable of earning wages."

The question of law for the opinion of the Court was—"Whether the statement of opinion in the certificate of the medical practitioner appointed by the Secretary of State, to the effect that the workman has 'recovered from his injuries' and is 'fit for light work' is conclusive as to the matter of fact, and has the legal effect of rendering it imperative upon the Arbitrator, regardless of his own opinion, to decide that the appellants' liability to pay compensatien has come to an end without any proof of the workman's ability to find suitable work and to earn his former wages should he find work?"

The Workmen's Compensation Act 1897, First Schedule, section 11, enacts as follows—"Any workman receiving weekly payments under this Act shall, if so required by his employer, . . . from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, . . . but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman and shall be conclusive evidence of that condition. . . ."

Section 12. "Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act."

Argued for the appellants—The Sheriff-Substitute had erred in disregarding the certificate of the medical man appointed under the Act. A workman was entitled to compensation during incapacity result-

ing from injury sustained in his employment. But when that incapacity ceased the right to compensation ceased also. The official medical practitioner had certified that the respondent no longer suffered from incapacity resulting from the injury, and his certificate was declared to be conclusive evidence of the workman's condition. The object of that provision was to avoid an expensive litigation and conflicting medical testimony. The Sheriff-Substitute was therefore bound to grant the appellants' application for terminating the payment of compensation to the respondent.

Argued for the respondent—The certificate of the official medical practitioner was conclusive only as to the actual condition of the workman. It was not conclusive on the question whether that condition was due to the injury or to other causes. That could not be ascertained by a medical examination without an inquiry into the circumstances of the accident and the workman's previous history. The medical man was not authorised to take evidence, and the Court had no means of knowing upon what grounds he had reached his conclusion. The Sheriff was entitled to take evidence or as here to form a judgment from his knowledge of the circumstances.

At advising—

LORD JUSTICE-CLERK—In this case the respondent, who was injured in the appellants' employment, received compensation up to a certain date from them upon a medical certificate certifying his inability to work because of his injuries. The appellants, in terms of section 11 of the First Schedule to the Act, called upon the respondent to submit himself again to medical examination by a medical man nominated by them, and thereafter the medical man reported that he had "quite recovered from his said injuries." The respondent, being dissatisfied with this report, was examined by Dr M'Ewan, a medical practitioner officially appointed for the purposes of the Workmen's Compensation Act, who reported in these terms—[*His Lordship quoted the terms of the report.*]—The appellants' contend that, in respect of this certificate, they cannot be legally required to pay any further compensation to the respondent. I am of opinion that this contention is sound. By sub-section 11 of Schedule I. of the Act it is declared that if a person injured submits himself for examination "to one of the medical practitioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act," that "the certificate of that medical practitioner as to the condition of the workman at the time of the examination . . . shall be conclusive evidence of that condition." The purpose of this provision is plain. It is to prevent expensive and protracted litigation by submitting the medical questions in the case to the final decision of a neutral expert. It cannot be doubted for a moment that if the certificate had stated that the workman was still affected by the accident, so as to be disabled wholly or partially from work, the appellants would have been compelled to continue to pay compensation, and would not have been allowed to lead evidence to prove that the certificate was erroneous. Here, equally, I hold that the certificate declaring that he has recovered from his injuries, and that any disability for hard work under which he may suffer is not connected with his late injuries, is conclusive upon the question of his right to further compensation, compensation being due only because of disability arising from the accident.

The Sheriff, with nothing before him of which he could take judicial cognisance except the certificate, has ordered further compensation to be paid. I am of opinion that he has erred in so doing.

The question appended to the case is not satisfactory. I think it should be answered by stating that the certificate of the medical practitioner appointed by the Secretary of State, that the respondent has recovered from his injuries and is not suffering from any disability caused by the injuries, is conclusive against any further claim for compensation under the Workmen's Compensation Act, and that the Sheriff ought to have so decided.

LORD YOUNG—The important question here is, what is the true meaning and import of sub-section 11 of the First Schedule to the Act—a question not the less but all the more important in respect that it has not heretofore arisen. I am not surprised that this is so, because the injuries for which compensation is paid, and with regard to which a workman may be required to submit himself to examination by a medical man, are in the ordinary case of the nature of wounds or broken bones, and a medical examination will usually show whether the wounds have healed or the bones knit together. I think the Act was intended to apply, and has hitherto been applied to such cases, the medical man being required to grant a certificate setting forth the result of his examination as to the condition which he found the workman to be in. But the question which occurs in this case, and which may occur again, is as to what led to that condition, and that does not, or at least may not appear upon a medical examination. Now, the condition in which this respondent was at the date of the medical examination was that of deficient natural vigour and premature frailty of old age—I say premature, because these signs do not usually occur at the age of forty-nine. The frailty of old age comes on at different periods of life according to the history of the individual—according to the life he has led—and the want of vigour which disables him from employment may depend on what cannot appear to the medical man upon merely inspecting the body of the patient. I think that the condition of the man is the only thing that can be satisfactorily ascertained by such an examination, and my own judicial sympathies are with what the Sheriff-Substitute says, although I do not assent to all his language. The Sheriff-Substitute had tried the case, and therefore was ac-

quainted with the circumstances of the accident. He tells us that the respondent fell a distance of 24 feet. That is an incident which may conduce to the premature frailty of old age and want of vigour. The Sheriff says further that he suffered injuries to his head and groin, and the medical man tells us that he had sustained concussion of the brain. Now, if a man has received injuries of that kind—and there is no statement that before the accident he was suffering from the frailty of old age or deficient vigour—and the result of those injuries was so serious that at the first examination in May he was reported to be still totally unfit for work, and remained so till the end of November, I can quite appreciate that he is suffering from frailty and deficient vigour. But I am not prepared to accept the medical certificate that the concussion of the brain and the consequences of the fracture of his thigh have nothing to do with the condition in which he now is. That could not be ascertained merely by a medical examination without information as to the man's previous history, the circumstances of the accident, and its immediate effects. I do not know what information the medical man had as to these facts, and he is not authorised to take evidence. I think therefore it is misleading to say that he is certifying as to the man's condition when he certifies that the accident had nothing to do with his condition. I should have allowed the respondent to lead evidence, and we were informed that this was proposed, but opposed by the appellants, and the Sheriff thought that he might use his own judgment. The respondent was not suffering from premature old age before the accident, but was earning wages, and it is ridiculous to say that his age of itself is sufficient to account for his condition without evidence. Nor was he previously suffering from deficient vigour. But deficient vigour may be accounted for by concussion of the brain; indeed, there are doctors who think that there is never complete recovery from concussion of the brain. I am not therefore prepared to assent to the view on which your Lordship's judgment proceeds, that this certificate is to be taken as conclusive not only as to the respondent's condition but also that the terrible accident which occurred to him has nothing to do with that condition.

Lord Trayner—The respondent in this case was injured on 13th April 1900 while in the appellants' employment. He was, in respect of the injuries he had sustained, awarded compensation by the Sheriff-Substitute at the rate of 6s. 9d. weekly from 27th April until the further orders of Court. The appellants have now applied to the Sheriff-Substitute to review the order formerly made by him in order that the weekly payment to the respondent may be "ended." This application is founded on the 12th section of the First Schedule appended to the Workmen's Compensation Act 1897. The respondent has been examined (in terms of the 11th section of the same Schedule) by a medical practitioner appointed by the Secretary of State (Schedule 2, sec. 13), and he reports that the respondent has recovered from the injuries sustained by him in April 1900, in respect of which compensation had been awarded. He reports further that the respondent is not fit for hard manual labour, but adds, "This disability is not connected with his late injuries."

The first question put to us in this special case contains really two questions. They are (1st) Is the medical practitioner's certificate conclusive evidence of the fact there stated that the respondent has recovered from his injuries; and (2nd), if that be so, are the appellants absolved from further liability for compensation to the appellant? The first of these questions, I think, only admits of one answer, and it is to be found in the Act, which provides that the certificate of the medical practitioner "as to the condition of the workman at the time of the examination . . . shall be conclusive evidence of that condition" (Schedule 1, sec. 11). That certificate being conclusive evidence, no other evidence is necessary or indeed competent. Now, if it is conclusively proved that the appellant has recovered from his injuries received in the respondents' employment, are the respondents bound to go on paying compensation therefor. The second question (as I have stated it) appears to me equally clear. The Act provides (Sched. 1, sec. 1 (6) that where "total or partial incapacity for work results from the injury" the workman is entitled to a certain weekly payment "during the incapacity"—that is, the incapacity resulting from the injury. So long as the incapacity so occasioned continues the right to compensation continues, but nothing in the Act suggests that where the incapacity resulting from the injury has disappeared any right to compensation exists. The contrary is the view and purpose of the Act. An employer is to compensate his workman for injury received, which results in the incapacity of the workman to labour and earn wages. But the employer is not to provide compensation for an incapacity not connected with or caused by the injury received in his employment. I think therefore that the first question put in the case should be answered in the affirmative, and the case remitted back to the Sheriff, with directions to him to grant the appellant's application, and to give such order as may be necessary to end the weekly payments to the respondent.

Lord Moncrieff—I am of opinion that the Sheriff's judgment is wrong, because under the 11th article of Schedule 1 of the Workmen's Compensation Act the certificate of the medical practitioner appointed under the Act is declared to be "conclusive evidence" of the injured workman's condition.

The manifest object and effect of that provision is to exclude all other inquiry, skilled or otherwise. The alternative (which it was desired to avoid) would be a

conflict of skilled medical evidence, or, as in this case, the opinions of those who have no special medical training.

I would answer the question in the affirmative.

The Court answered the question of law by stating that the certificate of the medical practitioner appointed by the Secretary of State—that the respondent has recovered from his injuries, and is not suffering from any disability caused by the injuries—is conclusive against any further claim under the Workmen's Compensation Act, and remitted to the arbitrators to grant an order ending the weekly payments to the respondent.

Counsel for the Appellants — Munro. Agents—Cuthbert & Marchbank, S.S.C.

Counsel for the Respondent—Hamilton. Agent—J. Pearson Walker, S.S.C.

Friday, July 12.

WHOLE COURT.

HALL *v.* INCORPORATED SOCIETY OF LAW-AGENTS.

Law-Agent—Right of Women to be Admitted as Law-Agents — Inveterate Custom — Statute — Interpretation — Women not Included Under "Persons"—Law-Agents (Scotland) Act 1873 (36 *and* 37 *Vict. cap.* 63).

Held by the whole Court that the Court has no power to admit women to practise as law-agents.

On 5th November 1900 Margaret Howie Strang Hall applied to the Secretary of the Examiners of Law-Agents with a view to enrolling herself for the first examination in general knowledge, which must be passed by persons who intend to become law-agents. The secretary replied that he was unable to enrol the applicant, and that the examiners were of opinion that they could not take ladies on trial for examination unless authorised by the Court of Session to do so.

Miss Hall thereafter presented a petition to the Court, in which she craved the Court to authorise and direct the Secretary of the Board of Examiners of law-agents to enrol the petitioner for examination in the first examination in general knowledge; to authorise and direct the examiners to examine her; and to authorise and direct that she be enrolled and examined in respect of all subsequent examinations under the Acts relating to law-agents practising in Scotland, and in the event of her satisfying the examiners on the first of the two examinations in general knowledge to authorise any qualified law-agent to enter into an indenture with her as an apprentice.

The petitioner averred that Mr Daniel Anderson, Solicitor, Dunoon, had agreed to take her into his office as an apprentice.

By interlocutor dated 18th December 1900 the First Division ordered intimation and service on the Secretary to the Examiners of Law-Agents, and also on the Incorporated Society of Law-Agents in Scotland.

Answers were lodged for the Incorporated Society of Law-Agents in Scotland, in which they referred to the Acts of Sederunt and statutes with regard to the regulation of the profession of law-agents, and stated that they did not appear to contemplate the case of women becoming members of the profession.

The Law-Agents (Scotland) Act 1873 (36 and 37 Vict. cap. 63), which regulates the admission of law-agents, enacts as follows—"(Section 7) Any person qualified as hereinbefore provided may present to the Court a petition praying to be admitted as a law-agent, and the Court shall examine and inquire, by such means as they shall think proper, touching the indenture and service and the fitness and capacity of such person to act as a law-agent; and if the Court shall be satisfied by such examination or by the certificate of examiners, as hereinafter mentioned, that such person is duly qualified and fit and competent to act as a law-agent, then and not otherwise the Court shall cause him to be admitted a law-agent."

Lord Brougham's Act of 1850 for the Abbreviation of Acts of Parliament (13 and 14 Vict. cap. 21), which was in force when the Law Agents Act of 1873 was passed, enacts as follows—"(Section 4) In all Acts, words importing the masculine gender shall be deemed and taken to include females, unless the contrary as to gender is expressly provided."

By interlocutor dated 30th January 1901 the First Division, in respect of the novelty and importance of the question involved in the case, appointed parties to lodge minutes of debate to all the Judges of the Court in order to their opinion being obtained thereon.

Argued for the petitioner—(1) It was necessary to construe the Law-Agents Act 1873 in the light of Lord Brougham's Act, and so construed its terms included women. Though no woman had ever been admitted a law-agent, no woman had ever been rejected, and a negative inference was all that could be drawn from inveterate custom. The cases in which women had been held to be excluded—*Jex-Blake* v. *Senatus of the University of Edinburgh*, June 28, 1873, 11 Macph. 784; *Chorlton* v. *Lings*, November 9, 1868, L.R., 4 C.P. 374; *Beresford-Hope* v. *Lady Sandhurst*, 1889, 23 Q.B.D. 79, Lord Coleridge at p. 93—were distinguishable from the present case. In *Jex Blake* v. *Senatus of University of Edinburgh*, the Court proceeded upon the ground that the ancient charters of the University as interpreted by the *contemporanea expositio* of usage showed that the foundation was instituted for men only. *Contemporanea expositio* was doubtless of great weight in interpreting old statutes or deeds, but this rule did not apply where the statute to be interpreted was so recent as 1873. In *Chorlton* v. *Lings* the Court proceeded partly upon long usage, but also upon positive statements of law in old