for amendment of a case come just as often from one side as they do from the other.

Now, having said so much upon the remit, I do not propose to trouble your Lordships with any views of mine upon the general question. I had to consider the matter in the case of *Mackinnon* v. *Miller*, 46 S.L.R. 299—a case which I apprehend none of your Lordships disagree with, and I refer to my judgment in that case. The conclusion that I came to of the criterion, as it is not long, I shall here repeat. I said in that case, and I repeat it in this—"It seems to me that each case must be dealt with and decided upon its own circumstances, and that inferences may be drawn from circumstances just as much as results may be arrived at by direct testimony;" and then in that case I went on to say—"Here the learned Sheriff-Substitute cannot be said to have drawn an inference which no reasonable man could draw, and that being so, that it is not for your Lordships to interfere with his decision." Now that criterion commends itself to all your Lordships, because you have really expressed the same thing in other, and I doubt not, in better words.

I am bound to say that if the matter was open to me I should agree—in fact I do agree—with the views of my noble and learned friend beside me (Lord Atkinson), and if I may say so, I feel still more certain of this, that if I had been sitting in the Second Division I should have come to the same conclusion as they did, and I should have come to that conclusion, not so much upon what I thought myself, but because I should have thought I was loyally carrying out the views of the House of Lords as expressed in *Marshall* v. "*The Wild Rose*," [1910] A.C. 486, 48 S.L.R. 701, and more particularly would I have thought I should have carried out the views of my noble and learned friend opposite, because I agree that his argument in one sense cannot be controverted. I quite agree that, taking the criterion as I have set it down, I admit myself out of Court when three of your Lordships say that you would have came to the same conclusion as the arbitrator. I can only say that I look in vain for any evidence in this case. It all turns upon one point, whether there is any evidence which, so to speak, associates this man's duty with his being at the side of the ship. I can find none. I say no more, because my noble and learned friend beside me has dealt at length with that matter. I should not even have dissented were it not for this, that although the opinion of my noble and learned friend beside me and myself cannot influence the decision of your Lordships, at least I hope it may serve as a hint to some arbitrators that they really must go upon facts and not confine themselves to guesses.

Their Lordships reversed, with expenses, the interlocutor appealed against.

Counsel for the Appellants — Clement Edwards, M.P.—Wetenhall. Agents—J. & A. B. Boyd, Ayr—Lindsay, Cook, & Dickson, S.S.C., Edinburgh—Alexander Smith, London.

Counsel for the Respondents — Horne, K.C. — Alex. Neilson. Agents — Maclay, Murray, & Spens, Glasgow—J. & J. Ross, W.S., Edinburgh — Botterell & Roche, London.

Friday, July 17.

(Before Earl Loreburn, Lords Dunedin, Atkinson, Shaw, and Parmoor.)

CLARK *v.* GEORGE TAYLOR & COMPANY.

(In the Court of Session, March 6, 1914, 51 S.L.R. 418, and 1914 S.C. 432.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *First Schedule* 1(*b*)—"*Incapacity for Work Results from the Injury*"—*Tendency to Obesity Increased by Enforced Idleness Caused by Injury.*

A workman was injured by accident arising out of and in the course of his employment on 7th October 1910, and his employers paid him compensation up to 11th July 1913, when they ceased payment on the ground that he had recovered from the effects of his injuries. A remit having been made a medical man reported—"(1) The defendant has recovered from the direct effects of his injury but not from the indirect. (The injury having thrown the man out of work for a time, his age—sixty-three years—coupled with his disposition to obesity have told against him, so that from lack of continuity of activity he has become less and less fit for labour of any kind.) He is not fitted to undertake any work other than that of a more or less sedentary character—for example, a watchman." And again—"The man's incapacity for work has arisen from the fact that he has been doing no hard work during the last three years." The arbiter "found that his partial incapacity on 8th October 1913 did not result from the injuries sustained by him on 7th October 1910."

Held (*rev.* judgment of the First Division) that the arbiter might so find.

This case is reported *ante ut supra.*

George Taylor & Company, the respondents in the Court of Session, appealed to the House of Lords.

At delivering judgment—

EARL LOREBURN—If I were to act upon my own opinion of the merits of this case and regarded that as being within my province I should draw a conclusion from the evidence as contained in the award the same as that which was drawn by the Court of Session. I agree with the reasoning, and I think, if I may respectfully say so, that the conclusions they arrived at were the same conclusions as I myself should have come to. That, however, is not what we have to consider.

In this case the only point raised before the arbiter was whether the present inca-

pacity of this man resulted from his injury. The arbiter found that it did not result from his injury. We may not go into the evidence for the purpose of seeing whether we should agree with him, we must take the findings of the Sheriff as findings upon which his conclusion rests, and we may look at that conclusion and ask whether a reasonable man could arrive at it or not.

Now the arbiter says that the partial incapacity on the 8th of October 1913, which is the crucial date, did not result from the injury sustained by the applicant on the 7th October 1910. I ask whether that is such a finding that I can say that a reasonable man could not have arrived at it. The learned arbiter might think that the increase of obesity and age were as a matter of substance, and looking at it broadly, the real causes which led to this incapacity—that the incapacity resulted from that and not from the injury. You cannot analyse the chain of causation too closely or you will get into all the labyrinth of argument and disputation which has constantly surrounded the discussion of this subject The arbiter may, after puzzling over these considerations, have said to himself in the end, "I think on the whole that it was the disease and the age which was the cause of his incapacity," and in fact he has said so.

Mr Moncrieff addressed to us an argument with very remarkable ability, very concise, very powerful, and very much to the point. He said that the arbiter had made an error in law, because he had assumed that in order to bring the case within the statute the incapacity must be the direct consequence of the injury, and that the injury must be the exclusive cause of the incapacity. If that were so, then I should think it was an error of law. It is not necessary that the incapacity should be the direct result of the injury. It is not necessary that there should be no contributory source of weakness. But in this case I think that the arbiter may have arrived, and very likely did arrive, at his conclusions from the considerations to which I have referred. When you ask, in the language of the statute, whether something results from the injury, if we are to refine, we may ask, what is the meaning of resulting; how far back are you to carry the claim? It is a question of fact in each case. Each of us must judge in each case how near or how remote the injury is. I do not know how you could lay down a rule of law prescribing the degree of remoteness which excludes the case from the statute, nor could you lay down any formula to guide people to the conclusion that this quantum or that quantum of contributory cause was the cause from which the incapacity resulted. How much other causes contributed, if at all, what is the degree of connection which is necessary between the incapacity and the injury, are, in my opinion, questions of fact.

I do not therefore find that the learned arbiter acted on a wrong view of the law, I do not find that a reasonable man must have found in a different sense, and therefore I think that his award ought to be restored, and in saying so I will expressly repeat that, in my opinion, if I had to form an opinion upon the facts of this case I should have come to the same opinion as that which the Court of Session has arrived at.

LORD DUNEDIN—I think that this case is truly a corollary of the last. I do not find that there is any necessity for me to think that the arbitrator here made a mistake in law. The test of that always is this—assume the law to be rightly stated and then put to yourself the question—could he have arrived at the result that he did with that law so rightly stated? I think he could upon a certain view of the facts, and I think there were sufficient facts for him to come to that result.

I say no more, except that I agree with the judgment of Lord Johnston, and I concur in the remarks which have just fallen from the noble Earl on the Woolsack.

LORD ATKINSON—I concur with the judgment delivered by my noble and learned friend on the Woolsack. At the same time I must confess that I am not at all certain that the arbiter did not arrive at the conclusion at which he has come under the mistaken view of the law that under section 1, sub-section (*b*), of the First Schedule the result must be the direct result of the injury. That upon the case is left obscure, but if there be any obscurity about it I think it is entirely due to the way in which the parties have thought proper to conduct the case. Practically the case was decided upon the medical evidence of the gentleman most wisely selected as the person who was to be really the medical witness of both parties, and I think that the parties should, if they desired to raise this question, have endeavoured to get a more definite statement from the learned Judge in the case he was about to submit upon this point. That being so, I do not feel that there are materials before me which enable me to say that the Sheriff-Substitute misdirected himself upon a point of law, or came to a wrong conclusion upon a point of law in the construction of the statute. As to the question of fact, if he did not misdirect himself and took a proper view of the true meaning of the statute, I do not think upon the finding of fact that his award can be disturbed.

LORD SHAW—In the last case upon the facts I agreed with the arbitrator, in the present case I should have come to a different conclusion. In both cases alike, however, I hold that it would be invading the arbitrator's province to reverse his verdict. And for brevity's sake I may say that for the reasons shown by me and explained in the case of *Lendrum* I agree to the course now proposed in this case of *Taylor*.

LORD PARMOOR—I concur. I think the only possible ground on which the arbitrator's award could have been questioned would be the ground that he had made a mistake in law in excluding matters of indirect damage. For a time I thought that might be so, having regard to the very able argument of Mr Moncrieff, but I have satisfied myself that no such mistake of law has

been committed by the arbiter, and I entirely concur in the judgment of the noble and learned Earl on the Woolsack.

Their Lordships reversed, with expenses, the order appealed from.

Counsel for Clark (Appellant in the Court of Session, Respondent in the House of Lords)—Moncrieff, K.C.—Mackenzie Stuart. Agents—Mackintosh & Bain, Kilmarnock — Macpherson & Mackay, S.S.C., Edinburgh — R. S. Taylor, Son, & Humbert, London.

Counsel for George Taylor & Company (Respondents in the Court of Session, Appellants in the House of Lords) — Horne, K.C.—Fenton. Agents—James S. Inglis, Kilmarnock—Simpson & Marwick, W.S., Edinburgh—Bell & Sugden, London.

COURT OF SESSION.

Friday, June 26.

FIRST DIVISION.

MACDONALD, PETITIONER.

Public Records—Writ—General Register of Sasines—Power of Keeper to Reject Deeds Transmitted to him for Registration.

The Keeper of the General Register of Sasines has a discretionary power to reject such writs transmitted to him for registration as he thinks ought not to enter the register.

Observed per the Lord President—"Where any controversy arises with regard to the propriety of the action of the Keeper of the Register of Sasines in refusing or rejecting any deed transmitted to him for registration, that controversy ought in the first instance to be referred to the Deputy Clerk Register, and that reference may be made at the instance either of the Keeper of the Register of Sasines himself or of the agent of the party whose deed has been refused. If the Deputy Clerk Register finds himself in any doubt or difficulty, then it is his duty to refer to this Court for direction and guidance, because the Deputy Clerk Register now, as in place of the Lord Clerk Register, is subject to the control and supervision of this Court in the performance of his statutory duties under the Lands Registration Act of 1868."

Circumstances in which *held* that the Keeper of the Register of Sasines had rightly exercised his discretionary power of rejecting a deed transmitted to him for registration.

On 25th September 1913 Mrs Annie Macdonald, widow, 140 M'Donald Road, Edinburgh, presented a petition to the First Division for an order on the Keeper of the General Register of Sasines to record in the said register, on the date on which it was presented, a deed of settlement granted by her son William Macdonald, in which he declared that a bequest of his whole means and estate in favour of his wife was granted subject to the petitioner's liferent right of "the house in No. 140 M'Donald Road, Edinburgh."

The *petition* stated—"In May 1905 the petitioner and her family purchased the said heritable subjects, which consist of a flat at 140 M'Donald Road, Edinburgh, for the sum of £335. Of this sum £250 was borrowed, and the petitioner and her family provided the balance. The title to the house was taken in the name of William Macdonald, a son of the petitioner, but he truly held the property in trust for behoof of himself and his mother and sister. All the parties resided in the house until March 1911, when the said William Macdonald went to England.

"No qualification of the title to the house which stood in the name of William Macdonald was put in writing until 27th September 1912, when the said William Macdonald, in order to define his mother's rights in the property, to furnish her with evidence thereof, and to make provision for her being maintained in the liferent of the said house in respect of her contributions towards the price and the reduction of the said loan of £250, granted the deed of settlement set forth in the appendix, and took his wife bound to implement the provisions of the deed in the event of his predeceasing the petitioner. The deed, duly signed both by the said William Macdonald and by his wife, was delivered to the petitioner by the said William Macdonald. By the date of receiving the deed the loan was reduced partly by the petitioner to £135, and she has also paid certain feu-duties and taxes in respect of said house.

"In May 1913 the said William Macdonald, in order to prejudice the petitioner's rights, granted a disposition of the said house to a brother-in-law, Donald Gow, clerk, 41 Temple Park Crescent, Edinburgh, in return for an alleged purchase price of £250 paid to him, and the purchaser then raised in the Sheriff Court at Edinburgh an action of ejectment against the petitioner. In defence the petitioner averred the said family arrangement, and produced the said deed, which had been presented for being recorded in the General Register of Sasines on 14th July, with the result aforesaid. The action in the Sheriff Court has been sisted to await the decision in this application.

"The said deed sets forth the name, designation, and the present and past addresses of the said William Macdonald, and describes the property as being 'the house in number one hundred and forty M'Donald Road, Edinburgh, the title to which is in my (*i.e.*, the said William Macdonald's) name.' It defines the petitioner's right in the said house, and forms her only title to said right. The said heritable subjects are the only heritable subjects at any time held in the name of or owned by the said William Macdonald, and no question as to the identity of the subjects can arise.

"In order to have the petitioner's rights established it is necessary for her to have the said deed recorded in the General