end of the year comes and we see how much you are going to get back from us. Accordingly we are asked the question in the Special Case whether the second parties — that is, the proprietors — are "entitled to deduct from the assessments recoverable from them the allowance of 2½ per cent. in terms of section 7, sub-section (6), of the said Act at the time of payment; or does such allowance fall to be deducted after the net amount of assessments received from the second parties has been ascertained at the close of the financial year?"

I am of opinion that both parties are equally wrong. They both want a little more than they are entitled to. I think it is perfectly clear what the equity of the matter is, and that the equity of the matter is quite in accordance with the statute. I think, if the assessing authorities ask, as they did here, from the proprietor the whole of the occupiers' assessment, that he is entitled at that time to keep back 2½ per cent.; but then at the end of the year when the proprietor goes to the authorities and says—"Now then, give me back a portion of my assessment, because during such and such a period of the year my tenement has not been occupied, then I think instead of giving him back absolutely the whole of that portion the authorities are entitled to make a deduction which reduces the 2½ per cent. originally retained to the proper figure. That does justice to both, and does not allow either to get the better of the other by keeping somebody else's money in their own pocket.

Consequently the first question will be answered in the affirmative, the second question is superseded, and the third question is not answered by either the affirmative or the negative, but by a declaration in terms of what I have said.

The LORD PRESIDENT stated that LORD JOHNSTON and LORD CULLEN concurred.

LORD KINNEAR and LORD MACKENZIE did not hear the case.

The Court pronounced this interlocutor—

"Answer the first question of law in the case in the affirmative: Find it unnecessary to answer the second question: Find in answer to the third question of law that the second parties are entitled at the time of payment to deduct the allowance of 2½ per cent. from the total assessment then demanded from them, but that if subsequently they claim repayment of any such assessment in terms of sub-section 3 of section 7 of the House Letting and Rating Act, they must allow them as a counter deduction 2½ per cent. on the sum so claimed to be repaid, and decern."

Counsel for First Parties—Murray, K.C. —Hon. W. Watson. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Second Parties—Clyde, K.C. —J. Hossell Henderson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Wednesday, November 27.

FIRST DIVISION.

[Sheriff Court at Glasgow.

ELLIS *v.* FAIRFIELD SHIPBUILDING AND ENGINEERING COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 2 (1) (*a*) *and* (*b*)—*Notice of Accident—Want of Notice—Delay in Making Claim —"Mistake or other Reasonable Cause."*

A workman alleged that he was injured by accident on 1st June 1911. From that date down to 5th August 1911 he suffered pain in his neck and shoulder which he attributed to the alleged accident. He then consulted a doctor, who diagnosed his disease as, and treated him for, muscular rheumatism. In that state of opinion he gave no notice of the accident and made no claim against his employers. On 11th November 1911 he left his employment and was thereafter treated by a doctor for a severe strain of the neck up to 3rd December 1911, when he consulted another doctor, who informed him that his head was partially dislocated from the spine, and recommended his removal to the infirmary as being in a dangerous condition. On 30th January 1912 he formally claimed compensation.

Held that the delay in giving notice and making a claim was due to "mistake . . . . or other reasonable cause" within the meaning of section 2 (1) of the Workmen's Compensation Act, and so was not a bar to the maintenance of proceedings for compensation.

Rankine v. *Alloa Coal Company, Limited*, February 16, 1904, 6 F. 375, 41 S.L.R. 306, and *Egerton* v. *Moore*, [1912] 2 K.B. 308, *commented upon.*

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 2 (1) (*a*) *and* (*b*)—*Procedure—Preliminary Defence—Proof.*

Observed that it is the duty of an arbiter to dispose of the case as a whole, and not to allow separate proof on preliminary defences.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), section 2, enacts—"(1) Proceedings . . . . shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury . . . . Provided always that (*a*) the want of . . . . such notice shall not be a bar to the maintenance of such proceedings if it is found . . . . that the employer is not . . . . prejudiced in his defence by the want . . . . or that such want . . . . was occasioned by mistake . . . . or other

reasonable cause; and (*b*) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake . . . or other reasonable cause."

On 9th May 1912 William Ellis, shipwright, Govan, *appellant*, claimed compensation, under the Workmen's Compensation Act 1906, from the Fairfield Shipbuilding and Engineering Company, Limited, *respondents*, in respect of injuries which he alleged he had sustained on 1st June 1911 while at work in the respondents' employment.

The respondents pleaded, *inter alia*—"(1) Notice of the accident to pursuer not having been given to defenders as soon as practicable after the happening of said accident, and the defenders being prejudiced by the want of such notice, the pursuer is barred from insisting in the present proceedings," and "(2) the pursuer having failed to claim compensation timeously from the defenders, is barred from insisting in the present proceedings."

On 24th August 1912 the Sheriff-Substitute (LYALL), after a preliminary proof as to the alleged want of notice and claim, found that the failure to make a claim within the statutory period was not occasioned by mistake or other reasonable cause, and dismissed the application.

The pursuer having requested the Sheriff-Substitute to state a case for appeal, the Sheriff refused to do so in the terms proposed by the pursuer, but appended to the certificate of refusal the case which he was prepared to submit to the Court, and this case was eventually accepted by the parties as the Stated Case for appeal.

The *facts* as stated by the Sheriff were as follows:—"(1) That it was alleged that the accident in question occurred on 1st June 1911. (2) That the appellant remained in the employment of the respondents until 11th November 1911, when he left and did not return. (3) That no notice of the alleged accident was given and no claim for compensation made until 30th January 1912. (4) That it was practicable for the appellant to have given notice of the accident immediately after the happening thereof and before he left the employment. In these circumstances I found in law that these proceedings were not maintainable unless it should be proved (*a*) that the respondents were not prejudiced by the want of timeous notice, and (*b*) that the appellant's failure to make a claim within six months was occasioned by mistake, absence from the United Kingdom, or other reasonable cause. And in this connection I found further in fact—(5) That it was not proved that the respondents were not prejudiced by the appellant's failure to give timeous notice, but on the contrary that they were so prejudiced by being deprived of the opportunity, of which they would have availed themselves, of having the appellant medically examined. (6) That from the date of the alleged accident up to 5th August 1911 the appellant suffered pain in his neck and shoulder, which he himself attributed to the result of the accident. (7) That on 5th August 1911 he consulted a doctor at the Western Infirmary, who diagnosed his disease as, and treated him for, muscular rheumatism of the right shoulder. (8) That up to 11th November 1911 the appellant remained in his employment, being off work for certain short periods during that time; but on the said 11th November 1911 he finally left his employment and did not thereafter return to work (it is alleged that on that day he was attacked by severe pains in the neck, but this was not proved, the appellant himself not being examined as a witness). (9) That the appellant was thereafter treated by a doctor for a severe strain of the neck up to 13th December 1911. (10) That on 13th December 1911 the appellant consulted another doctor, who found and informed the appellant that his head was partially dislocated from the spine and recommended his removal to the Infirmary for treatment, the said doctor's opinion being that the appellant was then in a dangerous condition. (11) That, at the request of the appellant, respondents obtained for him free removal in an ambulance of the St Andrews Ambulance Association to the Infirmary on 20th December 1911. (12) That the respondents are in the habit of obtaining this privilege for their workmen in all cases where removal to the Infirmary is ordered whether on account of accident or disease. (13) That some time in January 1912 the appellant's wife intimated, for the first time, to an official of the respondents' company, that the appellant claimed compensation in respect that his then condition was attributable to the alleged accident on 1st June 1911. (14) That a claim signed by the appellant was made on 30th January 1912, for compensation for injury by accident, not on 1st June 1911, but 'on the middle of June.' I found further in fact that although the appellant may have been under a mistake as to his symptoms and conditions between 5th August 1911 and 13th December 1911, he was under no mistake, but himself attributed his condition to the result of the alleged accident from the date thereof until 5th August 1911 and from 13th December 1911 to 30th January 1912."

The Sheriff-Substitute further stated—"I therefore found in fact and law that the failure to make a claim within the statutory period was not occasioned by mistake or other reasonable cause, dismissed the application, and found the respondents entitled to expenses."

The *questions of law* were—"1. Was the arbitrator right in holding that these proceedings were not maintainable unless it should be proved (*a*) that the appellant's failure to give notice as soon as practicable and before leaving his employment was not to the prejudice of the respondents, and (*b*) that his failure to make a claim within six months of the accident was due to mistake or other reasonable cause; and if so—2. Was it competent for the arbitrator to hold on the facts proved (*a*) that the

appellant's failure to give timeous notice was to the prejudice of the respondents, and (*b*) that the appellant's failure to make a timeous claim was not due to mistake or other reasonable cause?"

Argued for appellant—The first question of law was incomplete, for the Sheriff-Substitute had omitted one branch of the proviso with regard to want of notice, viz., that such want was not to have any effect where it was occasioned by mistake or other reasonable cause—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), section 2(*a*). *Esto* that the respondents had been prejudiced by the appellant's delay, the facts showed that such delay was due to mistake. The Sheriff-Substitute was therefore in error in dismissing the application. He was also in error with regard to the appellant's failure to make a timeous claim, for the clear inference from the facts was that his failure to do so was due to mistake—*Rankine* v. *Alloa Coal Company, Limited*, July 16, 1903, 5 F. 1164, 40 S.L.R. 828, and February 16, 1904, 6 F. 375, 41 S.L.R. 306; *Brown* v. *Lochgelly Iron and Coal Company, Limited*, 1907 S.C. 198, 44 S.L.R. 180; *Milton* v. *Refuge Assurance Company, Limited*, 1912 S.C. 37, 49 S.L.R. 67; *Hoare* v. *Arding & Hobbs*, October 16, 1911, 5 Butterworth's Com. Cas. 36. The present case was *a fortiori* of *Rankine* (*cit. sup.*), for the appellant's mistake was due to following his doctor's advice. The case of *Egerton* v. *Moore*, [1912], 2 K.B. 308, on which the respondents relied, was distinguishable, for in that case the workman was aware of his true condition.

Argued for respondents—The Sheriff was right, for the facts showed that the appellant's failure to give timeous notice and to make a timeous claim was not due to mistake or other reasonable cause. The case was ruled by that of *Egerton* v. *Moore* (*cit. sup.*). The cases cited by the appellant were distinguishable, for in them it was not possible for the claimants, as it clearly was here, to give notice timeously. The conditions of section 2 had to be strictly complied with—*O'Neill* v. *Motherwell*, 1907 S.C. 1076, 44 S.L.R. 764.

At advising—

LORD PRESIDENT—William Ellis, a shipwright and an inmate of the Victoria Infirmary in Glasgow, sought to recover compensation from the Fairfield Shipbuilding and Engineering Company, Limited, Govan, in respect of an accident which he alleged happened to him when he was in their employment on 1st June 1911. The respondents in their answers to the application pled that notice of the accident had not been given as soon as practicable after the happening thereof, and also that a claim had not been made within six months of its occurrence. Seeing that plea, the learned Sheriff-Substitute as arbitrator allowed the respondents a proof as to the alleged want of notice and claim, and to the applicant a conjunct probation, and did not allow a proof at this stage as to the general facts of the case. In so doing I think that the learned arbitrator adopted an inconvenient procedure—I do not say an incompetent, but an inconvenient procedure—a procedure which has more than once been said in this Court not to be, except in very exceptional circumstances, the proper procedure, with the result (as will be presently apparent) that the case has got into a more or less unfortunate position. On this point I may remind your Lordships of the remarks that were made by Lord Kinnear, with the approbation of the other Judges of this Division, in *Rankine* v. *Alloa Coal Company, Limited* (5 F. at p. 1169).

The learned arbitrator decided that proper notice had not been given, and that a claim had not been timeously made, and therefore dismissed the application. The workman, wishing to bring that judgment under review, asked the arbitrator to state a case, and eventually, after a certain amount of difference between the parties as to what form the case should take, the learned Sheriff-Substitute did state a case which, although it was not at the time accepted by the workman, has been accepted quite properly by his learned counsel to-day, and quite properly also by his opponent. We have therefore had the argument upon the Stated Case as framed by the Sheriff-Substitute, which, although not technically before us, is so of consent of parties.

Now, taking the Stated Case as framed by the Sheriff-Substitute, he first finds that it was alleged that the accident occurred on 1st June 1911. I do not think there can be any more obvious commentary upon the procedure adopted than this, that we have, for the purposes of argument, to assume that the accident happened without really knowing anything about the accident, and yet when it comes to the question whether there has been reasonable delay or not, it is quite evident that a good deal turns upon the fact of the accident and what happened afterwards. The learned Sheriff-Substitute then goes on to say "that no notice of the alleged accident was given, and no claim for compensation made, until 30th January 1912." Now that is a finding in fact, and indeed there is no dispute that no actual notice or claim was made until that date. He then makes this finding, "that it was practicable for the appellant to have given notice of the accident immediately after the happening thereof and before he left the employment." It is perhaps difficult to say exactly how far that finding, standing by itself, goes. If it means that the man knew on the 1st June that something had happened to him, and that therefore he could have said so, it is really no more than a truism. If, on the other hand, it means more than that, then upon the face of it it is perfectly impossible to discover how much more it does mean. The learned Sheriff-Substitute then goes on to enumerate certain other facts which he finds established, but he first interpolates this finding in law, "that these proceedings were not maintainable unless it should be proved (*a*) that the respondents were not

prejudiced by the want of timeous notice, and (*b*) that the appellant's failure to make a claim within six months was occasioned by mistake, absence from the United Kingdom, or other reasonable cause." I do not think that the Sheriff-Substitute there is really wrong, but he has certainly made a slip. He has left out something that he ought to have put in, because he means to echo what the statute says. Now what the statute says in section 2 is this—"Proceedings . . . shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or in case of death, within six months from the time of death: Provided always that"—and then there follows a double proviso, one branch applying to each of the two requisites I have mentioned; and so far as the requisite of notice is concerned, the want of notice is not to have any effect if it is found in the proceedings that the want of notice did not prejudice the employer. That is mentioned by the learned Sheriff-Substitute. But then the same branch of the proviso goes on to say—"Or that such want . . . was occasioned by mistake, absence from the United Kingdom, or other reasonable cause," and that he leaves out.

The Sheriff-Substitute then proceeds, as I have said, to make certain other findings, and first of all he finds that it was not proved that the respondents were not prejudiced by the appellant's failure to give timeous notice, but that in fact they were, inasmuch as they were deprived of the opportunity of having him medically examined. Then he gives us what really are the material facts upon which I think we can dispose of the case. He finds "that from the date of the alleged accident up to 5th August 1911 the appellant suffered pain in his neck and shoulder which he himself attributed to the result of the accident; that on 5th August 1911 he consulted a doctor, who diagnosed the disease as and treated him for muscular rheumatism of the right shoulder;" that up to 11th November 1911 he remained in his employment, but that he left on the 11th November; "that the appellant was thereafter treated by a doctor for a severe strain of the neck"—that is much the same as muscular rheumatism—"up to 13th December 1911," when he consulted another doctor, who informed him that his head was partially dislocated from the spine and recommended his removal to the infirmary for treatment; that he was removed on 20th December 1911; and that afterwards, sometime in January 1912, he intimated for the first time that he "claimed compensation in respect that his then condition was attributable to the alleged accident on 1st June 1911." He does not actually say, but I think it is obvious, that the appellant, in the infirmary, after the 1st January, was suffering from a condition which, in his own opinion at least and in the opinion of his advisers, was consequent upon the state of matters which had been diagnosed by the last doctors on the 13th December, namely, partial dislocation of the head from the spine. He further finds that a formal claim was made upon 30th January 1912.

The learned Sheriff-Substitute then proceeds to say—"I found further in fact that although the appellant may have been under a mistake as to his symptoms and condition between 5th August 1911 and 13th December 1911, he was under no mistake, but himself attributed his condition to the result of the alleged accident from the date hereof until 5th August 1911, and from 13th December 1911 to 30th January 1912." With regard to this last finding I cannot help saying that it seems to me that there is a play upon the word "condition." In view of the facts that the learned Sheriff-Substitute has just found, it is clear that in one sense this man was aware of his condition from the date of the accident until 5th August 1911—that is to say, he knew that he had had an accident and that his shoulder was sore; but if "condition" means true condition, he, upon the facts, is found to know nothing about it, because he was suffering from something he did not know anything about—dislocation of the head—until he was told on the subsequent 13th December. It is true, I think, that from the 13th December until January he did know—for he had been told by the doctor on the 13th December—from what he was suffering, and afterwards when he got into the infirmary it is probable—though the learned Sheriff-Substitute does not tell us—that the infirmary doctor then told him that his condition was serious and that it bore out the diagnosis of the 13th December. The learned Sheriff-Substitute then says this—"I therefore found in fact and law that the failure to make a claim within the statutory period was not occasioned by mistake or other reasonable cause, dismissed the application, and found the respondents entitled to expenses." He had previously found in fact that it was not proved that the respondents were not prejudiced by the want of timeous notice, but he had made no finding at all as to whether such want of notice was or was not occasioned by mistake, absence, or other reasonable cause.

I am of opinion, and I must say very clearly, upon the facts as found, that the learned Sheriff-Substitute's finding cannot be supported. There is ample authority upon this matter. There is first of all the case of *Rankine* v. *Alloa Coal Company* (6 F. 375), which was followed in this Court by the case of *Brown* v. *Lochgelly Iron and Coal Company, Limited* (1907 S.C. 198), and by the cases of *Hoare* v. *Arding & Hobbs* (5 Butterworth's C.C. 36) and *Moore* v. *Naval Coal Company* (5 Butterworth's C.C. 87) in the Court of Appeal in England, and, finally, by the case of *Egerton* v. *Moore* ([1912] 2 K.B. 308), which I shall refer to

later on more particularly. Now the result of the cases which I have mentioned, other than *Egerton* v. *Moore*, seems to me to affirm this proposition perfectly clearly—that if a man has an accident, and honestly believes at the time that nothing serious has happened to him, and therefore, not conceiving that he has a good claim against his employer, makes no claim, but it afterwards turns out that he had made a mistake in fact and really had been injured, that may be—I do not say must always be, because the question of time might enter into it—reasonable cause for his not making the claim within the six months, or not giving notice of the accident before he left the employment, or, if one likes to use the other words, that his failure to give notice or make a claim in such circumstances may be occasioned by a mistake, in the sense of the statute, for I think the words are really exegetical of each other—it is mistake, absence, or other reasonable cause—that is to say, reasonable cause is *ejusdem generis* with mistake.

I think, further, that in this case the whole facts point clearly the one way. Not only did the man himself not think at the time that he was much injured, but on going to the doctor for skilled advice he is told "You are suffering from muscular rheumatism." Well, muscular rheumatism may sometimes be occasioned by an accident. In the strict sense of the word it is not caused, because a blow cannot directly occasion rheumatism. In fact, to borrow the words of Lord Justice Fletcher Moulton in *Egerton* v. *Moore*, he is talking of a tubercular abscess, but, *mutatis mutandis*, the same language may be applied to the case of rheumatism being caused by a blow —"The medical evidence showed that the abscess might have come from other causes, although it most probably came from this blow, but it must be remembered that the ultimate mischief was only an indirect consequence of the blow. The blow would not produce the tubercular abscess, but, like any other lesion of the tissues, it might produce a state of things which would cause the tubercular tendency which was in the man's system to show itself there. Other lesions might have caused it to show itself elsewhere." Substituting rheumatism for tubercular abscess, that is exactly in point in this case. This workman is told by his doctor—"You have only got muscular rheumatism, and that is a thing which will pass off." He does not think it is anything very serious, he does not make a claim, and he goes on in that state of ignorance until nearly the end of December, when he gets much worse, and then he goes to another doctor, who makes, I suppose, a more careful examination and finds out that he has sustained a very serious injury. I agree that after that the man might have given notice. But then, as I think was said by one of the learned Judges in this Division, "We are not to measure this question of notice in very nice scales," and I think the trouble occasioned to this man by his removal to the infirmary and his being laid up there are all reasonable causes for a little longer delay in giving of the notice. I therefore think that there is only one conclusion to be reached upon these facts, viz., that there was here a reasonable cause for the man not giving notice of the accident.

Now I come again to what I think shows the inconvenience of the procedure which was adopted here. In all that I have said I have been bound to assume that it could be clearly proved that the man's present condition, following upon the partial dislocation of his head from his spine, was really the result of the accident—an accident of which we do not know the details. It is quite clear that this workman is not entitled to get anything unless he proves that his present condition is due to the accident, and that he will still have to prove in the proceedings before the Sheriff-Substitute; and it would have been much more satisfactory if one had not had to give a decision upon the question of reasonable cause upon an assumed state of facts. But, on the other hand, I do not think it would be justice to the workman not to give a decision upon the assumed state of facts, because if the facts are as assumed, then undoubtedly I think there was here reasonable cause in the sense of the statute.

I said that I would refer specially to *Egerton* v. *Moore*. *Egerton* v. *Moore* was relied on by the learned counsel for the employers here, because there are certain criticisms upon Lord Adam's judgment in *Rankine* v. *Alloa Coal Company*. I am satisfied that there is nothing in *Egerton* v. *Moore* which is at all inconsistent with the judgment in *Rankine* v. *Alloa Coal Company*, or with what was said in that case by Lord M'Laren and Lord Kinnear, or, indeed, with what was said by Lord Adam except in one portion of his judgment, where — with great respect for all Lord Adam says—I agree with the English judges in thinking that he went beyond the necessities of the case and seemed to lay down some general propositions which go too far. As it is well put by Lord Justice Buckley—"There are expressions in the judgment of Lord Adam in *Rankine* v. *Alloa Coal Company* which might be used to sustain an argument that the two expressions 'to make a mistake' and 'to take a wrong course' are equivalent expressions." But nothing could be clearer than Lord Justice Buckley's opinion itself, to the effect that *Rankine* v. *Alloa Coal Company* was well decided, because, after making that criticism upon what Lord Adam says, and pointing out that "mistake" in the Act of Parliament does not mean "taking a wrong course," he goes on to say this—"Let me instance what might be a mistake — assume a person who has sustained an injury which, for the time being, is latent. He does not know whether it is going to result in anything serious or not. He may for some time be under a mistake of fact whether he has really received an injury, and may not give notice. That would, I think, be a mistake within the meaning of the word in the Act of Parliament." I could not have a

better description in very few words, according to my view, of the facts of this case.

On the whole matter I think the case must be remitted to the Sheriff-Substitute with instructions to allow the applicant to prove his original averments as to the accident and as to his state in order that compensation may be assessed if it is found that what he is suffering from is the result of the accident.

LORD KINNEAR—I am entirely of the same opinion, for the reasons which your Lordship has given. The only question which is actually before us at present is whether, upon the averments of the applicant for compensation that are before us, and upon the state of the facts which the Sheriff-Substitute has found with reference to these averments, the applicant has lost his right to maintain these proceedings by reason of his failure to give notice of the accident as soon as practicable after it had happened, or by reason of his failure to make a claim within the statutory specified period.

Now the answer to both these objections is that the want of notice and the failure to make a claim were occasioned by mistake or some other reasonable cause, and that is the only question that is formally before us now. It is primarily a question of fact for the arbiter. But the appellant is entitled to say that in answering it he has been misled by an erroneous construction of the statute; and that is a question which he is entitled to bring under the consideration of the Court. Upon the statement which the learned Sheriff-Substitute has made, it appears to be proved to his satisfaction that immediately after the alleged accident by which this man says he was injured, he suffered from pain in his neck and shoulder, that he consulted a doctor, and that the doctor told him that he was suffering from muscular rheumatism. In that state of opinion he gave no notice of the accident and made no claim against his employer. He remained under that impression, induced by his doctor's advice and by his own suffering, until 13th December 1911. He then consulted another doctor, who informed the workman that his head was partially dislocated from the spine. From this second diagnosis, therefore, he found that he was suffering from a very serious injury of a totally different kind from that which he supposed he had been suffering from before. That he should not have made a claim when he thought that the accident resulted in nothing worse than rheumatism, and yet have made a claim when he found it had caused a dislocation of the head from the neck, is perfectly intelligible. He abstained from making the claim when he did not know the extent of his injury; and when he was at last informed what the extent of his injury was it was reasonable that he should make his claim.

I agree with your Lordship that his delay in giving notice and making a claim was occasioned by a reasonable cause, and therefore that the delay should form no bar to carrying on proceedings for obtaining compensation under the statute. I agree that the course your Lordship proposes to take is the right one in the circumstances. I only add that I still adhere to the opinion expressed in the case of *Rankine* on the merits, and also to the decision in the first stage of that case as to the proper course of procedure in actions of this kind, in which it is extremely desirable that if a case is to be brought to this Court at all it should be brought once for all, and not by several successive appeals upon different questions raised at different stages.

LORD JOHNSTON—The course adopted by the learned Sheriff-Substitute is, I think, competent, though, unless in exceptional cases, inconvenient. There is nothing in the present case to make it an exceptional case, and I therefore agree that the Sheriff-Substitute should here have dealt with the whole matter as one. On the merits of the preliminary questions dealt with by the learned Sheriff-Substitute I entirely agree with your Lordship.

LORD MACKENZIE—I agree with your Lordships. It is apparent from the findings of the learned arbitrator that the injury for which the workman here seeks to recover compensation was partial dislocation of the head from the spine, and it also appears that he was not aware that he had sustained this injury until the 13th December 1911, although the accident is assumed, for the purposes of this case, to have happened on the 1st June. Now in these circumstances I think that the case is really *a fortiori* of the decision in the case of *Rankine* v. *Alloa Coal Company*. I cannot hold that the workman had not reasonable cause for his failure to give notice of the accident or to make the claim within the time specified in the section of the Act.

The Court pronounced this interlocutor—

"Find in answer to the questions of law in the case that on the facts stated to have been proved there was good and reasonable cause for the failure of the appellant to give earlier notice of the accident and intimation of his claim: Recal the determination of the Sheriff-Substitute as arbitrator appealed against, and remit to him to allow to the appellant a proof of his averments and to proceed as accords."

Counsel for Pursuer—Watt, K.C.—T. D. K. Murray. Agents—D. Maclean, Solicitor.

Counsel for Defenders—D. P. Fleming—Crawford. Agents—Webster, Will, & Co., W.S.