draws from it. In the case of *Anderson* v. *Adamson* it is noticeable that the First Division thought the case a narrow one, and that Lord Johnston was careful to put the judgment of the Court expressly on the two admissions which have been noticed by Lord Salvesen.

Second, you may have special risk owing to the general nature of the man's employment; but in relation to the accident here there was no special risk due to his employment as a lorryman. In the third place, you may have special risk arising from the place where the accident happened. We are told that the adjoining roof had blown off three or four times within the last few years, but it is not said that on these previous occasions any part that was blown off fell into the place where this man was injured. I therefore think, without questioning the judgment in *Anderson* v. *Adamson*, that the question should be answered as Lord Salvesen proposes.

LORD JUSTICE-CLERK — I concur in the judgment proposed. If I had had to decide a case with the same facts as those in *Anderson* v. *Adamson* before it had been dealt with by the other Division I should have had the greatest possible difficulty in coming to the conclusion that the judgment of the Sheriff awarding compensation should be affirmed. Their Lordships of the First Division indicated plainly that they looked upon that case as a very narrow one, and I think we find in the opinion of Lord Johnston a circumstance referred to which distinguishes that case from the present. His Lordship says—"The fact that he, *i.e.*, the workman, was engaged in the open air, bending over to adjust heavy machinery, is a fact from which it may reasonably be deduced that in the circumstances of his particular vocation he was exposed to something apparently beyond the normal risk, and that to this abnormal exposure the accident was attributable." Now that seems to me to distinguish that case from the present. If a man is obliged to keep his eyes towards the ground while he is stooping to do something, he is in a totally different position from the driver of a van or a lorry whose business it is to keep his eyes about him, not to stoop and look down. Accepting the view so clearly expressed by the Master of the Rolls in the case referred to by Lord Salvesen, I think it is not possible to hold in this case that there is ground for saying that the accident arose out of the employment. On these grounds I agree with your Lordships.

The Court answered the question of law in the negative.

Counsel for the Appellant — Moncrieff, K.C. — C. H. Brown. Agents — Cairns & Robertson, S.S.C.

Counsel for the Respondent — Chisholm, K.C. — A. A. Fraser. Agent — Sterling Craig, S.S.C.

Wednesday, July 16.

FIRST DIVISION.

[Sheriff Court at Hamilton.

PATON *v.* WILLIAM DIXON, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1—*Injury by Accident—Natural or Probable Consequence—Disease.*

A workman sustained an injury to his back on 7th December 1911, which totally, and thereafter partially, incapacitated him for work. On 1st May 1912 the medical referee certified that he would be fit for his usual work in three weeks, and he accordingly resumed his old work on 27th May 1912. From that date he worked regularly until 15th August 1912, when he again became totally incapacitated owing to aneurism of the heart. He was not troubled with pain in the cardiac region until July 1912, nor did any of the medical men (including the medical referee) who examined him at or before 1st May 1912 suspect any cardiac trouble. The workman having claimed compensation under the Workmen's Compensation Act 1906 in respect of the accident of 7th December 1911, the arbitrator refused compensation.

Held, on appeal, that there was evidence on which the arbitrator might find as he did, and appeal *dismissed*.

In an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between John Paton, miner, High Street, Blantyre, *appellant*, and William Dixon, Limited, coalmasters, Blantyre, *respondents*, the Sheriff-Substitute (SHENNAN) refused compensation, and stated a Case for appeal.

The *facts* were as follows:—"1. The appellant, who is 42 years of age, was on 7th December 1911 a workman in the respondents' employment at No. 3 Pit, Blantyre Colliery. He was employed as a miner at the coal face. 2. On that day when he was throwing out lumps of coal he twisted his back and racked himself. 3. He went out to his work the following day, but his back became so painful that he took to his bed. 4. The respondents paid him compensation of 16s. 3d. per week in respect of total incapacity until 17th February 1911, and thereafter in respect of partial incapacity 10s. per week until 3rd March 1912, when the amount was reduced to 8s. 3d. per week. 5. A dispute having arisen between the parties as to the appellant's capacity for work they agreed to refer the matter to a medical referee. On 1st May 1912 the medical referee certified that the appellant was then able for light work and that if he could obtain this he would be ready for his usual work in three weeks. 6. The respondents stopped payment of compensation on 22nd May 1912, and the appellant makes no claim for compensation for the period between that date and 15th August 1912. 7. The appellant resumed his

old work on 27th May 1912 and worked on until 15th August 1912. During that period he was being paid the full shift rate, and from the middle of June he worked with great regularity and gave satisfaction to his employers. He may have found the work harder, but the usual output of coal was obtained and no complaints were made at the time that he did less than his share of the work. 8. On 15th August the appellant again became totally incapacitated for work. It was then discovered that he was suffering from symptoms of cardiac dilatation. This was subsequently diagnosed as due to an aneurism of the aorta which will permanently incapacitate him for work. 9. The appellant was not troubled with pain in the cardiac region until July 1912, nor did any of the medical men (including the medical referee) who examined him at or before 1st May 1912 find any reason to suspect cardiac trouble."

The Sheriff-Substitute further stated—"In my opinion the aneurism from which the appellant suffers resulted from the continuous strain put on his heart muscles while he was working between 27th May 1912 and 15th August 1912. He was then doing work beyond his physical powers. I held that the incapacity from which he has suffered since 15th August 1912 was not proved to be due to the accident of 7th December 1911."

The *question of law* was—"On the foregoing facts, was the arbiter wrong in holding that the appellant's incapacity since 15th August 1912 is not due to the accident of 7th December 1911?"

Argued for appellant—The appellant's incapacity was due to the accident of 7th December 1911, for no new cause had intervened. That being so the appellant was entitled to compensation—*Dunham* v. *Clare*, [1902] 2 K.B. 292; *Walton* v. *South Kirkby, &c., Colliery, Limited*, (1912) 5 B.C.C. 640. Where, as here, the report of the medical referee did not state that he had completely recovered, it was not conclusive against the appellant—*Gray* v. *Shotts Iron Company, Limited*, 1912 S.C. 1267, 49 S.L.R. 906. An injury might be the result of an accident even though not directly due to it—*Shirt* v. *Calico Printers' Association, Limited*, [1909] 2 K.B. 51. *Esto* that the payment of compensation had *de facto* ceased, there had been no formal determination of the appellant's right thereto and his original claim was therefore still alive—*King* v. *United Collieries, Limited*, 1910 S.C. 42, 47 S.L.R. 41.

Argued for the respondents—The appellant had not proved that his breakdown in 1912 was due to the accident of 1911, and that being so the chain of causation was not complete. His claim therefore had been rightly dismissed. The question whether the chain of causation was or was not complete was one of fact for the arbiter. It was matter for proof and not for surmise or speculation—*Hawkins* v. *Powell's Tillery Steam Coal Company, Limited*, [1911] 1 K.B. 988, *per* Cozens Hardy, M.R., at 992; *Beaumont* v. *Underground Electric Railways Company of London*, (1912) 5 B.C.C. 247. The claimant was bound to prove his case—*Barnabas* v. *Bersham Colliery Company*, (1910) 3 B.C.C. 216; *Perry* v. *Ocean Coal Company, Limited*, (1912) 5 B.C.C. 421; *Noden* v. *Galloways, Limited*, [1912] 1 K.B. 46. This he had failed to do, for where, as here, he had undertaken work that was too heavy for him, a new cause had intervened and the chain of causation has been broken.

At advising—

LORD PRESIDENT—The question that arises here is a somewhat novel one and not a very easy one. The facts upon which it arises are these—The appellant, who is a workman, met with an accident in the respondents' employment on 7th December 1911. The accident with which he met was that he twisted his back and racked himself. It became painful, and he had to go to bed. He was paid at the rate appropriate for total incapacity until 17th February 1912. He then became rather better, and was paid for certain other periods in respect of partial incapacity. Then, there being a disagreement between the parties as to whether he had or had not totally recovered, they agreed to refer the matter to a medical referee. If they do that, your Lordships will remember that under the statute the medical referee's decision is final upon the question as to the state of the man's health. On 1st May the medical referee certified that the appellant was then able for light work, and that if he could obtain this he would be able for his usual work in three weeks. Accordingly the respondents went on paying him at the modified rate for the three weeks and then they stopped payment altogether. The three weeks expired on 22nd May. On 27th May the appellant resumed his old work. No complaint was made by him, and he worked with the same results as before. But on 15th August he became incapacitated. The case then goes on: "It was then discovered that he was suffering from symptoms of cardiac dilatation—This was subsequently diagnosed as due to an aneurism of the aorta, which will permanently incapacitate him for work. The appellant was not troubled with pain in the cardiac region until July 1912, nor did any of the medical men (including the medical referee) who examined him at or before 1st May 1912 find any reason to suspect cardiac trouble." And then the learned arbiter proceeds to this finding—"In my opinion the aneurism from which the appellant suffers resulted from the continuous strain put on his heart muscles while he was working between 27th May 1912 and 15th August 1912. He was then doing work beyond his physical powers. I held that the incapacity from which he has suffered since 15th August 1912 was not proved to be due to the accident of 7th December 1911."

Now the question before your Lordships is, Can that finding of the learned arbitrator be supported on the evidence or can it not? As I have said, I do not consider the case

easy, but upon the whole, giving it the best consideration I can, I do not see my way to say that that finding cannot be supported upon the evidence. The whole point is, Is there a chain of causation between the accident which happened on 7th December 1911 and the state of incapacity in which the man is found in August 1912? because I take it that it could not be said that there was an accident in August. I do not mean to say for one moment—I should be going very much against the cases if I did—that an anuerism of the aorta may not be in itself an accident. But in the circumstances of this case naturally that could not be said—that is to say, supposing you excised all reference to the accident in December, no one, I think, could have said that here the man suffered from an accident. There was nothing like the tightening of the nut in the spanner case; there was nothing like the over-exertion that was shown in the other cases owing to pushing something heavy or doing something particular. So far this case would have been upon all-fours with the case of *Coe* v. *Fife Coal Company* (1909 S.C. 393). I venture to quote, as really leaving nothing more to be said, what was said there by my brother Lord Kinnear. Discussing the word "accident" in the light of the House of Lords' judgment in the well-known case of *Fenton and Thorley* (1903, A.C. 443)—"It seems to me that all these interpretations of the word point to some particular event or occurrence which may happen at an ascertainable time, and which is to be distinguished from the necessary and ordinary effect upon a man's constitution of the work in which he is engaged day by day. So defined, the word 'accident' seems to me to exclude the anticipated and necessary consequence of continuous labour." The same view has been taken by the English Courts in a set of cases which I need not quote, where they held that there must be something in the nature of a definite event. In the case before your Lordships the workman need never have suffered from heart disease—upon the view of the learned arbiter, who is the judge of the facts—had he not put himself to work for which he was physically unfit. In other words, the true cause of the heart disease was not the original accident in December, which, being a rick in the back, had, so far as the learned arbiter finds, no connection with heart disease at all, but his putting himself to and persisting in work for which he was physically unfit.

It was argued—and that is just the novel point in the case—that the condition of physical unfitness was a result of the accident in December. Well, my first remark upon that is, that although that may be so, it is not found to be so. We have not got a finding in fact that the man's impaired physical condition was due to the rick in the back. But even supposing it was, I do not think, on the best consideration I can give it, that the result would be different, and I think a fair test would be this—As a matter of fact the man's second period of labour was with the same employers as he had been with when he met with the accident in December. But suppose it had been with some other employer. Suppose the accident in December had happened under employer A and the heart dilatation under employer B. In that case it is quite clear that he could not have made any claim against employer B, because, if what I have said about the case is sound, the employer B would have said, "Oh, this is caused by your work pure and simple." Well, then, could he have gone back to employer A and said, "Well, now, I claim in respect of my accident in December 1911."—I assume that the compensation had not been ended in such a way as prevented him making a new application. Would not the employer A then have said—"It is quite true that you ricked your back, and if you could have shown that the effects of that rick in your back were still with you I should have paid you modified compensation; but you are not to saddle me with full compensation because you choose to put yourself to work for which you are entirely unfit." I think that is a useful test. As I say, I do not think the case is free from difficulty. But in a case which is not free from difficulty I think we always take the view which has prevailed in the cases in the House of Lords, that when there is a case of doubt we are not entitled to interfere with the decision of the arbiter upon a question which really is not a question of law but a question of fact, because the principal question of fact which decides the matter is whether there exists a chain of causation between the accident of December 1911 and the aneurism of the aorta in August 1912? I am of opinion that there is not, and I think the appeal should be refused.

LORD KINNEAR—I am of the same opinion. I agree with your Lordship that the question is one of considerable difficulty. I think we must be satisfied from the statement of the arbiter that there was no new accident between 7th December and 15th August 1912—I mean nothing had happened between those two dates which in any reasonable sense of the word could be called an accident. And therefore the question raised by the workman's application must be whether the incapacity which became apparent at 15th August can be traced as a remote or indirect consequence to the accident on 7th December or whether it cannot. I apprehend that is a question of fact, and that we are bound to accept the decision of the Sheriff upon that question of fact unless, upon his own statement of the specific facts which he says were proved to him, we can see that he had no evidence before him which could justify his conclusion.

Now I am quite unable to say that the Sheriff had not evidence upon which he was able to decide one way or the other. I think he had a difficult question to decide, and it appears to me that there might be two points of view from which he required to consider it. He might have to

consider, in the first place, whether there was anything to show that the original cause of the dilatation of the heart from which the man ultimately suffered was the accident on the 7th December, because it may have been shown that the accident that then happened started the evil which developed later as the man was working. Or again, it might be shown that he began work in such a defective physical condition, caused by the accident, as to expose him to the injury from which he actually suffered. Both of these are, in the first place, questions of fact, and I think the Sheriff negatives both. I am therefore unable to see any sufficient ground for disturbing his decision.

LORD JOHNSTON—The learned Sheriff-Substitute has in my opinion come to a sound conclusion. But it is not a question for this Court, as the Sheriff puts it in the case before us, whether the arbiter was wrong in holding that the appellant's incapacity since 15th August 1912 was not due to the original accident of 7th December 1911, but whether there was before him evidence from which he could reasonably and therefore competently come to that conclusion.

A miner at the face on 7th December 1911, when throwing out lumps of coal, twisted his back and racked himself. He was off work till 17th February 1912 and received full compensation. He received reduced compensation as partially incapacitated to 3rd March, and still further reduced till 22nd May 1912. But on 1st May 1912 a reference was made to a medical referee, who pronounced that the injured man was then able for light work, and that if he could obtain it in the interim he would be fit for his usual work in three weeks. We are not told whether he got or accepted light work in May 1912. But on the 27th of that month he returned to his ordinary work. Down to July 1912 he worked regularly and full time and had nothing to complain of. But in July he began to feel pain in the cardiac region, and on 15th August 1912 he became totally incapacitated and was found to be suffering from aneurism of the heart. While the Sheriff found that the aneurism resulted from the continuous strain put on his heart muscles from 27th May to 15th August 1912 by work beyond his physical powers, he also found that there was no evidence to connect the aneurism as the cause of his present incapacity with the accident of 7th December 1911.

The appellant did not found his claim upon anything occurring during his period of work from May to August 1912. Had he done so there would have been a case for consideration (akin to *Hawkins* v. *Powell's Tillery Steam Coal Company*, L.R. 1911, 1 K.B. 988), though I think that there would then have been possible reason for excepting to the Sheriff's statement that the aneurism then discovered resulted from continuous strain when "doing work beyond his physical powers." That appears to be a pure inference from the presence of the aneurism, and not as far as I can see established by any evidence as to the development of the aneurism.

But the appellant based his claim on the accident of 7th December 1911. That he met with an accident on that date is true. But he must prove that the injury of which he complains was an injury by or in other words resulting from this accident. I think the Sheriff was justified on the evidence in holding that he had failed to prove any connection between the two, and that therefore there is no ground for disturbing his judgment.

LORD MACKENZIE—I am of the same opinion. There may or may not have been a chain of causation between the accident the workman met with on 7th December 1911 and his condition on the 15th August 1912. It was for the arbiter to say, and I am unable to come to the conclusion that the arbiter was not entitled to make the finding that he has made.

The Court answered the question of law in the negative and dismissed the appeal.

Counsel for Appellant—Moncrieff, K.C.—Keith. Agents—Simpson & Marwick, W.S.

Counsel for Respondents—Horne, K.C.—Strain. Agents—W. & J. Burness, W.S.

HOUSE OF LORDS.

Friday, July 18.

(Before the Lord Chancellor (Haldane), Earl Loreburn, Lord Shaw, and Lord Moulton, Lord Parker being present at delivering judgment.)

TYZACK AND BRANFOOT STEAMSHIP COMPANY, LIMITED *v.* SANDEMAN & SONS,

(In the Court of Session, July 12, 1912, 49 S.L.R. 897, and 1913 S.C. 19.)

Ship — Affreightment — Bill of Lading — Exemptions—Short Delivery—Unmarked Goods not Identifiable as Part of Any Particular Consignment.

A ship's cargo consisted of a number of consignments of bales of jute, and at the port of delivery it was found that the number of bales was short by 14, while, further, 11 bales were unidentifiable with any particular consignment and contained a different quality of jute. In an action by the shipowners for freight against a firm of consignees who had received short delivery, *held* that the consignees were not bound to accept *pro tanto* a proportion of the unidentifiable bales.

Spence v. *Union Marine Insurance Company*, L.R., 3 C.P. 427, and dictum of Lord Russell in *Smurthwaite* v. *Hannay*, [1894] A.C. 504, *distinguished.*

This case is reported *ante ut supra.*