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

Register of Sasines. It forms her title to the said liferent, and it is necessary in order to preserve her rights in competition with the said disposition that it should be held as presented for registration on the date when it was first presented by the petitioner, but the refusal of the Keeper to record the deed makes it necessary for the petitioner to appeal to the *nobile officium* of the Court for an order on the said Keeper to record the deed in the said register. The said refusal is unreasonable and without any legal warrant, and is seriously to the prejudice of the petitioner, as enabling the said purchaser to place his disposition, which he has done, on the register since the date the petitioner's deed was presented but refused to be recorded."

Answers were lodged by (1) The Keeper of the General Register of Sasines, and (2) by the said Donald Gow.

In his answer the former stated—"Explained that No. 140 M'Donald Road is a tenement of houses consisting of a number of flats and houses therein, one of which (the respondent has been informed) is the house referred to in said writ. The description of that house contained in said document does not conform to the statutory requirements regulating registration of writs in the register of sasines. It is not one of the classes of description recognised in Scots conveyancing, *e.g.*, general or particular description, nor is it a description in statutory form. In any event it is not a description sufficient for the identification of the property. *Quantum valeat* it may be made available as a mid-couple in the completion of the title of the party alleged to be in right of the liferent. Should a deed containing a description of lands in terms so vague be admitted to the register it would cause much confusion and needless expense particularly in regard to searches, and to rights, whether of ownership or of security, in relation to the lands."

[The respondent Donald Gow adopted the answers for the Keeper of the Register quoted above.]

Argued for petitioner—The Keeper of the Register had no discretionary power to refuse to register a deed. Were it otherwise, money would not be advanced on deeds, as that was done on the faith of their being recorded, and in many cases unfair preferences might be created. The statutes dealing with the registration of deeds conferred no discretionary power on the Keeper of the Register; he was bound to record any deed presented to him for registration—Acts 1617, cap. 16, 1686, cap. 19, 1693, cap. 13, 1696, cap. 18, and to the Land Registers (Scotland) Act 1868 (31 and 32 Vict. cap. 64), secs. 2, 9, and 24. As to the practice followed in the Register House, reference was made to the report of Lord Low's Committee on Land Registration in Scotland (1898), pars. 26, 98, 123, 125, 135, 140, and 304.

Argued for respondent (the Keeper of the Register)—The Keeper was a recorder not of deeds but of sasines, and he was entitled, therefore, to reject any deed which was not in a reasonable sense a sasine. It was absurd to say that he was bound to record any deed—for example, a will which might be revoked next day. It was the usual practice for the Keeper of the Register to reject deeds which were defective, as, for example, deeds having no registration clause, or deeds in which the subjects were, as here, insufficiently described. The Keeper was bound to keep the register accurate, and he could only do so by exercising a strict supervision over the deeds presented to him for registration.

On 17th December 1913 the Court remitted to the Deputy Clerk Register and to the Deputy Keeper of the Signet to inquire into and report as to the practice of the Keeper of the General Register of Sasines to reject or return writs transmitted to him for registration.

The reporters having lodged their report, and counsel for the parties having stated that they had nothing further to add, the Court on 11th June made avizandum.

The import of the report appears from the opinion (*infra*) of the Lord President.

At advising—

Lord President—In this case an appeal is made to us to exercise the *nobile officium* of this Court under unprecedented circumstances, for we are asked to ordain the Keeper of the General Register of Sasines forthwith to record, in the appropriate division of the register, a deed of settlement granted by William Macdonald, dated 27th September 1912, on the date when it was presented for registration in the said register.

Now I do not say that we might not under certain circumstances accede to that request. I am certain that these circumstances do not exist in the present case, for when examined the deed which we are asked to ordain the Keeper to record appears to be a testamentary settlement and nothing else, executed by the son of the petitioner, who is still alive and may to-morrow revoke the whole deed if he pleases. For the settlement of the succession to his means and estate after his death he dispones to his wife, but only in the event of her surviving him, his whole estate, but under burden of the liferent right presently enjoyed by his mother Mrs Annie Macdonald, the petitioner, should she survive him, of the house in No. 140 M'Donald Road, Edinburgh, "the title to which is in my name." Now how a valid infeftment in the liferent right could pass upon an ambulatory deed is to me incomprehensible. It would, I think, be a sheer abuse of the Register of Sasines to record this deed in it. But that was not the ground upon which the Keeper of the Register refused to accept the deed for registration, for in the answers given in by him he explains "that No. 140 M'Donald Road is a tenement of houses consisting of a number of flats and houses therein, one of which (the respondent has been informed) is the house referred to in said writ. The description of that house contained in said document does not conform to the statutory requirements regulating the registration of writs in the Register of Sasines. It is not one of the classes of description recognised

in Scots conveyancing, *e.g.*, general or particular description, nor is it a description in statutory form. In any event it is not a description sufficient for the identification of the property. . . . Should a deed containing a description of lands in terms so vague be admitted to the register, it would cause much confusion and needless expense, particularly in regard to searches, and to rights, whether of ownership or of security, in relation to lands."

Now that seems to me like good sense. But it was argued to us on behalf of the petitioner that the Keeper of the Register had no duty, and therefore no right, to question the sufficiency of the description in any deed tendered to him for registration; that he had no discretionary power in the matter, and was bound without cavil or question to record the deed as it was presented to him. To this view thus stated we found ourselves wholly unable to accede, for we considered that a highly-placed official like the Keeper of the Register of Sasines was bound, in the faithful discharge of his statutory duties, to exercise some care and control over the register in order to secure its efficiency for the purposes for which it was created. But before determining the limits and scope of the discretionary power which we considered was confided to the Keeper of the Register, we thought proper to remit to the Deputy Clerk Register and the Deputy Keeper of the Signet to inquire into and report as to the practice of the Keeper of the General Register of Sasines to reject or return writs transmitted to him for registration.

We now have before us the report of these two very capable public officials. It is a very satisfactory document from all points of view, and I cannot but express on behalf of my brothers Lord Mackenzie and Lord Ormidale and of myself our indebtedness to Sir J. Patten Macdougall and Sir George M. Paul for the pains they have taken to investigate and elucidate this important although hitherto somewhat obscure topic.

As we fully anticipated, it appears from the report that "the rejection or return of a writ has its source in the initiative of the Keeper, and—except as regards the two disqualifications of defects in the stamp-duty and in the warrant of registration—it seems to have no statutory basis beyond this, as the Keeper explains to us, that he believes himself to be by implication charged with the maintenance of the correctness and purity of the register in the interests of proprietors, purchasers, lenders, and others dealing with land." It further appears from the report, as we might have anticipated, that the Keeper finds it difficult, even almost impossible, to apply general rules, that each case of rejection or return must be considered upon its own merits, and further, that in performance of the duty laid upon him, which, on a fair view of the requirements of the statute, he believes to be imposed upon him, the Keeper informed the reporters that he held himself bound to refuse to record a writ which does not contain the essentials to enable him to frame a statutory minute, and that this has been the invariable practice of successive keepers since at least 1853. And it appears from the report that during the past sixty years no fewer than 28,963 deeds have been rejected upon a variety of different grounds which are summed up under seven separate and distinct heads in the report. Two of these heads seem to me to be singularly apposite to the case in hand—(1) writs have been rejected—and during the last sixty years to the number of no fewer than 663—on the ground that they were wholly inappropriate to the Register of Sasines—a ground of objection which might have been taken, although it was not taken, in the present case; (2) writs have been rejected during the period I have mentioned to the number of no fewer than 120, on the ground of error in description and insufficiency of description. That is as one might naturally have expected, because it would be impossible for the Keeper of the Register faithfully to discharge his statutory duty if he were to admit to the record any deed, however insufficient the description of the property might be, conveyed, burdened, or released from burden. In the performance of his statutory duty it would be impossible for him to fulfil the function which is his if he were not to exercise this discretionary power. So that, so far as precedent and practice are concerned, the act of the Keeper in this instance seems to have been fully justified.

If the Keeper of the Register, subject to the Deputy-Clerk Register's approval, were to lay down a general rule that he would refuse to accept for registration any deed which was in its description of the property conveyed, burdened or released from burden disconform to statutory requirements—the requirements of the 41st section of the Statute of 1874 and the corresponding schedule—I think it very unlikely that the Court would interfere with his discretion.

In this case, therefore, we come to the conclusion that the Keeper has acted well within his discretionary powers. But I must add that we do not, for the reason I am about to state, consider that this case has come before us in the proper form. Towards the close of the report before us a reference will be found to the report of the committee presided over by Lord Low, issued in 1898, in which the existing law and practice relative to the control of the Register of Sasines is exhaustively dealt with. To the conclusions of that report I desire very specially to direct the attention of the profession. In its conclusions I, in common with your Lordships, entirely concur.

Now I find on referring to Lord Low's report that he points out that under the existing law the control over the Sasine Office is vested, *inter alia*, in the Deputy Clerk Register under the powers in sections 9 and 10 and 20 and 24 of the Act of 1868, as regards the forms of indexes and abridgments and the direction and initiation as well as the general powers of superintendence in use to be exercised from early times by the Lord Clerk Register under the control of the Court; (secondly) in the Court of Session in so far as its original powers have

not been taken away by the Act of 1868. And then, summarising the existing law and practice relating to the control of the register, Lord Low's report proceeds—"The general powers of control of the Court of Session and the Deputy Clerk Register should be expressly recognised, and express power should be given to the Deputy Clerk Register at his own instance, or at that of others having interest in the efficiency of the register, to apply to the Court for direction in any circumstances of doubt or difficulty as to the working of the Lands Rights Registration system." From all this I conclude that in future if 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 the 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.

That I consider is the correct course to follow in the future in the event of any controversy arising. But I observe from a passage at the close of the report before us that this course has not been followed in recent years, because it appears that where the Keeper has had any difficulty in deciding what action he should take in any particular case his practice is to refer it to the Secretary for Scotland with a request that Crown counsel may be consulted, and that cases of this kind have recently occurred. Now I have no doubt whatever that that is an incorrect procedure which has been adopted in recent times, and as I chanced to be one of the law officers of the Crown who was consulted on these recent occasions I think it right to say that the attention neither of the Secretary for Scotland nor of the law officers of the Crown was directed to the conclusions of Lord Low's report, or indeed to the duties imposed by statute upon the Deputy Clerk Register. The opinion was asked and was given in the ordinary routine of the office, just as any public department refers—and rightly refers—to the law officers of the Crown for aid where legal difficulty arises. I see no objection whatever to the Deputy Clerk Register, if he so pleases, consulting the law officers of the Crown upon any question of doubt or difficulty, but the reference to the law officers ought to be made at the instance of the Deputy Clerk Register and not of the Secretary for Scotland, and in all cases the ultimate decision must rest with this Court. That, it appears to me, is the course of procedure which ought to be followed in future where any dispute of this kind arises.

In the present instance I am for refusing the prayer of the petition.

LORD MACKENZIE—I concur.

LORD ORMIDALE—I also concur.

LORD JOHNSTON and LORD SKERRINGTON were absent.

The Court approved of the report, refused the prayer of the petition, and decerned.

Counsel for Petitioner—Anderson, K.C. — M'Kenzie Stuart. Agents — Cairns & Robertson, S.S.C.

Counsel for the Keeper of the General Register of Sasines (Respondent)—Chree, K.C. — Mitchell. Agent — Sir William Haldane, W.S.

Counsel for Donald Gow (Respondent)—Skinner. Agent—John Nicol, Solicitor.

Saturday, June 27.

FIRST DIVISION.

[Lord Ormidale, Ordinary.

FOWLER *v.* THE NORTH BRITISH RAILWAY COMPANY.

Reparation — Negligence — Railway — Injuries Due to Shock—Averments—Relevancy.

Process—Proof—Jury Trial—Injury to Passenger on Railway by Nervous Shock.

In an action of damages against a railway company the pursuer averred that, travelling on the defenders' line, he was leaning across to deposit the ash from his cigarette in an ash-holder on the side of the door opposite to him when the door suddenly flew open, and he with great difficulty saved himself from being thrown out of the carriage; that the train was travelling at a high rate of speed, causing the door to swing backwards and forwards violently; that he tried to close the door and failed; that the glass of the window of the door was broken into fragments and the door itself damaged; that the shock arising from the danger in which he was placed caused serious injury to his nervous system and to his health; that the occurrence was due to the fault of the defenders' servants in not seeing that the door was properly fastened. *Held* that the pursuer's averments were relevant.

Held further that proof and not jury trial was the proper method of inquiry.

On 21st February 1914 T. B. Fowler, furniture dealer, Edinburgh, *pursuer*, brought an action against the North British Railway Company, *defenders*, for £100 damages in respect of physical injuries which he alleged he had sustained while travelling in one of the defenders' trains from Berwick-on-Tweed to Edinburgh.

The pursuer averred—"(Cond. 2) The said train came from Newcastle-on-Tyne, and at Berwick Station the pursuer entered a