to be meaningless, for if the cargo is not lost the amount of freight payable would apparently be regulated by the gross weight at the port of discharge. On the whole matter I have come to the conclusion that this clause, which, I take it, must be construed strictly and against the shipowner who propones it as modifying the common law, cannot be taken as applying to the case of a partial loss of the cargo. If this view be sound the result is that the defenders are entitled to be assoilzied.

LORD GUTHRIE—Four views have been expressed on the part of the 15th clause of the bill of lading in question in this case. The pursuers have been consistent throughout in maintaining that full freight must be paid on the whole cargo loaded, whether delivered or undelivered, in whole or in part; and they seek to avoid all difficulty as to the ascertainment of the weight of freight lost in whole or in part by pointing out that the parties have agreed on the weight to be taken in this case. It seems to me sufficient to say that this agreement was only made for the purpose of the case and does not involve any admission in law. In order to avoid the effect of the words "freight is to be considered as earned, and must be paid, ship and/or cargo lost or not lost," the defenders argued in the Sheriff Court that these words ought to be held *pro non scripto*, leaving freight payable under the first part of the clause only on goods delivered, as the weight shall be ascertained at the port of discharge. In the Inner House the defenders accepted the Sheriff-Substitute's view that effect must be given to the latter part of the clause, and they maintained that it could be reconciled with the first part of the clause by limiting its application to the case where the whole cargo was lost, in which case it would have no application to the present case, where only part of the cargo was lost. A fourth view commended itself to the Sheriff-Substitute. He thought that if loss of cargo took place from ordinary causes, such as, I presume, evaporation, no freight would be payable on such lost cargo, whereas if the loss took place from such an untoward cause as the collision which happened in this case freight would be payable. The Sheriff-Substitute avoided the difficulty about ascertaining the weights of such lost cargo by saying that the amount would fall "to be ascertained in the best practicable way, as was done in *Spaight* v. *Farnworth*, 1880, 5 Q.B.D. 115," a case which can be of no assistance in the present case, because in that case the dimensions to be ascertained were of existing timber which had not been lost, whereas in the present case the weight to be ascertained is of non-existent material.

It appears to me that the most reasonable construction of the latter part of clause 15 is to hold it applicable, in the case of cargo, both to total and partial loss. No reason has been suggested why freight should be payable on undelivered cargo when the whole contents of a ship have been lost, whereas if any portion has been saved no freight is payable on the part, however large, which has been lost. But this does not end the matter. The question still remains—How is the weight of the lost cargo to be ascertained, to which the rate of £7, 5s. per ton is to be applied? The material does not exist as in *Spaight's* case. The weight as ascertained at the port of loading cannot bind the shippers, who repudiate responsibility for this weight on the face of the bill of lading. It appears to me that there is no standard by which the weight of the lost cargo can be ascertained, and therefore that the clause is incapable of execution.

I accordingly agree in the result arrived at by your Lordships that the defenders must be assoilzied.

The Court assoilzied the defenders.

Counsel for the Pursuers and Respondents —Sandeman, K.C. — Normand. Agents — Boyd, Jameson, & Young, W.S.

Counsel for the Defenders and Appellants — Dean of Faculty (Murray, K.C.) — W. T. Watson. Agents — Beveridge, Sutherland, & Smith, W.S.

Wednesday, July 9.

SECOND DIVISION.

(SINGLE BILLS.)

[Sheriff Court at Wigtown.

THOMSON *v.* EARL OF GALLOWAY.

(Reported *supra*, p. 448.)

Expenses — Landlord and Tenant — Arbitration — "Expenses of and Incidental to Arbitration and Award" — Expenses Incurred in Preparing and Submitting Special Case to Sheriff — Expenses in Sheriff Court — Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, cap.* 64), *Second Schedule, sec.* 14.

Held that expenses incurred in preparing and submitting a special case under the Agricultural Holdings (Scotland) Act 1908 for the opinion of the sheriff did not fall within an allowance by the sheriff of "expenses in this court" but were expenses "of and incidental to the arbitration and award" in the sense of section 14 of the Second Schedule of that Act, and as such in the discretion of the arbiter.

The Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64) enacts—Second Schedule, section 14—"The expenses of and incidental to the arbitration and award shall be in the discretion of the arbiter, who may direct to and by whom and in what manner those expenses or any part thereof are to be paid . . . "

In an arbitration arising out of a claim for compensation lodged by William Thomson, tenant of the farm of Polwhilly, Wigtownshire, against the landlord, the Earl of Galloway, the arbiter who had been appointed by the Board of Agriculture proposed certain findings, and the landlord

asked the arbiter to state a case for the opinion of the Court. On 6th March 1919 the Sheriff-Substitute (WATSON) answered the question of law in the Case, and found the claimant entitled "to his expenses in this Court." The landlord appealed to the Second Division of the Court of Session, and on 4th June their Lordships dismissed the appeal with expenses.

On the motion for approval of the Auditor's report the appellant objected thereto in so far as there had been allowed certain items all in connection with the preparation and submission of the Special Case to the Sheriff-Substitute. The items allowed were ten in number and amounted to £6, 1s. 6d. The principal item was as follows—"Travelling to Castle Douglas, when application by landlord heard by arbiter and granted, and arranging details of Special Case. Occupied, including travelling, 6 hours, £3."

Argued for the appellant—The expenses in question were not expenses of proceedings before the Sheriff, but were, strictly speaking, expenses incidental to the arbitration in the sense of the Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), Second Schedule, section 14—*Scottish Union and National Insurance Company* v. *Surveyor of Taxes*, 1889, 16 R. 624, 26 S.L.R. 489; *M'Quater* v. *Ferguson*, 1911 S.C. 640, 48 S.L.R. 560. Appellant's note of objections should accordingly be sustained.

Argued for the respondent—The expenses in question were not expenses "of and incidental to the arbitration and award" in the sense of the Agricultural Holdings (Scotland) Act 1908, but were really expenses of and incidental to the Special Case, and as such fell within the words "expenses in this Court" in the Sheriff's interlocutor. The Court had inherent power to decide questions of expenses in such cases—*MacIntyre* v. *Board of Agriculture*, 1916 S.C. 983, 53 S.L.R. 316. In stated cases under the Workmen's Compensation Acts expenses in connection with the adjustment of the case had been allowed—*M'Govern* v. *Cooper & Company*, 1901, 4 F. 249, 39 S.L.R. 164; Maclaren on Expenses, p. 300; C.A.S. L. XIII, 17. On the appellant's argument the cost of framing a petition or drawing a summons would not be expenses in a case.

LORD JUSTICE-CLERK—The question in this case is, what is the meaning of the words in the Sheriff-Substitute's interlocutor of 6th March, "expenses in this Court," and whether the tenant's expenses in the Sheriff Court included expenses which were incurred in preparing and submitting the case to the Sheriff?

I think these expenses, if they come into the proceedings at all, are expenses which fall within section 14 of the Second Schedule of the Act of 1908, as being expenses "of and incidental to the arbitration and award" which are in the discretion of the arbiter. The Stated Case is put forward in terms of the statute, as can be done at any stage of the proceedings—in this case at the stage where the arbiter has gone so far as to issue proposed findings, when the parties raised a question of law which would affect materially the ultimate award to follow upon these proposed findings. Accordingly it seems to me that—to use the Sheriff-Substitute's language—"they are not expenses in this Court." What the arbiter may do with them I do not know. I think they do not fall within these words, and accordingly, in my opinion, the objection should be sustained.

LORD DUNDAS—I am of the same opinion and for the same reason.

LORD GUTHRIE—I concur.

The Court sustained the objections.

Counsel for the Appellant — Fenton. Agents—Cowan & Stewart, W.S.

Counsel for the Respondent — Scott. Agents—Carmichael & Miller, W.S.

HOUSE OF LORDS.

Tuesday, July 1.

(Before Viscount Finlay, Viscount Cave, Lord Dunedin, Lord Shaw, and Lord Wrenbury.)

M'ALINDEN *v.* JAMES NIMMO & COMPANY, LIMITED.

(In the Court of Session, February 23, 1918, 55 S.L.R. 276, and 1918 S.C. 329).

Master and Servant — Workmen's Compensation — Compensation — Increased Weekly Payment on Failure to Obtain Work when Partially Incapacitated.

It is open to an arbiter acting under the Workmen's Compensation Acts, upon sufficient evidence being adduced, to increase the compensation granted to a workman on partial incapacity, on the ground that though there is no change in his physical state, there is a greater difficulty than had been contemplated at the time of the original grant in his obtaining employment. *Circumstances* in which *held* that an arbiter had facts before him to entitle him to increase an original award.

Expenses—Poor—House of Lords Appeal.

The Scots Act 1424, cap. 24 (1424, cap. 45), dealing with pauper causes, enacts—". . . And gif sic cause be obtenyt the wrangar sall asseyth bath the party scathit and the aduocatis costis and truale. . . ."

Held that the practice of the House of Lords was established as to the question of expenses in a poor's cause, and could not be altered because of an early Scots statute which had not in contemplation an appeal to the House of Lords.

This case is reported *ante ut supra.*

VISCOUNT FINLAY—In my opinion the right view of this case was taken by the Lord Justice-Clerk, and I observe that Lord Dundas, although he agreed with the majority of the Court of Appeal, and agreed