At the conclusion of appellants' argument—

LORD CHANCELLOR (LOREBURN)—I do not think it is necessary to enter at all upon the interesting details of this appeal, which is one wholly relating to matter of fact. The learned Judge who heard the witnesses takes one view, and in substance I think the same view is taken by the Lord President, of what took place on the occasion of this collision. I myself agree with the views which have been expressed, and I really do not think that any good purpose would be served by entering upon a consideration of the various arguments that have been adduced by one side or the other. I am content to accept the judgment of the Lord President.

I think the appeal ought to be dismissed, and I move your Lordships accordingly.

LORD MACNAGHTEN—I agree.

LORD ATKINSON—I concur.

LORD SHAW—I desire to say that so far as the form of process goes in this case, I do not myself see any occasion for the change of the interlocutor which occurred in the Inner House. It appears to me that the finding of Lord Dewar, which was recalled by the First Division, was completely justified by the clear and conclusive narrative which he gave in stating his opinion. The change of form which has occurred did not arise, as I observe, from any change of view in the First Division as to the fault or negligence of the pilot. The Division, or at least the majority thereof, came back at the conclusion of the case to exactly the position in which Lord Dewar left it. I concur in the course proposed.

LORD ROBSON—In this case it has been found by two Courts in Scotland that the fault lay wholly with the pilot, and I think to that finding no objection can be taken. Some difficulty no doubt arises on the evidence as to the look-out kept by the ship, but it cannot be said that the pilot was without warning or information as to the danger which he realised too late. When the vessel got alongside the "Koombana," the captain of the "Buenos Ayrean" drew the pilot's attention to the boom of the "Koombana," so that he knew he was very near the wharf and any vessels that might be there, and he ought to have taken immediate steps to get more into mid-channel so as to clear any vessel that might be lying further on. He did not do so. That error caused the accident, and I think it cannot be said that the evidence as to the look-out was sufficient to make out fault against the defenders.

Their Lordships dismissed the appeal, with expenses.

Counsel for the Pursuers (Appellants)—Laing, K.C.—Horne, K.C. Agents—Maclay, Murray, & Spens, Glasgow—J. & J. Ross, W.S., Edinburgh—Thomas Cooper & Company, London.

Counsel for the Defenders (Respondents)—Butler Aspinall, K.C.—Roberton Dunlop. Agents—Wilson, Caldwell, & Tait, Glasgow—Webster, Will, & Company, W.S., Edinburgh—Pritchard & Sons, London.

Tuesday, March 12.

(Before the Lord Chancellor (Loreburn), Lord Macnaghten, Lord Atkinson, Lord Shaw, and Lord Robson.)

HARGREAVE *v.* HAUGHEAD COAL COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (8 *Edw. VII, cap.* 58), *Schedule I* (16)—*Ending of Compensation—Accident Likely to Affect in Future the Workman's Wage-Earning Capacity.*

A miner was injured by accident arising out of and in the course of his employment, and as the result lost one eye. His employers for a time paid him compensation for total incapacity. They applied for review of the compensation, and the arbiter ended it, finding that the miner's incapacity had ceased. He also found that the miner had incipient cataract in the other eye, that incapacity would result gradually from the cataract, and that the cataract was not due to the accident.

Held, affirming judgment of the Second Division, that the arbiter was right in ending the compensation.

Henry Hargreave, coal miner, Tollcross, Glasgow, *appellant*, presented a Stated Case under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) against a decision of the Sheriff-Substitute (MILLAR CRAIG) at Airdrie, whereby in an application at the instance of the Haughhead Coal Company, Limited, *respondents*, the compensation paid by them to him was ended as at 15th September 1910.

The Case stated—"The case was heard before me on 13th February 1911, when the following *facts* were admitted or proved—1. That on 18th February 1910 the appellant sustained injury to his right eye by an accident arising out of and in the course of his employment as a miner with the respondents in their Broomhouse Colliery. 2. That in consequence of the injury the eye had to be removed. 3. That the appellant received compensation from the respondents in respect of total incapacity from the date of the accident till 15th September 1910, at the rate of 13s. 9d. per week. 4. That on 12th November 1910 the appellant's incapacity had ceased and he was fit to resume his former work as a miner. 5. That the appellant had on 12th November 1910, and has now, incipient cataract in his left eye. 6. That incapacity for his work will result gradually from the cataract. 7. That the cataract in the left eye is not due to the accident. 8. That it is admitted that the appellant's condition was the same at 15th September as at 12th

November 1910. 9. That in the beginning of December 1910 the appellant resumed his former work as a miner with the respondents. 10. That his wage-earning capacity is not diminished by the loss of his right eye."

The *question of law* was—"Was the arbiter right in the circumstances stated by him in ending the compensation payable to appellant by respondents in respect of the accident sustained by him on 21st February 1910?"

On 17th June 1911 the Second Division of the Court of Session pronounced an interlocutor answering the question in the affirmative.

LORD JUSTICE-CLERK—The Sheriff here has found certain facts, and we must assume—we are bound to assume—that he found those facts as basing his judgment upon the evidence which was before him. If there was a deficiency of evidence we have nothing to do with that. We must assume that he had evidence before him which justified him in coming to the conclusion upon the facts at which he arrived. I leave out of view altogether the question about the cataract, because it does not interfere with the appellant's work at present, and it is not an injury which necessarily involves the ultimate loss of his second eye. It is not suggested, and I understand cannot be suggested, that the cataract has anything to do with the accident which happened and whereby he lost the first one.

Now the appellant resumed his work as a miner, and the finding in fact of the Sheriff-Substitute is that his wage-earning capacity is not dimished by the loss of his right eye. That is a finding in fact. Mr Constable contended that that finding was unreasonable, and that we were entitled to say that we must find otherwise. I am not of that opinion. I think if the Sheriff had evidence before him which satisfied him of the fact that the man's earning capacity was not diminished by the loss of his right eye he was quite entitled so to find; and that can be decided not by theory at all but by the fact that for a considerable period of time the man with his one eye was doing his work in the mine and earning the same wages that he used to earn before, the same wages in fact as other miners were earning with the same output.

If that is so, it seems to me that the case of *Rosie*, as Lord Salvesen has said, is conclusive against the pursuer. In that case the question was one of rupture, and the possibility was stated there that the man could do a good deal of labour and the rupture might not affect him so far as his capacity to do his work was concerned. Nevertheless the question being whether at that time and with reasonable prospects for the immediate future he was able to do the work which he undertook to do and proved it by doing it without any appearance of injury caused by the doing of it, the Court of Seven Judges held by a majority of five to two that he was not entitled to any further compensation, and that the Sheriff had been wrong in allowing him compensation of 9s. 2d. a-week upon the footing that something would happen in the future of which there was no certainty whatever as to when it would occur or whether it would actually occur.

On these grounds I think there is no reason for interfering with the judgment at which the Sheriff-Substitute has arrived.

LORD DUNDAS—I am of the same opinion. I confess that when the learned counsel for the appellant was reading the Stated Case over to us and came to the tenth finding in fact, I wondered what his argument was going to be, because it seemed to me upon the facts that it was very difficult to see what was to be said to us to raise a question of law upon which the appellant could succeed. The point turned out to be that finding ten was an unreasonable finding. It was said to be unreasonable because it was alleged that it was logically inconsistent with the second finding. I do not think that is the case at all. The whole findings must be read and considered together. The tenth finding is, like the others, a pure question of fact upon which the Sheriff-Substitute has found. He may be right or he may be wrong upon it—I do not see any reason to suppose that he was wrong—but he arrived at it upon a consideration of the facts. I think it is final, and see no reason for our interference in the matter.

LORD SALVESEN—I agree.

Hargreave, the appellant, appealed to the House of Lords, and in a supplementary statement set forth as the question which it was desired to have settled—"Whether the practice, which at one time was followed in both countries, of keeping the arbitration open by making an order for a nominal payment of compensation or by some other device, is competent in circumstances where the immediate effects of the accident are spent but where there is a prospect that incapacity may again develop at a later date?" Reference was made to *Nicolson* v. *Piper*, [1907] A.C. 215; *Irons* v. *Davies & Timmons*, [1899] 2 Q.B. 330; *Chandler* v. *Smith*, [1899] 2 Q.B. 506; *Rosie* v. *Mackay*, 1910 S.C. 714, 46 S.L.R. 999; *Clelland* v. *Singer Manufacturing Company*, July 18, 1905, 7 F. 975, 42 S.L.R. 757; *Freeland* v. *Macfarlane, Lang, & Company*, March 20, 1900, 2 F. 832, 37 S.L.R. 599; *Ferrier* v. *Gourlay Bros. & Company*, March 18, 1902, 4 F. 711, 39 S.L.R. 453; *Anderson* v. *William Baird & Company*, January 15, 1903, 5 F. 373, 40 S.L.R. 263; *Owners of the "Tynron"* v. *Morgan*, [1909] 2 K.B. 66. The following *reasons* for *reversal* were, *inter alia*, set forth:—"2. Because supervening incapacity due to the said accident is in the circumstances reasonably to be apprehended by the appellant. 4. Because in the circumstances disclosed by the stated case the arbiter should have kept the arbitration

open, *or otherwise* proceeded to assess compensation for the appellant's loss of wage-earning capacity."

The respondents stated—"The decision of the arbiter that the appellant does not suffer from any diminution of wage-earning capacity as a result of the accident in question is a finding in fact, and is not subject to review unless it could be held that the arbitrator had no evidence before him on which such a conclusion could be reached. The finding was made by the arbiter upon evidence led before him. There is no provision of the Workmen's Compensation Act 1906 which enables the arbiter to award any compensation to a man when he has found as a fact that the man has ceased to suffer a diminution of working or wage-earning capacity as a consequence of the accident in question." They referred to *Rosie* v. *Mackay, cit. sup.*; *Clelland* v. *Singer Manufacturing Company, cit. sup.*; *Ball* v. *William Hunt & Sons*, [1911] 1 K.B. 1048.

At the conclusion of the appellant's argument—

LORD MACNAGHTEN—In this case the appellant lost his right eye by an accident, and it appears, at least I so gather from the finding of the Sheriff, that at that time there was no sign of incipient cataract. It is not very clearly stated in his findings, but I think that is the fair result. It seems to be clear that the incipient cataract only dates from the 12th of November 1910, the accident having occurred on the 18th of February preceding. That being so, it seems to me that it is impossible to say that the arbitration ought always to be kept open, because it would result plainly from that that when a man, being gifted by nature with two organs of vision, loses one, the arbitration ought to have been kept open on the chance of his losing the other before he becomes unfit to work or is unable to earn his livelihood.

For these reasons I think that the appeal ought to be dismissed, and I move your Lordships accordingly.

LORD ATKINSON—I concur. As I understand the finding, the learned County Court Judge has found that this cataract is not due to the accident—that is, that it is not caused by the accident. Now the compensation is given where an injury by accident is caused arising out of and in the course of a man's employment, and it is for that and that alone that he is entitled to receive compensation. The function of the schedule is to supply a measure of damages for that compensation, but a man is not entitled to compensation for an injury not inflicted upon him by the accident with which he meets.

If the argument of the appellant were well founded, if a man loses one eye, then inasmuch as if anything happens to the other eye he would become totally blind, the award must be for ever kept open in order to see whether that misfortune will ever fall upon him. There would be no finality in such a case. It is on the other hand quite understandable that if a man is in a diseased condition at the time he meets with the accident and the accident accelerates in any way that disease, that as well as the actual physical injury directly caused by the accident may be fairly taken into account. And if this cataract was in an incipient stage at the time that the injury to the other eye was sustained, and if that injury to the other eye accelerated the disease in the left eye, it might possibly be that the award should be kept open to meet further developments of that somewhat consequential injury. But it appears to me, taking the finding here, which I take to be that this cataract did not exist at the time the man sustained the injury to his right eye, but that it developed subsequently, coupled with the seventh finding, which says "that the cataract in the left eye is not due to the accident," I do not see why the award should be kept open to meet the possibility of the consequences which have been indicated following on.

LORD SHAW—In my opinion, in this case when the Sheriff made his award he made it as a final award, meaning to exclude from the scope of that award anything in respect of or in connection with the cataract in the left eye. I think that the finding in head 7 "that the cataract in the left eye is not due to the accident" destroys all causal link of connection between that ailment and any accident arising out of and in the course of the employment. The causal connection having been thus destroyed, it appears to me that it would be straining the statute and contrary to its provision to apply it to a case like the present.

LORD ROBSON—I entirely concur.

LORD CHANCELLOR—I concur.

Their Lordships dismissed the appeal, with expenses.

Counsel for the Appellant—Constable, K.C.—Moncrieff—Gilbert Beyfus. Agents—Hay, Cassels, & Frame, Hamilton—Simpson & Marwick, W.S., Edinburgh—Deacon & Company, London.

Counsel for the Respondents — D.-F. Scott Dickson, K.C.—Beveridge. Agents—W. T. Craig, Glasgow—W. & J. Burness, W.S., Edinburgh — Beveridge, Greig, & Company, Westminister.