traffic thereon; and (3) that the driver should, if necessary to avoid an accident, give way to all traffic which is coming along the main road. Now as the collision in the present case occurred after the pursuer had safely entered upon the main road, after he had crossed it to the extent of two-thirds or thereby of its breadth, and after he had proceeded on the main road to some distance to the west of the side street, my own opinion is that the case of *Macandrew* does not apply, but that the taxi-cab had, so to speak, obtained such possession of the crossing that if there was a special duty of care on either vehicle it was on the tramway car to avoid running down the taxi-cab. But I directed the jury to assume that the case of *Macandrew* did apply, and asked them to consider whether the pursuer had used all reasonable precautions in emerging from the side street. The jury's verdict shows that they considered that the pursuer had exercised proper care in coming out of Saltoun Street.

The next case to be considered is that of *Fraser*, 10 R. 264. This case, as I read it, lays down no general principle as to contributory negligence. In particular it does not affirm that it is necessarily negligent to cross in front of an approaching vehicle. *Fraser* was decided as it was because of the particular act of negligence committed by the injured boy. He made to cross a distance of 17 feet while the approaching car was only 5 or 6 yards from the place where he was knocked down by the horses. The opinions of the Lord President, Lord Mure, and Lord Shand make it plain that they were deciding the case on these special facts. Thus Lord Mure says—"There are two points to be considered—first, the distance the boy had to go after he left the pavement; and second, the distance the car was from the point at which he attempted to cross at the time he left the pavement." And Lord Shand says—"The short distance which the car had to travel before it reached the place where the boy left the footpath and tried to cross is a most material circumstance." There is nothing in the opinions of the judges of the majority or in the decision in the case which is inconsistent with Lord Fraser's general statement—"In itself it cannot be held to be rashness to cross a street in front of an advancing carriage. It must depend upon the distance from the carriage whether it would be safe and proper, or foolhardy and rash, to make the attempt." That seems to me to be sound common sense, and also good law, which should never be divorced from common sense. We know that damages are frequently awarded in cases of this description, and we were informed that only the other day, in a case against the Musselburgh Tramways Company, not reported, the Extra Division, in a case whose facts closely resembled those of the present case, found that the driver of the crossing vehicle was not in fault, but that the sole cause of the accident was the negligence of the driver of the tramway car. The question of the conduct of the injured person seems thus to be a jury question, and the decision of the jury ought to stand unless it be shown that, in the language of Lord Fraser, the attempt to cross was a "foolhardy and rash" act. There must always be calculation in crossing a street and sometimes miscalculation, but whether in the latter case there is negligence in the sense of the law of reparation depends on the particular circumstances of the case. In the present case my opinion is that the pursuer took reasonable precautions for his own safety, and it was because his calculations were upset by the abnormal conditions under which the tramway car was driven that the accident took place. I am therefore of opinion that the jury were right in holding that the defenders had not proved that the pursuer had been guilty of contributory negligence.

The last case referred to was that of *Radley*, 1 App. Cas. 754, which was explained by Lord President Dunedin in the case of *Mitchell*, 1909 S.C. at p. 749. Assuming contributory negligence on the part of the pursuer, I am of opinion that the driver of the tramway car had time and opportunity to obviate the consequences thereof, and that accordingly he alone was to blame for the accident. There was time for the driver of the tramway car, after the pursuer had placed himself in jeopardy, either to warn the pursuer to slacken the speed of his car, or if necessary to stop his car altogether. He did none of these things, and the doing of them would in all probability have prevented the accident.

The Court set aside the verdict and granted a new trial.

Counsel for the Pursuer—G. Watt, K.C. —D. Jamieson. Agents—Manson & Turner Macfarlane, W.S.

Counsel for the Defenders—Wilson, K.C. —M. P. Fraser. Agents—Simpson & Marwick, W.S.

HOUSE OF LORDS.

Friday, April 27.

(Before Earl Loreburn, Lord Shaw, Lord Parker, Lord Sumner, and Lord Parmoor.)

LYONS *v.* WOODILEE COAL AND COKE COMPANY, LIMITED.

(In the Court of Session, May 30, 1916, 53 S.L.R. 538, and 1916 S.C. 719.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—*Accident—Death Due to Chill Contracted by Miner while Waiting at Shaft-Bottom—Delay Due to a Protracted Statutory Inspection of Shaft.*

A miner went to the shaft-bottom to be raised to the surface, about the time when the statutory inspection of the shaft was taking place. He was kept waiting and caught a chill from which he died. The statutory inspection occupied a varying amount of time, and on

this occasion took somewhat longer than usual owing to a breakdown of the bell wire.

Held that the miner was not injured by accident within the meaning of the Workmen's Compensation Act 1906.

This case is reported *ante ut supra*, where will be found the narrative of facts.

EARL LOREBURN—In this case the arbitrator has found that the injury arose out of and in the course of the applicant's employment, but he said that he found that it was not by accident. Now in order to succeed an applicant must show that there was an accidental occurrence or condition, something unlooked for, some unlooked for mishap, or untoward event which was not expected or designed; but he must also show that the injury was connected with it and consequent upon it, and, as there are many causes of most events, it must be a connection which is not as a matter of common-sense too remote. That is for the arbitrator as a conclusion of fact from the evidence, and the Court has power to set it aside if there is no evidence which reasonably warrants the conclusion at which the arbitrator has arrived. I cannot myself say that that is so here, and indeed the learned Solicitor-General for Scotland has not asked the House to say so.

But the Court may also interfere if the Sheriff took an erroneous view of the law which has affected his judgment. Now the learned Sheriff has given his reasons for his award, and my own impression is that there was a misunderstanding about *M'Luckie's* case, 1913 S.C. 975, 50 S.L.R. 770, but I have not been able to see that the award of the learned Sheriff was really affected by that misconception of *M'Luckie's* case, if it was a misconception, and therefore in my opinion the appeal fails.

It is unnecessary to repeat what has been so often said in this House that the decision of an arbitrator is the decision of the person appointed by the Legislature to be the judge of fact, and that whether one agrees with him or does not agree with him, in either case, unless there is some error of law, the Courts have no power to interfere.

LORD SHAW—I entirely concur with what has just been observed by the noble and learned Earl on the Woolsack.

Cases of this sort begin with the first link of the chain, namely, whether there was an accident. But in order to bring them within the Act you have to inquire whether that accident was causally connected with the other portion of the claim of causation which concludes with injury or death.

In the present case that causal connection is completely broken because the learned Sheriff in his careful findings, as I think them to be, does not leave any doubt on our minds that he thought there was no accident whatever which could be causally connected with the result which was so unfortunate to this workman.

There is nothing further in the case. As I have remarked in former cases, for us to interfere in this House, or for any court of law to interfere with a judgment of that character, would be an act of usurpation in regard to the power to determine fact which is specially remitted by the Legislature to the arbitrator and to the arbitrator alone. It is an additional comfort, however, for me to reflect that looking upon this case in its entirety I see no reason which suggests itself to my mind for the conclusion that the learned Sheriff did not come to a correct finding.

LORD PARKER—I agree.

LORD SUMNER—I concur.

LORD PARMOOR—I agree.

Their Lordships dismissed the appeal.

Counsel for the Appellant—Morison, K.C. (Sol.-Gen.)—D. R. Scott. Agents—Cormack & Roxburgh, Dumbarton—Weir & Macgregor, S.S.C., Edinburgh—C. F. Martelli, London.

Counsel for the Respondent—Hon. W. Watson, K.C.—Villiers Bayly (for Mr Harold Beveridge). Agents—W. T. Craig, Glasgow—W. & J. Burness, W.S., Edinburgh—Beveridge & Company, Westminster.