preposition "or," are not in reality proper alternatives. The test I apply is this—Could a man accused under this indictment be guilty of all the charges libelled? I answer without hesitation that he could. They are not mutually exclusive. In saying that I am far from applauding this as a model form of indictment; for when one turns to the Act of Parliament it is quite clear that there are four separate and distinct persons who might be accused of the offences here charged. There is in the first place the owner of the gaming house: there is in the second place the occupier of the gaming house, and by that I understand the tenant or occupant; there is in the third place the superintendent, the person who has the care and management; and there is in the fourth place the subordinate servant who acts in any manner in conducting the gaming.

When one turns to this indictment one finds that the two accused persons are both charged with having been guilty of what properly ought to be charged against the tenant separately, against the superintendent separately, and against the subordinate servant separately, although, I repeat, anyone might be guilty under all three charges.

I propose to separate the cases of the two accused, and I take first the husband. We are asked to say whether the facts proved are adequate in law to infer the committal by him of the offence charged. I am of opinion that they are not. All that is found proven against the husband is that he was the tenant or occupier of this house, and if he had been charged simply with being the occupier of a gaming house and a conviction had followed, I have little doubt that the conviction would have been sustained. But I can find in the Stated Case no facts set out, which the magistrate found proven, adequate in law to convict this man of having the care and management of the house or acting in the conduct of the gaming. All we know about his daily avocation is that he was employed with waggon builders, and that I need scarcely say is not sufficient to lead anyone to infer that he was engaged in the care and management of a betting house.

When I turn to the case of the wife I find facts proven which are quite sufficient to support the charge that she was not only the keeper but also that she acted in the care and management of the house, and that she was acting in the conducting of the gaming. Accordingly, inasmuch as these offences could quite well be committed by one person—in other words, that they are not mutually exclusive—the general conviction following upon the charge is unassailable.

Turning to the question put to us, I propose that we should answer it thus—that the facts proved did not infer a contravention by the husband of the statute as libelled, but that in the case of the wife the facts proved did infer a contravention by her of the statute as libelled.

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

LORD MACKENZIE—I concur.

In answer to the question in the Case, the Court found that the facts proved did not infer a contravention of the statute libelled in the case of Robert M'Culloch, but that they did infer such a contravention in the case of Annie Gray or M'Culloch, his wife, and accordingly sustained the appeal and quashed the conviction *quoad* Robert M'Culloch, and dismissed the appeal *quoad* Annie Gray or M'Culloch.

Counsel for the Appellants—Sandeman, K.C. — Duffes. Agent — James Bryson, Solicitor.

Counsel for the Respondent—Macmillan, K.C.—Gentles. Agents—John C. Brodie & Sons, W.S.

COURT OF SESSION.

Wednesday, March 17.

FIRST DIVISION.

[Sheriff Court at Glasgow.

SMITH & LEISHMAN *v.* FLOOD.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 2 (1)—*Notice of Accident*—"*Mistake . . . or other Reasonable Cause*"—*Interval of Five Months between Accident and Claim for Compensation, with no Formal Notice of Accident.*

A workman suffered an injury to his finger by accident arising out of and in the course of his employment on 2nd December 1913. He continued at work till 22nd February 1914. On 24th March, on the advice of a doctor, he went to the infirmary and remained there till 22nd April, on which date he lodged with his employers a formal claim for compensation. The arbitrator found that at the time of the accident the workman did not think it was serious, the doctor treating the finger as septic although disapproving of work, and that it was only when sent to the infirmary that he began to think it serious, and when there to think of compensation. He also found that the disease with which the respondent was afflicted was of an obscure character on which medical opinion differed. *Held* that the arbitrator was entitled to reach the decision that the failure to give statutory notice of the accident was due to "mistake . . . or other reasonable cause."

Opinion that the workman's delay was due to "reasonable cause" and not to "mistake."

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 2, enacts—"(1) Proceedings for the recovery under this Act of compensation for any injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before

the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in the case of death, within six months from the time of death: Provided always that (*a*) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause; and (*b*) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause. (2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers."

Smith & Leishman, timber measurers, &c., Woodville Street, Govan, *appellants*, appealed in an arbitration with John Flood, stableman, 69 Blackburn Street, Govan, *respondent*, brought under the Workmen's Compensation Act 1906 in the Sheriff Court at Glasgow.

The arbitration was heard before the Sheriff-Substitute (MACKENZIE), on 13th and 21st July 1914, when the respondent was awarded compensation at the rate of 13s. 9d. per week, beginning the first payment as at 1st March 1914. On appeal the First Division of the Court of Session, pronounced this interlocutor dated 21st November 1914:—"Remit to the Sheriff-Substitute as arbitrator to amend the case by substituting the following question in place of the first question of law, viz.—'Whether the respondent is barred from maintaining proceedings for the recovery of compensation,' and by finding (1) whether the statutory notice was given by the respondent as soon as practicable, and if not (2) whether the appellants were not prejudiced by such want of notice, and if prejudiced (3) whether such want was occasioned by mistake or other reasonable cause, with instructions to state the facts upon which he bases said findings, and to take such further evidence (if any) as he shall think necessary in consequence of this remit."

The Case was finally stated by the Sheriff-Substitute in, *inter alia*, the following terms:—"The case was heard before me, and proof led on these dates [13th and 21st July 1914], at which one of the medical referees appointed under said Act sat with me as assessor, when the following *facts* were established:—(1) That the respondent is a stableman, residing at 69 Blackburn Street, Govan, and the appellants are timber measurers, Woodville Street, Govan. (2) That on 2nd December 1913, and for three years previously, the respondent was in the employment of the appellants as stableman, and on the date mentioned met with an accident arising out of and in the course of his said employment by striking his hand against the edge of a pail in which was food for the horses in his charge; that this accident produced a small wound near the nail of the middle finger of his left hand. (3) That the average weekly wage of the respondent in the appellants' employment was 27s. 6d. (4) That the respondent finished his day's work but informed his wife when he went home at breakfast time that he had hurt his finger; that he continued to work till 22nd February 1914, when said finger began to swell; that he was treated in the Western Infirmary for four weeks, and was discharged therefrom about the 1st of April. Verbal notice of accident was given to the foreman on 4th December 1913 (who did not report same), and formal notice of claim on 22nd April 1914. (5) That on the second day after the accident the respondent went to Dr Reid, who attended to the finger as for a case of septic poisoning, and that he afterwards consulted Dr Anderson, who advised him to go to the infirmary; that respondent was examined by Dr M'Gregor on the 8th June and 10th July, and by Dr Duff on 26th May. (6) That five or six years ago the respondent had two toes amputated, and that he is afflicted with a constitutional complaint which may lie dormant for a time and be awakened into activity by such an accident as that which the respondent sustained. (7) That the respondent is still incapacitated from performing his former work, and that such incapacity arises from said accident.

"The following additional findings are made in obedience to the remit of 21st November 1914:—(1) That the statutory notice was not given by the respondent as soon as practicable. This finding is based on the following facts—(*a*) That the respondent gave verbal notice of the accident to the appellants' said foreman on 4th December 1913, the second day after the accident; (*b*) that the respondent did not then consider the injury a serious one involving any claim for compensation; (*c*) that the respondent while working wore a dressing on the injured finger which attracted the notice of the foreman and also of his fellow workman Brennan; (*d*) that up till about the end of February the respondent continued to work with the appellants; (*e*) that he then, in March, consulted Dr Anderson, who advised him to go to the infirmary; (*f*) that he went to the infirmary on 24th March and remained there until 22nd April; (*g*) that the respondent is illiterate, being unable to read or write; (*h*) that about the second week of April the respondent spoke to his wife about obtaining compensation, and asked her to instruct a lawyer towards this end; (*i*) that on 16th April the respondent's wife consulted his law agent, and on 20th April sent to him the particulars required by him; (*j*) that the respondent's agent by

22nd April had got the full particulars, and on that date lodged the notice of claim. (2) That the appellants were prejudiced by such want of notice. This finding is based on the following facts—(*a*) That the verbal notice given to the foreman was not communicated by him to the appellants; (*b*) that the lapse of time, from the date of the accident to 22nd April, made it difficult for the appellants to obtain evidence of the facts of the accident, although there were no witnesses to the actual accident, the respondent being alone at the time; (*c*) that the serious nature of the injury did not fully appear until the month of March, but that if a medical examination had been made by the appellants before notice of claim was given, it might possibly have thrown some further light on the somewhat obscure constitutional disease with which the respondent is affected. (3) That the want of statutory notice was occasioned by mistake or other reasonable cause. This finding was based on the following facts—(*a*) That the respondent is illiterate and can neither read nor write—a fact only spoken to by the respondent's wife; (*b*) that at the time the accident happened he did not look upon it as serious, nor for sometime thereafter, the finger being treated at first by Dr Reid as a septic finger, that doctor, however, disapproving of the respondent continuing to work; (*c*) that he went on working until the end of February, a period of nearly three months; (*d*) that it was not until he saw Dr Anderson in March, who advised him to go to the infirmary, that he began to regard his injury as serious, and not until he was a patient in the infirmary that he began to consider the question of compensation; (*e*) that his giving notice to the foreman, and wearing a dressing on his finger while at work, were circumstances inducing him to suppose, although the respondent does not say so, that the fact of the accident was already known to the appellants; (*f*) that about the second week of April the respondent told his wife to instruct a law agent to give notice of claim, which was done on 22nd April; (*g*) that the disease with which the respondent is affected is of an obscure character, on the precise nature of which there was some difference of medical opinion.

"I found that the appellants were liable to the respondent in compensation for said injury from 22nd February 1914 at the rate of 13s. 9d. per week until the further orders of Court, and awarded compensation accordingly. I also found the appellants liable to the respondent in expenses."

The *questions of law* for the opinion of the Court were—"1. Whether the respondent is barred from maintaining proceedings for the recovery of compensation? 2. Whether the arbiter was entitled in view of the medical evidence led to pronounce the above findings, which are in accordance with the opinion of the medical assessor? 3. Whether, on the evidence led, it could be competently found that respondent's incapacity for work was not the result of an accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act 1906, or whether his disability was due to natural causes?"

Argued for the appellants—The respondent was barred from maintaining proceedings, since there was nothing in the findings on which he could base a plea of "mistake or other reasonable cause." A mistake must be one of fact and not of law, and here there was none such. There were on any view three points of time at which the respondent fully understood his condition—(1) when the doctor advised him to cease work; (2) when he actually ceased work: (3) when the doctor ordered him to the infirmary; and at none of these had the respondent lodged any claim. In England two kinds of "mistake" had been recognised—(1) when the injury was trivial, (2) when it was latent—*Egerton* v. *Moore*, [1912] 2 K.B. 308, Cozens Hardy, M.R., at 313, Fletcher Moulton, L.J., at 315, Buckley, L.J., at 315; *Webster* v. *Cohen Brothers*, 6 B.W.C.C. 92, Cozens Hardy, M.R., at 96, Buckley, L.J., at 97. "Reasonable cause" had also been defined—*Clapp* v. *Carter*, 7 B.W.C.C. 28, Cozens Hardy, M.R., at 32; *Potter* v. *Welch & Sons, Limited*, 7 B.W.C.C. 738; *Hayward* v. *Westleigh Colliery Company, Limited*, 7 B.W.C.C. 53. All these cases, though conflicting with the dicta in *Rankine* v. *Alloa Coal Company, Limited*, February 16, 1904, 6 F. 375, 41 S.L.R. 306, did not conflict with the judgment, and showed that as soon as a man knew that he had a serious injury he must give notice. In *Rankine* v. *Alloa Coal Company, Limited* (*cit. sup.*) there was no point of time at which the gravity of his injury was brought home to the workman, and he did not know he was entitled to compensation. At the lowest a period of a month elapsed between the respondent going to the infirmary and the lodging of his claim, for which delay no reason at all was alleged. In any event the workman must prove affirmatively that a "mistake" had occurred. Verbal intimation to the foreman was no substitute for written notice—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 2 (2). The cases quoted by the respondent were reviewed by Buckley, L.J., in *Webster* v. *Cohen Brothers* (*cit. sup.*) at 98, and were all cases of latent injury.

Argued for the respondent—While verbal notice to the foreman was not sufficient under the statutory requirements, it took away all suggestion of prejudice to the employers — *Clapp* v. *Carter* (*cit. sup.*), Cozens Hardy, M.R., at 33; *Hayward* v. *Westleigh Colliery Company, Limited* (*cit. sup.*). The "mistake" of the respondent lay in minimising his injury. The present case was covered by *Rankine* v. *Alloa Coal Company, Limited* (*cit. sup.*), Lord Adam at 378, 380, followed by *Brown* v. *Lochgelly Iron and Coal Compang, Limited*, 1907 S.C. 198, 44 S.L.R. 180. In *Clapp v. Carter* (*cit. sup.*) the Court held that the workman was aware of the serious nature of his injury. "Reasonable cause" had been defined so as to cover the present case in *Haward* v. *Rowsell & Matthews*, 7 B.W.C.C. 552, and *Zillwood* v. *Winch*, 7 B.W.C.C. 60. In a

number of cases delay in giving notice had continued for a much longer period than in the present case, and there had been held to be "reasonable cause"—*Hoare* v. *Arding & Hobbs*, 5 B.W.C.C. 36; *Stinton* v. *Brandon Gas Company, Limited*, 5 B.W.C.C. 426; *Breakwell* v. *Clee Hill Granite Company, Limited*, 5 B.W.C.C. 132; *Fry* v. *Cheltenham Corporation*, 5 B.W.C.C. 163. In all these cases, though the disease had been latent for a considerable period, the delay continued after the disease had emerged.

At advising—

LORD PRESIDENT—On the case as now stated I am of opinion that the workman has successfully surmounted what at first sight seemed to be a very formidable obstacle in the way of his claim for compensation.

He suffered an accident arising out of and in the course of his employment on the 2nd December 1913, and he gave no notice of the accident "as soon as practicable thereafter." He gave a notice of claim on the 22nd April 1914, and his claim for compensation was met with the plea that he had not complied with the provision of the statute in respect that he had failed to give a notice of the accident.

The arbitrator had to consider, therefore, whether this was fatal to the claim, and he found upon the facts which are set out in the case that the workman had not given the notice of accident as soon as practicable after the mishap befell him. He further found that the employers were prejudiced thereby; and therefore these two doors are closed, for I did not understand the counsel for the respondent here to challenge the conclusion which the arbitrator had come to. There remained a third door which the arbitrator has held is open, to wit, that he did not give his notice of accident because he was labouring under a mistake or had some other reasonable cause for not giving it.

Now the question we have to consider is whether the facts as stated in the case warrant that conclusion. Was there evidence before the arbitrator upon which he was entitled to come to the conclusion that the man was labouring under a mistake and had reasonable cause for failing to give the notice? I think that, looking to additional finding (3) under sub-heads *b*, *d*, *f*, and *g*, that the arbitrator had evidence adequate in law to entitle him to come to the conclusion he did, for under sub-head *b* he finds—"That at the time the accident happened he did not look upon it as serious, nor for some time thereafter, the finger being treated at first by Dr Reid as a septic finger, that doctor, however, disapproving of the respondent continuing to work." Under sub-head *d* the arbitrator finds—"That it was not until he saw Dr Anderson in March, who advised him to go to the infirmary, that he began to regard his injury as serious, and not until he was a patient in the infirmary that he began to consider the question of compensation." He finds under sub-head *f*—"That about the second week of April the respondent told his wife to instruct a law agent to give notice of claim, which was done on 22nd April"; and under sub-head *g* the arbitrator finds—"That the disease with which the respondent is affected is of an obscure character, on the precise nature of which there was some difference of medical opinion."

On these facts the arbitrator was, in my opinion, entitled to find that the man did not realise until April that his injuries were so serious as they turned out to be. No doubt he was advised by a medical man early in March, and the arbitrator found that he then began to regard his injury as more serious than he had thought it was. But he did not, as I think, fully realise that, or at all events the arbitrator was entitled to find that he did not realise that, until a later date. I might have come to that conclusion or I might not, but if I were to review the arbitrator's conclusion upon a matter of this kind I should be invading his province and assuming functions which are not mine under the statute.

The finding that the man had a good excuse, or laboured under a mistake, in failing to give notice because he did not realise how serious his injuries were, was challenged by the counsel for the appellant in law. And it was argued that this was not sufficient to entitle the arbitrator to come to the conclusion that there was a mistake, or that there was reasonable cause for failure to give notice. I am of opinion that it was sufficient, and I do not well see how the arbitrator could have come to any other conclusion facing him the cases of *Rankine* v. *Alloa Coal Company, Limited*, 6 F. 375, and of *Brown*, 1907 S.C. 198. The former of these cases seems to me to have decided this very question. Lord Adam puts it in a sentence thus—"The workman thought his injury was not so serious as it was, and I think that was a reasonable cause for not giving notice." And although, no doubt, Lord Adam himself and the other two Judges who agreed with him put the excuse upon the ground of mistake, it is by no means unreasonable to hold that it might be not only a mistake but might be a reasonable cause for failing to give notice, that the man did not realise the seriousness of his injuries at the time, and did not for some considerable time subsequent to the date of the accident realise how serious his injuries were. That decision was followed by the case of *Brown* in the Second Division, where, as appears from the opinion of the Lord Justice-Clerk, the Court founded upon similar circumstances as warranting the conclusion that the man had reasonable cause for failing to give notice. And for my part, whilst I do not differ from the view that it may be regarded as a mistake, I prefer to base my judgment upon the ground that it was a reasonable cause. It would have been difficult to take any other course in the case of *Brown*, because I observe that the question was put there, "Whether the man's failure to recognise the serious nature of his injuries and de-

signedly to withhold notice of the accident afforded a sufficient excuse?" and it is not easy to say that a man does a thing designedly if in truth he was labouring under a mistake.

That a man who is labouring under an error as to the seriousness of the injury which he has suffered has reasonable cause for not giving the notice enjoined by the statute is a proposition I am prepared to affirm. Whether he is under such an error or not is, of course, a question exclusively for the arbitrator to determine.

I therefore propose that we should answer the first question in the negative. As I have no doubt whatever that there was evidence which was sufficient to entitle the arbitrator to give this man compensation at the rate of 13s. 9d. a-week, we must, I think, answer the second question in the affirmative. The third question appears to me to be wrongly stated, and I propose to your Lordships that we should give no answer to it.

LORD JOHNSTON—I concur, but in doing so I desire to limit my concurrence to this, that on the case stated as it is, and in the circumstances under which it has been brought before us, I cannot find any definite ground to upset the learned arbitrator. But I reserve my opinion on the question of the meaning and application of certain words in the statute. They vary in the 1906 Act slightly from those which were used in the Act of 1897, which was in force when the cases of *Rankine*, 6 F. 375, and *Brown*, 1907 S.C. 198, were before the Court. At that date the closing words of the sub-section were simply "occasioned by mistake or other reasonable cause," and those were the words dealt with by the Judges who decided the cases of *Rankine* and *Brown*. They have been amplified a little in the Act of 1906, and they now run, "occasioned by mistake, absence from the United Kingdom, or other reasonable cause."

On a consideration of the judgments in *Rankine's* case, and the criticism that it received in the English case to which we were referred, the case of *Egerton* v. *Moore*, [1912] 2 K.B. 308, I have come to entertain considerable doubt as to the appropriateness of the explanations given by Lord Adam, which were commented upon in that case, particularly by Lord Justice Buckley. It appears to me that it is sometimes forgotten in dealing with this matter that it is to be assumed that the employer has been prejudiced by want of notice, and that for that want of notice the workman is responsible, to the effect of a bar to his claims. The proviso which follows is then intended to make an exception to the responsibility of the workman in a case in which it must be assumed that prejudice has occurred from his conduct. I think that the words in question are not to be read loosely, as they seem to me to have been read by the Court in *Rankine's* case, but to be read somewhat strictly—a penalty, presumably properly imposed, upon the workman for not giving his notice in good time. I think that it is a question whether the terms "mistake" and "other reasonable cause" are to be run into one another and treated as if it did not matter which, and as if it did not matter whether you can put your finger upon a real mistake or a real and intelligible other cause of a reasonable nature. I question whether they do not require, particularly when read along with "absence from the United Kingdom," to be more strictly applied than they have been in the two Scottish cases.

While I desire to reserve any opinion upon that point, I entirely agree in the way in which your Lordship proposes to deal with this case, in which the materials are not properly before us to raise any question on the conflict between the judgments in the Scottish and English cases. When the question comes again properly before the Court I think that a consultation of the other Division of the Court might not be inappropriate.

LORD MACKENZIE — I reach the same result as your Lordship. The arbitrator has found that the statutory notice was not given by the respondent "as soon as practicable," and that the appellants were prejudiced by such want of notice; and accordingly he had to consider the further question, namely, whether the want of statutory notice was occasioned by mistake or other reasonable cause.

Now the case is in some respects not stated with the precision that one would have wished. That may be from the nature of the evidence that was led. But the first question is whether the arbitrator addressed himself to the proper question of law. He states his conclusion that the want of statutory notice was occasioned by mistake or other reasonable cause. It is, I think, a little unfortunate that he has not found specifically whether in his view it was a case of mistake or whether it was a case of other reasonable cause, although I am bound to say, looking to what was said in the case of *Brown*, 1907 S.C. 198, I am not surprised that the arbitrator should have so framed his third proposition.

To my mind the true question in the case is whether there was reasonable cause for the want of notice, and I refer to the interlocutor in the case of *Rankine*, 6 F. 375. One does not require to go further than the interlocutor, which contains the judgment of the Court—a judgment which is binding upon us. It was there found that the facts of that case were sufficient to constitute a reasonable excuse, which I take to mean just a reasonable cause; and therefore so far as regards the law, if there is evidence in the case upon which the arbitrator can come to the conclusion that there was reasonable cause for the want of notice, then the workman is entitled to succeed, and accordingly I think it is there that the difficulty in this case lies.

One must approach the case keeping in view the very peculiar nature of the condition of the workman. That is clearly brought out in three passages in the case.

It is found that he was afflicted with a constitutional complaint which may lie dormant for a time and be awakened into activity by such an accident as that which the respondent sustained. And it is described in the other passages as an obscure constitutional disease. Accordingly one is not surprised that the workman should not realise the nature of the injury which he had sustained in the same way as he would realise the nature of the injury if it was a case of a broken bone, or something which did not consist in the exciting of a dormant cause which was due to some obscure ailment. It is in these circumstances that we must deal with the findings in fact. I take as a crucial finding in fact that the serious nature of the injury did not fully appear until the month of March. One is entitled, consistently with the other findings in the case, to convert that proposition into this, that until the month of March the workman was entitled to consider that the injury was not of a serious nature, and I say that bearing in mind fully the able argument of Mr Horne to the contrary—that it was impossible for a man to remain in that mental attitude after he ceased to work, and that he ceased to work in the end of February. I think the answer to that is this, that a man may be incapacitated from his work and yet really honestly believe that his incapacity may only be of a short duration, and I think it is possible to take that view consistently with the whole findings in the case. His view may have been that until he consulted Dr Anderson in March he had not even begun to regard that there was a possibility of his injury being serious. Dr Anderson advised him to go to the infirmary. He went into the infirmary, and it was while he was there that the serious nature of the injury fully appeared, while the finding which is contained in 3 (*b*) of the additional findings does not exclude the idea that it was not until the last week of March that he became convinced that his injury was of a serious nature. Then one turns to the first additional findings, subhead (*h*), and finds "that about the second week of April the respondent spoke to his wife about obtaining compensation, and asked her to instruct a lawyer," and in subhead (*a*) "that the respondent is illiterate, being unable to read or write."

It is in these circumstances that we are asked to say that there was no evidence to entitle the arbitrator to reach the conclusion he did. It is not for us to say that we would have reached the same conclusion. Unless there is no evidence to enable him to reach that conclusion we cannot disturb his finding. For my part I cannot say that there is no evidence, and accordingly I think that the conclusion to which the arbitrator has come must stand.

LORD SKERRINGTON concurred.

The Court answered the first question of law in the negative, the second in the affirmative, and returned no answer to the third.

Counsel for the Appellants—Horne, K.C. —Lippe. Agent—E. Rolland M'Nab, S.S.C.

Counsel for the Respondent—Crabb Watt, K.C.—Gentles. Agents—Dove, Lockhart, & Smart, S.S.C.

Wednesday, March 17.

SECOND DIVISION.

[Sheriff Court at Fort-William.

MACDONALD *v.* DAVID MACBRAYNE, LIMITED.

Reparation—Negligence—Carrier—Contributory Negligence—Misdelivery of Goods —Failure of Consignee to Notice Error.

The servants of the consignee of two barrels of paraffin received along with them from the carrier a barrel of naphtha which had not been ordered, and which, without examination and without ascertaining what their master had ordered, they placed in his store beside the barrels of paraffin. The consignee was subsequently asked to pay the freight to the carriers for the two barrels of paraffin, and before doing so went into his store and ascertained that the two barrels were there. On the end of each of the barrels a description of its contents was stencilled, but neither the consignee nor his servants noticed this. About three weeks after delivery one of the consignee's servants, in the belief that the barrel of naphtha contained paraffin, drew off part of its contents by the light of a candle, and an explosion ensuing, the store and its contents were destroyed by fire. *Held* in an action of damages at the instance of the consignee against the carriers that the consignee was entitled to recover from the carriers the loss he had thus sustained, and that he was not guilty of contributory negligence in respect of his failure to conduct his business so that the error was discovered.

Reparation — Negligence — Remoteness — Injuries Incurred in Voluntary Endeavour to Stop Loss Caused by Another's Negligence.

Held that a merchant whose store had been burned down through the negligence of others was not entitled to recover damages from them for personal injuries which he had sustained through falling from the roof of an adjoining building in endeavouring to put out the fire, the injuries in question being too remote.

Simon Macdonald, grocer and general merchant, Fort-William, *pursuer*, brought an action in the Sheriff Court at Fort-William against David MacBrayne, Limited, steamship owners, Glasgow and Fort-William, *defenders*, for payment of (1) £50 sterling, the value of a store belonging to the pursuer, which had been destroyed by fire on