Tuesday, May 16.

SECOND DIVISION.

[Sheriff Court of Forfarshire.

BENNETT *v.* WORDIE & COMPANY.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 2 (1)—"*Claim*"—"*Notice*"—"*Proceedings.*"

On 7th November 1898 the employers of a workman who had sustained injuries while working in their employment, from which he died on 3rd August 1898, received a letter from a law-agent acting on behalf of the deceased workman's father, in which it was intimated that as the accident arose in the course of the deceased's employment, and as insufficient precautions were taken for his safety, his father held them liable for compensation and solatium. They received no other communication in the nature of a "notice" or a "claim" under the Workmen's Compensation Act 1897 until a petition to the Sheriff Court under that Act was served upon them on 2nd March 1899, more than six months after the date of the workman's death. *Held* that the letter referred to was not a "claim for compensation" within the meaning of the Workmen's Compensation Act 1897, section 2 (1), and that as consequently no "claim for compensation" under that Act had been made until more than six months after the workman's death, proceedings under the Act were not maintainable.

Opinion (*per* the Lord Justice-Clerk and Lord Trayner) that a "claim" under the Act means a judicial claim, and is the same thing as "proceedings for the recovery of compensation," that is to say, in Scotland a petition to the Sheriff as arbitrator under the Act.

Opinion upon this question *reserved* by Lord Moncreiff.

This was an appeal from the Sheriff Court of Forfarshire at Dundee upon a stated case in the matter of an arbitration under the Workmen's Compensation Act 1897, between Thomas Bennett, stableman, Dundee, and Ann Kirkpatrick or Bennett his wife, claimants and appellants, and Wordie & Company, contractors, and James Scott & Sons, jute merchants, Dundee.

The case stated for the opinion of the Court by the Sheriff-Substitute (CAMPBELL SMITH) was as follows:—"Upon the 2nd of March current a petition was presented under the Workmen's Compensation Act 1897, to the Sheriff Court of Forfarshire at Dundee, at the instance of the appellants against the respondents, jointly and severally, to pay to the appellants £170, 12s., in such proportions to each as the Court might direct, with the legal interest till payment.

"In their condescendence the appellants stated—Article 1. That they were the father and mother of the deceased Thomas Bennett, carter, who resided at 86 Albert Street, Dundee, who was at the time of his death in the employment of the respondents Messrs Wordie & Company. Article 2. That about 6·30 P.M. on 3rd August 1898 the said Thomas Bennett, in the course of his employment as a carter, was having a lorry loaded with jute from the jute warehouse in Horsewater Wynd belonging to the respondents James Scott & Sons: That the respondents Wordie & Company were employed by respondents James Scott & Sons: That said warehouse is a 'warehouse, dock, wharf, and quay' within the meaning of the Factory and Workshop Act of 1895, and a factory within the meaning of section 7 of the Workmen's Compensation Act 1897: That the said deceased went to the top of a tier of jute for the purpose of rolling down some bales of jute to be placed upon said lorry: A loose rope round one of the bales which was being rolled down caught his foot and he fell to the floor: That he alighted on his head and was rendered unconscious: He was forthwith removed to the Royal Infirmary, Dundee, where he died three hours after the happening of said accident.

"That the petition was served upon the respondents upon 2nd March, and a hearing took place before the Sheriff on 10th March, both 1899.

"At this hearing the respondents pled that the petition, being the claim under the Workmen's Compensation Act 1897, had not been presented within six months after the date of the injury, and was therefore incompetent and ought to be dismissed. To this the appellants made answer that the lapse of six months had not caused any prejudice to the defence. They also pleaded that the letter of 7th November 1898 by their agents, admitted to have been received by Wordie & Company, was in law equivalent to a claim. That letter is referred to for its terms.*

"The Sheriff sustained the objection and dismissed the petition in respect the appellants' claim had not been made within six months after the date of the injury.

"The questions of law for the opinion of the Court are—(1) Whether the interlocutor foresaid is or is not well founded under the Workmen's Compensation Act 1897? (2) Whether the appellants' averment that the

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* "*32 Union Street, Dundee,*
"*7th November* 1898.

"Messrs Wordie & Coy.,
Carting Contractors, So. Union Street.

"Dear Sirs,—Thomas Bennett, stableman, 86 Albert Street, Dundee, has consulted me in reference to the death of his son Thomas Bennett, who was killed while in your employment in a jute warehouse in Mid Wynd, Dundee, in August last. As this accident arose in the course of deceased's employment, and as insufficient precautions were taken for his safety, I am instructed by his father to intimate that he holds you liable for compensation and solatium. This notice is given in terms of the statutes.—Yours faithfully, *p.* A. FORDYCE BURKE,
"J. O. M."

respondents have not been prejudiced in their defence by the failure to claim within six months is or is not irrelevant?"

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37) enacts as follows:—Section 1 (4)—"If within the time hereinafter limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed, but the Court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which in its judgment have been caused by the plaintiff bringing the action instead of proceeding under this Act." Section 2 (1)—"Proceedings for the recovery under this Act of Compensation for an 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 case of death, within six months from the time of death: Provided always that 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 prejudiced in his defence by the want, defect, or inacracy, or that such want, defect, or inacuracy was occasioned by mistake or other reasonable cause."

Argued for the claimants and appellants—The letter produced was a "claim" within the meaning of the Act. Three things were distinguished and contrasted in the Act, viz., "notice," "claim," "proceedings." The making of a claim was not the same thing as the commencing of an action. The claim was not necessarily a judicial claim—that is to say, in Scotland a petition to the Sheriff Court—see Second Schedule, section 14. Indeed, one of the principal objects of the Act was to enable "claims" to be settled without any judicial "proceedings" at all. Any formulation of a demand for compensation was a claim within the meaning of the Act. In the Employers Liability Act 1880, action was barred unless the action was commenced within six months. On the other hand, in this Act it was laid down that the claim must be made within six months, and it was to be inferred from this difference of phraseology that the Legislature had designedly abstained from requiring that judicial proceedings for recovery of compensation must be commenced within six months, and had only required that a claim for compensation should be formulated within that time. [Lord Trayner referred to the first words of section 1 (4) of the Act.] That was at best an error in the drafting of the Act, for no time was "hereinafter in this Act limited for taking proceedings." The question as to whether the deceased was in the employment of the respondents James Scott & Sons was not competently raised under this appeal, as the Sheriff had not decided any question of law with regard to that matter — Second Schedule, section 14 (c).

Argued for the respondents Wordie & Company—The "claim" was not made within six months as required by the Act. The proviso at the end of section 2 (1) only applied to the "notice." A "claim" meant a judicial claim—that is to say, here the petition to the Sheriff Court, and the date of the petition was the date to be looked to in determining whether the claim had been made in time. If this were not so, then there was no limit of time laid down for commencing proceedings under the Act, and that was obviously not the intention of the Legislature. In any view, the letter produced was not a "claim." It made no definite demand for compensation under the statute. At most it was a "notice."

Argued for the respondents Messrs Scott & Sons — The claim was not made timeously. The deceased was not in the employment of these respondents.

Lord Justice-Clerk—We thought it advisable, as this was the first case occurring under this section, to hear senior counsel before we decided it, although for myself I had not any serious doubt on the matter, I am clearly of opinion that the Sheriff-Substitute's view is right. The statute enacts as follows:—[*His Lordship read section* 2 (1).] The proviso applies solely to the giving of "notice." It does not apply to the "claim." When I find the claim referred to, it is in language which cannot refer to a "notice." A "claim" in the sense of the statute means asking a particular sum as compensation for the injuries received, not merely intimating that the undertakers will be held liable—that is to say, it is not, in my opinion, merely a general demand for compensation, but the taking of proceedings for making that demand effectual.

That view is confirmed by the expression used in sub-section 4 of section 1, which has been referred to by Lord Trayner, for that expression clearly shows that there is a time limited within which proceedings under this Act must be taken. The subsection says—"If within the time hereinafter in this Act limited for taking proceedings." Now, I can find nothing as to any limitation of time for taking proceedings except this enactment as to the claim being made within six months. I am therefore of opinion that proceedings for compensation under the Act must be taken within six months of the occurrence of the accident or the death, as the case may be, that the Sheriff-Substitute's interlocutor was therefore well-founded, and that consequently the first question of law stated for our opinion ought to be answered accordingly.

LORD YOUNG—The only question in this case is, whether the letter which has been read to us is a "claim" under the Workmen's Compensation Act. I am of opinion that it is not a "claim" or a "taking of proceedings." It is a mere notice that a claim will be made, and that the petitioners hold Messrs Wordie liable. Therefore I think the Sheriff was right in sustaining the objection that proceedings had been commenced too late. I do not like the form of the question of law put to us by the Sheriff, but that matter can be attended to in our interlocutor.

LORD TRAYNER — I agree. This is an appeal in an action or proceedings for the recovery of compensation under the Workmen's Compensation Act; and the question is, whether these proceedings have been brought in such time as to be maintainable under that Act. I think the Sheriff has rightly decided this question in the negative. It appears from sub-section 4 of section 1 that there is a limit of time within which such proceedings must be commenced, for that sub-section begins with the words "If within the time hereinafter limited for taking proceedings," &c. That matter of time is regulated by section 2, which provides that "proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof, . . . 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 case of death within six months from the time of death."

Now, if we look at the case we find that the appellants maintain that the letter of November 7th was in law equivalent to a claim. I think that in the most liberal interpretation which we can give to that letter we cannot regard it as a claim. It is a notice of the accident, and intimates an intention of making a claim. If so, the appellants have failed to make a claim within six months. That would be sufficient for the decision of the case, but I would add that in my view the "claim for compensation" mentioned in the section means a judicial claim, and is the same thing as the "proceedings for the recovery of compensation" therein mentioned. As these proceedings were not commenced within the time prescribed by the statute they are not now maintainable.

LORD MONCREIFF—I arrive at the same result. The statute provides as follows:—[*His Lordship read section* 2(1)]. Now, it is noticeable that the word "claim" is used. The expression adopted is not that action must be raised, but that the claim for compensation must be made within six months. The reason for this is that under the statute, failing agreement, compensation is to be fixed by arbitration, and the first step in proceedings for that purpose is not raising an action but making a claim. But a claim in the sense of the statute must be sufficiently specific to form the groundwork of the statutory "proceedings."

The letter of 7th November 1898 is not a "claim," but merely a "notice" containing no doubt intimation of an intention to make a claim.

It bears to be a statutory notice. The first "claim" therefore of any kind in this case was contained in the petition to the Sheriff, which was not presented till 2nd March 1899, more than six months after the death of the claimant's son.

Without prejudging any question which may hereafter arise as to the precise shape in which a "claim" should be made, or whether a claim having been timeously made, the proceedings before the arbiter must commence within six months of the death or accident, I think that here at least no "claim" was made within the time limited, and that consequently the Sheriff-Substitute's interlocutor was well founded.

Counsel for the respondents James Scott & Sons moved for expenses.

Counsel for the respondents Wordie & Company also moved for their expenses.

Counsel for the appellants maintained that only expenses as for one appearance should be allowed, in respect that as regards the only question which could be competently raised and decided in this appeal the interests of both respondents were identical.

The Court pronounced this interlocutor—

"The Lords having heard counsel for the parties to the stated case, Dismiss the appeal and affirm the interlocutor appealed against, and decern: Find the respondents entitled to expenses in this Court as for one appearance, and remit," &c.

Counsel for Appellants—W. Campbell, Q.C.—D. Anderson. Agents—Mackay & Young, W.S.

Counsel for the Respondents Wordie & Company—Younger. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for the Respondents James Scott & Sons—Sol.-Gen. Dickson, Q.C.—Salvesen. Agents—J. & D. Smith Clark, W.S.

Thursday, May 18.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

WILLIAMSON *v.* HOWARD.

Process — Reclaiming-Note -- Failure to Print Amendment—Court of Session Act 1825 (6 *Geo. IV. cap.* 120), *sec.* 18—*Act of Sederunt*, 11*th July* 1828, *sec.* 77.

A reclaiming-note boxed without having an amendment made in the Outer House upon the conclusions of the summons printed and appended thereto is incompetent, and it makes no difference that the amendment is immaterial, and made upon a conclusion