father, and acquires a settlement in a parish other than the parish of the father's settlement, the pupil, in the case of his becoming a pauper is entitled to be relieved by the parish of his mother's settlement. The liability of the mother's parish rests on two grounds, (*a*) that it is the policy of the poor law to avoid the dispersion of a family, and (*b*) that in such a case it is the mother who is truly the pauper, the children being viewed as her dependants. (3) In the event, however, of the mother's death after acquiring a settlement in a particular parish, the liability of that parish for the support of her pupil child ceases to exist, and the suspended liability of the deceased father's parish to support the pupil child revives. (4) The said liability of the mother's parish ceases at her death in whatever way her settlement in such parish may have been acquired, whether by industrial residence or re-marriage or otherwise. The reason for such cessation being that the grounds on which the mother's parish is made liable in preference to the father's necessarily cease to exist on the occurrence of her death.

I cannot reconcile the decision in *Grant* v. *Reid*, 22 D. 1110, with the decisions above referred to, and accordingly I must hold that it falls to be disregarded as not being authoritative.

I concur in holding that the interlocutor of the Sheriff-Substitute ought to be recalled and decree pronounced in favour of the pursuers as concluded for, with expenses in both Courts.

The Court pronounced this interlocutor:—

"Sustain the appeal: Recal the said interlocutor appealed against: Find in fact in terms of the findings in fact in the said interlocutor: Find in law that the derivative settlement which the pauper had from his father in New Monkland was not lost at the date of the pauper becoming chargeable, but revived on his mother's death in 1904," &c.

Counsel for Appellants—Orr Deas—D. P. Fleming. Agents—H. B. & F. J. Dewar, W.S.

Counsel for Respondents—Hunter, K.C. —Grainger Stewart. Agent—A. P. Nimmo, W.S.

Saturday, June 22.

SECOND DIVISION.

[Sheriff Court at Glasgow.

O'NEILL *v.* MOTHERWELL.

Master and Servant—Workmen's Compensation Act 1897, (60 *and* 61 *Vict. cap.* 37) *sec.* 2 (1)—*Time for Taking Proceedings—Claim not Made within Six Months—Arbitration Held Incompetent—Indication of Circumstances in which Six Months' Rule would not be Enforced.*

The Workmen's Compensation Act 1897, section 2, (1) enacts:—"Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable . . . 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. . . ."

An injured woman during a period of about six months received from her employer a larger weekly sum than she would have been entitled to under the Workmen's Compensation Act 1907, to which no reference was made by either party. The employer having proposed to reduce the amount of the payments, the woman, more than six months after the accident, and without having made any claim for compensation within that period, brought an arbitration under the Act, contending that she was not barred by her omission to make her claim within the statutory period, because she had been led by her employer to believe that her right to compensation was admitted and that a claim was unnecessary.

Held that there was nothing in the circumstances of the case to entitle the Court to diverge from the strict rule laid down in the Act, but *observed* that a remedy would be found if the case should ever arise of an employer deliberately misleading an injured workman and inducing him to refrain from making a claim within the statutory period.

Sarah Cameron or O'Neill brought an arbitration under the Workmen's Compensation Act 1897 in the Sheriff Court at Glasgow against Andrew Motherwell, in which the Sheriff was asked to ordain Motherwell to pay to O'Neill the sum of nine shillings and eightpence half-penny weekly, beginning the first weekly payment as at 25th April 1904, until the further order of Court.

The Sheriff [FYFE] dismissed the application, and at the request of O'Neill stated a case which contained the following statement of facts—"1. That respondent is a grain merchant, carrying on business in Glasgow.

"2. That his business premises, fronting Surrey Street, Cumberland Street, and Main Street, Glasgow, consist of (*a*) grain mill and other buildings, entering from Surrey Street; and (*b*) office quarters, entering from Cumberland Street.

"3. That these two parts of the premises are not under one roof, but are separate buildings situated at some distance apart.

"4. That an overhead railway runs between these two sections of the premises, but access is possible from the one to the other by means of a pend which enters from Cumberland Street, passes under the office buildings, through an arch beneath the railway, and into a lane upon which the mills portion of the property abuts.

"5. That, as the buildings were constructed, at 11th April 1904, the only access to the office where appellant was employed as an office-cleaner was by a stair leading

direct from Cumberland Street up to the office, and the only egress was by this same stair into Cumberland Street.

"6. That machinery was employed in the mills fronting Surrey Street.

"7. That the only mechanical appliance which was in the portion of the buildings where the office was situated was an electric motor, situated in the same part of the Cumberland Street building as the office, and behind the portion used as an office.

"8. That this mechanical power was primarily provided and used for working a hoist, but it was also connected to a mixer, used for the purpose of mixing flour to make it self-raising, and so preparing it for the market for sale.

"9. That in a portion of the Surrey Street building adjoining the grain mill (and entering from it) there is a bag-room where women are employed, on piece-work, to make and mend bags.

"10. That for some time prior to April 1904 appellant had been in the employment of the respondent under two distinct engagements.

"11. That one was that in the mornings from 6 till 9 she was engaged as an office-cleaner to keep in order the said office, entering from Cumberland Street as described.

"12. That for this daily duty she received a fixed wage of 9s. per week.

"13. That the other was that from 10 A.M. till 5 P.M. the appellant was at liberty to work, and was accustomed to work, in the bag-room of the mill entering from Surrey Street.

"14. That for this work she was paid by piece-work, and her average weekly earnings amounted to 9s. 6d. per week.

"15. That on the morning of 11th April 1904, whilst appellant was engaged in her office-cleaning duty within the said office entering from Cumberland Street, she fell off two chairs upon which she was standing to reach and dust some pictures.

"16. That she broke her left arm.

"17. That she was thereby incapacitated from following the occupation either of an office-cleaner or a bag-mender.

"18. That she is now sufficiently recovered to be able to undertake the work of bag-mending, but that she is not yet able to undertake the duty of an office-cleaner.

"19. That formal notice was not given to respondent of the accident, but he was at the time aware of it, and has not been prejudiced by the want of formal notice.

"20. That appellant did not, within six months of the occurrence of the accident, make a claim for compensation.

"21. That the respondent from the date of the accident until the end of September 1904, voluntarily made to the appellant an allowance of 10s. per week.

"22. That appellant's daughter Catherine, aged 17, then and still residing in family with her mother, had been accustomed to assist her mother in her office-cleaning work.

"23. That she was capable of undertaking this work alone, and upon her mother becoming incapacitated respondent continued this daughter as the office-cleaner at the same wage of 9s. per week, and she still continues to do this work.

"24. That early in October 1904 respondent proposed to reduce the cash allowance to 5s. per week, whereupon appellant declined to accept anything less than 10s.

"25. That the allowance was therefore altogether discontinued.

"26. That the respondent's said premises constitute a factory within the meaning of the Workmen's Compensation Act 1897.

"27. That respondent is the undertaker.

The Sheriff's *finding-in-law* was:—"I found in law that in respect the making of a claim within six months is under the statute a condition-precedent to proceedings for recovery of compensation, and that appellant had failed to comply with this statutory requisite, her application for compensation is incompetent.

"I therefore dismissed the application and assoilzied the respondent, but in the circumstances found no expenses due to or by either party."

The *question of law* for the opinion of the Court was—"Is the application competent?"

Argued for the appellant—(1) The respondent was barred *personali exceptione* from founding upon the absence of a claim within the statutory period. The payment during six months of the maximum compensation obtainable under the Act was an admission of the appellant's right to compensation under the Act, and a waiver of the necessity for a formal claim—*Freeman* v. *Cooke* (1848), 2 Exch. 654; *M'Kenzie* v. *British Linen Co.*, February 11, 1881, 8 R. (H.L.) 8, 18 S.L.R. 333. The provisions of section 2 (1) were not absolutely imperative—*Wright* v. *John Bagnall & Sons, Limited* [1900], 2 Q.B. 240—and generally one of the main objects of the Act was to avoid unnecessary technicality. (2) But in any event the appellant's refusal to take less than ten shillings when five were offered to her was in itself a claim. No particular form for a claim was required—*Powell* v. *Main Colliery Company* [1900], A.C. 366.

Argued for the respondent—The provisions of section 2 (1) were imperative, and this at anyrate was not a case in which the Court would seek to relax them. The respondent could not be barred in any way by the payments he had made, because the payments had not been made or received as payments under the Act. The appellant's contention that she had in fact made a claim was negatived by the Sheriff's finding in fact that she had made no claim, and was otherwise unsound, because a claim for compensation under the Act must be a claim for a definite sum within the amount allowed by the Act, whereas the appellant had demanded more—*Kilpatrick* v. *Wemyss Coal Company, Limited*, 1907, S.C. 320, 44 S.L.R. 255.

LORD LOW—The question in this case relates to the competency of a workman instituting arbitration proceedings under the Workmen's Compensation Act after the elapse of more than six months from

the date of the accident, no claim having been made within the six months.

The material facts are these. The appellant, who was employed to clean the office of the respondent, and who also worked at piecework in the bag-room of his mill, broke her arm upon the 11th of April 1904. For cleaning the office she received 9s., and in the mill she earned 9s. 6d. weekly, so that the most she could have claimed under the Act would have been 9s. 3d. weekly during total incapacity, and that, too, only from a period of two weeks after the accident. Now, without anything being said about the Act, the employer paid her 10s. a-week from the date of the accident, and employed her daughter, who was seventeen years of age, and lived with the appellant, to clean the office, at the same wage—9s. a-week—which the appellant had received, the result being that more money was coming into the appellant's house after than before the accident. These payments were continued for about six months, and then the employer proposed to reduce the allowance of 10s. to the appellant to 5s. The appellant objected, and made an attempt to have a memorandum of agreement formally registered. She was unsuccessful, and her next step was to bring these arbitration proceedings. The Sheriff-Substitute has found as a fact that the appellant did not within six months of the accident make a claim for compensation, and he has accordingly held that the application for arbitration is incompetent.

It was argued for the appellant that the present application is not barred by the fact that she did not make a claim within the six months, because she was led by the respondent to believe that he admitted her right to compensation, and that there was no necessity for her to make a claim.

Now if the case should arise of an employer deliberately misleading an injured workman, and inducing him to refrain from making a claim within six months, I have no doubt that the Court would find a remedy, but no such case is disclosed by the facts as stated by the Sheriff-Substitute in this case. I think that the inference from the facts is that the respondent acted in perfect good faith, and did what he considered to be fair to the appellant irrespective of his obligation under the Act, and the appellant was quite willing (which is not surprising) to accept what the respondent offered. In these circumstances I see no reason why the strict rule that a claim must be made within six months should not be enforced. I accordingly think that the Sheriff-Substitute was right, and that the question stated should be answered in the negative.

LORD ARDWALL—I agree with your Lordship. There is nothing stated in the case which is sufficient to raise a bar against the employer, or entitle the Court to diverge from the rule laid down in the Act.

LORD STORMONTH DARLING concurred.

The LORD JUSTICE-CLERK was absent.

Counsel for the Appellant—Hunter, K.C. —J. A. T. Robertson. Agent—Alexander Wylie, S.S.C.

Counsel for the Respondent—J. R. Christie. Agents—Simpson & Marwick, W.S.

Saturday, June 22.

SECOND DIVISION.

[Lord Mackenzie, Ordinary.

CAMPBELL *v.* JOHN RITCHIE & COMPANY.

HAY *v.* JOHN RITCHIE & COMPANY.

Reparation — Slander — Newspaper — Innuendo—"Thief."

A newspaper published the following report:—"Bird-liming in Midlothian. Effect of an important new Order. Protection for Linnets. As the result of a new Order to apply to Midlothian under the Wild Birds Protection Regulations it is hoped that the prevalent practice of bird-liming for linnets, siskins, wrens, &c., will be stamped out. In the past the Midlothian police have been able to deal with thieves who captured in this way owls and the larger birds, and now the smaller birds will have an equal measure of protection. One of the first cases under the new Order was dealt with at Edinburgh Sheriff Court to-day, where A and B were fined 4s. each or three days for having on 2nd December in Sea Road, near Lauriston Farm, Cramond, taken three green linnets and one grey linnet. The mode of operations of the bird-limers is as follows:—The thieves set up decoy birds in cages in a hedge in the vicinity of a house where the birds on which they have an eye are. The hedge itself is strewn with twigs coated with lime, and the thieves have merely to wait till the birds attracted by the presence of the occupants of the decoy cages flutter on to the hedge and are caught by the lime." A and B (who admitted the convictions), in actions for damages for slander against the proprietors of the newspaper, innuendoed the report to represent that they had been guilty of theft. The Court (*rev.* Lord Mackenzie) *dismissed* the action, *holding* that the article could not bear the innuendo proposed.

Expenses—Slander—Newspaper—Successful Defence—Expenses Refused—Provocation.

The proprietors of a newspaper, successful defenders in an action for damages on the ground of slander contained in an article published in their paper, *refused* expenses on the ground that the action against them was to some extent provoked by the exaggerated language used in the article.

George Campbell and Robert Hay raised each an action against John Ritchie &