to perform the operation of ascertaining the arithmetical mean by adding together the wages received in various weeks and dividing them by the number of weeks. In cases like *Grewar*, where the method was applied to short periods—in that case consisting of two broken weeks—the mean of two broken weeks would certainly not give a proper approximation to the wage that a healtby man might earn in the course of the year. But then no other mode of estimating the wage was open to the arbitrator or to the Court, and after all it was for the benefit of the workman that he should be awarded a sum based on this computation, small as it was, because in no other way could he get anything. It seems to have been brought to the notice of the Legislature that there were cases where owing to the shortness of the period or the irregularity of the work it was impossible to get fair results in this way. No doubt if there are only two weeks you may perform the operation of obtaining the amount by adding the two sums of wages together and dividing. But that is a mere operation, and it does not follow that it would give a true estimate of the average weekly earnings of the workman over a year. The principle of obtaining the mean result is to suppose there is some rule or permanent element underlying the varying elements of the computation. The object of taking the average is to eliminate all irregularities or incidental circumstances, and, of course, the greater the number of factors that are to be averaged the greater is the probability of arriving at a true result. This is really elementary, and I only mention it because I think it explains the motive of the Legislature in this provision of rule 2 (*a*). I judge from the terms of the statute that we are not intended to lay down any definite criterion as to the number of weeks which would in all cases be sufficient to enable the arbitrator to arrive at a true average. The proviso has reference to particular cases, and it may be that while in this case owing to the interruptions and other causes we do not see that a fair average can be got out of nine weeks' employment, there may be many cases where three or four weeks would be quite sufficient to enable the arbitrator to get an average, as, for example, in a case in which a man works steadily and for the full number of working hours during the whole time. With regard to the mode of proceeding where there are irregularities in the period of service, I think we are safe in availing ourselves of the aid of so distinguished a mathematician and scientist as Lord Justice Moulton, and I quite agree that the mode of calculation which he proposes is sound and applicable to the circumstances of the present case. I agree with your Lordship that the proper course is to remit the case to the Sheriff as arbitrator to proceed in terms of the rules we have referred to.

LORD KINNEAR—I concur with the opinion of the Lord President.

The Court found it unnecessary to answer the questions of law as put in the case, recalled the determination of the Sheriff-Substitute as arbitrator, and remitted to him to proceed.

Counsel for the Appellant—Munro—J. A. Christie. St Clair Swanson & Manson, W.S.

Counse for the Respondents—The Dean of Faculty (Campbell, K.C.)—D. Anderson. Agents—Cadell & Wilson, W.S.

Saturday, July 18.

FIRST DIVISION.

[Sheriff Court at Hamilton.

HENDRY (SIMPSON'S EXECUTRIX) *v.* THE UNITED COLLIERIES, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *secs.* 1 (1) *and* 2, *and First Schedule, sec.* 1 (*a*) (1) *—Dependant—Death of Dependant before Making Claim—Right of Representative of Deceased Dependant to Claim Compensation.*

The right to compensation conferred by the Workmen's Compensation Act 1906 upon the dependants of a deceased workman who has met his death through personal injury by accident arising out of and in the course of his employment, is a right which vests in the dependant, and is transmitted to his legal representatives on his death notwithstanding that the dependant has died without having made the claim—*diss.* Lord M'Laren, on the ground that before it will transmit the claim must have been made by the dependant.

Darlington v. *Roscoe & Sons*, [1907] 1 K.B. 219, *approved; O'Donovan* v. *Cameron, Swan, & Company*, [1901] 2 I.R. 633, *disapproved.*

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—section 1 (1)—"If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act."

First Schedule—"(1) The amount of compensation under this Act shall be (*a*) where death results from injury (*i*) if the workman leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of these sums is the larger, but not exceeding in any case three hundred pounds. . . . . "

Mrs Isabella Simpson or Henry, wife of Robert Henry, miner, Shettlestone, executrix-dative of the late Mrs Marion

Wilson or Simpson, claimed, *qua* executrix, compensation under the Workmen's Compensation Act 1906, from the United Collieries, Limited, Uddingston, in respect of the death of Alexander Simpson, a son of the late Mrs Simpson. The matter was referred to the arbitration of the Sheriff-Substitute at Hamilton (THOMSON), who assoilzied the defenders.

A case for appeal was stated.

The *facts* admitted or proved, as stated in the case, were—"(1) That the said Alexander Simpson was in the employment of the respondents as a miner on 9th July 1907; (2) that on said date he was knocked down by a train of waggons which were being shunted on the respondents' premises, and received injuries from which he died on 14th July following; (3) that his mother, the said deceased Mrs Marion Wilson or Simpson, who was, as is averred, dependent upon the said Alexander Simpson, died upon the 16th October 1907, without making any claim upon the respondents for the death of her son; (4) that a claim was first made on 10th December 1907, and was at the instance of the present applicant; (5) that shortly after the accident the present applicant's husband called on the respondent's cashier and inquired whether the accident had been reported and was informed that it had, and on his calling again a few days later he was informed that the respondents considered that no compensation was due in respect of the accident: That it is not proved that he was then acting on the instructions of his mother-in-law: That he made no claim nor intimated any intention to make a claim either on behalf of his mother-in-law or of the present applicant."

The Sheriff-Substitute further stated—"In these circumstances I found that the applicant, as executrix of the said Mrs Marion Wilson or Simpson, had no title to take proceedings for compensation under the Act, and I therefore assoilzied the respondents with expenses."

The *question of law* was—"Whether, in the circumstances above set forth, the right of the mother of the deceased workman to make a claim and to take proceedings under the Act vested in the applicant so as to entitle her to insist in the present application."

Argued for appellant—There was nothing in the Act to exclude the appellant's claim. Under sec. 1 (1) of the Act and the First Schedule, sec. 1 (*a*) (1), a statutory right to a measured sum of money vested in the workman's dependants. The right vested by mere survivance and transmitted to executors. Such a right did not fall within the maxim *actio personalis moritur cum persona—Peebles* v. *The Oswaldtwistle Urban District Council*, [1896] 2 Q.B. 159; *Darlington* v. *Roscoe & Sons*, [1907] 1 K.B. 219. That maxim was limited to claims founded on delict. The appellant's claim was not founded on delict but on statute. It was a claim for a civil debt, and such claims transmitted to and against executors—*Auld* v. *Shairp*, December 16, 1874, 2 R. 191, 12 S.L.R. 177; *Bern's Executor* v. *Montrose Asylum*, June 22, 1893, 20 R. 859, 30 S.L.R. 748 (Lord Young's opinion). A claim of this kind was not an "*actio*" in the sense of the maxim—*Darlington* (*cit. sup.*) at p. 230. *Esto* that the case of *O'Donovan* v. *Cameron, Swan, & Company* [1901], 2 I.R. 633, was adverse to the appellant's contention, that case was not binding in Scotland, and moreover was disapproved of in *Darlington* (*cit. sup.*),—*vide* opinion of Cozens-Hardy, L.J., at 229 foot. The statute did not say that the claim must be made by a dependant himself, and if the appellant was entitled to the money there was nothing in the Act to prevent her taking steps to recover it. The fact that the statute had not provided for the case of a dependant dying before making a claim or recovering payment was a mere *casus omissionis* as to machinery of procedure which could be remedied by decision—*Darlington* (*cit. sup.*), *per* Collins, M.R., at p. 227. In any event the silence of the statute was not to be read against the appellant.

Argued for respondents—The arbiter was right. The Act imposed no absolute duty to pay compensation, but merely a contingent liability, which became absolute on a claim being made. The appellant was not a person entitled to claim under the Act. Those entitled to claim were specified in section 13 of the Act, and the appellant was not within that class. The case of *O'Donovan* (*cit. supra*) was rightly decided and should be followed here. The main ground of that decision was that the making of a claim by the dependant was a condition-precedent—*per* Collins, M.R., in *Darlington. cit. sup.*, at p. 225. That was the intention of the Legislature. It was not intended to give a transmissible right, or the Act would have said so. The provisions of the First Schedule, especially sections 5 and 8, implied that mere survivance was not enough—the dependant must also claim. The compensation given by the Act was meant to be alimentary, and that implied that the right to claim it did not transmit to a dependant's representatives where the dependant had made no claim himself.

At advising—

LORD KINNEAR—I have found this to be a question of difficulty, not only because there is a difference of opinion on the Bench, but because I am unable to follow a judgment of very high authority pronounced by the Court of Appeal in Ireland in the case of *O'Donovan* v. *Cameron, Swann, & Company*. But the question is the same as that which has arisen under the first section of the Workmen's Compensation Act of 1897, when read along with the first section of the first Schedule; and the true construction of that enactment is, in my opinion, that adopted by the Court of Appeal in *Darlington* against *Roscoe*, with which, if I may respectfully say so, I entirely concur. The condition of fact upon which the question arises is, as I understand it, exactly the same, because the sole dependant who would have been entitled to compensation for the death of a workman has died before

compensation could be awarded, and a claim is now made by her representative. With reference to such a state of things, the Master of the Rolls in the case I have referred to, after reading the sections I have mentioned, says—"It appears to me that these enactments give to the person wholly dependent on the deceased workman a statutory right to a quantified sum by way of compensation for the death of the workman. There is no action at all, nor is it a question of any wrong done by the employer, for the accident may not have happened through any negligence of his, or for which he was responsible. The statute confers on the dependant, under the given conditions, a right to be paid by the employer a measured sum of money, the amount of which is quite irrespective of any probabilities as to duration of life, or other such considerations, which might involve the making of elaborate calculations. . . . . It appears to me that a statutory right to this ascertained sum accrued to the widow in her lifetime and passed to the respondent as her legal personal representative." Now if there is a statutory right to a sum of money accrued, I am unable to see any ground in law for holding that it does not transmit to the representative of the person to whom it accrued. It is a right to a sum of money given, not by way of *solatium* to an injured person, but for the benefit of the personal estate of the dependant who has suffered a patrimonial loss by the death of the person on whom she depended, and according to our law I hold it to be quite settled that a right of that kind once vested as a moveable claim, passes to the personal representatives or to assignees. I do not think it necessary to examine the authorities in detail, because the principle I have stated is elementary; but I refer in general to the opinion of Lord Neaves in *Auld* against *Sharp*, because that opinion was cited by Lord Watson in *Darling* against *Gray* as a sound exposition of the law of Scotland, and I take the result of it to be that even where a claim is made by way of compensation for a personal wrong, it is a claim which, according to our law, transmits to the representatives of the claimant and against the representatives of the wrongdoer. The decision comes to this, that a civil debt is transmissible to executors. Lord Neaves was dealing there with a case which, I agree with his Lordship in the chair, is not that which arises here, because it was an action in respect of a wrong done by the defender, but then I think the exposition of the general law is none the less valuable or the less apt in its bearing upon the present discussion, because the point of the judgment was that the transmissibility of such a right of action depends upon the same law as that of an ordinary civil debt; and we are relieved from any difficulty which might otherwise have been supposed to arise as to the extent to which the law so laid down should be qualified in construing a statute applicable to England and Scotland alike by the doctrine embodied in the maxim *actio personalis moritur cum persona*, since it appears from the decision in *Darlington* against *Roscoe* that even in the law of England where that maxim is accepted, it has no bearing on the question of the Workmen's Compensation Act. As Lord Watson points out, it is only to a very limited extent that that maxim has been recognised in Scotland, but so far as I understand it, I am very clearly of opinion that it has no bearing, because it is applicable only to actions arising out of a wrong. In the case of a person injured by a legal wrong, if the person injured dies, his claim does not transmit to his representatives; if the wrongdoer dies, the claim against him does not transmit against his representatives. I have no difficulty in holding with the learned judges in England that that is not a rule of law which can be applicable to the right given to a workman under the Compensation Act. That is not technically a right of action, and it arises independently altogether of any wrong. It is statutory compensation for a patrimonial loss. But then if that maxim does not apply I am unable to see any plausible ground for holding that a vested right in the compensation money does not transmit. I confess I am not moved by any consideration as to the policy of the statute, because while I entirely agree that the persons favoured by this statute are the immediate dependants of the workman, and not any remoter relations or any dependants of theirs, the question is not Who are the persons favoured by the Act, but What is the character of the right which the Act has conferred upon them? If it is a right to a sum of money, then under our law it transmits, and we cannot deny the effect of a settled doctrine of law from deference to any speculation as to the purpose of the Legislature in conferring a particular benefit. But the question remains which it was not necessary to decide in *Darlington* v. *Roscoe*, and it is one which to my mind is more difficult because of the judgment in the Irish case of *O'Donovan*, whether it is not a condition-precedent that a claim shall be made within six months from the occurrence of the accident causing the injury. I think it is a condition-precedent to the institution of statutory proceedings for obtaining an award, but not precedent to the vested right. It is not so expressed. The first clause, which creates the liability, and therefore the corresponding right, is absolute in all its terms, and when read along with the clause in the section which fixes a specific compensation in a particular case it amounts to the creation in favour of a person defined of an absolute right to a definite sum of money. That a right so conferred should vest so as to be transmissible, and yet that the person in whom it has vested should be required to take proceedings within a definite time in order to make it effectual is a condition which is perfectly familiar to our law. There is a familiar instance in the Triennial Act. A creditor in certain debts must bring his action within three years, otherwise "he shall have no action." It is exactly the same kind of enactment as that of the Compensation Act, that pro-

ceedings shall not be maintainable unless made within six months. But no one ever doubted that the creditor's right, although it must be enforced within a certain time, was nevertheless transmissible to his executors subject always to the same condition as to the time when an action might be brought. Accordingly it seems to me that the vesting of the right is not affected by the condition as to procedure. It is said that this is a claim which must be made by the dependant himself, that it can only be made by a living dependant, and therefore that when the dependant has died there is nobody to make it. I am unable so to read the words. The condition is that proceedings are not to be maintainable unless the claim for compensation shall be within six months. It must be made, of course, by the person entitled to make it, but if it should be held that it is a vested right which is transmissible to executors, there is nothing in the words which will not be satisfied if the executor makes the claim. The question as to the force of the condition really depends upon the meaning of the section creating the right. If it means that a right shall accrue, but that proceedings must be taken within six months, that condition will be satisfied if they are taken within that time by the person in whom the right is then vested. If it means that no right shall accrue unless and until a claim shall be made, and that within six months, it follows that no right passes to the representatives of a dependant who has not made a claim. I prefer the former view, although for the reason I have stated I cannot hold it with confidence. I am therefore unable to agree with your Lordship and the Sheriff, and I think that the question which the Sheriff puts to us must be answered in the affirmative.

LORD MACKENZIE—Alexander Simpson, a miner, met with an accident on 9th July 1907 while in the employment of the United Collieries, Limited, and received injuries from which he died on 14th July following.

The mother of the deceased, who was, as is averred, dependent on him, died upon 16th October 1907 without making any claim for compensation. A claim was first made under the Act of 1906 on 10th December 1907 by the present appellant, who is the executrix of the mother of the deceased.

The question in the case is whether, in the circumstances above set forth, the right of the mother of the deceased workman to make a claim and to take proceedings under the Act vested in the applicant so as to entitle her to insist in the present application.

The statute by section 1 (1), and the First Schedule, section 1 (*a*), imposes an obligation upon the employer, subject as thereinafter mentioned, to make payment of compensation. The liability is one not founded upon contract or delict. It does not require to be established in an action. The compensation in the case of the death of the workman leaving any dependants wholly dependent upon his earnings is to be paid as a capital sum. This is not calculated with reference to the expectation of life of the dependant. The liability to pay once the right has vested is the same whether the dependant survives the workman days or years.

The contention of the respondents is that no right in this capital sum, the amount of which is fixed by the Legislature, accrues to the dependant unless and until in terms of section 2 "the claim for compensation with respect to such accident has been made in the case of death within six months of the time of death." It appears to me that the purpose of this section was to protect employers from claims which had been deferred for an indefinite period. The claim for compensation in the present case was made within six months of the time of death; therefore what would appear to me to be the purpose of the section has been served. The respondents, however, say that no right to receive the compensation which they are liable to pay vests unless the claim is made by the dependant himself or herself, and that therefore if the dependant dies without having made a claim, his or her representatives cannot do so. The contrary view that the right does vest although subject to a limitation is one not unfamiliar to the law of Scotland. A vested right may be subject to limitation imposed either by convention or statute. An example of this is the limitation attached by statute to cautionary obligations. It seems more likely that it was intended the right to compensation should vest from the time of death so as to form a fund of credit. The necessities of the dependant commence with the death. There seems to be no sufficient reason why the right to compensation should not vest at the same date.

It was said that the applicant here was not one of the persons who under the statute could make a claim. Section 13 declares that "any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable." The contention is that the omission of any reference to the personal representatives of the dependants excluded the idea it was intended they could make "the claim for compensation" under section 2. The omission of any reference to the representatives of the dependants is quite consistent with the idea that the statute vests a right to compensation in the dependant by survivance of the workman. Any rights which they obtained under the Act would, without any statutory provision, be vindicated by their executors or assignees under the ordinary law. Nor are sections (5) (7) and (8) of the First Schedule, which provide for the apportionment of the compensation partly to total and partly to partial dependants, contrary to the theory of vesting. There may be vesting in a class subject to variation as regards the extent of the interest taken by each member of the class.

The fallacy at the root of the respondents'

argument appears to me to be the supposition that the claim for compensation, which is made in order to compel performance of a statutory duty, is analogous to an action in which damages are sought on the ground of delict. The two are not analogous. They are brought into contrast by the Act itself, *e.g.*, in section 1 (4), which provides —"If within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act." So also in section 6. Upon this *Powell* v. *Main Colliery Company*, 1900, 2 Q.B. 145, A.C. 366, may be referred to. It was there held that the claim for compensation does not mean the initiation of proceedings before the tribunal by which the compensation is to be assessed, but a notice of claim for compensation, which does not require to be in any prescribed form, sent to the workman's employer.

In the Irish case of *In re O'Donovan & Cameron Swan & Company*, 1901, 2 I.R. 633 (under the 1897 Act), it was held, in circumstances similar to the present, that because no claim for compensation, as required by section 2, had been made during the dependant's lifetime, a claim could not be made by the dependant's legal personal representative. With all deference to the opinions expressed in that case, I am unable, for the reasons stated, to reach this result.

In the case of *Darlington* v. *Roscoe & Sons*, 1907, 1 K.B. 219 (also under the 1897 Act), the dependant made a claim under the Act of 1897, but died before any award was made in respect of that claim, and it was held that the right of compensation survived and passed to the legal personal representative of the dependant. This case was therefore distinguishable from that of *O'Donovan*. The opinions, however, expressed in *Darlington*, as I read them, support the view that the right to compensation accrued to the mother in her lifetime, and passed to the appellant as her legal personal representative. There is no material difference between the 1897 and the 1906 Acts as regards this question.

I am therefore of opinion that the question should be answered in the affirmative.

LORD M'LAREN—I regret that I am unable to concur in the opinions which have been delivered, but as my opinion will not affect the judgment of the Court I shall confine myself to a brief statement of the grounds on which I conceive that the respondents are not liable to pay compensation money to the appellant.

My opinion is founded mainly on the view I take of the policy of the Act of Parliament, which, as I think, was not intended to constitute any general obligation on the part of employers to pay a sum of money in respect of the death of an employee from accident arising in the course of his service, but was only intended to secure to those who were dependent on his earnings compensation for pecuniary loss which they might sustain by being deprived of the support which they had been in use to receive from their deceased relative.

It is true that where compensation has been awarded to a dependant who dies before he or she has been able to make use of the money, the compensation money, or what remains unexpended, will pass to the executors as part of the deceased's estate; but that is only because in the case of death resulting from an accident the compensation is given in the shape of a capital sum, and when that sum has been awarded it vests in the dependant, and is assignable and transmissible to executors or next-of-kin. If a claim is made within the statutory period, and the dependant dies before an award has been made, I should consider that a right to an award of compensation had vested in the dependant, and that a right to follow out the proceedings in the arbitration passed to the legal personal representatives, because a vested right is property, and is transmissible as such. But then I think it is a condition of the dependant's right to compensation that he shall make a claim within the statutory period, and if he does not choose to make a claim, or if he is prevented by death from making a claim, the employer's liability—which is contingent on a claim being made —comes to an end. In this case the claim was made within the prescribed period, but it was not made by the dependant, but by her executrix, and I cannot find in the language of the statute that a claim is allowed to anyone other than the dependant. The appellant does not profess to have been dependent on the earnings of the deceased miner; she sustained no loss through his death, and her claim does not seem to me to fall within the scope or object of the statute, which is to provide compensation to those who have suffered. The distinction may be illustrated by supposing the case of a workman who is survived by more than one dependant. One of the dependants dies without having made a claim. I should have thought that in such a case the compensation money would go to the surviving dependants, but according to the decision proposed this would not be a good award unless a share of the money were allotted to the next-of-kin or executor-dative of the deceased dependant—a person who had not suffered and who might not be in want.

On this question the decisions of the English and Irish Courts are conflicting. My opinion has the support of the Appeal Court of Ireland in the case of *O'Donovan* (1901), 2 Irish Rep. 633, but I do not wish to be understood as concurring in their Lordships' decision in so far as it is founded on a rule of law expressed by the maxim *actio personalis moritur cum persona*. I do not think that a claim under the Workmen's Compensation Act can be described as *actio personalis*, and I see difficulty in extending the maxim by a supposed analogy to cases of this description, because the maxim is merely a statement of an arbitrary rule without the necessary limitations, and because it does not embody anything that I can recognise as a principle capable of extension to cognate cases.

My opinion in the case of *Barr*, 20 R.

859, which was referred to in the arguments in this case, did not proceed on the assumption that this law maxim had been recognised as a rule of practice by the Scottish Courts. My opinion was founded partly on the Roman law, which in the passages quoted from the Digest negatived the right of the representatives of an injured person to prosecute the *actio injuriarum*, partly on the absence of any authority in our own law which could support such a claim, but also on the inconvenience and injustice of allowing representatives to make a claim which the injured person might have good reasons for not preferring in his own name.

I do not consider that the case of *Darlington* is conclusive one way or the other, because it only decides that a claim which has been made by the deceased dependant may be followed to its conclusion by the representatives, and that I think is a sound interpretation of the statute. While it may be that the authority of the case of *O'Donovan* is somewhat shaken by the observations of the learned judges in *Darlington's* case, I am of opinion that this claim is not well founded, and that the judgment of the arbitrator is right.

The LORD PRESIDENT and LORD PEARSON were absent.

The Court answered the question of law in the case in the affirmative, recalled the determination of the Sheriff-Substitute as arbiter, and remitted to him to proceed as accords.

Counsel for Appellant—Scott Dickson, K.C.—Moncrieff. Agents—Simpson & Marwick, W.S.

Counsel for Respondents—Hunter, K.C. —Carment. Agents—W. & J. Burness, W.S.

TEIND COURT.

Friday, July 10.

(Before the Lord President, Lords M'Laren, Kinnear, Johnston, and Mackenzie.)

MINISTER OF DALSERF *v.* THE HERITORS.

Teinds—Stipend—Augmentation.

Circumstances in which, all the heritors consenting, the Court *granted* an augmentation of stipend of seven chalders.

In a process of augmentation raised by the minister of Dalserf against the heritors the minister craved an augmentation of seven chalders. The heritors, by minute produced in process, unanimously consented to the augmentation craved. It appeared that there had been no modification of the stipend since 1849, at which date it was fixed at eighteen chalders, and that the predecessor of the present minister, who had been possessed of considerable private means, had occupied the benefice for a period of fifty-six years. The free teind was stated to amount to £120.

LORD PRESIDENT—This is an unusual demand, and under ordinary circumstances I do not think this Court would be prepared to grant it. But the circumstances here are peculiar. There has been no modification of this stipend since 1849, and there is a complete concurrence on the part of all the heritors in the augmentation asked for. They no doubt take the view that the present low figure at which the stipend stands is due to the personal circumstances and the moderation of the previous incumbent, who lived a long time, and they feel that it is right that the benefice should not suffer on that account. I regard this as quite a special case, and in the peculiar circumstances we find here I think your Lordships may grant the augmentation.

LORDS M'LAREN, KINNEAR, JOHNSTON, and MACKENZIE concurred.

The Court granted the augmentation of seven chalders.

Counsel for the Minister — Henderson Hamilton. Agents — Gardiner, Gillespie, & Gillespie, S.S.C.

Saturday, July 18.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

EARL OF LAUDERDALE *v.* SCRYMGEOUR-WEDDERBURN.

(See *ante* December 16, 1904, 42 S.L.R. 222, 7 F. 1045.)

Jurisdiction—Court of Session—Heritable Office—Hereditary Standard Bearer for Scotland.

Held that the Court of Session has jurisdiction to determine claims to the Office of Hereditary Standard Bearer to the Kings of Scotland, that being a heritable office and not a mere title of honour.

Res Judicata—Heritable Office—Award of Court of Claims Appointed at Coronation.

The parties to an action of declarator of right to the Office of Hereditary Standard Bearer for Scotland had both been claimants before a Court of Claims appointed by Commission under the Great Seal to hear and determine claims to perform services at His Majesty's Coronation. The defender's claim had been allowed and the pursuer's refused by the Court of Claims. The defender now pleaded *res judicata*. *Held*, on consideration of the terms of the Royal Commission creating the Court of Claims and the terms of that Court's deliverance, that that Court did not finally determine the question