in which the work is not intrinsically dangerous"—and that is the case here—"but is rendered dangerous by some defect which it was the duty of the master to remedy. In cases of that description the relations of the workman to the peril are so various that it is impossible to lay down any rule in regard to the operation of the maxim which will apply to them all alike." Therefore it is a question which must be solved as a question of fact. Now I do not doubt that there might be facts so averred as to put us into this position that we should be able to say that if these facts as averred were all proved it would be the duty of any judge trying the case to tell the jury that they could only come to one conclusion, namely, that the workman had undertaken the risks; and in that case, of course, it would be our duty not to grant an issue. But in this case the facts fall very short of that. The truth is that the only fact bearing on this matter is that the workman continued in the employment after he knew that the crane was there. That by itself is not enough, as was determined in *Smith* v. *Baker & Sons*. Another way of putting the same thing is this. The House of Lords in *Smith* v. *Baker & Sons*, I think, held that the questions which were submitted to the jury were substantially right, although the noble and learned Lords indicated that there were certain criticisms to be made upon the form of the questions. One of the questions put there was—Did the workman voluntarily undertake the risk in the knowledge of these risks? and the answer was—No. The House of Lords, Lord Bramwell dissenting, held that there was evidence upon which the jury might come to that conclusion, and therefore they did not disturb the verdict. But if the jury had answered the question in the other way, there would have been an end of the case. Now, I think that that particular question was not quite rightly put, although that fact substantially did not cause any harm. I think the question we should now put, in the light of what the noble and learned Lords said in the case of *Smith* v. *Baker & Sons*, would be, not did the pursuer voluntarily undertake a risky employment with knowledge of its risk, but did the pursuer voluntarily undertake the risk of what happened in the employment.

Upon the whole matter I think it is perfectly clear that this question must be left to a jury. I think that we ought to recall the Lord Ordinary's interlocutor and allow the issues. The second action is certainly a case where the pursuer's case will be more difficult for him to prove than the first, but still even upon it there is something to go to a jury, and I do not think that we should take upon ourselves to determine the question at this stage of the proceedings.

LORD KINNEAR—I concur. I think the case must go to a jury, and I have nothing to add to what your Lordship has said.

LORD DUNDAS—I am of the same opinion.

LORD M'LAREN and LORD JOHNSTON were absent.

The Court recalled the Lord Ordinary's interlocutor and approved of the issues.

Counsel for Pursuer (Reclaimer)—Anderson, K.C. — Morton. Agent — Malcolm Graham-Yooll, S.S.C.

Counsel for Defenders (Respondents)—Murray, K.C.—T. G. Robertson. Agents—Morton, Smart, M'Donald, & Prosser, W.S

Wednesday, December 8.

FIRST DIVISION.

[Sheriff Court at Cupar.

THE WEMYSS COAL COMPANY LIMITED *v.* PEGGIE.

Master and Servant—Compensation—Computation of Time—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 2 (1).

The Workmen's Compensation Act 1906, sec. 2 (1), enacts that proceedings for the recovery of compensation shall not be maintainable unless the claim for compensation has been made "within six months of the occurrence of the accident."

A workman was injured during the course of his employment at 11·30 a.m. on 24th November 1908. No claim for compensation was made by him till 24th May 1909, when two claims were lodged on his behalf, the first at 5·30 p.m., the second at 11 p.m.

Held that the claim was timeously made.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 2 (1), enacts—"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 in respect of 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. . . ."

David Peggie, miner, West Wemyss, claimed compensation under the Workmen's Compensation Act 1906 from The Wemyss Coal Company, Limited, and they being dissatisfied with an award of the Sheriff-Substitute of Fife and Kinross (ARMOUR), acting as arbiter under the Act, appealed by way of stated case.

The case stated—"The claimant claimed compensation from the respondents for injuries sustained by him through an accident which occurred to him while in the employment of the respondents as a pit-head worker at their Victoria Pit, East Wemyss, at 11·30 a.m. on 24th November 1908. No claim for compensation was made

by him till 24th May 1909, when two claims were lodged on his behalf, the first being dropped into the letter-box at the respondents' office after the office closed for business about 5·30 p.m., the second being handed to a porter in the respondents' employment, and when he was upon their premises, about 11 p.m. I held that the six months within which the claim must be made began at midnight on 24th November 1908 and ended at midnight on 24th May following, and that the claim was timeously lodged. I accordingly found the claimant entitled to compensation at the rate of 11s. 0½d. per week from 24th November 1908, with expenses on the higher scale."

The *question of law* for the opinion of the Court is—"Was the claim timeously made within six months from the occurrence of the accident within the meaning of section 2 (1) of the Workmen's Compensation Act 1906."

Argued for the appellants—The time within which the claim must be made was within six months from the "occurrence" of the accident, and accordingly the six months commenced to run immediately after the occurrence, *i.e.*, 11·30 a.m. on November 24, 1908, and terminated at that hour of day six months afterwards, *i.e.*, 11·30 a.m. 24th May 1909. As the starting point from which the six months ran was an occurrence and not a day or date, the rule applicable to days—of which *Simpson* v. *Marshall*, January 25, 1900, 2 F. 447, 37 S.L.R. 315, and *Frew* v. *Morris*, March 12, 1897, 24 R. (J.) 50, 34 S.L.R. 527, were examples—that the period ran from midnight of the first day—did not apply. Reference was also made to *In re North*, 1895, 11 T.L.R. 417. (The Lord President referred to *Parish Council of Cavers* v. *Parish Council of Smailholm*, 1909 S.C. 195, 46 S.L.R. 170).

Counsel for the respondent were not called upon.

LORD PRESIDENT—The question that is raised in this stated case is as to the computation of time. The second section of the Workmen's Compensation Act provides that "proceedings for 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, and unless the claim for compensation in respect of 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 the accident here happened on the 24th November 1908, and a claim was made on 24th May 1909. *Prima facie* that would seem to be timeous, because the 24th May is the twenty-fourth day of the sixth month after November. But it has been argued to us that the claim was not made timeously, because as a matter of fact the accident happened at 11·30 a.m., whereas the claim was not made till either 5·30 or 11 p.m.—there seem to have been two claims put in.

I adhere to what I said in the recent case of *Parish Council of Cavers* v. *Parish Council of Smailholm* (1909 Session Cases 195), where, in dealing with the computation of a period, I said this—"I do not think that the Court will ever be concerned with the question of what happens inside a day—that is to say, I do not think that it will go into an inquiry as to the particular hour of the day at which the period commences and at which it ends; and in that sense the maxim *dies inceptus pro completo habetur* is applicable." I think that remark is borne out by the whole of the decided cases, and I see no reason why the remark should not apply also to this case. The truth is, that you must, in one sense, take rather a rough and ready manner when you come to a computation of time which is not prescribed in days but is prescribed in months, because a month is not a stable unit of time. It has long ago been decided that the meaning of the Legislature in speaking of a "month" or "six months" is "calendar month" or "months." But these calendar months are not units of time; and the practical and obvious conclusion has been come to, that when a period of six months or twelve months is spoken of, the corresponding day in the sixth or twelfth month thereafter is to be taken as the termination of the period. That is not scientifically accurate, because the place which a particular day occupies in a month is not the same in every month; for instance, the 24th May bears a different relation to the fractional parts of the month that are behind it and in front of it from that which the 24th June bears to the corresponding fractional parts of its month, because there are thirty-one days in the one month and thirty in the other—but for practical purposes the rule has been established.

I think, therefore, that the claim here was timeously made, that the Sheriff-Substitute has rightly decided the matter, and that the question ought to be answered in the affirmative.

LORD KINNEAR—I agree with what your Lordship has said. The statute does not require the time to be reckoned by hours or minutes, but it prescribes that a certain claim shall be made within the six months from the occurrence of the accident. I agree with what was decided in the case of *Parish Council of Cavers* v. *Smailholm*, which I think we should follow. As I understand that case, when the thing to be determined is an interval of time, which is expressed in terms of a division of the calendar, then, as Lord M'Laren said, "the interval is to be reckoned from the day when it begins to the corresponding day in the next division of the calendar." The time is to be reckoned from, for example, 24th May to 24th November, without reference to the particular moment in the time of the day at which the event in question occurs or the notice is given.

LORD DUNDAS—I quite agree, and I think the decision in this case is really concluded

by that in the recent case of *Cavers*, to which your Lordships have referred. In particular, I may quote as specially applicable an observation by Lord M'Laren. His Lordship said—"We are only concerned with a period prescribed by statute, and in the absence of express provision to the contrary I should hold that it was unnecessary to reckon by hours and minutes."

LORD M'LAREN and LORD JOHNSTON were absent.

The Court answered the question of law in the affirmative.

Counsel for the Appellants—Horne—Carmont. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Jameson. Agent—D. R. Tullo, S.S.C.

Thursday, November 25.

FIRST DIVISION.

(SINGLE BILLS.)

PETRIE *v.* PETRIE.

Husband and Wife—Aliment—Expenses—Declarator of Marriage where Alleged Husband Dead—Interim Awards.

A lady raised an action of declarator of marriage against the executor-dative of her alleged husband, and obtained decree in the Outer House. The defender reclaimed, and the cause was sent to the roll. The pursuer then presented a note craving an award of expenses and of *interim* aliment.

The Court *granted* pursuer an award of thirty guineas for expenses and *interim* aliment, which, however, was fixed at merely sufficient for bare subsistence on the grounds that the obligation depended on the establishment of the marriage and the estate was small.

Mrs Annette Cooper or Gordon Petrie, who alleged she was the widow of Alexander Gordon Petrie, S.S.C., Edinburgh, raised an action of declarator of marriage with the said Alexander Gordon Petrie, and for an accounting, against Margaret Cathro Petrie, Fountainbleau, Dundee, as executrix-dative *qua* next-of-kin of the said Alexander Gordon Petrie, and also as an individual, and against George Petrie, Fountainbleau, Dundee, the only other next-of-kin known to her. On 3rd November 1909 the Lord Ordinary (SALVESEN), after proof, granted decree in terms of the declaratory conclusions of the summons, *quoad ultra* continued the cause, and granted leave to reclaim. On 10th November 1909 a reclaiming note was presented by the defenders, and on 12th November 1909 the case was sent to the roll.

The pursuer thereafter presented a note to the Lord President, which, *inter alia*, stated that the value of the estate given up by the executrix-dative, including a heritable bond for £500, amounted to £7133; and that the pursuer (respondent) was without sufficient means to aliment herself pending the disposal of the reclaiming note. The note craved for an award of aliment at the rate of £200 per annum, commencing as at 4th February 1909 (the date of the death of the said Alexander Gordon Petrie), and for the sum of £50 towards the expense of supporting the Lord Ordinary's judgment in her favour.

On 24th November counsel for the pursuer moved the Court to grant the prayer of the note, and argued—(1) In any case pursuer was entitled to an *interim* award of expenses—*Forster* v. *Forster*, February 18, 1869, 7 Macph. 546, 6 S.L.R. 355 (*voce Fleming* v. *Foster*). (2) *Interim* aliment should also be awarded. There was here a strong *prima facie* case that the pursuer was right; the Lord Ordinary had decided in her favour. It was not here the husband who was denying the marriage, and his executors' denial was not of the same force. These elements distinguished the case from *Campbell* v. *Sassen* (*cit. infra*), and *Browne* v. *Burns* (*cit. infra*), relied on by the defender.

Argued for the defender—(1) Any award of *interim* expenses should be small; pursuer could not obtain anything for past expenses—*Forster* v. *Forster* (*cit. sup.*)—and defender was willing to print any papers pursuer might think necessary. (2) There was no reported case in which an application for *interim* aliment by a wife suing for declarator of marriage had been upheld. It was refused in *Browne* v. *Burns*, June 30, 1843, 5 D. 1288, and when it had been granted in the Court of Session, it was said in the House of Lords that it ought not to have been granted—*Campbell* v. *Sassen*, May 23, 1826, 2 W. & S. 309.

At advising—

LORD PRESIDENT—This is an action of declarator of marriage at the instance of a lady, her alleged husband being dead, and it is defended by the executrix-dative of the deceased. The action has run its course in the Outer House and decree has been given in favour of the lady. The interlocutor giving decree has been reclaimed to this Division, and the case has been sent to the roll to await discussion in its turn.

Under these circumstances a motion is made on behalf of the lady, who if the decree stands was the wife of the deceased, for an allowance, first of expenses, and second of aliment. As regards expenses there can be no doubt, and indeed the learned counsel for the executrix did not contend against an allowance of expenses, for here the lady is *prima facie* right and should be allowed money to maintain the judgment in her favour before your Lordships. The lady being respondent in this Court has no expenses of printing, and, moreover, an offer has very properly been made by the executrix to print any papers she may wish to have printed. In these circumstances I think that an award of