here which is rather more than the pecuniary value of the actual sum which it is proposed to exact; because if you can suppose that it could be right that Aitchison had to pay the £36 and the £36, 4s. 7d. only because a decree had been granted against the Scottish National Athletic Club for those sums, it follows that he must also pay any sum that anybody can recover against the club. We are then in that class of case where the question brought before the Court was whether a passenger on a tramcar ought to have paid a penny or twopence as his fare; and there it was held that the true question of the case was whether the tramway company was entitled to charge twopence or only a penny; and that question went far beyond the pecuniary value of the sum immediately involved. But thirdly, even if we were to pin ourselves to the precise sum here, no exception can be taken to the value of the cause, as it is not merely £36 and interest, but that sum *plus* £36, 4s. 7d., which is more than the required £50. That point must be decided upon the provisions of section 7 only, and not at all upon section 5 (5), which defines the jurisdiction of the Sheriff in suspending charges competent in his Court, and not the limit of the value of causes which must be brought before him.

I therefore think we must recall the Lord Ordinary's interlocutor and pass the note, which means that the suspension will have to be granted as a matter of course in the Court of Session; and probably the complainer will not take any further steps in the matter at all.

LORD KINNEAR—I agree with your Lordship.

LORD JOHNSTON—I also agree.

LORD MACKENZIE—I am of the same opinion.

The Court pronounced this interlocutor—

"Recal said interlocutor [*i.e.*, of 15th September 1910]: Remit to the Lord Ordinary on the bills to pass the note: Of new sist execution meantime and decern: Find the complainer entitled to expenses, and remit the account thereof to the Auditor to tax and to report to the Lord Ordinary on the Bills, to whom grant authority to decern for the taxed amount thereof."

Counsel for the Complainer and Reclaimer—Forbes. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Respondent—Macquisten. Agent—A. C. D. Vert, S.S.C.

Tuesday, November 29.

FIRST DIVISION.

[Sheriff Court at Hamilton.

DEVONS *v.* ALEXANDER ANDERSON & SONS.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 2 (1)—*Time for Making Claim—Claim not Made within Six Months—Bar to Pleading Statutory Limitation.*

An injured workman was waited upon by an agent of an insurance company, with whom his employers were insured, who endeavoured to get him to accept compensation, and by a tout to a writer who advised him not to accept compensation but to claim damages. The workman eventually decided not to accept compensation, and put the matter into the writer's hands, who, however, carried nothing to a conclusion, with the result that the six months allowed by the Act for making a claim expired. In an arbitration at the instance of the workman the arbiter found that the pursuer was barred from prosecuting his claim, and dismissed the application.

Held that as no claim had been made within the six months, the application had been rightly dismissed—no reasonable cause for the failure to make a claim being stated, and there being nothing to bar the employer from pleading the statutory limitation.

Observations (*per* Lords Ardwall and Johnston) as to the effect of an employer's admission of liability, or offer to pay compensation, on the necessity for making a claim.

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 . . . the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury. . . . Provided always that . . . (*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."

In an arbitration under the Workmen's Compensation Act 1906 between Patrick Devons, labourer, Holytown, and Alexander Anderson & Sons, boilermakers, Motherwell, the Sheriff-Substitute (THOMSON) found that the pursuer was barred from prosecuting his claim, and dismissed the application. He stated a case for appeal.

The *facts* were—"(1) That the appellant met with an accident while working as a labourer in respondents' employment on 24th March 1908, his average weekly earnings being then 24s.; (2) that for the treatment of his injuries he was taken to

the Royal Infirmary, Glasgow, and within a fortnight after his admission was waited upon (*a*) by the agent of the insurance company with which the respondents were insured, who endeavoured to get him to accept compensation at the rate of 12s, per week under the Workmen's Compensation Act 1906 and (*b*) by an old man who did odd jobs for Mr J. M. Connell, writer, Glasgow, and who, as acting for Mr Connell, advised him not to accept compensation but to claim damages; (3) that the appellant would not at first agree to either suggestion, but that he finally resolved not to accept compensation, and put the matter into Mr Connell's hands, that he might either arrange for a payment of a sum in name of damages or raise an action to recover damages; (4) that Mr Connell accordingly threatened, on his behalf, an action of damages at common law, and had several meetings with the agent of the insurance company, who was anxious to avoid an action at common law and to get the pursuer to accept compensation; (5) that nothing was arranged, nor was any action raised within the period of six months from the occurrence of the accident; (6) that the appellant becoming dissatisfied with Mr Connell consulted Mr Alexander Anton, writer, Motherwell, and granted the mandate in Mr Anton's favour which was produced in process; (7) that Mr Anton then endeavoured to effect a settlement on behalf of the appellant, but was unable to do so, because, as he believed, no proceedings could be taken owing to the lapse of time either for compensation under the foresaid Act or for damages under the Employers' Liability Act, and there was no valid ground of action at common law; (8) that the appellant failed, either by himself or by his agent, to make a claim for compensation under the Workmen's Compensation Act 1906 within the six months allowed for doing so; and (9) that he had not proved that the failure to make a claim was occasioned by mistake, absence from the United Kingdom, or any reasonable cause."

The Sheriff-Substitute further stated—"In these circumstances I found that the appellant was barred from prosecuting his claim for compensation, and dismissed the application, and found the respondents entitled to expenses."

The *questions of law* were—"(1) Whether a formal claim in the statutory sense was necessary in respect (*a*) that the respondents admitted their liability to pay compensation at the rate of 12s. per week, and (*b*) expressed their willingness to pay said compensation? (2) Whether, assuming an affirmative answer to question 1, the respondents are barred from pleading the statutory limitation? (3) Whether, assuming a negative answer to question 2, there was reasonable cause for the appellant's failure to comply with the strict letter of the statute?"

Argued for appellant—(1) A formal claim was not necessary—*Thompson* v. *Goold & Company*, [1910], A.C. 409. The right to compensation vested on the occurrence of the accident, and where, as here, liability was admitted, no claim at all was required. If, however, a claim were necessary there was reasonable cause for the appellant's failure to make it, for the parties were negotiating for a settlement. (2) The respondents having consumed the time for lodging a claim in trying to settle the case were barred from pleading the statutory limitation. Finding 4 showed that the respondents were all along endeavouring to induce the appellant to accept compensation. They were therefore barred from objecting to his claim—*Wright* v. *John Bagnall & Sons, Limited*, [1900] 2 Q.B. 240.

Argued for respondent—*Esto* that there must be a claim, formal or informal, the arbiter had expressly found that no claim at all had been made. That was a question of fact on which the arbiter was final. A claim could not be implied, for otherwise a workman by negotiating might be foreclosed from afterwards suing at common law or under the Employers' Liability Act. If a claim had been made here the workman would have been paid at once. That showed that no claim at all had been made. Findings 3 and 4 showed that the appellant had elected to claim damages, and having done so he could not now claim compensation—*Burton* v. *Chapel Coal Co., Limited*, January 27, 1909 S.C. 430, 46 S.L.R. 375. Reference was also made to *Thomson* v. *Baird & Co., Limited*, November 26, 1903, 6 F. 142, 41 S.L.R. 152. (2) The respondents were not barred from pleading the statutory limitation, for the facts showed that before the time limit had expired the appellant had finally decided not to accept compensation. That distinguished the present case from that of *Wright* cited by the appellant, and brought it within the rule of *Rendall* v. *Hill's Dry Docks and Engineering Company, Limited*, [1900] 2 Q.B. 245.

At advising—

LORD PRESIDENT—In this case the questions of law are in my view unfortunately stated. The facts upon which the case is stated are that the appellant met with an accident; that he was taken to the Royal Infirmary, and that while in the Royal Infirmary he was waited upon by an agent of an insurance company who endeavoured to get him to accept compensation at a certain rate; that he was also waited upon by a tout to a writer, who endeavoured to persuade him not to accept compensation but to raise an action for damages at common law or under the Employers' Liability Act; that the appellant did not agree to either proposition, but that he eventually put the matter into the hands of the writer recommended by the tout; that this writer carried nothing to a conclusion, and that the appellant then changed his agency, but by this time the six months had expired. Now upon these facts the Sheriff-Substitute found that the appellant was barred from prosecuting his claim for compensation, and dismissed the application, and then he puts the questions of law thus—"1. Whether a formal claim in the statutory sense was necessary, in respect (*a*)

that the respondents admitted their liability to pay compensation at the rate of 12s. per week, and (*b*) expressed their willingness to pay said compensation?" Now the difficulty about that question is this, that the necessity of a formal claim is linked with the avoidance of that necessity in respect of the two things expressed as (*a*) and (*b*). Now it has been settled by the decision of this Court so far, and conclusively by the House of Lords in the recent case of *Thompson* v. *Gould & Company*, [1910] A.C. 409, that a formal claim is not necessary at all. It is not necessary in terms of the statute. As long as it is a claim that is enough, and therefore really the question of law cannot be answered, because whether you answer it in one way or the other you would be going equally against the law as laid down by the House of Lords. And then the other two questions are hung upon that, because they are both put with the introduction—"Assuming an affirmative answer on question 1, or assuming a negative answer,"—where, as I have already pointed out, we cannot give either an affirmative or negative answer. Now if there were anything to be gained by having the case re-stated, of course we would send the case back to the Sheriff, but I do not think there is any necessity to do so here, because it seems to me that he has in his findings in fact given us a sufficient ground for disposing of the case.

It has been decisively settled by the House of Lords that a claim need not necessarily be a formal one, but the statute particularly says you must make a claim within the six months. Now, finding 8 by the Sheriff, which is upon the question of fact, is that the appellant failed either by himself or by his agent to make a claim within the six months allowed him to do so, and the only way in which one can get behind that finding would be if that finding were based upon certain other findings showing that what he stated as a fact was based upon some legal proposition. But that is not so. Practically the state of matters as made clear by the earlier findings is this—A man gets injured and goes into hospital; he is there approached by an agent for an insurance company, who of course is not the employer, but who for the purposes of the case (although remember I do not wish this to be held as a general proposition in law) I will assume to be an agent of the employer. I particularly wish to make this quite clear, for I do not wish to lay down a proposition that an agent for an insurance company doing certain things therefore binds the employer who has only insured himself with the insurance company. He goes to the man and says—"Will you accept compensation," and the man says "No." Now he must at some time make a claim, or say "Yes," and by finding 8 the Sheriff has expressly held that he never did. Accordingly I think that although we cannot answer the questions as put, the decision of the Sheriff was right, inasmuch as no claim was actually made within the six months.

LORD KINNEAR — I am of the same opinion. I had some difficulty at first sight in considering this case, because the first question appeared to me to be put upon an assumption of law which is clearly erroneous, since the form in which the question is put would suggest that the Sheriff had supposed that a formal claim of some sort must be made, which, I suppose, can only mean that the statute requires the claim to be made in some statutory or regular form in order to its validity. That, however, as your Lordship has pointed out, is not the law. But even assuming that the learned Sheriff was under a misapprehension of the law of this matter, the question would then arise, whether his statement discloses as matter of fact that there had been any claim at all made by or on behalf of this workman, either formal or informal. Now that appears to me to be a pure question of fact. The learned Sheriff has given us some details as to the events which happened after the accident, the practical result of which seems to me to be that this poor man was worried by the insurance company's agent on the one hand and the law agent's tout on the other, and that under their conflicting advice he never made up his mind to make any claim at all, and the consequence was, according to the Sheriff's statement, that although an action of damages at common law was threatened on his behalf, no action was raised and no claim was intimated within the period of six months from the occurrence of the accident. In the sequel of the case the Sheriff goes on to say that he found as matter of fact that the appellant failed either by himself, or by his agent to make a claim for compensation within the six months. It is obvious that we cannot disturb that finding, unless it appears that the Sheriff was misled by some erroneous view of the law, or else that he was proceeding without any evidence upon which it was reasonable to form a judgment. I am unable to affirm either of these propositions, and I think therefore it is a finding which we cannot disturb.

There remain two other questions which the Sheriff puts, not very accurately in point of form, because they assume the necessity for a formal claim. But if there were no claim, then two questions would arise under the Act, whether the failure to make a claim was occasioned by a mistake, or absence from the United Kingdom, or for any other reasonable cause, and whether, assuming that there was no reasonable ground for failure, the employers were barred by their own conduct from pleading the statutory limitation of action. These two questions also appear to me to be pure questions of fact, and I am unable to disturb the judgment of the Sheriff upon either of them.

LORD ARDWALL—I am of opinion that in order to entitle the appellant to initiate and proceed with the arbitration on which this appeal has been taken it was necessary

for him to make a claim for compensation under the Workmen's Compensation Act 1906 within six months from the occurrence of the accident. I do not think that in the words of the question put a "formal claim" was necessary, but a claim of some sort to compensation under the Act was necessary, though it was not necessary to mention the sum—see *Thompson* v. *Goold & Company*, A.C. 1910, p. 409. Further, an agreement between the parties to the effect that the employer was liable, though the question of amount of compensation was left over, has been held to found a valid plea of bar against the employer taking the plea of want of notice of claim—see *Wright*, L.R., (1900) 2 Q.B. 240. But a payment to account of the sum, if any, that might be found payable by an employer was held not to obviate the necessity for notice.

Coming to the present case, the facts found by the Sheriff do not in my opinion bar the respondents from founding on the want of notice of claim under the Act of 1906. The respondents, it seems, offered to settle with the appellant on the footing of a payment of 12s. a-week under the said Act. This offer the appellant refused, and subsequently put the matter into the hands of a law agent, with instructions either to arrange for payment of a sum in name of damages, or raise an action to recover damages. The agent for the insurance company again pressed him to settle under the Act of 1906, but he throughout declined to do so until after the time during which he might have raised an action under the Employers' Liability Act had expired, when he endeavoured to fall back on the Act of 1906, and instituted the present proceedings after the lapse of six months from the date of the accident. I am of opinion that the facts stated in the case do not amount to the giving of notice of claim by the appellant under the Act. Admission of liability by offering a sum, which offer was rejected, is not in my opinion an equivalent to admission of liability under the Act, and the making of such offer by the employer does not obviate the necessity for notice on the part of the workman, or bar the employer from pleading the want of notice if no other notice is given. I therefore think that the determination of the Sheriff ought to be affirmed.

LORD JOHNSTON—I assume for the purpose of this judgment that the respondents were represented by the agent of the insurance company and bound by his actings. But had I come to another conclusion on the question at issue, I should not be satisfied to decide this case without some evidence of what, on the statement of the learned Sheriff-Substitute, would be mere assumption.

Further, I assume that there was not merely an offer to pay on the part of the respondents but an admission of liability, though on this point the Sheriff-Substitute's question goes beyond his statement of facts. But I do not think that the respondents' expression of their willingness to pay, or even their admission of liability to pay compensation, if that can be implied from their action, absolved the appellant from the condition, precedent to his obtaining the advantage of the Workmen's Compensation Act 1906, of claiming compensation within six months from the occurrence of the accident, though as decided in *Thompson* v. *Goold & Company*, [1910] A.C. 409, the claim might be general and need not have been specific.

It is specially enacted, section 2 (1), that "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 of the occurrence of the accident causing the injury." The term "maintainable" is a very positive and decided expression.

There might, particularly having regard to section 1 (2) (*b*) and 1 (4), where a claim for compensation under the Act is put in contrast to the taking proceedings independently of the Act, have been a fair question, whether the claim for compensation, which must be made within six months, can be anything other than the initiation of the proceedings contemplated by the Act where these prove necessary. But in view of the decision in *Powell* v. *Main Colliery Company*, [1900] A.C. 366, that cannot now be maintained. Still "the claim for compensation," however informal, is a distinct condition precedent to "proceedings for the recovery under the Act of compensation." Now an admission by A, coupled with an offer by A, however definite, but not accepted by B—still more, as here, rejected by B—cannot possibly be construed as a claim by B. The third and fifth heads of fact stated by the learned Sheriff-Substitute, and which I need not detain your Lordships by reading, make it as clear as day that the very idea of compensation under the Act, however anxious the respondents may have been to make such compensation, was rejected by the appellant and a claim at common law elected. The appellant could not take this course and retain right after the lapse of six months to revert to a claim which he had rejected.

If so, the first question in its general sense, and without entering on any criticism of the term "formal," falls to be answered in the affirmative; and the same considerations lead to the second question being answered in the negative. Though the respondents exerted themselves to induce the appellant to take advantage of the statute, it is impossible to find anything in their conduct on which to found personal bar to their taking advantage of the statutory limitation on the statutory proceedings.

Before leaving this branch of the case I would advert for a moment to an important consideration deducible from section 1 (4) of the Act. That sub-section contemplates an action at common law and the failure of that action, but the emergence in course of the process of a relevant claim

for compensation under the Act, and provides for the Court, on the request of the pursuer, virtually turning the action into a proceeding under the Act. But there is this pointed condition, viz., that the action has been raised "within the time hereinafter limited in this Act for taking proceedings." This appears to me to confirm the view that section 2 (1) intended a positive and definite limitation of proceedings under the Act, and it is therefore not immaterial to the present question to note that if in the end the appellant had, as he proposed, raised his common law action in place of these proceedings and failed, as admittedly he would have failed, he could not, under this sub-section, have transformed his action into a proceeding under the Act.

There remains the third question, viz., whether the appellant can be relieved of the statutory limitation by reason of his failure having been occasioned by mistake, absence, or other reasonable cause. There was neither mistake, absence, nor reasonable cause of the like, or indeed any other, nature. The appellant may have his action against Mr Connell, but he cannot throw upon the respondents responsibility for Mr Connell's laches. Had they done anything to mislead him it might have been different. But the case cannot be brought under the category of *Wright* v. *Bagnall & Son*, [1900] 2 Q.B. 240, and is *a fortiori* of *Rendall* v. *Hills Dry Docks, &c. Company*, [1900] 2 Q.B. 245, and the query must therefore, I think, be answered in the negative.

LORD MACKENZIE was absent.

The Court refused to answer the questions of law as stated in the case, affirmed the determination of the Sheriff-Substitute as arbitrator, and decerned.

Counsel for Appellant—Morison, K.C.—Aitchison. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for Respondents—Horne, K.C.—Spens. Agent—Robert Miller, S.S.C.

Wednesday, November 30.

FIRST DIVISION.

(SINGLE BILLS.)

A. E. ABRAHAMS LIMITED AND ANOTHER *v.* CAMPBELL.

Sheriff—Process—Appeal—Competency—Summary Cause—Value of Cause—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *secs.* 3 (i) (1), 8, *and* 28.

The Sheriff Courts (Scotland) Act 1907 enacts, section 3—"In construing this Act (unless where the context is repugnant to such construction) . . . (i) Summary cause includes (1) Actions . . . for payment of money exceeding twenty pounds, and not exceeding fifty pounds, exclusive of interest and expenses . . ." Sec. 8, ". . . In a summary cause, if the sheriff, on appeal, is of opinion that important questions of law are involved, he shall state the same in his interlocutor, and he may then, or within seven days from the date of his interlocutor, grant leave to appeal to a Division of the Court of Session on such questions of law, but otherwise the judgment of the Sheriff shall be final." Sec. 28—"Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment of a Sheriff-Substitute or of a Sheriff, but that only if the value of the cause exceeds fifty pounds and the interlocutor appealed against is a final judgment . . ."

A firm of advertising contractors brought an action in the Sheriff Court for payment of £43 odd, being the amount alleged to be due, in terms of an agreement executed by the defender in 1907, for advertising on certain electric cars for 146 weeks commencing 11th June 1907 at the rate of one shilling per week each glass, under reservation of their right to all sums yet to become due thereunder. The Sheriff having found that the pursuers were not *in titulo* to demand implement of the contract, the pursuers appealed. The defender objected to the competency of the appeal on the ground that the action was a summary cause, and that no questions of law had been stated and no leave to appeal granted.

Held that as the initial writ showed that the real question at issue was the interpretation of the contract, involving a continuing liability of greater value than £50, the cause was not a "summary cause" in the sense of section 8, and objection repelled.

Opinion per curiam that "summary cause," as defined in section 3 (i) (1) of the Sheriff Courts (Scotland) Act 1907 meant an action for payment of money and nothing else.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), sections 3 (*i*) (1), 8, and 28 are quoted *supra in rubric*.

A. E. Abrahams, Limited, advertising contractors, Stratford, Essex, and the said A. E. Abrahams as an individual, brought an action against William Campbell junior, furniture dealer, Dumbarton, in which the pursuers' claim, as stated in the initial writ, was "for payment of the sum of £43, 16s. stg., being amount due in terms of agreement executed by defender and dated 1st March 1907, for advertising on six glass slides on the electrical cars running at Dumbarton for 146 weeks commencing 11th June 1907, at the cost of 1s. per week each glass, viz., 6s. per week in all, under reservation of pursuers' rights to any and all sums yet to become due by defender under said agreement." The crave was for decree for the said sum of £43, 16s.

By agreement dated 1st March 1907 the defender made a contract with the individual pursuer in the following terms—"I, William Campbell junior, do hereby