

being so, I think we should adhere to the Lord Ordinary's interlocutor, reserving the question of expenses, and I should suggest that power be given to the Lord Ordinary to dispose of the expenses of this reclaiming note, and of the expense of raising the action of multiplepinding, so that there will be no need for the case to come back here unless something is done of which any of the parties may have reason to complain.

LORD KYLLACHY—I am entirely of the same opinion. I agree with the Lord Ordinary's construction of the correspondence, and think with him that it forms no bar to this action. I agree with him also that the case of *Muir* decides practically the question of the competency of a multiplepinding in the circumstances which exist here.

LORD STORMONTH DARLING—I concur.

LORD LOW—I am of the same opinion. If it had not been for the case of *Muir* I should have had great difficulty in holding that this multiplepinding was competent. I remain, however, of the opinion which I expressed in the Outer House that there is no substantial difference between the circumstances of this case and that of *Muir*, and I think that it is desirable that when a rule of practice has once been laid down it should be followed.

The Court pronounced this interlocutor—

“Refuse the reclaiming note, adhere to the said interlocutor reclaimed against and remit the case back to Lord Salvesen to proceed therein: Reserve the question of the expenses of the Reclaiming note, appoint them to be expenses in the cause, and authorise the Lord Ordinary to deal with them at the conclusion of the cause.”

Counsel for Defenders and Reclaimers, Hagart & Company—Hunter, K.C.—Chree. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for Defender, Reid, Real Raiser and Respondent—Cooper, K.C.—Mac-Robert. Agents—Drummond & Reid, W.S.

Agents for Pursuers and Nominal Raisers—Webster, Will, & Company, S.S.C.

Saturday, December 16.

SECOND DIVISION.

[Sheriff Court at Aberdeen.

PARK v. MAVER.

*Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), sec. 2, sub-sec. 1.—Claim for Compensation—“Claim” means a Demand for Definite and Specified Sum.*

By section 2, sub-section 1, of the Workmen's Compensation Act 1897 it is provided that proceedings for the recovery under the Act of compensa-

tion 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 with respect to such accident has been made within six months from the occurrence of the accident.”

A workman was injured on 16th August 1904. On 20th September 1904 his law-agent wrote to the employers as follows—“I am instructed” on behalf of the workman “to give formal notice of the claim arising in respect of injuries received by him whilst in your employment on 16th August 1904. . . . I understand you are already acquainted with the circumstances, but it is necessary to give you notice in order to found proceedings should these be necessary for obtaining compensation.”

On 14th August 1905 the workman brought an arbitration in the Sheriff Court.

*Held (following Bennett v. Wordie & Co., May 16, 1899, 1 F. 855, 36 S.L.R. 643) that the letter was not a “claim for compensation” in the sense of the Act, inasmuch as it did not contain a demand for a definite and specified sum, and that consequently the arbitration proceedings of 4th August 1905 were not maintainable.*

*Powell v. Main Colliery Co., Limited, [1900] A.C. 366, commented on.*

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), 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 before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death: provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause.”

The following case in an appeal under the Workmen's Compensation Act 1897 was stated by one of the Sheriff-Substitutes of Aberdeen, Kincardine, and Banff (ROBERTSON)—“This is an arbitration in which the respondent claims compensation from the appellant to the amount of 17s. weekly as from 30th August 1904, but under deduction of £38, 11s. 11d. paid to account, with expenses.

“The grounds of the claim are that the respondent was employed by the appellant on 16th August 1904 at the erection of a house. The building was then over 30 feet in height, and scaffolding was being used for its construction. The respondent, while engaged at said building on said date, sus-

tained injuries, and was unable to earn any wages until 5th July last, when he resumed work with the appellant till 26th July last, but has been unable to work since said last-mentioned date.

“On 20th September 1904 the respondent’s law-agent wrote the following letter, which was admittedly received by the appellant—

“181 Union Street, Aberdeen,  
Mr James Park, 20th Sept., 1904.

Joiner,

13 Balmoral Terrace, Aberdeen.

Dear Sir,—I am instructed on behalf of Mr George Maver, joiner, 193 Holborn Street, Aberdeen, to give formal notice of the claim arising in respect of injuries received by him whilst in your employment on 16th August 1904 at new house in course of construction at Roslin Terrace, Aberdeen, caused by a mortar-tub falling on him off a crane, with the result that his head was severely cut and his back and one of his arms injured, besides being stunned and suffering a serious nervous shock. I understand you are already acquainted with the circumstances, but it is necessary to give you notice in order to found proceedings should these be necessary for obtaining compensation.—Yours faithfully,

T. R. GILLIES.”

“The respondent raised the present proceedings in the Sheriff Court at Aberdeen on 4th August 1905.

“The appellant’s pleas-in-law were, *inter alia* :—1. ‘The application is irrelevant.’

“2. ‘The application is excluded, and is incompetent, in respect that the claim now maintained with respect to said accident was not made within six months from the occurrence of the accident as required by section 2 of the Workmen’s Compensation Act 1897.’

“The Sheriff-Substitute (SANDEMAN), acting at Aberdeen on 21st August 1905, heard parties, and held that the letter above copied was a claim for compensation in the sense of the Workmen’s Compensation Act 1897, section 2, and therefore repelled the pleas-in-law above quoted, and *quoad ultra* allowed proof, which was led before me on 19th October 1905. On the evidence adduced at said proof I held that the respondent was entitled to compensation at the rate of 12s. 3d. per week, and I accordingly awarded him this amount.

“The question in law for the opinion of the Court is—‘Whether the letter of 20th September 1904 above copied was a claim for compensation in the sense of section 2 of the Workmen’s Compensation Act 1897?’

Argued for the appellant—The letter was not a “claim” within the meaning of the Act, inasmuch as it did not contain a demand for a definite sum of money. It was only a “notice”—*Bennett v. Wordie & Company*, May 16, 1899, 1 F. 855, 36 S.L.R. 643; *Powell v. Main Colliery Company, Limited*, [1900] A.C. 366.

Argued for respondent—The letter was a good “claim,” and not merely a “notice.” The only object of section 2 was to impose a time limit within which proceedings must be taken, and accordingly it merely enacted that a “claim for compensation” must be

made within a certain time; it did not enact that the amount claimed must be stated—presumably, however, it would be the maximum provided by the Act—that being a matter of no moment so far as concerned the immediate purpose of the section. Any introduction of additional technical requirements was utterly opposed to the spirit of the statute—see the Lord Chancellor’s opinion in *Powell*. That case was an authority for the proposition that anything which could fairly be called a claim was sufficient. The letter here was in a better position than the letter in *Bennett*, but, in any case, *Bennett* was inconsistent with *Powell*, and in the more recent case of *Fraser v. Great North of Scotland Railway Company*, June 11, 1901, 3 F. 908, 38 S.L.R. 653, although the question of the necessity of the claim being for a definite amount was left an open one, there were distinct indications of opinion in favour of the view now contended for by the respondent. A technical illiberal interpretation of the Workmen’s Compensation Act was always to be avoided.

LORD JUSTICE-CLERK—If this question had come before us for the first time I should have said that the case for the respondent was not maintainable. But it is unnecessary to go into the reasons for so holding, because the question has already been dealt with by this Court. In the case of *Bennett v. Wordie* (1 F. 855) it was expressly decided that the statement of claim must not be a mere intimation of a claim, and that the amount of the claim must be stated. The only remaining question is, whether that decision has been set aside by higher authority. If the House of Lords had decided otherwise I should of course follow what they had laid down. But when the case of *Powell v. Main Colliery Company* (L.R. [1900] A.C. 366) is examined it will be seen that it contains a distinct statement to the effect that the decision of this Court in the case of *Bennett* was not wrong. Two questions arose there—*first*, whether the claim must be made in judicial proceedings, and *second*, whether there must be a claim for a definite amount. As to the first of these the House of Lords by a large majority held that judicial proceedings were not necessary, but it was also laid down that the claim must be for a definite sum. That being so, the decision to that effect in *Bennett* is not impugned. In *Powell’s* case there was a definite statement of a claim for 15s., and the other party was certiorated what he was asked to pay. This is a claim which bears to be for some compensation which is not stated, and it is therefore not a good claim. I am unable to hold a claim in general terms without specifying any sum to be a sufficient claim for compensation. On the whole matter I am of opinion that the appellant’s contention is right, and that the question should be answered in the negative.

LORD KYLLACHY—I am of the same opinion. I think, with your Lordship, that the question is settled by authority. In

the case of *Bennett v. Wordie*, 1 F. 855, two points were decided in this Court—*first*, that a “claim” in the sense of the statute meant a demand for a definite and specified sum as compensation for the injuries received; *second*, that the demand must be made judicially. In the subsequent case of *Powell v. Main Colliery Company* [1900], A.C. 366, the House of Lords approved of the decision in *Bennett* on the first point, but, by a majority, disapproved of it upon the second point. In these circumstances it appears to me to be quite impossible to hold that the letter in this case—the letter of 20th September 1904—was a “claim” in the sense of the statute.

LORD LOW—I am of the same opinion. There is no substantial difference between the notice given in the case of *Bennett v. Wordie & Company*, 1 F. 855, and the notice given here. In neither case is there a specific claim for compensation but only a notice that a claim will be made. That was held in the case of *Bennett* not to constitute a “claim for compensation” within the meaning of section 2 of the Act, and that interpretation of the statute was subsequently expressly approved of by the House of Lords in the case of *Powell v. Main Colliery Company*, [1900] A.C. 366. I am therefore of opinion that the question of law stated in the case falls to be answered in the negative.

LORD STORMONTH DARLING was absent.

The Court answered the question of law in the negative, recalled the award of the arbitrator, and remitted to him to dismiss the claim.

Counsel for the Appellant—Orr, K.C.—Spens. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondent—Hunter, K.C.—Macmillan. Agent—Andrew Newlands, S.S.C.

Saturday, December 16.

### FIRST DIVISION.

(Before the Lord President, Lord M'Laren, Lord Kinnear, Lord Kyllachy, Lord Stormonth Darling, and Lord Low.)

#### MARQUIS OF TWEEDDALE'S TRUSTEES v. MARQUIS OF TWEED- DALE AND OTHERS.

*Succession — Vesting — Liferent or Fee — Direction to Pay subject to Subsequent Declaration to Hold for Legatee in Liferent and her Children in Fee—Death of Legatee without Issue.*

A testator by his trust-disposition and settlement directed his trustees “to make payment” at a certain term after his death of a certain sum to each of his daughters, “but . . . subject always to the provisions, declarations, powers, directions, and others hereinafter written.” In a subsequent pur-

pose of the settlement he provided and declared that, “notwithstanding anything to the contrary herein before written,” the trustees were to “set aside and hold and retain and invest in their own names,” as trustees, the several provisions granted to each of his daughters for behoof of the daughters “in liferent for their respective liferent uses allenerly . . . and for behoof of their respective children equally among them in fee.” The *jus mariti* and right of administration of the daughters’ husbands were excluded, and the daughters’ liferents were declared to be alimentary and not liable to the diligence of creditors. There was no destination-over of the daughters’ shares in the event of their dying without issue.

*Held* (1) that the daughters took a fee of the sums directed to be paid to them respectively, which was reducible to a liferent only in the event of their having issue, and (2) that on the death of a daughter without issue her share fell to be disposed of as part of her moveable estate.

The late Marquis of Tweeddale died on 10th October 1876, leaving a trust-disposition and settlement dated 9th April 1870, which, with various codicils, was registered in the Books of Council and Session on 18th October 1876.

The trust-disposition provided as follows—(Fifth purpose)—“I direct and appoint my trustees to make payment at the first term of Whitsunday or Martinmas that shall happen six months after my decease, to each of my daughters Elizabeth Duchess of Wellington, Lady Louisa Jane Wardlaw Ramsay, Lady Hannah Charlotte Watson Taylor, Lady Emily Peel, and Lady Jane Taylor, of the sum of £8500; to my daughter Lady Julia Hay of the sum of £13,500; to each of my sons Lord William Montagu Hay and Lord John Hay of the sum of £505; and to each of my sons Lord Charles Edward Hay and Lord Frederick Hay of the sum of £13,905; the lawful issue of any of my said children who may predecease me leaving issue coming in place of their parents, and taking equally among them the said sums which would have been payable to their deceased parents if in life, but subject always, in the case of my sons the said Lord Charles Edward Hay and Lord Frederick Hay, and my said whole daughters, to the provisions, declarations, powers, directions, and others hereinafter written applicable to them respectively.” (Seventh purpose)—“I direct and appoint my trustees (subject always as regards any provisions falling to my sons the said Lord Charles Edward Hay and Lord Frederick Hay, and my said whole daughters, to the provisions declarations, powers, directions, and others hereinafter written applicable to them respectively) to pay, convey, and make over, as soon as conveniently may be, after implement and fulfilment of the preceding purposes of this trust, the whole residue and remainder of my said means and estate, heritable and moveable, real and personal, to my son the said Viscount