Tuesday, June 11.

FIRST DIVISION.

[Sheriff Court at Aberdeen.

GREAT NORTH OF SCOTLAND RAILWAY COMPANY *v.* FRASER.

Reparation— Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 2.—*Claim for Compensation—Claim First Made in Application to Sheriff—Notice of Claim.*

Section 2 of the Workmen's Compensation Act 1897 enacts that proceedings for the recovery of compensation under the Act 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."

Held that an application for arbitration under the Act made within the six months was in itself a sufficient claim to satisfy the conditions of the statute.

A workman was injured on 2nd May. On 30th October his law-agent wrote to his employers intimating that he was raising proceedings under the Act, but without stating the amount claimed. On the 31st he lodged with the Sheriff and served on the employers an application for arbitration under the Act. *Held* that the provisions of section 2 with regard to a claim being made within six months had been sufficiently complied with, and that the proceedings were competently maintained.

Question reserved, whether the agent's letter was a sufficient claim.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *Sched.* 1, *sec.* 2 — *Compensation — Wage-earning Capacity—Offer by Employers to Employ at Same Work and Wages as before Accident.*

A workman who was employed in the service of a railway company as an engine-cleaner lost his arm by an accident in the course of his employment. His employers offered to take him on at the same employment and at the same wage as he had previously earned, but this offer he declined. In an application at his instance under the Workmen's Compensation Act 1897 the employers maintained that in respect of their offer he was not entitled to be awarded any weekly payment under the Act. The Sheriff found in fact that he was no longer able to do the whole work of an engine-cleaner; that apart from the employers' offer he could not earn full wages in that employment; and that he was no longer eligible for certain higher posts in the railway service to which engine-cleaners have in the ordinary course a chance of attaining, and found him entitled to 6s. a-week. *Held*, in a case stated for appeal, that in the circumstances the workman was entitled to be awarded the sum allowed by the Sheriff.

The Great North of Scotland Railway Company, Limited, appealed, on a case stated, against a judgment of the Sheriff-Substitute of Aberdeenshire (ROBERTSON) as an arbitrator under the Workmen's Compensation Act 1897, whereby they were found liable to pay compensation at 6s. per week to John Fraser, engine-cleaner.

The facts set forth in the stated case as proved were as follows—"That the respondent John Fraser is eighteen years of age, and was in the employment of the appellants as an engine-cleaner on 2nd May 1900, when he met with an accident in the course of his employment, as a result of which his right arm was amputated above the elbow. That the respondent was at the time of the accident employed in or about a railway in the sense of the Workmen's Compensation Act 1897. That respondent had been ten months in said employment, and his average weekly wage during that period was 16s. That the present application was brought on 31st October 1900, and no previous written notice or claim had been given or made to the defenders, except a letter from respondent's agent to the appellants' solicitor, sent on 30th October 1900 in the following terms, viz.—'Dear Sir,—I have been consulted by John Fraser, engine-cleaner, lately in your company's service as to his claim for compensation in respect of the loss of his arm on the 2nd May last. As it will be six months on Thursday first from the date of the accident there will be no time to negotiate, and I must therefore raise action under the Workmen's Compensation Act. This, however, will be done merely to conserve my client's legal position, and I trust will not stand in the way of a friendly settlement. Please let me know by noon to-morrow if you will accept service.' That the application was raised on 31st October 1900, and that the appellants' solicitor accepted service thereof on same date. That appellants were aware of the accident, and had, up to the time of the raising of this application, paid to the respondent his full wages, and that they suffered no prejudice from the fact of no notice being sent of the accident. That thereafter appellants offered to take the respondent at his former wages to work at the same employment as he had at the time of the accident, adding that 'if anything more suitable turns up hereafter it could be given to him. I am writing without prejudice to my company's pleas should we have to thresh the matter out in Court.' That respondent declined said offer, in respect (1) that the appellants declined to guarantee its permanency, and (2) that he was satisfied that he was not equal to the work with one arm. That respondent, while he could clean portions of an engine with one arm, is not able to do the whole work of an engine-cleaner. That apart from the fact that he was injured in the appellants' service, the respondent would not be entitled to and could not get full wages as an engine-cleaner. That in the service of the appellants an engine-cleaner has in ordinary course the chance of being promoted to be in the first place a fireman and finally an

engine-driver, and that the respondent is not now eligible for either of these posts. That his wage-earning capacity was diminished."

On these facts the Sheriff held (1) that the application was competently brought. (2) That the respondent was entitled to compensation under the Act; and he awarded him 6s. a-week from and after 30th October 1900, and found him entitled to expenses.

The questions of law for the opinion of the Court of Session were—"(1) Whether the present proceedings cannot be maintained in respect that the claim for compensation with respect to the accident was not duly made, and no question had arisen for settlement by arbitration in terms of the Act? (2) Whether in the circumstances, having regard to the fact that the appellants offer and are willing to continue the respondent in their employment at a wage equal to his average weekly earnings during the twelvemonths previous to the occurrence of the accident, and that the respondent has declined said offer, the respondent is entitled to decree for the sum of 6s. per week awarded to him?"

The Workmen's Compensation Act 1897 enacts (sec. 2)—"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." Schedule 1, section 2—"In fixing the amount of the weekly payment regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident, and the average amount which he is able to earn after the accident."

Argued for the appellants—*On the first question*—There was here no claim such as the statute required. The agent's letter was not a claim, but merely a notice that a claim was going to be made. A claim must state the amount claimed; if it did not, it was merely an indication of an intention to claim—*Powell* v. *Main Colliery Company, Limited* [1900], A.C. 366, *per* Lord Chancellor; *Bennett* v. *Wordie & Company*, May 16, 1899, 1 F. 855. Nor were the judicial proceedings a claim. The principle of the Act was that the employer must have a claim made against him stating the amount demanded, and that he should have an opportunity of considering it. This principle was laid down in the opinion of Romer, L.J., in *Powell* [1900], 2 Q.B. 158, and approved by Lord Davey in the House of Lords. *On the second question*—The Sheriff was wrong in fixing the amount of compensation. The proper course when, as here, the workman received or was offered the same wages as before, was to make a finding that his wage-earning capacity was diminished, and leave the actual amount to be settled on a future application — *Freeland* v. *Macfarlane*, March 20, 1900, 2 F. 832; *Irons* v. *Davis & Timmins, Limited* (1899), 2 Q.B. 330; *Chandler* v. *Smith* (1899), 2 Q.B. 506; *Pomphrey* v. *Southwark Press* [1901], 1 K.B. 86.

Argued for the respondent—*On the first question*—There was nothing in the statute to make it necessary to state particulars in the claim made, and therefore the agents' letter complied with the statutory requirements. The employer, knowing what his workman's wages were, and what were the limits of compensation, could discover the amount of the claim for himself. Even assuming, however, that the letter was not a sufficient claim, the proceedings for arbitration were instituted within six months after the accident, and were in themselves a sufficient claim. The case of *Powell* v. *Main Colliery Company* (*cit. sup.*) was really in favour of this view, and it was contrary to the spirit of the Act to clog its working by any technicality of the kind suggested by the appellant. *On the second question*—The contention for the appellants on this point must necessarily mean that if a workman refused the offer of his employers to continue in his employment after the accident he was barred from claiming compensation, no matter how much his wage-earning capacity had been diminished. There was no warrant for that contention in the Act, and there was authority in England against it—*Ellis* v. *Knott*, April 9, 1900, Minton-Senhouse Reports of Compensation Cases, vol. ii., p. 116. The workman might feel himself unfitted by the accident for his previous employment; he might, as in this case, feel that the loss of his arm made an occupation, already dangerous, much more so.

Lord President—Two questions of law are submitted for our adjudication in this case, the first being, "Whether the present proceedings cannot be maintained in respect that the claim for compensation with respect to the accident was not duly made, and no question had arisen for settlement by arbitration in terms of the Act." The decision of that question must depend mainly upon the terms of section 2 of the Workmen's Compensation Act of 1897 as applied to the facts of the case. That section requires two things as conditions-precedent to a proceeding for recovering compensation under the Act—first, that notice of the accident shall have been given as soon as practicable. That requirement, it is admitted, may be dispensed with, and no point is made upon it here. The second condition is that a claim for compensation in respect of such accident shall be made within six months from the occurrence of the accident causing the injury, or in case of death within six months of the death, and it is maintained by the appellants that nothing which was done by the applicant in this case constituted a claim for compensation in the sense of the section. The Act does not require, in terms at all events, that the amount of compensation shall be stated in the claim, but merely that a claim for compensation with respect to the accident shall have been made. We have here, on the second last day of the six months, the letter of 30th October 1900, written by the appellant's solicitor to the Railway Company, and it begins—"I have been consulted by

John Fraser, engine-cleaner, lately in your company's service, as to his claim for compensation in respect of the loss of his arm." So that the letter clearly relates to a claim for compensation, and we know from other statements in the case that negotiations were going on between the respondent and the appellants as to that claim. But the appellants maintained that a claim for compensation must contain a specification of the sum claimed; that it is not enough to say, "I claim compensation." I do not think it necessary to express any opinion upon this point, because even if the letter of 30th October was held insufficient to satisfy the statutory requirement of a claim, the application which was brought on 31st October, within the six months, is sufficient to do so.

That application in its prayer asks the Sheriff to fix and determine the amount of compensation, and thereafter craves decree for payment to the respondent of the sum of eight shillings weekly, or such other weekly sum as the Court in the course of the proceedings may fix and determine. So that, within the period of six months the appellants had a letter intimating a claim for compensation, and a formal application specifying the amount claimed. Now, it seems to me, without discussing the precise requisites of a claim, that the application by itself, or the two documents together, satisfy the requirement of section 2 in regard to that matter.

The second point is of a different kind, and it certainly raises a question of very general importance, as it involves the contention on the part of the appellants, that if they choose to offer to continue to employ an injured workman at a wage equal to his average weekly earnings during the twelve months previous to the accident, he is not entitled to decline the offer, and that if he does decline it, he must go without compensation. Now, I must say that is a somewhat startling doctrine, for which I find no warrant whatever in the Act. The first schedule of the Act, sub-section 2, which declares the mode of ascertaining compensation, runs thus—"In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident, and the average amount which he is able to earn after the accident, and to any payment not being wages, which he may receive in respect of his injury, during the period of his incapacity." The first observation which occurs on the appellants' proposal is, that it is not an offer of compensation, measured by the difference between the earning capacity of the respondent before the accident and his earning capacity after the accident. That his earning capacity has been largely diminished is plain from the Sheriff's statement, that "the respondent, while he could clean portions of an engine with one arm, is not able to do the whole work of an engine-cleaner," and then he goes on to say that the respondent would not now be fit to be first a fireman and afterwards a driver, a course of promotion usually open to engine-cleaners. There is nothing in the statute which would require that a workman who has lost his right arm shall remain in the service and endeavour to clean parts of engines with his left hand. It is common knowledge, that when a man has sustained a serious injury in connection with dangerous mechanism, he is apt to be scared and timorous about having anything to do with that mechanism again; and I think that this should not be left out of view when it is said that the respondent's refusal of the terms offered by the appellants is capricious. The offer is not made in perpetuity, or for any definite period, and even if it had been, the respondent would not have been bound to accept it in lieu of the compensation provided by the Act. It therefore appears to me that upon the second point, as well as upon the first, the Sheriff-Substitute's judgment is right.

LORD ADAM—The first question here is, "Whether the present proceedings cannot be maintained, in respect that the claim for compensation with respect to the accident was not duly made, and no question had arisen for settlement by arbitration in terms of the Act." Now, we have this proceeding before the Sheriff going on, in which this was pronounced, and there is no limitation of time we know within which such a claim may be brought against a company. It is sufficiently clear that if the claim for compensation refers to the action, it is all within the proper time. But that is not what is meant by the claim for compensation here, as I understand it, because, besides the claim in the action, Mr Ferguson contends, there was another claim necessary to be lodged in these proceedings which has not been lodged in these proceedings. That was a contention founded upon the 2nd section of the Act. Now, that section requires, apparently, a notice which shall contain certain things which are specified, and then it goes on to say—"And unless a claim for compensation in respect of such accident has been made within six months of the occurrence of the accident," and so on. These are necessary things in order to make good a claim. Beyond all doubt we have in this case a claim for compensation made, because it was made on the 31st day of October 1900, which was within the six months required by the Act. If this claim for compensation, which has taken the form it now has, is a claim for compensation within six months I do not see where the objection lies at all. The thing is, that an employer is to get notice of a claim for compensation any time within six months. The Act does not say it shall be in a particular form. The Act does not say that it shall not be in the form of a summons—a petition before the Sheriff, as required in Scotland. That might be a claim for compensation within six months; and there is nothing that I see in the Act which says that after having given that notice you are not to go on in the same form, and to use it under this Act in the circumstances of this case. And that is really the question

here. I think there is certainly a claim for compensation given within the six months, and I say nothing about whether the letter was in itself an intimation, for it was not required as a notice. As to whether it might not also be necessary that it should be sustained as a distinct claim under the 2nd section, it was said that it could not because it does not specify the amount. I prefer to reserve my opinion as to that; but I think there is an absolutely good answer to the objection taken in this case, in respect that the claim was in time, being given by the raising of the action within the six months. That being so, I see no reason why the action should not be subsequently proceeded with.

With reference to the second question, it is quite a different one, and I agree with your Lordship on it also. The point is this—when he was injured he was earning sixteen shillings a-week, and the duty fell upon the Sheriff, by the second section of the First Schedule of the Act, to make inquiry, and fix the amount of weekly payment to be made to him, and that regard should be had to the difference between the weekly amount earned before the accident and the average amount earned after. That was the proposition presented to the Sheriff by the Act. The Sheriff tells us that he entered into all the required inquiry. He gave all relevant consideration to it, and he came to the conclusion that the wage-earning capacity was diminished, and diminished apparently to the amount of six shillings a-week, because he fixes that sum, and it is found as a fact in this case. Nobody objects, so far as I understand, to the amount fixed by the Sheriff. Nobody says it should have been more, and nobody says it should have been less. Therefore it is difficult to say, that having been found by the Sheriff, why he should not get it. But the question raised is quite a different question. It is a question of this kind—it is a bar to his getting any compensation at all, because it is said that the respondent is entitled to nothing because he has declined the offer made by the appellants to give him the same weekly wages as before. Now, we know that as matter of fact the lad is not able to earn the same wages as before, and the Sheriff has found in point of fact that he cannot earn the same wages as before by reason of his injuries. I see nothing to bar a man who has been so injured, and whose capacity to earn wages is not the same as before, recovering compensation. We are told that he shall not recover compensation unless he accepts an offer made to him of the sum of his earnings. I see nothing in the Act of that sort. If a man says, "I am unable to earn what I did before, or to resume the work I had before, and I am not going to do it," I see nothing in that to show that the Sheriff is not perfectly right in saying that the wage-earning capacity is diminished to the amount of six shillings per week. And it is neither diminished nor increased by the fact that he will not accept the offer. I cannot see why it should be decided otherwise.

LORD M'LAREN—As has been pointed out, there is no question at all about notice of the accident, because that point has been finally determined by the Sheriff acting as the statutory arbitrator. But then the Act of Parliament provides, or rather makes it a condition of the right to compensation, that within six months after the cause of claim has arisen a claim of compensation shall be made. It appears from the stated case that a letter was written by the injured man's agent two days before the expiration of the six months, and a claim in the form of a petition to the Sheriff was lodged on the following day, both these writings being within the period of six months allowed by the statute. And therefore if either of these be a claim in the sense of the statute, it is a claim made in due time. But it was argued to us that the letter was not a claim in the sense of the Act, because no sum of compensation was specified; that it was merely an intimation of a right to compensation in general terms. Then as to the petition, it is said that it was not the kind of claim which the Act of Parliament required; that the Act contemplates a claim of an informal kind, instead of these more contentious proceedings which form the subject-matter of the arbitration. Reliance was placed on both sides on the case of *Powell* v. *The Main Colliery Company*, I need hardly say that while, according to the best interpretation of the statute, employers of labour within Scotland are not indulged with the luxury of an appeal to the House of Lords, they are most fully entitled to the benefit of all the law that may be laid down by the House of Lords in appeals from English decisions under the same Act of Parliament. But when we look at the case of *Powell* the first thing that one notices is that the decision of the Court of Appeal, which was under appeal to the House of Lords, was a decision to the effect that an informal claim made within six months was insufficient, because in the opinion of the learned Judges what the statute required was a formal request for arbitration filed in a county court. Now, such a proceeding, indeed, was taken, but was not taken within the period of six months, and would not have been available on the point in question. But having read the decision I cannot find that any member of the Court of Appeal, or any of the Judges who took part in the decision of the House of Lords, ever doubted that a request for arbitration filed in a county court would have been a good claim if made within the statutory period of six months. The House of Lords had not to consider that point at all, although it is pretty evident what their decision would have been, and the decision in *Powell* is only a decision that an informal notice will satisfy the requirement of the statute. As the Lord Chancellor puts it—"The claim made in this case was made for a definite amount in respect of an accident described by its date, and as I say I should think no person unless forced to give an artificial meaning to the words of the section which I have read could doubt that it was a 'claim for compensation'" But

while my opinion is that a petition to the Sheriff in Scotland is a perfectly good way of making a claim, I cannot say that I would regard the decision in *Powell's* case as authority for the proposition that the agent's letter in this case was also a good claim. I should prefer, in common with your Lordship, to reserve my opinion on that point, because it may arise in other cases. I shall only say that if I should have the misfortune to be obliged to prefer a claim of this kind, I think I would not risk it upon a letter which did not state the amount of damage which I wished to be found due to me.

Passing to the second question, whether the Sheriff ought to have refused to make an award, in respect that the Railway Company had offered to continue to the claimant the wages he had been accustomed to receive. I think there is, perhaps, room for a distinction in regard to the rights of employers in this respect, because if the claimant had been willing to accept this offer, or if he had said, "I am quite willing, at all events, to give a trial to my old work at that wage," then I think his right would remain to have an inquiry as to the extent to which he was disabled from earning wages, and to have a sum found due to him. It may very well be that in such a case a weekly sum of money might be awarded under the qualification that this weekly payment was not to take effect so long as the claimant was working for full wages to his old employers. But in this case the claimant does not desire to work at his trade as an engine-cleaner, and one can understand that after the accident he sustained he might have an insuperable distaste to continuing in the employment. That, however, does not help us very much to a solution of the question, because the only point I think under this question is, whether we can find in the statute authority to refuse the compensation to which the workman would otherwise be entitled, on the ground that he declines to continue in the service of his employer. It seems to me that if we were to hold that this was a condition of the right to compensation, we should be introducing a new condition into the statute, which, as I read it, is not to be found there. The conditions are carefully defined in the 2nd section, and are defined in such a way that, I venture to say, it would be impossible to impose upon employers a burden in favour of a man who by choice was leading a life of idleness, because the arbitrator is to inquire into the man's ability to earn a wage, and he is only to give him compensation for his disablement in respect of the accident. But that is a very different condition from what is proposed—that the right to compensation should be conditional on the claimant consenting to continue in the service of the same employer.

Lord Kinnear—I agree that it is not desirable in this case to express any opinion as to the effect of the agent's letter of the 30th October if that letter had not been followed by any other procedure within the six months. Whether that would be a perfectly sufficient claim in the sense of the statute or not is a question that does not seem to me to arise, for the reasons which your Lordships have already pointed out. Therefore I desire to reserve my opinion upon it. But I think that the application to the Sheriff, which was made on the 31st of October, and which was certainly within the six months, is a perfectly sufficient claim to satisfy the conditions of the statute. All that the statute requires is that a claim shall be made, and the document, which is said not to be a sufficient claim, sets out perfectly clearly and distinctly everything which can possibly enter as an element into the composition of a claim under the statute. It sets out the fact of the accident, the fact that the applicant demands compensation, and the amount of the compensation which he demands, and I cannot see anything more which requires to be specified in order to make a perfectly good claim. It is not the less a good claim because it happens to be in one of the forms contained in the schedule to the Sheriff Court Act of 1876. In the case of *Powell* it was held in the House of Lords that a claim made by a workman under this statute does not require to be a formal judicial claim, but that it may be made in any manner, however informal, provided, of course, that it is made clear to the employer on whom it is served what the intention of the claim is. But there is nothing in the opinions of the learned Lords to suggest that a claim is any the worse because it is formal. The decision that you may adopt any form you like in stating your case does not prevent you taking the ordinary form which is adopted in certain proceedings in the Sheriff Court. The only point which, it appears to me, the appellants could make upon this part of the case was suggested in Mr Ferguson's argument that the employer is entitled to an opportunity for considering whether he will settle the claim otherwise than by going to the Sheriff, and it was said that a petition in the Sheriff Court was premature. Mr Ferguson's argument was that it was premature, because it was a proceeding only to be taken failing certain other proceedings which are pointed out by the statute. In the first place, if there is a committee representative of the employer and his workmen, then they may settle it; and in the second place, if there is no committee, then the question is to be settled by a skilled arbitrator agreed on by the parties, and it is only in the absence of agreement that it is to be settled by a County Court judge in England or by a sheriff in Scotland. But then it is only if no objection is made by either party that a representative committee is to settle the matter, and it is only if both parties agree that it is to be settled by an arbitrator nominated, and there cannot be clearer evidence that one of the parties does not mean to agree to either of those methods, and is demanding to go at once before the Sheriff, than the presentation of a petition in the Sheriff Court. But even if the application were premature on the ground suggested, the

only consequence would be that it might be dismissed as a petition in the Sheriff Court, but it would still remain a perfectly sufficient intimation of the workman's claim to satisfy the requirements of the statute. Therefore it appears to me that that objection completely fails.

As to the second point, I agree with your Lordships. The material point appears to me to be that all the considerations which ought to go to affect the maintenance of a claim for compensation are very plainly set out in the case stated by the Sheriff-Substitute, and have been fairly considered by him. I confess that it appears to me that a great part of the appellants' argument was based upon a misconception of the question which is really raised in this appeal, and especially of that part of the argument which was founded upon the second section and the First Schedule. We have nothing to do in this appeal, as I think, with what the Sheriff is required to consider in estimating the amount of the award which he is to give. If it had been said that certain facts, and, in particular, the fact upon which so much weight was laid, that the Railway Company have offered this man employment and that he has refused it, had been brought before the Sheriff, and that he had refused to consider it, I daresay that might have been a relevant objection to his award. And if it could be shown that such a refusal was due to a failure on the part of the Sheriff to have regard to one of the things which the second section requires him to consider, we should have to send the case back to him. But nothing of the kind is stated in the case. It is perfectly clear from the statement of the case that the Sheriff has had regard to all these facts which the appellants bring before us, because they are all very clearly set out in the case, and having had regard to them all he has proceeded to fix the amount of the compensation. Now, that we, of course, cannot review, and we are not asked to review it, but the only point that was taken is this, not that that compensation was not reasonable, not that it has not been fixed upon a careful consideration of all the elements which the statute requires, and which the Sheriff is bound to take into account, but that although it may be a proper award, the respondent is not entitled to have decree for the amount, because his employers have offered him an employment which he has declined to accept. I can quite see the force of what Mr Salvesen said, that in many cases it is very right and proper for a company to give a workman such employment as he may be fit for after he has been injured in their service, although he is no longer a perfectly able-bodied man, and it may be very right that an injured workman to whom such an offer is made should accept it, and should not endeavour, as Mr Salvesen said, to eat the bread of idleness. All that is perfectly proper, but it merely suggests considerations for an arbitrator in estimating the amount of his award. If he should find, upon taking all these considerations into account, that the compensation due under the statute is so much, then this Court cannot interfere with the process by which he has reached that conclusion. The point really came to this, that the respondent was bound in law to undertake the work which was offered to him by the Railway Company. I confess I know of no principle in law which would enable us to affirm that proposition. I can conceive no reason why he should be bound in law to accept an employment which he does not choose to accept, although the offer and refusal may be properly taken into account in fixing the amount of his compensation. When one looks at the case and finds that what is set out is that the man is satisfied that he is not equal with one hand to the work which he used to do when he had two hands, and that the Sheriff says that that is matter of fact, that he is not equal to his former work of engine-cleaner, and that he could not get wages at that work if he tried it, it seems to me that it would be a very arbitrary proceeding in a court of law to say that in these circumstances the man was bound to undertake the work merely because it was offered to him. I am therefore unable with your Lordships to find anything in the statute which would justify our saying that the respondent is to be deprived of compensation, because in the circumstances set out in this case he has declined to undertake the work which the Railway Company offered to him.

The Court pronounced this interlocutor—

"The Lords having heard counsel for the parties upon the stated case on appeal, Find in answer to the first question in the case that the proceedings were competently maintained; and in answer to the second question, that the respondent is in the circumstances entitled to be awarded the sum of six shillings per week, and decern," &c.

Counsel for the Appellants — Salvesen, K.C. — Ferguson. Agents — Gordon, Falconer, & Fairweather, W.S.

Counsel for the Respondent—Dove Wilson. Agent—Alexander Ross, S.S.C.

Tuesday, June 11.

FIRST DIVISION.

[Lord Low, Ordinary.

BARR *v.* ARDROSSAN CASTLE CURLING CLUB.

Succession — Legacy — General or Special Legacy — Ademption — Demonstrative Legacy.

A, by his trust-disposition and settlement executed in 1878, directed his trustees "to pay or transfer . . . the legacies following, namely, to pay" legacies of sums of money to two persons named and "to transfer" to the officials of a certain club "two five per