REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL, WHICH, THOUGH NOT ORIGINATING IN SCOTLAND, DEAL WITH QUESTIONS OF INTEREST IN SCOTS LAW.

HOUSE OF LORDS.

Thursday, June 9, 1910.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Atkinson, Collins, Shaw, and Mersey.)

THOMPSON *v.* GOOLD & COMPANY.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 2, *sub-sec.* 1—*Claim—Specific Sum.*

A "claim for compensation" under sec. 2 (1) of the Act need not be a claim for a specific sum.

Kilpatrick v. *Wemyss Coal Company* (1906, 44 S.L.R. 255, 1907 S.C. 320) *disapproved.*

The appellant was a workman who sustained injury by accident in the course of his employment with the respondents. He gave formal unwritten notice of a claim to compensation, but without mentioning any fixed amount in his claim. The Court of Appeal (COZENS-HARDY, M.R., FLETCHER MOULTON and FARWELL, L.JJ.) set aside the order of the County Court Judge and found that the workman was disentitled from compensation under the Act in respect of non-compliance with the statutory requisites of claim.

The workman appealed.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—There is no doubt that the decision of the Court of Appeal in this case has support from earlier authorities, though I do not think that any deliberate opinion has been expressed in this House, or even that the precise question has been raised. Your Lordships would, however, at all times pay the utmost respect to these authorities; but I confess that they do not convince me, and they seem to proceed rather upon considerations of public policy than upon a strict interpretation of the Act of Parliament. This Act says that "the claim for compensation" must be made within six months of the accident. It has been held in the Court of Appeal that unless the amount claimed has been specified there has been no "claim for compensation." I cannot see why it should be so. There is no such provision in the Act itself; I mean in its actual terms. If a man says, as admittedly the appellant did say, "I claim compensation," why are we to conclude that he did not so claim? The reasoning for the respondents is that unless a sum is named the employer is deprived of an opportunity of settling the claim and so avoiding proceedings under the Act. Surely if he wants to know he can ask the question or he can make an offer himself. Perhaps the workman would answer, especially if he gave the notice immediately after the accident, that he cannot tell until a little time has elapsed what degree of injury he has sustained. If the Act had imposed upon a workman the duty of specifying the amount which he demanded when making the claim it might have been thought unfortunate, because it would often make the workman ask, as a matter of prudence, for the maximum that he could possibly recover. But I forbear from speculating as to what it would have been advisable for the Act to say. It is enough that the Act does not say that the amount is to be specified, and, with all respect, we must construe it as it stands. In my opinion, therefore, this appeal succeeds. I will add that, even if it were necessary to specify the amount, my present view is that the respondents waived that particular. But I should not so decide without further consideration, and the point does not arise in the view which I believe that your Lordships take of the Act itself.

LORD ATKINSON—In this, which was a case under the Workmen's Compensation Act 1897, the County Court Judge has found, amongst other things, first, that verbal notice of the accident was given by the workman to one Devereux, the manager of the works in which he (the appellant) was employed; secondly, that this notice was not formal in character;

and thirdly, that the want of a formal notice did not prejudice the employers in their defence. It was not contended—it could not be contended successfully—that there was not abundant evidence in the case to sustain these findings. The County Court Judge further found that the appellant made a claim for compensation verbally to the same Devereux, not, however, stating the precise sum he claimed in money, or in any other way specifically fixing it. This finding, like the other, is justified by the evidence, and Devereux himself proved that he had informed his employers of all that the appellant had said to him. It must be taken, therefore, that the appellant's employers were made aware in a manner so specific as to enable them to make their defence, that the appellant had met with an accident in their works and that he had claimed compensation in respect of it. So much is clear. It is not suggested that the appellant's employers or any person on their behalf ever made any inquiry from the appellant or anyone who represented him as to what was the amount or nature of the compensation which he claimed. It is, on the contrary, proved by the respondents' witnesses that the appellant's solicitor—one Broughton, since deceased—called upon the manager of the respondents at Carlisle —Stubbs by name—for the purpose of making a claim on behalf of the appellant, and that Stubbs, though he "knew the appellant had had an accident," would not allow Broughton to discuss the case with him. And it is found by the County Court Judge that in his (the Judge's) belief Broughton had on this occasion in fact made a "definite" claim for compensation on the appellant's behalf. It is not clear what is meant in this connection by the word "definite." It may be that it does not mean that Broughton stated the amount claimed in money. Two questions, therefore, emerge for decision—First, the general question, whether it is necessary that the amount of compensation should be stated in the claim in order to make it a valid claim within the provision of sec. 2 of the Act of 1897 (60 and 61 Vict. c. 37); and, secondly, the question whether the appellant was relieved from the obligation of stating the amount of compensation by reason of the conduct and action of the respondents' agent Stubbs. It has been established by the authorities, and is not disputed, that the claim referred to in this section need not be in writing. A verbal claim is admittedly sufficient. It has also been established by authority, and not disputed, that the claim mentioned in this section is, like the notice of the accident therein also mentioned, a preliminary to the "proceedings for the recovery" mentioned in sec. 2, and not part of the pleadings, if such they can be styled, in these proceedings. It is, to use the words of the Master of the Rolls in the present case, "something antecedent to and apart from the formal application required by the statute." This was the point decided in your Lordship's House in the case of *Powell* v. *Main Colliery Company* ([1900] A.C. 366). The present point was not raised, and could not have been raised, in that case, for the simple reason that there the amount of compensation was precisely stated in the written claim; and I do not think that anything was said by any of the noble and learned Lords who took part in the decision which, fairly construed, amounted to an expression of opinion on the point now raised. I should have myself thought that it was plain upon the face of this statute that the object of requiring notice of the accident to be served was to protect the employer from exaggerated or unfounded claims. Hence the requirement that the full particulars should be given, the right to have the workman examined—clause 1, sub-clause 3 of the 1st schedule—the proviso in sec. 2, sub-sec. 1, relieving the workman from the consequence of a defect or inaccuracy in the notice where the employer is not thereby prejudiced in his defence. And I should have thought it equally plain that the main, if not the only, object of requiring the claim for compensation to be made within six months from the accident is to protect the employer from stale demands, to warn him that a claim is about to be made against him, and thus put him upon his guard, just as notice of action was designed to do the same thing in the case of those officials and public bodies who were under many statutes entitled to receive it. A notice of the accident does not involve a claim for compensation, or imply that such a claim will necessarily be made—for this, amongst other reasons, that though the accident may occur, and notice be given of it as soon thereafter as practicable, no compensation will be recoverable unless the workman is by it incapacited for a period of two weeks from earning full wages: (sec. 1, sub-sec. 1). Your Lordships have been referred to several cases decided in England, Scotland, and Ireland on this section of the Act of 1897. I have read the judgments delivered in each of them most carefully, and, with the most profound respect for the learned Judges who decided them, I am unable to find in these judgments any line of reasoning convincing to my mind that the statement of the amount of the compensation claimed would have the powerful influence attributed to it in leading to a settlement of the workman's demand, or any explanation why, if this statement be an element of such potency, this statute, evidently framed to encourage settlement, did not expressly provide that the amount should be stated. It does not appear to be a final and binding statement of the amount sought to be recovered. The amount claimed in the request for arbitration prescribed by rule 8 of the Rules of 1898 need not be the same, and the omission to name the amount is not mentioned in any of the rules or forms as a good ground of defence, though the omission to make the claim within the time prescribed is distinctly set forth in form 8, appendix N, as a good ground of defence. It is scarcely conceivable that

this would be so if the mention of the amount was a vital matter. In all those cases in which the results of the accident have not fully developed themselves, or are not likely to develop themselves within the period of six months from the date of the accident—and there are many such—it is obvious that the workman, if he is to state the amount of compensation, must in self-defence claim the maximum recoverable. Even where there is a doubt as to the probable duration of his incapacity to earn full wages, he must either do this or delay the making of the claim till the last moment—courses of action which would, I think, if anything tend rather to impede than to promote settlements. The special advantage which the statement of the amount is said to possess is, according to the judgments of the learned Judges in the Court of Appeal and of the other Judges to which they refer, that it gives the parties "an opportunity to agree"; that, when it is stated, if the master accedes to it there is no dispute. I should *a priori* think that the occasions upon which the employer gives everything which he is asked to give are not very numerous. I should suppose that injured workmen, like most people who have a cause of action, do not confine their demand to the precise sum which they are entitled to recover or would be content to receive, or to the sum which the persons from whom they claim it would be willing to give. Such moderation in measuring the quantum of the relief which they seek is not to be expected from them more than from others. But if the amount be not stated, what is to prevent the employer from asking his workman how much he will take to settle, or from making the latter an offer? He has had all the information which the notice of the accident affords. Possibly he has availed himself of the provision in the 1st schedule already mentioned, and has had the workman examined. He is in a position to form a judgment on what is the amount which it is right or prudent for him to pay. It might, no doubt, be some advantage to him to have the amount stated in the claim. But, on the other hand, in cases such as I have already indicated, it would undoubtedly greatly embarrass the workman to be obliged to quantify, as it were, the redress which he seeks, to force him in effect to fix by anticipation the duration of his incapacity and appraise the value in money of his possible sufferings. What I fail altogether to realise is that the advantage to the employer is so great as to render it imperative, in order not to defeat the purpose and object of the statute, to interpolate into its provisions words not to be found there—the more especially as the making of a claim serves the main and paramount purpose of protecting the employer against stale demands, even though no amount be mentioned. The essence of this requirement is the element of time. The provisions dealing with the notice of the accident show that, where it is necessary for the protection of the employer that he should be in possession of full and detailed particulars, the giving of those particulars is expressly enjoined. If in the estimation of the Legislature the statement of the amount claimed possessed all the virtues now attributed to it, I confess that it seems to me incredible that it would not be dealt with as the notice of the accident is dealt with, and the statement of the amount expressly enjoined. I find nothing in the letter or spirit of the statute which requires that the amount should be stated; and on this ground I am of opinion that the judgment of the Court of Appeal is erroneous and should be reversed, and this appeal allowed with costs. It is therefore unnecessary for me to consider the second point—namely, whether Stubbs by his action did not relieve the appellant from stating the amount of the compensation, if that were essential. The inclination of my opinion, however, is that he did relieve him from doing so. A little stress was laid in the argument before your Lordships on the effect of the use of the definite article "the" before the word "claim" instead of the indefinite article "a." In my opinion there is nothing in this point.

LORD COLLINS—I concur.

LORD SHAW—I agree with the judgments which have been delivered. There is no doubt that the Court of Appeal in England and the Court of Session in Scotland have found themselves lately confronted by a body of authority, and the state of that authority has produced a certain amount—not inconsiderable—of embarrassment. The Second Division of the Court of Session on the 16th May 1899 pronounced a judgment in the case of *Bennet* v. *Wordie & Co.*, 36 S.L.R. 643, 1 F. 355, and though there were various grounds of that judgment, still it cannot be denied that a substantial ground was expressed by the Lord-Justice Clerk in the following terms—"A 'claim' in the sense of the statute means asking a particular sum as compensation for the injuries received, not merely intimating that the undertakers will be held liable—that is to say, it is not, in my opinion, merely a general demand for compensation, but the taking of proceedings for making that demand effectual." That was the state of the law in Scotland as decided by *Bennet* v. *Wordie & Company*, but that state of matters there did not last very long, because upon the 11th June 1901, in the case of *Great North of Scotland Railway Company* v. *Fraser* (38 S.L.R. 653, 3 F. 908) the same point also arose; and that most distinguished Judge, the late Lord President Kinross, uses language of a very different complexion, because he says with reference to the same provision of the Act, "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"; and both he and Lord Kinnear expressly reserved their opinion upon that point. The situa-

tion in Scotland was therefore this—that they had decisions apparently and to some extent in conflict; and under the Workmen's Compensation Act 1897 an appeal to this House was precluded. In those circumstances the best was done that could be done, namely, Seven Judges were called together to decide the question; and that decision took place in December 1906, in the case of *Kilpatrick* v. *Wemyss Coal Company* (44 S.L.R. 255, 1907 S.C. 320). But when those Seven Judges were convened to decide that point, they held it to have been concluded by the authority of a judgment in this House, and that was the judgment in the case of *Powell* v. *Main Colliery Company* (*cit.*). I am bound to say that I have the greatest difficulty in seeing how *Powell* v. *Main Colliery Company* can be held to be a decision affecting the real issue in this case. The issue here is this—When a claim for compensation is made, must the claim not only be made, but must it be quantified? The question is, shall damages be quantified, and, if not, is there or is there not a claim at all? But in the very forefront of the case of *Powell* v. *Main Colliery Company*, and brought out purposely by Lord Halsbury, who as Lord Chancellor delivered the leading judgment, the notice was quoted *in extenso;* and the notice leaves no room whatever for the point in this case, or for the point in the previous Scotch cases, because the notice was in these terms: "Take notice that I claim the sum of 15s. per week from the 4th day of January 1899." Accordingly, in the case of *Powell* v. *Main Colliery Company* the question as to the need for quantification in the notice could not possibly arise, because, as I say, upon the forefront of the notice the claim was already quantified at 15s. a-week. It is quite true that in the course of Lord Halsbury's judgment reference is made, apparently with approbation, to the case of *Bennett* v. *Wordie & Co.* (*cit.*), and there being that *obiter dictum*, in that situation the Seven Judges in the case of *Kilpatrick* v. *Wemyss Coal Company* (*cit.*) decided the question as being concluded by the judgment of this House in *Powell* v. *Main Colliery Company*. There was no judgment of this House in the sense accepted by the Seven Judges in the Court of Session; but so far has that acceptance, in a wrong sense, of the judgment in *Powell* v. *Main Colliery Company* gone, that this present case now under appeal rests very largely upon the adoption by the Court of Appeal of the views of the Scotch Judges in the *Kilpatrick* case as to the decision in *Powell* v. *Main Colliery Company*. Now, as I have already shown, that judgment did not and could not possibly rule the point in issue in this case; and I accordingly hold that I am forced to consider the question, not from the point of view of authority, but from the point of view of principle. Now the Master of the Rolls in this case cites with approbation the judgment of Lord Pearson, who, agreeing with Lord Dunedin, says this—and this is the principle upon which the judgment in the Scotch case (apart from authority) appears to depend—"I should say that, above all, the statute regards it as important that the parties should have an opportunity of agreeing, and so of saving all the delay and expense of proceedings." I have given, like my noble and learned friend Lord Atkinson, the most careful consideration to that line of reasoning, and I cannot find anything convincing to my mind in it. Although a claim be not quantified, there appears to me to be all the same opportunities, equal in strength, for a man when he merely makes his claim to have his employer meet him; the employer can then, in the very same way as he could have done if the claim had been quantified, meet the workman and say, "Well, how much is the compensation to be?" If principle is to be appealed to, there are some reasons why the claim might not necessarily be quantified. What are those? Let me mention only two. The first of those reasons is that necessarily before the time expires there is in many cases the greatest uncertainty with reference to the result of the injuries, and a prognosis estimable in money would be the merest and vaguest conjecture. In the second place, the statute prevents in a certain sense any wild claim because it itself provides a maximum. In those circumstances there seems to be no reason whatever on principle for compelling the initial quantification of a claim. To hold that the words of the statute "the claim for compensation" must mean "the claim for a specific sum of money by way of compensation" appears to me to make an unjustifiable addition to what the Act prescribes. In the present case it is clearly found that the appellant, although not naming a sum, did in fact make a claim for compensation within the statutory limit of time, and he thus in my opinion completely satisfied all that the Act required. I have traversed the authorities and discussed the principle at such length because of the great care manifested both in the Court of Appeal and in the Court of Session on the topic. I add that I agree, if I may respectfully do so, with every word of the analysis made by my noble and learned friend Lord Atkinson of the statute in this particular respect.

LORD MERSEY—The only question argued on the hearing of this appeal was whether the appellant had made a "claim for compensation" sufficient in law to comply with the requirements of the Workmen's Compensation Act 1897. The learned County Court Judge decided that he had, and gave judgment for the appellant. The Court of Appeal came to the conclusion that he had not, and entered judgment for the respondents. The facts are quite simple. While working for the respondents the appellant lost the sight of one of his eyes by an accident within the meaning of the statute. What happened subsequently is stated by the respondents in their case, "the appellant within six months of the date of the alleged accident . . . said to the works

manager 'I claim compensation,' . . . but the appellant did not at any time specify the amount of his claim." The question is whether such a claim comes within the meaning of section 2, sub-section 1, of the Act, which provides that proceedings for the recovery of compensation shall not be maintainable unless "the claim for compensation" has been made within six months of the happening of the accident. The fault which the respondents find with the claim is that it does not name the sum of money for which it is made; and it is said that this fault is fatal. My short answer to this contention is that the Act contains no words which require the workman to mention a sum of money. But then it is said that the Act of Parliament cannot be administered properly unless such words be read into it; for that it contemplates an opportunity being afforded to the master of settling the claim, and so avoiding arbitration proceedings, and that such opportunity is not afforded unless the workman says how much he wants. This reasoning does not satisfy me. It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do. Here I see no necessity at all for introducing the words. The absence from a claim for compensation of a named sum does not prevent the workman from saying how much he will accept, nor does it prevent the master from saying how much he will give. Preferring a claim for compensation is by no means a necessary preliminary to arriving at an agreement as to the amount to be paid. What the workman is willing to take, or the master willing to pay, may be something quite different from the measure of compensation. Many considerations may induce a man to take less or a master to give more than "compensation." If the parties fail to agree, or do not try to agree, then it is that compensation has to be fixed; and the tribunal to fix it is the County Court. Why should the workman undertake the task? Why may he not tell what is probably the truth, and say, "I cannot fix any sum, for I am not skilled enough to form an opinion as to the nature of my injuries, or clever enough to measure them in money"? There is in fact no good reason why he should not take up this position. It is said, however, that the case is settled by authority, and reference is made to a number of cases, among which is the Scotch case of *Kilpatrick* v. *Wemyss Coal Company* (44 S.L.R. 255, 1907 S.C. 320). In that case it was undoubtedly held that the claim for compensation to be good must mention the sum claimed. But it will be noticed that the decision is largely based on dicta to be found in *Powell* v. *Main Colliery Company*, decided in this House and reported in [1900] A.C. 366. Those dicta, however, were *obiter*, and I do not think that they bind your Lordships' House, even if they go to the length suggested. For these reasons, I come to the conclusion that there is nothing in the Act of Parliament, and nothing in the authorities, which constrains your Lordships to arrive at a decision which, if arrived at, would deprive the appellant of the remedy to which otherwise he is undoubtedly entitled. I wish further to add that in my opinion the respondents by their conduct, as appearing from the evidence of their own witnesses dispensed with the naming of any sum by the appellant, and thereby estopped themselves from objecting to the form of the claim.

The LORD CHANCELLOR said that the EARL OF HALSBURY, who was present during the argument, concurred in the judgment.

Judgment appealed from reversed.

Counsel for Appellant—Cavanagh—E. E. Humphrys. Agents—Botterell & Roche, Solicitors.

Counsel for Respondents — Sanderson, K.C.—W. Shakespeare. Agents—Thomas Cooper & Co., Solicitors.

HOUSE OF LORDS.

Friday, June 10, 1910.

(Before the Lord Chancellor (Loreburn), Lords James of Hereford, Atkinson, Shaw, and Mersey.)

KIRKWOOD *v.* GADD.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Loan—Moneylender—Registered Address—Carrying on Business — Moneylenders Act 1900 (63 *and* 64 *Vict. c.* 51), *sec.* 2 (1) (*b*).

In a moneylending contract a bill of sale was executed at the borrower's house over his furniture, and the loan itself was advanced and a receipt granted there. The preliminary arrangements had been made by correspondence to and from the moneylender at his registered address — no other address was employed. The Moneylenders Act 1900, sec. 2 (1) (*b*), enacts—"a moneylender . . . shall carry on the moneylending business . . . at his registered address or addresses, and at no other address." The borrower raised legal proceedings in which he maintained that the moneylending contract was void as in breach of this prohibition.

Held that the prohibition against carrying on business at an address other than the registered address raised a question of fact to be determined by the whole circumstances of each case, and that the carrying out of incidents of the transaction away from the registered address did not in itself constitute a breach of the Act.

The appellant, who was a registered moneylender, was the holder of a bill of sale over certain furniture, executed by the respon-