LORD YOUNG—The only question in this case is, whether the letter which has been read to us is a "claim" under the Workmen's Compensation Act. I am of opinion that it is not a "claim" or a "taking of proceedings." It is a mere notice that a claim will be made, and that the petitioners hold Messrs Wordie liable. Therefore I think the Sheriff was right in sustaining the objection that proceedings had been commenced too late. I do not like the form of the question of law put to us by the Sheriff, but that matter can be attended to in our interlocutor.

LORD TRAYNER — I agree. This is an appeal in an action or proceedings for the recovery of compensation under the Workmen's Compensation Act; and the question is, whether these proceedings have been brought in such time as to be maintainable under that Act. I think the Sheriff has rightly decided this question in the negative. It appears from sub-section 4 of section 1 that there is a limit of time within which such proceedings must be commenced, for that sub-section begins with the words "If within the time hereinafter limited for taking proceedings," &c. That matter of time is regulated by section 2, which provides that "proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof, . . . and unless the claim for compensation 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."

Now, if we look at the case we find that the appellants maintain that the letter of November 7th was in law equivalent to a claim. I think that in the most liberal interpretation which we can give to that letter we cannot regard it as a claim. It is a notice of the accident, and intimates an intention of making a claim. If so, the appellants have failed to make a claim within six months. That would be sufficient for the decision of the case, but I would add that in my view the "claim for compensation" mentioned in the section means a judicial claim, and is the same thing as the "proceedings for the recovery of compensation" therein mentioned. As these proceedings were not commenced within the time prescribed by the statute they are not now maintainable.

LORD MONCREIFF—I arrive at the same result. The statute provides as follows:—[*His Lordship read section* 2(1)]. Now, it is noticeable that the word "claim" is used. The expression adopted is not that action must be raised, but that the claim for compensation must be made within six months. The reason for this is that under the statute, failing agreement, compensation is to be fixed by arbitration, and the first step in proceedings for that purpose is not raising an action but making a claim. But a claim in the sense of the statute must be sufficiently specific to form the groundwork of the statutory "proceedings."

The letter of 7th November 1898 is not a "claim," but merely a "notice" containing no doubt intimation of an intention to make a claim.

It bears to be a statutory notice. The first "claim" therefore of any kind in this case was contained in the petition to the Sheriff, which was not presented till 2nd March 1899, more than six months after the death of the claimant's son.

Without prejudging any question which may hereafter arise as to the precise shape in which a "claim" should be made, or whether a claim having been timeously made, the proceedings before the arbiter must commence within six months of the death or accident, I think that here at least no "claim" was made within the time limited, and that consequently the Sheriff-Substitute's interlocutor was well founded.

Counsel for the respondents James Scott & Sons moved for expenses.

Counsel for the respondents Wordie & Company also moved for their expenses.

Counsel for the appellants maintained that only expenses as for one appearance should be allowed, in respect that as regards the only question which could be competently raised and decided in this appeal the interests of both respondents were identical.

The Court pronounced this interlocutor—

"The Lords having heard counsel for the parties to the stated case, Dismiss the appeal and affirm the interlocutor appealed against, and decern: Find the respondents entitled to expenses in this Court as for one appearance, and remit," &c.

Counsel for Appellants—W. Campbell, Q.C.—D. Anderson. Agents—Mackay & Young, W.S.

Counsel for the Respondents Wordie & Company—Younger. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for the Respondents James Scott & Sons—Sol.-Gen. Dickson, Q.C.—Salvesen. Agents—J. & D. Smith Clark, W.S.

Thursday, May 18.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

WILLIAMSON *v.* HOWARD.

Process — Reclaiming-Note -- Failure to Print Amendment—Court of Session Act 1825 (6 *Geo. IV. cap.* 120), *sec.* 18—*Act of Sederunt*, 11*th July* 1828, *sec.* 77.

A reclaiming-note boxed without having an amendment made in the Outer House upon the conclusions of the summons printed and appended thereto is incompetent, and it makes no difference that the amendment is immaterial, and made upon a conclusion

which has been abandoned before the reclaiming-note comes on for hearing.

This was an action at the instance of John Williamson, Union Hotel, Dunfermline, against R. Howard, 272 High Street, Glasgow, in which the pursuer originally concluded (1) for specific performance by the defender of a contract for the sale of the Union Hotel, Dunfermline, and for payment of the price, viz., £8750, with interest, in exchange for a conveyance of the subjects, "the pursuer, however, allowing, if the defender so desire, £4000 of said sum (*i.e.*, the price) to remain on mortgage at 4 per cent.;" or alternatively (2) for payment of the sum of £2750 as damages for breach of contract.

A proof was allowed and led, and at the hearing of counsel thereon it was suggested that the first alternative conclusion of the summons should be amended. Accordingly, on 20th January 1899, the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Allows the first alternative conclusion of the summons to be amended as proposed by the minute No. 48 of process; and the amendment having been made, and having heard counsel for the parties on the proof adduced, makes avizandum, reserving as to expenses."

The minute referred to was as follows:—"Thomson for pursuer craved leave to amend the first alternative conclusion of the summons by substituting for the words 'Four thousand pounds of said sum to remain on mortgage at four per cent.,' the words following, namely, 'Four thousand five hundred pounds of the said sum to remain on bond for five years at four per cent. interest so long as said interest is regularly paid and the property kept in good order and repair, and the licensed business on said property so conducted that no breach of certificate be committed.'"

Thereafter the Lord Ordinary, on 31st January 1899, pronounced an interlocutor finding that the defender was not bound to implement the contract, and assoilzieing him from the conclusions of the summons, with expenses.

The pursuer reclaimed. The reclaiming-note was boxed on 14th February. Neither the interlocutor allowing the amendment nor the minute quoted *supra* were boxed along with the reclaiming-note, and the summons, so far as appeared from the print appended to the reclaiming-note, stood as it was before the amendment was made.

On 10th May prints of the interlocutor allowing the amendment, and of the minute of amendment, were boxed as additional prints for the pursuer and reclaimer.

The amendment upon the principal copy of the summons was not in fact initialled by counsel until 17th May.

Between the dates of the Lord Ordinary's interlocutor and the date of the hearing in the Second Division, the pursuer sold the property in question, and it was explained to the Court that he was now only insisting in the alternative conclusion for damages.

The Act of Sederunt 11th July 1828 enacts as follows:—(Section 77) "That reclaiming-notes, not being against decrees-in-absence or upon failure to comply with orders, shall at first be moved merely as single bills, and immediately ordered to the roll, and shall then be put out on the short or summar roll as the case may be. Provided always, that such notes, if reclaiming against an Outer House interlocutor, shall not be received unless there be appended thereto copies of the mutual cases, if any, and of the papers authenticated as the record, in terms of the statute, if the record has been closed, and also copies of the letters of suspension or advocation, and of the summons, with amendment, if any, and defences." . .

The defender and respondent objected to the competency of the reclaiming-note, and argued — The provisions of the Court of Session Act 1825, sec. 18, and the Act of Sederunt 11th July 1828, sec. 77, were imperative, and where they had not been complied with a reclaiming-note could not be received even of consent—*M'Evoy* v. *Brae's Trustees*, January 16, 1891, 18 R. 417; *Wallace* v. *Braid*, February 16, 1899, 36 S.L.R. 419; *Watt's Trustees* v. *More*, January 16, 1890, 17 R. 318. The omission to print and box any part of the record along with the reclaiming-note was fatal—*Muir* v. *Muir*, October 17, 1874, 2 R. 26, which was a case of omission to print an amendment, and *Carter* v. *Johnston*, February 6, 1847, 9 D. 598 (omission to print pleas-in-law). The Act of Sederunt specially mentioned amendments of the summons among the papers to be printed and boxed along with the reclaiming-note, and whether the amendment was material or not the provisions of the Act of Sederunt must be obeyed. It was no answer therefore to the present objection that this amendment was immaterial to the only question which the Court had now to decide.

Argued for the pursuer and reclaimer—The pursuer could only now insist, and was only now insisting, in the conclusion for damages. The amendment only applied to the conclusion for specific implement, and that conclusion was now withdrawn from the consideration of the Court. The amendment was therefore entirely immaterial to the only question which the Court had to decide. In *Muir* v. *Muir*, *cit.*, the judgment of the Court proceeded upon the ground that the amendments were extensive and material, and had formed the main subject of discussion in the Outer House. Apparently if this had not been so, and the amendment had been trifling and immaterial, as it was here, the reclaiming-note in *Muir* would not have been refused. If the respondent's view were sound, then if one line of the summons was omitted through a printer's error not detected, however immaterial that line might be, the reclaiming-note must be refused as incompetent.

LORD JUSTICE-CLERK—The terms of the Act and of the Act of Sederunt are very stringent, and from what we have heard of the cases they have been very stringently carried out. In the case of *Carter* v. *Johnston*, 9 D. 598, the pleas-in-law were not printed, and that was held to be fatal, the

Court having no discretion in the matter. It is true that in the case of *Muir* v. *Muir*, 2 R. 26, the ground of judgment was partly the extent of the amendment. It is to be observed, however, that in that case there was no practical failure to put the amendment before the Judges. It was added in manuscript to the prints of the original record, which were boxed, but it was not printed. Nevertheless the failure to print it was held fatal. In this case the fact is that part of the record, which was added by way of amendment, and upon which the Lord Ordinary proceeded in giving judgment, was not printed at the proper time. Mr Thomson, with his usual candour, admitted that this amendment had only been initialled by him yesterday. That seems to show that there was some accident here, and that the whole matter of the amendment was overlooked.

Now, amendments are specifically stated as things which must be printed and boxed within the reclaiming-days. Here that specific enactment was not given effect to.

In these circumstances I am very sorry to say that, although it is a very hard case, we have, in my opinion, no alternative but to hold that this reclaiming-note is incompetent.

Lord Young—I am of another opinion. This was originally an action in which the first conclusion was for specific implement of a contract of sale, subject to the following qualification :—"The pursuer, however, allowing, if the defender so desire, £4000 of said sum (that is to say, the price) to remain on mortgage at 4 per cent." That is the part of the record upon which the amendment was made, and the amendment was that instead of the words "Four thousand pounds to remain on mortgage at four per cent.," there should be substituted this—"Four thousand five hundred pounds of the said sum to remain on bond for five years at four per cent. interest, so long as said interest is regularly paid and the property kept in good order and repair, and the licence business on said property so conducted that no breach of certificate be committed." That is all to be allowed if the defenders desire it, but the defenders did not desire it, and it has been stated that the pursuer has sold the property, and that therefore there is no room for the conclusion for implement, allowing so much to remain on bond, and so on. The pursuer therefore necessarily now restricts his action to the alternative conclusion, which is a conclusion for damages as for breach of contract, and the case is before us, and can only come before us, upon that conclusion.

Suppose a summons to contain two conclusions, and one of these to be departed from, and to be struck out of the record by amendment, and a judgment taken upon the other, and a reclaiming-note to be brought against that judgment, but that there has been an omission to strike out the conclusion which has been deleted by amendment in the copies of the record boxed with the reclaiming-note, I asked in the course of the discussion, would law or common-sense, which generally accompanies law, demand that the reclaiming-note should be dismissed as incompetent? The answer was common-sense—No; but the Act of Sederunt—Yes. Now, I am always disposed to read statutes and Acts of Sederunt in the light of common-sense. The object of this statute and of this Act of Sederunt is that everything should be before the Court which has any reasonably possible bearing upon the case which they have to consider, and if there was any reasonable consideration of that kind, I should be stern in insisting strictly upon compliance with the enactments in question. But I do not see what legitimate interest can possibly be affected by the omission to print the amendment in the case which is now presented to us, looking to the fact that the conclusion in which the amendment occurs is now necessarily departed from, and cannot form matter for discussion before the Court. To say that when there has been an omission to print such an amendment in such circumstances, review is excluded, is a proposition to which I cannot assent. I am quite alive to the expediency in the interests of litigants generally of being strict as to the time-limit for lodging reclaiming-notes, and as to the provisions regarding printing and boxing, so that the materials for considering a case may be before the Court. I am disposed to give effect to these rules strictly. But all reasonable considerations should be taken into account, and looking to the circumstances of this case, I must say, although I understand I am alone in thinking so, that in my opinion this objection to the competency of this reclaiming-note should be disallowed.

Lord Trayner—The rules as to reclaiming-notes contained in the Judicature Act and relative Act of Sederunt have been frequently before the Court, and in many cases it has been decided that they are imperative—so imperative that they cannot be departed from even of consent. I feel bound by these decisions. I take no cognisance of the nature of the particular amendment in this case, for that is not a matter which affects the question before us. Now, the rules I have referred to require that reclaiming-notes shall not be received unless there be appended thereto copies of the papers constituting the record, and in precise terms require that there should be printed a copy of the summons, "with amendments, if any."

There was here an amendment of the summons, which was considered by the Lord Ordinary in arriving at his judgment. It is said that the amendment was not made before the Lord Ordinary in point of fact, but I must take the fact to be otherwise, because the Lord Ordinary says that the amendment was made, and that he made a *vizandum* with the cause as amended. That amendment was not printed and boxed to the Court within the reclaiming-days, and therefore, having regard to previous decisions, I think we have no alternative

but to hold that the provisions of the Judicature Act and relative Act of Sederunt have not been complied with, and that therefore the present reclaiming-note is incompetent. Whatever might be the expediency of altering these rules in the direction of relaxing their strictness, I think we have no power as matters now stand to dispense with full compliance with what they require.

LORD MONCREIFF — I agree with the majority of your Lordships. I regret to do so, as it is plain that in the discussion we should have had nothing to do with the amendment. But I agree that we are driven to this result by the terms of the statute and Act of Sederunt (the latter of which specially mentions amendments of the summons as things which must be appended to a reclaiming-note), and by the decisions which have followed on those enactments. The decided cases satisfy me that we have no discretion to consider whether the part of the record which has been omitted is material or not.

The Court pronounced this interlocutor—

"Refuse the reclaiming-note, as incompetent, and decern: Find the defender entitled to additional expenses, and remit," &c.

Counsel for the Pursuer—Shaw, Q.C.—Salvesen—A. S. D. Thomson. Agent—John Veitch, Solicitor.

Counsel for the Defender—Lees—Craigie. Agents—Campbell & Smith, S.S.C.

Thursday, May 18.

FIRST DIVISION.

[Sheriff Court of Ayrshire.

MURNIN *v.* CALDERWOOD.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 31), *sec.* 7 (1).

Section 7 (1) of the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) provides that "This Act shall apply only to employment by the undertakers, as hereinafter defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers, as hereinafter defined, on, in, or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power is being used for the purpose of the construction, repair, or demolition thereof."

Held (following *Mellor* v. *Tomkinson & Co.*, L.R. [1899] 1 Q.B. 374) that the section applies to employment on, in, or about a building on which machinery driven by steam, water, or other mechanical power is being used for the purpose of the construction, repair, or demolition thereof, and it is not also necessary that the building should exceed thirty feet in height.

This was a stated case under the Workmen's Compensation Act 1897 following upon an interlocutor pronounced by the Sheriff-Substitute of Ayrshire in a statutory arbitration in which the present appellant, James Murnin, labourer, claimed compensation from the respondent Andrew Calderwood, builder and contractor.

The following was the case as stated by the Sheriff-Substitute:—"This is an arbitration in which there was no proof led, but, as appears from the pleadings, the facts are as follows, viz.—On 4th July 1898 the pursuer was engaged, with other workmen in the defender's employment, in demolishing a wing of Elmbank House, Kilmarnock, which wing had formerly been occupied as a museum. A steam crane was used to aid in the process of demolition. In the course of the operation the pursuer met with an accident, in consequence of which he sustained serious personal injury. Though before the process of demolition began Elmbank House had exceeded thirty feet in height, no part of it was at the time of the accident so high as thirty feet, and the said wing had never exceeded thirty feet in height.

"I decided, in respect that no part of said Elmbank House at the time of the accident exceeded thirty feet in height, and that the work at which the pursuer was engaged was not an engineering work within the meaning of the Workmen's Compensation Act 1897, that the pursuer's claim against the defender under the said Act was excluded by the terms of section 7 thereof. I accordingly sustained the defences and dismissed the action.

"The questions of law for the opinion of the Court are—(1) Whether the pursuer is entitled to compensation from the defender for injuries sustained by him on the said building in course of demolition, that building being at the date of the accident to the pursuer under thirty feet in height, and the wing at which the accident took place never having exceeded thirty feet in height, although the main part of the building was beyond that height when the demolition began? and (2) Whether the work on which the pursuer was engaged at the time of the accident was an engineering work within the meaning of the Workmen's Compensation Act 1897, in respect that a steam crane was being used in the demolition of the building."....

Sec. 7 (1) of the Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37) provides that "This Act shall apply only to employment by the undertakers, as hereinafter defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers, as hereinafter defined, on, in, or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power