naturally is to throw the fund into Court and obtain exoneration as speedily as possible. He is often unable to ascertain with certainty all the parties who may be interested in the fund; and although he may ascertain their names, he may fail by advertisement or otherwise to advise them of the dependence of the process. Consequently considerable indulgence is shown to parties interested who have not been cited or received notice of the dependence of the process, and who are able to satisfy the Court that they did not know of its dependence. In the case of such persons there are decisions to the effect that even after final judgment they will be allowed to come forward and claim provided the funds are still *in manibus curiæ*. The case of *Morgan* v. *Morris*, 18 D. 797 and 818, and 3 Macq. 347, affords a very good illustration of the difference between the case of parties who have not been cited and that of those who have been cited but have not chosen to appear. After final judgment in a competition certain parties who had not been cited applied to the Court for leave to lodge claims. They were allowed to do so, but only on the Court being satisfied on inquiry that they had only recently heard of the dependence of the process, and on condition of a large payment of expenses (18 D. 818).

But in the same case, and at the same time, other parties who had been called to the multiplepoinding but had not appeared, desired, after final judgment, to claim on a different footing from that on which the competition had previously proceeded. This proposal the Court unanimously rejected, leaving the parties to adopt any other remedies which they might have.

Now, in the present case the reclaimers were duly called as defenders, and did not choose to appear; and they allowed the case to proceed so far that this Division pronounced a final judgment, the effect of which was to divide the whole fund between those claimants who did appear. In an ordinary action the proposal now made would undoubtedly be held to come too late; and among the various authorities which were cited to us I find none which in my opinion constrain us to apply a different rule to multiplepoindings. The only case which creates any difficulty is *Dymond* v. *Scott*, 5 R. 196. In that case, after a final decree of ranking and preference had been pronounced by the Inner House, a party who had been called as defender, and had appeared and been ranked in one capacity, was allowed after final judgment to lodge a new claim. That decision can perhaps be explained on the supposition that the new claim which was allowed to be lodged was regarded as a rider upon the claim for the owner of the cargo. I cannot otherwise reconcile it with previous decisions. While the report of the argument is clear enough though short, no opinions of the Judges are reported; which leads me to think that they cannot have intended to decide the larger question which was argued to us.

I am therefore of opinion that the Lord Ordinary has rightly refused the motion for the claimants.

The Court adhered.

Counsel for the Pursuers and Real Raisers—Napier. Agents—Webster, Will & Company, S.S.C.

Counsel for Claimants David G. Landale and Others—Solicitor-General (Dickson, Q.C.) — Younger. Agents—J. & J. Ross, W.S.

Counsel for Claimant the Bank of Scotland—W. Campbell, Q.C.—Pitman. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Claimant J. S. Wilson — Dundas, Q.C. — Chisholm. Agent — J. Gordon Mason, S.S.C.

Tuesday, June 19.

SECOND DIVISION.

[Sheriff-Substitute at Aberdeen.

WEIR *v.* PETRIE.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7—"*Undertaker*—"*Factory*"—*Factory and Workshops Act* 1878 (41 *Vict. c.* 16), *sec.* 93, *sub-sec.* (3)—*Mechanical Power Used in Aid of Manufacturing Process—Grindstone Driven by Gas-Engine.*

A workman, who was employed in a stone-dressing yard claimed compensation from his employer for injuries received by him in the course of his employment. The premises occupied by the employer consisted of a yard in which the stones were dressed by manual labour, and included an engine-house, where the workmen's tools were sharpened on a grindstone driven by a gas-engine. No other mechanical power was used in the premises. The claimant while dressing stones was struck in the eye by a piece of metal from a chisel which was being ground.

Held (1) that the premises were a factory within the meaning of the Factory and Workshops Act 1878, section 93 (3), and the Workmen's Compensation Act 1897, section 7 (2); and (2) that the employment was one to which that Act applied.

This was an appeal under the Workmen's Compensation Act 1897 in the matter of an arbitration before the Sheriff-Substitute (BURNET) at Aberdeen between James Petrie, claimant and respondent, and David Weir, builder, Aberdeen, appellant.

The facts stated as proved were as follows:—"The defender occupies premises at 23 Claremont Street, Aberdeen, in which he carries on the business of dressing stones for building purposes; the stones are dressed by manual labour, and the defender employs in that work a number of workmen, of whom on 4th July the pur-

suer was one; the premises consist of a yard in which the stones are dressed, and include an engine-house which is entered from the yard, and which contains a grindstone on which the tools used by the workmen are sharpened from time to time, and a gas-engine used for the purpose of driving the grindstone. The engine and grindstone are under the charge of a young man of seventeen years of age or thereby, whose duty it is to make regular visits to the different benches at which the stone-cutters dress the stones, carry off the blunt tools, sharpen them on the grindstone, and return them when sharpened to the workmen. The engine and grindstone are in daily and constant use as part of the regular work of the establishment. No other mechanical power is used in or upon the premises. On 4th July 1899 the pursuer, while engaged in dressing stones on the pursuer's premises, was accidentally struck on the left eye by a piece of metal from a chisel, and was so severely injured that his eye had to be removed six days afterwards, and since the date of the injury he has been unable to earn wages as a stone-dresser."

Upon the foregoing facts the Sheriff-Substitute held (1) that the said premises were a non-textile factory within the meaning of the Factory and Workshops Act 1878, section 93 (3), and therefore constituted a factory within the meaning of the Workmen's Compensation Act 1897, section 7, and the defender, being the occupier of said premises, was an undertaker in the sense of the last-named statute; (2) that the employment in which the pursuer was engaged at the time of the accident was an employment to which the last-named Act applies, and the said accident having arisen out of and in the course of the employment, the defender was liable to pay compensation in accordance with the said last-mentioned Act.

The questions of law for the opinion of the Court were—"(1) Whether the defender's premises were a factory within the meaning of the Workmen's Compensation Act 1897? and (2) Whether the employment in which the pursuer was engaged at the time of the accident was an employment to which the said Act applies?"

The Workmen's Compensation Act 1897, sec. 7, enacts that the Act shall apply only to the employment by "undertakers" on, in, or about, *inter alia*, a "factory," and defines a 'factory' to have the same meaning as in the Factory and Workshop Acts 1878 to 1891," and further defines 'undertakers' to mean, in the case of a factory, 'the occupier thereof within the meaning of the Factory and Workshop Acts 1878 to 1895."

The Factory and Workshops Act 1878, sec. 93, defines the expression "non-textile factory" to include (sub-sec. 3) "any premises wherein . . . any manual labour is exercised by way of trade, or for the purposes of gain in or incidental to . . . (c) the adapting for sale of any article, and wherein . . . steam, water, or other mechanical power is used in aid of the manufacturing process carried on there."

Argued for the appellant—The operation of sharpening tools was not "in aid of" the manufacturing process. What was meant by these words was that the mechanical power should be used directly in the course of the process, or at least directly assist it. If the appellant had sent his tools to be ground elsewhere, his premises would not have been within the definition of a factory. It was an anomalous result that because he chose to sharpen them on the premises that should render him liable.

Counsel for the respondent was not called upon.

LORD JUSTICE-CLERK—This statute certainly gives rise to anomalous cases, and I think that this is one of them. The appellant carries on the business of dressing stones for business purposes, which is undoubtedly a manufacturing process. Now, he has chosen to have a small gas-engine in his premises for the purpose of driving the grindstone, and the question is, whether having this engine in his premises he is an undertaker within the meaning of the Act. I think that he is. It is very difficult to draw a line except where the statute has drawn it. The Act applies to any premises in which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there. If, then, a gas-engine, which is a machine giving mechanical power, is used in aid of the manufacturing process carried on in the appellant's premises—as I think it is—then the Act applies. I am of opinion that we should answer both questions in the affirmative.

LORD YOUNG—I think so too. On the facts found by the Sheriff-Substitute I am of opinion that we should answer both questions in the affirmative.

LORD TRAYNER—I concur.

LORD MONCREIFF—I am of the same opinion. Of course if the appellant had sent his tools to be sharpened elsewhere these premises would not have been a "factory" in the sense of the Act. But as he has chosen to put up this small gas-engine and grindstone for that purpose in his own premises, I am of opinion that they are a "factory" within the meaning of the Act, being premises "wherein steam power is used in aid of the manufacturing process carried on there" (Factory and Workshops Act 1878, section 93, sub-section 3).

The Court answered both questions in the affirmative.

Counsel for the Appellant—Constable. Agents—Simpson & Marwick, W.S.

Counsel for the Respondent—W. Brown. Agents—Alexander Morison & Company, W.S.