nominee. The case of *Finlay*, quoted in the Sheriff-Subsitute's note, was distinguishable from the present.

Counsel for the defenders were not called upon.

At advising—

LORD JUSTICE-CLERK—The pursuer here was one of the collectors of the defenders' society, the Scottish Legal Life Assurance Society. His employment was terminated on 12th June 1901, and he brings this action for payment of £350 in respect that the defenders' society have refused to allow him to nominate a successor as collector with the society. Now, under the rules of the society a collector has power to nominate a successor, but that power is declared to be "subject to the discretion and approval of the 'board of management' of the society." The society therefore are not bound to accept the outgoing collector's nominee. The society are not bound to make an appointment at all; they may if they please close the particular agency; and they are not bound to give reasons for making no appointment or for appointing some-one else than the old collector's nominee. The power of nominating a successor may be a matter of some value to the collector, because if the society accept his nominee, then he is entitled to the benefit of any arrangements with his nominee which he has made and may be profitable to him, but all that is subject to the condition that the society accepts the nominee, which they have full liberty to refuse to do.

LORD YOUNG—I think that this action is clearly irrelevant. The society acted very properly in letting the pursuer know that there was no use in his making a nomination as they were not going to accept his nominee. He made no nomination, and reasonably so on his part, for he knew that any nomination by him would be of no avail. But to say that he suffered a legal wrong entitling him to bring an action of damages through the society intimating that they would refuse to accept his nominee is to my mind absolutely extravagant.

LORD TRAYNER — I think the Sheriff-Substitute is right in saying that this case is not distinguishable from the case of *Finlay*, to which he refers. I am therefore of opinion that the Sheriff-Substitute's interlocutor should be affirmed.

LORD MONCREIFF was absent.

The Court dismissed the appeal.

Counsel for the Pursuer and Appellant—Guthrie, K.C.—Wilton. Agents—Robertson, Dods, & Rhind, W.S.

Counsel for the Defenders and Respondents—M'Kenzie, K.C.—Spens. Agents—J. & J. Ross, W.S.

COURT OF TEINDS.

Friday, July 4.

(Before the Lord President, Lord Adam, Lord M'Laren, Lord Kinnear, and Lord Low.)

MINISTER OF HUTTON v. THE HERITORS.

Teinds — Process — Augmentation — Procedure where Dispute as to Existence of Sufficient Free Teind—Clause of Reservation in Interlocutor Granting Augmentation.

In a process of augmentation where the minister asked for four chalders, the heritors, while admitting the existence of free teind sufficient to meet an augmentation of two chalders, denied that the free teind was sufficient to meet an augmentation of more than two chalders. They moved that a reservation should be inserted in the interlocutor to the effect that the modification should depend upon there being in existence a fund for the purpose.

The Court *granted* an augmentation of four chalders and *refused* to insert any reservation in the interlocutor.

In a process of augmentation raised by the Minister of Hutton against the heritors, the minister moved for an augmentation of four chalders to the stipend. It was stated for the minister that there was free teind in existence amounting to £100, being amply sufficient for the augmentation asked.

Certain heritors opposed an augmentation of more than two chalders. They stated that the free teind in the parish amounted only to £36, being sufficient for an augmentation of from two to three chalders only. They further stated that, with the exception of the teinds of one heritor, the teinds of the parish were almost exhausted, and that therefore the augmentation craved if granted would fall to be borne almost entirely by that one heritor. They moved that a reservation should be inserted declaring that the modification and the settlement of any locality thereof should depend on its being shewn that there existed a fund for the purpose.

Argued for the minister—The admission by the heritors that there was free teind to meet an augmentation of two chalders showed that the minister had a *prima facie* case. The question of the existence of free teind could be determined in the locality. This course had been followed in the *Minister of Banchory* v. *The Heritors*, July 1, 1863, 1 Macph. 1014. Reservations of the kind desired by the heritors were introduced into the interlocutor only in cases where some special questions were at issue between the parties. Thus in *Minister of Morvern* v. *The Heritors*, November 22, 1865, 38 Scot. Jur. 49, a reservation was inserted owing to there being a question as

to what was included in the valuation. So in *Minister of Inverkeillor* v. *The Heritors*, March 4, 1902, 39 S.L.R. 551, a reservation was inserted in view of the fact that there was a question of reclaiming teinds from extraneous parishes. The mere fact that the teinds might not be sufficient to meet the augmentation was not in itself a reason for inserting a reservation.

Argued for the heritors—When the heritors denied that there was sufficient free teind to meet the augmentation the practice was to insert in the interlocutor a reservation or declaration that the modification and the settlement of the locality should depend on its being shown that there existed a fund available for the purpose—*Minister of Bonhill* v. *Orr Ewing*, February 22, 1886, 13 R. 594, 23 S.L.R. 406; *Minister of Peebles* v. *The Heritors*, January 8, 1897, 24 R. 293, 34 S.L.R. 294; *Minister of Banchory* v. *The Heritors*, July 1, 1863, 1 Macph. 1014; *Minister of Morvern* v. *The Heritors*, November 22, 1865, 38 Scot. Jur. 49.

The Court granted an augmentation of four chalders and refused to insert any reservation in the decree, the Lord President observing that it was safer on the whole not to introduce the reservation suggested in respect that if the effect of such a reservation was merely to express what the law would imply it was unnecessary, and if, on the other hand, it meant anything else it might be mischievous.

Counsel for the Minister—J. C. Watt. Agent—P. Gardiner Gillespie, S.S.C.

Counsel for the Heritors — Constable. Agents—J. & J. Turnbull, W.S.

COURT OF SESSION.

Wednesday, July 9.

SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire at Airdrie.

GIBB *v.* DUNLOP & COMPANY (1900) LIMITED.

Reparation—Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *First Schedule* (1) (*b*)—*Amount of Compensation — Average Weekly Earnings—Continuity of Employment.*

A workman was employed for over twelve months prior to 16th August 1901 by a colliery company as a brusher at an average weekly wage of £1, 17s. 6d. On that date he was accidentally injured, and was thereafter off work till 15th October. From 31st August till 15th October he was paid compensation by the company at the rate of 18s. 9d. per week. On 15th October 1901 the workman resumed work, and was again accidentally injured after working for two hours and earning 1s. 10½d.

Held that the period of employment contemplated by Schedule 1, section 1 (*b*), was a continuous employment during which the relation of master and servant substantially continued to exist between the employer and workman; that the period from 16st August to 15th October 1901, during which the workman was off work, constituted a break in his employment with the company; and that he was only entitled to compensation on the footing that his employment with the company had commenced on 15th October, the date on which he had resumed work.

Grewar v. *Caledonian Railway Company*, June 19, 1902, 39 S.L.R. 687, *followed.*

The Workmen's Compensation Act 1897, First Schedule, enacts:—"(1) The amount of compensation under this Act shall be—(*b*) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound."

This was an appeal in an arbitration under the Workmen's Compensation Act 1897 before the Sheriff-Substitute of Lanarkshire at Airdrie (MAIR), between James Gibb, brusher, Airdrie, claimant and respondent, and James Dunlop & Company, Limited, coalmasters, Calderbank, appellants.

The following facts were admitted:—"(*First*) That for over twelve months prior to 16th August 1901 the respondent was employed by the appellants as a brusher at an average weekly wage of £1, 17s. 6d., the engagement being terminable at the will of either party: (*Second*) That on that date he was accidentally injured in the course of his employment: (*Third*) That from 31st August to 15th October he, being unable to work, was paid compensation by the appellants under the Workmen's Compensation Act 1897 at the rate of 18s. 9d. per week: (*Fourth*) That on 15th October he being able to resume work did so, and was again accidentally injured in the course of his employment after working for two hours and earning 1s. 10½d."

On these facts the Sheriff-Substitute found in law that the respondent was entitled to compensation at the rate of 18s. 9d. per week.

The following questions of law were stated for the opinion of the Court—"(1) Whether the period of eight and a half weeks prior to 15th October 1901, during which respondent was off work but in receipt of compensation from the appellants, did not constitute a break in his employment with them? (2) If not, does said period fall to be taken into account in calculating the respondent's average weekly earnings for the 12 months prior to 15th October 1901, the date of the accident in respect of which compensation has been