

Perhaps the most material averment is in Cond. 5, where it is stated—"Spill unlocked and slid open the collapsible door, and pulled the rope with the intention of raising the cage from the basement to the level of the floor on which they were standing. There was no light in the well, and to one standing at the entrance to the lift the well was obscure. Greenlees received no warning from Spill that the cage was not in position to receive passengers, and seeing the gate thrown back he assumed, as he was entitled to do, that it had been opened to admit him to the cage." The case put forward is therefore one of a stranger who, wanting to use the lift, and seeing the door thrown open without any warning from the attendant, steps forward and falls down the well. That appears to me to be a case which should go to a jury. I think the interlocutor of the Lord Ordinary is wrong, and that we should allow an issue.

LORD M'LAREN—I gathered from the arguments of counsel that the Lord Ordinary in disallowing an issue and dismissing the action proceeded upon the ground that sufficient facts were admitted on the part of the pursuer to show that the deceased met his death through his own negligence or contributory negligence. The interlocutor of the Lord Ordinary has, however, been supported before us on the ground that no relevant averment of negligence on the part of the defenders is contained in the record. I need say no more on the first question, except that I think the pursuer's averments strongly suggest that this traveller had not taken the usual precautions for his safety, but I do not think they can be construed as an admission of negligence on the part of the deceased.

As to the relevancy of the averments of negligence on the part of the proprietors of the hotel, the case raised on record is alternative. Either the lift, which appears to have been of old-fashioned construction, should have been provided with automatic arrangements for the safety of visitors to the hotel, or it was the duty of the attendant to warn visitors when the lift cage is not in position, because people who are accustomed to automatic arrangements are very apt to trust to them. I think the averments made are sufficient to entitle the pursuer to have the question as to whether there was negligence on the part of the proprietors submitted to a jury.

LORD STORMONTH DARLING—I concur with your Lordships. The case may be a difficult one for the pursuer to prove, particularly in view of the fact that the poor man is dead, but I think her averments are relevant. They are founded partly on the want of lighting, partly on the peculiar construction of the lift, and partly on the absence of any warning by the attendant. It is thus a competent case of fault, and I agree that it should go to a jury.

The Court recalled the Lord Ordinary's interlocutor, and approved of the proposed issue.

Counsel for the Pursuer and Reclaimer—Watt, K.C.—Ingram. Agents—Galloway & Davidson, S.S.C.

Counsel for Defenders and Respondents—Campbell, K.C.—Younger. Agent—W. Fulton Spiers, W.S.

Friday, January 13.

## FIRST DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.]

MOYES v. WILLIAM DIXON, LIMITED.

*Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 7, sub-sec. (2), First Schedule, sec. 1 (a)—Dependants—Parent and Child—Able-Bodied Daughter Keeping House for Her Father in Return for Board, Lodging, and Clothing.*

In an arbitration under the Workmen's Compensation Act 1897, in which the daughter of a workman, who had been killed in the course of his employment, claimed compensation from his employers, it was proved that the father of the claimant was accidentally killed on 11th August 1904 while in the employment of the respondents; that at the date of her father's death the claimant was about twenty-five years of age and in good health; that for some time prior to November 1899 (the date of her mother's death) she had been employed in a steam-laundry, earning 9s. a-week, and lived with her father and mother; that after her mother's death in November 1899 she ceased going to the laundry and remained at home keeping house for her father; that she received no money wages, but had board and lodging and clothing free.

*Held* that the claimant at the date of her father's death was a "dependant" within the meaning of the Act.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 7, sub-sec. (2), *inter alia*, enacts—"Dependants" means . . . (b) in Scotland such of the persons entitled, according to the law of Scotland, to sue the employers for damages or *solatium* in respect of the death of the workman as were wholly or in part dependent upon the earnings of the workman at the time of his death."

This was an appeal upon a stated case from the Sheriff Court of Lanarkshire at Glasgow in an arbitration under the Workmen's Compensation Act 1897 between Lily Moyes, residing at 4 Govan Pit, Glasgow Road, Rutherglen, claimant and appellant, and William Dixon, Limited, iron and coal masters, 1 Dixon Street, Glasgow, respondents.

The case stated that the following facts were admitted or proved:—“(1) That James Moyes, the father of the appellant, was a waggoner in the employment of the re-

spondents. 2. That the said James Moyes, while in the course of his employment, was accidentally killed on 11th August 1904. 3. That said employment was one to which the Workmen's Compensation Act 1897 applies. 4. That for the three years prior to his death the earnings of the said James Moyes amounted to £149, 13s. 11d. in money, but he also got the use of a house valued at £4 per annum (making £12 for three years), thus bringing up his total earnings for the three years to £161, 13s. 11d. 5. That at the date of the death of the said James Moyes, the appellant, who was a daughter of the deceased, was a woman of about twenty-five years of age, in good health. 6. That for some time prior to November 1899 she had been employed at Cathkin steam-laundry, earning 9s. a-week, and lived with her father and mother. 7. That her mother having died in November 1899 the appellant ceased going to the laundry and remained at home keeping house for her father. 8. That she received no money wage, but had board and lodging and clothing free."

On these facts the Sheriff-Substitute (FYFE) found that the appellant, not having been a dependant of the deceased James Moyes at the date of his death, was not entitled to compensation under the Act, and dismissed the application.

A case for appeal was stated.

The question of law was—"Was the appellant a 'dependant' within the meaning of the Workman's Compensation Act 1897?"

Argued for the appellant—The claimant was dependent on her father at the date of his death—*Turners, Limited v. Whitefield*, June 17, 1904, 6 F. 822, 41 S.L.R. 631; *Main Colliery Company v. Davies*, [1900] A.C. 358; *Howell v. Vivian & Sons*, 1901, 18 Times Law Rep. 36. She was so in fact, and therefore also in the sense of the Act.

Argued for the respondents—This was a question of fact though a question of law was also involved—*Rees v. Penrkyber Navigation Colliery Company*, [1903], 1 K.B. 259. The claimant was really doing service and was not a mere dependant. She got board and lodging in return for her services, and had she not been available another would have had to be paid to do the work. The policy of the statute was that only those who had been deprived of their means of support should receive compensation—*Trainer v. Addie & Sons' Collieries, Limited*, November 22, 1904, 42 S.L.R. 85. The claimant here was quite capable of earning her own support.

LORD ADAM—This is a stated case under the Workmen's Compensation Act. The facts found by the Sheriff disclose that a certain workman, in the employment of the respondents, James Moyes, met with an accident and was killed while in their employment on 11th August 1904. His daughter is the claimant and appellant in this case. The facts found by the Sheriff are very short and very much to the point. [His Lordship then quoted the facts as stated in the case.] The inference in law which the Sheriff has drawn from these

facts is that in the sense of the Workmen's Compensation Act the claimant was not dependent on her father, and is therefore not entitled to compensation under this Act.

The appellant was entirely capable of earning wages of 9s. a-week, but in point of fact she ceased to seek out-door labour, and very naturally on her mother's death came back to her father to keep house for him, and continued till the time of his death three or four years afterwards to keep house for him, getting no wages from him, but getting, as in the common case, board and lodging. The question therefore is whether or no a woman in such circumstances was dependent on her father. I confess that it seems to me, in point of fact—and it is a question of fact—she was dependent on her father at the date of his death. She was getting no assistance from any source, she was getting board, lodging, and clothing from her father, and in all respects was dependent on him.

It is said that this is not a correct view to take of the facts because the appellant was capable of earning wages for her own aliment, and it is suggested that the true view of the case is that she was in the position of a servant and entitled to demand wages from her father, and therefore was not dependent on him but dependent on her own earnings which her father was due her. I think any consideration of that kind is quite irrelevant, because in my opinion the question is, was the appellant or was she not in point of fact dependent on her father at the time of his death? The only conclusion I can arrive at in this case is that she was dependent, and I think we should answer the question to the effect that the appellant was a dependant.

LORD M'LAREN—Under the schedule of the Workmen's Compensation Act it is the function of a Court of Appeal to deal with questions of law determined by the arbitrator and stated in a case. It appears to me that in this case the Sheriff-Substitute, the arbitrator, has determined a question of law because from the findings 1 to 8, which are set forth very clearly in the case, he draws the conclusion that the appellant was not dependent on her father, the deceased James Moyes, in the sense of the Workmen's Compensation Act. In accordance with our settled practice, wherever there is a substantial question of the construction or application of a clause in the statute, this constitutes matter of law that may properly form the subject of a case to us. I infer from the report of a leading case in the House of Lords (*Main Colliery Company v. Davies*) that the Lords of the Court of Appeal had taken the same view of their functions, because while their Lordships in disposing of the case spoke of the question as a question of fact whether the party there in question was or was not a dependant, yet they expressed their views fully on various questions that go to establish the relationship of dependence, and came to the conclusion that the relation of dependence did exist in the case. I have therefore no doubt at all that the question

whether this young woman was or was not dependent on her father is competently before us under the statute. Now, in considering whether she was dependent I find that in the definition clause of the Act, which is substantially the same for Scotland as for England, the right of compensation is limited to such persons as are entitled to sue for damages "as were wholly or in part dependent upon the earnings of the workman at the time of his death." If it had been meant that the right was to be limited to those who were in the position to sue an action for aliment it would have been very easy to say so, or if it had been meant to exclude those who were earning wages for themselves, that again could have been very shortly and definitely expressed in the statute. The right to aliment is a much more limited right than is apparently given under this statute, because a father is not bound to support an able-bodied son who might be earning wages for himself. It is only in cases of sickness or inability to earn a living, it may be from mental inability or want of instruction, that a parent becomes liable in aliment. But the analogy of an alimentary claim is not suggested by anything in the statute; the condition of total or partial dependence upon a man at the time of his death introduces an idea wholly foreign to the common law.

I can see no other construction for this provision except that the ground of liability is whether the wages of the workman at the time of his death were in fact applied to the maintenance of the person who is making the claim. Now, if that be the true construction of the Act the appellant in this case has established her claim, and I am unable to see any other criterion consistent with the language of the statute. I do not say that there may not be exceptional cases, but in the present case, although the woman was no doubt able to earn, and had been in the habit of earning, a small subsistence by doing out-door work, she had come to her father's house to keep his house for him, and that seems to be one of the normal cases where a grown-up child may be dependent on the father. The statute does not limit the case of "dependant" to those who are either minors or infirm or otherwise incapable—it is a general right with a qualification, and the qualification, in my judgment, is that the deceased person at the time of his death had recognised the claim upon him by giving support out of his earnings.

LORD ARDWALL—I concur. The question here is whether or not, in the words of the Act, the appellant was "wholly or in part dependent on the earnings of the workman at the time of his death." Primarily that is a question of fact, and I think it is to be solved by putting it thus—How was this appellant supported? The answer to that question which is given in the findings of the Sheriff-Substitute is that she was supported by the earnings of the workman and in no other way at the time of his death. She had no other source of income whatever. She was dependent

for her board, clothing, and lodging entirely on the wages of the workman her father, with whom she resided, and that being so I cannot see how it can be said in fact or in law that she was not dependent on the wages of the workman at the time of his death.

I consider it quite irrelevant to inquire whether she could have supported herself. If instead of doing what it was, I think, her duty to do in the circumstances—staying at home and keeping house for her father—she had gone outside and earned money by her labour and compelled her father to get a strange woman for his housekeeper, she might have laid past some savings out of her earnings to provide for the future, but I think it would be establishing a very hard precedent, and a precedent that might work very badly in practice, to say that a daughter who acts as the appellant did here shall not only lose the opportunity of saving money but shall have no claim under this Act in respect of her father's death. Mr Hunter seemed to fear that in deciding this case as your Lordships propose to do a dangerous precedent would be established for holding that any able-bodied son or daughter residing with his or her father and doing no work whatever should be entitled to the benefits of this statute. I should say such a case would have to be dealt with in a very special way if it came up for decision, but as matter of actual fact I do not think there is much fear of any such question arising, for I should think it would be a most unusual occurrence for a working man to allow an able-bodied son or daughter to live at home without any good reason for doing so, such as the appellant had, and to sorn on their father for a living. I think the fear expressed on behalf of the respondents here is entirely illusory, and on the facts and the law I entirely agree with your Lordships.

LORD KINNEAR was absent.

The Court answered the question in the affirmative.

Counsel for the Claimant and Appellant—Watt, K.C.—W. Thomson. Agents—J. Douglas Gardiner & Mill, S.S.C.

Counsel for the Respondents—Salvesen, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Saturday, January 14.

SECOND DIVISION.

[Lord Pearson, Ordinary.

HOWLING'S TRUSTEES v. SMITH.

Company—Liquidation—Irregularity in Appointment of Liquidator—Title of Trustees of Deceased Shareholder to Object—Contributories—Companies Act 1862 (25 and 26 Vict. cap. 89), sec. 76.

Held that the testamentary trustees and executors of a person who at his death was the registered owner of shares in a limited liability company