

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.

Monday, June 29, 1903.

(Before Lords Macnaghten, Shand, and Lindley.)

ABRAM COAL COMPANY v.
SOUTHERN.

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

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Viet c. 37), First Schedule (1) (a)—Earnings—Deductions from Wages.

The word "earnings" in the Workmen's Compensation Act 1897 is used in a popular sense, and means the sum which a workman gets for his work when he comes to it properly equipped according to the general understanding and practice of his particular trade.

By agreement with a collier, his employer deducted from his weekly wages a sum for the checkweigh fund, the sharpening of picks, and the maintenance of lamps, and the supply of oil thereto.

Held that in estimating the compensation due for an injury under the Workmen's Compensation Act 1897, the workmen's earnings were his whole wages without any deduction.

In an arbitration under the Workmen's Compensation Act 1897, brought before the County Court Judge of Lancashire at Wigan (BRADBURY), the widow of William Southern claimed compensation from the Abram Coal Company for the death of her husband, a collier, as the result of an accident in the course of his employment at one of the company's mines on 26th July 1901.

Southern's total earnings were stated to be £196, 15s. 8d., but it was agreed by the parties that this sum was not actually paid to him, but only the balance after deduction of £8, 11s. 6d. made under an agreement between him and his employers that deductions should be made from his weekly wages for the checkweigh fund, the sharpening of picks, and the maintenance of lamps, and the supply of oil thereto.

The Coal Company maintained that in calculating the total earnings of Southern

the £8, 11s. 6d. should be deducted from the £196, 15s. 8d.

On 3rd December 1901 the County Court Judge awarded the full amount claimed, refusing to make the deduction above-mentioned.

On 7th June 1902 the Court of appeal (COLLINS, M.R., MATTHEW, and COZENS HARDY, L.JJ.) affirmed this decision.

The Abram Coal Company appealed.

At the conclusion of the appellant's argument their Lordships gave judgment.

LORD MACNAGHTEN—I do not think that your Lordships need be troubled with the consideration of any questions of political economy or with the provisions of the Truck Act. The Truck Act was passed for a wholly different purpose, and it uses different expressions from those which we find in the statute which we have now to construe. The sole question which your Lordships have to consider is what is the meaning of the word "earnings" in the Workmen's Compensation Act 1897. There is no definition of that word, nor is there anything said about deductions. I think that the word "earnings" is used in the schedule not in the sense in which economical writers use it, but in a popular sense. It is to be observed that it is a rough measure; the object of the Act is to ascertain somewhat roughly what is the proper compensation to be made in a case of accident resulting in death. It is not an accurate measure at all; it is only a rough measure between two extreme limits—the limit of £150 and the limit of £300. In my opinion the word is used in a popular sense—in the vernacular in fact. I think that if a miner were asked what his earnings were, he would name the whole sum which he received without any deduction. He might add that he had to pay so much for his lamp-oil and his pick-sharpening, and so on, but I think that the word is used to cover the whole sum of his earnings. I do not think that the point can be put very much better than it is put in the decision of the County Court Judge—"I would add that a lamp and picks in proper working order seem to be looked upon in the trade as being part of the necessary equipment of a miner, to be provided by him or at his cost, without them he would not be considered to be a properly equipped miner, and I should say the word "earnings" means the sum the

workman gets for his work when he comes to it properly equipped according to the general understanding and practice in that particular trade." That being so, I move your Lordships that the appeal be dismissed."

LORD SHAND—I am of the same opinion. The "earnings" are made the standard of compensation in the schedule to the Act, but there is no definition, economic or general, of the term of which the Courts are to ascertain the general sense. A man would say that his earnings were what he got as the result of his labour. I entirely accept the language of the County Court Judge. It may be that a man has to provide himself with certain necessities for his work, but that makes no difference. I also concur with Lord Macnaghten's observations on the Truck Act, and with what Cozens-Hardy, L.J., said with respect to that Act.

LORD LINDLEY—I am of the same opinion, and I have very little to add. I think that these payments, some of which are compulsory while others are not, are all really deductions from the earnings. With regard to the use of the word "earnings" in the schedule, I think it is a rough way of getting at the sum to be paid for compensation. As regards the Truck Act there is no analogy between it and the Act under consideration. The object of the Truck Act is very simple. It is to prevent an employer from giving or professing to give with one hand wages which he takes away with the other. That is the object, and accordingly all kinds of deductions from wages are forbidden. The decisions upon it are of no use on the present occasion.

Judgment appealed against affirmed and appeal dismissed.

Agent for Claimant and Respondent —
—Watkins, Son, & Fletcher, Atherton.

Counsel for Appellants—Haldane, K.C.—
F. L. Smith. Agents—Rowcliffes, Rawle,
& Co., for Peace & Ellis, Wigan.

PRIVY COUNCIL.

Thursday, July 16.

(Before the Lord Chancellor (Halsbury),
Lords Macnaghten, Shand, Davey,
Robertson, Lindley, and Sir Arthur
Wilson.)

YOUNG v. S.S. "SCOTIA."

(ON APPEAL FROM THE SUPREME COURT
OF NEWFOUNDLAND.)

*Ship—Salvage—Ship Belonging to Crown
not Liable to Arrest for Salvage Ser-
vices.*

No arrestment, action *in rem*, or
other process is maintainable against
a vessel which is the property of the

Crown for salvage services rendered to
her, or for any other claim. The only
mode in which an application can be
made to the Crown in respect of con-
tractual rights is that which is pro-
vided by statute.

The master of the s.s. "Furnessia," and
acting on behalf of the owner and crew,
brought an action *in rem* against the s.s.
"Scotia" in the Supreme Court of New-
foundland to recover salvage for services
rendered to her by the "Furnessia" in the
North Atlantic on 19th and 20th September
1901.

The "Scotia" was a twin-screw ferry
boat built at Newcastle-in-Tyne in pur-
suance of a contract between the builders
and the Minister of Railways and Canals
of the Dominion of Canada, acting on
behalf of Her late Majesty the Queen.
The vessel was built for the purpose of
carrying railway cars across the Straits of
Canso between the termini of the Inter-
Colonial Railway of Canada, which was
the property of the Dominion Government
and managed by the Minister and Depart-
ment of Railways and Canals.

The Supreme Court of Newfoundland
found in fact that services worthy of
liberal recompense had been rendered by
the "Furnessia" to the "Scotia," but held
that the "Scotia" was at the time of the sal-
vage services, and still was, the property
of the Dominion of Canada, and therefore
the public property of His Majesty, and
could not be arrested or proceeded against
for salvage. The Court therefore dismissed
the plaintiff's action.

The plaintiffs appealed.

The judgment of their Lordships was
delivered by

The LORD CHANCELLOR (HALSBURY)—
This is an appeal from a judgment of the
Supreme Court of Newfoundland in a sal-
vage suit in which the steamship "Scotia"
was arrested for salvage services. The
salvage services, which will be referred to
hereafter, were of no ordinary character,
but the only question before the board
is whether the vessel so arrested was or
was not liable to seizure, she being (as it is
alleged) the property of the Crown. The
"Scotia" was built for the Crown upon a
contract which is before their Lordships,
and the first piece of evidence which (it is
suggested) makes the ship—at all events
for some period of her existence—not the
property of the Crown, although she was
built for the Crown and money was paid
for her on behalf of the Crown, is that the
money had not been paid in its entirety at
the time when this question arose. Their
Lordships are not disposed to give any
weight to that consideration. Even if the
ship was still in the possession of the
builders and subject to the builders' lien
for the unpaid balance, that would not in
their Lordships' opinion affect the ques-
tion arising on this appeal. The seizure is
intended to be a preliminary to the sale of
the ship, and what would be sold would
not be the mere possession, but the prop-
rietary right. If the proprietary right