

Counsel for the Appellants—Sir R. Finlay, K.C.—Scrutton, K.C.—H. Cowell. Agents—Parker, Garrett, Holman, & Howden, Solicitors.

Counsel for the Respondent—Attorney-General (Sir W. S. Robson, K.C.)—Solicitor-General (Sir S. Evans, K.C.)—Rowlatt. Agent—Solicitor to the Board of Trade.

HOUSE OF LORDS.

Friday, May 14, 1909.

(Before the Lord Chancellor (Loreburn), Lords Ashbourne, James of Hereford, Gorell and Shaw.)

ORRELL COLLIERY COMPANY,
LIMITED v. SCHOFIELD.

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

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), sec. 13—Dependant—Posthumous and Illegitimate Child.

A workman was killed by an accident arising out of and in the course of his employment. At the date of his death he was engaged to be married; the banns had been published at his expense and the wedding day fixed; the woman was pregnant with a child which the workman had acknowledged to be his own and intended to maintain.

Held that the after-born illegitimate child was a dependant under sec. 13 of the Workmen's Compensation Act 1906.

The claim of a posthumous illegitimate child for compensation as a dependant of a deceased workman was sustained by the County Court Judge and affirmed by the Court of Appeal (COZENS-HARDY, M.R., MOULTON and FARWELL, L.J.J.), reported [1909] 1 K.B. 178.

The employers appealed.

After the argument for the appellants their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I move your Lordships that this appeal be dismissed with costs. I do not propose to add anything on the question either of illegitimate children or of posthumous children, as I agree with what has been said by the Court of Appeal on those subjects. As far as the language of the statute is concerned with respect to the question of dependency the real practical matter is whether assistance has been given, or could reasonably have been expected, from the victim of the accident. In this case there was such a reasonable anticipation that the child would have been maintained or assisted by the father.

LORDS ASHBOURNE, JAMES OF HEREFORD, GORELL, and SHAW concurred.

Appeal dismissed.

Counsel for Appellants—C. A. Russell, K.C.—Rigby Swift. Agents—W. P. Ellen, for Peace & Darlington, Liverpool.

Counsel for Respondent—Langdon, K.C.—G. A. Scott. Agents—Burn & Berridge, for James Wilson, Wigan.

HOUSE OF LORDS.

Monday, May 17, 1909.

(Before the Lord Chancellor (Loreburn), Lords Ashbourne, Gorell, and Shaw.)

ANSLOW v. CANNOCK CHASE
COLLIERY COMPANY, LIMITED.

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

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), Sched. I, secs. 1, 2—Amount of Compensation—“Average Weekly Earnings”—Mode of Computation.

A workman was totally incapacitated by accident. During all the preceding year he had been employed by respondent company in the same grade of work. During this time there were 16 weeks when work was impossible through public holidays or stoppage of work. Out of the 36 working weeks the workman had been off work for 3 from sickness and private holiday. His total wages for the year earned in the 33 remaining weeks were £68.

Held that stoppage of work and public holidays were normal incidents of the employment, and that therefore the workman's average weekly earnings, in terms of the Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), Sched. I, secs. 1, 2, were 36/52nd parts of the workman's weekly earnings during the 33 weeks he had actually worked, i.e., 36/52nds of a 33rd part of £68.

The appellant claimed compensation for his total incapacity, caused by an accident sustained in the course of his employment by the respondents. His statutory average weekly earnings, under the circumstances stated *supra* in rubric, were computed by the County Court Judge, whose finding was affirmed by the Court of Appeal (COZENS-HARDY, M.R., MOULTON and FARWELL, L.J.J.), reported [1909] 1 K.B. 352.

The workman appealed.

At the conclusion of the argument for the appellant their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In this case I agree with the conclusion arrived at by the Court of Appeal and by the learned County Court Judge in his extremely careful and able judgment. The question is in regard to the way in which the average weekly earnings of a workman should be calculated in a case in which normally a recognised incident of his work was fourteen

weeks' stoppage and two weeks' general holidays during the year. The object of the Act of Parliament was to compensate a workman for his incapacity to earn, which is to be measured by what he could earn under the conditions prevailing before and up to the time of the accident. If the workman takes a holiday and forfeits his wages, that does not interfere with what he can earn. It is only that for a month he did not choose to work. But if it is one of the incidents of his employment to stop for a month, then he cannot earn wages for that time in that employment, and his capacity of earning is less. I agree with the Master of the Rolls when he says—"In my opinion the true test is this, What were his earnings in a normal week, regard being

had to the known and recognised incidents of the employment? If work is discontinued, that is an element which cannot be overlooked." I therefore move that the appeal be dismissed.

LORDS ASHBOURNE, GORELL, and SHAW concurred.

Appeal dismissed.

Counsel for Appellant—Rufus Isaacs, K.C.—Hugo Young, K.C.—G. Milward. Agents—James Mitchell for R. A. Willcock & Taylor, Wolverhampton.

Counsel for Respondents—C. A. Russell, K.C.—E. W. Cave. Agents—Beale & Co., Solicitors.