

REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL DEALING WITH QUESTIONS OF INTEREST IN SCOTS LAW. *(Continued from page 624 ante.)*

HOUSE OF LORDS.

Thursday, March 3, 1910.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Collins, and Shaw.)

HODGSON v. WEST STANLEY COLLIERY COMPANY.

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

Master and Servant—Workmen's Compensation Act 1906 (6 Edw., VII, cap. 58) sec. 13, Sched. I (1) (a)—Dependant—Father and Two Sons Killed together—Dependency on Earnings of All Three.

Three workmen, a father and two sons, were killed by the same accident. The widowed mother and her surviving children sought for compensation in respect of all three deaths. The sons' wages, together with the father's, had formed one common fund out of which the household was maintained.

Held that compensation was payable in respect of all three deaths.

Observed that compensation may competently be awarded up to the maximum of £300 although the dependency be only partial.

The appellant claimed compensation for the deaths of her husband and two sons under circumstances described in the judgment of Lord Macnaghten. Judgment against the claim was pronounced in the County Court and affirmed by the Court of Appeal (COZENS-HARDY, M.R., FARWELL and KENNEDY, L.JJ.).

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In this appeal a widow, whose husband and two sons were killed in a colliery accident on the 16th February 1909, claimed compensation under the Workmen's Compensation Act upon the ground that she and her six surviving children were in fact dependent upon the earnings of all the three deceased. If the fact is to be taken to be as it undeniably was, the widow and the six children were so dependent, for the earnings of the three deceased, amounting to upwards of £2 a-week for each of them, formed one common fund out of which the

whole household was maintained. Liability in respect of the death of the husband is admitted, but two objections are raised to her receiving compensation in respect of the deaths of her two sons. The first objection is that though there were three deaths in this accident, yet the applicant cannot recover more than the maximum provided in the schedule in respect of one workman's death. There is not a word in the Act to justify this contention. The Act does not say that a dependant cannot receive more than the maximum, but only that an employer shall not be required to pay more than the maximum in respect of one workman's death. How that can limit the employer's liability to the same sum, whether the number of deaths be one or two or three, I cannot understand. This point does not really deserve attention. I think that it was not argued in the Courts below. The second objection when analysed is as follows—It was argued that the mother was in the eye of the law wholly dependent upon her deceased husband, and being so could not possibly be in any degree dependent upon her two deceased sons, for that would involve a logical contradiction. This supposed doctrine of law was to begin with presented to your Lordships as an inexorable rule. Later on Mr Mitchell Innes so far unbent as to admit that it might be only a rebuttable presumption. But when asked if the presumption could be rebutted by conclusive proof that it was diametrically opposed to the facts as here he would not admit that it could be so rebutted. How a rebuttable presumption could be better rebutted I really do not know. In this argument I am told that I am by law required to affirm something as the truth which everyone knows to be entirely false. The short answer is that the law requires no such thing. There are such things as legal fictions, which have a peculiar history of their own, but this is not one of them. The mother was not in law wholly dependent on her deceased husband. She and her family were dependent upon those who supplied them with the means of subsistence, namely, in the present case, her husband and both of her two deceased sons. The Court of Appeal in deciding this case purported to follow earlier decisions in *Senior v. Fountains*, [1907] 2 K.B. 563, and *M'Lean v. Moss Bay Company*,

[1909] 2 K.B. 521. In the last-named case, Buckley, L.J., delivered a dissenting judgment which seems to me quite unanswerable. I think that the error, if I may respectfully so designate it, arose from a misconception of the language used by Lord Halsbury, L.C., in your Lordships' House in *Main Colliery Company v. Davies*, [1900] A.C. 358. The question there was whether a father could be said to be in part dependent upon his son's earnings where the son contributed to the family wages fund and the father received the contributions and spent them in maintaining himself and his family. The answer was obviously yes, and Lord Halsbury, referring to some argument at the Bar, said that the father was so dependent because he was helped by the son to discharge his legal duty of maintaining his family. Hence it seems to have been inferred by the Court of Appeal that the mother must be wholly dependent on the father and could not be dependent on the son's contribution. I find it difficult to follow the reasoning, all the more that Lord Halsbury expressly says in the same case that "the whole family were all dependent on the wages." It is one thing to say that in a particular case a father is partly dependent on his sons' contributions because they assist him in discharging his legal duty of maintaining his family. It is quite a different thing to say that in all cases while the father is alive the mother is wholly dependent upon him. I do not see that the latter proposition in any way flows from the former. This Act of Parliament has its difficulties, as your Lordships are well aware. But so far as the present subject is concerned its provisions are simple enough. If a workman is killed in an accident all who are dependent upon him (within the prescribed limits of kinship) may claim compensation from the employer. If two workmen are killed they may claim twice, and so on according to the number of workmen killed. The employer is protected by a statutory limit of liability in regard to each of the deaths. It is for the arbitrator or County Court Judge to ascertain, purely as a question of fact, who are dependent and to what extent, and what they are to receive, and how the compensation is to be distributed among the dependants if there be more than one, in accordance with the directions of the Act. There is no room that I can see for legal presumptions. Accordingly I move your Lordships to allow this appeal, and to declare, as the evidence is all one way, that Mary Hodgson and her surviving children were dependent upon the earnings of the three deceased—Anthony Hodgson, Joseph Hodgson, and Sidney Hodgson—and that Mary Hodgson and her surviving children are entitled to receive compensation in respect of the deaths of each of the deceased persons. In regard to the directions asked for in the Special Case, the learned County Court Judge says that if at liberty so to decide, he would have awarded three sums of £250, £100, and £150 respectively. I see no objection. But

I must add this observation. It would be an erroneous view to hold that because the widow was only partially dependent upon the husband's earnings, therefore she cannot receive the full sum of £300 in respect of his death. Her loss by his death may be £300 though she was only partially dependent upon him. I do not say that it was so in this case; but I make this observation because he tells us that if she was wholly dependent on the father he would award £300, and if she was partially dependent on the father he would award £250. What has to be awarded in case of partial dependency is "such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants." The sum is to be proportioned to the injury. It is for the committee to say what is reasonable and proportionate to the injury.

LORD MACNAGHTEN—This appeal raises a question of some importance under the Workmen's Compensation Act 1906. The answer seems to be simple enough if regard is to be had to actual facts and to the plain language of the statute. One Anthony Hodgson and two of his sons were in the employment of the owners of the West Stanley Colliery, in Durham. The two sons, who were unmarried, lived at home with their father and mother and six younger children. Both the sons gave the whole of their earnings to their parents. Their earnings with the wages received by the father formed one common fund, out of which the family was maintained. No wages were earned by any of the younger children. The father and the two wage-earning sons were killed in the course of their employment by one and the same accident on the 16th February 1909. Thereupon the widowed mother applied for compensation under the Act on the footing that she and her surviving children were dependent on the earnings of each and all of the three deceased workmen. Each of the three at the time of the accident was in receipt of wages which would have entitled his dependants, if wholly dependent upon him, to the maximum amount of compensation. The owners of the colliery, who are respondents to this appeal, contended that the widow and the surviving children were wholly dependent on the father's earnings, and that in respect of the deaths of the two sons the award must be limited to the expenses of burial. The application came before a representative committee. The committee submitted the matter to the County Court in the form of a Special Case, with a request that if the Court should be of opinion that the contention of the applicant was correct the case should be remitted to the committee "with such directions with respect to the amount or measure of compensation payable by the respondents as to the Court might seem meet." The

Special Case was argued before His Honour Judge O'Connor. In a judgment, which met I think with your Lordships' entire approval, that learned Judge gave cogent reasons for determining the question in favour of the applicant, but in deference to two recent decisions in the Court of Appeal, he came to the conclusion that he was bound to give effect to the contention raised on behalf of the employers. From this decision the widow appealed. The appeal was dismissed with costs, on the ground that the question was concluded by the decisions cited before the learned County Court Judge—*Senior v. Fountains, cit. sup.*, and *M'Lean v. Moss Bay Co., cit. sup.* In this House the learned counsel for the respondents began by suggesting that the three deaths, occurring as they did at the same moment of time, and being caused by one and the same explosion, ought to be regarded as one single fatal accident entitling the widow and orphans to an award of £300 and nothing more. It is enough to say that there is no foundation for such a suggestion. It is opposed to the spirit and to the language of the enactment. Injuries by accident in all cases throughout the Act are dealt with individually as involving separate liability in each case. Passing from this point, the learned counsel pressed upon your Lordships considerations which, whether they are legitimate or not, seem to have had effect sometimes. He warned your Lordships that a decision in favour of the applicant would in many cases tell against the interests of workmen. It was, he said, the general rule, if not the invariable practice, to refuse the maximum amount of compensation in cases of partial dependency. If such be the practice, all I can say is that no warrant for it can be found in the Act. The maximum compensation in cases of partial dependency is just the same as it is in cases of total dependency. In a proper case the arbitrator is at liberty to award compensation on the highest scale, and he ought to do so if such an award seems to him to be reasonable and proportionate to the injury. In a case like the present, where a workman is killed leaving a widow and six children, the youngest being only two years old, no one could say that an award on the highest scale would be unreasonable or disproportionate to the loss to the dependants, though not wholly dependent on his earnings. On the real point at issue there is very little to be said. The question of dependency is not a question of law at all. It is purely a question of fact. If authority is wanted for a proposition so self-evident there is the case of *Main Colliery Company v. Davies (cit.)*, a decision of this House in which there is an explicit statement to that effect. The view of the Court of Appeal seems to be based on a misconception of Lord Halsbury (L.C.'s) judgment in that case. Nothing could be plainer than his Lordship's language. "What the family was in fact earning, what the family was in fact spending, for the purpose of its maintenance as a family, seems

to me," says his Lordship, "to be the only thing which the County Court judge could properly regard." He does, no doubt, refer to the legal obligation on the father to maintain his family, but only, I think, for the purpose of explaining that the learned Judge was justified in coming to the conclusion at which he arrived without taking a strict account of the father's receipts or requiring an analysis of his expenditure. On this slender basis a theory seems to have been constructed to the effect that you must shut your eyes to the sources from which the contributions to the family maintenance came; that you must look to the father, and the father alone; and that what was spent on the maintenance of the family must be deemed to be his in fact because it may have been his in law. It seems to me, with all respect to the Court of Appeal, that the more recent decisions of that Court, on which the judgment under appeal is founded, cannot be supported. I agree in the dissentient judgment of Buckley (L.J.) in *M'Lean v. Moss Bay Company (cit.)*, and in the earlier decisions of the Court of Appeal in which my noble and learned friend Lord Collins took part as Master of the Rolls. I am therefore of opinion that the appeal should be allowed, with costs here and below, and the case remitted to the committee with a declaration that the applicant was dependent on each and all of the three deceased workmen. It rests with the committee to determine the proper amount of compensation. But as the committee has asked for directions on the matter it may be permissible to say that the aggregate amount of compensation which the learned County Court Judge intimated that he would have allowed if he had been free to decide the question seems to be fair and reasonable. But, speaking for myself, I venture to think that it would be more consonant with the spirit and intention of the Act if the full amount of compensation were awarded in respect of the father's death, and the balance of the sum proposed to be allowed apportioned in respect of the deaths of the two sons.

LORD COLLINS—I have had an opportunity of reading the judgment of my noble and learned friend on the Woolsack, and I entirely concur with it.

LORD SHAW—The respondents put forward an argument to the effect that there having been only one accident, and a maximum award having been made in respect of the death of one victim, namely, the father, the statutory remedy has been exhausted, and no further award can be made to the appellant in respect of the death of her two sons, who were also workmen, and in the same accident lost their lives. It is sufficient for me to say that I think that such an argument is totally without warrant from the terms of the statute. On one other matter, apart from the real question for determination in this case, I wish to remark. I express my entire concurrence with the views of the noble and learned Lord on the Woolsack as

to the fixing of the scale of compensation in cases of partial dependency. Indications not infrequently appear of an opinion that the maximum awards apply only to cases of dependency, and not to partial dependency. That, however, is not so. The statute merely provides (Schedule I, sec. 1, sub-sec. (a), ii) that in the case of partial dependency the maxima for total dependency shall not be exceeded. Within that limit the arbitrator is free to do his best to make the compensation meet the loss according to the circumstances of the case. The material finding of fact in the Special Case is—“(5) Both the deceased sons gave all their earnings to their parents, and such earnings, together with the earnings of the deceased father, formed one common fund out of which the whole household was maintained.” The statement, both of the facts of the case and of the position of the legal decisions as made by the County Court Judge, is eminently satisfactory and clear. He says plainly—“The son’s wages, together with the father’s, formed one common fund out of which the household was maintained.” And he puts the fact illustratively thus—“If the mother had been asked on the morning of the 16th February what she and her family had to live on she would have answered truly, ‘Upon the earnings of my husband and my two boys.’” This being the actual fact, it would, apart from certain decisions and their consequences, to which I shall refer, seem difficult to see how a court of law could reach the conclusion that the wife must, contrary to that fact, be held to have been constructively wholly dependent on her husband’s earnings, and constructively not dependent on her sons’. It seems late in the day to reiterate that the question of dependency is one of fact. The Statute of 1906 so treats it in the 8th section of Schedule I, and the fact is to be found by arbitration or the County Court. In four separate judgments my noble and learned friend Lord Collins (then Master of the Rolls) has most clearly laid this down. I refer to the cases of *Simmons v. White*, [1899] 1 Q.B. 1005; *Bevan v. Crawshaw*, 1901, 71 L.J., K.B. 49; *Howells v. Vivian*, 1901, 85 L.T. Rep. 529; and *Rees v. Penrhyber Colliery Company*, [1903] 1 K.B. 259. According to the judgments of the Court of Appeal in these cases, whether dependency exists, whether it is whole or whether it is partial—all these are questions of fact. In Scotland the matter was so treated by Lord President Kinross and his colleagues of the First Division in *Turners v. Whitefield*, 1904, 41 S.L.R. 631, 6 F. 822. In that case a husband and wife had lived in voluntary separation for fourteen years prior to his death by accident. And the Lord President says—“It was stated by the Lord Chancellor in giving judgment in the case of *Main Colliery Company v. Davies* (cit.), that the question whether a person was a dependant in the sense of the Act is a question of fact. The respondent in the present case was not supported by, nor was she receiving any contribution towards support from, the deceased, and it ap-

pears that she was not to any extent relying on him for her support—in other words, she was not in fact dependent upon him—and I am therefore of opinion that she was not dependent upon his earnings within the meaning of the Workmen’s Compensation Act 1897 so as to entitle her to compensation from the appellants.” As I have stated, not only whether dependency exists, but whether it is whole or is partial, are questions of fact. In one of the cases Lord Collins says—“I understand by the words wholly dependent that there was no other source of income during the life of the deceased other than his earnings on which the applicant was dependent.” And Stirling, L.J., said—“Put broadly, the test raised by the Act is whether what the workman was earning at the time of his death was the sole source to which the applicant could have looked for maintenance at the time.” I respectfully agree with the soundness of those views, and, so regarding them, I concur with Buckley, L.J., in thinking that it is—if they are to be given effect to—impossible to hold in the present case that the applicant was wholly dependent on her husband’s earnings. To do so would be not to accept but to controvert the facts as found. I think that the decisions cited and the opinion above expressed are in complete accord with the judgments, especially those of Lord Halsbury, L.C., and Lord Davey in *Main Colliery Co. v. Davies* (cit). Lord Halsbury says—“The whole family were all dependent upon the wages. Whose wages? Partly this boy’s wages. . . . What the family was in fact earning, what the family was in fact spending, for the purpose of its maintenance as a family, seems to me to be the only thing which the County Court Judge could properly regard.” How has this decision been regarded? For an answer one must turn to *Senior v. Fountains* (cit). Because the father was treated as head of the family and bound by the extent of his means to support it, and was ‘relying or dependent’—call it what you please—for the means by which he discharges his legal obligation upon the funds supplied to him or partly supplied to him by the children who can earn those funds;” therefore—the conclusion appears to run—the wife and family are wholly dependent on the father. This humbly appears to me to upset the notion supported in *Main Colliery Co. v. Davies*, and so entirely in accordance with fact, of a family fund to which various members of the family contribute, and directly to contradict the view of Lord Davey. With much respect to the Court of Appeal, I think that the case of *Senior v. Fountains* was founded on misapprehension and was erroneous. And I must venture to add this—In that case the County Court Judge came to the conclusion “that the mother and younger children were not wholly dependent on the father’s earnings.” I think that that was a conclusion and finding of fact. In reversing that conclusion, the Court were truly reversing a conclusion of fact, and

the finding or opinion that the mother and children must be treated as wholly dependent on the father's earnings was a departure from the fact found. Such a departure was not in my opinion competent to a court of legal review. Following the judgment in *Senior v. Fountains* came that of *Moss Bay Company (cit.)*, in regard to which I concur in the dissentient judgment of Buckley, L.J., and the present case, in which I fully share the opinion of the learned County Court Judge on which I have commented. As to the Irish case of *Queen v. Clarke* (1906, 2 Ir. Rep. 135), it follows from the opinion above delivered that I agree with the dissenting opinion of that distinguished Judge the late Fitzgibbon, L.J.

Judgment appealed from reversed.

Counsel for the Appellant—Isaacs, K.C. —Lowenthal. Agents—Hyman, Isaacs, & Lewis, Solicitors.

Counsel for the Respondents—Sir R. B. Finlay, K.C. — Mitchell Innes, K.C. — Griffith Jones. Agents — Rawle, Johnstone, & Co., Solicitors.

HOUSE OF LORDS.

Monday, March 14.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Atkinson, Collins, and Shaw.)

CLOVER, CLAYTON, AND COMPANY
v. HUGHES.

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

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1—Accident—Diseased State of Workman Leading to Death.

A workman suffered from a severe aneurism of the heart, from which he might at any time have died even in bed. While he was at his work engaged in manual labour the aneurism burst and he died. The County Court Judge found that "the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal." He therefore awarded compensation.

Held (diss. Lords Atkinson and Shaw) that there was evidence to support the finding, and that the injury had arisen out of and in the course of the employment.

An award of compensation was made to Hughes under the Workmen's Compensation Act 1906, and affirmed by the Court of Appeal (COZENS-HARDY, M.R., FARWELL, and KENNEDY, L.J.J.). The employers Clover, Clayton, & Company appealed. The facts are given in the judgment.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In this case a workman suffering from an aneurism in so advanced a state of disease that it might have burst at any time was tightening a nut with a spanner when the strain, quite ordinary in this quite ordinary work, ruptured the aneurism and he died. This is a mere summary of the facts. They and the learned County Court Judge's conclusions from them are stated fully in his instructive judgment. In what I am about to say I take the facts as he found them *in extenso* and rely upon them. He has held, and the Court of appeal have confirmed his decision, that in these circumstances the workman's dependants are entitled to compensation. I agree. These judgments make it unnecessary, from my point of view, that I should review the authorities, which I wish to follow loyally. But in a case of such great importance in the construction of this Act I wish to state my own view as to its meaning in the light of the weighty opinions which have been cited to us in argument. It seems to me important that we should regard not merely the question, "Was this an accident or not?" but also the entire sentence at the commencement of the Act of 1906, in which the liability of the employer to make compensation is set up. It runs as follows—"If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this Act." The injury must be caused by an accident, and the accident must arise out of the employment. We are not concerned here with the course of employment. What, then, is an "accident?" It has been defined in this House as "an unlooked for mishap, or an untoward event which is not expected or designed." All the Lords who took part in the decision of *Fenton v. Thorley*, 41 S.L.R. 460, [1903] A.C. 443, agreed in substance with this definition in Lord Macnaghten's speech. I take that as conclusive. Next, the accident must be one "arising out of" the employment. There must be some relation of cause and effect between the employment and the accident, as well as between the accident and the injury. I think that some of our difficulties in applying the Act are due to this. Courts of law have frequently been obliged to consider, especially in actions on policies of insurance, what is to be regarded as the cause of some particular event. In one sense every event is preceded by many causes. There is the *causa proxima*, the *causa causans*, the *causa sine qua non*. I will not pursue scholastic theories of causation. The *causa proxima* is alone considered in actions on a policy as a general rule. I do not think that it is the proper rule for cases under the section now under discussion, for the reasons explained by Lord Lindley in *Fenton v. Thorley (cit.)*. It seems to me enough if it appears that the employment is one of the contributing causes without which the accident which actually happened would not have hap-