

# SUMMER SESSION, 1903.

## COURT OF SESSION.

Thursday, May 14.

### FIRST DIVISION.

[Sheriff Court at Hamilton.

**CORBET v. GLASGOW IRON AND  
STEEL COMPANY, LIMITED.**

*Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), First Schedule, secs. 1 (b) and 2—Amount of Compensation—Partial Incapacity of Workman.*

*Held* that in an arbitration under the Workmen's Compensation Act 1897, the arbitrator, in fixing the amount of compensation in cases of partial incapacity, may, if on the evidence he sees fit, award as compensation the whole amount of the difference between the average earnings of the workman before the injury and the average amount of his earnings after the injury, provided that it does not exceed fifty per cent. of the average earnings before the injury, and does not exceed £1 per week.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), 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 £1. (2) In fixing the amount of the weekly payment regard shall be had to the difference between the amount of the average weekly earnings of the workman

before the accident and the average amount which he is able to earn after the accident, and to any payment, not being wages, which he may receive from the employer in respect of his injury during the period of his incapacity.”

In an arbitration under the Workmen's Compensation Act 1897 before the Sheriff-Substitute (DAVIDSON) at Hamilton, Thomas Corbet, puddler, Motherwell, claimed compensation from the Glasgow Iron and Steel Company, Limited, in consequence of having been severely burned by molten metal on January 14, 1902, in their iron works at Motherwell, and craved an award in his favour against them of such weekly payments as might be found due to him under the Act. The Sheriff-Substitute awarded the claimant 11s. 8d. per week as compensation.

Corbet took an appeal.

The case stated by the Sheriff-Substitute set forth—“The case was heard before me on the 3rd October 1902, when the following facts were admitted:—That the appellant was severely burned as above stated; that his wages at the time of the accident were £2, 3s. 4d. per week; that the respondents admitted the appellant's claim and paid him £1 per week from two weeks after the date of the accident until the 5th August 1902; that on said 5th August appellant having partially recovered from the effects of the accident obtained a light job from the respondents for which he was paid wages at the rate of £1 per week; that after said date, when the appellant was receiving £1 per week of wages as stated, the respondents tendered to him compensation at the rate of 11s. 8d. per week. The appellant refused to accept said sum. No evidence was led on 3rd October 1902, the date of the hearing, neither party desiring to lead evidence, as the facts were not in dispute. In these circumstances I found that the appellant was entitled to 11s. 8d. per week, being the sum offered, and being fifty per cent.

of the difference between what he earned before the accident and what he was earning at said light job after 5th August 1902, and I awarded him compensation at that rate, with expenses to respondents."

The question of law was—Was the arbiter right in the circumstances stated in awarding the appellant fifty per cent. of the difference between what he earned before the accident and what he earned when he had partially recovered?

Argued for the appellant—It was clear from the manner in which the Sheriff-Substitute explained his decision, and from the terms of the question of law stated by him, that in making his award he proceeded on the view that the employers' liability was limited to fifty per cent. of the difference between the appellant's wages before the accident and his wages after the accident. That view was wrong in law—*Geary v. William Dixon, Limited*, May 12, 1899, 4 F. 1143, 36 S.L.R. 640; *Parker v. William Dixon, Limited*, June 19, 1902, 4 F. 1147, 39 S.L.R. 663. The question put in the case should accordingly be answered in the negative, and it should be made clear that the Sheriff-Substitute's discretion in making the award was not limited in this way.

Argued for the respondents—It certainly was within the discretion of the Sheriff-Substitute to award the sum given, and accordingly the question of law put should be answered in the affirmative.

LORD PRESIDENT—There seems to be no doubt that the Sheriff-Substitute in making his award proceeded upon the assumption that he was limited to fifty per cent. of the difference between the workman's wages before the accident and the wages which he was able to earn after the accident. The views so clearly expressed in the cases of *Geary* and *Parker* do not appear to have been brought under the Sheriff-Substitute's notice. This being so, the proper course seems to be to answer the question in the negative and remit to the Sheriff to make an award not so limited, but fixed with reference to the facts and the law of the case.

LORD ADAM—There seems to be no dispute between the parties as to the true construction of the statute, but the question in the case is ambiguous, and it rather appears to me that an unqualified answer in the negative might lead to misunderstanding, and that we ought to make a finding that the Sheriff-Substitute is not limited in awarding compensation to fifty per cent. of the difference between the wages before and after the accident, and "therefore" answer the question in the negative.

LORD M'LAREN—I rather incline to the suggestion of Lord Adam to make a special finding, and with that finding remit to the Sheriff-Substitute to award compensation.

I presume it would be perfectly clear that it is within the discretion of the Sheriff-Substitute under that remit to

award the same sum as he has already awarded should he consider it necessary to meet the justice of the case to do so. The point is that the award is not necessarily to be limited to fifty per cent. of the difference between the wages earned by the workman before the accident and the wage he was able to earn after the accident.

LORD KINNEAR—I agree with your Lordships.

The Court pronounced this interlocutor:—

"Answer the question put in the case in the negative: Find that the appellant is entitled to compensation under the Workmen's Compensation Act 1897, and that the Sheriff as arbiter may, if on the evidence he sees fit, award as compensation to the appellant the whole amount of the difference between his average earnings before the injury and the average amount of his earnings after the injury, provided that it does not exceed fifty per cent. of the average earnings before the injury and does not exceed £1 per week: Find the appellant entitled to expenses, and remit the account thereof to the Auditor to tax and to report."

When the Auditor's report came up for approval and decree a remit was made to the Sheriff to proceed in terms of the findings in the above interlocutor.

Counsel for the Appellant—Campbell, 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, May 16.

#### FIRST DIVISION.

SUMMERLEE AND MOSSEND IRON AND STEEL COMPANY, LIMITED, v. HUGHES.

*Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) Sched. I., sec. 1 (a), sub-sec. ii.—Amount of Compensation—Dependants Partially Dependent upon Earnings of Deceased Workman—Funeral Expenses.*

The arbitrator, in determining the amount payable as compensation under the Workmen's Compensation Act 1897, Sched. I., sec. 1 (a), sub-sec. ii., to a person in part dependent upon the earnings of a deceased workman, is entitled to take into consideration expenses disbursed by the claimant for the workman's funeral.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), First Schedule, is in these terms:—"Scale and Conditions of Compensation.—Scale.—(1) The amount of compensation under this Act shall be (a) —where death results from the injury—(i.)