

SUMMER SESSION, 1901.

COURT OF SESSION.

Tuesday, May 14.

SECOND DIVISION.

(Sheriff-Substitute at
Rothesay.)

CUNNINGHAM v. JAMES M'GREGOR
& COMPANY.

Reparation—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), First Schedule, sec. 1 (a) (i)—Dependants—Wholly or in Part Dependent—Husband Living Apart from and Not Supporting Wife.

In an arbitration under the Workmen's Compensation Act 1897, in which the widow of a workman claimed compensation from his employers on account of the death of her husband while in the course of his employment, it was proved that the husband had for the three years preceding his death lived separate from his wife and family, and that his contribution towards their support did not exceed £5 per annum. In addition to that sum the wife's means of livelihood were derived from occasional employment, together with contributions from her relatives.

Held that the wife was wholly dependent upon her husband within the meaning of the First Schedule, sec. 1 (a) (i), of the Workmen's Compensation Act 1897.

This was an appeal in an arbitration under the Workmen's Compensation Act 1897 before the Sheriff-Substitute at Rothesay (MARTIN) between Mrs Ann Cunningham, widow of David Cunningham, quarryman, Bearsden, as an individual and as tutor and administrator-in-law for her son Patrick Cunningham, claimant and appellant,

and James M'Gregor & Company, quarrymasters, Corrie, Arran, respondents.

From the case stated by the Sheriff-Substitute it appeared that the appellant's husband met with an accident while in the employment of the respondents at their stone quarry at Corrie, Arran, which resulted in his death on 11th July 1900.

The Sheriff-Substitute in the case further stated as follows—"It was proved that the average wage earned by the deceased was £1, 8s. 10³/₄d. per week—amounting for 156 weeks to £225, 7s. 9d. It was also proved that the deceased had during that period represented himself to be an unmarried man, and lived quite separate from his wife and family, without any arrangement for maintaining them, and that the average sum contributed by him towards their support did not exceed £5 per annum. It was further proved that the appellant had no regular means of livelihood other than occasional employment and what was contributed by her relatives and the dole from her husband above mentioned, and that the pupil claimant was earning a small wage."

In these circumstances the Sheriff-Substitute held as matter of law "that the appellant and her pupil child were not (within the meaning of the statute, section (1) (a)), wholly, but only partly, dependent upon the deceased at his death, and therefore entitled only to a sum reasonable and proportionate to the injury sustained by them."

The Sheriff-Substitute assessed the sum at £15, being three times the sum received by the claimant during the last year of deceased's life, and apportioned that sum thus—£10 to the widow and £5 to the son.

The questions of law for the opinion of the Court were—" (1) Whether in the circumstances above stated the appellant and her pupil child were within the meaning of the statute, section (1) (a), partly dependent only; or (2) Whether in respect of the

deceased's common law obligation of support they were wholly dependent within the meaning of the Act."

The Workmen's Compensation Act 1897 by the First Schedule 1 (a) provides that the amount of compensation shall be where death results from the injury—" (i) if the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury," or (ii) if he leave no such dependants "but leaves any dependants in part dependent upon his earnings, . . . such sum . . . as . . . may be determined . . . to be reasonable and proportionate to the injury to the said dependants."

Argued for the appellant—It was admitted that the son of the deceased, who was earning a small wage, was only partly dependent upon him at the time of his death. But the Sheriff-Substitute was wrong in holding that the appellant was only partly dependent. She was legally dependent upon her husband, and the fact that he had failed to support her did not affect the question. If it had appeared that she was supporting herself the case might have been different; but the facts showed that she was chiefly living upon the charity of her relatives, with the addition of what she could earn by occasional employment, and the small sum contributed by her husband. In the sense of the statute she was wholly dependent upon him.

Argued for the respondents—The Sheriff-Substitute had found, as matter of fact, that the appellant was only partly dependent upon her husband; and that finding was supported by the specific facts stated as proved. It was impossible that she could have lived upon the annual contribution of £5 made by her husband, and for the rest she was therefore not dependent upon him.

LORD JUSTICE-CLERK—This is a peculiar case. From the facts stated by the Sheriff-Substitute it appears that this man neglected his wife, and only contributed a small sum towards her support, but that she was dependent on him I have no doubt. She was dependent on him for maintenance. The only facts stated to the contrary are, that certain relatives contributed to her support, and that she had occasional employment. If there was anything to show that she was earning her own livelihood the case might be different; but there is no definite statement on that point, and we do not know what she earned. The whole facts seem to indicate that this is just the ordinary case of a wife dependent for her subsistence upon her husband. I think, therefore, that the case must go back to the Sheriff-Substitute to settle what sum should be awarded to her upon that basis.

LORD TRAYNER—I agree. The facts stated by the Sheriff-Substitute satisfy me that the appellant was wholly dependent on her husband within the meaning of the Act, and that his pupil child was only partly dependent.

LORD YOUNG—I agree. Assuming the facts to be as stated in the case, I am of opinion that we must answer the question whether the appellant was wholly or partly dependent upon her husband as we are desired by the appellant. The facts stated are to the following effect—[*His Lordship quoted the facts ut supra*]. I can see nothing in that statement which displaces the legal presumption that a wife is wholly dependent on her husband. There might be facts which showed that the case was otherwise, but these facts do not. I think, therefore, that the appellant was wholly dependent on her husband, and that the case must go back to the Sheriff to award her compensation upon that footing.

LORD MONCREIFF—I am of the same opinion. I agree with the Sheriff-Substitute in thinking that the child was not wholly but only partly dependent on the deceased at his death, because the child was then earning a small wage; but as regards the widow I think that the conclusion which the Sheriff-Substitute has reached is wrong. In coming to the conclusion that the widow was only partly dependent on the deceased at the time of his death the Sheriff-Substitute has proceeded on the ground that because she had managed to exist without being supported by her husband, except to the extent of a sum not exceeding £5 a-year, she was not wholly dependent on him. I think that that conclusion proceeds on an erroneous view of the statute. I think that a relative is "in part dependent" on the deceased in the sense of the statute only when the relative has some independent means of support of a more or less permanent and substantial character. Now, I think it is clear from what is stated in the case that the wife here had no regular and independent means of support. She had herself only occasional and precarious employment, and her main means of support were charitable contributions by her relatives and the small sums which she received from her husband, who was well able to support her had he chosen to do so. In these circumstances it is clear, in my opinion, that she was wholly dependent on her husband at the time of his death. I therefore agree that the first question should be answered as your Lordship proposes.

The Court found that on the facts as stated the appellant was wholly dependent on her late husband, while the pupil child of the deceased was only partially dependent upon him; therefore recalled the award of the arbitrator, and remitted to him to award compensation in terms of the foregoing finding.

Counsel for the Claimant and Appellant—Glegg—A. S. D. Thomson. Agents—Hutton & Jack, Solicitors.

Counsel for the Respondents—Salvesen, K.C.—Younger. Agents—Macpherson & Mackay, S.S.C.