

question of detail to be considered. I presume your Lordships would not, in the judgment now to be given, say anything prejudicial to the claim which Mr Rogerson through his counsel intimates he may have to make at a later stage in the proceedings. Mr Rogerson, I understand, contends that if there is any individual loss he is not to share it. There is nothing in the interlocutor which affects Mr Rogerson's position, and we give no opinion upon it.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court adhered.

Counsel for the Pursuers—Kennedy—Gunn. Agents—Mackay & Young, W.S.

Counsel for the Defenders Dobie's Trustees—Ure, Q.C.—Cullen. Agents—Webster, Will, & Co., S.S.C.

Counsel for the Defenders Rogerson's Trustees—C. N. Johnston—A. F. Steuart. Agents—J. C. & A. Steuart, W.S.

Tuesday, July 18.

FIRST DIVISION.

[Sheriff-Court of Lanarkshire.

FAGAN v. MURDOCH.

Reparation — Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) 1st Schedule (1) (a)—Claim by Person Partly Dependent on Deceased — Whether Excluded by Existence of One Wholly Dependent.

By the first schedule of the Workmen's Compensation Act it is provided that the amount of compensation payable under the Act shall be "(a) where death results from the injury, (1) If the workman leaves any dependants wholly dependent upon his earnings at the time of his death" . . . a certain sum depending on the amount of his wages. "(2) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death" . . . a sum to be fixed by agreement or arbitration. "(3) If he leaves no dependants" . . . the expenses of deathbed and funeral. *Held* that the claim of a person in part dependent on a deceased workman is excluded by the fact of his leaving a dependant wholly dependent on him.

This was an appeal at the instance of Robert Murdoch, builder, Glasgow, in an arbitration under the Workmen's Compensation Act at the instance of Patrick Fagan, workman, who claimed £200 as compensation for the death of his son.

The following facts were stated by the Sheriff (STRACHAN), as having been proved in the case:—"(1) That said deceased John Fagan died on 28th February 1899, from injuries sustained by him while a workman

in the employment of the appellant in the sense of The Workmen's Compensation Act. (2) That the respondent is the father of the said John Fagan, and was partially dependent for his maintenance on his said son at the time of his death. (3) That the average wage of the said John Fagan while in the employment of the appellant was 23s. 6d. per week, so that the total amount of compensation payable by the appellant under the Act was £187. (4) That the said John Fagan was survived by a widow, but no children, and an arrangement was entered into between the appellant and Margaret Skerry or Fagan, then wife now widow of the said John Fagan, under which she accepted the sum of £80 as in full of all claims then competent to her or which might arise through the death of her said husband, in addition to the sum of £20 for funeral expenses. These sums, together with a further sum of £3, were duly paid by the appellant, on which a discharge was granted by the said widow in favour of the appellant, in full 'of all claims either existing then or to become due on the death of my said husband.' This discharge forms No. 3 of process. (5) That at the time of said discharge the appellant understood that the said Margaret Skerry or Fagan was the only person entitled to compensation in respect of the death of the said John Fagan. (6) That the widow of the said John Fagan was, on 12th April 1899, four months gone in pregnancy, conform to medical certificate, which forms No. 5 of process." The Sheriff proceeded:—"On these facts I held that the respondent was partially dependent on his son at the time of his death, and I awarded him the sum of £25 as compensation due to him under the Act, and also found him entitled to £5, 5s. of expenses."

The following questions were submitted for the opinion of the Court:—"(1) Whether the fact that the respondent held a decree for aliment against the deceased and received payment of aliment from him constituted the respondent a part dependent within the meaning of the Act? (2) Whether the fact that the deceased left a dependent wholly dependent on him excludes the claim of the respondent as a part dependent on the deceased?"

At advising—

LORD PRESIDENT—In my opinion no one who was only partially dependent on the deceased can claim compensation under the Act of 1897 if a person exists who was wholly dependent on the deceased. I cannot say that this is perfectly clear, or at least so clear as might be expected, one way or another, on a point of this importance. But it seems to be the necessary result of the part of the Act relating to this subject. Moreover, I do not think this at all a surprising result. It must be borne in mind that the Act leaves untouched the common law rights of persons who do not come under it. And the remedies which it provides do not profess to be a complete or systematic satisfaction of all legal claims, but rather a more or less

practical redress for salient cases of hardship.

Now, the question mainly turns on the first section of the first schedule, head (a), which begins, "Where death results from the injury." It is necessary, however, to remember that the general words with which the whole section begins are "The amount of the compensation under this Act shall be," and then follows "where death results from the injury." Immediately after these latter words the sub-section is again branched, and deals with three cases—first, "if the workman leaves any dependants wholly dependent upon his earnings;" second, "if the workman does not leave any such dependants, but leaves any dependants in part dependent;" and third, "if he leaves no dependants." In each case the amount is stated; but it is to be noted that while in the first case (that of persons wholly dependent) three years' earnings, not exceeding £300, is the amount prescribed, in the second case (that of persons partially dependent) it is so much, not exceeding the amount payable under the first head, as is found to be reasonable. In the third case (that of no dependants) the amount is merely medical and burial expenses, not exceeding £10.

Now, it seems to me that this sub-section when read as a whole defines the total liability of the employer, and presents three alternative cases which are mutually exclusive. If there are persons wholly dependent, then the employer has got to pay three years' earnings not exceeding £300. The next case contemplated is that of those partially dependent, but their right is conditioned by the opening words "if the workman does not have any such" (i.e., wholly dependent) "dependants." If he has left such wholly dependent dependants, then the Act does nothing for the partially dependent. There is no provision authorising the arbitrator to carve a provision for them out of what is devoted to the wholly dependent, and no provision for any further liability on the part of the employer than what is set forth in the three cases put in the sub-section. The first schedule in which those provisions occur is expressly pointed to in the first section of the Act itself, which declares generally the liability of the employer, as stating the rules of that liability. Accordingly, the employer is only liable in those events which are provided for in the first schedule.

I am therefore for answering the second question in the affirmative. This supersedes the first question, which was not debated.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court answered the second question in the affirmative, and found it unnecessary to answer the first question.

Counsel for Appellant—G. Watt—Glegg. Agents—Macpherson & Mackay, S.S.C.

Counsel for Respondent—Orr—J. D. Miller. Agents—Inglis & Orr, S.S.C.

Tuesday, July 18.

FIRST DIVISION.

STARK v. FIFE AND KINROSS COAL COMPANY, LIMITED.

Company—Lien over Shares—Obligation by Shareholder to Trustee for Preference Shareholders.

The vendors of certain property, for the purchase of which a company had been formed, entered into an agreement with the company whereby they undertook, *inter alia*, to guarantee the interest on the preference shares of the company for three years. In implementation of their agreement they granted a bond of guarantee by which they bound and obliged themselves jointly and severally to pay to certain trustees for the preference shareholders the interest on the preference shares for three years.

One of the vendors having died, and his estates having been sequestrated, his trustee sold certain ordinary shares of the company standing in his name to a purchaser. In an action by the purchaser to have the shares registered in his name, *held* that the company had no lien over the shares in question, in respect that the creditors in the bond of guarantee were the trustees for the preference shareholders, and not the company.

The Fife and Kinross Coal Company, Limited, was incorporated on 3rd February 1897 with a capital of £70,000, divided into 3,500 cumulative preference shares of £10 each, and 3500 ordinary shares of £10 each.

Article 36 of the articles of association of the company was in the following terms:—"The company shall always have a first and paramount lien on the whole of the shares of every member, for all debts, liabilities, or engagements, ascertained or contingent, of such member, solely or jointly with, or as surety for, any other person, to the company; and the board may not only refuse to register the transfer of any such shares if the transferrer is indebted to the company as aforesaid, but may, after six days' notice in writing, absolutely sell and dispose of, for behoof of the company, all or any of the shares of such debtor, and apply the proceeds, so far as the same extend, in discharge or satisfaction of such debts, liabilities, or engagements, or may hold the proceeds in security thereof; and upon such sale the board shall, without any further or other consent from the holder of such shares, transfer the same to the purchaser thereof; but subject always to the provision in article 30 as to members whose registered place of address is not in the United Kingdom. The said lien shall also extend to all dividends from time to time declared in respect of such shares."

Article 42 provided—"The board may, in their sole discretion, decline to register any transfer of shares upon which the company