

HOUSE OF LORDS.

Tuesday, December 4.

(Before Lord Dunedin, Lord Atkinson, Lord Shaw, Lord Phillimore, and Lord Blanesburgh.)

JOHN BROWN & COMPANY, LIMITED
v. BAIRD.

(In the Court of Session, January 13, 1923
 S.C. 300, 60 S.L.R. 208.)

Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58)—Compromise of Claims—Discharge of All Claims, including War Additions, in Return for Lump-Sum Payment—Validity.

An injured workman was paid compensation by his employers at the full statutory rate of £1 per week plus the corresponding war addition of 15s. per week from 15th April 1920, the date of the accident, until 21st August 1920, when they ceased payment, maintaining that he had fully recovered. The workman contended that he was still incapacitated, but eventually signed a discharge of all his claims under the Workmen's Compensation Act and the War Additions Acts for £35. The recording of the memorandum of the agreement having been objected to by an approved society, of which the workman was a member, on the ground that the sum was inadequate, the matter was referred to the Sheriff-Substitute as arbitrator. Before anything more had been done the workman raised arbitration proceedings, to which his employers replied by founding on the discharge. The arbiter having found that the agreement was void in respect that it amounted to contracting out of the Act, the employers appealed by way of Stated Case. Eventually the present appeal was taken.

Held (rev. judgment of the First Division, Lord Skerrington diss.) that the workman was not barred by the discharge from applying for an award of compensation; that the discharge amounted to an agreement to contract out of the Act in breach of section 3, sub-section 1; and that accordingly it fell to be set aside.

The case is reported *ante ut supra*.

The workman appealed.

On 4th December 1923 a joint application was made to the House of Lords by the appellant and respondents in which they craved their Lordships to pronounce an order reversing the judgment of the First Division finding that the appellant was bound by the discharge above referred to from proceeding with the arbitration.

The petition stated—"That since the date of said interlocutor and prior to the appellant presenting the said petition of appeal your Lordships had on 20th March 1923 decided in *Russell v. Rudd* ([1923] A.C. p. 300) (*infra*) that an agreement between an injured workman and his employer for the

settlement of all claims to compensation under the Workmen's Compensation Act 1906 by the payment of a lump sum apart from the provisions of the Act relating to agreements for the redemption of a weekly payment is void as being a contracting out of the Act contrary to section 3, sub-section 1. That the respondents have intimated to the appellant's agent that in view of the decision in the said case of *Russell v. Rudd* their clients have decided not to maintain the said interlocutor of the First Division of the Court of Session, and the parties to the said cause have now agreed that the said interlocutor be reversed, and that the cause be remitted back to the Court of Session in Scotland with a direction to answer the questions of law, Nos. 1, 2, 3, and 6 in the case in the affirmative, and to do therein as shall be just and consistent with this judgment, and that the determination of the Sheriff-Substitute as arbiter be restored and upheld, and further that the respondents do pay or cause to be paid to the appellant the costs of the action in the Court of Session, and also the costs incurred by him in respect of said appeal to your Lordships."

Counsel for the appellant stated that the House was invited to do by agreement what it would probably, after the recent decision of their Lordships in the case of *Russell v. Rudd* ([1923] A.C. 309) (reported *infra*), have to do in any event, as the main question in the present case, as in *Russell's* case, related to the adequacy of a lump-sum payment.

Counsel for the respondents stated that he concurred in the application.

Their Lordships ordered that the interlocutor complained of be reversed; that the cause be remitted back to the Court of Session in Scotland with a direction to answer questions 1, 2, 3, and 6 in the affirmative; and that the respondents do pay to the appellant the costs of the action in the Court of Session, and also the costs incurred by him in respect of the appeal.

Counsel for the Appellant—Wark, K.C.—Macgregor Mitchell—Wallington. Agents—W. T. Forrester, Solicitor, Edinburgh—C. M. Scott, Solicitor, Glasgow—D. Graham Pole, S.S.C., London.

Counsel for Respondents—W. T. Watson, K.C.—Garrett—Shakespeare. Agents—Kerr & Barrie, Glasgow—Hair & Company, London.

Tuesday, March 20.

(Before the Lord Chancellor, Lord Dunedin, Lord Shaw, Lord Buckmaster, and Lord Carson.)

RUSSELL v. RUDD.

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

(Referred to *supra* in *Brown & Company, Limited v. Baird*.)

Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), secs. 1, 3, Schedules I (17) and II (9) and (10)—Agreement to Pay a Lump Sum in Settlement of All Claims—