

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Mike Krzus v. The Crow's Nest Pass Coal
Company, Limited, from the Court of Appeal
of British Columbia : delivered the 13th June
1912.*

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD SILLW.

[DELIVERED BY LORD ATKINSON.]

This is an Appeal from a Judgment of the Court of Appeal for British Columbia dated the 28th day of April 1911 reversing a Judgment of Mr. Justice Clement upon a case stated by an Arbitrator under the provisions of the British Columbia Workmen's Compensation Act, 1902.

The facts of the case are few and simple. The Defendant Company had in their employment at Fernie, in the Province of British Columbia, a workman who was an alien, an Austrian subject named Albert Krzus. While in this employment he met with an accident by which he lost his life. It is admitted that this accident was an accident "arising out of and in "the course of his [the deceased's] employment," within the meaning of the above-mentioned statute. He was a married man. His wife, now his widow, resided at the time the accident occurred, and still resides, in Austria, and was, like her deceased husband, an Austrian subject.

The Appellant is the legal personal representative of the deceased, and resides in the Province of British Columbia. As such representative he in the interest of the widow, as a dependant of her deceased husband, made an application for compensation under the above-mentioned Statute. The Arbitrator before whom the application came, in exercise of the powers conferred upon him by the 4th Section of the second Schedule to the Act, submitted on the 23th of September 1910, in the form of a case stated, for the decision of a Judge of the Supreme Court of British Columbia, the three following questions:—

“1. Can the applicant who is the legal personal representative of the deceased workman, and who is resident in the Province of British Columbia, obtain an award for compensation under the Workmen’s Compensation Act, 1902, the dependant of the deceased being an alien residing in a foreign country at the time of the accident out of which the claim for compensation arose, and at the time of the death of the deceased workman and ever since?”

“2. Can such legal personal representative in such circumstances enforce payment to him of compensation so awarded by an action on the award?”

“3. Can such legal personal representative in such circumstances enforce payment of the award pursuant to Section 8 of the Second Schedule of the Workmen’s Compensation Act, 1902?”

Mr. Justice Clement answered the first of these questions in the affirmative, and declined to answer the others. The Statute with which he was dealing is practically identical with the Statute of the United Kingdom, the Workmen’s Compensation Act of 1897, save that the duties imposed upon the Registrar of Friendly Societies by Section 3 of the latter are imposed upon the Attorney-General of the Province by Section 4 of the former. The widow of the deceased admittedly comes within the definition of dependants contained in both Statutes; and the sole question for decision on this Appeal, therefore, is, whether the fact that the widow is an alien

resident in Austria prevents the Plaintiff, as legal personal representative of the deceased, from recovering compensation under the Provincial Act since he would hold it, if recovered, for her benefit. It is not disputed that if the widow had been resident in British Columbia at the time of the accident and up to the date of the inquiry before the Arbitrator this objection could not have been raised. It is her present residence outside the province, not the fact that she is an alien, that it is urged disqualifies her. Their Lordships did not understand it to be contended that if she had been resident at the periods above-mentioned, and compensation had been awarded in respect of the loss she had sustained she would have been bound to refund any of the sum awarded if she had subsequent to the award gone to reside outside the Province. Nor was it contended that if the workman had been injured only, not killed, the compensation in the shape of a weekly sum payable to him during his total or partial incapacity for work would have been forfeited, or should be terminated upon his going to reside in Austria. Yet, if the principle upon which the decision of the majority of the Court of Appeal, consisting of the Chief Justice and Mr. Justice Gallihier appears to be based was sound, these results should logically follow from the change of residence by the widow and her husband respectively. That principle was, by the Chief Justice, thus stated: "The Workman's Compensation Act," he said,

" is in its nature domestic or municipal, and it may be
 " regarded as a shifting of what one might call (though
 " strictly not one) a duty, namely, to provide for the
 " destitute, from the State to the employer. This Province
 " owes no such obligation to aliens abroad; these could not
 " become a burden upon the State or upon private charity in
 " the State; hence, I think, no intention ought to be inferred
 " to impose obligations on employers beyond that essential
 " to accomplish what would appear to be the legislature's

“intention. Or to put it in another way, that the general
 “words used in the Act relied upon as including foreign
 “dependants must be limited by reference to what the
 “legislature may fairly and reasonably be considered to
 “have had in contemplation.”

Further on in his Judgment the learned Chief Justice said :—

“There is very little internal evidence of the legis-
 “lature’s intention in this behalf to be found in the Act,
 “but I think that Section 8 of the second schedule
 “furnishes some, although perhaps only slight evidence
 “that those who enacted this legislation never had in
 “contemplation as a person entitled to be awarded
 “compensation anyone other than a resident of the
 “province.”

The provision to which the learned Chief Justice referred in this latter passage is that requiring that when the amount of compensation under the Act is ascertained, or any weekly payments varied, or any other matter decided under the Act by a committee, an arbitrator, or by an agreement, a memorandum thereof is to be sent to the registry of the county for the district in which any person entitled to such compensation *resides*, who on being satisfied of its genuineness shall record the memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment. This provision is copied from the corresponding section of the second schedule of the Statute of the Imperial Parliament of 1897. The words supposed to indicate that the benefits of the Act are to be confined to residents, namely the words “for the district in which any person entitled to such compensation resides,” are omitted from the corresponding section of the second schedule of the latest statute of the Imperial Parliament dealing with the subject, the Workmen’s Compensation Act of 1906. Nothing is stated as to the applicability of this provision

of the Act of British Columbia to the condition of things existing in that province, nor is it stated whether any rules of Court have been made prescribing how the provisions of the section are to be carried out; but in any event these provisions constitute merely the machinery for making the memorandum mentioned enforceable as a county court judgment, and, strange to say, this itself is immediately followed in the schedule to the Act of 1897 by a section which appears to be somewhat inconsistent with it. Section 9, not copied into the schedule to the Statute of the Province, requires that when any matter under the Act is to be done in a county court, or by or before the judge or registrar of a county court, then, unless the contrary intention appear, it is to be done in or by or before the judge or registrar of the county court of the district in which all the parties concerned reside, or if they reside in different districts the district in which the accident occurred. In addition, the words, "any person entitled to such compensation resides," occurring in Section 8 of this schedule, may well only apply to the legal personal representative of a deceased workman where there is one, because in the definition clause it is provided that any reference to a workman when he is dead shall include a reference to his legal personal representative or his dependants or other person entitled to whom compensation is payable. And section 4 of the first schedule of the Statute of 1902 enacts that "the payment shall in case of death be made to the legal personal representative of the workman, or if he has no legal personal representative to or for the benefit of his dependants," &c. If there be a personal representative he is the person to whom the compensation must be paid as trustee, no doubt, for those entitled to it beneficially, the dependants. If there be several

dependants, as there often are, they may be resident in different districts, some within some without the province to which the statute applies. In such a case some person must sue in a representative capacity, and it would appear to be sufficient if the person who sued was resident within the province since the words of the section are not "every person entitled to the compensation" but "any person entitled to such compensation." No one person could in such a case be entitled to all the compensation unless it be the person claiming as representative of all those entitled to share in it. Again, the principle adopted by the Chief Justice would, where there were several dependants, only one of whom was resident within the province, exclude those resident elsewhere from any share in the compensation since none of them could become a burden on the public or private charity of the Province. A result one would think greatly opposed to the intention and purpose of the legislature.

The only authority upon which the learned Chief Justice relied is the passage from Maxwell on the Interpretation of Statutes, page 213, cited by the Master of the Rolls in his judgment in *Tomalin v. Pearson* (1909), 2 K.B., p. 61, and the case of *Jeffries v. Boosey*, 4 H.L. Cas. 815. This latter was a case on the law of copyright and dealt with the exclusive right claimed by the assignee of the assignee of the composer Bellini to print for sale in England copies of this composer's opera of "La Sonnambula." The case has not, in their Lordships' view, any application to the present case.

The passage cited from Maxwell on Statutes runs thus :—

"In the absence of an intention clearly expressed or to be inferred from its language, or from the object or subject matter, or history of the enactment, the presumption is that Parliament does not design its statutes

“ to operate beyond the territorial limits of the United Kingdom.”

The principle embodied in the passage was directly applicable to the case in which it was cited, because there it was sought to apply a statute of the United Kingdom to an accident happening in Malta, arising out of an employment carried on in Malta. So to apply the statute would, indeed, amount to making it operate beyond the territorial limits of the United Kingdom. And the Court of Appeal held, quite rightly in their Lordships' view, that this Statute did not apply to such an employment; but no attempt is made in the present case to do anything of that kind. Here it is not insisted that the Provincial statute shall operate extraterritorially. It is insisted that by its express words it imposes on the employer a liability to compensate his workmen for personal injuries by accident arising out of and in the course of the employment which he carries on, and in which they work. Where that employment is carried on in the Province of British Columbia, one of the results of this intraterritorial operation of the Statute may, the Respondents admit, possibly be that in some cases a non-resident alien may derive a benefit under it, but their Lordships think that if the liability thus expressly imposed is to be cut down at all, or if the employer is to be relieved from it to any extent, this must be done either by some provision of the Statute itself or of the schedules attached to it, either expressed or to be clearly implied, and not by conjectures as to the policy of the Act not suggested by its language.

It is admitted that this case does not come within the expressed exceptions contained in the statute. If so the employer is, by the terms of the Statute, made liable to pay the compensation in accordance with the first schedule. When

one turns to that schedule one finds that in cases where death results from the injury, and the workman leaves behind him dependants wholly or partly dependent upon his earnings, the amount of the compensation not exceeding in any case \$1500 is to be paid. In one case and only one case is this limit of the compensation cut down or altered, namely, where he leaves no dependants. Then the reasonable expenses of his medical attendance and burial not exceeding \$100 are alone to be paid.

In *Baird v. Birsztan* (1906) 8 F. 438 (Court of Session), it was assumed that the widow of an alien workman who was herself an alien resident abroad was entitled to recover; and as Mr. Justice Irving pointed out in his dissenting judgment in the Court of Appeal it was decided in the case of *United Collieries Company v. Simpson* (1909) A.C. 383, that where the workman's death resulted from the accident, and he left as his sole dependant a mother who died before she made any claim, her executrix was entitled to recover the compensation to which she became entitled on her son's death. On the principle adopted by the Court of Appeal in the present case this decision should have been otherwise, as the dependant being dead she never could become a burden on the public or private charity of this country. On the whole case then their Lordships are of opinion that the judgment of the Court of Appeal was erroneous and should be reversed, and that the answer given by Mr. Justice Clement was correct in law, and they will humbly advise His Majesty accordingly. The Respondents must pay the costs of the Appeal.

In the Privy Council.

MIKE KRZUS

v.

THE CROW'S NEST PASS COAL
COMPANY, LIMITED.

DELIVERED BY LORD ATKINSON.

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