does not need to be made explicit. I think that this constitutes a "claim" within the meaning of this sub-section. It has been pointed out that if the magistrates acted up to the full extent of the jurisdiction given to them by this statute it might have the most inconvenient consequences. When the statute was passed the claims between employer and workman were, for the most part, simple in character and small in amount. Since then they have become numerous, complicated, and substantial, and are no longer such as can be conveniently or properly disposed of by a magistrate acting under this sub-section. But most of them are confined to special tribunals, and I doubt if the mischief suggested would be serious in extent. The jurisdiction of the magistrate, however, is discretionary, and it is difficult to think that he would be so unreasonable as to exercise it in some of the extreme and inappropriate cases which have been suggested. In any event we have no power to construe this statute otherwise than according to its plain intent, and I think that this appeal falls.

LORD CHANCELLOR (LOREBURN)—I agree.

Appeal dismissed.

Counsel for Appellant—Bailhache, K.C. — John Sankey, K.C. — Clive Lawrence. Agents—Smith, Rundell, & Dods, Solicitors.

Counsel for Respondents—Danckwerts, K.C. — Stewart Brown — H. H. Harding. Agents — Bell, Brodrick, & Gray, Solicitors.

HOUSE OF LORDS.

Tuesday, July 18, 1911.

(Before the Lord Chancellor (Loreburn), Lords Atkinson, Shaw, and Robson.)

NEW MONCKTON COLLIERIES LIMITED *v.* KEELING.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 13, *Sched. I* (1) (*a*)—*Dependant—Wife—Inference of Fact.*

There is no presumption of law or of fact that a workman's wife is dependent upon him, but only an inference of fact arising from the circumstances.

The widow of a workman who was accidentally killed had for twenty years before his death neither received any support whatever from him nor communicated with him in any way.

Held that there was no evidence on which the County Court Judge could competently find in fact that the widow was dependent either totally or partially upon the workman.

Baird & Company v. *Birsztan*, 1906, 46 S.L.R. 300, 8 F. 438, *approved.*

A workman was killed by an accident, and his widow sought to recover compensation from his employers in respect of his death. As stated *supra in rubric*, and fully in their Lordships' opinions, she had not actually been supported by him for twenty years. The County Court Judge made an award of compensation, which was affirmed by the Court of Appeal (COSENS-HARDY, M.R., FLETCHER-MOULTON and FARWELL, L.JJ.).

The employers appealed.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I agree with the judgment about to be delivered by Lord Atkinson, which I have had an opportunity of reading.

It is a question of fact whether a particular person is a dependant or not. The Act was passed to provide compensation for certain people who should be damnified because the workman ceased to earn wages. If thereby they were either deprived of actual support, or deprived of a source on which they did and would reasonably rely for it, they may be damnified to a degree greater or less according to the circumstances. The fact that a legal duty lay upon the workman to provide maintenance is an element to be considered, no doubt, because people usually count upon getting what they are entitled to get. But when, as here, the wife had not been supported for twenty years, and in no sense relied upon the workman for any help, I think that there was no evidence of dependency. In my opinion this appeal should be allowed.

LORD ATKINSON—I have read through the notes of the County Court Judge in this case more than once without being able to discover any express finding that the respondent was either wholly dependent upon the earnings of her deceased husband at the time of his death, or partly dependent upon them. In the judgment of the Master of the Rolls, however, I find the following passage—"The learned County Court Judge has not found in this case that the widow was wholly dependent, but he has proceeded upon the footing of partial dependency, and has awarded somewhat less than she would have been entitled to if it had been a case of total dependency. Nothing turns upon the figures here." I assume, therefore, that the County Court Judge was of opinion that the respondent was, at the time of her husband's death, the 5th January 1910, only partly dependent upon his earnings within the meaning of the Workmen's Compensation Act 1906. The County Court Judge has omitted to state in his notes on what principle he arrived at that conclusion, but as it appears to me his finding, if sustained at all, can only be sustained on the ground that in such a case as this there is some presumption of law that a wife is dependent on the earnings of her husband, within the meaning of the statute, if he is under a legal obligation to maintain her, I assume that he has proceeded on that principle.

Isaac Keeling, the respondent's husband,

had never during a period of over twenty years immediately preceding his death contributed one farthing out of his earnings or at all to the support and maintenance of his wife, and I cannot conceive how any reasonable man could upon the evidence come to the conclusion that he had in fact maintained her wholly or in part, or that there was any reasonable probability that he would ever do so, either voluntarily or under compulsion. She left him in 1888, taking her children with her. She said that he was in the habit of thrashing her. He then promised to pay her 1s. 6d. a week, but never did so. She then lost sight of him. She made inquiries about him, but could not find him. She got a lawyer to write to him, but he took no notice of the letter. He continued to live in the house which they had both occupied at Kirk Folly till 1890, and then left for Mansfield. She did not hear of him for a very long time after he left for Mansfield. She never communicated with him directly or indirectly from thenceforward, never made any claim upon him, or received anything from him. After she had left him she lived with her parents for some time, working occasionally as a servant in their house and occasionally in a factory, and for many years before his death and up to that event she had been employed as housekeeper by two miners, receiving from them as wages 16s. a week, out of which exclusively she had in fact maintained herself. She has reared her children. They have been for some time married and placed out in life.

It certainly would appear to me that this evidence establishes clearly that, apart from the presumption which I have mentioned, Alice Keeling was in fact at the time of her husband's death no more dependent on his earnings than she was on the earnings of any member of the community of whom she had never heard and from whom she had never received one farthing for her support. It may be that her husband was in law bound to maintain her, but it is by the discharge of this obligation, not by its mere existence in law, that a husband supports and maintains his wife. It cannot in the nature of things be on the mere possession of a legal right, but rather on the effective enforcement of it in some shape or form, that a wife relies for her support. It is also in my view impossible to come to the conclusion that there was any reasonable probability that she would ever enforce her right against her husband, or look to the result for her subsistence to any extent. It is only necessary to read the provisions of the Statute of 1906 and its schedule to see that the sums to be awarded under it are intended to be compensation for the pecuniary loss sustained by reason of the loss or cessation of the workman's power of earning. No doubt in the case of death an arbitrary sum, three years' earnings, is, subject to the limit mentioned under rule 1 (*a*) (1), fixed as the amount of compensation, but in sub-section 11 of the same rule, dealing with partial dependence, it is clear that the word "injury" means "*damnum*" and the main provisions of the statute show that its object was such as I have mentioned. If it be asked what was the pecuniary loss sustained by Alice Keeling by reason of the cessation of her husband's power of earning, what was the money value of an obligation which there was no reasonable probability that he would ever discharge to any extent, the answer must, I think, be that it was *nil*, and if that be so the award of the arbitrator in its results defeats the object and intention of the statute.

Now as to this presumption of law upon which the award would appear to be based, no doubt the Court of Appeal have in many decisions laid down that this presumption exists, and have adhered tenaciously to their opinion. One might, I think, not unnaturally have expected that the authority of the principle thus established could not, as a judicial guide in cases such as the present, have survived the decision of your Lordships' House in the case of *Hodgson* v. *West Stanley Colliery*, 47 S.L.R. 881, [1910] A.C. 229, if not its decision in *Main Colliery Company* v. *Davies*, [1900] A.C. 358, when rightly understood. In the former of these cases the legal obligation of the husband to maintain his wife was in full force and effect up to the time of his death. His wages were substantial, £2 a week, but he and his two sons who perished with him in the same accident contributed in equal shares to the family chest out of which all the family were maintained. The arbitrator found, according to the facts, that the mother was partly dependent on her husband, and partly dependent on each of her two contributing sons. The Court of Appeal reversed that decision, and it was contended in argument before this House that when contributions are made to a common fund they are in law held to be paid to the father; that the circumstance that the actual payment was made to the mother was irrelevant; that the obligation was on the head of the family, and that there could not be a dependency partly on the father and partly on the sons; that the father being in the eye of the law wholly responsible there could be no further liability arising out of the same accident. Your Lordships held that this contention was unsound, and that the decision of the Court of Appeal was erroneous, and should be reversed, not at all, however, upon the ground that this legal presumption existed, and was rebutted by the evidence in the case, but on the ground that it did not exist at all, that the question of dependency was purely a question of fact, and should be decided according to the facts proved, irrespective altogether of any legal presumption. The Lord Chancellor dealt thus with the matter (p. 231)—"The second objection when analysed is as follows—It was argued that the mother was, in the eye of the law, wholly dependent upon her deceased husband, and being so could not possibly be in any degree dependent on her two deceased sons, for that would

involve a logical contradiction. This supposed doctrine of law was, to begin with, presented to your Lordships as an inexorable rule. Later on Mr Mitchell Innes so far unbended as to admit that it might be only a rebuttable presumption. But when asked if the presumption could be rebutted by conclusive proof that it was diametrically opposed to the facts, as here, he would not admit that it could be so rebutted. How a presumption could be better rebutted I really do not know. In this argument I am told that I am required by law to affirm something as the truth which everyone knows to be entirely false. The short answer is that the law requires no such thing. There are such things as legal fictions, but this is not one of them. The mother was not in law wholly dependent on her deceased husband. She and her family were dependent on those who supplied them with the means of subsistence—namely, in the present case, her husband and each of her two deceased sons." And again (at p. 233)—"It is for the arbitrator, or County Court Judge, to ascertain, purely as a question of fact, who are dependent, and to what extent." Lord Collins, whose judgment in *Coulthard* v. *Consett Iron Company Limited* ([1905] 2 K. B. 869) was much relied on, entirely agreed with that judgment, which he said he had had the opportunity of reading. Lord Macnaghten thus expressed himself (p. 236)—"On the real point at issue there is very little to be said. The question of dependency is not a question of law at all; it is purely a question of fact. If authority were wanted for a proposition so self-evident, there is in the case of *Main Colliery Company* v. *Davies*, [1900] A.C. 358, a decision of this House in which there is an explicit statement to that effect. The view of the Court of Appeal seems to be based on a misconception of Lord Halsbury's judgment. Nothing could be plainer than his Lordship's language—'What the family was in fact earning, what it was in fact spending, for the purpose of its maintenance as a family, seems to me,' says his Lordship, 'to be the only thing which the County Court Judge could properly regard." And again at the bottom of the same page—"It seems to me, with all respect to the Court of Appeal, that the more recent decisions of that Court, on which the judgment under appeal is founded, cannot be supported. I agree in the dissentient judgment of Buckley, L.J., in *McLean* v. *Moss Bay Haematite Iron Company* ([1909] 2 K.B. 521) and in the earlier decisions of the Court of Appeal in which Lord Collins took part as Master of the Rolls." This judgment of Buckley, L.J., was unanimously approved of. In it that learned Judge states distinctly that dependency is not based on the legal liability on the deceased to maintain his wife. It by no means follows, however, that though there is no presumption of law that a wife is dependent upon her husband's earnings merely because of his legal obligation to maintain her, this legal obligation is to be ignored in deciding on the fact of her dependency. On the contrary, the existence of the obligation, the probability that it will be discharged, either voluntarily or under compulsion, the probability that the wife will ever enforce her right if the obligation be not discharged voluntarily, are all matters proper to be considered by the arbitrator in determining the question of fact, whether or not the wife, at the time of her husband's injury, looked to his earnings for her maintenance and support in whole or in part. It is one of the many elements to be taken into account.

In a recent case decided in the First Division of the Court of Session in Scotland (*Baird & Co.* v. *Birsztan*, 1906, 43 S.L.R. 300, 8 F. 438), arising under the Act of 1897, the Lord President, Lord Dunedin, deals with this question of the alleged presumption of dependency raised by the legal obligation to maintain in a manner so clear and convincing, and, in my view, lays down so soundly what the law is both in Scotland and in this country that I desire to quote and, if I may do so, to adopt as my own the following passage from his judgment—"But the expression to which I rather take exception is about there being a legal presumption that a wife is dependent on her husband, a legal presumption which has to be displaced in each case. . . . If by a presumption of law that a husband should support a wife he means that it is necessary that you should start with that presumption according to the law of Scotland, and that that has necessarily to be rebutted by showing that this particular wife was not dependent on her husband, I humbly do not agree. Taking the sentence in another aspect, I quite agree. In a proper sense it is not a presumption at all either of fact or of law, but it is an inference of fact, drawn from the experience of ordinary life, that if you know nothing about a wife except that she is simply the wife of a husband, more especially in the class with which we are here dealing, the woman is dependent on her husband, because men's wives in such a class are usually, as a matter of fact, dependent upon their husbands."

Assuming, then, that the finding of the County Court Judge was what the Master of the Rolls states it to have been, I think that there was no evidence before him which could lead reasonable men to the conclusion at which he arrived, that his award was therefore bad, and, with all respect for the Court of Appeal, that their decision was based upon an assumption decided by your Lordships' House on more than one occasion to be erroneous. I think, therefore, that their decision should be reversed and this appeal allowed with costs.

LORD SHAW—I agree that this appeal should be allowed. In the case of *Hodgson* v. *West Stanley Colliery* (1910, 47 S.L.R. 881, [1910] A.C. 229) I ventured to deal in some detail with the question of dependency, whether there is dependency at all, or whether that dependency is total or partial, as each and all questions of fact, and I thought it right to cite and deal with various cases decided on that subject.

With much respect for the learned Judges of the Court of Appeal, it humbly appears to me to be a mistake to think that the opinion which I then delivered stood alone in any respect. Upon examination this appears very clearly. Are these questions questions of fact or of law? Nothing could be plainer than the opinion of Lord Macnaghten on that subject, expressed in these brief words—"The question of dependency is not a question of law at all; it is purely a question of fact." Again, are these questions questions of fact, or are they governed by legal presumption? Nothing could be plainer than the judgment of the Lord Chancellor, who, after setting forth that it was for the arbitrator "to ascertain, purely as a question of fact, who are dependent, and to what extent, and what they are to receive, and how the compensation is to be distributed," follows this up by adding—"There is no room that I can see for legal presumption." Speaking for myself I am not able to see how the cases decided in the Court of Appeal, which have been treated as still binding upon that Court, can stand alongside the judgment in *Hodgson's* case. I recognise very fully the difficulty in which the learned Judges considered themselves to be placed on account of their views as to the state of the decisions, but it is worthy of remark that the facts of the present case appear to confirm in a somewhat marked degree the conclusions and principles there laid down. I do not, of course, repeat my observations in the case of *Hodgson*. But out of the respect which I entertain for the learned Judges in the Court below I will venture these observations—

First, as to the facts. What are they? The widow of this unfortunate workman had not lived with him for twenty-two years. So long ago as that she left him, taking her children with her. They are all now grown up and married. She has never in the course of all these years either lived with him or met him, or received anything from him. For ten years she has been housekeeper to a miner, in whose house she has lived, and from whom she receives for his board 16s. a-week. Another miner is a lodger in the household, and from him she receives 13s. a-week. In this way at the time of her husband's death, and for years before, she earned her own living. All this has happened independently of her husband, his obligations, or his earnings. She has lived an independent life. I shall speak of presumptions in a moment, but I cannot see it to be proved, nor do I feel myself capable of imagining it to be the truth, that the appellant was in these circumstances dependent upon the earnings of her husband.

Secondly, as to the statute. What does it provide? It provides that compensation shall be given, not to the members of the family of a workman who has lost his life by accident, but to those within that class (if any) who were dependent. "Member of a family" is defined in the Act, the definition containing practically a repetition of the category in Lord Campbell's Act, with the addition, if I mistake not, of "brother, sister, half-brother, and half-sister." The appellant having been the wife of the deceased falls within the class, and the inquiry then is whether, being within that class, she is entitled to compensation as one of the "dependants." That term means "such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death." It appears to me that any expression appearing in the judgment of the learned Judges in the present and the preceding cases in the Court below which amplifies this dependency so as to make it include a dependency upon the husband's "obligations" or his "legal liability" is not warranted by the statute itself. What the statute says is that the dependency is to be upon the husband's "earnings." If obligations or legal liability were the test, then dependency in fact at the time of the workman's death might in many cases be completely absent. The wife might be the possessor of a good going business, or have succeeded to a sufficiency of means, but the obligation and liability referred to would still remain *in abstracto* or *de jure*. It would still be within the bounds of possibility that the business might go, or the means be lost, and then in such a contingency—it might be infinitely remote—the husband's liability would have to be resorted to. I think that this illustrates the danger of departing from the language of the statute, which, upon the whole, is simple and clear. Cases involving a certain amount of refinement must occur, as always happens in practical affairs. A case is quoted in one of the decided cases of a husband leaving home for a month or two in search of work, the wife expecting his return and being in hopeless poverty, having, in short, her dependency as a very active fact in her life, and her husband's earnings being the thing, to use the language of Romer, L.J., to which, and to which alone, she really looked for support. These cases of refinement do not appear to me to give any justification for doubting that the statute places the double fact to be established of the relationship in the first place, and among those related, of dependency, as facts, both of which in a reasonable and actual sense must be established in order to enable the statute to apply. The Act of Parliament seems to say—Among the relations of the deceased workman, if there be those who depended for support upon his earnings, and by his death have lost that support upon which they depended, then let them be compensated for that loss.

Thirdly, as to the decisions. I should not myself have thought, as I have explained, that the cases founded upon in the Court below were still, after the decision in *Hodgson's* case, binding authorities upon the point relied on. *Coulthard* v. *Consett Iron Company*, [1905] 2 K.B. 869, and the judgments of Romer and

Mathew, L.JJ., in it are founded upon in the Court of Appeal. The salient feature in *Coulthard's* case—the case in which the widow was daily expecting her husband's return to provide a home, and was subsisting in the meantime mostly on charity—is treated by the learned Lords Justices named from the point of view that there was this destitution on the one hand, and the daily expectation of the husband's return on the other, as a case for an inference of fact that she was dependent on his earnings at the time of his death. Romer, L.J., is careful upon that subject. He puts it—"I think that it might be so inferred, unless there were other circumstances to justify this conclusion, that she had ceased to look to her husband's earnings for maintenance." Mathew, L.J., so treats the case—"He fell out of work, the home was broken up, and the husband seems to have gone away in search of work. He took one of the children with him. I should infer from this that sooner or later he intended to resume his former position, and that meanwhile he was desirous of lessening the burden on his wife." Lord Collins quotes with approval Lord Moncreiff's judgment in the Scotch case of *Sneddon* v. *R. Addie & Sons' Collieries* (1904, 41 S.L.R. 826, 6 F. 992)—a case in which the existence of the legal obligation was not treated as standing alone, "but when that legal obligation, not discharged by the wife, concurs with total destitution on the part of the wife, and inability to support herself." As I say, I cannot find that *Coulthard's* case would have been a sufficient authority to set up the binding presumption which has been founded upon in the judgment of the court below in this case. *Coulthard's* case, however, was succeeded by the two cases of *Stanland* v. *North-Eastern Steel Company* ([1907] 2 K.B. 425, n) and *Williams* v. *Ocean Coal Company* ([1907] 2 K.B. 422), and there seems no doubt that by these combined judgments the presumption now being dealt with obtained a substantial footing in the law of England. "In the case of a wife," says the Master of the Rolls, "I think that it is established by authority that there is a presumption in favour of the dependency of the wife. That was certainly asserted by us in *Stanland's* case." In *Williams'* case the County Court Judge had put the matter of fact thus—"I have come to the conclusion that it would be absolutely impossible for me to hold that the lady at the time of the death of the workman was really dependent upon his earnings. To hold that would be to hold in my opinion that to be a fact which was not a fact, to hold that which is really untrue." It was held that this was a misdirection, upon the grounds, *inter alia*, that the learned Judge had gone wrong by "first ignoring the presumption."

I cannot at present understand how these cases can now be set up, conflicting as they do with the passages which I have ventured to cite from the judgments in *Hodgson's* case in this House. I am of opinion that the judgments and dicta in these cases, in so far as they dealt with or depended upon the legal presumption referred to, were erroneous. What is the value of presumption in relation to the ascertainment and settling of truth in matters of fact? The legal value in such a relation is that it forms a guide where doubt exists; it assists elucidation where inferences might conflict; and it settles in one direction the balance of the judgment in favour of the establishment of truth which is only dimly or partially ascertained. But where the facts are ascertained, where there is no difference as to the inference which flows from them, and the truth is plain and proved, I am at present at a loss to understand what is the value or cogency or appropriateness of presumptions, and I view with much disrelish the idea that they can be invoked for the purpose of affirming that a thing is true in law which is not true in fact. The present case appears to me to illustrate this position plainly. To put it in a word, this wife did not depend upon her husband's earnings. For more than twenty years she knew nothing of him, lived a separate life, and earned her own living independently. One of the learned Judges says that it is not established that there was anyone else than her husband upon whom she was dependent. I agree; but it is established that she was independent of him and of anybody.

The course of the decisions in Scotland has been very different from that in England. In an early case of *Cunningham* v. *M'Gregor & Company* (1901, 38 S.L.R. 574, 3 F. 775) Lord Young in a single sentence of his judgment referred to "the legal presumption that a wife is wholly dependent upon her husband." That observation has been much and justly commented upon, but in justice to the learned Judge, and as bearing not remotely upon the present case, it is fair to quote his very next sentence, which was to this effect—he had, as I have stated, referred to "the legal presumption that a wife is wholly dependent on her husband," but he goes on, "there might be facts which showed that the case was otherwise, but these facts" (that is to say, the facts in *Cunningham's* case) "do not." Still his general proposition has been considered in Scotland as of an unsettling tendency, and accordingly in the judgment in *Baird & Company* v. *Birsztan* (1906, 43 S.L.R. 300, 8 F. 438) the Lord President expressly repudiates that part of the judgment, and he places this portion of the law, adopting as I respectfully do in its entirety his language, upon a sound foundation. "In a proper sense," says his Lordship, "it is not a presumption at all either of fact or of law"—these are the words which have just been quoted by Lord Atkinson—"but it is an inference of fact, drawn from the experience of ordinary life, that if you know nothing about a woman except that she is simply the wife of a husband, more especially in the class with which we are here dealing, the woman is dependent upon her husband, because men's wives in such a class are usually as a matter of fact

dependent on their husbands." It does not stop there, because in the subsequent case of *Lindsay* v. *M'Glashen* (1908, 48 S.L.R. 559, 1908 S.C. 762) this view of the law has been expressly followed, and the language of the Lord President, together with his criticism of Lord Young's judgment in *Sneddon's* case (1904, 41 S.L.R. 826, 6 F. 992), has been expressly adopted by Lord Ardwall in the Second Division. In my judgment in *Hodgson's* case I referred to *Turners* v. *Whitefield* (1904, 41 S.L.R. 631, 6 F. 822), and I only add to my reference humbly approving of that decision the observation that I consider that the judgment of Lord Stormonth-Darling in *Lindsay's* case, in which he cites largely from *Turners* v. *Whitefield*, to be a clear and conclusive statement of the law of Scotland. Putting these three judgments in *Turners'*, *Baird's, and Lindsay's* cases together, I am glad to find that the simplicity and plainness of the provisions of the statute are unmistakably affirmed, and the point of fact, as distinguished on the one hand from liability or obligation, and on the other from legal presumption, is in my humble opinion clearly and correctly dealt with. The same result was reached in *Briggs* v. *Mitchell* (48 S.L.R. 606, 1911 S.C. 705) decided on March 16 in this year, in which, in the leading judgment delivered by Lord Dundas there was, in my humble opinion, an equally correct treatment of the principle and the law. These cases are in entire accord with the views set forth in the cases of *Main Colliery Company* v. *Davies* ([1900] A.C. 358) and *Hodgson* v *West Stanley Colliery* (1910, 47 S.L.R. 881, [1910] A.C. 229), both of which were decided in this House. Applying the statute itself and these decisions to the very simple facts of this case, I am of opinion that no conclusion is open to a court of law administering the Act except that the conditions of liability there set out have not been met.

LORD ROBSON—The question to be determined in this case is whether on the admitted facts there was evidence to justify the learned County Court Judge in finding that the applicant was wholly or partially dependent on the deceased.

The facts are few and simple. The applicant had left her husband about twenty-two years before his death because of his alleged ill-treatment; she had since lost sight of him, and had apparently given up all attempts to find him. After leaving him she had at first lived with her parents and worked in a factory. Then about ten years before her husband's death she became housekeeper to two miners, and maintained herself by her own efforts in a way suitable to her condition in life. The word "dependants" as defined by sec. 13 of the Workmen's Compensation Act 1906 includes all such members of the workman's family as were wholly or in part dependent on the earnings of the workman at the time of his death. The learned County Court Judge has not said whether he found the dependence of this applicant on her husband's earnings to be total or partial, and the amount awarded — namely, £263, 5s. — appears upon the evidence as to the average wages of the deceased not to be conclusive as to either view. The award, however, has been treated by the Court of Appeal as one applicable to a partial dependency, and I will deal with it on that basis.

The position with regard to the applicant at the time of her husband's death was that she had long ceased to be dependent on him in fact, but, of course, she had not lost the legal right to maintenance at his hands, and might assert it if she chose. Under these circumstances it cannot be said in any fair and reasonable sense that she was wholly dependent on him. She had by her own act, for reasons no doubt natural and sufficient to herself, rejected any such dependence. She had definitely declined the advantages, and a thing which it is very important to bear in mind, she had refused to perform the duties attaching to a dependent condition. She now seeks, as against her husband's employer, to be treated as though she stood in a relation to her husband which she had, as a matter of fact, completely abandoned so far as her husband was concerned. It is easy to imagine circumstances in which the husband might make the performance of her duties so onerous and so dangerous to her safety or health that she would be driven to seek relief from their performance. The law does not leave her without a remedy in such a case. It may give her some relief from her duties to him, while holding him to his pecuniary obligations to her. And even where she has left her duties without securing by legal process a definite assertion of her continuing dependence on her husband's earnings, yet the circumstances may be such as to justify an arbitrator under the Workmen's Compensation Act in finding that her actual dependence is unaffected. The arbitrator, of course, is not bound to constitute himself a tribunal to try the merits of domestic disputes and separations. All that he has to do is to find whether or not there is in fact dependence on the husband in whole or in part at the time of his death. That single question of fact is all that concerns him, though the circumstances to be considered in arriving at the answer may be of infinite variety. The wife does not necessarily cease to be dependent on the husband simply because he refuses to recognise or perform his obligation, and succeeds in throwing the burden of her maintenance for the time being on her parents or friends, or on the State. They may fulfil the husband's duty for him, but the wife's legal dependence is still on him and not on them, and his death deprives her of the proper stay and support on which alone she is entitled to rely.

The circumstances, however, are wholly different where the wife herself has for years clearly asserted and definitely maintained her complete independence of

her husband. That is what the applicant did in this case, but her doing so seems to have counted for nothing in deciding either the existence or the degree of her dependency. In the case of a widow wholly dependent upon the deceased, the statute provides a measure of compensation which involves no inquiry into her exact pecuniary loss, but in the case of one only partly dependent on him, the compensation, while not exceeding the amount payable in cases of total dependency, is to be "proportionate to the injury to the said dependant." Although the learned County Court Judge is said to have treated the applicant as a partial dependant, no one invited him, and he did not attempt, to proportion the compensation to her actual injury or loss. The whole question seems to have been treated as one of law rather than fact, and she was regarded as being entitled to compensation solely because of the legal presumption of dependency attaching to her status as wife. The money coming to a widow under the Act is not a present in consideration of her status; it is a payment by a third person to compensate her as a dependant for her actual pecuniary loss by her husband's death, and where her husband's death does not, in the circumstances of the particular case, involve any real detriment to her pecuniary position, there is no rule of law to prevent the arbitrator from finding that, though married to the deceased, the applicant was not in fact dependent on him. The judgments in the Court of Appeal in favour of the applicant were founded on the authority of certain decided cases.

Without going over the ground traversed by Lord Atkinson, I will refer briefly to the facts in the principal of those cases. In the case of *Coulthard* v. *Consett Iron Company* ([1905] 2 K.B. 869) the husband had left his wife and had ceased to contribute to her maintenance, so that she was thrown upon the charity of friends or the workhouse. At the time of his death she was expecting him back every day to provide a home. In *Stanland* v. *North-Eastern Steel Company*, reported in note to *Williams* v. *Ocean Coal Company Limited* ([1907] 2 K.B. 425), the deceased had left the applicant to look for work, but failed to return, and the applicant maintained herself and her children with occasional recourse to the workhouse. In *Williams* v. *Ocean Coal Company* ([1907] 2 K.B. 425) the husband left his wife in charge of his parents while he went to seek employment at sea. She afterwards went to her own parents. The husband found work as a miner, and though he did not give her a home, they had occasional intercourse, and there was nothing in the facts to suggest the conclusion that she had in fact given up her legal dependence upon him. In *Sneddon* v. *R. Addie & Sons' Collieries* (1904, 41 S.L.R. 826, 6 F. 992) the husband had deserted the wife, and she was thereafter supported by her mother and the charity of friends, being herself unable to work owing to bad health. In each of these cases the widow was held, and I think rightly held, to be dependent on the husband at the time of his death. The dependence of the wife continued after the separation from her husband, though other persons, her parents, or friends, or the State, voluntarily and temporarily fulfilled the husband's obligation in his default. In such circumstances there was no adequate rebuttal of the presumption, or, as it may be better described, the probability, of dependency arising from her position as a married woman, whereas in the present case it would scarcely be possible to have such a rebuttal more clearly established. I think therefore that the appeal should be allowed.

Judgment appealed against reversed.

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HOUSE OF LORDS.

Friday, July 21, 1911.

(Before the Lord Chancellor (Loreburn), Lords Atkinson, Gorell, and Robson.)

EDGE & SONS, LIMITED *v.* NICCOLLS & SONS, LIMITED.

(On Appeal from the Court of Appeal in England.)

Trade-Name—Passing-off—Common Trade Article—Imitation of Get-up—Article Distinguished by Makers' Label—Revoked Patent.

The plaintiffs had since 1884 manufactured washing-blue and sold it extensively in small bags with a wooden stick attached as a handle for use in washing. A patent was obtained for this method of wrapping the article, but was revoked in 1891. The bags were retailed without any maker's name attached. No other manufacturer of washing-blue used this get-up for his goods until in 1909 the respondents began to do so, imitating exactly the bags and the wooden handle, but attaching a label with their own name. The plaintiffs sought for an injunction.

Held that the imitation of the get-up of the plaintiffs' article amounted to a representation likely to deceive retail purchasers into believing they were buying the plaintiffs' manufacture, and that the attachment of the respondents' label was not a sufficient distinction, and injunction *granted*.

A manufacturing company sought, under the circumstances stated *supra in rubric* and in their Lordships' judgment, an injunction against another firm from passing off an imitation of the plaintiffs' manufactures. Judgment by Swinfen Eady, J.,