HOUSE OF LORDS.

Monday, March 29, 1915.

(Before Earl Loreburn, Lords Atkinson and Parker.)

SMITH *v.* DAVIS & SONS, LIMITED.

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

Master and Servant — Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *Sched. I* (4), (14), *and* (15) — *Refusal to Submit to Medical Examination.*

Compensation had been paid by weekly payments for injuries received by a workman, and had been discontinued on the workman's recovery and return to work. About two years later the workman, having meantime been in hospital with an illness which was not the result of the accident, claimed compensation on the ground of partial incapacity arising from the original injuries. The employers demanded that the workman should submit to medical examination, and on the second occasion the man refused to do so. Consequently the employers, successfully, applied to the County Court for an order staying the proceedings till he should submit himself to such examination. *Held* (*aff.* Court of Appeal, 7 B.W.C.C. 138) that under the Workmen's Compensation Act 1906, Sched. I, par. 4, which paragraph here applied, the workman was bound to submit to as many examinations as the employer might reasonably require, and that there was no suggestion that the demand was in this case unreasonable.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), Schedule I, enacts:—

[*Preliminary Medical Examination.*]

"(4) Where a workman has given notice of an accident he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation and to take or prosecute any proceedings under this Act in relation to compensation shall be suspended until such examination has taken place. . . .

"(14) Any workman receiving weekly payments under the Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

"(15) A workman shall not be required to submit himself for examination by a medical practitioner under par. 4 or par. 14 of this schedule otherwise than in accordance with regulations made by the Secretary of State, or at more frequent intervals than may be prescribed by those regulations. . ."

At delivering judgment—

EARL LOREBURN — In this case Charles Smith, a workman, who was injured by accident so as to be entitled to compensation under the Act, complains of an order suspending his right to proceed until he submits himself to examination by a medical practitioner on behalf of his employer. The injury occurred on the 27th January 1911. Without any proceedings before an arbitrator the employers paid him a weekly sum as compensation under the Act. In June 1911 the workman resumed work and continued until August 1912, receiving no payment from his employers for compensation during that time. In August 1912 Smith stopped work owing to an illness which was not due to the accident, namely, Bright's disease. On the 18th June 1913 he had recovered from the Bright's disease, but as he claimed to be partly incapacitated by the old accidental injury he served his employers with notice that unless he could obtain from them some light employment he must have full compensation under the Act.

Thereupon the employers required him to submit to medical examination, and he was examined on the 26th June 1913 by their medical man. On the 10th September he filed a claim in the County Court asking for compensation from the 12th August 1912. The employers denied liability, alleging that he had recovered. On the 22nd September the employers required him again to submit to a medical examination and he refused. The employers then asked for, and on the 6th November 1913 obtained from His Honour Judge Bryn Roberts, an order suspending proceedings under the Act until he complied with that requirement. Had the learned Judge power to make that order? In substance the point argued was whether or not the workman was bound to submit himself to this examination, it being freely admitted that there was nothing unreasonable in the requirement. The answer depends upon the Act and regulations made under it.

I think the scheme and effect of the Act and regulations are as follows:—After the workman has given notice of an accident there is a period preliminary to any decision. The employer may desire to learn from his own medical adviser what is the physical condition of the workman so that he may determine what to do. Either he will admit his liability and agree to make weekly payments, or he will dispute liability in whole or in part and prepare himself for the trial. His right to require a medical examination during this, which I will call the first, period is defined by Schedule I (4) and (15). It may be that these paragraphs cover more than this. I will not pursue that question or further examine these paragraphs for the moment. Clearly they apply to this first period.

Then comes a second period during which a similar medical examination may be required. If either by agreement or by the

award a weekly payment has to be made by the employer, the amount may have to be reviewed and ended, or diminished or increased. An employer's right to require such medical examination during this period is defined in Schedule 1 (14) and (15) and regulations 1 and 2 of the 28th June 1907. "Any workman receiving weekly payments under this Act" is from time to time to submit himself for medical examination (paragraph 14), but not otherwise, nor at more frequent intervals, than is prescribed by regulations (paragraph 15). And the regulations prescribe certain intervals applicable to the case of "a workman in receipt of weekly payments" (2nd regulation of the 28th June 1907).

Now, with all respect, I do not think that we are at liberty to read any qualifying words into these provisions. I cannot see why they are not applicable to the case of a man who is receiving weekly payments by oral agreement just as much as if a memorandum had been recorded or as if the sums were payable under an award. The purpose seems to me to be exactly what the words say. If the employer for any reason, whatever it may be, does not make the weekly payments, he has no right to have a medical examination under these provisions, and he and the workman are left to their rights without the obligation on the workman of submitting to the examination imposed by the provisions. If, on the other hand, the workman is receiving payments under the Act, it does not signify whether there is a memorandum or an award or an unrecorded agreement, provided that the man is in fact being paid in respect of the rights conferred upon him by the Act. It would be different if the money were being paid as an act of mere charity or benevolence, for in that case no part of the Act has any application. I am of opinion that Schedule 1 (14) has nothing to do with the present appeal, because, though payments had been made under the Act, the man was not receiving weekly payments under it at the time the medical examination was required, and had not been receiving them for many months.

But there is also another contingency which may arise and has arisen in the present case. It may be that weekly payments have been made and are then discontinued because of the workman's recovery or for other reasons. What is the right of the employer to have a medical examination if he is asked to recommence them? The specific contingency is not expressly and in particular terms provided for. It cannot be met by Schedule 1 (14) and its dependent provisions for the reason already stated. Can it be met by Schedule 1 (4)? To answer this I must now return to paragraphs 4 and 15. In my opinion paragraph 4 relates primarily to the first period, before the employer's liability has been admitted or adjudicated by the arbitrator. But I think it also covers more than that. The paragraph takes effect "where a workman has given notice of an accident." I see no reason for cutting down these words. If there has been an agreement or an award, and weekly payments under the Act are being made, then paragraph 4 will be superseded by the more particular provisions of paragraph 14. In this case it will apply, for here the workman has given notice of an accident.

What then are the duties as to submitting himself for medical examination which are imposed by paragraphs 4 and 15? The workman must submit to examination if so required by the employer, but neither paragraph 4 nor paragraph 15 says how often, nor is there any regulation saying how often. It is to my mind out of the question to say that only one such examination can be required. There is nothing, either in the Act or in the good sense of the thing, to warrant any such limitation. It follows that under paragraph 4 the workman must submit to examination when it is reasonably demanded by the employer.

In the present case it is not suggested that the requirement is unreasonable, or that the learned County Court Judge, who is the person to decide, was asked to treat it as unreasonable. He had full power, and I have no doubt was perfectly right to make the order complained of, and this appeal must be dismissed, with costs.

LORD ATKINSON—I concur.

On the 18th June 1913 the appellant, having recovered from Bright's disease, but alleging that he had become partly incapacitated from the effect of the early injury, served a notice in a very peculiar form. In this notice the cause of the incapacity is stated to be the old injury; no date is given for accident, and the fact of which notice purports to be given is that the appellant was injured while in the respondent's employment.

The notice was, I think, intended to be a notice under the fourth of the rules in the first schedule to the statute, and not a document served as a preliminary to proceedings to be taken for the review of a weekly payment under rule 16. I think this is clear from the contents of the application for arbitration, dated the 10th September 1913, served by the appellant's solicitors. In it the weekly payments made from the 27th January 1911, the date of the accident, till the 11th June following, are treated as a benefit received from the employer, which is to be taken into account under rule 3 of the same schedule in estimating the compensation.

Moreover, the applicant relied in argument on the decision of the Court of Appeal in *Major* v. *South Kirkby, Featherstone, and Hemsworth Collieries Limited*, 1913, 2 K.B. 145, 6 B.W.C.C. 169, in which it was held that the weekly payment mentioned in Sched. 1 (14) is a weekly payment to which the workman has become entitled either under an award or under an enrolled agreement which could be enforced as a judgment of a County Court, *i.e.*, a weekly payment in reference to which the workman stands to his employer in the relation of a judgment creditor. It is not necessary for your Lordships in this case to decide this latter point. The importance of the appellant's reliance upon the decision consists in this, that it shows what he considered was the

true nature of his objection, and what the precise point he desired to raise. That point is, in my view, clearly this, that where a workman serves under Sched. 1 (14), notice of an accident he is absolutely entitled to refuse to be examined by a medical practitioner provided and paid by his employer more frequently than once, whether that refusal be reasonable or unreasonable — which in effect means that the County Court Judge had no jurisdiction to make the order he has made, and that the decision of the Court of Appeal in *Major* v. *South Kirby, Featherstone, and Hemsworth Collieries, Limited*, should be overruled.

On the 4th October following the respondents served upon the appellant notice of their intention to apply to the County Court Judge having jurisdiction in the case for an order to supersede the appellant's right to compensation, and his right to take or prosecute any proceedings under the statute in relation thereto.

This application having come before the County Court Judge on the 6th November 1913, he made the order applied for.

It has already been decided by your Lordships' House that a County Court judge in dealing with applications such as this is bound to act reasonably. If in any particular case the second or third application to submit to a medical examination be in the opinion of the County Court judge unreasonable under all the circumstances of the case, he has full power to refuse to inflict upon the workman the penalty of suspension. This is a complete protection to the workman against any attempt on the part of the employer to harass him by repeated requests that he should submit himself to repeated medical examination.

The contention put forward on the appellant's behalf, that this and other evils would follow if a workman were bound to submit himself more than once for examination, has therefore no substance in it. One of the objects of the Act and of the rules in the schedule attached to it clearly is that settlements of claims for compensation should, if possible, be arranged by agreement between the employer and the workman. Nothing, I think, would be more calculated to defeat that object, and nothing could be more opposed to common sense and reason, than to require that an employer should make up his mind in all cases definitely on the result of one examination whether he would or would not resist the workman's claim. In the present case, for instance, three months elapsed between the date of the first examination and the demand for the second. A still further time might in many cases elapse.

The employer, and indeed the workman, are both interested in having a medical examination made as soon after the accident as possible in order that both of them may be able to fix the time when the incapacity to work, if it supervened, had commenced. Again, any symptoms of bodily hurt in their early stages might be of such an obscure nature that it would be quite impossible to ascertain on one examination whether they would soon abate or pass away, or whether some incapacity more or less permanent might not supervene. Of course if the language of Schedule I (4) be so plain that it admits of no other construction than that contended for by the appellant, one must adopt that construction, however irrational, absurd, or mischievous the result, but unless one is coerced to adopt a construction from which such consequences follow it ought not to be adopted.

It is, in my view, clear that the words of Schedule I (4) need not be read as if the words "once but only once," were written into it between the words "submit" and "himself." The submitting "himself for examination" provided for is a "process," not a single act. It may necessitate one or more acts to effect its object, namely, to ascertain the bodily condition of the sufferer.

I think Schedule I (15) strongly supports this conclusion, inasmuch as the concluding words of the first paragraph, which run "or at more frequent intervals than may be prescribed by those regulations," cannot be confined in their application to paragraph 14. I think these words apply equally to paragraph 4, and if so they indicate conclusively that more than one act of submission to examination was contemplated in the framing of this fourth paragraph.

I am clearly of opinion therefore that the County Court Judge had jurisdiction to make the order which he did make, and that the judgment appealed from was right and should be affirmed and this appeal be dismissed, with costs.

LORD PARKER—The appellant in this case on the 27th January 1911 met with and was injured by an accident arising out of and in the course of his employment by the respondents. The weekly sum payable to him under the Act was agreed at 16s. 8d., and this sum was paid to the appellant by the respondents from the 27th January to the 11th June 1911. On the 11th June 1911 the appellant returned to work and the weekly payment was discontinued. On the 12th August 1911 the appellant ceased work, being incapacitated by Bright's disease, which he admits was not due to the accident. On the 18th June 1913 the appellant, having recovered from Bright's disease, gave notice to the respondents of a claim to compensation based on the contention that he was partially incapacitated from work by reason of the accident. Thereupon the respondents required him to submit, and he accordingly on the 26th June submitted, to examination by a duly qualified medical practitioner. Nothing further was done until the 10th September 1913, when the appellant instituted proceedings in the County Court of Glamorganshire for the purpose of enforcing his claim. On the 22nd September 1913 the respondents again required the appellant to submit to medical examination, and upon his refusing applied to the County Court Judge for an order suspending the appellant's right to compensation or to take or to prosecute proceedings under the Workmen's Compensation Act 1906. The County Court Judge granted the application, and an appeal from his decision was

dismissed by the Court of Appeal. The appellant is now asking your Lordships to reverse the orders made in the Courts below. [*His Lordship read Schedule I, paragraphs* 4, 14, *and* 15, *and continued*]—

The last-mentioned paragraph of the First Schedule obviously contemplates that a workman may have to submit to medical examination under paragraph 4 as well as paragraph 14 more than once, and paragraph 4 is in my opinion quite consistent with his having to do so, though it is open to the Secretary of State to prescribe that the examinations shall not take place otherwise than at certain intervals. The only regulations made by the Secretary of State on this subject are those of the 28th June 1907, which prescribe the intervals at which examinations under paragraph 14 are to take place, but are silent as to examinations under paragraph 4.

If, as I think, the fourth paragraph contemplates more than one medical examination, and the regulations of the Secretary of State are silent as to the number of examinations which are permissible, the question whether the appellant was justified in refusing to be examined as required by the respondents on the 22nd September 1913 depends upon whether the requisition was reasonable under the circumstances—a question of fact not for the decision of your Lordships but of the County Court Judge who dealt with the matter, and whose finding can only be disturbed if as a matter of law the requisition could not under any circumstances have been properly made. This in my opinion is the result of your Lordships' decision in *Morgan* v. *Dixon Limited*, 1912 A.C. 74. The appellant bases his contention that the requisition could under no circumstances have been properly made—first, on the contention that paragraph 4 contemplates only one examination—a contention which is in my opinion sufficiently disposed of by reference to paragraph 15; and secondly, on the absence of any regulations in that behalf of the Secretary of State under paragraph 15. In my opinion paragraph 15 must not be read as prohibiting any medical examinations which the Secretary of State does not specifically authorise, but as leaving the County Court judge to determine whether any proposed examination is reasonable under the circumstances, subject only to any regulations made by the Secretary of State as to the intervals at which such examinations are to take place.

Some discussion occurred in the course of argument as to the meaning of the words "any workman receiving weekly payments under this Act" in paragraph 14 of Sched. 1 and the corresponding words "a workman in receipt of weekly payments" in the regulations of the 28th June 1907. Counsel on both sides seemed disposed to agree that these words could not apply to workmen who had for a time received weekly payments but had ceased to receive them because the incapacity during which alone they were payable had, or was alleged to have, come to an end. I prefer to reserve my opinion on this point, though as a matter of practice it can be of very little importance. If the cessation of payment of the weekly sum to which the workman is entitled under the Act puts an end to the operation of paragraph 14, the right of the employer under paragraph 4 must, in my opinion, be held to revive, and if, as I think, recurrent examinations are possible under that paragraph, no difficulty would occur in practice, nor would any injustice or inconvenience be caused to either employer or workman.

In my opinion the appeal fails, and should be dismissed, with costs.

Appeal dismissed with expenses.

Counsel for the Appellant—Leslie Scott, K.C.—A. T. James. Agents—Smith, Rundell, & Dods, for Morgan, Bruce, & Nicholas, Pontypridd, Solicitors.

Counsel for the Respondents—Scott Fox, K.C.—Albert Parsons, K.C. Agents—Bell, Brodrick, & Gray, for C. & W. Kenshole, Aberdare, Solicitors.

HOUSE OF LORDS.

Thursday, June 10, 1915.

(Before Earl Loreburn, Lords Atkinson, Parker, Sumner, and Wrenbury.)

DRUMMOND *v.* COLLINS.

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

Revenue — Income Tax — Foreign Possessions—Remittances to a Guardian in the United Kingdom—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *secs.* 41, 100, *Sched. D, Case* 5—*Income Tax Act* 1853 (16 *and* 17 *Vict. cap.* 44), *sec.* 2, *Sched. D.*

A testator, resident in America, by his will vested his property in trustees, and directed them in their discretion to apply the trust funds for the benefit of his grandchildren. The testator's son's widow was now resident in England with the children, and as guardian of the children received remittances from the trustees in America for their maintenance and education.

Held that these remittances were assessable to income tax under section 100, case 5, of the Income Tax Act 1842, Sched. D, as being moneys received in England in respect of foreign possessions.

Decision of the Court of Appeal reported [1914] 2 K.B. 643, *affirmed.*

Appeal from a decision of the Court of Appeal affirming a decision of Horridge, J., reported 1913, 3 K.B. 583.

The question for determination was whether certain sums remitted from America by the trustees in America of the will of Mr Marshall Field, of Chicago, to the appellant Mrs Drummond, in England, as guardian of three infant children, for the education and maintenance of these children, were assessable to income tax under the fifth case of