Legal Decisions

BRITISH COMPENSATION ACT: IMPORTANT INTERPRETATION OF PRINCIPLES.

In a case just decided in the British Courts, which was brought under the Workmen's Compensation Act, the judge explained that he had reserved judgment not because there was any doubt in his mind as to whether the applicant was entitled to any compensation, but because he thought it was desirable to draw attention again to the broad principles which governed these cases. It seemed, he stated, to be erroneously supposed that any workman who suffered an accident was entitled under the act to be awarded compensation. But that was not the law. The act, no doubt, gave compensation to an injured workman, but the amount of that compensation had not to be measured by the severity of the accident but by the amount he lost in wages in consequence of the accident. Therefore, if a workman suffered an accident which at the time of his application for compensation had not diminished his wages he was not entitled to any compensation at that moment, although he might possibly become entitled to compensation if his wages were diminished at some later time. The question to be tried, therefore, was simply this—was the workman able to earn less wages than he was able to earn before the accident?

In the case in question the applicant had his left eye damaged while chipping slag off a ladle on which it had accumulated, and substantially speaking, he was now almost blind in that eye. There was, therefore, no doubt about the serious nature of the accident, which happened on the 16th of December, 1911. The applicant returned to work on January 29, 1912, and was paid compensation down to that date. He remained at his work and received full wages up to July 6, when he ceased work voluntarily because he could not see to do his work and the question was whether he was entitled to compensation since July 6. The first schedule of the act said: "In the case of partial incapacity the weekly payment should in no case exceed the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he was earning or capable of earning in some suitable employment or business after the accident."

In the opinion of the court, the applicant was engaged in work which was suitable. It was very plain straightforward work with no substantial risks, and certainly none which justified him in declining to work—whether he did it well or badly was for his employers to judge. Therefore, as long as they were willing to pay him his wages he was capable of earning the same wages after the accident as before.

The application, concluded the court, must, therefore, be dismissed with costs. His award, however, was not a final one, nor did the employers desire that it should be so, because having regard to the fact that the injury was to the eye, they had consented to a declaration of liability being put on the file.

[It will be observed that according to this decision a British workman suffering an accident may not be entitled to compensation at the time, but "might possibly become entitled to compensation if his wages were diminished at some later time." Thus are the problems of reserve against future claims piled on the unfortunate liability underwriter.—Ed.]

BANKS AND THEIR UNDER-AGE CUSTOMERS.

An important decision regarding the relations of the Canadian banks with customers who are under the age of 21 years was given recently by Mr. Justice Middleton, of the Ontario High Court, in the case of Freeman *vs.* Bank of Montreal. This was an action brought to recover the sum of $1,300, being a portion of $1,800 deposited by plaintiff in the Bank's branch at Deseronto and withdrawn by him during his infancy. The action was dismissed with costs. The decision is drawn attention to by Mr. John D. Falconbridge in a recent number of the *Journal of the C. B. A.* Part of the text of the decision follows; the remainder will be given in our next issue:—

Action tried at Napanee on the 3rd June, 1912, brought by one John W. Freeman, to recover from the defendant bank the sum of $1,300, being a portion of a sum of $1,800 deposited by the plaintiff to his credit in the bank at its branch at Deseronto and withdrawn by him from the bank during his infancy.

The sum of $1,020.42 was deposited on the 8th September, 1905. This sum was the share of the plaintiff in the estate of his deceased grandfather. His father, John Freeman, was executor of the estate, and upon realization paid this money to plaintiff, who thereupon deposited it in the bank to his own credit. The sum of $774.76 was deposited in the bank on 15th September, 1905, and was the amount of money standing to plaintiff's credit in the Post Office Savings Bank and withdrawn by him from that bank in the name of John Freeman. This amount represented $100, the proceeds of the sale of certain sheep given to plaintiff by his grandfather, with whom he at one time resided, and moneys saved by plaintiff from wages paid to him by his father.

The plaintiff's father was at one time supposed to be a successful business man. He carried on business first as a grocer in Deseronto and later as an hotel-keeper. The plaintiff entered his father's employment when about twelve years of age, and assisted first in the grocery business and afterwards as bartender. He lived at home, was charged nothing for his board or lodging, and received wages, a substantial portion of which went into the Post Office Savings Bank and then into defendants' bank.

The hotel premises were, at that time, under mortgage to one John McCullough. In April, 1906, an agreement was come to between plaintiff and his father by which plaintiff agreed to lend his father $1,800, to be paid on account of the mortgage upon the hotel; and on 20th April, 1906, plaintiff signed a cheque in favour of McCullough for this amount. This cheque was afterwards deposited to the credit of McCullough in defendant bank, and in due course was paid out upon McCullough's cheque.

The father continued to carry on the hotel business until shortly before 22nd August, 1910, when he left Ontario on account of domestic and financial trouble. Almost immediately after his departure the plaintiff consulted his present solicitor, who, on 22nd August, 1910, wrote a letter to the bank demanding payment of $1,300 and interest, upon the theory that the receipt of the $1,800 from a minor was a breach of the Bank Act, and that the payment to the minor of anything over $500 was void against plaintiff, who, by reason of his minority, claimed to avoid the contract. Without waiting for a reply the writ in this action was issued on 23rd August.

Plaintiff was born on 23rd December, 1887, and so