

On the 4th June, 1920, the Workmen's Compensation Act, 1920, 10 & 11 Geo. V. ch. 43, received the royal assent, and came into force on the 1st July, 1920.

By sec. 8 of that Act, the limitation upon the total amount of compensation payable upon the death of a workman under the Workmen's Compensation Act of 1914 was increased from 55 per cent. to $66\frac{2}{3}$ per cent. of the average monthly earnings of the workman; and by sec. 12 it was provided that "the increases in the amount of compensation payable under the Workmen's Compensation Act in cases of injury resulting in death shall apply to all pension payments accruing after the coming into effect of this Act, whether the accident happened before or after that date, and whether the award of compensation has been heretofore or is hereafter made, but nothing in this section contained shall entitle any person to claim additional compensation for any period prior to the coming into effect of this Act."

The plaintiff company, by its cross-appeal, asked for leave to amend its claim and vary the judgment by adding \$3,022, the additional amount which the plaintiff company would be obliged to pay to the dependants of the deceased Gourgon, under the provisions of the Act of 1920. The cross-appeal was against the defendant city corporation as well as against the defendant company.

On the 20th September, 1920, the appeals and motion were heard by MULLOCK, C.J. Ex., RIDDELL, SUTHERLAND, and MASTEN, JJ.

R. McKay, K.C., for the defendant company, supported the main appeal.

W. L. Scott, for the plaintiff company, asked, in lieu of an amendment, that there should be a new trial on the question of damages. The Act referred to had been passed since the trial, but was expressly made retroactive. He also asked for leave to amend by making the dependants of the deceased Gourgon plaintiffs.

McKay, K.C., for the defendant company, and F. B. Proctor, for the defendant city corporation, opposed the granting of the relief asked by the plaintiff company.

THE COURT gave judgment at the conclusion of the hearing, holding that the action was not properly constituted, as it should have been brought in the name of the dependants, and holding also that the statute was plainly retroactive.

The order made by the Court was, that so much of the judgment as fixed the amount of the damages should be set aside and that there should be a new assessment of damages; that in other respects the judgment should stand; that the plaintiff company