[IN THE COURT OF APPEAL.]

C. A.
1909
March 30.

EAVES *v.* BLAENCLYDACH COLLIERY COMPANY, LIMITED.

Employer and Workman—Compensation—Review of Weekly Payments—Earning Capacity of Workman—Nervous Prostration—Loss of Will Power—Physical and Muscular Recovery—Workmen's Compensation Act, 1906 (6 *Edw.* 7, *c.* 58), *Sched. I.* (16.).

On an application by an employer under the Workmen's Compensation Act, 1906, Sched. I. (16.), to have the weekly payments reviewed, the nervous and mental as well as the physical condition of the injured workman must be taken into consideration in estimating the extent of his recovery and consequent earning capacity. It is not sufficient for the employer to shew that the muscular and physical mischief caused by the accident has come to an end.

APPEAL from an award of the judge of the county court of Pontypridd sitting as arbitrator under the Workmen's Compensation Act, 1906.

The only question raised by this appeal which requires any detailed report was whether the nervous and mental condition of an injured workman ought to be taken into consideration in estimating the extent of his recovery and consequent earning capacity. The facts so far as material were as follows:

In May, 1905, the applicant, a collier in the employ of the respondent company, was injured by a large stone, weighing about half a hundredweight, falling on his right foot, which at that moment was on a tram rail.

The company accepted their liability and entered into an agreement to pay the workman 18*s.* a week from the time of the accident, and this payment was continued till September, 1908, when the company applied to review the agreement and to have the amount of compensation reduced or terminated. The county court judge found that the man ought to have gone back to work before and that he was not entitled to further compensation. On appeal, on the ground of misdirection, the matter was remitted to the county court judge for reconsideration.

In January, 1909, when the matter was reheard, there was medical evidence to the effect that the applicant was physically

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and muscularly sound and had no organic disease, but that his right leg up to the knee was absolutely devoid of sensation, so that a pin might be driven into it without the man feeling any pain; that upon the man being made to stand the leg collapsed under him and he fell to the ground; the alleged cause of this was stated to be a certain mental condition which prevented him from driving the necessary impulse into the leg to make it a useful limb like the other leg and the same as this leg was before the accident.

The evidence proved that the applicant was suffering from traumatic neurasthenia and anæsthesia of the leg as a consequence of the accident; that traumatic neurasthenia was a real complaint, and that it had affected the applicant's mental condition and destroyed his will power.

The county court judge came to the conclusion on this evidence that the loss of sensation did not affect the muscular power or the physical power to work; that he was able to do the ordinary work of a collier; that the applicant was not malingering, but was under the genuine belief that he was incapable of working; but on these findings he nevertheless reduced the compensation payable under the agreement to a penny a week.

The applicant appealed.

Rufus Isaacs, K.C., and *A. Lincoln Reed*, for the appellant.
C. A. Russell, K.C., and *Parsons*, for the respondents.

COZENS-HARDY M.R. This is an appeal from the judgment of a county court judge, and it is the second time that this matter has come before this Court. I cannot help thinking that the learned judge has misapprehended the view which was taken by this Court on the former occasion and has again misdirected himself.

In so far as the learned judge has found the facts we have no desire to interfere with his decision. He has told us plainly what the facts are in his view, and I accept those findings of fact.

The short material facts are these. The man was a collier

and he met with an accident which arose "out of and in the course of his employment"; that is beyond all doubt. For a considerable time he received compensation from his employers on that footing, and the learned county court judge, in a passage which I will read in a minute, finds that the evidence satisfies him that the muscular mischief caused by the accident has come to an end, or perhaps (to express what I mean to say more accurately) that so far as muscular power is concerned he is in the same condition in which he was before the accident, and so far as that is concerned he is competent now to do the ordinary work of a collier. He also finds another thing which is equally plain, that the workman is not malingering—that he is not shirking the work with any desire or intention to avoid it. The learned judge says he thinks that, although the man honestly believes he is not able to do the work, and although he is not shamming or malingering, it is sufficient for the employers to shew that the muscular mischief is at an end. I am entirely unable to assent to that view. The effects of an accident are at least twofold: they may be merely muscular effects—they almost always must include muscular effects—and there may also be, and very frequently are, effects which you may call mental, or nervous, or hysterical, whichever is the proper word to use in respect of them. The effects of this second class, as a rule, arise directly from the accident from which the man suffered just as much as the muscular effects do, and it seems to me entirely a fallacy to say that a man's right to compensation ceases when the muscular mischief is ended, though the nervous or hysterical effects still remain. [The Master of the Rolls then quoted passages from the judgment of the county court judge to shew that he had misdirected himself in applying the facts, and continued:—] The result of this judgment, however, is that the man is still suffering from the accident, and he has not wholly recovered from the nervous effects of the accident, which are just as real and just as important as the muscular effects and make him unable to work. I hope nothing that I say here will ever be supposed to give any colour to malingering; and if the learned judge had found that the man was malingering, the position, of course, would have

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been entirely the other way, and that would have been a question of fact for him, and we should not have interfered with the finding. The learned judge has not found that the man was malingering—he has said so in express terms—and, that being so, having regard to what I said before, he has plainly misdirected himself in the award which he made in altering the compensation, in fact terminating it, subject only to the penny a week.

In my view, therefore, this appeal should be allowed.

FLETCHER MOULTON L.J. I am of the same opinion. It is quite clear that serious muscular and nervous consequences followed from the accident that happened to this workman. The muscular consequences have disappeared, but that the nervous consequences still remain is common ground, because there is the very remarkable fact of almost total anæsthesia of the leg, which is deposed to by the witnesses on both sides. As I read the finding of the learned county court judge, he finds that because the sole results are nervous and not muscular they are not the consequence of the accident and do not justify an award of compensation. In my opinion, so long as these serious consequences remain, the man is entitled to compensation just as much as if his muscular power had not come back.

FARWELL L.J. I am of the same opinion. The fallacy, with all respect to the learned county court judge, which appears to me to underlie his judgment is this, that he has totally disregarded nervous complaints. A man may be a strong man in so far as his muscular powers are concerned, but he may be suffering from a railway accident in which he had a very bad shock; his nerves may be shattered, and this nervous complaint may be perfectly real. Of course it is exceedingly difficult for a county court judge in many cases to determine whether it is really a nervous complaint or whether the man is shamming. Here the judge has excluded shamming, but he has ruled that the man is physically capable of working, and has disregarded the nervous affection. The man is suffering from traumatic neurasthenia and he has not recovered from it. Therefore he has not

recovered his earning capacity and is still entitled to compensation. The learned judge has misunderstood the reasons this Court had in sending the case back.

Appeal allowed.

Solicitors: *Smith, Rundell & Dods, for Morgan, Bruce & Nicholas, Pontypridd; Evan Davies, Pontypridd.*

W. C. D.

[IN THE COURT OF APPEAL.]

MORTIMER *v.* SECRETAN.

Employer and Workman — Injury to Workman—Permanent Incapacity — Compensation—Weekly Payments — Redemption — Agreement for Lump Sum—Memorandum—Registration—County Court Judge—Jurisdiction—Power to assess Amount—"Such order as under the circumstances he may think just"—Workmen's Compensation Act, 1906 (6 *Edw.* 7, *c.* 58), *Sched. II., cl.* 9 (*d*).

Where the registrar of a county court has refused to register an agreement between an employer and a workman, who has been injured in his service, for the redemption of a weekly payment by a lump sum, on the ground of the inadequacy of the sum agreed upon, and has referred the matter to the judge under Sched. II., cl. 9 (*d*), of the Workmen's Compensation Act, 1906, the sole question for the judge is whether the agreement is one which ought or ought not to be recorded. He is not entitled to treat the agreement as a submission by the employer to pay any sum which the judge may, under the circumstances, think reasonable.

APPEAL from an order of the judge of the Surrey County Court holden at Lambeth.

On August 31, 1908, Annie Mortimer, a domestic servant, was accidentally injured by falling down some steps while in the employment of Mrs. Secretan. Her average weekly earnings, computed under the Workmen's Compensation Act, 1906, were 17*s.* 8*d.* She was totally incapacitated for five months, and it was likely that her partial incapacity would be permanent. After the accident her employer made weekly payments to her of 8*s.* 10*d.* down to January 30, 1909, when the parties entered into an agreement whereby the employed agreed to accept the sum of 80*l.* as a lump sum in full satisfaction of all her claims against the employer in respect of the injury. The said sum of 80*l.* was