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before us all the facts which can be proved. If the case went down to trial again, it would be impossible for another jury to reasonably find a verdict for the plaintiff; and to send the case down for another trial would be only a useless expenditure. It appears to me, therefore, that this Court will properly exercise its powers by entering the verdict for the defendant.

Appeal allowed, judgment set aside, and judgment entered for the defendant.

Solicitors, for appellant, *Stone & Burt.*
Solicitor, for respondent, *Jenkins.*

H. E. M.

[HIGH COURT OF AUSTRALIA.]

THE GREAT FINGALL CONSOLIDATED LIMITED . . . . . } APPELLANTS;

DEFENDANTS,

AND

SHEEHAN . . . . . RESPONDENT.

PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

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PERTH, *Oct.* 16, 17, 18, 20.

Griffith C.J., Barton and O'Connor JJ.

Appeal—Master and servant—Worker—Accident—Compensation—Liability of employer — Release — Accord and satisfaction— Contract — Consideration — Workers' Compensation Act (*W.A.*) 1902 (*No.* 5).

An appeal lies to the Supreme Court of Western Australia from a decision of the Local Court in an action for compensation under the *Workers' Compensation Act.*

Respondent, while in the employ of appellants, received injuries for which he was entitled, during incapacity resulting therefrom, to compensation under the *Workers' Compensation Act*. The amount to which he was entitled at the end of the third week was £1 17s. 11d., on payment of which he gave appellants a receipt which was expressed to be in full satisfaction and liquidation of any claim he had or might have against them in respect of the accident. In an action to recover the balance of weekly payments to which, owing to a further continuance of his incapacity, he claimed to be entitled under the Act:

Held, that a release or an agreement to accept a lump sum in full satisfaction of all claims is not prohibited by the Act; but that the receipt in question did not amount to a release, but was merely evidence of an agreement by way of accord and satisfaction, and, in the absence of consideration, was not a bar to respondent's claim.

Decision of the Supreme Court affirmed, but on different grounds.

APPEAL from a decision of the Supreme Court of Western Australia.

The following statement of facts is taken from the judgment of *Griffith* C.J.

The respondent was a workman in the employment of the appellants, and during the course of his work he sustained an injury for which he was entitled to compensation under the *Workers' Compensation Act*. He took proceedings in the Local Court in the prescribed form, and amongst the defences set up by the appellants was that he had received a sum of £1 17s. 11d. from them "in full satisfaction and liquidation of any claim" he had or might have had against them in respect of the injury. The Local Court at Cue were of opinion that that defence was proved, and that it was a good defence, and they therefore dismissed the claim. The Supreme Court of Western Australia on appeal held that the receipt was not a valid release and discharge to the defendants, and remitted the matter to the Local Court at Cue for the assessment of compensation.

Pilkington (with him *Stawell*), for the appellants. No appeal lies to the Full Court from the decision of the Local Court on a claim under the *Workers' Compensation Act*. It was contended that an appeal lay to the Supreme Court under sec. 8 of the *Workers' Compensation Act* and sec. 8 of the *Small*

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Debts Ordinance 1863, *Amendment Act* 1894. The English Act, unlike the local Act which is founded upon it, provides expressly for appeals. The appeal given by sec. 8 of the *Small Debts Amendment Act* 1894 does not apply to proceedings under the *Workers' Compensation Act*. The tribunal established by the latter Act is entirely distinct from that established under the *Small Debts Ordinance* 1863. The *Workers' Compensation Act* created entirely new rights and liabilities, and the machinery is also new.

The appeal provided for by sec. 8 of the *Small Debts Amendment Act* 1894 is an appeal from a "judgment"; but the tribunal established by the *Workers' Compensation Act* has power only to make an "award." In addition, the right of appeal under sec. 8 of *Small Debts Amendment Act* 1894, from a tribunal consisting of magistrates, cannot apply to a case decided by two assessors under the *Workers' Compensation Act*.

In *Carr* v. *Stringer* (1), it was held that no appeal lay under sec. 14 of 13 & 14 Vict. c. 61, from the decision of a County Court; and that section is very similar to sec. 8 of the *Small Debts Amendment Act* 1894. The regulations under the *Workers' Compensation Act*, dealing with the procedure of the Court, speak of the result of the proceedings as an "award," and not as a judgment. [He cited *Workers' Compensation Act*, Regulations 16, 17, 18, 31, 32, 34]. These regulations have the force of law, and form a guide to the interpretation of the Statute: *Hardcastle on Statutes* (3rd ed.), at p. 164; *Ex parte Weir* (2); *Interpretation Act* 1898 (W.A.), 62 Vict. No. 30, sec. 11; *Institute of Patent Agents* v. *Lockwood* (3). The whole proceedings are therefore in the nature of an arbitration, and there can be no appeal from the award given: *Mountain* v. *Parr* (4).

The company's liability and the amount and duration of the payments were settled by agreement under sec. 8 of the Act before proceedings were taken; and the payment of £1 17s. 11d. was a compromise of the claim, and was so found by the Court. The agreement was not that the Act should not apply, but merely that respondent should abandon the benefits secured him

(1) E.B. & E., 123.
(2) L.R., 6 Ch., 875.
(3) (1894) A.C., 347.
(4) 1 W.C.C., 110.

by the Act. Such an agreement is binding on the parties, unless expressly prohibited by the Act itself, compare *Employers' Liability Act* (W.A.), 58 Vict. No. 3, sec. 14. There are no words in the Act strong enough to take away the right of a workman to compromise his claim. Sec. 8 assumes the right to compromise; or at least it does not exclude such right. Even though the agreement for compromise were made before respondent was fully aware of the nature of his injuries, it is still binding: *Rideal* v. *Great Western Railway Co.* (1).

Villeneuve-Smith, (with him *Phillips*,) for the respondent. An appeal lies to the Supreme Court from decisions of the Local Court in cases under the *Workers' Compensation Act*, just as in ordinary cases. Under the English Act (60 & 61 Vict. c. 37) proceedings in claims for compensation were purely arbitration proceedings. The local Act makes no provision whatever for arbitration proceedings. The joint effect of sec. 16 of the Act, and Rule 41 thereunder is the same as sec. 5 of the English Act, under which an appeal lies to the King's Bench Division. An appeal also lies under sec. 120 of the *English County Court Act*, which is similar to sec. 8 of the local *Small Debts Amendment Act* 1894: *Morris* v. *Northern Employers' Mutual Indemnity Co. Ltd.* (2); *Kniveton* v. *Northern Employers' Mutual Indemnity Co.* (3). In Rules 31 and 34 the term "award" has no technical significance, being used merely for brevity. Rule 34 (2) further provides that the certificate may be filed in the Local Court and enforced as a final judgment of that Court. Sec. 9 of the Act also provides for the entering of judgment when an action is brought independently of the Act and compensation is assessed, as provided, according to the Act. In *Mountain* v. *Parr* (4), the judgment proceeded on the assumption that the County Court Judge sat as assessor and not as a Judge, and is therefore no authority for the contention of the appellants. The conferring of additional jurisdiction does not alter the Court on which it is conferred, *e.g.*, *Navigation Act* 1904 (W.A.), No. 59, sec. 20. A reference of disputes, similar to that provided for by the *Workers' Compensation Act*, was made to the County

(1) 1 F. & F., 706.
(2) (1902) 2 K.B., 165.
(3) (1902) 1 K.B., 880.
(4) 1 W.C.C., 110.

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Court by the *Friendly Societies Act* 1875 (38 & 39 Vict. c. 60), sec. 22 (*d*), under which it was held that an application to the County Court must be taken to be an action and not a reference to the Judge sitting as an arbitrator. *Wilkinson* v. *Jagger* (1); *Neptune Steam Navigation Co.* v. *Schlater, The Delano* (2). The *Workers' Compensation Act* confers a right of action on the worker immediately an accident happens causing him injury (sec. 6 and second Schedule.) Sec. 13 (1) was designed not only to meet contracts made during service, but also after the accident had occurred. An agreement made between both parties before assessors for payment of a certain sum for compensation is a contracting out of the Act, and cannot be enforced. The second Schedule (2), Condition 8 provides that no agreement can be made for the payment of a lump sum as compensation until after six months from the date of the first payment. The agreement referred to in sec. 8 is one which must be made in accordance with the Act. Assuming the employer admits his liability, then a vested interest arises in the worker. Any compromise to be operative must be in accordance with the Act, which prohibits such compromise till after a lapse of six months: *Jones* v. *Great Central Railway Co.* (3). Even under the agreement £1 17s. 11d. was not to be the total amount of compensation; but the respondent was in addition to be given light work. When the light work ceased, the question arose as to the amount the respondent was entitled to. One object of the Act was to prevent the acceptance by the men of a lump sum as compensation before they knew the real nature of their injuries: Minton-Senhouse "Accidents to Workmen," 2nd ed., pp. 128 and 206. Sec. 7 (2) enables the worker to claim compensation under or independently of the Act, provided that the employer is not to be liable to pay twice over. The worker would be bound by his agreement to accept a certain sum as compensation if he had taken proceedings independently of the Act; but once the Act has been appealed to, no such agreement would have been binding: *Chandler* v. *Smith & Son* (4). Appellants' contention really amounts to a plea of accord and satisfaction, the onus of establishing which is on the company.

(1) 20 Q.B.D., 423.
(2) (1894) P., 40.
(3) 4 W.C.C., 23.
(4) 1 W.C.C., 19.

There was no evidence of accord and satisfaction, nor of any consideration for the release by the respondent: *Smith* v. *Baker & Sons* (1); *Wohlgemuthe* v. *Coste* (2). Under any circumstances the £1 17s. 11d. was already due to the respondent, and the payment of that amount cannot establish a plea of accord and satisfaction as to all future payments. There was therefore no consideration for any agreement to forego those payments. It is admitted that there were other stipulations agreed upon besides those contained in the document, *e.g.*, that respondent was to be given light work by the company. Even if the claim were compromised, the compromise could not under any circumstances extend to future claims: *Prosser* v. *Lancashire and Yorkshire Accident Insurance Co.* (3); *Rideal* v. *Great Western Railway Co.* (4); *Taylor* v. *Hamstead Colliery Co. Ltd.* (5).

Pilkington in reply. The document containing a release of all claims is evidence of an agreement in the terms mentioned therein: *Ellen* v. *Great Northern Railway Co.* (6). Where agreement means mutual assent and not contract, no consideration is necessary. Where the payments end by mutual consent, the matter is at an end—the duration is deemed to be settled by agreement; and when the weekly payments are discontinued by agreement, there can be no further claim: *Pomphrey* v. *Southwark Press* (7).

Oct. 20.

GRIFFITH C.J. This is an appeal from a decision of the Full Court of Western Australia, remitting to the Local Court at Cue, for reconsideration, a claim made under the *Workers' Compensation Act* 1902. This Court gave special leave to appeal from the decision, upon the ground that two questions of law of general public importance were involved in the case: First, whether an appeal lies from the Local Court to the Supreme Court in a case of proceedings under the *Workers' Compensation Act*, and secondly, whether a claim by a workman under that Act can be released or settled by accord and satisfaction. We have had the advantage of very full and careful argument on both sides, and I

(1) (1891) A.C., 325.
(2) (1899) 1 Q.B., 501.
(3) 6 T.L.R., 285.
(4) 1 F. & F., 706.
(5) 6 W.C.C., 34.
(6) 17 T.L.R., 338, 453.
(7) (1901) 1 K.B., 86.

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think we are in a position to dispose of the matter without any serious doubt, although I confess my mind has fluctuated a good deal during the argument. I will state briefly the facts of the case. [The learned Judge then stated the facts as above, and proceeded:]

The first question for consideration is whether an appeal lies from a Local Court to the Supreme Court in a case under the *Workers' Compensation Act*. The answer to that question depends upon the construction of the Statutes. Section 6 of the *Workers' Compensation Act* provides that if, in any employment within the Act, personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall, subject as thereinafter mentioned, be liable to pay compensation in accordance with the second Schedule to the Act. The second Schedule is headed, "Scale and Conditions of Compensation," and the second part of it, which applies to cases where the worker is totally or partially incapacitated, declares that the compensation shall be a weekly payment during the incapacity, after the second week not exceeding 50 per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer; such weekly payments not to exceed £2, and the total liability of the employer shall not exceed £300. Sec. 7 provides that nothing in the Act shall affect any civil liability of the employer independently of the Act where the injury is caused by the negligence of the employer or of some person for whose act or default the employer is liable; and that the worker may claim compensation under the Act or take the same proceedings as are open to him independently of the Act; but the employer is not to be liable to pay compensation independently of and also under the Act. Sec. 8 provides that if any question arise as to liability to pay compensation under the Act, or as to the amount or duration of such compensation, the question, if not settled by agreement, shall, subject to the provisions of the second Schedule, be heard and determined by the Local Court of the district within which the injury happened; and that for all such purposes jurisdiction is conferred upon that

Court. Sub-section 2 of the same section provides that for the hearing and determination of any such question, "the Magistrate" shall sit with two assessors appointed in the manner to be prescribed by regulation; and the decision of a majority of "such three persons" shall be the decision of the Court. It is necessary now to turn to the Acts of the legislature under which the Local Courts are established. The principal Act is the *Small Debts Ordinance* of 1863, which provides, by sec. 2, that it shall be lawful for the Governor to constitute Local Courts for the recovery of small debts and demands . . . throughout the Colony . . . and likewise by proclamation to alter the time or place or manner of holding such Courts, which Courts are declared to be Courts of Record. So that the Ordinance begins by establishing a new Court of Record. No doubt a Court in one sense consists of the Judges of the Court, but in another sense it is a separate entity, the functions of which are exercised by the persons who, for the time being, are members of the Court. Sec. 3 provides that the Governor may from time to time nominate and appoint such and so many justices of the peace as may be deemed fit and proper to exercise the powers conferred on them by the Ordinance; and the term "the Magistrate" wheresoever occurring in the Ordinance shall be understood to mean the Magistrate so appointed. Provision is then made for appointing other officials of the Court. Sec. 6 provides that the Magistrate may sit alone, or associated with any other justice or justices of the peace who attend, and that when two or more justices of the peace and the Magistrate form such Court the decision of the majority shall be taken and recorded as the judgment of the Court. Under the *Workers' Compensation Act*, however, the Court is constituted in a different way. For the purpose of hearing claims under that Act the Court is constituted of the Magistrate and two assessors, appointed in the manner prescribed by the regulations, whereas under the *Small Debts Act* 1863, the Court is constituted of the Magistrate and such justices as may think fit to attend. The regulations in force prescribe that each party shall appoint an assessor by a writing under his hand filed with the Clerk of the Court. It is contended for the appellants that the Court, sitting to try claims under the *Workers'*

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Compensation Act, although still called the Local Court, is in substance a different Court, inasmuch as its constitution is essentially different; and it is contended further that the proceedings under this Act are not in substance judicial proceedings, but are essentially in the nature of an arbitration. Under the English *Workmen's Compensation Act*, upon which the Act of this State is mainly based, the proceedings are arbitration proceedings, with an appeal to the Court of Appeal. But under the Western Australian Act jurisdiction is in terms conferred upon an existing Court by its own name, with special provisions to which I have called attention. Our attention was called to the regulations made under sec. 19, which provides that the Governor may make regulations for the purpose of prescribing the mode in which claims and questions under this Act may be determined, and also for any other purpose which he deems necessary in order to give full effect to the provisions and intention of the Act. The Governor, under that power, has made regulations, in which the determination of the Court is throughout called an award, and forms are given, all of which describe it as an award. It is contended that these regulations may be referred to for the purpose of interpreting the Act. In my opinion they cannot. We were referred to a case in which it was said that in construing an ambiguous section of the *Bankruptcy Act* 1869, the Rules made by the Lord Chancellor, which had the force of law, might be used as a guide as to which of the two or three possible constructions of the section was the correct one; but notwithstanding that case I cannot assent to the argument that a regulation made by the Governor can be used for the purpose of construing the Statute under which it is made. I come to the conclusion, upon the language of the Act, that the legislature intended to confer this jurisdiction upon the Local Court as a Court of Justice. A further reason for adopting that construction, if it is open upon the language of the Act is, I think, to be found in the circumstance that under the *Small Debts Act* 1894, an appeal lies from the Local Court to the Supreme Court upon any point of law, or upon the admission or rejection of evidence. It is well known that under the English *Workers' Compensation Act*, extremely difficult questions of law have arisen, upon which there have been

divergent opinions expressed, and the opinion of the Court of Appeal has often been dissented from by the House of Lords; and I think it is *primâ facie* highly improbable that the legislature intended to leave the decision of important and difficult matters of law to a tribunal in which the majority of the Judges might be untrained laymen. In my judgment when the legislature conferred this jurisdiction upon the Local Courts they intended to confer it upon a Court of justice to be exercised judicially, and subject to all the incidents attendant upon the exercise of the ordinary jurisdiction of the Court according to its constitution, except so far as expressly altered. And I do not think that the direction for the appointment of assessors to form part of the Court is any more material than a direction that questions of fact should be determined by a jury. In either case it is the same Court. For these reasons I am of opinion that an appeal lies to the Supreme Court. When this cause of action arose, however, an appeal only lay upon a question of law.

The other point of law of importance which induced this Court to give leave to appeal, was whether a claim under the *Workers' Compensation Act* could be released or compromised. The learned Judges in the Full Court were of opinion that it could not. Sec. 13 deals with what is called "contracting out" of the Act. It provides that where the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workers, certifies that any scheme of compensation, benefit, or insurance for the workers, whether or not such scheme includes other employers and their workers, is on the whole not less favourable to the general body of workers and their dependents than the provisions of the Act, the employer may, until the certificate is revoked, contract with any of those workers that the provisions of the scheme shall be substituted for the provisions of the Act, and that thereupon the employer shall, as respects the workers with whom he so contracts, be liable in accordance with the scheme in lieu of the Act; and adds: "But, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act." The effect of such a scheme would be that the provisions of secs. 6, 7, and 8, including the reference to the Local Courts, would no longer be applicable;

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but the worker would have such rights as were conferred upon him by the scheme. In my judgment the provision that the Act shall apply "notwithstanding any contract," refers to a contract to be entered into by the worker and his employer as one of the conditions of his employment, and before an accident happens. The Act lays down certain conditions of employment by which the employer and workmen are bound if no scheme is in force; but if a scheme is in force under sec. 13, that scheme is substituted for the Act. The learned Judges in the Supreme Court were of opinion that a contract made by way of compromise or release after the happening of an accident was a contract within the prohibition contained within sec. 13. On this point I am unable to agree with them. It was further contended that, apart from sec. 13, the rights conferred by sec. 6 to compensation in accordance with the second Schedule are absolute, and that no arrangement can be made by which these rights can be discharged. On this point also the learned Judges agreed with the respondent's contention. Now, it is a general rule, which we have had occasion to lay down more than once in this Court, that when a Statute interferes with the liberty of the subject, it will not be taken to deprive him of that liberty to any greater extent than is expressly stated, or to be inferred by necessary implication. In general, any person is at liberty to release or compromise any claims he may have on such terms as he may think fit. And I do not think that sec. 6 deprives a worker of this right. Any other construction would, indeed, be very prejudicial to the workers themselves; for, supposing a generous employer of a workman in a case in which it was doubtful whether the case came within the terms of the Act, offered him a cottage by way of compensation to live in for life, or a sum of money sufficient to set him up in a lucrative business, or a share in a mine of great although speculative value, it would surely be a hardship if the workman were debarred by Statute from accepting an offer which he thought highly beneficial to him. It was said that in such a case the worker might be deemed to have made a claim at common law, and to have recovered compensation independently of the Act, and that the case would so fall within the provisions of sec. 7. It must be remembered,

however, that an accident may give rise to a claim for compensation on either of three grounds—under the *Workers' Compensation Act*, under the common law for negligence of the employer, or under the *Employers' Liability Act*; and it would be very unfortunate if we were obliged to say that a claim could not be compromised with safety because it might turn out that in reality the only real foundation for the claim was under this Act. I can find nothing in the Act to exclude the common law right of a workman to make a compromise with his employer in respect of compensation to which he is entitled, or to release his claim. Indeed, sec. 8 of the Act appears to me to recognize the right to do so, for the jurisdiction of the Local Court only arises in respect of questions not settled by agreement. It is contended that as the agreement intended must be one relating either to liability, or to the amount or duration of a weekly payment when once the liability is admitted, the only subject matter of a valid agreement must be either the duration or amount of the payment. It is no doubt true that the question which, if not settled by agreement, is to be decided by the Local Court is one of this sort, but it does not appear to me to follow that no agreement can be made for settling *uno flatu* all subjects in controversy. Then it is said that there are provisions in the second Schedule inconsistent with that view. Condition 7 of the Schedule contains a provision that the weekly payment may be reviewed by the Court at the request either of the employer or of the worker, and, on such review, may be ended, diminished, or increased, subject to the maximum above provided; and condition 10 provides that if the matter has been previously before the Court, under sec. 8 of the Act, the assessors who then sat may sit together with the Magistrate to hear and determine any such application, and if the matter has not been previously before the Court, assessors may be appointed by the parties in the prescribed manner to sit with the Magistrate. It is said that that provision, which refers to the case of a weekly payment which has not previously been before the Court, suggests, at any rate, that an agreement made between parties may be reviewed by the Court, and that therefore the only agreement possible must be one as to the amount of the weekly compensation. It may be

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that the Court could review an agreement made between the parties as to compensation which has been agreed to be given in the form of a weekly payment. On that point I express no opinion. Condition 8 of the second Schedule confers on the employer, after a weekly payment has been continued for six months a right to have all future payments commuted for a lump sum. But this is only an option given to the employer. Effect should, no doubt, be given, if possible, to every word of the Statute, but I think it is impossible to hold that these provisions in the Schedule are sufficient to negative the liberty of the worker to make the best bargain he can for himself, especially when regard is had to words of the 8th section. The same words in the Schedules to the English Act have a clear meaning in consequence of a different context. That Act contains a provision for the registration of agreements in the County Court, and gives them when registered the effect of an award, so that condition 7 in the second Schedule as applied to an agreement of that sort is quite intelligible. The agreement, under the English Act, having the effect of an award, may be varied in the same manner as any other award. For these reasons I am of opinion that it is competent for a workman to release his claim for compensation under the Act, either by a formal release, or by any other agreement which has the effect of discharging the claim.

It now becomes necessary to consider, on this view of the law, whether the appeal to the Supreme Court in this case was on a point of law, and if so whether the point was wrongly decided by the Local Court. The *primâ facie* claim of the worker was admitted. The alleged discharge was a matter set up by the appellants, and the burden of proof was therefore on them. If there was evidence fit to be considered by a jury that the respondent's claim had been discharged by accord and satisfaction, it was a question of fact, and under the *Small Debts Act* 1863, the Supreme Court had no authority to review the decision of the Court on the question. But whether there was any evidence fit to be considered by a jury is a point of law. It is necessary therefore to refer to the facts with regard to this alleged discharge. It appears that about three weeks after the injury, which was then understood by both parties to be of a merely tem-

porary nature, the respondent went to his immediate superior, a Mr. Brown, who told him to see a doctor and get a certificate. He accordingly obtained a medical certificate to the effect that he was not likely to be fit to do work for three weeks. Under the Act he was not entitled to any compensation for the first two weeks, but he was entitled to anything up to half wages for the third week. Mr. Brown's version was that, the respondent not being able to work, he told him to see a doctor, get a certificate, and put it into the office, when he could get "half pay for being off"; and he added that between the 2nd of June and the day of the accident the respondent was entitled to one week's half pay. So that there was no controversy with regard to his right to compensation for that week, nor as to the amount of it, which was £1 17s. 11d. The respondent accordingly went to the appellants' office on 31st May, and took with him the doctor's certificate, which showed upon its face that he would in all probability be incapacitated for three weeks more, during which time he would by law be entitled to receive compensation, presumably at the same rate. Upon presenting the doctor's certificate, the sum of £1 17s. 11d. was paid to him, and he was asked to sign, and did sign, the following document: "Received on 31st May 1904, from the Great Fingall Consolidated, the sum of £1 17s. 11d. in full satisfaction and liquidation of any claim I have or may have in respect of an accident sustained by me on or before the 11th of May 1904." There was some evidence that the document was read over to him and that he understood it; there was also evidence to the contrary. Upon the question whether it was read over to him and he understood it, it was open to the Court to come to a conclusion either way. They decided that this document which, of course, is not a release, being at most evidence of an agreement by way of accord and satisfaction, was a valid release or discharge. The respondent contends that there was no consideration for such an agreement if made, and that therefore it did not bind him. That is clearly a point of law, and it was expressly raised in the Local Court. The circumstances then were these: Here was a man entitled to immediate payment of a sum of £1 17s. 11d., and also entitled to a weekly allowance, presumably of the same amount, to be possibly continued until he had received a maximum

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of £300, and which would almost certainly continue for three months. What was the consideration for his giving up this right? What was paid to him was admittedly due to him, as was expressly found by the Court. I cannot distinguish this transaction from a case where a man to whom a debt is owing gives a receipt for part of it in discharge for the whole. I think it is quite clear that upon the evidence there was no consideration for the alleged agreement by way of accord and satisfaction. For these reasons I think that the appeal from the Local Court was properly entertained, and allowed by the Supreme Court. The appeal therefore fails. I think it right to add that I entertain grave doubts whether an agreement in settlement of a claim under the *Workers' Compensation Act*, made when the parties are mutually under the erroneous belief that the injury is trivial and temporary, can be set up, if it afterwards appears that the injury is permanent.

BARTON J. As His Honor the Chief Justice has in his judgment gone over all the grounds of appeal, and has dealt with the argument so thoroughly, and as I am so completely in accord with his reasoning, I have come to the conclusion that I should refrain from delivering my judgment, which would in large part repeat what he has said. I will only say I entirely concur.

O'CONNOR J. Some very important matters were discussed in this case, and although I entirely concur in the judgment of the learned Chief Justice, I think it right to add my reasons for coming to the same conclusion. The question whether an appeal lies from the decision of the Local Court as constituted under the *Workers' Compensation Act* is one of considerable importance. That Act gives an entirely new right to a workman injured in the course of his employment; his right to compensation does not depend upon the default or neglect of his employer, but is a right in the nature of an insurance against accident—a right which accrues to him by the mere happening of the accident, unless it has been occasioned by serious and wilful misconduct upon his part. We know that under the English Act important questions of law are continually being raised, and many of them have found their way to the House of Lords before being settled. Mr. Pilkington's contention is that the Local Court, specially

constituted for the purpose of hearing this class of cases, becomes a different Court from the ordinary Local Court under the *Small Debts Act* 1863, and that the provisions of the *Small Debts Act Amendment Act* 1894 giving an appeal from the decisions of the ordinary Local Court do not extend to the Local Court as so specially constituted. I think that an examination of the *Workers' Compensation Act* itself makes it plain that that contention cannot be upheld. The Court constituted by the Act of 1863 is a Court of Record under the name of the "Local Court," and although its jurisdiction may be exercised by one Magistrate or by several Magistrates, it is the same tribunal; it is still the Local Court. Jurisdiction is given by sec. 8 of the *Workers' Compensation Act* to the Local Court in the following terms: "If any question arise as to liability to pay compensation . . . . the question . . . . shall . . . . be heard and determined by the Local Court of the district within which the injury happens; and for all such purposes jurisdiction is hereby conferred upon such Court. . . . ." If the section had stopped there no question could have been raised as to the right of appeal given by the *Small Debts Act Amendment Act* of 1894 applying to such cases. But it is said that the second sub-section of sec. 8 creates the difficulty, and that the Magistrate sitting with two assessors instead of alone, or with other justices constitutes a different Court from the ordinary Local Court. In my view whether assessors sit with the Magistrate or other Magistrates sit with him, or he sits alone, the tribunal constituted in either of these three ways is the same—the Local Court. Under the *Workers' Compensation Act* jurisdiction is given to the Local Court, and although for the purpose of hearing cases under the Act it is constituted in a special way, it is still the Local Court, and all the rights of appeal which are given from the decisions of the Local Court are, in my opinion, intended to be given from the Local Court when thus specially constituted under the *Workers' Compensation Act.* There is an English decision bearing upon the question which may be usefully referred to, *Morris* v. *The Northern Employers Mutual Indemnity Co.* (1). The English County Courts have certain jurisdiction con-

(1) (1902) 2 K.B., 165.

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ferred upon them under the English *Workmen's Compensation Act* 1897, and the question was raised whether the County Court sitting for the purpose of dealing with cases under that Act was in respect of appeals in the same position as the ordinary County Court. It was contended that the right of appeal given from ordinary decisions of the County Court did not apply. With regard to that question *Collins*, M.R., makes the following observations (1):—"We have here a decision given by a County Court Judge in the exercise of his jurisdiction as such with regard to what would certainly appear at first sight to be a 'matter' within the meaning of sec. 120 of the *County Courts Act* 1888. *Primâ facie* the Divisional Court would seem to have jurisdiction under that section to entertain an appeal with regard to any matter with which a County Court Judge has dealt in the exercise of his jurisdiction. It seems to me, therefore, that such jurisdiction must exist with regard to an order made by a County Court Judge under sec. 5 of the *Workmen's Compensation Act* 1897, unless there is something in that Act to negative its existence. I do not think that the appellant's counsel succeeded in pointing out anything in the *Workmen's Compensation Act* 1897, which has that effect. The matters which arise under sec. 5 may be matters of considerable importance, and *primâ facie* one would suppose that the legislature intended that there should be an appeal from the County Court in respect of them as in respect of other similar matters. For these reasons I think the Divisional Court had jurisdiction to entertain the appeal."

That principle of construction may well be applied in this case. When the *Workers' Compensation Act* was passed there was in existence the Local Court with an appeal from all its decisions on questions of law. To that Court the *Workers' Compensation Act* handed over jurisdiction; unless there is something in that Act which alters the right of appeal, it must be taken that the same rights of appeal will apply in respect of the new jurisdiction as applied in respect of the old. There is certainly nothing in the Act itself which cuts down in regard to workers' compensation cases the right to appeal on questions of law which exists in respect of Local Court decisions in other cases. For

(1) (1902) 2 K.B., 165, at p. 166.

these reasons I am of opinion that the decisions of the Local Court, under the *Workers' Compensation Act*, are subject to appeal on questions of law in the same way as other decisions of the Local Court are subject to appeal.

Another argument urged by Mr. Pilkington was this, that the determination of the Local Court sitting under the *Workers' Compensation Act* was not a judgment but an award, and therefore the right to appeal against judgments could not apply. There is one simple answer to that argument, namely, that the question whether the determination is appealable or not cannot be affected by the form of judgment or the procedure for attaining it authorized by the regulations. By sec. 19 the Governor is empowered to make regulations prescribing the mode in which claims and questions under this Act may be determined. It is true that the existing regulations have established a procedure which calls the determination of the Local Court an "award," but it is open to the Governor at any time to issue new regulations providing for an entirely different mode of initiating proceedings, beginning for instance by a plaint and resulting in a judgment. It cannot be that the existence of the right of appeal depends upon the form in which the determination of the Local Court is to be given. There can be no doubt that the determination, whether in the form of an award or a judgment, is a judgment from which an appeal is given by the *Small Debts Act* 1894.

It was next contended that the jurisdiction of the Local Court was ousted because the matter had been settled by agreement under sec. 8 of the *Workers' Compensation Act*. In the first place it is clear that the Local Court did not apply their minds to the consideration of the question whether there had been any agreement for settlement which ousted the jurisdiction of the Court under that section. They dealt with the question of settlement of the claim by agreement it is true, but they dealt with it as an answer to the claim by way of release or accord and satisfaction. That distinction, however, is not of much moment, because if it had appeared upon the face of the proceedings that there had been a legal settlement of the claim by agreement before the matter

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came into Court, and the Local Court had found that agreement proved, this Court as a Court of Appeal would have been bound to give effect to the objection that the jurisdiction of the Local Court was ousted. The jurisdiction of the Court, however, can be ousted only by a valid agreement, and Mr. *Villeneuve-Smith* has contended that this is not a valid agreement, because he says the Act does not permit the parties to settle claims under the Act in that way. The learned Judges in the Court below have upheld that contention, being of opinion that such an agreement is contrary to sec. 13. I cannot take the same view. The agreement does not come within the prohibition of sec. 13. That forbids agreements that the Act shall not apply at all to the contract of employment. Its object was to prevent workmen from contracting themselves out of the benefits of the Act—that is to say, contracting themselves out of the Act in the sense that they should acquire no rights under the Act. It is another question altogether when the parties come to an agreement as to a right to compensation which has accrued under the Act. In my opinion there is nothing to interfere with the liberty of workmen or employers to compromise that right in any way they think fit. I entirely assent to the general observations of my learned brother the Chief Justice that the ordinary right of men to manage their own affairs cannot be taken away except by express enactment or the necessary intendment of the words of a Statute. I do not think the Act has either expressly or impliedly placed any restriction upon the making of such an agreement, and if in other respects the agreement were valid, there was nothing to prevent the plaintiff from agreeing to receive a certain sum of money or some other consideration or benefit in accord and satisfaction of his claim. But when one looks at the agreement itself it is clear that it is invalid on another ground. One of the first principles of the law of contract is that every contract must be supported by a valid consideration. On the face of the contract a consideration is stated, precise and definite. It is the payment of £1 17s. 11d. by the defendant company to the plaintiff. For that payment the plaintiff purports to give up and relinquish all claims of any kind against the defendant company in respect of the accident. But that £1 17s. 11d. was money, which, in the sense I shall

explain, belonged to the plaintiff already. He was entitled to it under sub-sec. 2 of the conditions annexed to the Act. He had suffered serious injury by the accident, sufficient time had elapsed to entitle him to payment of some amount, the maximum being £1 17s. 11d. It only remained to fix the exact amount. There is clear evidence that the exact amount had been fixed by the company's representative, and assented to by the plaintiff before the signing of the alleged agreement of compromise. So that, before the alleged agreement of compromise was made, the plaintiff had become entitled to be paid that £1 17s. 11d. as compensation under the Act. The Local Court specially find that the plaintiff was entitled to payment of this amount in respect of weekly payments under the Statute. The evidence upon which they came to that conclusion is worth stating. The plaintiff himself first gave evidence on the point. Tom Brown, the defendant's metallurgist, was his immediate superior, and there is abundant evidence that he had authority to fix the amount of weekly payments. He had authority to employ the plaintiff and he fixed his weekly wages. Speaking of Brown the plaintiff says: "Brown told me to see a doctor and get a certificate. After seeing the doctor I went back to the mine and gave the certificate to Tom Brown. Tom Brown read the certificate and told me to take it to the office and get my first week's pay which was due to me for getting hurt." Coming to the evidence of Brown himself we find he says: "I told him to see a doctor and get a certificate, to put it in the office and he could get half pay for being off. After fourteen days after accident the rules provide he can get half pay. He started as watchman then, and on the 2nd of June, or between that time and the 2nd of June the applicant was entitled to one half week's pay." Lynch, the accountant, who made out the receipt or alleged agreement of release, but who apparently had no instructions to draw out the document in the form in which it was drawn out, said, "I explained to Sheehan that he was going back to work and was to get no more on account of the accident. I knew he was entitled to £1 17s. 11d." Following all that evidence the Local Court found specially . . . that the plaintiff received from the company's accountant the sum of £1 17s. 11d., in payment of half earnings, admittedly due to him as accident pay

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under the *Workers' Compensation Act.* To my mind it is perfectly clear that he was entitled to that £1 17s. 11d. before the alleged agreement of compromise was made, and therefore it could not form a consideration for any new promise; that being so, the £1 17s. 11d. was not a consideration at all. There was therefore no consideration to support the agreement, and it has therefore no validity either as an agreement ousting the jurisdiction of the Court, or as a compromise or accord and satisfaction of the plaintiff's claim. The only way of doing justice is to send the case back to the Local Court. I therefore agree with the conclusion of the Supreme Court, although for different reasons from those on which their conclusion was based, that the matter must be remitted to the Local Court for decision.

Appeal dismissed with costs.

Solicitors, for appellants, *Stawell & Cowle.*
Solicitors, for respondents, *Martin & Phillips.*

H. E. M.

[HIGH COURT OF AUSTRALIA.]

THE YORKSHIRE FIRE AND LIFE INSURANCE COMPANY PLAINTIFF, APPELLANT;

AND

THE BRITISH AND FOREIGN MARINE INSURANCE COMPANY LTD. DEFENDANT, RESPONDENT.

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MELBOURNE, *Nov.* 17, 20, 21, 22.

Griffith C.J., Barton and O'Connor JJ.

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

Fire Brigades Act 1890 (*No.* 1200) (*Vict.*), *secs.* 2, 42, 45, 46—*Contribution to expenses of Fire Brigades Board—"Insurance Company," meaning of—Marine Insurance Company insuring against fire on land—Fire insurance incidental to marine insurance—Premium covering both insurances—Ascertainment of proportion of contribution.*