[HIGH COURT OF AUSTRALIA.]

McILWRAITH McEACHARN LIMITED . . APPELLANT;

AND

LAWRENCE SWEETMAN . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

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PERTH, *Sept.* 8, 9.

MELBOURNE, *Oct.* 27.

Gavan Duffy, Rich, Starke and Dixon JJ.

*Workers' Compensation—Accident to worker—Agreement as to payment of compensation during incapacity—Release of employer from all further claims—Recurrence of incapacity from same cause—Further claim for compensation—Workers' Compensation Act* 1912-1924 (*W.A.*) (*No.* 69 *of* 1912—*No.* 40 *of* 1924), *sec.* 6 (4), 16; 1*st Sched., sec.* 20.

A worker suffered injury by accident arising out of and in the course of his employment resulting in a period of incapacity. At the end of this period of incapacity he received in a lump sum the balance of weekly payments up to the date of his recovery and executed an agreement acknowledging the amount paid him by way of compensation and containing a release and discharge of the employer from all further claims in respect of the accident. The agreement

* The *Workers' Compensation Act* 1912-1924 (W.A.) provides as follows:—Sec. 6 (4) "If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a worker to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First and Second Schedules, be heard and determined by the Local Court nearest to which the party applying resides, or to which the matter is transferred in the manner and circumstances prescribed by Rules of Court, and for such purposes jurisdiction is conferred upon Local Courts." By sec. 20 of the First Schedule it is provided that "Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act by agreement or any agreement, whether purporting to be made under this Act or not, has been entered into whereby a worker agrees to compound for any claim or right to compensation under this Act, a memorandum thereof shall be sent, in manner prescribed by Rules of Court, by any person interested, to the clerk of the Local Court, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a Local Court judgment."

was recorded in pursuance of sec. 20 of the First Schedule to the *Workers' Compensation Act* 1912-1924 (W.A.). Some time afterwards the worker suffered a second period of incapacity as the result of the same injury by accident.

*Held*, that the agreement was valid, and precluded the worker from recovering compensation in respect of the second period of incapacity:

By *Gavan Duffy*, *Rich* and *Dixon* JJ., on the ground that it was an agreement as to the amount or duration of compensation, and that by such an agreement the parties are at liberty to agree that all incapacity is for ever ended, with the consequence that the employer is relieved of all further liability even in the unexpected event of the same injury causing another period of incapacity;

By *Starke* J., on the ground that it was an agreement for the redemption (i.e., commutation) of a weekly payment by a lump sum.

Decision of the Supreme Court of Western Australia (Full Court) reversed.

APPEAL from the Supreme Court of Western Australia.

The respondent, Lawrence Sweetman, was employed by the appellant, McIlwraith McEacharn Ltd., as a lumper on the *s.s. Zealandia* carrying meat and butter out of a freezing chamber on 25th April 1929, and in the course of such employment he caught a cold and pneumonia developed with pleurisy, which totally incapacitated him from working from 26th April to 5th June 1929 and entitled him under the *Workers' Compensation Act* 1912-1924 (W.A.) to receive from his employer half wages for that period in addition to medical and hospital expenses. On 10th June 1929 an agreement, a copy of which is set out in the judgment of *Starke* J. (hereunder), was made by Sweetman with the appellant Company releasing it from all claims arising out of the accident on payment of the sum of £21 4s. 10d. and £7 8s. 6d. for medical expenses. Early in September 1929 Sweetman suffered a recurrence of pleurisy, and again became totally incapacitated. On 31st October 1929 he lodged an application in the Local Court at Fremantle for compensation under the *Workers' Compensation Act*, alleging as the cause of incapacity the injury caused to him on 25th April 1929. The Company pleaded the agreement of 10th June 1929, which had been duly registered and filed by the clerk of the Local Court in pursuance of sec. 20 of the First Schedule of the Act. The Local Magistrate held that he had no jurisdiction to entertain the application in view of the agreement made between the parties, which had been duly recorded in accordance with the provisions of the Act.

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On appeal by Sweetman from the decision of the Local Magistrate, the Full Court of the Supreme Court of Western Australia allowed the appeal, reversed the decision of the Local Court, and referred the case back to the Magistrate with a direction that it should be reheard.

From this decision the Company now appealed to the High Court.

*Keenan* K.C. (with him *Coleman*), for the appellant. By the *Workers' Compensation Act* 1912-1924, sec. 6, sub-sec. 1, a worker is entitled to compensation for personal injury arising out of or in the course of his employment, such compensation to be paid by the employer. If any question arises in any proceedings under the Act as to the liability to pay compensation under the Act, the question, if not settled by agreement, shall, subject to the provisions of the First and Second Schedules, be heard by the Local Court. It is admitted that if no such agreement is made and entered into, the basis of the compensation provided for in the First Schedule, sec. 1, par. (*b*), is a weekly payment during the incapacity not exceeding 50 per cent of the average weekly earnings. Previously to the enactment of the *Workers' Compensation Act Amendment Act* 1924, sec. 20 of the First Schedule did not contain the words in the third line, "or any agreement, whether purporting to be made under this Act or not, has been entered into whereby a worker agrees to compound for any claim or right to compensation under this Act." These words were inserted by sec. 15 of that amendment Act. The effect of these words is to make lawful agreements for the composition of a claim by a worker independent of agreements for the redemption of weekly payments. If this contention be wrong, then even if the agreement entered into is an agreement for redemption of weekly payments, once it has been recorded in accordance with the provisions of sec. 20 of the First Schedule no jurisdiction exists in the Magistrate to hear any claim for compensation based on injuries alleged to have arisen out of the same accident. The Magistrate, in order to have such jurisdiction, may remove such agreement from the Register. This power can only be exercised within six months after recording, and then only on proof that the agreement was procured by fraud, undue influence or improper means. There was no application to

the Magistrate to remove the agreement from the Register on any ground. The Magistrate was correct in holding that he had no jurisdiction to hear the application (*Ware* v. *Whitlock* (1)). The only question raised on appeal to the Full Court was that the Magistrate misdirected himself and was wrong in law and in fact. There was no motion that the agreement should be declared invalid and removed from the Register. The appellant could have sworn that the sum paid was in excess of the full amount due under the *Workers' Compensation Act*. Neither before the Magistrate nor the Full Court was there any question of the degree of the disability suffered by the respondent. The weekly payment provided for in sec. 1 of the First Schedule, par. (*b*), is one not exceeding 50 per cent of the average earnings. It would be open to the appellant to show, without admitting total disability or incapacity, that it had paid a sum in a case of partial incapacity based on total incapacity, if that were the fact. The only questions before the Full Court were whether the Magistrate was right in holding that (a) the agreement could only be impeached so far as the Local Court was concerned on the ground of fraud, undue influence or improper means; (b) there was no evidence to warrant any finding of fraud, undue influence or improper means; and (c) so long as the agreement remained duly recorded jurisdiction to hear a claim for compensation was barred. The words inserted by sec. 15 of the *Workers' Compensation Act Amendment Act* 1924, in sec. 20 of the First Schedule, made an agreement valid based on a lump sum payment altogether apart from any payment by way of redemption of weekly payment. This must be the construction given to the words inserted, otherwise there is no meaning in the alteration. In 1925 an exactly similar measure was passed by the Imperial Parliament, 15 & 16 Geo. V. c. 84, secs. 24 and 25. There are no cases applicable in the English Courts before that date. *Russell* v. *Rudd* (2) does not apply. The substantial matter is the agreement to accept a lump sum. Unless that agreement is one that has been obtained by fraud, undue influence or improper means, and once the clerk has recorded it, it settles all the matters between the parties. The Full Court confined

(1) (1923) 2 K.B. 418.

(2) (1923) A.C. 309.

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its view to agreements in redemption of weekly payments, and ignored the alteration made in sec. 20 of the amending Act of 1924. Even if the first submission is not accepted, on this ground the judgment of the Full Court is clearly wrong.

*H. P. Downing* K.C. and *Boylson*, for the respondent. The agreement set up by the appellant can only be a bar to the respondent's claim for compensation (a) if it is one binding on the parties, (b) if the question submitted for decision is settled by it, (c) if it is one that should have been recorded, and (d) if it has been recorded in accordance with the Act and Rules. It is not necessary by independent proceedings to have the agreement set aside: the Magistrate can inquire into the validity of the agreement, and, if satisfied of its invalidity, proceed to deal with the claim (*Elliott's Workmen's Compensation Acts*, 9th ed., pp. 358-359). The agreement relied on is in contravention of sec. 15 of the Act, and is therefore void (*Russell* v. *Rudd* (1) ). The Magistrate found as a fact that at the time the respondent entered into the agreement the amount which was then paid to him by the appellant was due for disability that he had already suffered—nothing being paid for future disability. Prima facie, therefore, the question which arose on the present proceedings, i.e., the claim for disability through a recurrence of the incapacity after the agreement was entered into was not settled by it. The agreement was, therefore, spent, and should not have been recorded under sec. 20 of the First Schedule (*Popple* v. *Frodingham Iron and Steel Co.* (2) ). In so far as it purported to release the appellant from future liability, it was an attempt to contract out of the Act and was void (see sec. 16 of the Act and *Russell* v. *Rudd* ). Further, the agreement was not recorded in accordance with rules 32 (2) and 39 of the Rules of Court, nor were the particulars required by form 22 (*a*) supplied, the clerk of the Local Court had, therefore, no material on which to decide as to the adequacy of the lump sum alleged to have been paid in redemption. The respondent was deprived of the protection under sec. 20 (*d*) of the First Schedule. The Schedule to the Act and the Rules form the code explaining

(1) (1923) A.C., at p. 317. (2) (1912) 2 K.B. 141.

how the approval of the Local Court is to be given (per Lord *Sterndale* M.R. in *Ware* v. *Whitlock* (1) ).

*Keenan* K.C., in reply.

*Cur. adv. vult.*

The following written judgments were delivered :—

Oct. 27.

GAVAN DUFFY, RICH AND DIXON JJ. The respondent suffered injury by accident while employed by the appellant. He experienced a period of incapacity arising from the injury by accident, and received, in two sums, compensation pursuant to the *Workers' Compensation Act* 1912-1924 of Western Australia. He signed an agreement acknowledging the amount paid him by way of compensation, and containing a release and discharge of the appellant from all further claims in respect of the accident. After a period of some months he suffered a further period of incapacity which he attributed to the same injury by accident. For this new period of incapacity he claimed compensation, and brought proceedings against the appellant in the Local Court. The appellant, by its answer, did not deny that the respondent had suffered injury by accident arising out of and in the course of his employment by it, but relied only upon the effect of the agreement. This agreement had been recorded as under sec. 20 of the First Schedule to the *Workers' Compensation Act* 1912-1924. In the Local Court the Magistrate held that, because it was so recorded, he was bound to give effect to it unless and until an application was made to him under sec. 20 (*e*) to remove the record from the Register, or possibly under sec. 20 (*e*) to rectify it. Such applications must be made on notice pursuant to clauses 40 and 38 respectively of the Rules of Court, and the only proceedings before the Magistrate were by way of claim for compensation. On appeal to the Supreme Court the Magistrate's judgment was reversed upon the ground that the release contained in the agreement was void and obtained no efficacy because a memorandum thereof was recorded. The question is whether these conclusions are right. Sec. 16 of the Act provides that the provisions of the Act shall apply and have effect in all cases

(1) (1923) 2 K.B., at p. 427.

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notwithstanding any contract to the contrary. An agreement, therefore, which purports to relieve the employer from a liability to pay compensation which otherwise he had incurred or would incur is void unless it is authorized by some provision of the Act. See *Russell* v. *Rudd* (1), a decision with which much that was said in *Great Fingall Consolidated Ltd.* v. *Sheehan* (2) cannot be reconciled.

Sub-sec. 4 of sec. 6 provides that if any question arises as to the liability to pay compensation under the Act, or as to the amount or duration of compensation, the question, if not settled by agreement, shall be heard by the Local Court. "The effect" of this provision, "so far as material, is that any question as to the 'amount or duration of compensation under the Act'—that is to say, in a case of incapacity of the amount or duration of the weekly payment—may be settled either by agreement between the employer and the workman, or by arbitration" (per Viscount *Cave* L.C., *Russell* v. *Rudd* (3)). "Any question as to the duration of the compensation must therefore in reality be a question whether the incapacity during which it is payable did or did not exist at the particular *punctum temporis* at which it is alleged that the compensation ceased to be payable" (per Lord *Parker*, *George Gibson & Co.* v. *Wishart* (4)).

In the present case the agreement states the consideration to be a lump sum, which it describes as "compensation," and certain other sums, which it describes as "medical expenses." Prima facie "compensation" means, in a case of incapacity, weekly payments, and the agreement suggests, what appears to have been the fact, that the sum represented weekly payments up to some date not later than that of the document. In fact, as appeared from the evidence, the period of incapacity had come to an end, and the parties considered that compensation was payable in respect thereof up to 5th June 1929, five days before the date of the agreement, and that the sum payable was £3 10s. per week. The lump sum of compensation fixed by the agreement represented weekly payments up to that date. For the purpose of applying the document containing the agreement, it is permissible to look at the situation in which the parties stood when they made it. They

(1) (1923) A.C. 309.
(2) (1905) 3 C.L.R. 176.
(3) (1923) A.C., at pp. 316-317.
(4) (1915) A.C. 18, at p. 32.

were dealing with a case of incapacity and with a period of incapacity which continued until about the time of their agreement. When the document is applied to this state of circumstances the substance of the agreement which it expresses appears to be to fix the total amount of the weekly payments by reference to the duration of the incapacity, and to end all liability for further weekly payments finally and conclusively whether incapacity recurs or not. It is not material that the release purports to go further and discharge the employer from every kind of liability in connection with the accident. No liability is or was in question unless the compensation for incapacity which clearly was covered. For the rest, *utile per inutile non vitiatur.*

There can be little doubt that in so far as such an agreement deals with the determination of a period of incapacity which existed, it answers the description " agreement settling a question as to the amount or duration of compensation " and is warranted by the provisions of sec. 6 (4). Indeed, the settlement by agreement of the amount payable in respect of incapacity which comes to an end seems conspicuous as an example of what must have been in contemplation.

But the question remains whether, in authorizing them to determine by agreement when a period of incapacity ends in respect of which compensation is payable, the provision enabled the employer and workman conclusively to agree that all incapacity is for ever ended, with the consequence that the employer is relieved of all further liability even in the unexpected event of the same injury causing another period of incapacity. The answer depends upon the effect to be given to the words " question as to the duration of compensation." It is perhaps possible, by adopting a narrow interpretation, to restrict the application of this expression, in a case of incapacity, to the question when is the termination of a given period of incapacity in respect of which compensation is payable, leaving unaffected the contingency of another such period arising. But no reason appears for excluding from its application the wider question, with which an employer must be concerned, what is the full duration of the compensation for which he is liable by reason of the personal injury. The primary meaning of such

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an expression includes the complete duration of the whole compensation, and neither the general scheme of the Act, nor any particular provision it contains, affords any ground for adopting a restrictive interpretation. On the contrary, the primary meaning conforms with the interpretation which has been given to the provisions relating to the termination of weekly payments upon review.

Sec. 15 of the First Schedule of the *Workers' Compensation Act* 1912-1924 provides that any weekly payments may be reviewed by the Local Court at the request either of the employer or the worker, and on such review may be ended, diminished or increased, as from such date as the Court, having regard to the past or present condition of the worker, may see fit. This provision is based upon clause 16 of the First Schedule of the *Workmen's Compensation Act* 1906 of Great Britain, which provides that any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review, may be ended, diminished or increased, and the amount of payments shall, in default of agreement, be settled by arbitration under that Act. Upon this clause the question arose whether the arbitrator was able finally to end the weekly payments, so that all responsibility of the employer was terminated, notwithstanding that afterwards a new period of incapacity might or should arise, or whether it was possible only to stop the payment of compensation when apparently the incapacity ended, the liability remaining, nevertheless, to resume payment on the recurrence of the incapacity. It was decided by the House of Lords that the provision enabled the arbitrator "to declare that these payments should be ended for all time, and that . . . the liability of the employer to pay and the correlative right of the workman to receive these payments should both cease altogether" (per Lord *Atkinson*, *Taylor* v. *London and North-Western Railway Co.* (1); *Nicholson* v. *Piper* (2)). Further, it has been decided that the payments may be so ended as from a past date (*George Gibson & Co.* v. *Wishart* (3)). It would be a curious result, if, although upon review the duration of weekly compensation might be determined definitively, yet the general provision for the settlement of questions as to the duration of

(1) (1912) A.C. 242, at p. 250. (2) (1907) A.C. 215.
(3) (1915) A.C. 18.

compensation did not allow a final determination of the period of liability, but authorized no more than the ascertainment of the time for which payments must be made in respect of specific incapacity. It is true that in sec. 15 of the First Schedule of the Western Australian Act the words "in default of agreement" do not appear. These words may have been omitted because they were considered an unnecessary repetition of the reference in sec. 6 (4) to the settlement of such questions by agreement, or, on the other hand, because it was not desired that weekly payments should be reviewed by agreement. But, whatever may be the reason of the result of the omission, it cannot affect the meaning of the general provision contained in sec. 6 (4), which is transcribed from the British Act, and an incongruity remains in ascribing to a provision relating to the determination of the duration of a weekly compensation less effect than is given to a provision dealing with its termination.

It follows from this reasoning, that the parties were at liberty, by agreement to settle finally the duration of the compensation so that the employers' liability should be for ever ended, and as this is the effect of the agreement which they made, it is valid.

Accordingly the appeal should be allowed.

STARKE J. In October 1929 Sweetman, a worker, who alleged that a personal injury by accident had arisen out of and in the course of his employment with McIlwraith McEacharn Ltd., his employer, requested a hearing, pursuant to the *Workers' Compensation Act* 1912-1924 of Western Australia, before the Local Court at Fremantle for the determination of the following question or questions: (1) As to the liability of the employer to pay compensation under the Act in respect of the injury, or (2) as to the amount (or duration) of the compensation payable by the employer to the worker under the Act in respect of the injury. The employer, in answer to this request, relied upon an agreement made between it and the worker and recorded under the Act. The Local Court dismissed the application, the Supreme Court of Western Australia reversed that decision, and an appeal is now brought to this Court.

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Sweetman, it appears, was in the employment of McIlwraith McEacharn Ltd., and whilst working in the freezing chamber of the *s.s. Zealandia*, developed pneumonia and pleurisy, whereby he was laid up for several weeks. He did not receive any regular weekly payments from the employer, but it made several payments to him of sums of £5. On 5th June the worker's medical adviser formed the opinion that he was sufficiently recovered to resume work, and he did in fact return to work. On 10th June 1929 the worker and the employer executed an agreement in the following form :—" Be it remembered that at Fremantle on the twenty-sixth day of April 1929 personal injury was caused to the above-named L. Sweetman of Subiaco (herein called the claimant) by accident arising out of and in the course of his employment and that on the date hereof the following agreement was come to by and between the claimant and McIlwraith McEacharn Limited acting for and on behalf of the masters owners and agents of the *s.s. Zealandia*. In consideration of the sum of £21 4s. 10d. (twenty-one pounds four shillings and tenpence sterling) being £19 14s. 7d. compensation and £1 10s. 3d. medical expenses disbursed by claimant, paid by the masters owners and agents of the *s.s. Zealandia* to the claimant L. Sweetman (the receipt whereof is hereby acknowledged) and of medical expenses in accordance with proviso (*c*) of paragraph 1 of the First Schedule of the *Workers' Compensation Act* 1912-1924 paid by the Company, namely, Dr. H. Burns £6 16s. 6d., H. Illingworth 8s. 6d., A. Wilkinson 4s. 6d., the claimant doth by these presents remise release and for ever discharge of and from all and all manner of action and suit sum and sums of moneys accounts trespasses damages wrongs claims and damages whatsoever at law and equity which against McIlwraith McEacharn Limited and/or the masters owners and agents of the *s.s. Zealandia* the claimant has or may have by reason or in consequence of the injuries sustained by him whilst working at Fremantle on the *s.s. Zealandia* on 26th April 1929 or which may result therefrom or of anything which may hereafter arise in relation thereto or for or upon or by reason of any matter cause or thing whatsoever. And the claimant acknowledges that he has received the said sum in full and hereby abandons all legal proceedings remedies and redress present and future of or

consequent upon the matters aforesaid." A memorandum of this agreement was sent to the clerk of the Local Court for registration pursuant to the provisions of the *Workers' Compensation Act* 1912-1924, and, after notice to the worker, who made no objection, the clerk on 4th July 1929 recorded the agreement in the Register pursuant to the provisions of sec. 20 of the First Schedule to the Act. Subsequently to the agreement the worker found that he had not fully recovered and could not carry on his work, and so, in October 1929, he commenced proceedings, as already mentioned, for the purpose of obtaining the compensation to which he considered himself entitled.

Under the Act, if in any employment personal injury by accident arising out of or in the course of the employment is caused to a worker his employer is liable to pay compensation, in accordance with sec. 6. When total or partial incapacity for work results from the injury the worker is entitled to a weekly payment not exceeding £3 10s. (First Schedule, sec. 1 (*b*) ). And the provisions of the Act apply and have effect in all cases notwithstanding any contract to the contrary (sec. 16).

The Act has provided two methods for settling this compensation —by proceeding in the Local Court or by agreement (sec. 6 (4) ). It was decided in *Russell* v. *Rudd* (1) that an agreement between a workman and an employer for the settlement of all claims to compensation under a similar Act in England, by payment of a lump sum, was void as being a contracting out of the Act. But the same case recognized that the Act expressly allowed agreements for the redemption of a weekly payment by a lump sum. The prohibition against contracting out did not apply to agreements authorized by the Act itself. The registration or recording of such agreements is, however, obligatory. And on the proceedings for registration or recording, the agreement is subject to review as to its genuineness or its adequacy, or by reason of the agreement having been obtained by fraud, undue influence or other improper means. The provisions of the Western Australian Act differ in some respects from those of the English Act under which *Russell* v. *Rudd* was decided. Thus the First Schedule, sec. 20, provides:

(1) (1923) A.C. 309.

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" Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act by agreement *or any agreement, whether purporting to be made under this Act or not, has been entered into whereby a worker agrees to compound for any claim or right to compensation under this Act*, a memorandum thereof shall be sent . . . to the clerk of the Local Court, who shall . . . on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a Local Court judgment: Provided that . . . (*d*) Where it appears to the clerk of the Court on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum . . . ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and in that case shall refer the matter to the Magistrate, who shall . . . make such order . . . as under the circumstances he may think just. And sec. 22 declares: " *No agreement to which section twenty of this Schedule is applicable shall be binding on or enforceable against the parties or admitted to be good or valid unless it is registered as provided in that section.*" The words italicized do not appear in the English Act. Undoubtedly they strengthen the supervision of the Local Court over agreements. But sec. 20 is not, I think, definitive of the cases in which parties are authorized to come to agreements under the Act. Otherwise, the provisions of sec. 16 of the Act against agreements contracting out would be nugatory. Consequently, other provisions of the Act must be considered, such as sec. 6, sub-secs. 1 and 2, and the First Schedule—the liability of employers to pay compensation to workers for injuries; sec. 6 (3)—the liability to pay compensation for certain injuries set out in the Second Schedule; sec. 6 (4)—the methods of determining compensation; First Schedule, sec. 16—redemption of weekly payments by a lump sum; First Schedule, sec. 15—the review of weekly payments whereby they may be ended, diminished or increased. Thus, if it were admitted that a

personal injury by accident arose out of and in the course of employment and resulted in the loss of both eyes, then sec. 6, sub-sec. 3 (*a*), provides that the compensation shall be £750. The Act, by sec. 16, prohibits contracting out of this liability, and nothing in sec. 20 of the First Schedule would authorize any agreement compounding the claim or right to such compensation. If the question of liability were in dispute, possibly some agreement settling the compensation might be justified under sec. 6 (4), but sec. 20 and sec. 22 of the First Schedule would require the agreement to be recorded, and that subjects it to review by the prescribed authority. So, as already noticed, the Act expressly allows agreements for the redemption of a weekly payment of a lump sum. In *Russell* v. *Rudd* (1) Lord *Shaw of Dunfermline* thus stated the effect of the English Act:—"There may be an agreement between an employer and workman for redemption of a weekly payment, not only in the case where there had first been an agreed-on weekly payment prior to the redemption, but also in the case where there was simply the liability under the statute to make a weekly payment. . . . Redemption is simply commutation, and the commutation is commutation, into one sum, of the sums which would otherwise, on a calculation of the liability, have been periodically due to the workman. Redemption, by its very nature, points to the future, and it is liability for the future which is the essential thing which has to be compounded or commuted." It is thus within the competence of the parties to determine by agreement the liability to pay compensation, and the amount and duration of the compensation (sec. 6 (4) ), and to commute the statutory liability for a lump sum. Therefore the question in the present case is whether the agreement above set out and recorded under the Act is an "agreement as to the redemption of a weekly payment by a lump sum" authorized and permitted by the Act. It may be that an agreement which, in consideration of an agreed sum for compensation and medical expenses, pursuant to the *Workers' Compensation Act*, releases and discharges the employer from all claims and damages whatsoever, in consequence of injuries sustained during his service, "is not very appropriately described as an

(1) (1923) A.C., at p. 328.

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agreement as to the redemption of a weekly payment by a lump sum" (see *Russell* v. *Rudd* (1)). But in fact the claim in the case was to determine the question of the statutory liability to compensation, and the amount and duration of the compensation. There was, indeed, no real question as to the liability, and the only substantial question between the parties was the amount and duration of the compensation. The compensation to which the workman was entitled was a weekly payment during incapacity. Prior to the agreement, neither the amount nor the duration of the compensation had ever been fixed. It was this claim that was commuted under the agreement, or else the agreement is void. And, as the Lord Chancellor said in *Russell* v. *Rudd* (1), "it appears . . . to be right, *ut res magis valeat quam pereat*, to put upon a document a construction which gives it validity if it is reasonably capable of that construction." Now what difficulty is there in the present case in construing the agreement as a commutation of the statutory liability? It is none the less a commutation because the parties arrived at the sum on the footing that the maximum weekly payment under the Act should be allowed, and that the incapacity had ended. The parties necessarily had to consider the statutory liability to make a weekly payment and its duration, and the sum fixed in their agreement is the commutation of that liability, or the redemption of that liability, by payment of a lump sum. The English Act, which provides that a weekly payment may be reviewed by agreement, and ended, diminished or increased, may lend some assistance to this view. It would be strange if the parties could end an agreement for a weekly payment as soon as it was made, and yet be unable to make an agreement ascertaining the amount necessary to satisfy or commute the statutory liability to make a weekly payment. But I place no reliance on this argument in the present case, for the Western Australian Act only empowers the Local Court to review a weekly payment, and end, diminish or increase it (see First Schedule, sec. 15).

In the result, the agreement in the present case is permitted and authorized by the Act. Consequently, the clerk of the Local Court had authority to record a memorandum of the agreement, pursuant

(1) (1923) A.C., at p. 319.

to the provisions of sec. 20 of the First Schedule. But, in the interests of the worker, that section submits the agreement, before it is recorded, to the scrutiny of the clerk, and after him to that of the Magistrate, of the Local Court. Once, however, the agreement is recorded, as in this case, it is enforceable as a Local Court judgment, and can then only be removed from the Registry in the circumstances prescribed by sec. 20 (*e*) of the First Schedule (*Ware* v. *Whillock* (1) ). It follows, therefore, that the agreement was an answer to the application of the worker for a hearing and determination of the questions as to the liability of the employer to pay compensation, and the amount and duration of the compensation under the *Workers' Compensation Act* 1912-1924. The decision of this Court in *Great Fingall Consolidated Ltd.* v. *Sheehan* (2) supports this conclusion, but I doubt if the reasons advanced in that case can be relied upon, in view of the reasons assigned in the House of Lords for the decision in *Russell* v. *Rudd* (3).

The appeal should be allowed, the decision of the Supreme Court reversed, and the decision of the Magistrate dismissing the worker's application restored.

*Appeal allowed. Judgment of the Supreme Court of Western Australia discharged. Judgment of the Local Court at Fremantle restored. Appeal therefrom to Supreme Court dismissed. Respondent to pay the costs of his appeal to the Supreme Court.*

Solicitor for the appellant, *Frank Unmack.*

Solicitors for the respondent, *Richard S. Haynes & Co.*

(1) (1923) 2 K B. 418.
(2) (1905) 3 C.L.R. 176.
(3) (1923) A.C. 309.