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As to the third ground of defence, I agree that it is not supported by the facts.

In my opinion, the judgment of *Lowe* J. should be affirmed and the appeal dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Malleson, Stewart, Stawell & Nankivell.*
Solicitors for the respondent, *Moule, Hamilton & Kiddle.*

H. D. W.

Cons *Buckfield & Repatriation Commission, Re* (1993) 29 ALD 884

[HIGH COURT OF AUSTRALIA.]

SMITH . . . . . APPELLANT;
APPLICANT,

AND

THE AUSTRALIAN WOOLLEN MILLS LIMITED RESPONDENT.
RESPONDENT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Nov.* 27, 28; *Dec.* 8.

Gavan Duffy C.J., Rich, Starke, Dixon, Evatt and McTiernan JJ.

Workers' Compensation—Injury—"Arising out of and in the course of the employment"—Fainting fit—Diabetic reaction—Machine with guard rails—Zone of special danger—Workers' Compensation Act 1926-1929 (*N.S.W.*) (*No.* 15 *of* 1926—*No.* 36 *of* 1929), *secs.* 6 (1), 7.

A worker was employed by a firm of wool carders, and, in the course of his duties, he walked along a passageway between some wool-carding machines. The passageway was protected by guard rails on either side of it. The worker, who suffered from diabetes had a fainting fit which was due to his diabetic condition and fell against the guard rails, and as a result sustained injury.

Held, that the injury arose out of and in the course of the employment within the meaning of the *Workers' Compensation Act* 1926-1929 (N.S.W.).

Lander v. *British United Shoe Machinery Co.*, (1933) 149 L.T. 395, not followed.

Decision of the Supreme Court of New South Wales (Full Court): *Smith* v. *Australian Woollen Mills Ltd.*, (1933) 33 S.R. (N.S.W.) 260; 50 N.S.W.W.N. 124, reversed.

APPEAL from the Supreme Court of New South Wales.

A claim for compensation was made, under the provisions of the *Workers' Compensation Act* 1926-1929 (N.S.W.), by Charles William Smith against the Australian Woollen Mills Ltd. in respect of incapacity caused by injuries received by him on 17th June 1932, when he fell whilst on duty at his place of employment with the company. The applicant had been employed by the company for over sixteen years as the minder of a wool-carding machine. In the room in which he worked there were eight wool-carding machines of large dimensions used for converting scoured wool into a continuous thread. In each machine were twenty-four large cross-drums. An overhead shaft driven by an electric motor supplied power to each of the machines by means of a belt, and the power was conveyed by means of smaller belts to the various drums through fixed pulleys situated at their ends. Each machine was guarded by two iron railings—the upper four feet, and the lower two feet, in height —supported by uprights fitted into slots in the wooden floor. On pressure the iron rails gave a little backwards and forwards. The passageway between the railings was about four feet wide. On 17th June 1932, the applicant commenced work at about 7.30 a.m. and about 3 p.m. was walking between two machines with the object of "piking," that is, picking the waste wool from the ends of the spindles on which the drums revolved. He had walked twenty feet from the back towards the front of the machine, and the last he remembered before the accident was that he was walking. His next recollection was of being in the ambulance which took him to a hospital. The doctor who, after the accident, attended the applicant at the respondent's works when he was unconscious, and later at the hospital, found scalp and lip wounds, which he stitched, and also two fractured ribs on the left side. Six days after his admission to hospital the applicant's condition appeared worse and was diagnosed as diabetic coma. He responded to

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intensive treatment and was discharged from hospital on 6th July, but on the following day was admitted to another hospital where he was treated for diabetes during the nine days he remained there. He had been treated at the latter hospital, both as an in-patient and as an out-patient, for some years for diabetes, and for about three years the diabetes had been controlled by insulin treatment, self-administered, consisting of twenty-unit doses of insulin injected twice daily. He had had an injection on the day of the accident. The Commission found the following facts :—On the day in question the applicant had an insulin reaction as a result of which he fell, receiving injuries to his ribs, scalp and lip, which incapacitated him for work for five weeks ; the probabilities were that in falling he struck his body on the guard railing which acted as a fender to the machines to protect employees from becoming entangled in the driving belts conveying power to the various drum spindles and as a result he received the injuries mentioned ; the injuries received did not play any part in producing the diabetic coma which developed in hospital and subsequently incapacitated him ; the diabetic coma was a phase of the disordered metabolism from which the applicant had suffered for a number of years and was dependent on the amount of sugar in the blood, a matter regulated by injections of insulin in a controlled case of diabetes mellitus. The Commission found that the applicant's incapacity for five weeks from 17th June 1932 was the result of injury arising out of and in the course of his employment on that date, and awarded him compensation at the rate of £4 4s. per week during that period. A case stated by the Commission in terms of sec. 37 (4) of the *Workers' Compensation Act* 1926-1929, at the request of the respondent, for the consideration of the Supreme Court, contained the following statement :—" The insulin reaction or hypoglycæmic condition was the primary or remote cause of the applicant's injury, it caused him to fall, and the fall was the proximate cause of the injury which incapacitated him. Owing to the applicant's proximity to the carding machines at the time of the seizure, where he was obliged as part of his duties to be, he fell on the iron guard rails of the machines which are themselves practically parts of the machines. Contact with something projecting or irregular in shape was necessary in falling in

order to have inflicted the damage to applicant's ribs as well as his head. It seems . . . therefore, that there was a zone of special danger within the range of which applicant's employment brought him and which was a factor in the causation of the accidental injuries which befell him and for this reason those injuries arose out of the employment. Although the guard rails were a factor in causing the applicant's accidental injuries there is no doubt that they operated also in protecting the applicant from much greater injuries he might have suffered had he been caught in any of the belts running along the side of the carding machines."

The following questions were reserved for the decision of the Supreme Court:—

"Is there any evidence to support the finding of the Commission:—

(1) That there was a zone of special danger within the range of which the employment of the applicant brought him, and which was a factor in the causation of the accidental injuries which befel him and for this reason those injuries arose out of the employment?

(2) That the incapacity for work of the said worker for five weeks from the 17th day of June 1932, as a consequence of scalp and lip wounds and two fractured ribs, was a result of injury arising out of and in the course of his employment?

The Supreme Court answered both questions in the negative: *Smith* v. *Australian Woollen Mills Ltd.* (1).

From that decision the applicant now, by special leave, appealed to the High Court.

Miller, for the appellant. The Commission found as a fact that the injury arose out of and in the course of the employment. In so finding, the Commission proceeded on the basis that the employment of the appellant brought him within a zone of special danger. An injury "arises out of the employment" if the employment brought the worker, or permitted him to be, at the place on the premises

(1) (1933) 33 S.R. (N.S.W.) 260; 50 N.S.W.W.N. 124.

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where he received his hurt. Whether the worker was in good health or ill health at the time of receiving the injury is immaterial. "Arising out of the employment" does not mean arising out of the nature of the employment (*Thom or Simpson* v. *Sinclair* (1)).

[DIXON J. The point seems to be that one must look on the immediate cause of the accident without considering the remoter causes, however near they may be to the immediate cause.]

Regard must be had to the proximate cause of the accident resulting in the injury (*Wicks* v. *Dowell & Co.* (2)). The appellant fell whilst doing something he was compelled to do in the course of his employment.

[EVATT J. The cases under the New York statute have been to some extent rationalized by the Court of Appeals of that State in *In re Connelly* v. *Samaritan Hospital* (3). One of the propositions there laid down seems to cover this case.]

It is submitted that the law as stated in that case applies in New South Wales. The real inquiry is whether the receiving of the hurt was the result of a risk incidental to the performance of the employee's work. "Incidental to the employment" does not mean peculiar to the employment (*Dennis* v. *A. J. White & Co.* (4)). The risk incidental to the employment here was not a mere matter of falling on to the floor, but was, as found, that should an employee fall from any cause, or be pushed, then he would be brought into contact with something irregular and protruding and thereby sustain injury, e.g., as here, fractured ribs. The place where the accident happened was a "dangerous place" (*Allcock* v. *Rogers* (5)). Whether the appellant's fall was caused by him losing his balance, or by slipping, or by becoming insensible, if, in falling, he received a hurt from some part of his employer's premises, then no further inquiry is necessary (*Dennis* v. *A. J. White & Co.* (6); *Stewart* v. *Metropolitan Water, Sewerage and Drainage Board* (7)).

[DIXON J. referred to *Upton* v. *Great Central Railway Co.* (8).]

The reference there to "passive and inert surroundings" is important.

(1) (1917) A.C. 127.
(2) (1905) 2 K.B. 225.
(3) (1932) 259 N.Y. 137.
(4) (1917) A.C. 479, at p. 489.
(5) (1918) 118 L.T. 386; 11 B.W.C.C. 149.
(6) (1917) A.C., at p. 491.
(7) (1932) 48 C.L.R. 216.
(8) (1924) A.C. 302, at p. 308.

[EVATT J. referred to *Frazer* v. *John Riddell & Co.* (1).

[GAVAN DUFFY C.J. " Course of employment " only means while the worker is employed.]

The contribution made by the employment here was not that it caused the appellant to fall, but that it added to his injury. On the facts found by the Commission, if the appellant had fallen anywhere else he would not have fractured his ribs. In view of the Commission's conclusion on the facts, the Supreme Court was in error in answering the questions in the negative ; the jurisdiction of that Court was limited to a review of the finding on a question of law.

Watt K.C. (with him *Lloyd*), for the respondent. There must be a causal connection between the employment and the injury. The argument addressed to the Court on behalf of the appellant wrongly seeks to eliminate the importance of the words " arising out of " ; that argument was directed to the question whether the injury arose in the scope of, or in the course of, the employment. That means not merely during the employment but from the incidence of the employment whilst in it (*Brooker* v. *Thomas Borthwick & Sons (Aus.) Ltd.* (2)). The appellant's fall was no part of his employment. The unconsciousness brought on by the insulin treatment was a " cause " intervening between the appellant's fall and his employment. It was not incidental to his employment that he suddenly became unconscious. The fracturing of the appellant's ribs was not a result of his employment ; there was nothing about the employment to cause the injury. This case is distinguishable from *Upton* v. *Great Central Railway Co.* (3) because here the employment was interrupted by some outside cause brought on by illness. The disabling factor was not in any way connected with his employment but was a bodily illness peculiar to the appellant. The appellant's employment did not carry an " additional risk " ; as that was the *ratio decidendi* in *Thom or Simpson* v. *Sinclair* (4), that case is not applicable.

[DIXON J. referred to *Lawrence* v. *George Matthews (1924) Ltd.* (5).]

(1) (1913) 7 B.W.C.C. 841.
(2) (1933) A.C. 669.
(3) (1924) A.C. 302.
(4) (1917) A.C. 127.
(5) (1929) 1 K.B. 1, at p. 18.

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Unless the injury is the result of a risk necessarily incidental to his employment an injured workman cannot succeed (*Plumb* v. *Cobden Flour Mills Co.* (1); *Dennis* v. *A. J. White & Co.* (2)). The appellant's employment neither created not intensified the risk arising from natural causes; consequently the accident did not arise out of the employment (*Butler* v. *Burton-on-Trent Union* (3); *Robson, Eckford & Co.* v. *Blakey* (4); *Rodger* v. *Paisley School Board* (5)). *Wright & Greig Ltd.* v. *M'Kendry* (6) was distinguished in *Hunter* v. *Simner* (7) and has now been overruled by *Lander* v. *British United Shoe Machinery Co.* (8). The tendency of the recent decisions is to concentrate on the requirements of establishing the claim to compensation, that is to say, that the accident arose not only in the course of the employment but also out of the employment, in the sense that the claimant must from the employment adduce something which was connected with the injury.

Miller, in reply. It was for the Commission to decide whether or not the injury arose out of or in the course of the appellant's employment (*Evans* v. *Bierrum & Partners* (9)). *Lander* v. *British United Shoe Machinery Co.* (8) was decided before *Brooker* v. *Thomas Borthwick & Sons (Aus.) Ltd.* (10), and is inconsistent with the decision in that case; it is also inconsistent with *Lawrence* v. *George Matthews* (1924) *Ltd.* (11) and *Stewart* v. *Metropolitan Water, Sewerage and Drainage Board* (12). Here the Commission found that the guard rails were part of the machines; hence they must be regarded as "dangerous." Also, here the appellant was actually in the performance of his duties, whereas in *Lander's Case* the injured workman was not at the time of the accident in pursuit of his duties of employment.

Cur. adv. vult.

(1) (1914) A.C. 62.
(2) (1917) A.C., at p. 492.
(3) (1912) 5 B.W.C.C. 355.
(4) (1911) 5 B.W.C.C. 536.
(5) (1912) 5 B.W.C.C. 547.
(6) (1918) 11 B.W.C.C. 402.
(7) (1921) 14 B.W.C.C. 327, at pp. 330, 331.
(8) (1933) 149 L.T. 395.
(9) (1930) 23 B.W.C.C. 131.
(10) (1933) A.C. 669.
(11) (1929) 1 K.B. 1.
(12) (1932) 48 C.L.R. 216.

The following written judgments were delivered :—

GAVAN DUFFY C.J., RICH, DIXON, EVATT AND MCTIERNAN JJ. This appeal raises for decision the question whether a workman, who, in a faint, falls against an object forming part of the plant at which he is working and is thereby physically injured, receives personal injury arising out of and in the course of his employment entitling him to compensation under the New South Wales *Workers' Compensation Act* 1926-1929 (secs. 7 (1), and 6 (1), definition of "injury"). The workman was a diabetic, and his faint arose solely from his diabetic condition. When he fainted he was walking, as his employment required him to do, between some wool-carding machines along a platform protected on each side by iron guard rails. He fell against one of the guard rails and fractured two ribs. Upon these facts it is undeniable that he received personal injury arising in the course of his employment. The controversy is whether it arose out of the employment. The New South Wales statute, unlike the British statute, does not require that the injury shall be by accident: the condition is that the injury, not "an accident," shall arise out of and in the course of the employment. It is, therefore, unnecessary to inquire if the fall was an accident. Further, the precise question is not whether the fall arose out of the employment, but rather, whether the injury sustained in falling arose out of the employment. In fact his ribs were broken because when he fell he struck the guard forming a part of the plant at which he was set to work. If the question were asked : "Why was the workman injured when he fell?" the answer would be : "Because his body struck part of the plant at which he was at work." The nature and extent of the hurt he suffered was thus determined by the fact that he was at work and that his work brought him into proximity with a particular structure capable of inflicting the injury, a structure which is not part of the ordinary surroundings of daily life but is part of the equipment of the employer's manufacturing premises, and is distinctively industrial. The conditions which combined to bring about his injury, therefore, include the existence, configuration and situation of the particular piece of equipment, and the workman's presence near it. These were conditions which the employment established. The true question appears to us to be whether these

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conditions of the employment so materially contributed to the injury that it can be said to have arisen out of the employment. To guide us to an answer to this question many cases were cited, but there are three general statements of high authority, which, together, go far, we think, towards a determination of the matter.

In *Lancashire and Yorkshire Railway Co.* v. *Highley* (1), Lord *Sumner* said a test which arose on the very words of the British statute was this :—" Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury ? If yea, the accident arose out of his employment. If nay, it did not, because what it was not part of the employment to hazard, to suffer, or to do cannot well be the cause of an accident arising out of the employment. To ask if the cause of the accident was within the sphere of the employment, or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or, conversely, was an added peril and outside the sphere of employment, are all different ways of asking whether it was part of his employment that the workman should have acted as he was acting, or should have been in the position in which he was, whereby in the course of that employment he sustained injury."

In *Upton* v. *Great Central Railway Co.* (2), Lord *Haldane* referred to injuries by accident arising directly out of circumstances encountered because to encounter them fell within the scope of the employment, and continued :—" The question is whether circumstances such as I have referred to are to be found among the causal conditions of the accident. These may have amounted to no more than passive and inert surroundings, requisite only to provide circumstances which admitted of the accident being occasioned by his own movement. Active physical causation by the surroundings is not required in order to satisfy what is implied by the expression ' arising out of the employment.' "

In *Brooker* v. *Thomas Borthwick & Sons (Aus.) Ltd.* (3), the case arising out of the earthquake at Napier, Lord *Atkin*, in delivering the opinion of the Judicial Committee said :—" The principle which emerges seems to be clear. The accident must be connected with

(1) (1917) A.C. 352, at p. 372.
(2) (1924) A.C. 302, at p. 308.
(3) (1933) A.C. 669, at pp. 676, 677; (1933) N.Z.L.R. 1118, at p. 1125.

the employment: must arise 'out of' it. If a workman is injured by some natural force such as lightning, the heat of the sun, or extreme cold, which in itself has no kind of connection with employment, he cannot recover unless he can sufficiently associate such injury with his employment. This he can do if he can show that the employment exposed him in a special degree to suffering such an injury. But if he is injured by contact physically with some part of the place where he works, then, apart from questions of his own misconduct, he at once associates the accident with his employment and nothing further need be considered. So that if the roof or walls fall upon him, or he slips upon the premises, there is no need to make further inquiry as to why the accident happened." In one of the cases covered by this decision (*Prendergast's*), the workman at the time of the earthquake was standing in the course of his duty at the top of a sheep race having a gradient of about one in three and a length of about one hundred and twenty feet. By reason of the motion he lost his balance and fell down to the bottom of the race and was injured. Their Lordships held the workman entitled to compensation, saying that his case spoke for itself (1).

Many cases have occurred when the causal connection between the employment and the accident (in this State it would be "the injury") consists in the presence of the workman at a particular place in the fulfilment of his duties. In such cases, of which the present is an example, it appears to have been felt that something more was required than the mere conjunction of the two circumstances, that at that place the physical object, moving or stationary, existed to work the injury, and to that place the workman came in the course of his duties. When the accident is of a kind to which all are exposed independently of occupation or particular locality, as in the case of natural forces, then, the something more has been found, as Lord *Atkin* says in the passage quoted (2), in a special degree of exposure. When the workman comes into physical contact with an object forming part of the premises, and especially of the place where he works, and his doing so is caused by some bodily condition or other cause personal to himself, that something

(1) (1933) A.C., at p. 679; (1933) N.Z.L.R., at p. 1127.

(2) (1933) A.C., at pp. 676, 677; (1933) N.Z.L.R., at p. 1125.

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more has been sought in some quality of danger inherent in the place. Thus Lord *Shaw* in *Thom or Simpson* v. *Sinclair* (1), explained cases where "location" provided the causal connection on the ground that, "in each and all it was because of the nature, conditions, obligations, or incidents of the employment by which the workman was brought within the zone of special danger that injury by accident was pronounced to have arisen out of the employment." In the year following, in *Allcock* v. *Rogers* (2), Lord *Wrenbury* said that for a place thus to be dangerous it must be "a place which has some quality which results in danger, for instance, that an insecure wall which may fall exists there."

In *Wicks* v. *Dowell & Co.* (3), where, through an epileptic fit, a workman fell through an open hatch near which he worked, a quality which resulted in danger was readily discoverable, an uncovered hatchway. But, in the Scotch case of *Wright & Greig Ltd.* v. *M'Kendry* (4), no special quality, except that of great hardness, could be found in what injured the workman by its contact with him, namely, a concrete floor upon which he fell in an uræmic fit. He was, nevertheless, held entitled to recover. Lord *Salvesen* dissented, however, upon the ground that the floor was not a peril attached to the particular location in which, by the obligation of service, the workman was placed and there was no zone of special danger (5).

The Supreme Court, in the case now before us, acted upon Lord *Salvesen's* judgment (5), and recently the Court of Appeal in England has likewise accepted it. In *Lander* v. *British United Shoe Machinery Co.* (6), the Court of Appeal had before it a case in which a workman went to a lavatory upon his employer's premises provided for his use, and there, in an epileptic fit, struck his head violently upon a hard floor. The arbitrator held that there was a zone of special danger for an epileptic but not for others. The Court of Appeal took no distinction between the use of a convenience like a lavatory, provided for the workman, and a place used for the performance of work, but upon the view expressed by Lord *Wrenbury*

(1) (1917) A.C. 127, at p. 144.
(2) (1918) 118 L.T. 386, at p. 387; 11 B.W.C.C. 149, at pp. 153, 154.
(3) (1905) 2 K.B. 225.
(4) (1918) 11 B.W.C.C. 402.
(5) (1918) 11 B.W.C.C., at p. 415.
(6) (1933) 149 L.T. 395.

in *Allcock* v. *Rogers* (1), that a particular quality of danger must belong to the place, held that the workman was not injured by accident arising out of his employment.

In *Lawrence* v. *George Matthews* (1924) *Ltd.* (2), Lord *Russell*, as he now is, in formulating the doctrines as they had developed had said:—"If the accident has occurred to the workman by reason of the employment bringing about his presence at the particular spot and so exposing him to a danger which in fact is proved to exist at that particular spot, then the accident arises out of the employment." This statement suggests that the quality of danger existing in the place need not be an antecedent menace to safety, but amounts to no more than the possession of those characteristics, which, in fact, resulted in the injury or accident.

In the earthquake cases, *Brooker* v. *Thomas Borthwick & Sons (Aus.) Ltd.* (3), Prendergast's fall was occasioned by nothing in the premises except that they shook with the earth movement, and his injury arose from falling down a moderately steep and long declivity. The actual decision of this workman's case seems almost inconsistent with the test adopted in *Lander's Case* (4) by the Court of Appeal from Lord *Wrenbury's* statement in *Allcock* v. *Rogers* (1). But, further, Lord *Atkin* expressly said (5) that that test could not be relied on, and disapproved of the very doctrine which had only a short time before entered so largely into the decision of the Court of Appeal.

In these circumstances, we think we should not follow the reasoning in *Lander's Case* (4). We think that if an additional element or consideration is needed before it can be said that a workman's injury arises out of his employment when the injury is occasioned by his falling, through causes personal to himself, against some physical object where he is at work, that additional element or consideration is to be found, not necessarily in risks of injury inherent in the place, but also in the character of the thing, physical contact with which causes the injury. If the workman's fall brings him into contact with something which, like plant or machinery, is

(1) (1918) 118 L.T., at p. 387; 11 B.W.C.C., at pp. 153, 154.
(2) (1929) 1 K.B. 1, at p. 20.
(3) (1933) A.C. 669: (1933) N.Z.L.R. 1118.
(4) (1933) 149 L.T. 395.
(5) (1933) A.C., at p. 678; (1933) N.Z.L.R., at p. 1126.

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peculiar to the work or occupation, and is not common both to industrial and private life, then the reason for his suffering includes the important circumstance that but for doing the particular piece of work which he was in fact performing he would not have experienced that particular sort of injury. We think that the reasoning disclosed by the citations we have made from Lord *Sumner* (1), Lord *Haldane* (2) and Lord *Atkin* (3) requires the conclusion that, because the form, nature and extent of the injury sustained when the appellant fell were determined by a characteristic feature of the premises where he was obliged to work, a feature, in this case, characteristic of the conditions of employment and not to be found in ordinary life, the employment materially contributed to the injury, which accordingly arose out of it.

In our opinion the second question in the special case should be answered in the affirmative, an answer which dispenses with any answer to the first question.

We think the appeal should be allowed.

STARKE J. The *Workers' Compensation Act* 1926-1929 of New South Wales provides for the payment of compensation to a worker who receives personal injury arising out of and in the course of his employment, whether at or away from his place of employment. The worker in the present case was employed in the respondent's woollen mills, and was in charge of one of the wool-carding machines, of which there were several in the mills, used for converting scoured wool into a continuous thread. The machines were guarded by iron railings. The worker, in the course of his duties, was walking between two machines, fell, and was injured. The Workers' Compensation Commission found the following facts:—1. The worker, who suffered from diabetes, had an insulin reaction, as a result of which he fell, receiving injury to his ribs, scalp and lip, which incapacitated him for work for five weeks. 2. He struck his body on the guard railing which protects employees from becoming entangled in the driving belts conveying power to the machines.

(1) (1917) A.C., at p. 372.
(2) (1924) A.C., at p. 308.
(3) (1933) A.C., at pp. 676, 677; (1933) N.Z.L.R., at p. 1125.

3. The injuries received did not play any part in producing a diabetic coma which developed in hospital and subsequently incapacitated the applicant. 4. The diabetic coma was a phase of the disordered metabolism from which the applicant had suffered for a number of years and was dependent on the amount of sugar in the blood—a matter regulated by injection of insulin. The Commission found that the worker's incapacity for five weeks was the result of injury arising out of and in the course of his employment, and awarded him compensation. But it stated the following questions of law for the decision of the Supreme Court :—Is there any evidence to support the finding of the Commission :—(1) That there was a zone of special danger within the range of which the employment of the applicant brought him and which was a factor in the causation of the accidental injuries which befel him, and for this reason those injuries arose out of the employment ? (2) That the incapacity for work of the worker for five weeks from 17th June 1932 as a consequence of scalp and lip wounds and two fractured ribs was a result of injury arising out of and in the course of his employment ? The learned Judges of the Supreme Court answered these questions in the negative, and from that decision an appeal is brought by special leave to this Court.

In the corresponding English Act, the provision is that if in any employment personal injury *by accident* arising out of and in the course of the employment is caused to a workman his employer shall be liable to pay compensation. In *Fenton* v. *J. Thorley & Co. Ltd.* (1) Lord *Macnaghten* observed :—" Now the expression 'injury by accident' seems to me to be a compound expression. The words ' by accident ' are, I think, introduced parenthetically as it were, to qualify the word ' injury,' confining it to a certain class of injuries and excluding other classes." Under the New South Wales Act it is not injury by accident, but simply " injury," that must arise out of and in the course of employment.

The decisions upon the Workers' Compensation Acts are numerous, but the following propositions have, I think, been established :—

1. The expression " arising out of " imports some kind of causal relation with the employment, but it does not necessitate direct or

(1) (1903) A.C. 443, at p. 448.

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physical causation. Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? It must arise out of the work which the worker is employed to do—out of his service (*Stewart* v. *Metropolitan Water, Sewerage and Drainage Board* (1), and the cases there cited).

2. An injury does not cease to arise out of the employment because its remote cause is the ideopathic condition of the injured man. The ideopathic condition must be dissociated from the other facts (*Wicks* v. *Dowell & Co.* (2)).

3. An injury which arises directly out of circumstances encountered because to encounter them falls within the scope of employment is an injury arising out of the employment. If the worker is injured by contact physically with some part of the place where he works, then, apart from questions of his own misconduct, he at once associates the injury with his employment (*Upton* v. *Great Central Railway Co.* (3); *Brooker* v. *Thomas Borthwick & Sons (Aus.) Ltd.* (4)).

These propositions appear to me decisive of this case in favour of the worker. The risk or hazard of falling upon the rail guard was one which he encountered in the course of his work, and was associated with his work, and the injury which resulted from that risk therefore arose out of his employment, and, admittedly, in the course of his employment. *Lander* v. *British United Shoe Machinery Co.* (5), in the Court of Appeal, is inconsistent with this conclusion, but that decision, in my opinion, is itself inconsistent with *Upton* v. *Great Central Railway Co.* (6) and *Brooker* v. *Thomas Borthwick & Sons (Aus.) Ltd.* (4), and cannot, therefore, be relied upon. The Scotch case of *Wright & Greig Ltd.* v. *M'Kendry* (7) is in line with the decisions as I understand them, but the Court of Appeal in *Lander's Case* did not agree with it.

The result is that this appeal should be allowed, the decision of the Supreme Court set aside, and question No. 2 stated for the

(1) (1932) 48 C.L.R. 216, at pp. 226, 227.
(2) (1905) 2 K.B. 225.
(3) (1924) A.C., at pp. 307, 308.
(4) (1933) A.C. 669; (1933) N.Z.L.R. 1118.
(5) (1933) 149 L.T. 395.
(6) (1924) A.C. 302.
(7) (1918) 11 B.W.C.C. 402; (1919) Sess. Cas. 98.

determination of the Supreme Court should be answered in the affirmative.

Appeal allowed with costs. Order of Supreme Court discharged, and in lieu thereof order that case stated be remitted to the Workers' Compensation Commission with the intimation that question No. 2 is answered: Yes, and that it is unnecessary to answer question No. 1. Respondent to pay costs of appeal to Supreme Court.

Solicitor for the appellant, *Abram Landa.*

Solicitors for the respondent, *J. W. Maund & Kelynack.*

J. B.

[NOTE.—Special leave to appeal from this decision was refused by the Privy Council on 14th May 1934.—*Ed.*]