[PRIVY COUNCIL.]

THE METROPOLITAN COAL COMPANY LIMITED . . . . . } APPELLANT;

RESPONDENT,

AND

PYE . . . . . RESPONDENT.

APPLICANT,

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

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Mar. 6, 27.

Workers' Compensation—Injury—Disease—"Other than a disease caused by silica dust"—Onus of proof—Workers' Compensation Act 1926-1929 (*N.S.W.*) (*No.* 15 *of* 1926—*No.* 36 *of* 1929), *secs.* 6 (1), 7 (1).

The *Workers' Compensation Act* 1926-1929 (N.S.W.) provides, by sec. 7 (1), that a worker who has received an injury shall receive compensation from his employer in accordance with the Act, and, by sec. 6 (1): "'Injury' means personal injury arising out of and in the course of the employment and includes a disease so arising whether of sudden onset or of such a nature as to be contracted by gradual process other than a disease caused by silica dust." By the *Workmen's Compensation (Silicosis) Act* 1920 (N.S.W.) the Executive Government was empowered to provide a scheme for the payment of compensation by the employers of workmen in any specified industry or process involving "exposure to silica dust" who suffered injury through such exposure.

Held that, in a claim under the *Workers' Compensation Act* 1926-1929, a worker who proved that he had received an injury arising out of and in the course of his employment in that he had contracted a disease due to dust had not to bear the further onus of establishing that the disease was not caused by silica dust. In order to meet the claim of the worker, the onus rested upon the employer to prove that the disease in respect of which the worker would otherwise be entitled to compensation was in fact a disease caused by silica dust.

Decision of the High Court: *Pye* v. *Metropolitan Coal Co. Ltd.*, (1934) 50 C.L.R. 614, affirmed.

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* Present—Viscount Hailsham L.C., Lord Thankerton, Lord Maugham, Sir George Lowndes, Sir Sidney Rowlatt.

APPEAL from the High Court.

On 6th March 1933 Jacob Pye, who had been employed by the appellant company as a miner for thirty-eight years, made an application under the *Workers' Compensation Act* 1926-1929 (N.S.W.) to the Workers' Compensation Commission. The Commission found that the worker was partially incapacitated for work and that the incapacity was due to pulmonary fibrosis resulting from the inhalation of dust in the employer's mine. The Commission also found that it was not satisfied that the worker's incapacity resulted from a disease caused by silica dust. The Commission did not find affirmatively that the disease causing the worker's incapacity was not caused by silica dust, and held that, in order to defeat the worker's claim under the *Workers' Compensation Act* 1926-1929, the onus lay upon the employer of showing that the disease was in fact caused by silica dust. Following upon this ruling of law in favour of the worker, the Commission stated a case for the decision of the Full Court of the Supreme Court of New South Wales. On 11th December 1933 the Supreme Court (*James* and *Halse Rogers* JJ., *Harvey* A.C.J. dissenting) reversed the decision of the Commission: *Pye* v. *Metropolitan Coal Co. Ltd.* (1). On 20th December 1933, upon the application of the worker, the High Court granted special leave to appeal from the decision of the Supreme Court. On 14th May 1934 the High Court (*Rich*, *Evatt* and *McTiernan* JJ., *Gavan Duffy* C.J. and *Starke* J. dissenting) reversed the decision of the Supreme Court and held that under the *Workers' Compensation Act* 1926-1929 the onus lay upon the employer of proving that a disease in respect of which the worker would otherwise be entitled to compensation under the Act was in fact a disease caused by silica dust: *Pye* v. *Metropolitan Coal Co. Ltd.* (2).

On 29th January 1935 the Privy Council granted the employer special leave to appeal from the decision of the High Court, the employer by its counsel having undertaken to pay to the respondent the compensation awarded by the judgment and order of the High Court and also the costs of the appeal to the Privy Council as between solicitor and client, whatever might be the result of such appeal.

(1) (1933) 34 S.R. (N.S.W.) 206; 51 W.N. (N.S.W.) 44.
(2) (1934) 50 C.L.R. 614.

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The history of the relevant New South Wales legislation is set out in the judgment of *Evatt* J. (1).

Macaskie K.C. and *Valentine Holmes*, for the appellant.

Cave K.C. and *Shakespeare*, for the respondent.

SIR SIDNEY ROWLATT delivered the judgment of their Lordships, which was as follows :—

This is an appeal from a decision (1) of the High Court of Australia reversing a decision (2) of the Supreme Court of New South Wales on a case stated under the provisions of the *Workers' Compensation Act* 1926-1929, sec. 37 (4), at the request of the appellant company, by the Workers' Compensation Commission of New South Wales.

The only question for determination is whether an applicant for compensation under the Act must in order to establish his claim not only prove that he has contracted a disease arising out of and in the course of his employment, but go on to prove that it was not caused by silica dust (in which case the employer would not be liable) or whether it suffices for him to prove the first proposition only, leaving it to the employer to show, if he can, that the disease was due to silica dust. It is a short though important question of construction relating to the onus of proof.

The directly relevant sections are as follows :—

Sec. 7 (1).—" A worker who has received an injury whether at or away from his place of employment (and in the case of the death of the worker, his dependants) shall receive compensation from his employer in accordance with this Act."

Sec. 6 (1).—" In this Act unless the context or subject matter otherwise indicates or requires . . . ' Injury ' means personal injury arising out of and in the course of the employment and includes a disease so arising whether of sudden onset or of such a nature as to be contracted by gradual process other than a disease caused by silica dust."

Sec. 5.—" Nothing in this Act shall affect the operation of the *Workmen's Compensation (Silicosis) Act* 1920, as amended by this Act."

(1) (1934) 50 C.L.R., at pp. 626, 627.
(2) (1933) 34 S.R. (N.S.W.) 206 ; 51 W.N. (N.S.W.) 44.

By the *Workmen's Compensation (Silicosis) Act* 1920, as amended by the *Workers' Compensation Act* 1926-1929, and by the scheme made by the Minister thereunder, provision is made for the payment of compensation by the employers of workmen in specified industries and processes or groups of industries and processes involving exposure to silica dust who suffer death or total disablement or partial disablement from diseases of the pulmonary or respiratory organs caused by exposure to silica dust. "Coal-mining" is not included in the industries or processes or groups of industries or processes specified in such Act or the scheme made thereunder.

The appellant company owns and works coal mines situated in the State of New South Wales, and the respondent was formerly employed by the appellant as a miner in one of its coal mines.

On 6th March 1933 the respondent filed an application for compensation which was heard by the Commission, being the appropriate tribunal under the Acts, on 11th and 12th May 1933. On behalf of the respondent there was put in evidence a certificate by a medical board (which by sec. 51 (3) of the Act is conclusive evidence as to the matter certified) stating that the respondent had "a partially incapacitating pulmonary fibrosis which could be due to coal dust." The respondent also called two radiologists who had made X-ray examinations of his lungs, and three other medical men. The result of their evidence was that the radiograph showed pneumonoconiosis, there being a mottling on the lungs which meant fibrosis and fine particles of dust, and that the condition observed might be brought about by silica dust or other dusts.

The appellant called no evidence and submitted that there was no case to answer.

On 12th May 1933 the Commission found:—"(1) That the incapacity for work of the applicant" (the respondent herein) "since the 27th day of April has been and still is partial; (2) that the applicant's partial incapacity for work is due to pulmonary fibrosis and results from the inhalation of dust in the respondent's" (the appellant herein) coal-mine; "(3) that the disease which partially incapacitates the applicant for work is of such a nature as to be contracted by a gradual process and his employment with the respondent was employment to the nature of which the disease

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was due ; (4) that on the evidence before it the Commission is not satisfied that the partial incapacity for work of the respondent results from a disease caused by silica dust."

On these findings they awarded compensation to the respondent and at the request of the appellant company stated a case for the Supreme Court of New South Wales. That Court by a majority entered judgment for the appellant company (1). On appeal the High Court of Australia, also by a majority, reversed this decision (2). In both Courts the only question was upon which party the onus lay as regards silica dust.

Carefully reasoned judgments were delivered in both Courts below but their Lordships do not think it necessary to examine these in detail. The majority in the Supreme Court of New South Wales and the minority in the High Court of Australia acted on the view that the *Workers' Compensation Act* applied only to a category of cases restricted *in limine* by the omission of cases of disease caused by silica dust. That, in the opinion of their Lordships, is to mistake the scope of this legislation. The intention of the Act as appearing from sec. 6 (1) is to provide for compensation in every case of injury (including disease) arising out of and in the course of a workman's employment. In the language of Mr. Justice *Rich* we have in the *Workers' Compensation Act* 1926-1929 a general law for compensating such injuries (3). That is the paramount enactment and to give effect to it the words " other than a disease caused by silica dust " must be read as inserted not to limit it but to prevent it being appealed to in particular circumstances where the relief would overlap that provided by a special and narrower scheme. Till such overlapping appears, its operation is unaffected. To hold otherwise would have the result that where, as in this case, medical evidence shows that the disease is due to dust but cannot specify the kind of dust, the workman is left without any compensation at all though undoubtedly suffering from a disease arising out of and in the course of his employment. This is to leave a gap which destroys the intended completeness of the scheme.

(1) (1933) 34 S.R. (N.S.W.) 206 ; 51 W.N. (N.S.W.) 44.
(2) (1934) 50 C.L.R. 614.
(3) (1934) 50 C.L.R., at p. 622.

Their Lordships do not overlook the circumstance that coal-mining is not an industry brought within the operation of the Act dealing with silicosis. The result, no doubt, is that if disease in a coal-miner is affirmatively proved to be due to silica dust the workman is left unprotected; and in that case the two schemes together do not cover the whole of the ground. The coal-mining industry may have been omitted from the silicosis scheme because it was not contemplated that pulmonary disease contracted in a coal-mine could ever be definitely attributed to silica dust in particular. The medical evidence in this case suggests that possibility. It is, however, unnecessary to speculate upon this point. The construction of the Act in its general application cannot be affected by the omission of this particular industry from the complementary legislation.

It only remains to add that basing their conclusion upon the scope and intention of the Act, their Lordships do not find it necessary to examine the decisions referred to in the judgments in the Court below and in the arguments before this Board in which the effect of different forms of language upon the onus of proof has been discussed upon general principles.

For these reasons their Lordships will humbly advise His Majesty that the appeal be dismissed. The costs have been provided for by the order granting special leave to appeal.

Solicitors for the appellant, *Bell, Brodrick & Gray.*

Solicitors for the respondent, *Pattinson & Brewer.*