[HIGH COURT OF AUSTRALIA.]

WEBB . . . . . APPELLANT;
APPLICANT,

AND

THE COMMISSIONER FOR RAILWAYS (NEW SOUTH WALES) . . . . . RESPONDENT,
RESPONDENT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *April* 8, 11.

Rich, Starke and Dixon JJ.

Workers' Compensation—Injury arising out of and in the course of the employment—Railway employee—Jumping on to moving locomotive—Abandonment of duty—Act "done by the worker for the purposes of and in connection with his employer's trade or business"—Workers' Compensation Act 1926-1929 (*N.S.W.*) (*No.* 15 *of* 1926—*No.* 36 *of* 1929), *sec.* 7 (2)*.

When returning to a railway station to report on a duty which he had been sent to perform, an employee of the Commissioner for Railways of New South Wales, in breach of a regulation, jumped on to the step of a slowly moving locomotive. His foot slipped, and he fell under the locomotive and sustained serious injury. On an application for compensation, the Workers' Compensation Commission found that, although the locomotive was proceeding in the same direction as that in which the applicant's work required him to go, his act, in attempting to ride on the locomotive, was done for purposes of his own and

* Sec. 7 of the *Workers' Compensation Act* 1926-1929 (N.S.W.) provides:—"(1) A worker who has received an injury whether at or away from his place of employment . . . shall receive compensation from his employer in accordance with this Act. (2) For the purposes of this Act, injury resulting in the death or serious and permanent disablement of a worker shall be deemed to arise out of and in the course of his employment notwithstanding that the worker was, at the time when the injury was received, acting in contravention of a statutory or other regulation applicable to his employment, or that he was acting without instructions from his employer, if such act was done by the worker for the purposes of and in connection with his employer's trade or business."

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was not done "for the purposes of and in connection with his employer's trade or business" within the meaning of sec. 7 (2) of the *Workers' Compensation Act* 1926-1929 (N.S.W.). The commission, therefore, dismissed the application.

Held that the finding was one open to the commission in the circumstances of the case, and the High Court could not interfere with the commission's findings of fact.

Decision of the Supreme Court of New South Wales (Full Court): *Webb* v. *Commissioner for Railways*, (1937) 38 S.R. (N.S.W.) 76; 55 W.N. (N.S.W.) 4, affirmed.

CASE STATED.

In an application for compensation brought by Arthur Bruce Webb against the Commissioner for Railways (N.S.W.) a case stated by the Workers' Compensation Commission for the determination of certain questions by the Supreme Court of New South Wales was substantially as follows :—

1. This case is stated at the request of the applicant worker referring for the decision of the Supreme Court of New South Wales certain questions of law which arose in proceedings before the Workers' Compensation Commission of New South Wales.

2. The relevant particulars of claim and defence, together with the facts found by the commission, and the reasons for its decision, are contained in the judgment of the commission set out in par. 3 hereof, the basic question referred for the decision of the Supreme Court being whether the commission erred in law in holding that the injury did not arise out of and in the course of the applicant's employment.

3. The judgment of the commission is as follows :—"This is a claim by the applicant against the respondent for £525 lump sum compensation under sec. 16 of the *Workers' Compensation Act* 1926-1929 in respect of the loss of the applicant's left foot, which resulted from injury received near the northern end of the platform of South Grafton railway station on 27th April 1935. Liability is denied by the respondent, the ground relied upon at the hearing being that the injury was not one arising out of and in the course of the applicant's employment as alleged. The applicant entered the respondent's service as a junior porter and on attaining his 21st birthday on 14th October 1934 continued

to carry out the duties of junior porter at an increased rate of pay. In April 1935 his duties included watering carriages and distributing 'call to duty' notices to various railway officers, and making himself generally useful. His remuneration was 1s. 7–4/11ths d. per hour. Since the happening of the injury he has been re-employed by the respondent who has made available suitable work, has increased his remuneration to 1s. 8–8/11ths d. per hour, and provided him with an excellent artificial foot. At the time of the happening of the injury the applicant was employed at South Grafton railway station where there are barracks for railway officers; a locomotive depot; equipment for watering and cleaning railway carriages and assembling trains. After lunch on 27th April 1935 the station master, Mr. Playford (since deceased), gave the applicant some 'call' papers and told him to take them to the barracks and call the guards for duty at the times prescribed on their call papers. The barracks were just beyond the northern end of the platform and on the western side of the railway lines. Almost opposite the barracks were a No. 50 class locomotive and north of but next to it a sleeping car known as 'ACX.' The 'ACX' had to be shunted south opposite the platform and later put at the end of the No. 14 south-bound mail train leaving South Grafton at 2.7 p.m. In order to do this, it was necessary for the locomotive to change ends on the 'ACX.' It proceeded south along the loop line for a short distance, and by means of the cross-over to the main line, then returned north along the main line near the barracks, and returned south on the loop line to the opposite end of the 'ACX.' The part between the main line and the parallel loop line was known locally as 'the 6 ft.' Operations connected with this shunting work were in progress when the applicant was returning from the barracks with the call papers. Two of the guards were not there and in the course of his journey back to the station master's office, which is towards the southern end of the platform, the applicant was called by acting leading porter, Lloyd. The applicant proceeded across the permanent way to Lloyd, who was near the 'ACX,' and was told by him to 'drag the water hose and connect it to the tap in readiness to water the carriage,' i.e., to fill the tanks which provided water or the use of passengers. There were four taps along 'the 6 ft.'

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opposite the southern end of the platform. The applicant's evidence is that the hose was opposite the station master's office and that he was proceeding on foot to notify the station master of his inability to serve call notices on the two guards and obtain the hose when the injury happened. Prior to the accident the applicant was last seen by Cox, the shunter, who spoke to the applicant near the 'ACX.' Cox said he did not remember what the applicant said or in which direction he went. Cox gave the requisite signal and the locomotive proceeded south towards the cross-over, travelling between 5 and 7 miles an hour. The accident happened near the cross-over towards the northern end of the platform. The applicant alleges that he was running along 'the 6 ft.' towards the cross-over when the locomotive overtook and was passing him. He was about level with the middle of the locomotive—he agreed where one would get on the engine if one wanted to—when he either tripped or slipped and his left foot came into contact with the wheels of the locomotive. The applicant alleges that his recollection is not clear as to material events surrounding the happening of the injury, and on this aspect he is unsatisfactory. His demeanour in the witness box suggested that he was withholding some material evidence and that the evidence he gave was not true in certain respects. If he were running, as he alleges, it is difficult to understand how the engine travelling between 5 and 7 miles an hour overtook him, and one would reasonably assume he would have some interest to know and some idea as to what caused him to slip or trip and how he fell. The measurements of a No. 50 class locomotive are: length of engine, 35′ 6″ over buffer; length of tender, 24′ 5″ over buffer; greatest width of engine, 9′ 4″; width of tender, 8′ 6″; amount of overhang from outside of rail, 2′ 1″. There are two steps with two hand rails to the tender and two steps with one hand rail to the engine. Running parallel with the lines there are iron interlocking rods called channel irons 6″ above the average ground level and about 12″ wide. The distance between the main line and the loop line, although known as 'the 6 ft.,' is 8′ 1″ wide, made up as follows: Between loop line and interlocking rods, 3′ 5″ (the clearance between the engine on loop line and the interlocking rods would not be more than 1′ 4″); interlocking rods,

about 1 ft. wide ; between main line and the interlocking rods the distance is 3′ 8½″. The applicant is definite that he was not running on the interlocking rods, but said that he does not know on which side of the rods he was running. The commission, after inspecting the scene of the accident, is convinced that he was not running along the space between the interlocking rods and the loop line if the locomotive overtook and was passing him. If at that time he had been running along the 3′ 8½″ space and fell, his foot could not have got under the locomotive. Furthermore, if he had been running along ahead of the locomotive he would have been seen by fireman Morgan, who was keeping a look-out on that side. The first Morgan knew of the accident was when he heard someone call out. He looked back and saw the applicant sitting on the ground. Sleeping-car conductor Wright, who was on the ' ACX,' gave evidence that, after having refreshed his memory from the written report he made to the respondent on the day of the happening of the injury, he was definite that on hearing a noise he looked south from the ' ACX ' towards the locomotive, which was half-way across the cross-over to the main line, saw the applicant hanging on one rail ; fall off the side of the engine ; sit down on the permanent way ; and grab his foot. After the engine passed he got up again and started to hop along. Witness saw that he was injured and rushed to his assistance. After witness had rendered first aid he asked the applicant what he was doing at the time of the happening of the injury and the applicant said ' his foot had slipped off the engine.' The evidence of shunter Cox is that after hearing a cry he looked towards the interlocking rods in question and saw the applicant sitting on the rods. Witness went over to the applicant and then sought a doctor. The applicant had been given first aid by Wright and was lying on a stretcher waiting for the doctor to arrive. When Cox questioned the applicant in regard to the happening of the injury, the applicant replied : ' I was trying to get on the tender of the engine.' The commission is satisfied that the applicant jumped on to one of the steps of the locomotive ; that his left foot slipped from there and the anterior portion was crushed by one or more wheels of the locomotive. The evidence is uncontradicted that the applicant's duties under his contract of service with the respondent did

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not require or permit him to have anything to do with locomotives. General rule No. 21 made in terms of by-law No. 322 under the *Government Railways Act* 1901 provides that: 'No employee must be allowed, unless in the execution of his duty, to ride on the engine, . . . without written or printed permission from a properly authorized officer.' The applicant had no such permission. Counsel for the applicant contends that, if the applicant was on the locomotive, he was there in the execution of his duty and his act was done to expedite his employer's business. The commission has carefully examined the applicant's case from this angle but is unable to come to that conclusion. The pace the locomotive was travelling on the loop was not appreciably faster than the applicant would run, and at the most the locomotive would have only taken him portion of the short journey towards the station master's office. There was an interval of not less than twenty minutes between the time of his conversation with Lloyd and the time of the arrival of the south-bound mail train, which was not due to leave South Grafton until 2.7 p.m., and the work which the applicant had to perform on the 'ACX' sleeping car would, according to his evidence, have taken him 10 minutes. There was not a state of emergency, and even if there had been riding for so short a distance on the slowly moving locomotive travelling across points would not have resulted in expedition. In fact, riding on the locomotive would be more likely to hinder than to hasten his journey. The applicant was friendly with the fireman on the locomotive in question, and the applicant's act may have been for the purposes of friendly conversation. The applicant knew that he was prohibited from riding on the locomotive. There is no evidence upon which the commission could reasonably find that it was in pursuance of any duty to his employer, or for the purposes of and in connection with his employer's business, that the applicant attempted to ride on the locomotive. On the weight of the evidence, the commission finds that the applicant's act in attempting to jump or ride on the locomotive was not in the execution of his duty and had no connection with, nor was it incidental to, his duties under his contract of service. In so doing he was voluntarily exposing himself to an entirely unnecessary peril. It is unfortunately true that the injury has resulted

in his serious and permanent disablement, but as he was not doing any part of his duty at the time, his act cannot be deemed to arise out of and in the course of his employment within the meaning of sec. 7 (2) of the *Workers' Compensation Act* 1926-1929. It is not a question of the applicant doing his proper job in a wrong or prohibited way, as in *Victoria Spinning Co. (Rochdale) Ltd.* v. *Matthews* (1), but of his voluntarily leaving his proper job and doing something hazardous outside the scope of his employment, and it was out of this unnecessary peril that the injury arose. Therefore the negativing of the contravention of the prohibition contained in rule 21, *supra*, as contemplated by sec. 7 (2), could not make the injury one which could be deemed to arise out of and in the course of the employment. The material cause of the applicant's injury was not that he committed a breach of a prohibition in the execution of duty when attempting to jump or ride on the locomotive, or that he failed to obtain permission to ride on the engine, but that apart from any prohibition he—instead of continuing in the course of his employment on foot—of his own volition deviated from that course and for purposes unconnected with his employer's business was attempting to jump or ride on the moving locomotive. By so doing he took himself away from his duties and needlessly put himself in a place of obvious danger, and, unfortunately for him, the danger materialized. In *Matthews' Case* (1), which was decided by the House of Lords in July 1936, Lord *Russell of Killowen*, after referring to *Wilsons & Clyde Coal Co. Ltd.* v. *M'Ferrin* and *Kerr or M'Aulay* v. *James Dunlop & Co. Ltd.* (2), said : 'The different treatment of the cases of the two men M'Ferrin and M'Aulay establishes, I think, the proposition, that if a workman at the time of the accident is doing something which is not his job at all and in doing that job contravenes a regulation or order to which those whose job it is are subject (as distinguished from the case of a workman whose job is subject to a regulation or order which he contravenes while doing his job) he is not within the provisions of sub-sec. 2, and the employer is not liable to pay compensation. The matter was fully discussed

(1) (1936) 29 B.W.C.C. 242; 52 T.L.R. 708.
(2) (1926) A.C. 377.

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in *Thomas* v. *Ocean Coal Co. Ltd.* (1), in which the workman there in question was held to be covered by sub-sec. 2. He was like M'Ferrin; he was doing his job, but in doing it he acted in contravention of a regulation. He was not like M'Aulay who had arrogated to himself a job which was not his, and in doing it had broken a regulation' (2). Here the applicant was not doing his job nor arrogating a job to himself which was not his, but was unnecessarily doing something hazardous which was not reasonably incidental to but was in fact outside the sphere of his employment. The commission considers that the principle to be followed in this case is that applied by the House of Lords in *Stephen* v. *Cooper* (3), following *Lancashire and Yorkshire Railway Co.* v. *Highley* (4). Stephen was a harvest hand driving a two-horse mower and in replacing a chain, instead of following the customary and proper method, voluntarily adopted a foolhardy one for purposes not connected with his employer's business and met with injury. The House of Lords held that the accident arose from an added peril to which the workman had voluntarily exposed himself and, consequently, did not arise out of his employment. Lord *Shaw* (who doubted the correctness of the decision) in his judgment said: 'A fundamental question is, Was the course taken by the workman prompted by his own indolence or purely for his own convenience and not in the interests of the work, say by effectiveness or despatch? If so, then the extra hazard is not only an added peril but a needless peril, and an arbitrator is free to find that the accident did not arise out of the employment' (5). Even applying that wide test to the facts found, the answer is not in favour of the applicant's case. For the reasons stated in this judgment, the commission finds that the injury received by the applicant was not one arising out of and in the course of his employment with the respondent. The award will therefore be for the respondent. Application for case stated granted."

The questions for the decision of the Supreme Court were as follows:—

1. Was there evidence on which the commission could find that the injury received by the applicant on 27th April 1935

(1) (1933) A.C. 100.
(2) (1936) 29 B.W.C.C., at p. 247; 52 T.L.R., at p. 709.
(3) (1929) 22 B.W.C.C. 339.
(4) (1917) A.C. 352.
(5) (1929) 22 B.W.C.C., at p. 361.

did not arise out of and in the course of his employment with the respondent ?

2. Is there any evidence to support the commission's finding that the sphere of the applicant's employment was limited by the terms of his contract of service which did not require or permit him to have anything to do with locomotives ?

3. Having regard to the findings contained in the commission's judgment, and the facts that it : (*a*) rejected the applicant's evidence that the injury happened as the result of his falling while running along " the 6 foot " in continuance of his journey to the station master's office ; (*b*) accepted the evidence of sleeping-car conductor Wright as to the happening in so far as he had refreshed his memory from the written report he made to the respondent on the day of the injury ; and (*c*) accepted the evidence of shunter Cox ; did the commission err in law in holding that there was no evidence on which it could reasonably find that it was in pursuance of a duty to his employer, or for the purposes of his employer's business, that the applicant attempted to ride on the locomotive ?

4. Is there any evidence to support the commission's finding that the applicant's act in attempting to jump or ride on the locomotive was not in the execution of his duty and had no connection with, nor was it incidental to, his duties under his contract of service ?

5. In view of the fact that the respondent in its answer raised the defence that the injury did not arise out of and in the course of the worker's employment, did the commission err in impliedly holding that voluntary exposure to an unnecessary peril was in the circumstances and conduct of the case a defence available to the respondent ?

6. Is there any evidence to support the commission's finding that the applicant was not doing any part of his duty when injured ?

7. Was the commission bound in law on the facts found by it to deem that the injury arose out of and in the course of the applicant's employment ?

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8. Did the commission err in law in inferring from the facts as found that the applicant had deviated from the course of his employment in attempting to jump or ride on the locomotive ?

9. Did the commission err in law in applying to the extent indicated in the judgment the principles in (*a*) *Stephen* v. *Cooper* (1) ; (*b*) *Lancashire and Yorkshire Railway Co.* v. *Highley* (2) ; (*c*) *Victoria Spinning Co.* (*Rochdale*) *Ltd.* v. *Matthews* (3) ?

10. Did the commission err in law in holding that the peril to which the applicant exposed himself was one outside the sphere of his employment ?

The Full Court of the Supreme Court answered the questions as follows : 1. Yes ; 2. It appears that there was no such finding as is mentioned ; 3. The finding referred to in par. *c* was only given by the commission on the basis of the findings of fact which had already been given ; 4. Yes ; 5. The commission did not so hold ; 6. The commission's finding to the extent mentioned was only based on the findings of fact which had already been given ; 7, 8, 9, 10. No.

From that decision the applicant appealed to the High Court.

McClemens, for the appellant. Several of the findings of fact made by the commission are not supported by the evidence. Even on the facts as found the commission should have held that the injury sustained by the appellant arose out of and in the course of his employment. It was found as a fact that the locomotive on to which the appellant climbed conveyed him towards a point where he had to perform a duty ; therefore, whatever his motive may have been, notwithstanding an alleged breach of a regulation, he did not abandon or deviate from the course of his employment (*Thomas* v. *Ocean Coal Co. Ltd.* (4) ; *Victoria Spinning Co.* (*Rochdale*) *Ltd.* v. *Matthews* (3)). In the circumstances the motive and intention of the appellant are immaterial (*Stokoe* v. *Mickley Coal Co. Ltd.* (5)). In *Knowles* v. *Southern Railway Co.* (6) the deceased worker not

(1) (1929) A.C. 570 ; 22 B.W.C.C. 339.
(2) (1917) A.C. 352 ; 10 B.W.C.C. 241.
(3) (1936) 29 B.W.C.C. 242 ; 52 T.L.R. 708.
(4) (1933) A.C. at p. 137.
(5) (1928) 21 B.W.C.C. 70.
(6) (1937) A.C. 463.

only committed a breach of a regulation, he also completely abandoned, for the time being, his work. The act of proceeding from the sleeping car to the railway station was an entire act on the part of the appellant. The matter comes within sec. 7 (2) of the *Workers' Compensation Act*; therefore the doctrine of "added peril" enunciated in *Stephen* v. *Cooper* (1) does not apply. The regulation which the appellant is alleged to have infringed does not limit the sphere of employment but is directed or addressed to employees acting in the course of their employment (*Henderson* v. *Commissioner of Railways (W.A.)* (2)). The climbing on to and the travelling by the locomotive were acts done by the appellant in connection with and for the purposes of his employer's trade or business. On the facts as found by it the commission, as a matter of law, should have made an award in favour of the appellant (*Herbert* v. *Samuel Fox & Co. Ltd.* (3); *Lancashire and Yorkshire Railway Co.* v. *Highley* (4); *Sparey* v. *Bath Rural District Council* (5); *Thomas* v. *Ocean Coal Co. Ltd.* (6); *Knowles* v. *Southern Railway Co.* (7)).

Bradley K.C. and *Chambers*, for the respondent, were not called upon.

The following judgments were delivered:—

RICH J. It is conceded by the appellant's counsel that the injury which his client sustained could not have been found as a fact to have arisen out of and in the course of his employment. His appeal depends wholly on the provisions of sub-sec. 2 of sec. 7 of the *Workers' Compensation Act* 1926. The interpretation of this provision, which is taken from the English Act of 1923, has proved a source of much difficulty in England. It is by no means easy to say what in all respects is the precise result of the decisions as they stand at present. But, both on the terms of the Act and upon the authorities, one thing at least is clear. The act which the worker was doing at the time when the injury was received must have been done

(1) (1929) 1 A.C. 570.
(2) (1937) 58 C.L.R. 281, at p. 295.
(3) (1916) A.C. 405.
(4) (1917) A.C. 352.
(5) (1931) 146 L.T. 285.
(6) (1933) A.C., at p. 136.
(7) (1937) A.C. 463.

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by him "for the purposes of and in connection with his employer's trade or business." As has been pointed out, this is wider than the worker's employment. The tribunal of fact set up by the statute is the commission, and no appeal lies from its findings of fact to the court. The commission has found in distinct terms that the act done by the appellant, viz., his attempt to climb on the moving engine, was not done "for the purposes of and in connection with his employer's trade or business." It is contended that the commission misunderstood or misapplied the law by which it should be guided in applying the law. There would be little to wonder at, and there would be no blame, if anybody who studied the numerous expositions of the sub-section failed to obtain a correct apprehension of their final significance. But there is one question of unadulterated fact outstanding, and that is the reason which prompted the appellant to climb on the engine. I think that the commission has made it sufficiently clear that in its opinion his reason was quite independent of anything arising in the pursuit of "his employer's trade or business." He simply wanted to talk to one of the crew. It happened that the engine was slowly moving in the same direction as he was going. But the finding, in effect, is that he turned aside from the purposes of his employer's business for a purpose of his own. If he was animated by this motive for his act and in doing it he had no intention of doing something on behalf of his master or in the furtherance of his business, it cannot be said that the act was done by the worker "for the purposes of and in connection with his employer's trade or business." The inference was one open to the commission on the circumstances of the case, and we cannot interfere with its finding of fact.

Mr. *McClemens*, who argued the case very well, has argued that the mere fact that the appellant was carried in the same direction as his work required him to go was enough to make his act in attempting to board the engine one done for the purposes of his employer's business. But I think the actual reason of the man for the act must be the deciding factor, at all events where the real and substantial motive is unconnected with the master's business.

The appeal should be dismissed with costs.

STARKE J. I agree.

The question in the case is really one of fact. Under the *Workers' Compensation Act* 1926 and its amendments a worker who receives a personal injury arising out of and in the course of his employment is entitled to compensation. Further, it is provided that an injury to a worker shall be deemed to arise out of and in the course of his employment notwithstanding that the worker was at the time of the injury received acting in contravention of a statutory or other regulation "if such act was done by the worker for the purposes of and in connection with his employer's trade or business."

Now in this particular case the Workers' Compensation Commission has found that the worker did not receive a personal injury arising out of and in the course of his employment. He got on an engine without any right to do so and contrary to regulation. But it is said that his act must be deemed to arise out of and in the course of his employment because it was done by the worker for the purposes of and in connection with his employer's trade or business. Again the commission has found the fact against the worker. He got on the engine for his own purposes and not for any purpose of and in connection with his employer's business. There is ample evidence to sustain the finding of the commission though it is quite possible if the commission had found the other way that the finding could not have been disturbed. The question as already indicated is wholly one of fact and exclusively within the jurisdiction of the Workers' Compensation Commission. The jurisdiction and authority of the Supreme Court and of this court are confined by the Act to questions of law. The worker has failed to establish the condition necessary for an award in his favour, and his appeal therefore fails.

DIXON J. I agree.

This case illustrates the difficulties that arise in distinguishing between an appeal upon facts and an appeal upon law. Under sec. 37 of the *Workers' Compensation Act* a party may require the commission to state a case for the decision of the Supreme Court and the commission must then do so. In this particular case,

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instead of stating the precise findings, the commission has incorporated in a case which contains evidence its reasons for judgment. Its reasons contain a consideration of a decision which the House of Lords had pronounced in 1926 upon this very difficult section, sec. 7, and it contains various statements in relation to the facts. It is not very easy to disentangle the conclusions of the commission from the evidentiary matters with which the reasons deal and from the commission's answers on matters of law. Sub-sec. 2 of sec. 7, however, makes one condition essential to its application, and that is that the act done by the workman at the time when he received his injury should be one done for the purpose of and in connection with his employer's trade or business. In the present case the regulation which was infringed was one which forbade him to board an engine. He did board an engine, and, no doubt, because he infringed the regulation, sub-sec. 2 would apply so far as concerned the fulfilment of that particular condition of its application. The engine was going in the same direction as the work of the employee would have taken him. The commission has made no very distinct finding as to the reason why he boarded the engine, but it has stated that it was very likely that he did so in order to talk to a member of the engine crew. It is conceded that the burden of proof was upon the applicant, and to suppose that he may have had such a purpose is in these circumstances almost as good as a direct finding, because, as a reasonable supposition, or hypothesis, it would exclude or at least militate against a finding that his reason was to get to his journey's end in a more expeditious manner. The general facts of the case suggest that there is very little reason for thinking that he climbed on the engine for the purpose of being carried. In all the circumstances I think we are entitled to take it that the commission negatived definitely that the object was to pursue his master's business and believed that the object of it was purely personal and had no relation whatever to his master's business. If that be so, I am of opinion that sec. 7 (2) could not apply.

I am unable to agree with the statement that the mere objective fact that the engine is going in the same direction as the man was required to go is enough to make his journey one for the purposes of and in connection with his master's trade or business. I think

the provision necessarily requires a consideration of the actual purpose which guided the man's actions and does not allow of the case being considered from an entirely objective point of view. In those circumstances the suggestion that the commission misapprehended the effect of the decision of the House of Lords seems immaterial, because the commission has made one distinct finding of fact which supports its conclusion and is fatal to a contrary conclusion.

For these reasons I agree that the appeal should be dismissed.

Appeal dismissed with costs. Question 4 answered: Yes. It is unnecessary to answer any of the other questions.

Solicitors for the appellant, *C. Jollie Smith & Co.*

Solicitor for the respondent, *Fred. W. Bretnall*, Solicitor for Transport.

J. B.