[HIGH COURT OF AUSTRALIA.]

HETHERINGTON . . . . . APPELLANT;
CLAIMANT,

AND

AMALGAMATED COLLIERIES OF W.A. LIMITED . . . . . } RESPONDENT.
RESPONDENT,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

H. C. OF A. 1939.

MELBOURNE, *Oct.* 16.

SYDNEY, *Nov.* 28.

Latham C.J., Rich, Starke, Dixon, Evatt, and McTiernan JJ.

*Workers' Compensation—Personal injury by accident—Worker suffering from coronary arterio-sclerosis—Death caused by occlusion of coronary artery—Occlusion due to disease and worker's exertion—Workers' Compensation Act* 1912-1934 (*W.A.*) (*No.* 69 *of* 1912—*No.* 36 *of* 1934), *s.* 6 (1).*

The body of a worker who followed the occupation of a miner was found dead during his working hours in a roadway between the coal-face where he had been working and the surface of his employer's mine. The worker was in the act of returning to the surface, and immediately prior to his death had ascended a series of steps sixty yards in length and walked along an incline thereafter for about one-quarter of a mile to the place where his body was found. A post-mortem examination disclosed that his coronary artery was in an advanced state of arterio-sclerosis and that an occlusion or obliteration of that artery caused his death. On a claim by the worker's widow for compensation under the *Workers' Compensation Act* 1912-1934 (W.A.) the magistrate found on the medical evidence that the worker was likely to die at any time as a consequence of the disease but that the exertion which he had undertaken and the conditions in which he had been immediately prior to his death had contributed to or accelerated his death.

* Sec. 6 (1) of the *Workers' Compensation Act* 1912-1934 (W.A.) provides:—"If in any employment personal injury by accident arising out of or in the course of the employment, or whilst the worker is acting under the employer's instructions, is caused to a worker, his employer shall, subject as hereinafter mentioned, be liable to pay comsation in accordance with the First Schedule."

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*Held*, on this finding (there being evidence to support it), that the worker's death was the result of personal injury by accident suffered in the course of his employment within the meaning of sec. 6 (1) of the Act.

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

APPEAL from the Supreme Court of Western Australia.

James Hetherington, for some years prior to his death, had been a shiftman in the employ of Amalgamated Collieries of W.A. Ltd., at the Co-operative Mine at Collie (W.A.). At about 1.45 p.m. on 15th November 1937 the worker, apparently in good health and making no complaint of any illness, went to his work as usual at the mine. The worker was employed on the afternoon shift removing stone from the face of the bord, his regular occupation, and between 9 p.m. and 9.30 p.m. he left the coal-face to proceed to the surface. At about 9.30 p.m., at a place where it was his custom to rest, his dead body was discovered about one quarter of a mile below the surface in a "back heading" tunnel by which the employees travelled to the surface. The body was in a kneeling position on the roadway, the head resting on a baulk of timber and the legs sprawled apart. The worker's death occurred during his working hours.

In order to get to the place where his body was found the worker had to travel from the coal-face about seven chains on the level, climb an incline about one quarter of a mile, then over a series of steep steps known as "The Golden Stairs" or "Jacob's Ladder," about sixty yards in length, along another level six or seven chains and then ascend another incline about 1 in 7 or 1 in 8 for about one quarter of a mile. The tunnel where his body was found was a ventilation tunnel by which the exhaust air left the mine. The air in it was bad, as the tunnel carried off all foul air used by explosions, horses and employees. It also carried the dust and fumes incidental to the working of a coal-mine.

Under the *Workers' Compensation Act* 1912-1934 (W.A.) the worker's widow, Annie Coates Hetherington, claimed compensation from the employer in the Local Court at Collie in respect of the death of the worker as being the result of a personal injury suffered by him in the course of his employment. On the hearing, medical

evidence was called on behalf of both parties. The notes of the medical evidence were substantially as follows:—John McCall, medical practitioner (called by the applicant):—"I performed post-mortem on his body on 16th November 1937. . . . On post-mortem, I found coronary artery was obliterated, brain was congested and lungs also. Heart muscles showed small areas of degeneration. Other organs were normal. Cause of death was occlusion of coronary artery. That is blocking of the artery. He had been suffering from arterio-sclerosis prior to death. He should not have been doing work he was on at time of death. Work and walking and atmospheric conditions in my opinion hastened death. I don't think Hetherington would have died had it not been for work and walking and atmospheric conditions described. . . . I would not say that heart organs were in as bad a condition as they possibly could be in a human body. They were very bad. He was liable to die suddenly. He could have died at any time. It was a possibility. He might have died in his sleep. Death was not due to natural causes. Excessive work raised blood pressure. When he sat down it dropped. Heart could not pump blood. A good many people with arterio-sclerosis die sudden deaths—a high percentage do. They might die sitting down or after a meal or in their sleep. I could not say the particular day's work in preference to work over previous six months caused his death. Heart disease had extended over many years, gradually becoming worse. His death probably would have been sudden. . . . Work over a number of years would not have improved condition. Had deceased not gone to work he might have been living now. If better air and conditions his length of life would have been much greater. Each day's work accelerated progress of disease. There is apt to be a 'last straw' under these conditions." James Gordon Hislop, medical practitioner (called by the applicant):—"On hearing conditions of work, walking and air and result of post-mortem I am of opinion that those conditions plus the disease contributed to his death. Coronary occlusion is caused by a drop in blood pressure due in most cases to inability of heart muscle to keep up pressure. This is increased by poor blood supply allowed to heart muscle by pre-existing coronary vessel sclerosis.

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A man with coronary sclerosis can be found dead in bed. If exertion further affects an already affected heart muscle a stage will be reached when exertion must cease. Following a cessation of exertion a sudden fall of blood pressure may result, thus either occlude coronary arteries or render circulation through them inefficient. Deceased was a candidate for sudden death—work or no work. He may have died that day had he done no work at all. The fact that there was no complaint previously from deceased was consistent with state of heart. Fifty per cent of cases of arterio-sclerosis do not die sudden death. Advanced cases do provide majority of sudden deaths from coronary sclerosis. Work deceased was doing was not type of work he should have been doing. Congestion of brain and lung indicates that exertion had played some part in his death." Harold Raymond Smith, medical practitioner (called by the respondent) :—" On 16th November 1937 I attended post-mortem on Hetherington. Arteries were in a grossly diseased condition showing conditions of coronary sclerosis. Arteries were of a pipe-stem variety. Walls were calcified and hardened. I hardly think they could have been in a worse condition. Deceased died of coronary sclerosis and heart failure. Assuming he did same type of work under similar atmospheric conditions as for weeks before or years before I do not consider that such work on that day materially contributed to his death. Work over years naturally contributed to causation and progression of the disease. He was a candidate for sudden death. He could have died on day he did, work or no work. Each day's work gradually diminished strength of heart. It was an ' added straw to camel's back.' I would recommend lighter work for a man in deceased's condition prior to death. . . . I cannot say work and atmospheric conditions did not contribute at all to death. There was a little congestion of brain and lung. This does not suggest the cause of heart failure."

The magistrate found that the worker's heart condition was such that he might have died at any time with or without exertion but " that death was hastened or contributed to by conditions encountered by the deceased immediately prior to his death and throughout the day, and that death was not due to natural causes," and gave judgment for the applicant for £600 as compensation, it being

conceded that she was a dependant of the worker. From this decision the respondent appealed to the Full Court of the Supreme Court, which reversed the decision of the magistrate on the ground that " there was no real proof, in fact nothing more than surmise that the occlusion of the coronary artery which was the cause of his death arose from the deceased's work at all."

From the decision of the Supreme Court the applicant appealed to the High Court.

*Seaton*, for the appellant. The deceased, according to the magistrate's finding, died in doing something either in the course of his employment or arising out of the employment. According to the Western-Australian Act it need not be shown that the deceased died as a result of the work. The following cases show how the English courts have dealt with heart cases :—*Clover Clayton & Co. Ltd.* v. *Hughes* (1) ; *Ormond* v. *C. D. Holmes & Co. Ltd.* (2) ; *James* v. *Partridge Jones and John Paton Ltd.* (3) ; *Partridge Jones and John Paton Ltd.* v. *James* (4) ; *Walker* v. *Bairds and Dalmellington Ltd.* (5) ; *Lochgelly Iron and Coal Co. Ltd.* v. *Walkenshaw* (6) ; *Moore* v. *Tredegar Iron and Coal Co. Ltd.* (7) ; *Oates* v. *Earl Fitzwilliam's Collieries Co.* (8).

[LATHAM C.J. Are not the facts in *Moore's Case* (7) identical with those in this case ?]

It may be urged that in *Moore's Case* (7) there was a fall. [He was stopped.]

*Leake* K.C. (with him *A. L. Read*), for the respondent. From the facts it appears that the exertion of the work did not materially cause the death of the worker but the cause was the condition of the worker's coronary artery. He was apparently resting at the time of his death. The magistrate's finding is not in accordance with the evidence. The exertion did not materially affect the worker's health ; he was " a candidate for death," and one cannot point to any accident or incident which may have been induced by ordinary work.

(1) (1910) 3 B.W.C.C. 275.
(2) (1937) 2 All E.R. 795.
(3) (1933) 26 B.W.C.C. 277.
(4) (1933) A.C. 501.
(5) (1935) 28 B.W.C.C. 213.
(6) (1935) 28 B.W.C.C. 230.
(7) (1938) 31 B.W.C.C. 359.
(8) (1939) 2 All E.R. 498.

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The test is laid down by Lord *Loreburn* in *Clover Clayton & Co. Ltd.* v. *Hughes* (1). There must be some specific definable incident which brought about a physiological change. English cases on appeal are not of much value in Western Australia, as appeals to the Supreme Court and this court are by way of rehearing and this court is not bound by the magistrate's finding as the House of Lords is by the County Court in England. All other cases are mere illustrations of the above test. *James* v. *Partridge Jones and John Paton Ltd.* (2) has not extended the law enunciated in *Clover Clayton & Co.'s Case* (1). The meaning of "accident" is defined by Lord *Macnaghten* in *Fenton* v. *Thorley & Co. Ltd.* (3) and reiterated in *Coe* v. *Fife Coal Co. Ltd.* (4) as a particular event or occurrence which happens at some ascertainable time. In *Partridge Jones and John Paton Ltd.* v. *James* (5) there was a definite occurrence. *Ormond* v. *C. D. Holmes & Co. Ltd.* (6) is not different. There must be an untoward event not expected or designed. There was no unexpected occurrence in this case.

[DIXON J. referred to *McGuire* v. *Union Steamship Co. of New Zealand* (7).]

*Eagle* v. *Leonard & Dingley Ltd.* (8) illustrates how the court should approach a heart case. *Barnabas* v. *Bersham Colliery Co.* (9) is still good law and is unaffected by *James'* *Case* (5). [Counsel referred to *Ormond* v. *C. D. Holmes & Co. Ltd.* (10); *Miller* v. *Carntyne Steel Castings Co. Ltd.* (11); *Whittle* v. *Ebbw Vale Steel, Iron and Coal Co. Ltd.* (12); *Oates* v. *Earl Fitzwilliam's Collieries Co.* (13).] Numerous cases have followed *Barnabas'* *Case* (9). [Counsel referred to *Muscroft* v. *Stewarts & Lloyds Ltd.* (14); *Coe* v. *Fife Coal Co. Ltd.* (15); *Black* v. *New Zealand Shipping Co. Ltd.* (16); *Davies* v. *John Vipond & Co. Ltd.* (17); *Davis* v. *McNamara & Co. (1921) Ltd.* (18); *Treloar* v. *Falmouth Docks and Engineering Co. Ltd.* (19).] There must be an accidental injury; none is proved in this case.

(1) (1910) 3 B.W.C.C. 275.
(2) (1933) 26 B.W.C.C. 277.
(3) (1903) A.C. 443.
(4) (1909) 2 B.W.C.C. 8.
(5) (1933) A.C. 501.
(6) (1937) 2 All E.R. 795.
(7) (1920) 27 C.L.R. 570, at pp. 584, 591, 594.
(8) (1938) N.Z.L.R. 219.
(9) (1910) 4 B.W.C.C. 119.
(10) (1937) 2 All E.R. 795.
(11) (1934) 27 B.W.C.C. (Supp.) 101.
(12) (1936) 29 B.W.C.C. 179.
(13) (1939) 2 All E.R. 498.
(14) (1928) 21 B.W.C.C. 274.
(15) (1909) 2 B.W.C.C. 8.
(16) (1913) 6 B.W.C.C. 720.
(17) (1932) 25 B.W.C.C. 47.
(18) (1932) 25 B.W.C.C. 550.
(19) (1933) 26 B.W.C.C. 214, at p. 223.

*Seaton*, in reply. *Treloar* v. *Falmouth Docks and Engineering Co. Ltd.* (1) and *Ismay, Imrie & Co.* v. *Williamson* (2) show that accidental injury may be over a period of time.

[McTIERNAN J. referred to *McArdle* v. *Swansea Harbour Trust* (3).]

In that case the effect of earlier work was cumulative, and, although at the time of the onset the worker was doing the lightest work, he was entitled to recover. In *Walker* v. *Bairds and Dalmellington Ltd.* (4) the House of Lords states that *Partridge Jones and John Paton Ltd.* v. *James* (5) is an extension of *Clover Clayton & Co. Ltd.* v. *Hughes* (6). That case is also an illustration of accidental injury being over a period of time. [He was stopped.]

*Cur. adv. vult.*

Nov. 28.

The following written judgments were delivered :—

LATHAM C.J. Mrs. Annie Coates Hetherington, the appellant, is the widow of James Hetherington, who died on 15th November 1937. She claimed compensation from Amalgamated Collieries of W.A. Ltd. in respect of the death of her husband, which she alleged was caused by an accident arising out of or in the course of his employment by the company (*Workers' Compensation Act* 1912-1934, sec. 6 (1), of Western Australia). The substantial defence was that no accident took place and that there was accordingly no personal injury by accident as required by the section to which I have referred.

The magistrate sitting in the Local Court made an order in favour of the widow, which was set aside upon appeal to the Full Court. An appeal to the Full Court is not, in Western Australia, limited to questions of law, as in the case in the corresponding jurisdiction in England.

The Full Court was of opinion that there was no evidence of anything in the nature of an accident—that " there was no incident or occurrence during Hetherington's day's work which could be described as an accident." The Full Court also was of opinion

(1) (1933) 26 B.W.C.C. 214.
(2) (1908) A.C. 437.
(3) (1915) 8 B.W.C.C. 489.
(4) (1935) 28 B.W.C.C. 213.
(5) (1933) A.C. 501.
(6) (1910) 3 B.W.C.C. 275.

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that " there was no real proof that the occlusion of the coronary artery which was the cause of his death arose from the deceased's work at all." The widow has appealed to this court.

The deceased was a coal miner employed by the respondent company. He suffered from arterio-sclerosis, and any exertion might have caused a rupture of the hardened walls of an artery which might have brought about his death. Two of the three doctors who gave evidence agreed that " the deceased was a candidate for sudden death—work or no work."

On the day of his death Hetherington did his ordinary work in shifting stone. When he finished this work he had to return to the surface. The time spent in travelling between his working place and the surface was within the working hours for which he was paid. He had to walk up a steep incline and at one point had to climb for about sixty yards a steep series of steps known as " Jacob's Ladder " or the " Golden Stairs." He had ascended this portion of his path, and a few minutes afterwards his dead body was discovered in a kneeling position in the centre of the road with the legs sprawled apart. A post-mortem examination showed an advanced state of arterio-sclerosis, the walls of the arteries being calcified and hardened. The three doctors who were called agreed that the cause of death was occlusion of the coronary artery. Two doctors were of opinion that his work and the walking and climbing which he had to do on the day of his death in the atmospheric conditions which existed in the mine contributed, together with his disease, to his death.

The magistrate expressed his findings of fact in the following words :—" I believe that Hetherington's collapse and death were due to the effect, on his already affected heart, of the exertion of the day's work and the arduous climb in foul air from the working place to the place of his death. . . . I accept the evidence of Drs. McCall and Hislop, that death was hastened or contributed to by conditions encountered by the deceased, immediately prior to his death and throughout the day." There was evidence to support these findings, and there is, in my opinion, no reason why they should be set aside.

The evidence shows that on the day in question the deceased was doing his ordinary work. There is no evidence of any exceptional or unusual strain or other specific event to which his death can be attributed. The finding of the magistrate was that an ordinary incident of his employment contributed to his death. The respondent contends that in such a case it cannot be said that there was any personal injury by accident as required by the Act.

Reference has been made to many cases where the facts were more or less similar to those which were established in the present case. It is not now possible to deal with such a question as that which here arises as if the court had a *tabula rasa* upon which to inscribe its opinion. The *Workers Compensation Act* has been the subject of very many decisions, and principles have been worked out which it is the duty of the court to apply, even if it might have been thought that a different interpretation of the provisions of the Act was originally open.

In the leading case of *Fenton* v. *Thorley & Co. Ltd.* (1) the House of Lords explained the meaning of the words "injury by accident." It was there held that the phrase "injury by accident" meant accidental injury, so that an injury which was in the nature of a mishap or untoward event which was not expected or designed was an injury by accident within the meaning of the Act. Accordingly, since this decision, it has not been necessary to show, first, that something to be described as an accident happened, and secondly, that something else, namely, an injury, was brought about or caused by that accident. If the injury is of the character described, it is an accidental injury and is an injury by accident within the meaning of the Act. Thus, in *Fenton* v. *Thorley & Co. Ltd.* (1) a workman who, being employed to turn the wheel of a machine, over-exerted himself and thus ruptured himself was held to have suffered an injury by accident. In *Clover Clayton & Co. Ltd.* v. *Hughes* (2) it was decided by the majority in the House of Lords that a workman who, suffering from an aneurism, ruptured the aneurism by a strain arising out of his ordinary work in tightening a nut by a spanner, and died as a result, had suffered personal injury by accident within the meaning of the Act. After referring to

(1) (1903) A.C. 443. (2) (1910) A.C. 242.

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*Fenton* v. *Thorley & Co. Ltd.* (1) Lord *Loreburn* L.C. said: "It seems to me enough if it appears that the employment is one of the contributing causes without which the accident which actually happened would not have happened, and if the accident is one of the contributing causes without which the injury which actually followed would not have followed" (2); and, further (3): "In each case the arbitrator ought to consider whether in substance, as far as he can judge on such a matter, the accident came from the disease alone, so that whatever the man had been doing it would probably have come all the same, or whether the employment contributed to it." Lord *Macnaghten*, who was one of the learned Lords constituting the majority, quoted the finding of the learned judge of the County Court as follows: "The death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal" (4). He continued: "The fact that a man's condition predisposed him to such an accident seems to me to be immaterial."

The same approach to the subject is shown in the case of *Partridge Jones and John Paton Ltd.* v. *James* (5). This was a case where the deceased workman suffered from disease of the coronary arteries. "His state was such that, although he might die at any time without any act of physical exertion, any such exertion was dangerous and likely to lead to heart failure" (6). His ordinary work was laborious in character. On the day when he died he did this work and died about ten minutes after he had stopped work. It was held that he suffered injury by accident. Lord *Buckmaster*, delivering the opinion of the House, referred to *Clover Clayton & Co. Ltd.* v. *Hughes* and particularly to the passages to which I have referred. He added a specific approval of what Lord *M'Laren* said in *Stewart* v. *Wilsons and Clyde Coal Co. Ltd.* (7): "If a workman in the reasonable performance of his duties sustains a physiological injury as the result of the work he is engaged in . . . this is accidental injury in the sense of the statute" (8). This authority therefore supports the proposition that, where a man is suffering from a disease of such

(1) (1903) A.C. 443.
(2) (1910) A.C. 242, at p. 245.
(3) (1910) A.C., at p. 247.
(4) (1910) A.C., at p. 249.
(5) (1933) A.C. 501.
(6) (1933) A.C., at p. 502.
(7) (1902) 5 Fraser 120, at p. 122.
(8) (1933) A.C., at p. 506.

a character that any exertion may bring about his death and the exertion which he happens to make in doing his work does in fact contribute to his death, he may rightly be said to have suffered personal injury by accident arising in the course of his employment.

These principles have been applied in two cases which have been reported since the Full Court of the Supreme Court of Western Australia gave its decision and to which, therefore, that court was not able to refer. *Moore* v. *Tredegar Iron and Coal Co. Ltd.* (1) was a case which is strikingly similar to the present case. A collier did his work and while on his way to the surface dropped dead. He suffered from a disease of the heart. There was no evidence of any particular strain or of anything abnormal in his day's work. It was held by the Court of Appeal that this circumstance was not conclusive against the applicant. The only difference on the facts between *Moore's Case* (1) and the present case seems to be that in *Moore's Case* the deceased miner was seen to fall and collapse, whereas in the present case he was discovered in a state of collapse and death.

In the case of *Oates* v. *Earl Fitzwilliam's Collieries Co.* (2) the Court of Appeal, consisting of three Lords Justices, none of whom had sat in the case last mentioned, dealt with another case of a man suffering from heart disease who while doing his ordinary work suddenly felt pain and died of heart failure two hours afterwards. The evidence showed that a rupture of the aortic cusp had taken place three or four weeks before his death. In the absence of any evidence of any specific incident leading to the heart failure on the day of his death, it was argued that there was no case of accident but simply a case of disease. *Clauson* L.J., who delivered the judgment of the court, in directing that the case should be remitted for a fresh hearing, stated the principles which the court regarded as relevant. In the first place it was stated that the question of the liability of the employer did not necessarily depend upon "the question whether or not a specific injury arising from some specific act could be shown to have taken place" (3). *Clauson* L.J. said: "In our judgment, it is clear since the decision of the House of Lords in

(1) (1938) 31 B.W.C.C. 359.
(2) (1939) 2 All E.R. 498.
(3) (1939) 2 All E.R., at p. 502.

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*Partridge Jones and John Paton Ltd.* v. *James* (1) that such a method of dealing with the case would be erroneous, and, if it was in fact so dealt with, the decision cannot stand" (2). The principle mentioned seems now to be well established, and it disposes of one of the grounds of the decision of the Full Court in favour of the respondent in the present case.

In the second place, in *Oates' Case* (2), the court stated a general proposition dealing with the case of a man suffering from a disease who happens to die because his ordinary work, combined with the disease, brings about his death. The proposition is as follows:— "In our judgment, a physiological injury or change occurring in the course of a man's employment by reason of the work in which he is engaged at or about that moment is an injury by accident arising out of his employment, and this is so even though the injury or change be occasioned partly, or even mainly, by the progress or development of an existing disease if the work he is doing at or about the moment of the occurrence of the physiological injury or change contributes in any material degree to its occurrence. Moreover, this is none the less true though there may be no evidence of any strain or similar cause other than that arising out of the man's ordinary work." I respectfully suggest that the words "or change" should be omitted in this statement because it cannot be said that every physiological change, whatever its character may be, is necessarily an injury. Apart from this criticism the statement quoted appears to me to state the actual result of the decisions in the House of Lords, and, in my opinion, it should be adopted and applied by this court.

As I have already said there is, in my opinion, evidence to support the finding of the magistrate that the arduous climb in foul air from his working place contributed in a material degree to the death of the deceased. Upon the reasoning which I have above stated it follows that the deceased suffered personal injury by accident, and, if this element is established, it is not disputed that the injury by accident arose in the course of his employment. In my opinion, therefore, the decision of the magistrate was right and should be restored.

The appeal should be allowed.

(1) (1933) A.C. 501.

(2) (1939) 2 All E.R., at p. 502.

RICH J. The difficulty of deciding a case under Workmen's Compensation Acts is not usually lessened by dicta in reported decisions. But in this case the magistrate found that "death was hastened or contributed to by conditions encountered by the deceased immediately prior to his death and throughout the day, and was not due to natural causes;" and at the end of his reasons the magistrate states:—"There is positive medical evidence, which I believe, that the exertion of the day hastened or contributed to death. There is undisputed evidence that this exertion continued, with only brief respite, up to the moment of death." It is true, as Mr. *Leake* says, that we are entitled under the law of Western Australia relating to appeals to look at the evidence, but it supports this finding and conclusion and constitutes an accident within the meaning of the Western-Australian *Workers' Compensation Act*. I refrain from adding any dictum or formula of my own to the catalogue to be found in the chain of cases which provoke appeals and harass the minds of counsel and judges.

In my opinion the appeal should be allowed.

STARKE J. The appellant, the widow of James Hetherington, took proceedings before the Local Court at Collie in Western Australia for compensation under the *Workers' Compensation Act* 1912-1934 of that State. It appeared from the evidence that Hetherington was a shiftman employed by the respondent in a colliery. He was so employed on 15th November 1937 and had completed work on his shift and was returning to the surface. He had climbed a stepped and steep incline known as "Jacob's Ladder" or the "Golden Stairs" and was found dead some little distance beyond the incline and before he had reached the surface. The medical evidence showed that his heart was in a very bad condition, that he suffered from arterio-sclerosis, and that the immediate cause of his death was an occlusion of the coronary arteries. In the Local Court, where the proceedings were heard, the magistrate found that Hetherington's "collapse and death were due to the effect, on his already affected heart, of the exertion of the day's work, and the arduous climb in foul air from the working place to the place of his death" and he accepted the medical evidence

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that Hetherington's "death was hastened or contributed to by conditions encountered by the deceased, immediately prior to his death and throughout the day, and that death was not due to natural causes."

Upon appeal, however, the learned judges of the Supreme Court held that there was no real proof, in fact nothing more than surmise, that the occlusion of the coronary arteries, which was the cause of Hetherington's death, arose from the deceased's work at all. Any party, we were told, dissatisfied with the judgment of the Local Court, was entitled to appeal to the Supreme Court upon matters of fact as well as upon matters of law (*Local Courts Act* 1904, Part VII.).

The findings of the magistrate, however, appear to me, with deference to the learned judges, to be in accordance with the evidence and the probabilities of the case. Consequently the decision of the appeal should have proceeded on that basis. It is then clear, I think, that the judgment or award in favour of the appellant should have been sustained. The decisions of the House of Lords in *Clover Clayton & Co.* v. *Hughes* (1) and *Partridge Jones and Paton Ltd.* v. *James* (2) are decisive. Personal injury by accident arises out of or in the course of employment "when the required exertion producing the accident is too great for the man undertaking the work, whatever the degree of exertion or the condition of health" (*Clover Clayton & Co.* v. *Hughes* (3)). "If a workman in the reasonable performance of his duties" (here, returning to the surface from his working place) "sustains a physiological injury as the result of the work he is engaged in . . . this is accidental injury in the sense of the statute" (*Partridge Jones and John Paton Ltd.* v. *James* (4); *Stewart* v. *Wilsons and Clyde Coal Co. Ltd.* (5)). It is not necessary to show that the workman suffered an injury as the result of some definite thing he did in the course of his work (*Partridge Jones and John Paton Ltd.* v. *James* (6)). But it is in all cases a question of fact whether in substance the accident came from the disease alone or whether the employment contributed to it (*Clover Clayton & Co.* v. *Hughes* (3)). If the work and the disease together

(1) (1910) A.C. 242.
(2) (1933) A.C. 501.
(3) (1910) A.C., at p. 247.
(4) (1933) A.C., at p. 506.
(5) (1902) 5 Fraser, at p. 122.
(6) (1933) A.C., at p. 504.

contribute to the injury, it is impossible to deny that the case is within the meaning of the Act as now interpreted (*Partridge Jones and John Paton Ltd.* v. *James* (1); *Moore* v. *Tredegar Iron and Coal Co. Ltd.* (2); *Oates* v. *Earl Fitzwilliam's Collieries Co.* (3)).

This appeal should be allowed.

DIXON J. Under sec. 6 (1) of the *Workers' Compensation Act* 1912-1934 (W.A.) any employer is liable to pay compensation if personal injury by accident arising out of or in the course of the employment is caused to a worker.

The worker in the present case died in consequence of a coronary occlusion, and the question is whether his widow is entitled to compensation under the provisions of the section. The worker was a miner, and his death occurred underground as he was making his way from the face, where he had been at work, to the surface. After finishing his shift, he had travelled some distance on foot. He had climbed up a steep incline and was walking along a tunnel. From the position in which his body was found it would seem that he had sat down to rest and had then collapsed.

A post-mortem examination was made and, according to the evidence of the two medical men who made it, the coronary arteries were calcified and hardened and were of a pipe-stem description. It was found that a complete occlusion or obliteration of a coronary artery had taken place. The medical evidence is meagre and contains no explanation or discussion of the exact physiological effects resulting in death which the ischaemia may be supposed to have produced, nor of the immediate reason bringing about the blockage itself. Some symptoms of infarction are mentioned: but there is no reference to thrombosis. Opinions were expressed that, in his advanced state of coronary arterio-sclerosis, the worker's exertions in the day's work and in walking back towards the place where he was found contributed to his death, or "hastened" it, that is, as I understand it, played a part in determining that death should then and there occur. The theory was put forward in evidence that the deceased's blood pressure was raised by his

(1) (1933) A.C., at p. 506. (2) (1938) 31 B.W.C.C. 359.
(3) (1939) 2 All E.R. 498.

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exertions and that, on his sitting down, it dropped and a block took place. The arterio-sclerosis had, of course, developed slowly, and the deceased's condition was such that he might have died at any time and independently of any specific exertion or effort. It is unfortunate that we have not the advantage of a full explanation and discussion of the physiological and pathological factors which are involved. Many of the reported decisions of the courts in which the sudden culmination of a morbid condition has been held to amount to injury by accident probably disclose a good deal of misconception as to pathological occurrences. Modern law seems unable to adopt tests of liability that consist in simple external occurrences, plain and objective; the law persistently turns to criteria involving causation. As a result, liability is often found to depend upon considerations which can only be elucidated by an examination of obscure phenomena and the application of scientific theories or conceptions. To add to the difficulty and uncertainty which must attend the ascertainment of rights and liabilities depending on standards of such a description, the tribunals upon whom the task falls are severely limited by the rules of evidence in the sources of information and instruction on which they may rely. There can be little wonder that some unsoundness can be discovered in the combination of legal and scientific reasoning guiding many of the decisions on claims that injury by accident has been sustained because, under the influence of particular exertion or the like, an injurious change of a pathological or physiological kind has occurred in the condition of a workman suffering from a progressive organic disease. But the court must in each instance act upon the evidence before it, and, in the present case, that evidence appears to me to support the conclusion, which, in substance, the magistrate reached, namely, that the coronary occlusion causing the worker's death came about as he was making his way to the surface and that to its occurrence at that particular time and place the exertion of his day's work and of walking towards the outlet contributed to a material extent.

Surprising as it may seem, such a cause of death falls within the definition of injury by accident arising out of the employment. As a matter of common speech, the expression "injury by accident"

appears inappropriate and inapplicable. But a long course of judicial decisions has extracted from the expression latent implications which make the test of the employer's liability independent of such things as external mishap, traumatic injury and unusual or unexpected incidents of work or duty. " There may be personal injury by accident even though the employee's work has proceeded in the normal way and even though the injury is due to the presence of a special condition in the employee's body " (per Lord *Tomlin*, *Walker* v. *Bairds & Dalmellington Ltd.* (1) ). In *McFarlane* v. *Hutton Brothers (Stevedores) Ltd.* (2), a stevedore suffering from disease of the coronary arteries experienced a strain while pulling a tub in the ordinary course of his work. Shortly afterwards he died. It was decided that his death was due to injury by accident arising out of and in the course of his employment on the ground that such an injury may be occasioned by an internal disarrangement of the physical structure of the body although produced by no unexpected external condition or event, but by the ordinary course of the man's work (per *Atkin* L.J. (3) ). Again, in *Lochgelly Iron and Coal Co.* v. *Walkenshaw* (4), it was held by the House of Lords that to entitle a workman to compensation for incapacity due to " an attack of cardiac insufficiency " it was enough that " the hard work on which the claimant was engaged induced the breakdown of his enfeebled heart " (5).

In *Ormond* v. *C. D. Holmes & Co. Ltd.* (6) Lord *Romer*, as he now is, summarized the result of the decisions as follows :—" If a man be incapacitated solely by reason of the fact that he is suffering from a disease, the incapacity is not due to personal injury by accident. It may be possible, in certain cases, to attribute the contraction of the disease to an accident, that is to say, to some unlooked-for mishap, or untoward event, and, when that can be done, and the disease results in an incapacity, it may rightly be said that the incapacity is one caused by that accident. But the disease itself is not an accident, in the popular and ordinary sense of that word. If a man

(1) (1935) 153 L.T. 322, at pp. 325, 326; 28 B.W.C.C. 213, at p. 224.
(2) (1926) 136 L.T. 547 ; 20 B.W.C.C. 222.
(3) (1926) 136 L.T., at p. 550.
(4) (1935) 28 B.W.C.C. 230.
(5) (1935) 28 B.W.C.C., at p. 234.
(6) (1937) 2 All E.R., at p. 801 ; 157 L.T. 56, at p. 59.

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should die suddenly of heart disease, without any contributing cause, no one would say that his death was accidental or due to an accident. In some cases, however, incapacity is caused by a disease in conjunction with a contributory cause. A man, for instance, may be suffering from a disease of the heart that sooner or later is bound to cause his death. His death, however, from the disease may be accelerated by some particular, though not necessarily an unusual, act of exertion. In those cases, the death or incapacity can properly be said to be caused by an accident, and, where the contributing cause is furnished by and in the course of the injured workman's employment, he is entitled to compensation under the Act."

In *Moore* v. *Tredegar Iron and Coal Co. Ltd.* (1) the Court of Appeal held that, where the workman's death was attributable to disease of the heart and occurred after ceasing work, the question for consideration was whether the work which he had been doing on that day caused or contributed to his death, or in any way accelerated it and that the injury should not be limited to something abnormal or special in the work.

In *Oates* v. *Earl Fitzwilliam's Collieries Co.* (2) *Clauson* L.J., on behalf of the Court of Appeal, restated the law :—" A physiological injury or change " (*scil.*, leading to death or incapacity) " occurring in the course of a man's employment by reason of the work in which he is engaged at or about that moment is an injury by accident arising out of his employment, and this is so even though the injury or change be occasioned partly, or even mainly, by the progress or development of an existing disease if the work he is doing at or about the moment of the occurrence of the physiological injury or change contributes in any material degree to its occurrence. Moreover, this is none the less true though there may be no evidence of any strain or similar cause other than that arising out of the man's ordinary work " (3).

In my opinion, the facts of the present case fall within the principles explained in the foregoing citations. The judgment of the Supreme Court to the contrary was, I think, based on two considerations,

(1) (1938) 31 B.W.C.C. 359.
(2) (1939) 2 All E.R. 498.
(3) (1939) 2 All E.R. 498, at p. 502.

one of law and one of fact. Their Honours appear to have thought that legal significance should be given to the fact that the deceased had done nothing other than the work he had been doing for years. The more recent decisions have established, however, that the absence of any unusual effort or incident in the course of work is not important. The consideration of fact was that in their Honours' view there was no real proof, but only surmise, that the occlusion of the coronary artery arose from the deceased's work at all. No doubt there is wisdom in a cautious refusal to adopt an affirmative conclusion on such a question of causation. But a court can only be guided by the evidence adduced in a given case, and here medical witnesses expressed a definite opinion which the magistrate accepted to the effect that the work done by the deceased and his exertion in climbing up towards the outlet did contribute to his death. As the evidence stands I do not think that the conclusion of the magistrate should be disturbed.

In my opinion the appeal should be allowed and the judgment of the Local Court restored.

Evatt J. The judgment of the Local Court in favour of the present appellant was set aside by the Supreme Court mainly upon the ground that the physiological injury or change suffered by the worker (i.e., the occlusion of the coronary artery) although amounting to "personal injury" could not, of itself, constitute "personal injury by accident" within the meaning of sec. 6 (1) of the *Workers' Compensation Act* 1912-1934 of the State of Western Australia.

So far as is material to this point, the English Act contains the same wording. Accordingly, the appellant has relied upon Lord *Buckmaster's* important judgment in *Partridge Jones and John Paton Ltd.* v. *James* (1). There, as here, the workman's daily duties were extremely laborious, but it was not possible to isolate as an "accident" any particular performance of duty. But the Full Court says of *James's Case*: "It is true that in the course of his judgment Lord *Buckmaster* made some observations which would suggest that it was unnecessary to show that anything in the nature of an accident had occurred in the course of the deceased's work, but that was merely *obiter*."

(1) (1933) A.C. 501.

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But the better view is that Lord *Buckmaster's* judgment founds itself upon the broad principle that the disabling physiological change or injury which occurs to the workman in the course of the employment and to which the labour of the day has contributed may, of itself and by itself, amount to " personal injury by accident." In England, this is the accepted interpretation of *James's Case* (1), as is evidenced by the definition recently suggested by *Clauson* L.J. in *Oates's Case* (2). Such definition postulates that the labour at which the workman is engaged " at or about the moment " of the disabling physiological injury or change must contribute in some " material degree " to such injury or change. But, so long as it does so contribute, it is unnecessary to prove that the labour involved any special strain. True, the labour of a very long period of work may have contributed to or caused the ultimate injury, but, if the work of the last day or the last hour or the last minute has contributed, that is sufficient to attract liability.

In my opinion, the Full Court should not have reversed the decision of the Local Court to the effect that the workman had sustained " personal injury by accident." I agree with the statement of the Local Court :—" Clearly it would be introducing something foreign to the *Workers' Compensation Act* to hold that the injury should be referable to a specific act. An injury might be referable to a specific event—usual or unusual, or to one or more of a miscellaneous series of events or to nothing outstanding in the day's work as in *James's Case* (1) and *Whittle's Case* (3)."

The Full Court of Western Australia also held that " there was no real proof, in fact nothing more than surmise, that the occlusion of the coronary artery, which was the cause of his death, arose from the deceased's work at all." I doubt whether this defence was raised or intended to be raised by the particulars of defence filed in the Local Court, or by the grounds of appeal to the Full Court. Moreover, as it was conceded that the injury arose " in the course " of the worker's employment, it does not seem to be material that it did not arise " out of " such employment (*Whittingham* v. *Commissioner of Railways* (*W.A.*) (4) ).

(1) (1933) A.C. 501.
(2) (1939) 2 All E.R., at pp. 502, 503.
(3) (1936) 29 B.W.C.C. 179.
(4) (1931) 46 C.L.R. 22.

However, in order to determine the nature of the injury sustained by the deceased, the Local Court found that the exertion of the day's work right up to and including the period immediately preceding death "hastened or contributed to" such death. If so, it is, of course, no answer that the worker's heart condition "was such that he might have died at any time with or without exertion." There was ample medical evidence warranting the Local Court's finding on this aspect of the case, and I think that any other finding would have been unreasonable.

This appeal can be disposed of merely by reference to the accepted principles laid down in the English cases. But, as I have already indicated, recovery may be had under the Western-Australian Act if the worker sustains personal injury by accident arising "in the course of" the employment, whether or not the accident has arisen "out of" the employment. Obviously the disjunctive form of expression has been used by the legislature so that the area of compensation shall extend beyond that permitted by the English Act. Where it is necessary, this important distinction will require further consideration. In this case, it is not necessary.

In my opinion, the appeal should be allowed and the judgment of the Local Court restored.

McTiernan J. I agree.

The decisions which are reviewed in the reasons for judgment of other justices make it clear that an occlusion of the coronary artery, which was the cause of the worker's death, is an injury by accident within sec. 6 (1) of the *Workers' Compensation Act* 1912-1934 of Western Australia. That section provides that the employer is liable to pay compensation if personal injury by accident arising out of or in the course of the employment is caused to a worker. The conditions of liability are there expressed to be alternative, not cumulative.

All the medical witnesses appear to have agreed that the post-mortem examination of the deceased worker showed that the condition of the heart was such that he might have died at any time with or without exertion. But the magistrate clearly found that the exertion of the deceased's work contributed to his death. The finding is very amply supported by the evidence, and it is impossible to disagree with it. The findings of fact are as follows: —"I believe that Hetherington's collapse and death were due to

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the effect, on his already affected heart, of the exertion of the day's work and the arduous climb in foul air from the working place to the place of his death. The deceased had rested at the top of 'Jacob's Ladder.' He had walked on for about another six or seven chains on the level, and for the remainder—making up a quarter of a mile— uphill on a grade of 1 in 7 or 1 in 8. He then collapsed, apparently after pausing again to rest. During the day, and even for years previously, he had shown no symptoms of disease. Apart from the heart condition the deceased had no other weakness likely to bring death from natural causes. The length and grade of the exit tunnel, the stairway, the conditions under foot, and the atmospheric conditions resulted in every miner being 'puffed' when he arrived at the surface. Such laborious walking and a day's work shifting stone were too much for a man in Hetherington's condition. On the undisputed medical evidence death was due to blocking of the coronary artery. This was explained by Dr. Hislop to have been due probably to the inability of the heart to keep up the blood pressure after the cessation of exertion. Obviously, the exertion of the 15th November 1937, was the last straw referred to by medical witnesses which caused the blood pressure that a weakened heart was unable to maintain. I accept the evidence of Drs. McCall and Hislop, that death was hastened or contributed to by conditions encountered by the deceased, immediately prior to his death and throughout the day, and that death was not due to natural causes."

Upon these findings of fact the magistrate, in my opinion, was correct in deciding that the appellant was liable to pay compensation on the ground that the cause of the worker's death was a personal injury arising in the course of his employment.

*Appeal allowed with costs. Order of Supreme Court set aside. Judgment of Local Court restored. Respondent to pay appellant's costs of appeal to Supreme Court and High Court.*

Solicitor for the appellant, *L. D. Seaton.*

Solicitors for the respondent, *Northmore, Hale, Davy & Leake,* by *Hedderwick, Fookes & Alston.*

O. J. G.