Appr *Comr for Superannuation v Miller* (1985) 8 FCR 153

Appl *Hood Constructions Pty Ltd v Nicholas* (1987) 9 NSWLR 60

[HIGH COURT OF AUSTRALIA.]

LINDEMAN LIMITED . . . . . APPELLANT;
RESPONDENT,

AND

COLVIN . . . . . RESPONDENT.
APPLICANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1946.

SYDNEY, *Aug.* 20.

MELBOURNE, *Oct.* 7.

Latham C.J., Starke, Dixon, McTiernan and Williams JJ.

Workers' Compensation—"Injury arising out of and in the course of the employment"—Second injury sustained by worker while convalescing in hospital from effects of original injury—Original and second injuries—Causal connection—Workers' Compensation Act 1926-1942 (*N.S.W.*) (*No.* 15 *of* 1926—*No.* 13 *of* 1942), *ss.* 6 (1), 7, 9, 37 (4).

A worker sustained a head injury which arose out of and in the course of his employment and resulted in total incapacity for work for a period. Before that period ended, but while he was convalescent in hospital, he, his medical attendant having said that he could walk in the grounds, if the weather was fine and warm and that he should move about, proceeded to walk in the hospital grounds and whilst walking down a flight of steps his left leg broke. The fractured leg caused an additional period of some months of total incapacity for work. The worker suffered from a pathological condition of the bones which rendered his leg liable to spontaneous fracture in the ordinary course of walking. The Commission found as a fact that walking down the steps was an integral part of the treatment prescribed for his head injury and that the chain of causation between the head injury and the total incapacity for the further period was unbroken and awarded the worker compensation as for total incapacity for work during the whole of the extended period.

Held, by *Latham* C.J., *Starke*, *Dixon* and *Williams* JJ. (*McTiernan* J. dissenting), that there was no evidence of a sufficient causal connection between the original head injury and the subsequent fracture of the worker's leg; accordingly in making such award the Commission had erred in law.

Decision of the Supreme Court of New South Wales (Full Court), by majority, reversed.

H. C. OF A. 1946. LINDEMAN LTD. v. COLVIN.

APPEAL from the Supreme Court of New South Wales.

An application under the *Workers' Compensation Act* 1926-1942 (N.S.W.) was made on 7th August 1945 to the Workers' Compensation Commission by Hugh Colvin for compensation claimed to be payable by Lindeman Ltd. for alleged total incapacity for work as from 28th March 1944 to 18th September 1944, both dates inclusive, arising from a head injury sustained by Colvin on 28th March 1944 whilst employed as a vineyard worker by the company at its vineyard at Corowa, New South Wales, and from a broken leg sustained by him while convalescing at the Corowa District Hospital from the effects of the head injury.

It was admitted that payments at the rate of £4 per week as from 28th March 1944 to 26th May 1944 had been made by the company to Colvin.

The company denied, *inter alia*, its liability to pay compensation in respect of the incapacity sustained by Colvin as a result of breaking his leg whilst in hospital, and at the hearing relied on the ground that Colvin did not thereby receive personal injury arising out of and in the course of his employment.

The Commission made the following findings of fact :—

(*a*) Colvin received a head injury on 28th March 1944 in respect of which he was compensated up to 26th May 1944 at the rate of four pounds (£4) per week ;

(*b*) The head injury caused Colvin—

(i) total incapacity for work for approximately two months—up to at least 28th May 1944 and thereafter ;

(ii) partial incapacity for work up to 18th September 1944 ;

(*c*) For the purpose of treatment necessitated by the head injury Colvin was admitted to Corowa District Hospital and he had reached a stage of convalescence at which it was considered desirable by his doctor that he should leave the hospital ward each day and spend a certain amount of time in the hospital grounds in the open air ;

(*d*) On 28th April 1944, Colvin for the purposes above-mentioned was walking down a flight of the hospital steps when his leg broke necessitating further hospital treatment and involving his total incapacity for work up to 18th September 1944 ;

(*e*) Colvin suffered from a condition of the bones which would render his leg liable to spontaneous fracture—in other words —the bones of the leg were brittle and liable to break in the ordinary course of walking either on level ground or down

steps, without the intervention of a slip or stumble or other untoward event such as would be necessary in the case of a person with normal bone development ;

(*f*) Colvin broke his leg when stepping down from one step to another, the impact resulting therefrom causing a fracture of his leg ;

(*g*) At the time of this leg injury Colvin was engaged in walking down steps which was an integral part of the treatment prescribed for his head injury ;

(*h*) Colvin's incapacity for work from 27th May 1944 to 18th September 1944 may be divided into two parts as follow :—
(i) as a result of the head injury applicant was partially incapacitated from 27th May 1944 to 18th September 1944 ;
(ii) as a result of the leg injury the before-mentioned partial incapacity was increased to total incapacity.

The Commission held that the chain of causation between the original head injury and the incapacity consequent thereon and continuing up to 18th September 1944 was unbroken and awarded Colvin weekly compensation at the rate of £4 from 27th May 1944 to 18th September 1944, in respect of total incapacity for work.

In a case stated, at the request of the company, under s. 37 (4) of the Act the questions for the decision of the Supreme Court were :—

1. Did the Commission err in law in holding that the worker's total incapacity between 27th May 1944 and 18th September 1944 resulted from an injury of 28th March 1944, which arose out of and in the course of his employment with the appellant ?

2. Did the Commission err in law in holding that the chain of causation between the worker's head injury of 28th March 1944, and his incapacity which lasted up to 18th September 1944, was unbroken ?

3. Did the Commission err in law in making an award of compensation as for total incapacity between 27th May 1944 and 18th September 1944 in favour of the worker ?

The Full Court of the Supreme Court (*Jordan* C.J., *Davidson* and *Street* JJ.) answered all three questions in the negative.

From that decision the company, by special leave, appealed to the High Court upon the condition that it pay the costs of the appeal in any event.

Wallace K.C. (with him *Bruxner*), for the appellant.

Miller K.C. (with him *Wall*), for the respondent.

Cur. adv. vult.

H. C. OF A. 1946. LINDEMAN LTD. v. COLVIN. Oct. 7.

The following written judgments were delivered :—

LATHAM C.J. Appeal by special leave from an order of the Full Court of the Supreme Court of New South Wales made upon a case stated by the Workers' Compensation Commission under the *Workers' Compensation Act* 1926-1942 (N.S.W.), s. 37 (4).

The case sets out findings of fact made by the Commission. The respondent received a head injury arising out of and in the course of his employment which caused total incapacity for work up to at least 28th May 1944 and thereafter partial incapacity up to 18th September 1944. For the purpose of treatment of the head injury he was admitted to the Corowa District Hospital. The doctor who was in charge of him told him that " he could walk about in the grounds so long as it was nice and warm." On 28th April 1944 he was walking down a flight of steps when his leg broke. He suffered from a condition of the bones " which would render his leg liable to spontaneous fracture—in other words—the bones of the leg were brittle and liable to break in the ordinary course of walking either on level ground or down steps, without the intervention of a slip or stumble." There was no evidence of any slip or stumble. One finding of fact made by the Commission is expressed as follows : " At the time of this leg injury the worker was engaged in walking down steps which was an integral part of the treatment prescribed for his head injury." The Commission decided that the fracture of the leg resulted from the head injury which arose out of and in the course of his employment, and that it therefore was an injury in respect of which he was entitled to compensation.

The first question submitted to the Supreme Court was : " Did the Commission err in law in holding that the worker's total incapacity between 27th May 1944 and 18th September 1944 resulted from an injury of the 28th March 1944, which arose out of and in the course of his employment with the appellant ? "

Two other questions were submitted, the answers to which depend upon the answer given to the first question. The evidence given before the Commission was attached to and made part of the case. The Full Court answered all the questions in the negative, with the result that the award of compensation in respect of the fracture of the leg stands. Special leave to appeal to this Court was granted.

The question whether the fracture of the leg and the consequent incapacity resulted from the head injury is a question of fact, but the question whether there was evidence upon which it could be held that the fracture so resulted is a question of law, and this is the real question which is before the Court.

The Full Court held that the statement that walking was "an integral part of the treatment prescribed for the head injury" was decisive of the case because it was established law that an injury resulting from normal medical treatment of an injury arising out of or in the course of employment was an injury regarded as arising out of the employment (*Shirt* v. *Calico Printers' Association Ltd.* (1); and see *Dunham* v. *Clare* (2)).

The head injury did arise out of the worker's employment. If the fracture of the leg was due to the head injury—if, for example, the head injury made the respondent dizzy so that he fell and the fall was the cause of the fracture of the leg, it would be possible to hold that the leg injury arose out of the employment. The appellant contends that the evidence permits only of the conclusion that the leg injury was due to the bone disease from which the respondent suffered and that it was quite independent of the original injury.

The leg injury arose while the respondent was being treated for the head injury and it is contended for the respondent that, because he was told in the course of convalescence to walk about, and the injury resulted from the walking, the fracture of the leg resulted from medical treatment reasonably pursued. The argument can be shortly put by saying that the act of walking caused the fracture and the act of walking was part of medical treatment rendered necessary by the head injury.

Where a second injury follows upon an original injury it may be causally connected with the original injury, as in cases of injury directly due to medical treatment of the injury. But not everything that happens during a period when a man is undergoing medical treatment can be regarded as part of the medical treatment so as to be causally connected with the injury for which he is being treated. A man undergoing medical treatment must have meals, and in one sense the eating of food may be described as an integral part of his medical treatment. But if these meals consist of normal food and he happens to choke himself and die, and the choking had nothing to do with his original injury, there would be no evidence to justify a finding that the death resulted from the original injury and so arose out of his employment. In this case the cause of the fracture was quite independent of the original injury. The bone condition of the respondent was not due to or aggravated by or otherwise affected by the original injury (cf. *Day* v. *Standard Waygood Ltd.* (3)). The act of walking was not necessitated by the head injury. Walking is a normal activity of ordinary life, and when the respondent was walking

(1) (1909) 2 K.B. 51.
(2) (1902) 2 K.B. 292.
(3) (1941) 65 C.L.R. 204.

H. C. OF A. 1946. LINDEMAN LTD. v. COLVIN. Latham C.J.

in the hospital grounds he was only resuming his normal life. There was no causal connection between the fracture and the original injury, and accordingly, in my opinion, the Commission did err in law in the decisions which it reached, and the questions in the case should be answered in the affirmative. The order of the Full Court should be set aside. In accordance with the order granting special leave to appeal the appellant pays the costs of the appeal.

STARKE J. Appeal by special leave from a judgment of the Supreme Court of New South Wales in Full Court upon a case stated under the *Workers' Compensation Act* 1926-1942 (N.S.W.).

The respondent—a worker—sustained a head injury arising out of and in the course of his employment by the appellant and was convalescing in hospital from its effects. His medical attendant advised him to walk about the hospital grounds and spend some time in the open air in order to assist his convalescence. This, it is stated in the case, was an integral part of the treatment prescribed for his head injury. Unfortunately, whilst stepping down from one step to another on a flight of steps leading to the hospital grounds the respondent fractured his leg.

The respondent suffered from a condition of the bones, which did not result from his head injury, that rendered his leg liable to fracture in the ordinary course of walking on level ground or down steps. The impact of the leg on the steps whilst stepping down them caused the fracture.

The Workers' Compensation Commission made an award in favour of the respondent but stated questions for the Supreme Court which upheld the award. When any question of law arises in any proceeding before the Commission, it may state a case for the decision of the Supreme Court but there is no appeal except on questions of law. The only question of law in this case appears to be whether there is any evidence to support the Commission's finding that the fracture of the respondent's leg arose out of or in the course of his employment with the appellant.

An injury only arises out of or in the course of employment when a causal connection exists between the employment and the injury. Such a connection may exist in the case of medical or surgical treatment reasonably undertaken to cure the employee or to obviate the consequences of the injury. That is a matter of evidence and of fact. In my opinion, there is no evidence whatever to support the finding of the Commission. The fracture of the respondent's leg had nothing to do with his head injury. It was brought about by the condition of his bones and was wholly unconnected with his

employment. It is true that the fracture happened whilst he was under treatment for his head injury as it might have happened if the respondent had been walking in the hospital or going home, but it was not brought about by any treatment for his head injury.

The appeal should be allowed and the questions stated in the case answered in the affirmative.

But I express regret that the Court persists in granting special leave to appeal in workers' compensation cases involving small amounts, some £60, I think, in the present case, and depending wholly upon the evidence given in the particular case and not upon any new or important principle of law.

DIXON J. Under the *Workers' Compensation Act* 1926-1942 of New South Wales a worker who has received an injury is to receive compensation from his employer (s. 7); "injury" means personal injury arising out of or in the course of the employment (s. 6 (1)); and where total or partial incapacity for work results from the injury the compensation payable by the employer is to include a weekly payment calculated in a manner prescribed and certain other benefits depending on circumstances (s. 9 (1)).

The respondent sustained a head injury which arose out of and in the course of his employment and total incapacity for work resulted from the injury. Before the period of total incapacity ended, but while he was convalescent in hospital, he sustained another injury, a fracture of both bones of the left leg. The fracture arose from the fact that he suffered from a pathological condition of the bones, which in consequence were liable to break under a slight jolt or impact. He was descending some stairs in the hospital and his leg broke from the impact of stepping down from one step to another. He had been out of bed for three days and he was going down stairs to walk in the grounds. His medical attendant had told him that he could walk in the grounds provided that it was nice and warm and that he should move about for the purpose of his convalescence from the head injury. The fractured leg caused a further period of some months of total incapacity for work. But for the fractured leg, for the greater part of this further period he would have been under a partial incapacity only as a result of the head injury.

The Workers' Compensation Commission upon evidence of the foregoing facts found that at the time of the leg injury the respondent was engaged in walking down steps, which was an integral part of the treatment prescribed for his head injury, and that the chain of causation between the original head injury and the total incapacity for the further period was unbroken. The Commission accordingly

H. C. OF A. 1946.

LINDEMAN LTD. v. COLVIN.

Dixon J.

awarded compensation for the whole period of total incapacity for work. At the request of the appellant the Commission stated a case pursuant to s. 37 (4) of the Act for the decision of the Supreme Court. The case stated, being after award, formed a proceeding for the review by the Supreme Court of the decision of the Commission upon questions of law arising in the proceeding before it, but, in accordance with practice, the Commission submitted questions for the Supreme Court. The first of these questions asked whether the Commission erred in law in holding, in effect, that the respondent's total incapacity for the further period resulted from the original injury. The second question asked whether the Commission erred in law in holding that the chain of causation between the original injury and his further period of incapacity was unbroken. The third question asked whether the Commission erred in law in making an award as for total incapacity for the further period. The Supreme Court answered all three questions no, for the reason that the matter was one of fact to be decided by the Commission.

In my opinion the conclusions of the Commission were not reasonably open to it and cannot be sustained.

The substance of the Commission's finding is that the total incapacity from the broken leg resulted from the head injury. Such a proposition can only be made out by tracing the existence of some of the conditions which were the immediate occasion of the leg breaking back to the influence that the head injury had upon the succession of events, and by treating the connection of each step with that which preceded it and that which followed it as sufficiently establishing that the last event resulted from the first. According to such a conception, the head injury brings the man into a hospital; the hospital happens to have stairs; the man happens to have bones that can be broken by walking down stairs without stumbling or falling; then the surgeon considers that the time has come when his convalescence would be advanced by his walking in the grounds; to get to the grounds he walks down stairs and in doing so breaks his brittle bones, and the last event spells more total incapacity. Thus you produce the conclusion that a disability consisting in a broken leg amounts to a total incapacity for work resulting from a head injury sustained two months earlier.

The simple answer appears to me to be that the broken leg was a distinct and separate injury due to a distinct and separate casualty or accident and that the fact that it occurred in conditions which would not have existed but for the sustaining of the earlier injury does not make it "result" from the first injury or "arise out of or in the course of the employment." But for the artificial view that

walking about is medical treatment because a medical man tells his patient that to resume the natural means of movement and locomotion would improve his condition or aid his convalescence, I do not think that it would have been possible to assimilate this case to the line of decisions dealing with further or aggravated injury ascribed to medical treatment. These decisions show that, if an injury resulting from accident arising out of and in the course of the employment is aggravated by medical treatment or if the surgical procedures adopted to remedy or alleviate the injury cause a secondary traumatic or pathological condition or death, the total condition is to be attributed to the accident, that is so long as the workman acted reasonably. See, for example, *Shirt* v. *Calico Printers' Association Ltd.* (1); *Mutter, Howey & Co.* v. *Thomson* (2); *Lewis* v. *Port of London Authority* (3). The surgical procedure must, however, be directed to the original injury, and death or disablement caused by additional procedures to remedy other ills cannot be attributed to the original accident or injury (*Charles* v. *Walker Ltd.* (4)).

I do not think that the present case is governed by the reasoning which leads to the inclusion of the consequences of defective, injurious or unsuccessful surgical treatment for the injury among the disabilities resulting from the accident. According to the common course of affairs injuries must be dealt with surgically or medically, and where surgical or medical treatment miscarries, as well as where it succeeds in alleviation, the final condition of the patient is regarded as resulting from the accident.

But walking is not medical treatment. It is part of normal life, and the medical opinion that it would be beneficial to resume it cannot make a new accident or injury occurring while walking a consequence of the old accident or injury. It might be a different thing if owing to the original injury the patient remained unfit or unable to walk and the unfitness or inability caused the new injury.

In my opinion on the facts proved in evidence the Commission could not lawfully find as it did. I think that the appeal should be allowed and the order of the Supreme Court discharged and in lieu thereof it should be ordered that the three questions in the case stated should be answered yes, and the matter remitted to the Commission.

Under the order granting special leave the appellant must pay the respondent's costs of the appeal. I do not think that we should prejudice the intended operation of that order by making an order

(1) (1909) 2 K.B. 51.
(2) (1913) 6 B.W.C.C. 424.
(3) (1914) 7 B.W.C.C. 577; 111 L.T. 776.
(4) (1909) 25 T.L.R. 609.

H. C. OF A. 1946.

LINDEMAN LTD. v. COLVIN.

in favour of the appellant for the costs of the case stated in the Supreme Court.

McTIERNAN J. In my opinion this appeal should be dismissed.

The appellant has been held liable to pay compensation in accordance with the *Workers' Compensation Act* 1926-1942 (N.S.W.) to the respondent for total incapacity for work during the period from 27th May 1944 to 18th September 1944. The respondent's total incapacity for that period resulted from a broken leg. He suffered this injury on 28th April. It was the later of two injuries. The other was an injury to his head, suffered on 28th March 1944. It arose out of and in the course of the employment and totally incapacitated the respondent for work until 26th May 1944. The appellant paid full statutory compensation for the whole of that incapacity. The total incapacity of the respondent after that date resulted from the broken leg. This incapacity lasted until 18th September 1944.

Section 6 (1) of the Act defines injury to mean personal injury arising out of or in the course of employment. Section 7 (1) gives to a worker, who has received an injury, thus defined, the right to be compensated by his employer in accordance with the Act. Section 9 (1) provides that where either total or partial incapacity results from an injury, the compensation shall be as provided in the subsection. It is not necessary in determining a claim, based on these provisions, to inquire whether the injury is " by accident " : s. 6 (1) (*Smith* v. *Australian Woollen Mills Ltd.* (1)).

The questions of law in the case stated amount in substance to this question—whether the Workers' Compensation Commission erred in law in holding that there was a causal connection between the employment and the total incapacity resulting from the broken leg. I think that the Commission did not err in law in so holding. The question depends upon the evidence given before the Commission, and its findings of fact as to the connection between the broken leg and the treatment which was prescribed to assist the re pondent's recovery from the effects of the head injury. The evidence and findings of fact are part of the case stated. It is shown that the respondent was in bed in the hospital, because of the effects of the injury to his head, from the date of this injury—28th March—until 26th April ; when he got up, the doctor who was attending him told him " to move around in order to get himself properly convalescent from the fractured skull," and the doctor said in his evidence that he gave this advice " as part of the treatment." The respondent said in his evidence that he had been told by his doctor to walk about the

(1) (1933) 50 C.L.R. 504, at p. 511.

grounds so long as it was nice and warm. There is evidence to support the finding of the Commission that the respondent's leg broke while he was following this advice of his doctor. It is necessary that there should be a causal relation between the injury to the respondent's head — an injury arising out of the employment — and the total incapacity resulting from the fracture. The test of this relationship is whether the advice given by the doctor was in the circumstances reasonable (*Shirt* v. *Calico Printers' Association Ltd.* (1); *Bower* v. *Meggitt* (2); *Terry* v. *Parsons Bros. & Co. Ltd.* (3)). There could be no doubt that the part of the treatment, the subject of that advice, was reasonable. If the respondent had failed to follow it and the incapacity beginning with the injury to his head had continued, he might have lost his statutory right to compensation in respect of the continuing incapacity (*Simpson* v. *Byrne* (4)). But the ordinary simple act of walking was attended with danger to the respondent. He was affected with a disease of the bones, which rendered them brittle and his leg liable to spontaneous fracture when he was walking either on level ground or down steps. The Commission found that, at the time the respondent's leg broke, he was walking down steps leading from the ward—in which he was a patient—to the hospital grounds, in order to carry out the doctor's advice to leave the ward each day and spend a certain time in the hospital grounds in the open air, and that the impact of the step on which he was treading resulted in the fracture of his leg. The Commission made a finding expressed in these terms: "At the time of this leg injury the worker was engaged in walking down steps which was an integral part of the treatment prescribed for him." It is obvious that unless the occasion or need for his walking down the steps at that time was to comply with the advice given him by his doctor in order to complete the treatment of the injury to his head—he had not then recovered from that injury—there could be no causal connection between the incapacity resulting from the fracture of his leg and the injury to his head. The evidence proves that such was the need or occasion for the respondent's walking from the ward to the hospital grounds. He was not walking as one walks in the ordinary course of living. He was a hospital patient, not yet fit to be discharged, engaged in walking as an exercise advised by his doctor to complete the treatment that he was receiving in the hospital for the injury to his head. This injury was an injury arising out of and in the course of the employment. As the occasion or need for the respondent to walk from the hospital ward into the grounds, at the time his leg broke, was to do what his doctor

(1) (1909) 2 K.B. 51.
(2) (1916) 116 L.T. 178.
(3) (1929) 3 W.C.R. (N.S.W.) 152.
(4) (1913) 6 B.W.C.C. 455.

H. C. OF A. 1946. LINDEMAN LTD. v. COLVIN. McTiernan J.

advised to assist his recovery from the injury to the respondent's head, there was proof of a causal connection between the employment and the incapacity resulting from the fracture of his leg. Having regard to the evidence, the Commission was not bound as a matter of law to hold that the fracture of the leg was a *novus actus interveniens*. There was evidence upon which the Commission could hold that there was a chain of causation between the employment and the total incapacity ensuing upon the fracture of the leg. I agree with the answers of the Supreme Court to the questions of law referred by this case stated.

WILLIAMS J. This is an appeal by special leave by the employer from an order of the Supreme Court of New South Wales answering in the negative three questions of law in a case stated for its decision under s. 37 (4) of the *Workers' Compensation Act* 1926-1942 (N.S.W.). These questions were :—(1) Did the Commission err in law in holding that the worker's total incapacity between 27th May 1944 and 18th September 1944 resulted from an injury of 28th March 1944, which arose out of and in the course of his employment with the appellant ? (2) Did the Commission err in law in holding that the chain of causation between the worker's head injury of 28th March 1944 and his incapacity which lasted up to 18th September 1944 was unbroken ? (3) Did the Commission err in law in making an award of compensation as for total incapacity between 27th May 1944, and 18th September 1944, in favour of the worker ?

The employer did not deny that the respondent had received a head injury in the course of his employment or that it would not have totally incapacitated him from work for two months and paid full compensation up to 26th May. The dispute relates to the period between 27th May and 18th September 1944.

The respondent was admitted to hospital for treatment to his head and, shortly before the injury to his leg, had reached a stage of convalescence at which it was considered desirable by his doctor that he should leave the hospital ward each day and spend a certain amount of time in the hospital grounds in the open air. On 28th April he was walking down a flight of the hospital steps in order to get into the grounds when his leg broke necessitating further hospital treatment involving his total incapacity for work up to 18th September 1944. It was found that he was suffering from a condition of the bones known as Paget's disease which rendered his leg liable to spontaneous fracture in the ordinary course of walking either on level ground or down steps. The fracture was caused by the impact of stepping from one step to another. The Commission found that " at the time of this leg injury the worker was engaged in walking

down steps which was an integral part of the treatment prescribed for his head injury." It held that he was partially incapacitated for work from 27th May 1944 to 18th September 1944 as a result of the head injury and that the leg injury had increased this partial incapacity to total incapacity. It therefore awarded compensation on the basis of total incapacity between these dates.

In my opinion the Commission erred in law in holding that the injury which befell the respondent on 28th April was a result of the injury which befell him on 28th March. The relevant authorities upon the question whether a supervening injury can be said to be within the chain of causation caused by the original injury have been recently reviewed by the Court of Appeal in *Rothwell* v. *Caverswall Stone Co. Ltd.* (1). In *Dunham* v. *Clare* (2) Lord *Collins* M.R. said: "If death in fact resulted from the injury, it is not relevant to say that death was not the natural or probable consequence thereof. The question whether death resulted from the injury resolves itself into an inquiry into the chain of causation. If the chain of causation is broken by a *novus actus interveniens*, so that the old cause goes and a new one is substituted for it, that is a new act which gives a fresh origin to the after-consequences. . . . It is quite consistent to say that death resulted from the injury and yet that it was neither the natural nor the probable consequence of it. If no new cause, no *novus actus*, intervenes, death has in fact resulted from the injury."

In subsequent cases a line has been drawn between an injured worker suffering further injury resulting from undergoing treatment properly prescribed by a doctor for the original injury and from the negligence of the doctor in prescribing wrong treatment or his lack of skill in carrying it out. In the former case the further injury arises within the chain of the causation of the original accident, whereas in the latter it is due not to the original accident but to a *novus actus*.

In the instant case there is no suggestion that the doctor was guilty of any negligence in ordering the respondent to walk in the hospital grounds. It was, I should think, a very ordinary instruction for a doctor to give a convalescent patient and one which it was entirely reasonable for the patient to obey (*Shirt* v. *Calico Printers' Association Ltd.* (3)). But the injury to the respondent's leg might just as easily have occurred if the doctor had told him it was time to get up and he was stepping out of bed. The following passage from the judgment of *du Parcq* L.J. in *Rothwell's Case* (1) is very much in point. "First, an existing incapacity 'results from' the original

(1) (1944) 171 L.T. 289.
(2) (1902) 2 K.B., at p. 296.
(3) (1909) 2 K.B. 51.

H. C. OF A. 1946. LINDEMAN LTD. v. COLVIN. Williams J.

injury if it follows, and is caused by, that injury, and may properly be held so to result even if some supervening cause has aggravated the effects of the original injury and prolonged the period of incapacity. If, however, the existing incapacity ought fairly to be attributed to a new cause, which has intervened, and ought no longer to be attributed to the original injury, it may properly be held to result from the new cause and not from the original injury, even though but for the original injury there would have been no incapacity " (1).

The findings of fact of the Commission must be considered as a whole. When this is done they show that the injury to the leg was not caused by any treatment prescribed for the cure of the original injury. It was solely attributable to an inherent weakness quite unconnected with the original injury, it did not aggravate or otherwise affect that injury, and it did not result in any way from it (*Wilson* v. *Chatterton* (2) ; *Day* v. *Standard Waygood Ltd.* (3)).

In my opinion the questions should be answered in the affirmative and the appeal allowed.

Appeal allowed. Order of Full Court set aside except as to costs. Questions in case answered in the affirmative. Appellant to pay costs of appeal.

Solicitor for the appellant, *J. Frisby Arnott.*

Solicitors for the respondent, *J. J. Carroll, Cecil O'Dea & Co.*

J. B.

(1) (1944) 171 L.T., at p. 298.
(2) (1946) 1 K.B. 360, at p. 367.
(3) (1941) 65 C.L.R. 204.