[HIGH COURT OF AUSTRALIA.]

HUME STEEL LIMITED . . . . . APPELLANT;
RESPONDENT,

AND

PEART . . . . . RESPONDENT.
APPLICANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1947.

SYDNEY, *Aug.* 15, 18.

MELBOURNE, *Sept.* 30.

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

Workers' Compensation—"Injury"—Daily or periodic journey—Death caused by coronary occlusion—Death due to disease and worker's exertion—Not caused or contributed to by employment—Workers' Compensation Act 1926-1946 (*N.S.W.*) (*No.* 15 *of* 1926—*No.* 41 *of* 1946), *ss.* 6 (1)*, 7 (1) (*b*).

Section 7 (1) (*b*) of the *Workers' Compensation Act* 1926-1946 (N.S.W.) so far as material, provides: "Where a worker has received injury without his own default or wilful act on any of the daily or other periodic journeys" between his place of abode and place of employment, "the worker (and in the case of the death of the worker, his dependants), shall receive compensation from the employer in accordance with this Act." Accordingly where a worker died while on a journey to his place of employment from his place of abode as a result of a coronary occlusion to the occurrence of which effort upon the journey was found to have contributed:—

Held, that it was open to the Workers' Compensation Commission to find as it did that the worker received injury within the meaning of s. 7 (1) (*b*) of the Act.

Held, further, by *Latham* C.J., *Dixon* and *McTiernan* JJ. that the definition of "injury" in s. 6 (1) of the *Workers' Compensation Act* is not applicable to the word "injury" appearing in s. 7 (1) (*b*) of that Act.

Decision of the Supreme Court of New South Wales (Full Court): *Peart* v. *Hume Steel Ltd.* (1947) 47 S.R. (N.S.W.) 384; 64 W.N. (N.S.W.) 118, affirmed.

* Section 6 (1) of the *Workers' Compensation Act* 1926-1946 provides:—"In this Act, unless the context or subject-matter otherwise indicates or requires: 'Injury' means personal injury arising out of or in the course of employment and includes a disease which is contracted by the worker in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor but does not, save in the case of a worker employed in or about a mine to which the *Coal Mines Regulation Act*, 1912-1941, applies, include a disease caused by silica dust."

APPEAL from the Supreme Court of New South Wales.

On 11th June 1945, about 6.45 a.m., Robert James Peart, aged about forty-one years, who was a worker within the meaning of the *Workers' Compensation Act* 1926-1946 (N.S.W.) and was the husband of Ellen May Peart, whilst journeying in rain by pedal-bicycle on his daily journey between his place of abode at 34 Anderson Avenue, Ryde, and his place of employment with Hume Steel Ltd. at Rydalmere suffered a coronary occlusion as a result of which he died on the same day.

In an application made by her under the *Workers' Compensation Act* the widow claimed on behalf of herself and Alan Peart, her adopted son, as total dependants of the deceased the sum of £825 by way of compensation under that Act.

The defences raised in the proceedings before the Workers' Compensation Commission were that the deceased had not "received injury" within the meaning of those words where used in s. 7 (1) (b) of the Act, and that the death of the deceased was not the result of anything which happened on his journey. Liability to pay the claim was denied by the respondent company on the grounds that (i) any physical effort arising out of the journey played no part in causing the coronary occlusion, and (ii) the context and subject matter of the journey provisions in s. 7 (1) (b) and (c) of the *Workers' Compensation Act*, required that the definition of "injury" in s. 6 (1) insofar as it included disease, should not be applied to the "injury" in respect of which compensation was provided under those journey provisions.

The evidence established that the deceased collapsed in Victoria Road, West Ryde, about thirty feet east of Brush Road; that the journey was over both downhill and uphill grades of the public highway, and that the uphill grade for two-tenths of a mile from the western part of the township at West Ryde railway station involved a material degree of physical effort. The deceased travelled less than four-tenths of a mile after passing over the crest of the hill, when he collapsed.

Post-mortem examination disclosed that the deceased's aorta and coronary arteries were in an advanced state of atheroma, the coronary artery being brittle. The coronary artery was opened and an occlusion was found. This was due to a small piece of the lining of the artery having loosened and blocked the artery. The occlusion was the inevitable end result of the disease. A medical witness explained that atheroma was peculiar to the aorta and coronary arteries and the cerebral arteries, but did not affect the arterial system in general. The disease is of gradual onset, there

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being no known cause or cure. If the main coronary artery is blocked the patient dies suddenly. If it be a lesser artery blocked, he may survive. In the case of the deceased the post-mortem disclosed that the blocking of the artery was due to debris in the vessel from the atheromatous area. On the question of whether the occlusion was materially contributed to by physical effort arising out of the deceased's uphill journey by pedal bicycle, a medical witness gave evidence for the applicant that in his opinion the effort did contribute. Another medical witness considered that the taking of any exercise would increase the likelihood of death, and yet another medical witness said that in the absence of a history of shortness of breath, pain or a feeling of tightness in the chest, he considered that the effort was within the deceased's cardiac competence. He was inclined to the school of medical thought that effort does not precipitate occlusion.

A case was stated at the request of the company under s. 37 (4) of the *Workers' Compensation Act* 1926-1946 for the decision of the Supreme Court of New South Wales on certain questions of law, and contained the following summary of the Commission's findings of fact :—

1. The deceased was employed by Hume Steel Ltd., and the applicant Ellen May Peart and her adopted son Alan Peart were totally dependent on the deceased's earnings at the time of his death.

2. On 11th June 1945 the deceased was journeying by pedal bicycle on his daily journey between his place of abode at Ryde and his place of employment with the company at Rydalmere when he suffered a coronary occlusion from which he died on that day.

3. The physical effort of pedalling the bicycle uphill which the deceased was engaged in within a minute or two of the happening of the occlusion increased his blood pressure and precipitated the occlusion.

4. Post-mortem examination disclosed that the aorta and coronary arteries of the deceased were in an advanced state of atheroma, the coronary artery being brittle.

5. The occlusion was due to a small piece of the lining of the artery having loosened and blocked the artery and the blocking of the artery was due to debris in the vessel from the atheromatous area.

6. The origin of atheroma is unknown. It is a disease of gradual onset and gradual progression and in the words of s. 7 (4) of the

Workers' Compensation Act 1926-1946 it is a disease which is of such a nature as to be contracted by gradual process.

7. The occlusion was the inevitable end result of the disease.

8. The disease was not due to the nature of the deceased's employment with the company nor was it contracted in the course of such employment and such employment was not a contributing factor thereto.

9. The disease had nothing at all to do with the deceased's employment with the company and the only part the journey played was that of the proverbial " last straw ".

10. Because of physical effort occasioned by the journey a change or new stage in the disease was reached on the journey; this immediately manifested itself and proved fatal.

11. The deceased received personal injury by accident on the daily journey in question which resulted in his death.

The questions of law referred for the decision of the Supreme Court were :—

(1) Is there any evidence upon which the Commission could find as it did that Robert James Peart received injury within the meaning of s. 7 (1) (*b*) of the *Workers' Compensation Act* 1926-1946 ?

(2) Is there any evidence upon which the Commission could find as it did that Ellen May Peart and Alan Peart as total dependants of Robert James Peart were entitled to receive compensation from the company in accordance with the provisions of the *Workers' Compensation Act* 1926-1946 ?

The first question, taken by it as asking whether upon the Commission's findings it was open to the Commission to find as it did that Robert James Peart received injury within the meaning of s. 7 (1) (b) of the *Workers' Compensation Act* 1926-1946, was answered by the Full Court of the Supreme Court (*Jordan* C.J., *Davidson* and *Street* JJ.) in the affirmative, and it was held to be unnecessary to answer the second question (*Peart* v. *Hume Steel Ltd.* (1)).

From that decision the company appealed to the High Court.

The relevant statutory provisions are sufficiently set forth in the judgments hereunder.

Wallace K.C. (with him *Langsworth*), for the appellant. A journeying not on an employment matter does not " arise out of " nor is it " in the course of " the employment. If a worker is on a journey to his work he is not " in the course of " nor is he doing anything " arising out of " his employment, he is merely journeying. The word " injury " in s. 7 (1) (a) of the *Workers' Compensation Act*

(1) (1947) 47 S.R. (N.S.W.) 384; 64 W.N. (N.S.W.) 118.

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1926-1946 (N.S.W.) is used in the sense defined in s. 6 (1) and the question is whether the word " injury " is also used in that sense in par. (b) of s. 7 (1). " Injury " as used in s. 7 (1) (b) does not include a disease not contracted in the course of the employment. The heart disease from which the deceased suffered was not contracted during the course of his employment nor was the employment a contributing factor. The true construction of the word " injury " as used in s. 7 (1) (b) is something different from the construction of that word as used in par. (a) of s. 7 (1). As used in par. (a) the word " injury " obviously should be given the meaning as defined in s. 6 (1), but that meaning is inappropriate to the word as used in par. (b) because, *ex hypothesi*, the injury is not contracted in the course of the worker's employment. The Commission expressly found that the disease suffered by the deceased was not due to the nature of his employment with the appellant, nor was it contracted in the course of that employment, and the employment was not a contributing factor thereto and, further, that the disease had nothing at all to do with his employment with the appellant. Decisions of the English courts which show that death or disease can be included in the definition of " injury by accident " are not of help in matters arising under the *Workers' Compensation Act* 1926-1946, and are distinguishable by reason of the difference between the provisions of the English statutes and the *Workers' Compensation Act* (*Kellaway* v. *Broken Hill South Ltd.* (1)). The word " injury " in par. (b) of s. 7 (1) is either used in the sense as defined in s. 6 (1) or in some other sense. If it is used in the defined sense, the deceased's disease was independent of the employment and hence the application must fail. " Disease " cannot, by any rules of construction, e.g., by reading the Act as a whole, or by ensuring that the same word does not receive different interpretations in the same section unless there is something which necessitates it, be incorporated in the word " injury " as used in s. 7 (1) (b). The finding that because of the physical effort occasioned by the journey a change or new stage in the disease was reached on the journey, is the crucial finding. The observations expressed in *Kellaway* v. *Broken Hill South Ltd.* (2) are applicable to this case. The words " by accident " do not appear in the *Workers' Compensation Act*. The Commission has held, in effect, that if one finds a causal connection between the journey and the last physiological change then there is an injury connected with the employment. But there can be no logical distinction between the case now before the

(1) (1944) 44 S.R. (N.S.W.) 210, at p. 213 ; 61 W.N. 83, at p. 85.

(2) (1944) 44 S.R. (N.S.W.), at pp. 215, 224, 225.

Court and that of a worker who whilst going to work in a tram or train is smitten with acute appendicitis, is taken to hospital and dies. In s. 6 (1) " injury " is defined as meaning personal injury " arising out of " and " in the course of " the employment and includes disease. Therefore the words appearing after " personal injury " cannot include any type of disease because disease has been confined and limited to a particular type of disease, namely, that which is contracted during the employment. Section 7 (1) (b) has no connection with employment—on the face of it it is directed to extra-employment periods—and the word " injury " is used in that paragraph in a way which must exclude any conception of disease. As so used it should be given the meaning of any harm or detriment suffered by a worker on a journey but excluding disease or physiological change. The " harm or detriment " would be such a type as the legislature could reasonably have had in contemplation that a worker might sustain while travelling. A physiological change is not necessarily an injury (*Hetherington* v. *Amalgamated Collieries of W.A. Ltd.* (1)). " Injury " as defined in s. 17B, inserted in 1944 by the *Workers' Compensation (Bush Fire Fighters) Act* 1944, includes a disease, but it is limited to a disease which was contracted in the course of fighting a bush fire, or a journey to or from a bush fire and to which such fighting or journeying was a contributing factor.

[DIXON J. It was said in the judgment of *Isaacs* and *Rich* JJ. in *McGuire* v. *Union Steamship Co. of New Zealand* (2) that the expression " injury by accident " means accidental injury. The whole of that judgment was directed to showing that the word " accident " does not qualify the word " injury " to exclude disease.]

In the circumstances, the definition section is clearly not applicable to the word " injury " (*Kellaway* v. *Broken Hill South Ltd.* (3)). That section contains a statement or condition which automatically excludes it, other than the opening words, from being applied to s. 7 (1) (b) because it includes a disease contracted in the course of the employment and, *ex hypothesi*, s. 7 (1) (b) deals with cases which cannot possibly have any connection with the employment. If the definition in s. 6 (1) is used for the purpose of the word " injury " in s. 7 (1) (b) then it means there cannot be compensation for an injury under s. 7 (1) (b) unless in addition to " arising out of " or being on a journey it comes under disease. If those words be necessary s. 7 (1) (b) does precisely nothing. The decisions in

(1) (1939) 62 C.L.R. 317, at p. 328.
(2) (1920) 27 C.L.R. 570, at pp. 576 et seq.
(3) (1944) 44 S.R. (N.S.W.), at p. 215; 61 W.N. at p. 86.

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English cases should not be adopted because the line of reasoning in those cases has led to the acceptance of diseases producing physiological changes. Another meaning must, therefore, be found. That other meaning is " some harm or detriment to exclude disease." The words " and includes a disease " really extend the meaning of personal injury.

McClemens K.C. (with him *Wall*), for the respondent. The crucial findings by the Commission are the findings numbered 3 and 10 respectively. The decision by the Commission depended upon the assumption of the effort of the journey and the fatal result, and the decision of the court below should be limited to those facts. It is not argued on behalf of the respondent in this case that any death or injury, however happening, on a journey is necessarily compensable. Illustrations by way of suppositious cases are not to the point and are of no assistance in view of the fact that there are for consideration particular circumstances which arise from a finding of fact that on this occasion there was an internal injury due to the effort by the deceased of riding the bicycle. The real basis of the decision of the court below is shown in the judgment of *Davidson* J. (*Peart* v. *Hume Steel Ltd.* (1)). The deceased suffered " harm or detriment " while proceeding on the journey to his employment. When he commenced the journey he was in relatively good health. The effort required by the journey caused certain things to happen and as a result of those happenings he died. The " fire fighting " provisions inserted into the Act in 1944 are not applicable to this case. Throughout the original *Workers' Compensation Act* 1897 (Imp.) the phrase " personal injury " was used. The phrase " the injury " which was used in s. 2 (1) of that Act was taken over in New South Wales by the Act of 1910 in which Act the word " injury " became the qualifying word. Of course, it was personal injury by accident but throughout the Act was to be found the use of the word " injury," and similarly in the Act of 1916 and the Act of 1926. It flows from that that the legislature intended, so far as New South Wales was concerned, to maintain that particular conception of " injury." Injury from certain diseases was included. A worker must be taken as he is found. Even if his condition be such that he is likely to die and there be added to that some injury, some aggravation connected, however slightly, to the employment, that is an injury within the meaning of the Act (*Fenton* v. *Thorley & Co.*

(1) (1947) 47 S.R. (N.S.W.), at pp. 387, 388.

Ltd. (1); *Brintons Ltd.* v. *Turvey* (2); *Ismay, Imrie & Co.* v. *Williamson* (3); *Clover, Clayton & Co. Ltd.* v. *Hughes* (4); *Walker* v. *Bairds and Dalmellington Ltd.* (5); *McGuire* v. *Union Steamship Co. of New Zealand* (6)). If the collapse of the deceased had been due to disease alone compensation would still have been payable. The distinction between "accident" and "injury" was discussed in *Fife Coal Co. Ltd.* v. *Young* (7). That case is authority for the proposition that it does not matter what the pre-existing condition of the worker was if the particular injury relied on was the thing that brought about the condition. Therefore, as far as the word "injury" is concerned, when used in s. 7 (1) (b) it does fall within the definition contained in s. 6, because s. 7 (1) (b) creates a notional extension of the right to compensation during the period of the journey. If during the course of that journey something connected with the journey causes a worker to have some harmful physiological change then that is sufficient to fulfil the requirements of the statute. That has been specifically found in this case. *Kellaway* v. *Broken Hill South Ltd.* (8) was wrongly decided. The dominant feature is the worker's ordinary condition; if that ordinary condition is aggravated by something that happened in the course of his employment, including the journeys to and from that employment, the worker should succeed without relying on s. 7 (1) (b). If an injury happens on a journey and is due to the journey the liability accrues. If the position is that a worker who shows a causal connection is within the Act, then the facts in this case have established that causal connection. The position in this case is stronger if it is not necessary to establish the causal connection.

Wallace K.C., in reply. Disease *simpliciter* the original contracting of which, and any subsequent accentuation of which, were not in any respect caused or contributed to by the employment does not come within the meaning of the word "injury" as used in the Act (*Kellaway* v. *Broken Hill South Ltd.* (9)). The finding that the occlusion was the inevitable end result of the disease should, therefore, conclude the matter in favour of the appellant. Section 7 (1) (*b*) does not include any type of disease or aggravation thereof, therefore decisions by the English courts are not in point. In the ordinary meaning of words it could not be said that a person who died of heart disease had received an injury.

Cur. adv. vult.

(1) (1903) A.C. 443.
(2) (1905) A.C. 230.
(3) (1908) A.C. 437.
(4) (1910) A.C. 242.
(5) (1935) 153 L.T. 322.
(6) (1920) 27 C.L.R. 570.
(7) (1940) A.C. 479, at pp. 488, 489.
(8) (1944) 44 S.R. (N.S.W.) 210.
(9) (1944) 44 S.R. (N.S.W.), at p. 216.

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The following written judgments were delivered :—

LATHAM C.J. This is an appeal from a decision of the Full Court of the Supreme Court of New South Wales upon a case stated by the Chairman of the Workers' Compensation Commission under the *Workers' Compensation Act* 1926-1946, s. 37 (4). It was held by the Supreme Court that there was evidence upon which the Commission could find (as it did find) that Robert James Peart received injury within the meaning of s. 7 (1) (b) of the *Workers' Compensation Act* 1926-1946. Hume Steel Ltd., Peart's employer, appeals to this Court. Section 7 (1) (b) was inserted in the *Workers' Compensation Act* by Act No. 13 of 1942. Section 7 (1), so far as relevant, provides as follows :—" (a) A worker who has received an injury whether at or away from his place of employment (and in the case of the death of the worker, his dependants) shall receive compensation from his employer in accordance with this Act. (b) Where a worker has received injury without his own default or wilful act on any of the daily or other periodic journeys referred to in paragraph (c) of this sub-section, and the injury be not received" during certain breaks or deviations in the journey " the worker (and in the case of the death of the worker, his dependants), shall receive compensation from the employer in accordance with this Act." Paragraph (c) defines " daily or periodic journeys " in such a way as to include a journey between the worker's place of abode and place of employment.

On 11th June 1945 R. J. Peart, a worker within the meaning of the Act who was employed by the appellant company, was riding a bicycle on a daily journey from his place of abode to his place of employment. The physical effort of riding a bicycle up an incline in the road brought about a coronary occlusion from which he died on the same day. His widow claimed compensation under the Act and was held to be entitled to compensation. The Commission's findings of fact include findings that the coronary arteries of the deceased were in an advanced state of atheroma, the coronary artery being brittle, and that the occlusion which brought about the blocking of the artery was due to a small piece of lining of the artery having loosened. It was also found that the origin of atheroma was unknown, and that the occlusion was the inevitable end result of the disease. It was found that the disease was not due to the nature of the deceased's employment with the respondent, that it was not contracted in the course of the employment, that the employment was not a contributing factor thereto, and that the disease had nothing at all to do with the deceased's employment with the respondent.

Compensation can be claimed under s. 7 (1) (b) where a worker has received injury without his own default or wilful act on a daily journey. Section 6 as amended by Act No. 13 of 1942 provides that, unless the context or subject matter otherwise indicates or requires, " injury " means " personal injury arising out of or in the course of employment and includes a disease which is contracted by the worker in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor but does not, save in the case of a worker employed in or about a mine to which the *Coal Mines Regulation Act*, 1912-1941, applies, include a disease caused by silica dust." This " definition " does not really define the word " injury " because it includes the word " injury " itself in the statement of the meaning assigned to the word. The effect of the definition is that the meaning of " injury " (whatever this meaning may be) is limited for the purposes of the Act to certain injuries. Only injuries which satisfy certain requirements are to be regarded as injuries for the purposes of the Act—they must be personal ; they must arise out of or in the course of employment or be a disease contracted in the course of the employment to which the employment is a contributing factor, with a special provision as to certain workers in coal mines. This " definition " is inapplicable to s. 7 (1) (b). If " injury " in s. 7 (1) (b) were given the meaning which is ascribed to the word in s. 6, then the periodic journey provisions in s. 7 (1) (b) would apply only in cases where there was an injury within the meaning of s. 6, that is, where the injury arose out of or in the course of the employment &c., or was a disease of the kind mentioned in the definition. If these conditions were satisfied, then the worker would be entitled to compensation under s. 7 (1) (a) of the Act, and it would never be necessary for any worker to have recourse to s. 7 (1) (b), which would have no possible field of operation. Accordingly, the context and the subject matter of s. 7 (1) (b) exclude the application of the definition of " injury " to the word where it appears in that section.

The *Workers' Compensation Act* deals with injuries resulting in incapacity or death. Death is not treated by the Act as itself an injury, but as something which may result from an injury. I refer, for example, to s. 7 (2) : " Compensation shall be payable in respect of any injury resulting in the death or serious and permanent disablement of a worker." Section 8 contains four sub-sections, each of them introduced by the words, " Where death results from the injury." In the present case, therefore, the question is not whether the death of the worker on his periodic journey was

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an injury, but whether he " received an injury " on his periodic journey which resulted in his death.

Many cases have been decided in English courts on the words " personal injury by accident " which appear in the *Workmen's Compensation Act* 1925, s. 1, and corresponding earlier legislation. Cases such as *Fenton* v. *J. Thorley & Co. Ltd.* (1) ; *Clover, Clayton & Co. Ltd.* v. *Hughes* (2) and many other cases have dealt with the subject of accident, and have resulted in the establishment of the proposition which I quote from *Fenton* v. *J. Thorley & Co. Ltd.* (3) that the " expression ' accident ' is used in the popular and ordinary sense of the word as denoting an unlooked-for mishap or an untoward event which is not expected or designed," that is, is not expected or designed by the worker : *Trim Joint District School Board of Management* v. *Kelly* (4). In many cases the relation of the conception of " accident " to that of disease has been discussed. But the word " accident " is not found in the New South Wales legislation and these authorities are in my opinion of no assistance in determining the question which arises in the present case.

The cases in which the question was whether the contraction or aggravation of a disease amounted to a personal injury by accident or whether a disease arose out of or in the course of the employment all assume that a disease is an injury. What are described as idiopathic diseases are outside the English Act (*Brintons Ltd.* v. *Turvey* (5)). The plaintiff's atheromatous condition, according to the findings of the Commission, was such a disease—it was a morbid condition of which the cause is unknown. But these diseases are excluded from the English Act, not because they are not injuries, but because the onset and development of such a disease cannot be brought within the conception of the word " accident " as defined in *Fenton* v. *J. Thorley & Co. Ltd.* (3). Thus in England it has been held that if the death of a workman is attributable solely to disease, then it cannot be said to be due to accident. In such a case there is nothing unexpected. But the exclusion of such cases from the category of accidental injury does not show that they are to be excluded from the category of injury.

There is a distinction, according to the common use of language, between getting hurt and becoming sick. The former would be described as an injury and the latter would generally not be so described. But it requires little analysis to show that an injury may be either external or internal. It appears to me to be difficult

(1) (1903) A.C. 443.
(2) (1910) A.C. 242.
(3) (1903) A.C., at p. 448.
(4) (1914) A.C. 667.
(5) (1905) A.C. 230.

to draw any satisfactory distinction between the breaking of a limb and the breaking of an artery or of the lining of an artery. One is as much an injury to the body, that is, something which involves a harmful effect on the body, as the other. Each is a disturbance of the normal physiological state which may produce physical incapacity and suffering or death. Accordingly, in my opinion the detachment of a piece of the lining of the artery in the present case should be held to be an injury. The death of the worker resulted from that injury.

This injury took place "on a daily journey" of the worker within the meaning of the Act. Section 7 (1) (b) requires only that the injury should take place "on" a periodic or daily journey. No causal connection between the injury and the journey is necessary. A temporal relation is sufficient, namely, that the injury happened while the worker was on the journey. In the present case it has been found that the effort of the journey was the last straw which brought about the coronary occlusion which resulted in death. But this fact is immaterial because s. 7 (1) (b) does not require the establishment of anything further than the occurrence of the injury during the journey.

The result of this interpretation of the section is to provide a considerable degree of life insurance for workers upon their daily or periodic journeys. In the event of death happening during such a journey the conditions of s. 7 (1) (b) will be satisfied if the death is the result of any physiological injury, including internal harmful changes, which occurs during the journey—which would ordinarily be the case. It would be immaterial that the death was the inevitable result of a long-standing disease which had nothing to do with his employment. The consequences of this view are, as has been pointed out in argument, remarkable; for example, the dependants of a man who dies just before he leaves his work must, in order to obtain compensation under the Act, show that he received an injury which arose out of or in the course of his employment and caused his death. But if the worker dies while he is on a tram to go home in his ordinary way, his dependants can recover, though his death had no relation whatever to his work. If he did not go straight home, but got off the tram to visit a friend or to have a drink, and the death happened when he resumed his journey, the dependants could not recover under the periodic journey provision because of the exceptions relating to breaks and deviations. But these consequences are matters for the consideration of the legislature, not of the courts. In my opinion the appeal should be dismissed.

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RICH J. I agree that the appeal should be dismissed. The relevant facts are that the worker suffered from heart disease and that while riding on a bicycle from his place of abode to his place of employment a coronary occlusion resulted and death ensued. Although the immediate injury was independent of any external or chance happening, the decisions include injuries due, as in the instant case, to the condition of the worker's body, cf. *Hetherington* v. *Amalgamated Collieries of W.A. Ltd.* (1). And it is unnecessary for me to add another link to the chain of cases which binds this kind of case (2). The findings in the case accordingly bring the case within s. 7 (1) (b). I agree with the answer given by *Jordan* C.J. to the question submitted. The appeal should be dismissed.

STARKE J. A worker who has received an injury whether at or away from his place of employment (and in the case of the death of the worker, his dependants) shall receive compensation from his employer in accordance with this Act (*Workers' Compensation Act* 1926-1946, s. 7 (1)).

" Injury " means personal injury arising out of or in the course of employment and includes a disease which is contracted by the worker in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor (*Workers' Compensation Act and Workmen's Compensation* (*Broken Hill*) *Act* (*Amendment*) *Act* 1942, No. 13, s. 2 (ii)). And by this Act was also inserted at the end of s. 7 (1), already set out, the following new provision :—

Where a worker has received injury without his own default or wilful action on any of the daily or other periodic journeys referred to in the Act and the injury be not received in certain circumstances immaterial to this case, the worker (and in the case of the death of the worker, his dependants), shall receive compensation from the employer in accordance with this Act. The daily or other periodic journeys referred to are :—(i) between the worker's place of abode and place of employment ; (ii) between the worker's place of abode, or place of employment, and any trade, technical or other training school, which he is required by the terms of his employment or is expected by his employer, to attend.

The object of the Act is to enlarge the right to compensation. The nature of the injury is not altered. It is still personal injury including disease, but instead of arising out of or in the course of employment the injury must have been received without the worker's own default or wilful act on a daily or other periodic

(1) (1939) 62 C.L.R. 317. (2) (1939) 62 C.L.R., at p. 329.

journey referred to in the Act, which the Act treats as part of or connected with his employment. The Act provides that where a worker has received injury on any of the daily or periodic journeys referred to in the Act he shall be entitled to receive compensation. But it is not necessary to decide whether there must be a causal connection or association between the injury and the periodic journey, for in this case there clearly was such a connection or association. The heart and the accompanying blood vessels of the worker, the aorta and the coronary arteries, were in an advanced stage of atheroma. The worker was pedalling his bicycle on the way from his home to his work when he suffered a coronary occlusion from which he died on that day. The physical effort of pedalling the bicycle, uphill, increased his blood pressure and precipitated the occlusion which was due to a small piece of the lining of the artery becoming loose and with other matter occluding the artery. The connection or association of his injury with the periodic journey is thus established and within the terms of the Act.

The decision of the Supreme Court of New South Wales that there was evidence upon which the Workers' Compensation Commission could find, as it did, that the worker received injury within the meaning of the *Workers' Compensation Act* 1926-1946 was right and this appeal should be dismissed.

DIXON J. The worker died shortly after the occurrence of a coronary occlusion during the course of his journey to his place of employment from his place of abode.

It was a daily or periodic journey within the meaning of s. 7 (1) of the *Workers' Compensation Act* 1926-1946 (N.S.W.). Paragraph (b) of s. 7 (1) provides that where a worker has received injury, without his own default or wilful act, on any of the daily or other periodic journeys to which the provision refers, he shall receive compensation from his employer.

By s. 6 (1) the word " injury " is defined to mean personal injury arising out of or in the course of the employment and to include a disease which is contracted by the worker in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor.

This definition is inappropriate to par. (b) because if it applied the result would be that the paragraph, which was introduced by amendment, would fail to produce any effect. For already par. (a), where the definition obviously does apply, had provided that a worker who has received an injury whether at or away from his place of employment shall receive compensation from his employer.

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If it were necessary that an injury received on a daily or other periodic journey should arise out of or in the course of the employment, the amendment would do nothing, except perhaps make clearer what in any case is clear enough, namely, that sometimes a workman may sustain an injury arising out of or in the course of his employment although he is on his way between his home and his place of employment.

It is, no doubt, strange that in one paragraph the word " injury " should be governed by the definition and in the next paragraph, although the same word occurs in an almost identical phrase, it should not be so governed. But nevertheless I think the defined meaning of " injury " must be given to it in par. (a) and cannot be given to it in par. (b). It is therefore immaterial that an injury received on a daily or periodic journey arose neither out of nor in the course of the employment. It is enough that it satisfies the words " has received injury on any of the daily or other periodic journeys referred to."

What kinds of physical harm amount to injury or an injury is a matter with which the definition does not deal, except to include a disease contracted in the course of the employment, if the employment is a contributing factor.

The question here is whether the coronary occlusion can amount to such an injury as is contemplated by the words of par. (b).

In jurisdictions where the expression is " personal injury by accident " the qualifying force of the words " by accident" has formed the chief consideration in the discussion of the place of disease in the legislation. But it has never been doubted that disease may amount to an injury. Thus in *Innes or Grant* v. *G. & G. Kynoch* (1) Lord *Wrenbury* said, " The man suffered personal injury, for he contracted a disease and it resulted in his death." He had said the same in the Court of Appeal in *Martin* v. *Manchester Corporation* (2). " Contraction of a disease is an injury; that injury may or may not be by accident." Again, in *Walker* v. *Bairds and Dalmellington Ltd.* (3) Lord *Tomlin*, speaking of a chill to a workman involving bronchopneumonia, said, " the disease which was the injury was in these circumstances the result of accident."

In *Fife Coal Co. Ltd.* v. *Young* (4) *Lord* Atkin said :—" It is necessary to emphasize the distinction between ' accident ' and ' injury ', which in some cases tend to be confused. . . . A man

(1) (1919) A.C. 765, at p. 797.
(2) (1912) 106 L.T. 741, at p. 742; 28 T.L.R. 344, at p. 345.
(3) (1935) 153 L.T. 322, at p. 326.
(4) (1940) A.C. 479, at pp. 488, 489.

suffers from rupture, an aneurism bursts, the muscular action of the heart fails, while the man is doing his ordinary work, turning a wheel or a screw, or lifting his hand. In such cases it is hardly possible to distinguish in time between 'accident' and injury; the rupture which is accident is at the same time injury from which follows at once or after a lapse of time death or incapacity. But the distinction between the two must be observed."

It would be ridiculous to suppose that for the purpose of par. (a) of s. 7 (1) the word "injury" was intended to have a more restricted meaning and application than it has received in England in the expression "personal injury by accident."

The purposes of that paragraph are served by the definition clause in s. 6 (1) where the expression is "personal injury" and I can see no reason why the meaning of those words in the definition and of "injury" in par. (b) s. 7 (1) should not be co-extensive.

Their application ought, I think, to be the same, that is, subject of course to the restrictive effect, in the one case, of the qualification expressed by the words "arising out of or in the course of" &c. and, in the other, of the words "on any of the daily or other periodical journeys referred to" &c.

Probably no difference would have been produced in the meaning of this latter phrase if the words "in the course of" had been used instead of the word "on" before "any of the daily or other periodical journeys."

In a general way the intention doubtless was to extend the course of the employment to the journeys of the workman between his home and his work. Injury received in the course of his journey is to stand in the same position as injury in the course of his employment.

It is well settled that, if it be established to the satisfaction of the tribunal of fact, as notwithstanding the present state of medical knowledge and opinion it often is established, that effort at work contributed to the occurrence of a coronary occlusion which a workman suffers during his hours of employment, he may be found to have suffered injury by accident arising out of and in the course of his employment.

It is not necessary to show that it was the result of some definite thing he did in the course of his work. If in the normal course of his work, owing to imperfect arteries or whatever other internal organ may have been diseased, the workman breaks down and dies, it is sufficient although you cannot point to a specific injury resulting from a specific act: see per Lord *Buckmaster*, *Partridge Jones and*

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John Paton Ltd. v. *James* (1). Cf. *Falmouth Docks and Engineering Co. Ltd.* v. *Treloar* (2); *Whittle* v. *Ebbw Vale, Steel, Iron & Coal Co. Ltd.* (3).

In *Wilson* v. *Chatterton* (4) *Scott* L.J. for the Court of Appeal refers to three decided cases where compensation was awarded "in which the workman suffered from weakness or disease of the heart, and death occurred without his being subjected to any abnormal strain. The principle which emerges," his Lordship continues, "is that, unless the weakness or illness of the workman is the sole cause of the accidental injury to, or death of, the workman, the employer is liable." See, too, *Oates* v. *Earl Fitzwilliam's Collieries Co.* (5). That is to say, it is enough if the employment contributed to bring about the breakdown. With these principles settled under the limited English formula, it is difficult to see how the word "injury" whether in par. (a) or par. (b) of s. 7 (1) could be given a narrower application.

I am unable to agree in the argument that was advanced founded upon the express reference in the definition of "injury" to diseases contracted in the course of the employment to which the employment is a contributing factor. That argument was that the only disease or pathological state or change covered by s. 7 (1), whether under the head of "injury" or otherwise, is that described in the reference to disease contained in the definition of "injury."

It must be remembered that the words in question were introduced to enlarge the scope of the definition. I think a restrictive inference of so drastic a kind cannot be based upon them.

The change of the word "and" to "or" has created a difficulty as to whether in the case of par. (a) of s. 7 (1) more than a purely temporal connection between the employment and the pathological injury is necessary under the New South Wales legislation. To state it another way, the difficulty is whether to be a personal injury the pathological fact or event must in some way be related to the employment. The same difficulty arises under par. (b) in relation to the journey. In *Kellaway* v. *Broken Hill South Ltd.* (6) the Supreme Court decided under par. (a) that if a worker suffers from a progressive disease neither caused nor contributed to by his employment and while he is in the course of his employment but by reason of the natural course of the disease with no contributing factor from the employment an accentuation occurs and causes disablement or death, the worker or his dependants are not

(1) (1933) A.C. 501, at pp. 504, 505.
(2) (1933) A.C. 481.
(3) (1936) 2 All E.R. 1221.
(4) (1946) 1 K.B. 360, at p. 367.
(5) (1939) 2 All E.R. 498.
(6) (1944) 44 S.R. (N.S.W.) 210

entitled to compensation. See, further, *Osbeiston* v. *Grimley Ltd.* (1) (Judge *Perdriau*).

There is some difference in the reasoning of *Jordan* C.J. of *Davidson* J. and of *Roper* J., who decided *Kellaway's Case* (2) but I think it may be said to depend upon their Honours' conception of the intended application of the expression "received a (personal) injury" in the context of the New South Wales enactment having regard particularly to the references to disease and to the change of "and" to "or."

On the question thus answered under par. (a) whether more than a temporal connection is needed for such a form of injury, I see little to distinguish the case under par. (a), of an injury in the course of the employment from the case under par. (b) of receiving injury "on" a journey. We may assume that the same considerations apply.

In the present case we need go no further than to decide that, if exertion or some other incident of the journey is a contributing factor, then coronary occlusion is within par. (b) of s. 7 (1). For in this case the deceased was riding to his work on a bicycle and it was found that the exertion contributed to the occurrence then and there of the coronary occlusion.

In my opinion the appeal should be dismissed.

McTiernan J. I am of opinion that the answer given by the Supreme Court to the first question is right and that this appeal should be dismissed.

The question arises under s. 7 (1) (b) of the *Workers' Compensation Act* 1926-1946 of New South Wales and depends upon the proper construction of the word "injury" in that provision.

Section 6 (1) gives a statutory construction to the word "injury" in the Act, and this construction applies unless the context or subject matter otherwise indicates or requires it. The circumstances in which s. 7 (1) (b) imposes a liability upon the employer in respect of a worker who has received injury, do not admit of the application of this construction. Section 7 (1) (b) would be nugatory if the remedy given by it was limited by the connection prescribed by s. 6 (1) between injury and employment. It would be nugatory because injury received by a worker while travelling between his home and employment would not generally arise out of or in the course of his employment; and if the injury did so, it would be within s. 7 (1) (a). The same considerations apply if "injury" in s. 7 (1) (b) includes a disease, for s. 6 (1) says that "injury" includes a disease, an essential characteristic of which is that it was con-

(1) (1944) 18 W.C.R. 99. (2) (1944) 44 S.R. (N.S.W.) 210.

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tracted in the course of the employment. The corollary of or implication from the express inclusion made by s. 6 (1) for the purposes of s. 7 (1) (a) of a disease having a particular connection with the employment, is not the exclusion of any injury due to disease from the purview of s. 7 (1) (b). The subject matter of the legislation limits the term "injury" in s. 7 (1) (b) to personal injury: the word "injury" is used in that sense in s. 7 (1) (b) without any limit upon its generality. Personal injury is the origin of the liability imposed upon the employer by s. 7 (1) (a) and s. 7 (1) (b). The essential difference between the two provisions does not consist in the nature of the personal injury against which each of them insures the worker, but in the circumstances in which each insures him. Section 7 (1) (b) is not at all concerned with limiting the word "injury" as a term descriptive of bodily hurt: it is concerned with extending the cover to circumstances beyond those delimited by s. 7 (1) (a). Neither s. 7 (1) (a) nor s. 7 (1) (b) contains the words "by accident." By omitting those words the legislature has done away with a qualification which is generally made on the employer's liability, but this omission does not restrict the content of the word "injury." The workman in the present case died from a coronary occlusion which was due to a small piece of the lining of the artery having loosened and blocked the artery. This was an injury within the accepted connotation of physical injury in this field of legislation. There is this finding of fact: "The occlusion was the inevitable end result of this disease." The disease was an advanced atheroma of the aorta and coronary arteries. The result of the authorities, many of which are cited in *Hetherington* v. *Amalgamated Collieries of W.A. Ltd.* (1) is that injury which is due to the worker's inherent weakness or disease may give rise to a claim for this statutory compensation. But if the claim was made under s. 7 (1) (a) it would be necessary to prove that the employment contributed to the injury: see s. 6 (1) "injury": cf. *Clover, Clayton & Co. Ltd.* v. *Hughes* (2) per Lord *Loreburn*. But in the present case, which is under s. 7 (1) (b), the only condition of liability is that the worker has received injury on a journey which is within the sub-section. The sub-section does not expressly require that there should be any other connection between injury and employment: and the sub-section does not imply any other connection.

Appeal dismissed with costs.

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J. B.

(1) (1939) 62 C.L.R. 317.

(2) (1910) A.C. 242, at p. 247.