[HIGH COURT OF AUSTRALIA.]

GOWARD . . . . . APPLICANT;

AND

THE COMMONWEALTH . . . . . RESPONDENT.

H. C. OF A. 1957.

SYDNEY, *Aug.* 26, 27; *Sept.* 12.

Dixon C.J., McTiernan, Williams, Webb and Kitto JJ.

Workers' Compensation—Injury "arising out of and in the course of the employment"—Incident of employment—Federal employee—Death—Cause—Surrounding circumstances—Proof—Lack of evidence—Inference—Claim by widow refused—Magistrates court—High Court—Special leave to appeal—Application refused in the circumstances—Federal jurisdiction—State courts—Statutory provisions—Effect—Presumption—Commonwealth Employees' Compensation Act 1930-1954, *ss.* 9 (1), 20, *First Schedule—The Magistrates Courts Act* 1921 *to* 1954 (*Q.*), *ss.* 2, 4, 7, 11 (3)—*Judiciary Act* 1903-1955, *ss.* 35, 39.

Having regard to the purposes of s. 39 of the *Judiciary Act* 1903-1955 and its basal character in matters concerning the federal jurisdiction of State courts, such a provision as s. 20 of the *Commonwealth Employees' Compensation Act* 1930-1954 should be treated as implying an assumption that the general nature of the federal jurisdiction of State courts is fixed by its provisions. In other words, s. 20 should be interpreted in connexion with s. 39 and understood as meaning to enable the State courts which it mentions to give the relief it prescribes on the implied presumption that they will exercise federal jurisdiction as under s. 39.

A stipendiary magistrate in Brisbane, exercising jurisdiction under s. 20 of the *Commonwealth Employees' Compensation Act* 1930-1954, refused compensation to the applicant and her children in respect of the death on a railway line of her husband and their father. The magistrate found expressly that there was no evidence as to what the deceased, an employee of the Postmaster-General camped with other employees near a country railway station, was doing on the railway line nor as to where he was going at the time of his death. The applicant applied for special leave to appeal to the High Court. The application was based upon the ground that the accident arose out of the deceased's employment because the position of the camp and the use of necessary services and amenities made the risk of injury by accident in connexion with the railway a risk to which the deceased was exposed in virtue of his employment.

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Held, that although to live in the camp might be regarded as an incident of the deceased's employment the lack of evidence as to what the deceased was doing on the railway line or as to where he was going at the time of his death left in doubt whether there was truly a causal connexion between the employment and the accident; he was killed by a train in circumstances which could be known, if at all, only from inference and as an appeal by the applicant must fail it would be wrong to grant her special leave to appeal.

APPLICATION for special leave to appeal from a magistrate's court.

A claim for compensation under the *Commonwealth Employees' Compensation Act* 1930-1954 made on behalf of herself and their two infant children by Beryl Mary Goward, widow, of Manly West, Brisbane, Queensland, in respect of the death, on 4th August 1955, at Dulbydilla, Queensland, of her husband, Selwyn Arthur Goward, a linesman formerly employed by the Postmaster-General, was rejected on 9th January 1957 by the Commonwealth Commissioner for Employees' Compensation whereupon the widow appealed to a stipendiary magistrate at Brisbane for a re-hearing of her application for compensation.

The appeal was heard before a stipendiary magistrate who, upon the conclusion of the taking of evidence and addresses by counsel for the parties, adjourned the matter for decision until 29th May 1957 when he gave his findings as follows and dismissed the appeal:—

"1. That at the time of the accident the deceased was not carrying on any duty of his employer; 2. That the deceased suffered his injuries outside the camp area and on the railway line; 3. That the deceased suffered his injuries at a place to which his duties did not take him; 4. That the deceased, at the time of his injury, was under no duty to be in camp; 5. That the deceased was not required to work outside his normal hours of duty, except on overtime; 6. That the establishment of the camp was for the convenience of both employer and employee; 7. That the location of the camp constituted a danger to a person travelling to and from the station house; and 8. That there is no evidence as to what the deceased was doing on the railway line or as to where he was going at the time of his death."

By motion on notice an application for special leave to appeal to the High Court from the magistrate's decision was made on behalf of the widow and the two children.

A solicitor acting on their behalf deposed by affidavit that, *inter alia*, finding No. 7 of the magistrate's findings was made after the decision was given on request by counsel for the appellant; that finding No. 8 of these findings was made after the decision

had been given upon request made by counsel for the respondent; that the amount payable to the applicant and her two children by way of compensation under the *Commonwealth Employees' Compensation Act* 1930-1954 should her application for special leave be granted and her appeal succeed would be £2,550 0s. 0d.; that the magistrate made no reference to the authorities quoted by either counsel in giving his decision; and that there is no avenue of appeal open to the applicant other than by obtaining special leave to appeal to the High Court.

Further relevant facts and statutory provisions appear in the judgments hereunder.

B. M. McLoughlin, for the applicant. The applicant has no right of appeal to the Queensland Supreme Court: see *Martin* v. *Commissioner for Employees' Compensation* (1) and cf. *The Commonwealth* v. *Wright* (2). Special leave to appeal was granted in *Yirrell* v. *Yirrell* (3) from a decision of a magistrate awarding maintenance for a child. Grounds for special leave are: (i) the amount involved; (ii) the magistrate obviously has not dealt with the questions of law which were raised at the hearing; and (iii) those questions of law do raise matters of wide general importance. For the employees' presence in the camp to arise out of their employment it is not necessary for them to be under an absolute duty to remain in camp. The case is put entirely on "arising" out of the employment; not on "travelling". The actual reason why the deceased was crossing from the camp to the station or the station house does not matter. The location of the camp was specifically selected by the department for its own purposes, and the deceased, while present there, was exposed to the risk of injury from passing trains at any time when it was necessary for him to carry out any of the normal incidents of life. It was contemplated by his employment that he should reside at the camp. The presence of the deceased in the camp was no less necessary than that of the ganger in *Henderson* v. *Commissioner for Railways (W.A.)* (4). [He referred to *Department of Public Works* v. *Majcher* (5); *Lamont* v. *Water Conservation and Irrigation Commission* (6) and *Mallyon* v. *F. W. Hughes Pty. Ltd.* (7).] *Hill* v. *Commissioner for Railways* (8) is directly in point in this case. The circumstances in this case are such as to make the crossing of the railway line as incidental to the

(1) (1953) Q.S.R. 85.
(2) (1956) 96 C.L.R. 536.
(3) (1939) 62 C.L.R. 287.
(4) (1937) 58 C.L.R. 281, at pp. 291-293.
(5) (1954) 28 W.C.R. (N.S.W.) 53.
(6) (1954) 28 W.C.R. (N.S.W.) 148.
(7) (1948) 22 W.C.R. (N.S.W.) 4.
(8) (1946) 20 W.C.R. (N.S.W.) 128, at p. 130.

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deceased's presence as the egress from the camp along the railway in *Hill* v. *Commissioner for Railways* (1). The deceased's presence in the camp necessitated his being upon the railway line not only during his hours of duty but also outside his hours of duty: see *McGrath* v. *Commissioner for Railways* (2); *Jordan* v. *Commissioner for Railways* (3) and *Brooker* v. *Thomas Borthwick & Sons (Australasia) Ltd.* (4).

C. D. Sheehan, for the respondent. The mere presence of an employee near a possible danger, such as a railway line or a busy main road, is not sufficient to sustain a claim. It must be shown that if an injury is occasioned to an employee he was, when injured, doing something incidental to his duties or something either authorised, or required, or expected of him (*Henderson* v. *Commissioner of Railways (W.A.)* (5)). Leave to appeal should not here be granted. There is no evidence that the deceased was doing anything which was incidental to or a necessary part of his duty (*Pearson* v. *Fremantle Harbour Trust* (6)). The matter is mere conjecture. Reliance is not placed on the judgments in *The Commonwealth* v. *Wright* (7). The matter is resolved here by finding No. 8. The question whether the injuries arose out of the employment was dealt with in *Henderson* v. *Commissioner of Railways (W.A.)* (8) and *Lancashire and Yorkshire Railway Co.* v. *Highley* (9). The deceased was not acting "within the sphere of his employment". The magistrate's findings were found on evidence which was practically uncontradicted and should be upheld by this Court.

B. M. McLoughlin, in reply, referred to *The Commonwealth* v. *Wright* (7), per *Dixon* C.J. (10).

Cur. adv. vult.

Sept. 12.

The following written judgments were delivered :—

DIXON C.J., WILLIAMS, WEBB AND KITTO JJ. This is an application for special leave to appeal by a widow who unsuccessfully applied under the *Commonwealth Employees' Compensation Act* 1930-1954 on behalf of herself and two infant children for compensation in respect of the death of her husband by accident, arising, as she maintains, out of his employment by the Commonwealth.

(1) (1946) 20 W.C.R. (N.S.W.) 128.
(2) (1951) 25 W.C.R. (N.S.W.) 129.
(3) (1946) 20 W.C.R. (N.S.W.) 69.
(4) (1933) A.C. 669, at pp. 676, 677.
(5) (1937) 58 C.L.R., at pp. 293-295.
(6) (1929) 42 C.L.R. 320, at p. 329.
(7) (1956) 96 C.L.R. 536.
(8) (1937) 58 C.L.R., at p. 290.
(9) (1917) A.C. 352, at pp. 371, 372.
(10) (1956) 96 C.L.R., at p. 541.

The order from which she seeks special leave to appeal was made by a stipendiary magistrate in Brisbane exercising an authority arising from s. 20 of the *Commonwealth Employees' Compensation Act* 1930-1954. That section provides that any person affected by any determination or action of the commissioner under the Act may, within thirty days of the date of the determination or the taking of the action or within such extended time as the court upon application in that behalf allows, appeal to a county court against the determination or action and the court shall have jurisdiction to hear and determine the appeal and such appeal may be in the nature of a re-hearing. Section 4 defines the expression " County Court ". It means a county court, district court, local court, or any court exercising a limited civil jurisdiction and presided over by a judge or a police, stipendiary or special magistrate, of a State or a Territory of the Commonwealth.

By *The Magistrates Courts Act* 1921 *to* 1954 of Queensland a court of petty sessions constituted by a stipendiary magistrate and sitting in a district for the hearing or determination of matters under that Act at a place appointed for the holding of such courts is a court of limited civil jurisdiction : see ss. 2, 4, 7.

Special leave to appeal is applied for on the footing that s. 39 (2) of the *Judiciary Act* 1903-1955 applies to the proceeding and further that no appeal as of right existed as a result of par. (*b*) of sub-s. (2) of s. 39. That paragraph provides that wherever an appeal lies from a decision of any court or judge of a State to the Supreme Court of the State an appeal from the decision may be brought to the High Court. By s. 11 (3) of *The Magistrates Courts Act* 1921 *to* 1954 an appeal to the Supreme Court from a magistrate's court sitting under that Act is provided but it is confined to the actions and proceedings mentioned in the sub-section. In applying for special leave the applicant accepted the view adopted by *Mack* J. in *Martin* v. *Commissioner for Employees' Compensation* (1) that the provision is not large enough to embrace a proceeding before the magistrate's court under s. 20 of the *Commonwealth Employees' Compensation Act* 1930-1954. It followed that no appeal as of right arose under par. (*b*) of s. 39 (2) of the *Judiciary Act* 1903-1955. Accepting that view the applicant sought special leave as in pursuance of par. (*c*) of s. 39 (2) which provides that the High Court may grant special leave to appeal to it from any decision of any court or judge of a State notwithstanding that the law of a State may prohibit any appeal from such court of judge. Section 35 (1) (*c*)

(1) (1953) Q.S.R. 85.

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of the *Judiciary Act* which deals with special leave has no application because that provision relates only to Supreme Courts.

We notice that in *Wright's Case* (1) *Dixon* C.J. referred to the amount involved but, as s. 35 could not have been considered applicable, the reference can have no materiality unless to the desirability of granting special leave.

There is a difficulty in treating s. 39 (2) (*b*), (*c*) and (*d*) as applying to a State court exercising the authority given it by s. 20 of the *Commonwealth Employees' Compensation Act* 1930-1954. For s. 39 (2) is expressed to confer federal jurisdiction within the limits of the several jurisdictions of the State courts and the paragraphs which ensue, though expressed in themselves as positive commands are enumerated as conditions of and restrictions upon the federal jurisdiction conferred. It may be said that the paragraphs do not apply to new federal jurisdictions conferred by subsequent Commonwealth enactments and that s. 20 as such an enactment confers a jurisdiction not theretofore exercisable and so outside s. 39 (2). But having regard to the nature and purpose of s. 39 there are reasons why s. 20 should be construed with it so that such a result does not ensue.

We have held that s. 39 (2) is ambulatory in the sense that it covers State jurisdiction as it exists from time to time : *The Commonwealth* v. *District Court of the Metropolitan District* (2). And we have held that a subsequent federal enactment conferring part of the jurisdiction which s. 39 (2) also confers does not exclude the operation of the paragraphs described as conditions and restrictions : *Adams* v. *Cleeve* (3). But to treat a proceeding under s. 20 as falling within these paragraphs, as was done in *Wright's Case* (1) and in *The Commonwealth* v. *Anderson* (4) may perhaps involve a further step. For although s. 20 is expressed rather as conferring a right of appeal and not in terms as conferring federal jurisdiction on the State courts there can be no doubt that it does invest an authority to grant relief and that that authority would not otherwise exist. In *Ffrost* v. *Stevenson* (5) *Dixon* J. (as he then was) remarked that it may be a question whether s. 39 (2) and its sub-paragraphs govern an authority which is given to State Courts for the first time and does not otherwise exist.

We are however disposed to think that, having regard to the purposes of s. 39 and what may be fairly called its basal character in matters concerning the federal jurisdiction of State courts, such

(1) (1956) 96 C.L.R., at p. 541.
(2) (1954) 90 C.L.R. 13.
(3) (1935) 53 C.L.R. 185, at p. 190.
(4) (1957) 97 C.L.R. 345.
(5) (1937) 58 C.L.R. 528, at pp. 570, 571.

a provision as s. 20 should be treated as implying an assumption that the general nature of the federal jurisdiction of State courts is fixed by its provisions. In other words we think that s. 20 should be interpreted in connexion with s. 39 and that it may be understood as meaning to enable the State courts which it mentions to give the relief it prescribes on the implied assumption that they will exercise federal jurisdiction as under s. 39.

The alternative is to regard s. 20 as conferring a federal jurisdiction the exercise of which results in an order falling within s. 73 (ii.) of the Constitution and to treat the resulting appeal as unregulated by any provision except O. 70 of the *Rules of the High Court*. That would mean that except for the lapse of time special leave would have been unnecessary. But because the time has passed for giving the notice of appeal under O. 70 and no summons to extend the time was issued before it expired, special leave is necessary by reason of O. 70, r. 6 (2).

The order made by the magistrate's court from which special leave to appeal is sought dismissed an appeal by the applicant from a decision of the Commonwealth Commissioner for Employees' Compensation. The commissioner refused compensation to the applicant and her children in respect of the death of her husband. The application for special leave is based in substance upon the ground that the applicant and her children were entitled to compensation and the decision of the magistrates' court was wrong in law and in fact.

It appears that the husband of the applicant was killed on Thursday 4th August 1955. She and their two young children were dependants. He was in the employment of the Commonwealth and the sole question is whether his death arose out of his employment. Sub-section (1) of s. 9 of the Act provides that the Commonwealth shall be liable to pay compensation if personal injury by accident arising out of or in the course of the employment is caused to an employee. (The first schedule provides for compensation when death results from the personal injury.)

The deceased man was employed in the Postmaster-General's Department as a linesman. He was one of a party of eight men to whom were allotted about twenty miles of line to maintain between Mitchell and Charleville in Western Queensland. They lived in a camp at a place called Dulbydilla which was about the middle of the stretch of telegraph and telephone lines for which the party was responsible. The camp was pitched near the railway. On the Thursday night in question he was killed by a train on the railway in circumstances which can be known, if at all, only from inference.

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The facts upon which the inference must depend and on which the question of liability must turn may be told very briefly.

At Dulbydilla there was a small railway station attended apparently by a station mistress and there was a station house behind it where she dwelt with her husband, who seems to have been a ganger. The mail train was the Westlander and that passed through on its way to Brisbane apparently only once a week. There were however goods trains and letters could be sent by them. The deceased, who had been stationed at the camp for seven months, wrote regularly to his wife and handed his letters to the station mistress. The station and station house were on the south side of the railway line where there seems to have been nothing else except a tool dump belonging to the postal department. There was a single line but opposite the station there was a loop line ending a little east of the station. There was another loop passing behind the station which joined the line a little further east still. At about that point there was a crossing with a track from it leading to a road running parallel with the railway about three hundred yards away. The railway line was fenced on each side by a wire fence the top wire of which was barbed. At the crossover there were gates in the fence. The metals ran about fifty feet from the fences. The camp was on the north side of the railway line east of the station and began about fifty yards from the crossover. There were four permanent tents with two bunks each. The deceased and a mate occupied the fourth or furthest tent from the crossover. The back of the tents was about two yards from the wire fence. Further east still was a tool tent, to the north of which was a shower. To the north of the deceased's tent was a galley and in line with that north of the other three tents was a mess tent. The railway station was about two hundred yards west of the camp and perhaps fifty yards or more further west there was a railway camp. The deceased knew the occupants of the station house and sometimes paid them a visit. The mail train passed through Dulbydilla on a Thursday evening and it was due in about 7.30 p.m. but it was by no means always to time.

On Thursday 4th August 1955 the party at the camp drove in a truck to a place called Mungallala to obtain their pay. Mungallala is about twelve miles by road east of Dulbydilla. They left the camp about 3 p.m. and reached the camp on their return at a time variously estimated between 8 p.m. and 9 p.m., probably about 8.30 p.m. At Mungallala there was some drinking. They had been unexpectedly delayed by some difficulty with the lights of the car. The deceased drank beer and perhaps spirits. On the

drive back he had a bottle of rum which was handed around. On reaching the camp he went to lie on his bed in his tent. He said that he was not feeling well and would lie down. It afterwards appeared that he was sick. According to the evidence he was not accustomed to drinking but was quite in control of himself. A meal was prepared, but two of the party saw the deceased apparently asleep on his bed and there left him. In the meantime a goods train bound for Brisbane came and departed. Later the deceased was missed. A search resulted in the finding of a part of his body on the railway line approximately opposite the back of the tent and the remainder some seventy-five to a hundred yards further east.

It seems that when the goods train stopped at Dulbydilla the engine was not as far east as the crossover which therefore could be used by a man who wished to cross the line.

Several hypotheses have been put forward to explain how the deceased came to be on the railway line. One is that, being unaware whether the Westlander had passed through on its way to Brisbane or was late, he had gone to find out and perhaps send a letter by the goods train. Another is that feeling unwell he had gone to the station house for some remedy. Again it was suggested that he had simply gone to visit the station house. These hypotheses would suggest that he was struck by the engine of the goods train at the crossing and his body was carried forward before it was dismembered. They are compatible however with his having been confused and wandering up the line after going through the gate of the crossing. That he got through the fence at the back of his tent is possible but it is said to be very unlikely, not only because there was no purpose in doing so but because there was high grass along the line and because of the trouble it would be to get through the wires in the dark. The fact is that there is nothing to show how or why he got upon the railway line. The magistrate, at the invitation of the Commonwealth, found expressly that there was no evidence as to what the deceased was doing on the railway line or as to where he was going at the time of his death.

The application for special leave to appeal is however based upon the ground that, even so, the accident arose out of the deceased's employment because of the position of the camp, the reliance for postal and other services on the station and station house and the dependence upon the crossover meant that the risk of injury by accident in connexion with the railway was made incidental to the employment or in other words that it was a risk to which the deceased was exposed in virtue of the employment. On this point the

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magistrate made a finding but one which did not go very far. It was that the location of the camp constituted a danger to a person travelling to and from the station house.

Logically there is of course a preliminary question, namely, whether the deceased's living in the camp fell within the general conception of the " employment ". But upon this question there could hardly be any doubt. Theoretically he could live where he liked so long as he was at hand to attend to his actual duties. But this was an entirely theoretical proposition. The postal department recognised the necessity of a camp, established and regulated camps, organised camping parties and paid a camping allowance. To live in the camp may therefore be regarded as an incident of the employment. But the difficulty is that the cause of the deceased's being on the railway line cannot be ascertained and therefore cannot be assigned to any closer or other association with the employment than can be found in the proximity to the railway line and the crossover and in the use made of the crossover to get to the station and station house.

The contention is based on the conception which the often repeated words of Lord *Shaw* in *Thom* v. *Sinclair* (1) describe—" The expression " (arising out of the employment) " in my opinion, applies to the employment as such—to its nature, its conditions, its obligations, and its incidents. If by reason of any of these the workman is brought within the zone of special danger and so injured or killed, it appears to me that the broad words of the statute 'arising out of the employment' apply " (2).

To this must be added the explanation given by Lord *Haldane* in *Upton* v. *Great Central Railway Co.* (3) to the effect that it will suffice if the accident arises out of circumstances the employee has had to encounter because it is within the scope of his employment to do so.

The question is one of cause, but it is not enough to point to antecedent situations in the absence of which there could not have been an accident of the description involved. It is correct no doubt that if the camp had not been near a railway and if the deceased had not been living in the camp the accident would not have happened. But these are no more than antecedent conditions which are preliminary to, but hardly operative causes of, the accident.

No special risk attached to the employment simply because the camp was near the railway. Anybody desirous of using the station or posting a letter must use the crossing unless he was on the south

(1) (1917) A.C. 127.
(2) (1917) A.C., at p. 142.
(3) (1924) A.C. 302, at pp. 306, 308.

side of the line. It was a public crossing open for all to use. No duties of the deceased required that he should cross. It was entirely because it was the public means provided for getting to the station or station house from the north. If, being in a confused condition, he made a mistake at the crossing the risk of his doing so was not an incident attached to his employment. If on the other hand he was run down through the train moving or being in motion as he crossed, that does not seem to be a risk particularly associated with the fact that as an incident of the employment he lived in the camp. The sparse habitation of the place tends to make it less apparent that the risks of the crossing really belong to the order of ordinary public risks not specifically associated with the employment. If there were large numbers of persons using the crossing this would seem clear. But the fact that the camp brought men to a place which doubtless few used does not mean that an ordinary public risk attending all crossovers becomes a risk of the employment, the duties of the deceased not having led him to cross on the occasion of the accident. The hypothesis that he got through the fence is even less capable of supporting his case. For it was a thing that could not be ascribed to anything but his voluntarily going beyond anything incidental to his employment.

For these reasons we think that an appeal by the applicant must fail and that it would therefore be wrong to grant her application for special leave to appeal.

McTIERNAN J. I agree. If this motion were allowed the ensuing appeal would turn on the question whether there is any evidence that the fatal accident arose out of the deceased's employment with the Commonwealth. In order that the applicant's claim should succeed, it is not necessary that there should also be evidence that it arose in the course of the employment, as the conditions of the right to compensation are, in the Act, disjunctive.

There is no evidence that any duty of the employment brought the deceased to the place where the train ran him down. If there were such evidence, it would be an inescapable conclusion that the occasion was within the protection of the Act. The absence of such evidence, however, does not necessarily preclude the applicant from claiming that the accident arose out of the employment. It is urged on her behalf that the evidence proves a causal relation between the employment and the accident sufficient to satisfy the criterion of "arising out" of the employment. The contention that such a causal relation existed is founded on the circumstances in which the deceased stayed at the camp. It is a permissible

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finding, on the evidence, that it was part of the deceased's employment to stay in the camp: see *London and North Eastern Railway Co.* v. *Brentnall* (1). The applicant relies upon what the evidence proves was in fact necessarily involved in staying in the camp. It proves that by reason of the situation of the camp alongside the railway line nobody, who was in the camp, could leave or return without crossing the rails; and because the camp was not self-sufficient, there were frequent occasions when it was necessary to go to the other side of the line, for example, to the station house where letters were posted and obtained by the men living in the camp. That is a purpose of a kind connected with staying in the camp. The magistrate found that because of the location of the camp a person travelling between it and the station house would encounter danger resulting from the traffic on the lines which he would have to cross. In the circumstances it could be inferred that the deceased was exposed to that risk by his employment, as it involved staying in the camp. The applicant's case is that the deceased was on a journey between the camp and the station house when he was killed by a train, and that the purpose of the journey was related, as above-mentioned, to his living in the camp and thus with the employment. If there were evidence on which to find that the deceased was run down by a train when he was crossing the rails in the course of such a journey, I think that it could be powerfully argued that his employment materially contributed to the fatal accident by which he met his death. The magistrate stated, in his decision, that there is no evidence as to what the deceased was doing on the railway line or as to where he was going at the time of his death. This is correct. The absence of that evidence creates the real difficulty in upholding the applicant's claim for compensation. The lack of such evidence leaves in doubt whether there was truly a causal connexion between the employment and the accident. For this reason I think that no useful purpose would be served in granting this application for special leave to appeal and it ought to be refused.

Application for special leave to appeal refused.

Solicitors for the applicant, *O'Sullivan, Ruddy & Currie*, Brisbane.

Solicitor for the respondent, *H. E. Renfree*, Crown Solicitor for the Commonwealth.

J. B.

(1) (1933) A.C. 489.