[HIGH COURT OF AUSTRALIA.]

BUCHANAN & BROCK PROPRIETARY LIMITED . . . . . Appellant;
Respondent,

AND

HARRIS . . . . . Respondent.
Applicant,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. of A. 1957.

Melbourne, *Oct.* 9, 10, 11; Sydney, *Nov.* 2.

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

Workers' Compensation (Vict.)—Employment risks—Injury deemed by statute to arise out of or in the course of the employment—If incurred while worker is "in attendance at any place" for purpose of receiving "medical surgical or hospital advice attention or treatment"—Whether "any place" includes worker's home or place of employment—Rupture of muscle by worker at place of work—Treatment by doctor at worker's home—Advice by doctor on last visit to remain in bed and rest for about another week—Vomiting of blood by worker while in bed three days later and subsequent death from carcinoma of stomach—Whether widow of worker entitled to compensation—Workers Compensation Act 1951 (*No.* 5601) (*Vict.*), *s.* 8 (2) (*b*) (*iii*)—*Workers Compensation Act* 1953 (*No.* 5676) (*Vict.*), *s.* 4 (2) (*c*).

Section 8 of the *Workers Compensation Act* 1951-1953 (Vict.) provides that "(2) Without limiting the generality of the provisions of sub-section (1) of section five of this Act but subject to the provisions of sub-section (1) of section six of this Act an injury to a worker shall be deemed to arise out of or in the course of the employment if the injury occurs—(*b*) while the worker—(iii) is travelling between his place of residence or place of employment and any other place for the purpose of obtaining a medical certificate or receiving medical surgical or hospital advice attention or treatment or of receiving payment of compensation in connexion with any injury for which he is entitled to receive compensation, or is in attendance at any place for any such purpose."

Held by *Dixon* C.J., *McTiernan*, *Kitto* and *Taylor* JJ., *Webb* J. dissenting, that a worker cannot, under s. 8 (2) (*b*) (iii) be in attendance at his place of residence or place of employment for any of the specified purposes.

A worker while working in the course of his employment ruptured a muscle in his leg and by reason of the injury ceased work and remained home in bed. He was there attended by his doctor on four occasions, the last occasion being on 18th April 1955. Beyond advising the worker to rest and apply heat the doctor did not otherwise treat him. On the final occasion the doctor advised him to remain in bed and rest for about another week. While in bed on 21st April 1955 the worker vomited blood and experienced shock. On 23rd April 1955 he was admitted to hospital where he was found to be suffering from carcinoma of the stomach from which he died in hospital on 17th May 1955. An award of workers compensation having been made in favour of the widow of the worker.

Held by *Dixon* C.J., *Kitto* and *Taylor* JJ., that the worker received the advice and attention at home merely because he was there and not because he had attended there for that purpose.

Held further by *Dixon* C.J., *Kitto* and *Taylor* JJ., *Webb* J. *contra*, that the worker was not at his home for the purpose of receiving medical treatment on 21st April 1955, which was three days after the last visit of the doctor.

Held further by *Dixon* C.J., *Kitto* and *Taylor* JJ. that even if it was conceded that the worker suffered a compensable injury when he vomited blood on 21st April 1955 his death did not result from that injury but from the carcinoma.

Decision of the Supreme Court of Victoria (Full Court): *Buchanan & Brock Pty. Ltd.* v. *Harris* (1957) V.R. 549, reversed.

APPEAL from the Supreme Court of Victoria.

Myrtle Margaret Harris applied to the Workers Compensation Board of Victoria for compensation in respect of the death of her husband William Arthur Harris. The respondent to the application, Buchanan & Brock Pty. Limited, was the employer of the deceased at the time of his death.

The application came on for hearing before the board on 9th March 1956 when both parties were represented by counsel and evidence was tendered on behalf of the applicant. On 29th January 1957 the board stated a case for the determination of the Full Court of the Supreme Court of Victoria, the material portions of which were :—3. After consideration of the evidence the board found the following facts—(a) The deceased William Arthur Harris late of 12 Perrin Street South Melbourne aged sixty-seven years was at all times material a worker within the meaning of the *Workers Compensation Acts* of the State of Victoria and had been in the employment of the appellant up to and including 3rd April 1955. (b) On 3rd April 1955 personal injury was caused to the deceased arising out of and in the course of his employment by the appellant, inasmuch as whilst performing work for the appellant he ruptured

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the plantaris muscle in his leg, an injury commonly known as a torn monkey muscle. (c) By reason of the said injury deceased ceased to work and remained home in bed. (d) He was attended professionally by his local doctor who told him to rest in bed and to apply hot packs to his injured leg at the seat of the pain. (e) The doctor attended him at his home on 7th, 9th, 12th and 18th April 1955 when he examined the deceased man's injured leg, discussed the patient's condition with him and advised him to rest and apply heat. He did not otherwise operate upon or treat the patient. On 18th April 1955 the doctor formed the opinion that the deceased's leg was improving, but that it was advisable for the injured man to remain in bed and rest for about another week. (f) Whilst in bed at his home as aforesaid on 21st April 1955 the deceased vomited blood and experienced shock. Because of this occurrence and his condition arising from it the deceased was admitted to hospital on 23rd April 1955. The injury to his leg and the condition resulting from the same and the progress made in recovery from the injury to the leg were such that there was not at any time any need for the deceased to be admitted to or treated in hospital in respect of the injury to his leg, or his recovery from that injury. (g) In hospital the deceased's condition was diagnosed as due to carcinoma of the stomach. His condition deteriorated and he ultimately died in hospital on 17th May 1955, the cause of death being the carcinoma. (h) There was no causal or other connexion or interrelation between the carcinoma of the stomach or its symptoms and the deceased's leg injury or his recovery therefrom or his work. (i) The vomiting of blood on 21st April 1955 marked an ascertainable stage in the development of the carcinoma, and in itself would have disabled deceased independently of the injury to his leg. 4. The appellant made all appropriate payments of workers compensation in respect of the leg injury up to the date of death of the deceased. 5. The applicant in the proceedings before the board was the widow of deceased. There were no other dependants of deceased at any material time. 6. The board found upon the above facts that the deceased died as a result of personal injury which was deemed to arise out of or in the course of his employment with the appellant, and made an award for £2,240 0s. 0d. with costs.

The question of law submitted for the opinion of the Full Court is whether upon the board's findings of fact the board erred in law in holding that the injury which caused deceased's death should be deemed to arise out of or in the course of his employment by the appellant within the meaning of s. 8, sub-s. 2 of Act No. 5601.

The case came on for hearing before the Full Court constituted by *Lowe*, *O'Bryan* and *Barry* JJ. which court on 11th June 1957 ordered that the question be answered in the negative: *Buchanan & Brock Pty. Ltd.* v. *Harris* (1).

From this decision Buchanan & Brock Pty. Limited appealed to the High Court.

P. D. Phillips Q.C. (with him *C. W. Harris*), for the appellant. Section 8 (2) (*b*) (iii) of the *Workers Compensation Acts* is confined to travel and the place to which the worker travels. The expression "is in attendance at any place for any such purpose" should not be given any wider meaning than is indicated by its association with travel. The conception of receiving medical attention is confined to attention received from a medical practioner or from some skilled person who is performing acts which are part of the medical treatment. The essence is attendance at a place and that gives to the treatment a locality character. It must be the kind of treatment which calls for presence at a particular place either because the person administering the treatment has demanded the worker's presence at that place or because the treatment demands his presence there.

O. J. Gillard Q.C. (with him *Kevin Anderson*), for the respondent.

Kevin Anderson. The words "in attendance" mean no more than in fact being present for a purpose. They do not involve the necessity of travel. In this case the deceased was present at a place, namely his home, for the purpose of receiving the benefits which would accrue to him from the carrying out of the medical advice which he had received. Medical treatment may consist of nothing more than advice to rest. [He referred to *Kirkley* v. *Howley Park Coal & Cannel Co.* (2).] The board has found that the deceased was receiving medical treatment at the material time. That finding should not be reviewed by an appellate court.

P. D. Phillips Q.C., in reply.

Cur. adv. vult.

Nov. 2.

The following written judgments were delivered:—

DIXON C.J., KITTO AND TAYLOR JJ. The respondent is the widow of one, William Arthur Harris, who died on 17th May 1955 and who, at all material times in his lifetime, was an employee of the appellant and a worker within the meaning of the *Workers*

(1) (1957) V.R. 549.

(2) (1920) 89 L.J. K.B. 1070.

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Compensation Acts of the State of Victoria. Subsequently to the death of the deceased the respondent made an application for compensation under these Acts and on 28th March 1956 the Workers Compensation Board made an award in her favour. At the request of the appellant the board, pursuant to s. 56 (3) of the Acts, stated a case for the opinion of the Full Court of the Supreme Court of Victoria raising for decision the question whether, upon the board's findings of fact, it " erred in law in holding that the injury which caused the deceased's death should be deemed to arise out of or in the course of his employment by the appellant within the meaning of s. 8 sub-s. (2) of Act No. 5601."

Until 1953 s. 5 of the *Workers Compensation Act* provided that if in any employment personal injury by accident arising out of or in the course of the employment should be caused to a worker his employer should, subject to the provisions of the Act, be liable to pay compensation. By s. 9 provision was made for the payment of specified amounts of compensation in cases where a worker's death resulted from the injury. Thereafter the *Workers Compensation Act* 1953 repealed the words " by accident " appearing in s. 5 and similar amendments were made to s. 8 which, by sub-s. (2), provided, for the purposes of the Act, notional extensions of the " course " of a worker's employment. As amended in 1953 the material provisions are in the following form: " (2) Without limiting the generality of the provisions of sub-section (1) of section five of this Act but subject to the provisions of sub-section (1) of section six of this Act an injury to a worker shall be deemed to arise out of or in the course of the employment if the injury occurs—(*a*) while the worker on any working day on which he has attended at his place of employment pursuant to his contract of employment—(i) is present at his place of employment; or (ii) having been so present, is temporarily absent therefrom on that day during any ordinary recess and does not during any such absence voluntarily subject himself to any abnormal risk of injury; or (*b*) while the worker—(i) is travelling between his place of residence and place of employment; or (ii) is travelling between his place of residence or place of employment and any trade technical or other training school which he is required to attend by the terms of his employment or as an apprentice or which he is expected by his employer to attend, or is in attendance at any such school; or (iii) is travelling between his place of residence or place of employment and any other place for the purpose of obtaining a medical certificate or receiving medical surgical or hospital advice attention or treatment or of receiving payment of compensation in connexion with any injury

for which he is entitled to receive compensation, or is in attendance at any place for any such purpose; or (iv) is travelling between his place of residence and a place of pick-up ".

It will be seen from the case stated that the provision which requires our consideration is sub-s. (2) (*b*) (iii) and that the award cannot be supported unless, on 21st April 1955, the deceased was, within the meaning of that provision, in attendance at a place for the purpose of receiving medical or surgical advice, attention or treatment in connexion with an injury for which he was entitled to receive compensation. The board considered that the circumstances of the case fell within the literal meaning of the provision because, as it thought, the deceased was in attendance at a place, his home, for the purpose of receiving medical treatment for a compensable injury.

The effect of s. 8 of the Acts is to make it unnecessary in any particular case to institute an inquiry whether a worker's injury has, in fact, arisen out of or in the course of his employment; it is sufficient under sub-s. (2) (*a*) if the injury has occurred whilst the worker, having attended at his place of employment on a working day pursuant to his contract of employment, is present at that place or, having been so present, is temporarily absent therefrom on that day during any ordinary recess and does not during any such absence voluntarily subject himself to any abnormal risk of injury. If either of these conditions is fulfilled it is unnecessary to go further for the purpose of finding some relation between the injury and the course of the worker's employment. This broad notion is carried further by sub-s. (2) (*b*) which entitles a worker to claim that any injury sustained by him whilst travelling in a specified variety of circumstances arises out of or in the course of his employment. The most familiar of these cases is, of course, the case where the worker is travelling between his place of residence and place of employment and this provision applies whether the worker is travelling to his place of employment or to his place of residence. It is sufficient if he is travelling between these two places in either direction. The same is true of the conditions specified in cll. (ii) and (iv) of s. 8 (2) (*b*); it is sufficient if the injury is sustained whilst the worker is travelling in either direction between the specified places. But when we come to consider cl. (iii) we find that it purports to deal with cases where a worker is travelling between his place of residence or place of employment and some other place for a specified purpose or purposes. The " purposes " specified are to obtain a medical certificate or receive medical, surgical or hospital advice, attention or treatment or to receive

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payment of compensation in connexion with any injury for which the worker is entitled to receive compensation. The first inquiry which the language of this clause provokes is whether its operation extends to the return journey to the worker's place of residence or place of employment after his purpose has been fulfilled. On the return journey, it may be said, he is not travelling for any specified purpose. And, indeed, one may ask whether a worker, who has attended " a place " for any such purpose, is still within the operation of the section if, whilst still at that place, he is injured after fulfilment of the purpose for which he had attended. It is, however, possible to say upon the general framework of the section that no such refinements were intended ; clearly the object of the section was to secure compensation to a worker who is injured whilst travelling to and fro between his place of residence or place of employment and some other place at which his attendance is necessary for any of the specified purposes. That is to say, the clause must be taken to refer to both the outward and return journeys where any of the so-called purposes have required the worker's attendance at some place other than his place of residence or place of employment. But in order to ensure complete protection for the worker in such cases it was thought necessary to go a little further and to provide that injuries received whilst in attendance at any place for any of the specified purposes should also be deemed to arise out of or in the course of the worker's employment. The result is that protection is given to the worker whilst travelling to such a place, whilst he is in attendance at such a place and during his journey therefrom to his place of residence or place of employment. But when he has returned home or to his place of employment the operation of the clause is exhausted. These considerations are, we think, sufficient to indicate that the clause does not contemplate or intend that a worker can be " in attendance " at his place of residence or at his place of employment for any of the specified purposes ; the words " or is in attendance at any place for any such purpose " are but an appendage to the clause to cover the attendance of the worker at a place to which he may be required to go and from which he may return to his place of residence or place of employment. Moreover the expression as used in the clause is, itself, more appropriate to signify physical presence at a place for a specific purpose. That being so, the deceased was not, whilst he was at home, in attendance at " a place " for the purpose of receiving medical attention.

But there is, it seems to us, another reason why the award cannot be upheld. Both the decision of the board and that of the Full

Court (1) accept the view that whenever a worker is confined to his home by an incapacitating injury and is there visited by a medical practitioner he may properly be said to be in attendance at a place for the purpose of receiving medical attention. And he would, it seems, continue to be in attendance for that purpose until he had fully recovered and even though the visits of his medical practitioner had previously ceased. As *Lowe* J. said: "the facts here show that he was at his residence for the purpose of carrying out the medical advice and treatment which he had received for a compensable injury. And I think he would continue to come within those words until the occasion occurred when the medical man had pronounced the man fit from his injury and treatment was no longer required" (2). No doubt the same might be said of a worker who, upon medical advice, convalesces at home, or for that matter, at any other place.

In the present case the facts show that the deceased was at home because he had an incapacitating injury. It is, no doubt, true that whilst there he received medical advice or attention on several occasions but this does not mean that he was "in attendance" at his home on those occasions for that purpose. The plain fact is that he received such advice and attention there merely because he was at home and not because he had attended there for that purpose. But even if the contrary view could be taken it would still be necessary for the respondent to maintain that the deceased was "in attendance" at home for such a purpose on 21st April 1955, that is to say, three days after the last visit of his medical adviser when he was advised to remain in bed and rest for "about another week". So to hold would, of course, mean that in every case where a worker is advised by a medical practitioner to rest for a few days the clause will operate if the advice is followed. He may be told to rest at home or elsewhere or, indeed, to take a sea voyage, and he would be entitled to say that he was in attendance at a place for the purpose of receiving medical attention. And it would matter nothing whether the advice were given at the worker's home or in the doctor's surgery. Such a notion, it seems to us, produces an inversion of the plain words of the clause which, in the case where a worker seeks advice from a medical practitioner in his surgery, affords protection to him only until he completes the return journey to his home.

Consideration of the facts discloses yet another difficulty in the way of the respondent for even if it be conceded that the deceased suffered a further compensable injury on 21st April 1955 it is clear

(1) (1957) V.R. 549. (2) (1957) V.R., at p. 552.

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that his death did not result from that injury. What caused his death, according to the case stated, was the carcinoma which was found to be present when he entered hospital. Presumably this was the condition for which he was being treated at the time of his death; at all events, there is no reason, upon the facts, to suppose that he was then in attendance at the hospital for treatment for any compensable injury or, that, whilst there, he suffered any additional injury.

For the reasons given the appeal should be allowed and the question raised by the case stated answered in the affirmative.

McTIERNAN J. The question in this case arises upon s. 8 (2) (*b*) of the *Workers Compensation Act* 1951 as amended. The provisions of this section make a wide extension of the area beyond the actual sphere of the worker's employment. The material provisions are in par. (iii). They are concerned with protecting the worker while he is travelling for specified purposes in connexion with an injury in respect of which he is receiving compensation or " is in attendance at any place for any such purpose ". If on either of those occasions, that is while travelling or in attendance, an " injury " occurs to him—as it were, an " injury " upon an " injury "—the provisions now in question make the employer liable to pay compensation in respect of the latter. The appellant, the employer, concedes that an injury within the meaning of the Act occurred to the deceased worker while he was at his place of residence and caused his death. The words upon which the question turns are " in attendance at any place for any such purpose ". It is not beyond the bounds of possibility for a worker to be in attendance at his place of residence for any of the purposes mentioned. But it is another thing to say that upon the true construction of par. (iii) the words " any place " include a worker's place of residence. In regard to travelling the paragraph limits the protection given to the worker to when he is travelling between his place of residence or place of employment and " any other place ". It is at any such other place that the provision protects the worker, if he is " in attendance " there for any of the specified purposes. In this view his place of residence is not a place at which he is given protection even if he is in attendance there for a specified purpose. The conclusion that the worker's place of residence is covered by the words " at any place " would involve reading the words " any other place ", which describe the terminal point of any travelling, as including the worker's place of residence. But the meaning of the provision, so far as it applies to travelling, is that nothing else than travelling between the

worker's place of residence or place of employment and " any *other* place " is included. What is provided in respect of travelling is not apt to describe travelling from the place of employment or any other place to his place of residence, or from that place or any other place to his place of employment. The provisions would appear to contemplate that at some other place than the worker's place of residence or place of employment he may need to attend for one or more of the specified purposes. The protection given to him while in attendance there for a specified purpose is supplementary to the protection given to the worker while travelling from his place of residence or of employment. For these reasons the words " attendance at any place for any such purpose " do not apply to the worker while at his place of residence.

In my opinion the question ought to have been answered adversely to the respondent to this appeal. I would allow the appeal.

WEBB J. This is an appeal from the Full Court of Victoria which answered in the negative a question in a case stated by the Victorian Workers Compensation Board asking whether the board had erred in holding that an injury which caused the respondent's husband's death should be deemed to arise out of or in the course of his employment by the appellant within the meaning of s. 8 (2) of the *Workers Compensation Act* 1951 (Vict.) as amended by the *Workers Compensation Act* 1953. The board made an award for £2,240 and costs in favour of the respondent. From the facts stated in the case it appears that the respondent's husband had been in the employment of the appellant up to and including 3rd April 1955 when, whilst performing work for the appellant, he ruptured the plantaris muscle in his leg and by reason of that injury ceased work and remained home in bed. His doctor told him to rest in bed and to apply hot packs to his injured leg. The doctor attended the deceased at his home on 7th, 9th, 12th and 18th April 1955, and advised him to rest and apply heat; but did not otherwise operate upon or treat the deceased. On 18th April 1955 the doctor formed the opinion that the deceased's leg was improving but that it was advisable for him to remain in bed and rest for about another week. Whilst in bed on 21st April 1955 the deceased vomited blood and experienced shock, and was admitted to hospital on 23rd April 1955. There the deceased was found to be suffering from carcinoma of the stomach and he died in hospital on 17th May 1955, the cause of death being the carcinoma. There was no causal or other connexion between the carcinoma and the deceased's leg injury. The vomiting of blood on 21st

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April 1955 would in itself have disabled the deceased independently of the leg injury. The appellant paid workers' compensation in respect of the leg injury up to the date of deceased's death.

Upon these facts the board found that the deceased died as the result of injury deemed to arise out of or in the course of his employment with the appellant.

Section 8 (2) (*b*) (iii) of the *Workers Compensation Act* 1951 as amended in 1953, so far as material, reads :—" . . . an injury to a worker shall be deemed to arise out of or in the course of the employment if the injury occurs . . . while the worker . . . is travelling between his place of residence or place of employment and *any other place* for the purpose of obtaining a medical certificate or receiving medical surgical or hospital advice attention or treatment or of receiving payment of compensation in connection with any injury for which he is entitled to receive compensation, or is in attendance *at any place* for any such purpose." The italics are mine.

It will be noted that if, say, an employer's factory is in one part of a city and his pay office is in another part and an employee in the factory becomes entitled to workers' compensation and goes to that office to receive the compensation and is injured there he becomes entitled to workers' compensation in respect of that injury also.

It is readily understandable that the legislature, having provided workers' compensation for an injury occurring whilst travelling to the office from the employee's residence or place of employment, should provide that injury in the place where the worker goes to receive medical surgical or hospital advice attention or treatment should likewise be included. But as these Acts receive a liberal interpretation, as *Lowe* J. remarked in the Full Court (1), we would not be justified in giving an unduly restricted meaning to the expression " medical surgical or hospital advice attention or treatment " in a context wherein it is provided that mere presence at the place to receive workers' compensation is enough to qualify for further compensation when the injury occurs there.

It seems to me that this expression should not be held to exclude compensation for injury occurring in any such place whilst things are being done by way of treatment of the injured employee, either by a doctor or by a person acting under his instructions, and whether that person be skilled or otherwise and even if they are done by the patient himself, provided they are within the scope of the doctor's instructions. The emphasis in this context is I think on the place where the things are done and not on the special qualifications of those actually doing them.

(1) (1957) V.R., at p. 551.

So much then for the type of treatment that is sufficient to characterise the place of attendance : as to the particular location of the place of treatment, this is not confined to " any other place ", as would be expected if the place of attendance was not intended to include the place of residence of the worker. Actually the phrases " any other place " and " any place " are contrasting in this context. The omission of the word " other " is significant, and must have been for the purpose of including the employee's residence. The omission would be unnecessary unless it were intended to include his place of residence. It would be unnecessary for the purpose of including other places. Moreover it would be quite arbitrary to exclude injury at his residence as not qualifying him for compensation because the treatment of the injury was not carried out by doctors and other experts only when similar treatment elsewhere would ensure entitlement.

But to qualify for compensation the employee must be *in attendance* at his home. If he were sent home by the doctor for more effectual treatment there he would I think be in attendance at home for that purpose. Where he is already at home when the doctor is sent for it might be difficult to find that he was in attendance at his home for medical treatment. But where, as here, the doctor advises him " to remain in bed and apply heat ", he would, I think, be in attendance at his home for medical treatment whilst applying heat. However as from 18th April to 21st April when he suffered the injury from vomiting he was in bed merely resting, although on the doctor's advice to do so for about another week. On the facts as stated in the case we must assume that there was to be, and was in fact, no further treatment for the leg injury after 18th April. Now can mere resting in bed, even on medical advice, properly be said to have been medical treatment for which he was in attendance at his home, on 21st April 1955 when the vomiting of blood occurred ? Certainly attendance involved the continued co-operation of two persons, the doctor and the patient. Had it ceased with the last visit of the doctor ? I conclude that it had not : he was to remain in bed on the doctor's advice for a further specified period, and not indefinitely.

As to the fact that the deceased died of carcinoma : that was not relied upon to defeat the claim for compensation by counsel for the appellant employer. The purpose of the enactment in question is to give compensation for a further injury sustained while undergoing medical treatment for the first injury. It is common ground that the vomiting of blood on 21st April 1955 was a further injury and that it led to the deceased's death which operated to fix the

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maximum measure of compensation and had no other relevance. The only question raised was whether the further injury occurred whilst the deceased was in attendance at a place for medical treatment.

I would dismiss the appeal.

Appeal allowed. Order of the Supreme Court of Victoria discharged. In lieu thereof direct that the question raised by the case stated be answered "yes". Further order that the award of the Workers Compensation Board be discharged and in lieu thereof order that the respondent's application be dismissed with costs. Respondent to pay the appellant's costs in the Supreme Court and in this Court.

Solicitors for the appellant, *Malleson Stewart & Co.*
Solicitors for the respondent, *Molomby & Molomby.*

R. D. B.