

Eric Grant Peter - - - - - *Appellant*

v.

The Yorkshire Estate Company, Limited, and another - - *Respondents*

FROM

THE COURT OF APPEAL OF BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 5TH MARCH, 1926.

Present at the Hearing :

THE LORD CHANCELLOR.

LORD PARMOOR.

LORD WRENBURY.

LORD BLANESBURGH.

LORD DARLING.

[*Delivered by* THE LORD CHANCELLOR.]

It is impossible not to feel sorry for the appellant in this case, but the decision must depend upon the construction of the Workmen's Compensation Act of British Columbia. Their Lordships do not feel any doubt as to the meaning of that Act.

The Act sets up a fund which is maintained by contributions, and which is available for compensating all workmen falling within the Act who suffer injury in the course of their employment. Section 4 of the Act applies to employers and workmen in or about certain industries which are there mentioned, including the operation of warehouses and freight and passenger elevators, and "any occupation incidental to or immediately connected with any of the industries enumerated in this section." In a proviso to the same section of the Act it is enacted that "this Part shall not apply to the following:—(a) persons engaged as travelling salesmen, and not exposed to the hazards incident to

the nature of the work carried on in the industry." Section 11, subsection (1) provides that:—

"Where an accident happens to a workman in the course of his employment in such circumstances as entitle him or his dependents to an action against some person other than his employer, the workman or his dependents, if entitled to compensation under this Part, may claim such compensation or may bring such action."

That provision is quite general, but an important qualification is introduced into it by subsection (4) of the same section, which provides that:—

"In any case within the provisions of subsection (1), neither the workman nor his dependents nor the employer of such workman shall have any right of action in respect of such accident against an employer in any industry within the scope of this Part."

Then provision is made for throwing the cost of the compensation in those cases upon that part of the fund in which the employer really responsible for the injury is interested. Then comes Section 12 of the Act, in which is the important subsection for present purposes—subsection (3). That subsection provides:—

"Where an action in respect of an injury is brought against an employer by a workman or a dependent, the Board"—(that is to say, the Workmen's Compensation Board)—"shall have jurisdiction upon the application of any party to the action to adjudicate and determine whether the action is one the right to bring which is taken away by this Part, and such adjudication and determination shall be final and conclusive: and if the Board determines that the action is one the right to bring which is taken away by this Part the action shall be for ever stayed."

The only other section which need be referred to is Section 74, which gives the Board exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising under Part I of the Act, and provides that the decision of the Board shall be final and not open to review. The section adds "and without restricting the generality of the foregoing the Board shall have exclusive jurisdiction to inquire into, hear and determine," among other questions:—

"(i) Whether or not any workman in any industry within the scope of this Part is within the scope of this Part and entitled to compensation thereunder"; and

"(j) Whether or not any person, firm or body corporate is an employer within the scope of this Part."

Now the appellant was in the employment of a firm named F. Wilkinson & Co., who dealt in wire rope and other things, and who had a warehouse and an office. The office was situated on the seventh floor of the Pacific Building at Vancouver. The owner of that building was one of the two defendants—it is needless for present purposes to distinguish between them—and one of those defendants operated certain elevators for communication with the upper floors of the building. It was part of the duty of the appellant to report himself from time to time at the office. On the 25th June, 1924, the appellant attended at the office in

the morning. Soon after 11 o'clock he was leaving the office by permission of his employers in order to view the arrival of the Special Service Squadron of the British Fleet. He entered one of the elevators, and the elevator most unfortunately fell; he suffered serious injury. The appellant brought an action against the respondents as the owners of the Pacific Building and the persons responsible for operating the elevator, the action being founded upon allegations of defects in the lift and of negligence on the part of the defendants' servants. The defendants applied under Section 12 subsection (3) of the Act to the Board to determine whether the action was one the right to bring which was taken away by the Act. The plaintiff, the present appellant, appeared before the Board under protest, and contended, first, that he was not within the Act at all, because he was a travelling salesman and not exposed to the hazards incident to the nature of the work carried on in the industry; secondly, that the defendants were not employers within the meaning of the Act so as to fall within the provisions of Section 12, subsection (3); and, thirdly, that in any case Section 12, subsection (3) did not on its true construction apply to an action brought by a workman against a person who was not his employer, although he was an employer within the meaning of the Act. The Board decided all those questions against the present appellant. In consequence of that decision the appellant's action has been stayed by the Court of Appeal of British Columbia, and it is against that stay that the present appeal is brought.

The appellant has raised again, as he was entitled to do, the points which have been mentioned. Their Lordships are plainly of opinion that the first two of these points were finally determined by the decision of the Compensation Board. An affidavit has been filed, but it is subject to objection, and their Lordships do not really know exactly on what material the Board came to its decision on the questions of fact; but whatever the materials before the Board may have been, the Board finally decided, as they were entitled to decide, both that the appellant did come within the scope of the Act, and that the respondents were employers falling within the statute. Those points, therefore, are closed beyond dispute.

There remains the third question, as to the construction of Section 12, subsection (3). It is argued on behalf of the appellant that the words "an employer" contained in that subsection refer only to the employer of the workman there mentioned, and not to a third person, that is to say, to another employer, although that other employer falls within the definition of an "employer" within the meaning of the Act. It might have been an answer to that contention that the Board have jurisdiction to decide questions of law as well as questions of fact; but it appeared to their Lordships more satisfactory to come to a conclusion themselves upon the point of law, and they

are of opinion that the contention cannot prevail. Throughout Sections 11 and 12 of the Act a distinction is drawn between "the employer" of a workman, who is from time to time referred to, and "an employer" within the meaning of the Act. It has been pointed out that in three expressions contained in the two sections "the employer" of the workman is clearly pointed to, and that in three other instances the word "employer" is used with reference to any employer under the Act. The seventh instance which occurs in the Act is the one in Section 12, subsection (3), which has to be dealt with. Upon the whole their Lordships are of opinion that the words "an employer" there occurring include any employer who falls within the purview of the Act. That view is supported by the circumstance that the Board is by the same subsection authorised to determine whether an action is one the right to bring which is taken away "by this Part," that is to say, by any section of this Part of the Act, including Section 11, subsection (4). That is the view which was taken by the Court of Appeal of British Columbia, and their Lordships do not see their way to differ from the conclusion of the Court. It follows that this appeal must be dismissed with costs, and their Lordships will humbly advise His Majesty to that effect.



In the Privy Council.

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