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20, 1950

77

In the Privy Council.

UNIVERSITY OF LONDON
 No. 1 of 1949.
 28 MAR 1951
 INSTITUTE OF ADVANCED
 LEGAL STUDIES

ON APPEAL
 FROM THE SUPREME COURT OF NEW SOUTH WALES.

BETWEEN

SLAZENGERS (AUSTRALIA) PROPERTY LIMITED

AND

IVY PHYLLIS EILEEN BURNETT Administratrix of the Estate
 of Minnie Gertrude Milligan, deceased - - - - Respondent

UNIVERSITY OF LONDON
 W.C.1.
 - - 7 JUL 1953
 INSTITUTE OF ADVANCED
 LEGAL STUDIES

RECORD OF PROCEEDINGS

NICHOLAS WILLIAMS & CO.,
 4 ARUNDEL STREET,
 STRAND,
 LONDON, W.C.2,
Solicitors for the Appellant.

KINGSFORD, DORMAN & CO.,
 EFFINGHAM HOUSE,
 ARUNDEL STREET, STRAND,
 LONDON, W.C.2,
Solicitors for the Respondent.

In the Privy Council.

ON APPEAL
 FROM THE SUPREME COURT OF NEW SOUTH WALES

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 LEGAL STUDIES

BETWEEN

SLAZENGRS (AUSTRALIA) PROPERTY LIMITED -

Appellant

AND

IVY PHYLLIS EILEEN BURNETT Administratrix of the Estate
 of MINNIE GERTRUDE MILLIGAN deceased - -

Respondent.

RECORD OF PROCEEDINGS

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 3. Affidavit in support of Notice of Motion for Leave to Appeal to the Privy Council.
 4. Notice of Motion for Final Leave to Appeal to the Privy Council.
 5. Affidavit in support of Notice of Motion for Final Leave to Appeal to the Privy Council.
 6. Affidavit by Ivy Phyllis Eileen Burnett, sworn 23rd September 1948.
 7. Affidavit by Geoffrey George Tremlett, sworn 12th November 1948.
 8. Certificate of the Prothonotary verifying Transcript Record.
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In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF NEW SOUTH WALES.

BETWEEN

SLAZENGERS (AUSTRALIA) PROPERTY LIMITED *Appellant*

AND

IVY PHYLLIS EILEEN BURNETT Administratrix of the
Estate of MINNIE GERTRUDE MILLIGAN deceased *Respondent*

10 RECORD OF PROCEEDINGS

No. 1.
CASE STATED.

No. 1.
Case stated,
3rd May
1948.

Term No. 93 of 1948.

IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the Workers' Compensation Act 1926-1947

IN THE MATTER of a case stated by the Chairman of the
Workers' Compensation Commission of New South Wales
referring questions of law which arose in proceedings before
the Commission for the decision of the Supreme Court of
New South Wales in accordance with the provisions of
Section 37 (4) of the Workers' Compensation Act 1926-1947

20

AND IN THE MATTER of a determination

Between MINNIE GERTRUDE MILLIGAN (the
Respondent herein) - - - Applicant

and

SLAZENGERS (AUSTRALIA) PTY. LTD.
(the Appellant herein) - - - Respondent.

CASE STATED.

1. This case is stated by the Chairman of the Workers' Compensation
30 Commission of New South Wales at the request of the Appellant Employer
under the provisions of Section 37 (4) of the Workers' Compensation Act
1926-47 and refers for the decision of the Supreme Court questions of

No. 1.
Case stated,
3rd May
1948,
continued.

law which arose in proceedings before the Commission on the Twenty-fourth day of October and the Twenty-seventh day of November One thousand nine hundred and forty-seven when Mr. Wall of Counsel appeared for the Applicant Widow (the Respondent herein) and Mr. Gordon Wallace of King's Counsel and Mr. Langsworth of Counsel appeared for the Respondent Employer (the Appellant herein).

2. On the Twenty-ninth day of May One thousand nine hundred and forty-seven John Samuel Milligan who was a worker within the meaning of the Workers' Compensation Act 1926-1947 and was the husband of the Respondent Minnie Gertrude Milligan whilst journeying 10 by tram on his daily journey between his place of abode at 23 Townes Gardens Pagewood and his place of employment with the Appellant at Alexandria suffered a coronary occlusion from which he died on the same day. The Respondent Widow claimed on behalf of herself as total dependant of the deceased at the time of his death the sum of Eight hundred pounds (£800) by way of compensation under the Workers' Compensation Act 1926-1947.

3. The defences raised in the proceedings before the Commission were that the deceased had not "received injury" within the meaning of those words where used in Section 7 (1) (b) of the Workers' Compensation Act 1926-1947 and that the death of the deceased was not causally related 20 to his journey.

4. The Commission found that the deceased had "received injury" on his daily journey within the meaning of Section 7 (1) (b) of the Workers' Compensation Act 1926-1947 and that such injury resulted in his death and accordingly made an award for the sum of Eight hundred pounds (£800) in favour of the Applicant.

5. The evidence on which the Commission arrived at the findings is set out in the transcript of evidence attached as part of this Case Stated.

6. Judgment of the Commission is in the following terms :— 30

" PERDRIAU J. : The Worker, John Samuel Milligan, aged 63 years, lived at Pagewood and was employed by the respondent in its factory at Alexandria. For some months he had been receiving medical treatment for hypertension and myocardial degeneration. On 29th May, 1947, while journeying by tram from his home to his work he suffered a coronary occlusion from which he died several hours later. His widow claims £800 compensation from the respondent. The defences relied on at the hearing, shortly stated, were that death had resulted from the disease alone, and that merely because the final stage happened on the journey did not 40 mean that the worker had 'received injury' within the meaning of section 7 (1) of the Workers' Compensation Act, 1926-1947.

The facts proved in evidence do not support an inference that any physical effort of the worker arising out of the journey played any part in the happening of the occlusion. His home was about three-quarters of a mile from the relevant tramway junction where he boarded the tram. He left home at the usual time, walked along practically level ground, the only slope being downhill, and arrived at the junction a few minutes before the tram commenced

on the journey. He boarded the waiting tram and sat talking to a fellow worker. He appeared to be in his normal health. When the tram left the junction at 6.25 a.m., the worker was sitting quietly on one of its seats, but when the tram had proceeded on its journey for several minutes he was seen suddenly to clutch his chest in pain. This was due to the happening of the coronary occlusion. He was helped out of the tram and sent home in a taxi, arriving back there about 7.15 a.m. He died about 9 a.m. I find that the weight of the evidence favours the view that the coronary occlusion was solely due to autogenous causes, and had no causal connection whatsoever with the journey.

No. 1.
Case stated,
3rd May
1948,
continued.

The finding of fact by the Commission in this case is the converse to *Pearl v. Hume Steel Ltd.* (1947), W.C.R. 28, and *Meagher v. The Commissioner for Road Transport and Tramways* (1947), W.C.R. 32, where it was found that there was strenuous physical effort arising out of the journey; that it and the happening of the coronary occlusion were practically simultaneous; that there was a causal connection between the two; and that by this means the worker 'received injury.'

The Commission's interpretation of section 7 (1) (b) is already reported in *Pearl's* case and *Meagher's* case, *supra*, wherein I expressed my opinion that to be compensatable under the Statute the injury or personal harm suffered must be received or got from some external source on the journey and not arise solely from causes within the worker's own body; that there must be a causal connection between the injury and the journey. However, when *Pearl's* case was on appeal before the High Court (Latham, C.J., Rich, Starke, Dixon and McTiernan, JJ.), Latham, C.J., expressed the definite opinion that no causal connection between the injury and the journey is necessary; that a temporal relation is sufficient, namely that the injury happened while the worker was on the journey. Although it was *obiter dictum*, in the circumstances, it seems to me to be an expression of opinion by which this Commission should be guided. As His Honour the Chief Justice stated, the consequences of this interpretation of the law, although remarkable, are not matters for consideration by the Courts, but are matters for the Legislature.

Applying that view of the law to the facts found in this case, the applicant is entitled to succeed in her claim, because the coronary occlusion, which was the injury, happened while the worker was on the journey, although there was no causal connection between the injury and the journey. An award is accordingly made in her favour against the respondent for £800 compensation with costs on the highest scale."

7. The following is a summary of the Commission's findings of fact:—

(1) The deceased was employed by the Appellant Slazengers (Australia) Pty. Ltd. and the Respondent Minnie Gertrude Milligan was totally dependent on the deceased's earnings at the time of his death.

No. 1.
Case stated,
3rd May
1948,
continued.

(2) On the Twenty-ninth day of May One thousand nine hundred and forty-seven the deceased was journeying by tram on his daily journey between his place of abode at 23 Townes Gardens Pagewood and his place of employment with the Appellant at Alexandria when he suffered a coronary occlusion from which he died at his place of abode on the same day.

(3) The physical effort of the deceased arising out of the journey did not play any part in the happening of the occlusion.

(4) For some months prior to his death the deceased had been receiving medical treatment for hypertension and myocardial degeneration. It was common ground that the hypertension, myocardial degeneration and coronary occlusion were not contracted by the deceased in the course of his employment with the Appellant nor was the employment a contributing factor thereto; neither was an injury which arose out of or in the course of deceased's employment.

(5) The coronary occlusion was solely due to autogenous causes and had no causal connection whatsoever with the journey.

8. The following question of law is now referred for the decision of the Supreme Court at the request of the Appellant :— 20

(1) On the Commission's findings of fact, did the Commission err in law in holding that the deceased John Samuel Milligan "received injury" within the meaning of Section 7 (1) (b) of the Workers' Compensation Act 1926-1947 ?

Forwarded herewith as parts of this Case Stated are :—

Application for Determination.

Respondent's Answer.

Award of Commission.

Transcript of Evidence.

(Sgd.) R. J. PERDRIAU, 30

Chairman,

The Workers' Compensation Commission
of New South Wales.

Sydney.

3rd May 1948.

APPLICATION FOR DETERMINATION.

No. 2.
Application
for deter-
mination,
27th June
1947.

No. of Matter 892 of 1947.

IN THE WORKERS' COMPENSATION COMMISSION OF NEW
SOUTH WALES.

IN THE MATTER of the Workers Compensation Act, 1926-47.
IN THE MATTER of a Determination

Between MINNIE GERTRUDE MILLIGAN - - Applicant

and

10 SLAZENGERS (AUSTRALIA) PTY. LIMITED Respondent.

An application under the above-mentioned Act is hereby made by the applicant against the respondent for the determination of the liability and amount of compensation payable by the respondent.

Particulars are hereto appended.

- | | | |
|-------|---|--|
| 1. | Name, age and late address of deceased worker. | John Samuel Milligan, aged 63 of
23 Townes Gardens, Pagewood. |
| 2. | Name, place of business, and nature of business of respondent from whom compensation is claimed. | Slazengers (Australia) Pty. Limited
Bowden St., Alexandria. Sporting
Goods Manufacturers. |
| 20 3. | Nature of employment of deceased at time of injury, and whether employed under respondent or under a contractor with him. | Employed in Glue room under
Respondent. |
| 4. | Date and place of injury, nature of work on which deceased was then engaged, and cause of injury. | On way to work on 29th May 1947,
became ill and had to return home and
died at home about 9 a.m. |
| 5. | Nature of injury to deceased, and date of death. | Died on 29th May 1947 of Coronary
occlusion. |
| 30 6. | Earnings of deceased during the four years next preceding the injury, if he had been so long in the employment of the employer by whom he was immediately employed, or if the period of his employment had been less than the said four years, particulars of his average weekly earnings during the period of his actual employment under the said employer. | About £6.13.0 per week. |
| 40 7. | Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof or any lump sum paid as compensation under the Act. | Nil. |

No.2.
Application
for deter-
mination,
27th June
1947,
continued.

8. Name and address of applicant. Minnie Gertrude Milligan of 23 Townes Gardens, Pagewood. Dependant Widow.
9. Character in which applicant applies i.e. whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.
10. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses and descriptions and occupations (if any) and their relationship to the deceased, and if infants their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death. No other dependants. 10
11. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefor made respondents, with their names, addresses, and descriptions and occupations (if any). None. 20
12. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied. £800.
13. Date of service of statutory notice of—
(A) Injury on respondent from whom compensation is claimed, and whether given before deceased voluntarily left the employment in which he was injured. John Samuel Milligan, son of deceased notified Respondent on date of death. 30
(B) Date when claim for compensation made. About 3rd June instant.
14. If notice not served, reason for omission to serve same. (Where death due to a disease contracted by a gradual process.) 40
15. Names and addresses of all other employers by whom deceased was employed during the twelve months previous to the date of incapacity or death, in any employment to the nature of which the disease was due.

The name and address of the applicant's solicitor (or agent) are :
Val Ackerman, Solicitor, 2 Joubert St., Hunters Hill.

Dated this twenty-seventh day of June 1947.

VAL ACKERMAN 50
Solicitor for Applicant.

I, MINNIE GERTRUDE MILLIGAN being the applicant in this application for Determination do hereby state as follows :—

No. 2.
Application
for deter-
mination,
27th June
1947,
continued.

(1) I am aware that if the injury in respect of which the said application is made was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, I may, at my option, proceed under the Workers' Compensation Act, 1926-1947, or independently of that Act.

10 (2) I do not desire to proceed independently of the said Act in respect of the injury.

(3) I elect to proceed under the said Act in respect of the injury.

Dated this twenty-sixth day of June 1947.

MINNIE G. MILLIGAN

Signature of Applicant.

I, the witness to the above signature, certify that :—

(1) I am not the solicitor for the employer or the solicitor for the employer's insurer ;

20 (2) I have read over and explained the Notice of Election to the Applicant ;

(3) I have examined the applicant touching his knowledge of the election and am satisfied that he understands the true purport and effect of the Notice of Election.

(4) The Notice of Election was freely and voluntarily executed by the applicant in my presence.

Solicitor for the Applicant
2 Joubert St., Hunters Hill.

VAL ACKERMAN,
Signature of Witness.

No. 3.
Answer by
Respondent
Employer,
3rd
September
1947.

No. 3.

ANSWER by Respondent Employer.

No. 892 of 1947.

IN THE WORKERS' COMPENSATION COMMISSION OF NEW SOUTH WALES.

IN THE MATTER of the Workers' Compensation Act, 1926-47.

IN THE MATTER of a Determination

Between **MINNIE GERTRUDE MILLIGAN** of 23 Townes
Gardens Pagewood - - - Applicant

and

SLAZENGERS (AUSTRALIA) PTY. LIMITED
of Bowden Street Alexandria - - Respondent.

10

TAKE NOTICE that the Respondent **SLAZENGERS (AUSTRALIA) PTY. LIMITED** states :—

THAT the Applicant's particulars filed in this matter are inaccurate or incomplete in the particulars annexed hereto.

THAT the Respondent denies its liability to pay compensation under the abovementioned Act in respect of the death of the worker mentioned in the Applicant's particulars on the grounds stated in the particulars annexed hereto.

20

THAT the Respondent intends at the hearing of the Application to give evidence and rely on the facts stated in the particulars annexed hereto.

PARTICULARS

1. Particulars in which the particulars filed by the Applicant are inaccurate or incomplete :—

As to the facts contained in paragraphs 4, 5, and 9.

2. The grounds on which the Respondent denies its liability to pay compensation :—

(A) That the deceased worker mentioned in the Applicant's particulars did not die as the result of an injury arising out of or in the course of his employment. 30

(B) If it is claimed the deceased worker died on a periodic journey or that his death arose out of a periodic journey then that the Applicant is not entitled to compensation under the Act as the deceased worker did not receive an injury on such journey.

(C) That even if the worker did receive an injury there was no causal connection between the journey and such injury.

3. Evidence which the Respondent intends to give in evidence and rely on at the hearing of the Application :— 40

The facts and grounds set out in paragraphs 1 and 2 hereof.

AND FURTHER TAKE NOTICE that the names and addresses of the Respondent and its Solicitor are

Of the Respondent : Slazengers (Australia) Pty. Limited Bowden Street Alexandria.

Of its Solicitor : Alfred Owen Ellison 12 O'Connell Street Sydney.

Dated this 3rd day of September, 1947.

No. 3.
Answer by
Respondent
Employer,
3rd
September
1947,
continued.

A. O. ELLISON

Solicitor for the Respondent.

To : The Registrar of the Commission,

10 And to the abovenamed Applicant.

No. 4.

AWARD OF COMMISSION.

No. of Matter 892 of 1947.

IN THE WORKERS' COMPENSATION COMMISSION OF NEW SOUTH WALES.

IN THE MATTER of the Workers' Compensation Act, 1926-47

IN THE MATTER of a determination

Between MINNIE GERTRUDE MILLIGAN - - Applicant

and

20 SLAZENGERS (AUSTRALIA) PTY. LTD. - Respondent

CORAM :

Perdriau J.

At Sydney

Having duly considered the matters submitted, the Commission, for the reasons stated in its judgment—

1. Finds that—

(A) on the Twenty-ninth day of May, 1947, whilst journeying by tram between his place of abode and place of employment, the worker John Samuel Milligan, suffered a coronary occlusion from which he died that day ;

30

(B) there was no causal connection between the injury—the said coronary occlusion—and the journey ;

(C) the worker received injury within the meaning of section 7 (1) of the abovementioned Act.

No. 4.
Award of
Commission
27th
November
1947.

No. 4.
Award of
Commission
27th
November
1947,
continued.

2. HEREBY ORDERS AND AWARDS :

(A) That the respondent DO PAY the sum of EIGHT HUNDRED POUNDS as compensation for the financial injury resulting to the applicant widow, Minnie Gertrude Milligan, as a result of the death of the said worker.

(B) That in pursuance of the provisions of section 57 (1) of the Act, the respondent DO PAY the said sum of EIGHT HUNDRED POUNDS to the Registrar of the Commission forthwith after the date of this award.

(C) That the respondent DO PAY the applicant's costs of and 10 incident to this determination, including a qualifying fee for Dr. Calov, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the Registrar under the HIGHEST of the scales of costs in use in District Courts, and to be paid by the respondent forthwith after the date of such taxation.

Dated the Twenty-seventh day of November, 1947.

For the Commission,

R. J. PERDRIAU,
Chairman of the Commission.

Transcript
of
Evidence,
24th
October
1947.

TRANSCRIPT OF EVIDENCE.

20

WORKERS' COMPENSATION COMMISSION.

Before His Honour Judge PERDRIAU.

SYDNEY, Friday, 24th October, 1947.

IN THE MATTER of a determination between—

MINNIE GERTRUDE MILLIGAN and SLAZENGER'S (AUST.)
PTY. LIMITED.

Mr. Wall appeared for the applicant.

Mr. Wallace K.C. with Mr. Langsworth appeared for the respondent.

No. 5.
Examina-
tion of
Minnie
Gertrude
Milligan.

No. 5.

MINNIE GERTRUDE MILLIGAN,

30

Sworn, examined, deposed :

To Mr. WALL : I am the applicant in this case. I live at 23 Townes Gardens, Pagewood. I am the widow of the late John Samuel Milligan.

Q. Your late husband was employed by Slazengers Ltd. ?—A. Yes.

Q. And he had been working with them for a considerable period before his death?—A. Yes.

Q. He went to work every day at a regular time?—A. Yes.

Q. I do not know whether you know what time he started work, but you know what time he used to leave his home?—A. Yes, about 20 minutes past 6 a.m.

Q. Your husband died on the 29th May this year?—A. Yes.

Q. On that particular day he got up at the usual time?—A. Yes.

Q. And dressed and had his breakfast in the usual way?—A. Yes.

10 Q. About what time did he leave on that day?—A. About 20 minutes past 6.

Q. What sort of weather was it that day?—A. Just coming on to rain, I helped him on with his overcoat at the back of the house.

Q. As he left—did he leave in a hurry?—A. Yes, he left in a hurry.

Q. You did not see any more of him until about what time; he was brought home in a taxi?—A. Yes, about 7.15.

Q. You are not quite certain of the time?—A. No.

Q. When he came back how was he?—A. He looked very sick.

20 Q. As time went on did he get better or worse?—A. He got gradually worse.

Q. And a doctor was called in and shortly afterwards he died?—A. Yes.

Q. How long from the time he came back in the taxi was it until he died?—A. It would be half-an-hour or something like that, or three-quarters of an hour. It is hard to judge the right time when you are all upset.

Dependancy admitted.

Cross-examination :

30 Mr. WALLACE: Your husband left at the usual time on this particular morning?—A. He was a little bit late, 20 minutes past 6.

Q. That was the usual time?—A. Sometimes he used to leave at a quarter past 6.

Q. Didn't you tell His Honour the usual time was about 6.20 for him to leave his home?—A. I did not say "usual"; I said that was about the time he left that morning.

Mr. WALLACE: It will be common ground here that you did say it was the usual time.

HIS HONOUR: I said "the usual time" and you said "yes."

40 Q. Did you watch him go down the street?—I only watched him go through the lattice gate, that was all.

Q. He was then walking?—A. Yes.

Q. Do you think you could agree with this, that it was nearer 9 o'clock than 8 o'clock when he died?—A. I think it was before 9, I am not quite positive because everything was so upset I did not think to look at the clock, but I think it was somewhere about 9 o'clock when he died.

(Witness retired.)

No. 5.
Examina-
tion of
Minnie
Gertrude
Milligan,
continued.

No. 5.
Cross-
examina-
tion of
Minnie
Gertrude
Milligan.

No. 6.
Examina-
tion of
Roland
Clyde
Triming-
ham.

No. 6.

ROLAND CLYDE TRIMINGHAM,

Sworn, examined, deposed :

To Mr. WALL : I live at 23 Townes Gardens, Pagewood.

Q. You were living there on the 29th May, 1947, boarding with Mr. and Mrs. Milligan ?—A. Yes.

Q. Where do you work ?—A. J. Kitchen & Sons, of Burke Road, Alexandria.

Q. On the 29th of May this year you left off work in the usual way ?—A. Yes.

Q. What tram do you go for ?—A. 26 minutes past 6 from Daceyville. 10

Q. From your knowledge and observation what tram did Mr. Milligan catch ?—A. The same one.

Q. Did you leave before or after Mr. Milligan ?—A. I left a few minutes before him.

Q. What sort of weather was it ?—A. It was starting to drizzle rain.

Q. Had the tram arrived when you got to the corner ?—A. No, just pulling in.

Q. What is the distance from the house in Townes Gardens to the tram stop ?—A. About three-quarters of a mile. 20

Q. When the tram arrived was Mr. Milligan there ?—A. No, he caught up to me, I got there first. I stayed there when the tram was pulling in and he came up.

Q. Can you tell us whether or not he was hurrying ?—A. Yes, he was hurrying when he got up to me.

Q. He came near you ?—A. Yes, and I looked into his face.

Q. What was he doing when you saw him ?—A. He stood there and I looked into his face. I said something.

Q. How did he look ?—A. He looked pale.

Q. Was he doing anything—what about breathing or anything like that ?—A. No, he just stayed there ordinary with me and his face seemed pale. 30

Q. Was that his ordinary look ?—A. No.

Q. You said something to him ?—A. Yes.

Q. You did not usually travel with him in that tram, he had his mates and you had yours ?—A. Yes.

Q. And he got into some other position in the tram from where you were ?—A. Yes.

Q. And that is the last you saw of him alive ?—A. Yes.

Q. When you went up to the tram that morning did you have to hurry ?—A. Yes, I was hurrying. 40

Cross-examination :

No. 6.
Cross-
examina-
tion of
Roland
Clyde
Triming-
ham.

Mr. WALLACE : Is this the fact that that tram waits at that junction about 10 minutes each morning in order to make connection with the tram coming from Maroubra ?—A. Yes.

Q. And the same men catch the same tram, of course, by and large every morning ?—A. Yes.

Q. And the usual thing is to see men sitting in the tram reading the paper or gossiping and yarning for some minutes before the tram moves off ?—A. Yes. 50

Q. The tram actually goes out to Alexandria in order to take people to and from out Maroubra way into Alexandria?—A. Yes.

Q. Is there a paper boy at the tram stop?—A. Yes, generally.

Q. You have your mates you sit with in the tram?—A. No, I am on my own.

Q. The deceased, I think, from your observation—you would say that he used to sit with a foreman named McJannett?—A. Yes.

Q. The tram moves off fairly punctually as a rule?—A. Yes.

10 Q. Do you say that the Milligan's home is three-quarters of a mile from the tram stop?—A. Yes.

Q. And you were walking the whole way?—A. Yes.

Q. How long does it take you to walk three-quarters of a mile, any idea?—A. Yes, when I am in a hurry I go in 12 minutes.

Q. Twelve minutes to walk the three-quarters of a mile?—A. Yes.

Q. Did you usually leave home with the deceased?—A. Yes, I was generally with him when we left home.

Q. At what time used you and the deceased generally leave home?—A. Say 10 past 6.

20 Q. Did you leave home at the usual time on this particular morning?—A. Yes.

Q. It is fairly level ground between the Milligan's home and the tram stop?—A. No, it is a bit downhill.

(Witness retired.)

No. 7.

GORDON MACQUARIE McJANNETT,

Sworn, examined, deposed :

To Mr. WALL : I live at 56 Maral Avenue, Maroubra Junction.

Q. You are employed by Slazengers as a foreman?—A. Yes.

Q. It has been your custom to travel to work on that tram?—A. Yes.

30 Q. And you used to see Mr. Milligan and in fact you used to travel with him?—A. Yes.

Q. On the 29th May he boarded the tram and sat opposite you?—A. Yes.

Q. When he got on to the tram how did he appear to be?—A. He appeared to be quite all right. I did not notice in any way that he was ill when he first got on the tram.

Q. When did you notice something?—A. When his hand went to his chest a couple of minutes after we left the Daceyville Section.

40 Q. Then you noticed that he put his hand to his chest?—A. Yes, and he complained of terrific pain in the chest. I asked him what the trouble was and he said "I am pretty crook, I have a terrific pain across my chest."

Q. I think you proceeded in this tram to a stop at McEvoy St., that was the usual procedure?—A. Yes.

Q. This morning when you reached McEvoy St., what was the position?—A. Mr. Milligan got up from his seat to get out at McEvoy St. He was still getting out when the tram moved off. He was just getting

No. 6.
Cross-examination of Roland Clyde Trimmingham,
continued.

No. 7.
Examination of Gordon Macquarie McJannett.

No. 7.
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tion of
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Macquarie
McJannett,
continued.

on to the footboard. I was behind him and I held him on the footboard until we got to the next stop, which I believe is Waterloo St., off Botany Road.

Q. You got him off at that stop?—*A.* Yes.

Q. You were helping him?—*A.* Yes.

Q. What did you do with him then?—*A.* There was a tramway seat just there at that stop, I sat him on the tramway seat and told him we would see if we could pick up a taxi and put him on the taxi to send him home.

Q. During all this time how did he appear to you to be?—*A.* At 10 that particular time he looked very ill to me. He was very ill.

Q. He needed your help?—*A.* Yes.

Q. After that you went on to Slazengers?—*A.* I stayed with him for about 10 minutes or a quarter of an hour. No taxi came. I noticed a small grocer's shop 100 yards or so down Waterloo St. I told Mr. Milligan I would go there and ring up a taxi, which I did. I rang up without results. I then came back to Mr. Milligan and asked him if he would be all right if I placed him on the tram to go back home.

Mr. WALLACE: I do not think anything turns on this detail.

(*To Mr. WALL:*) I then returned and helped him on a tram and 20 I then went on to Slazengers.

Q. I think you are a foreman at Slazengers?—*A.* Yes.

Q. The statement to the applicant's solicitors was supplied through Slazengers?—*A.* Yes.

Cross-examination :

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Cross-
examina-
tion of
Gordon
Macquarie
McJannett.

Mr. WALLACE: The deceased then was a fellow employee of yours?
—*A.* Yes.

Q. You used to see him every day?—*A.* Practically every day at work.

Q. And practically every day travelling to work?—*A.* Yes. 30

Q. And you were on a very friendly and intimate basis with him?—
A. As a workmate.

Q. We know that the tram stops at Daceyville Junction about 10 minutes or so before moving off; you will agree with that?—*A.* Yes.

Q. And as the workmen arrive at the Junction they get into the tram and begin to yarn or read the paper until it moves off?—*A.* Yes.

Q. On this particular morning did you see the deceased before he got into the tram?—*A.* Yes.

Q. For what distance did you have him under observation?—
A. Approximately 50 yards I would say. 40

Q. What was he doing during those 50 yards?—*A.* Walking straight towards the tram.

Q. Did he get straight into the tram?—*A.* Yes.

Q. Have you the slightest doubt about that?—*A.* No.

Q. And when he got into the tram was his appearance practically normal to you?—*A.* Yes.

Q. Did he appear to have the slightest sign of breathlessness?—
A. As far as I can remember, no.

Q. Did his face appear either pale or unduly coloured in any measure?
—*A.* To me it did not. 50

Q. How long after he got in the tram was it before the tram moved off?—A. I cannot remember that, possibly five minutes.

Q. At all events it would be much more than one or two minutes?—A. Yes.

Q. And during that five minutes were you and the deceased yarnning and having a few words?—A. We did say a few words.

Q. And everything was perfectly normal as far as you could see?—A. Yes.

Q. After the tram moved off it went a number of stops before he made any complaint?—A. Yes, about two stops.

Q. And you say the equivalent in time of a couple of minutes or so?—A. Yes.

Q. And you have told His Honour how he suddenly clutched his chest?—A. Yes.

Q. And prior to that time he had not made the slightest, or given the slightest indication of any pain, nor had he made any complaint?—A. No, not to me.

Q. Over that 50 yards you had him under observation before he got into the tram—he was walking an ordinary pace?—A. His usual pace was rather a hurried pace.

Q. On this occasion how would you describe his pace, would you say it was just a smart walk?—A. Yes, a smart walk, not unduly hurried I suppose.

Q. At all events when he got into the tram there was no sign of breathlessness whatever that you observed—that is the position?—A. Yes.

Q. You did not see him stop and talk to anybody before he got into the tram?—A. No.

Q. And you are prepared to say he did not stop and talk to anybody over that last 50 yards?—A. Yes.

(Witness retired.)

No. 8.

Dr. MAX ROBERT MOREY,

Sworn, examined, deposed :

To Mr. WALL: I am a legally qualified medical practitioner, practising my profession at 337 Anzac Parade, Kensington.

Q. I think you attended the late John Samuel Milligan before his death on the 24th May, 1947?—A. Yes, he was a patient of mine for several years.

Q. You had examined him from time to time with a view to examining his cardiovascular condition?—A. Yes, altogether with other complaints such as coughs and colds. The ordinary complaints you generally see patients with.

Q. In the few months leading up to the 29th May what was his heart condition?—A. He had seen me previously on a few occasions and he had complained of, I suppose, increasing breathlessness on exertion and some pain in the chest and around the shoulders on exertion at work and getting about generally. In his ordinary life, if he were hurrying or undergoing any exertion.

No. 7.
Cross-
examina-
tion of
Gordon
Macquarie
McJannett,
continued.

No. 8.
Examina-
tion of
Dr. Max
Robert
Morey.

No. 8.
Examina-
tion of
Dr. Max
Robert
Morey,
continued.

Q. Where did he complain of pain?—A. Mainly in the chest and about the shoulders.

Q. And his blood pressure readings, what were they?—A. The last time I took them it was 170/100.

Q. That was previous to the 29th May?—A. Yes, that was previous to his death. That would be about six to eight weeks previous to his death.

Q. What would you say as to that blood pressure?—A. It indicates some degree of myocardial degeneration I should think at his age.

Q. Did you form an opinion as to his response to effort?—A. Yes, it 10 was definitely decreasing.

Q. On the 29th May you were called in to attend to him at his home, that was in the morning?—A. Yes.

Q. What was his condition then?—A. He had suffered a coronary occlusion.

Q. And I think he died shortly after that?—A. Yes.

Q. It was your opinion the death was due to that occlusion?—A. Yes.

Q. You certified death was due to coronary occlusion, coronary sclerosis and arteriosclerosis?—A. Yes. 20

Q. I think you were given a history that he got an attack of pain on the tram as he was travelling to work?—A. Yes.

Q. And that he did not recover from that attack?—A. Yes.

Q. From the pathological point of view what was the cause of his death?—A. His death was due to the pre-existing heart disease and was probably the effort of walking half a mile or a mile. The effort would most probably accelerate the onset of the occlusion.

Q. When do you think the occlusion commenced?—A. After he had settled down and was sitting in the tram.

Cross-examination :

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Cross-
examina-
tion of
Dr. Max
Robert
Morey.

Mr. WALLACE: What history were you in fact given at the time you certified his death?—A. I was told that he became suddenly ill in the tram, and that he had got a sudden pain in the chest and was so collapsed that he had been brought home.

Q. Were you told anything further as to when he got the pain; how long he had been in the tram?—A. No, I did not inquire; I do not think I remember anything of the details.

Q. First you said that the effort of walking might have accelerated the onset, and then in answer to His Honour you said that such effort would have most probably accelerated it?—A. Most probably is more 40 correct.

Q. Would you think that such factors as to whether he showed any signs of breathlessness before the pain or any change of colour or that he was in any way abnormal; do you think those factors would be of any importance in deciding whether the effort of walking could accelerate the occlusion; in forming your opinion whether the effort of walking accelerated the occlusion, did you take into consideration—and I will name them one by one—did you take into consideration how long after the walking ended the pain commenced; did you take that factor into consideration?—A. No; I do not think that has any bearing on heart 50 disease, the onset of occlusion—after-effort would vary such a lot.

Q. Supposing after he walked he sat quietly in the tram for three-quarters of an hour?—A. He might still get an occlusion.

Q. Do you say the effort of walking would have any bearing in accelerating his occlusion?—A. Yes.

Q. Supposing he was sitting quietly in a tram or a railway train for two hours after he had walked and had merely sat quietly in his corner, would you then say the effort of walking two hours earlier could have had any effect in accelerating the occlusion?—A. Quite possibly it could.

10 Q. That is your evidence; supposing he was going on a railway journey from Sydney to Orange and he walked half a mile to the train and sat down in the train quietly and read a magazine for six hours and he got an occlusion at the end of the six hours, would you say then the coronary occlusion could have been accelerated by the walking six hours earlier?—A. Yes.

Q. Do you think you are in conformity with the general medical views on this matter?—A. I think so.

20 Q. Do you put any limit on the period of time elapsing after walking half a mile and the occurrence of a coronary occlusion thereafter—as to whether the effort of walking can accelerate an occlusion; any limit of time whatever?—A. Looking at it that way, there is probably no limit to the fact that any undue exertion at any time could deteriorate the man's heart a little bit. If after exertion he rested for some hours I think there is less likelihood of him getting an occlusion. If he does get some cardiac pain I think the rest would lessen the likelihood of the onset of an occlusion.

Q. Do you agree that in a large number of cases occlusions occur in bed?—A. Yes.

30 Q. Do you agree that medical research shows that the proportion of occlusions occurring throughout the day is in conformity with the periods of time working, resting or sleeping; you agree with that?—A. Yes, it is fairly evenly distributed so far as that is concerned.

Q. In other words, if you compare over a large number of cases the number of occlusions occurring to men whilst at work with the number of occlusions occurring to men whilst in bed, there is approximately the same number, having regard to the respective hours the same number occur in bed as occur during working hours?—A. It probably works out fairly evenly, I suppose.

40 Q. Are you aware of the school of thought which holds that effort has no relation to the occurrence of occlusions—are you aware of the existence of such a school of medical thought?—A. That is held, but it all depends on the existence of a pre-existing heart disease.

Q. What I am putting to you is, are you aware of a school of thought which says where you have a pre-existing heart disease effort has no effect on bringing about an occlusion; are you aware of such a school of thought?—A. Yes.

Q. You do not profess to be a specialist in heart matters?—A. No. I do not set myself up to be a heart specialist.

Q. You have been in general practice for some years?—A. Yes.

50 Q. Would you expect or not where there was some insufficiency—would you expect to find signs of breathlessness?—A. Yes.

Q. Would you expect to find some deviation from normal appearance, that is either pallor or colour in the face, of an abnormal nature?—A. Yes, it may not be very noticeable.

No. 8.
Cross-
examina-
tion of
Dr. Max
Robert
Morey,
continued.

Q. Supposing you were told that this man walked the last 50 yards at least before entering the tram; secondly, that he sat down in the tram for five minutes before it moved off; thirdly, that to a fairly intimate acquaintance or friend who saw him practically daily he showed no signs of abnormality and no signs of breathlessness; and fourthly, that during that five minutes he was sitting there perfectly normally chatting some of the time; and lastly, that it was two minutes after the tram moved off before he made any complaint. If you accepted those statements of mine as the facts of the case, would you then seriously say that the effort of walking most probably accelerated the occlusion; what 10
A. I still think the efforts could probably accelerate it, but I do not think there is any real evidence to disprove it, that that does not occur.

Q. Have you any evidence to prove that effort does accelerate it?—
A. No, and no heart specialist probably has either.

Q. So far as your reading and medical education and experience go, you can only say that you know of no evidence that has been established either to prove or to disprove that the effort accelerates the occlusion?—
A. All those things are supposition.

Q. You have never read of any effort? (No answer.) 20

Q. You would go this far with me, that is you know of no evidence which has proved the connection between effort and acceleration, surely you will agree with this, that where you found those facts which I have just tabularised, breathlessness, normality, that it was two minutes after the tram moved off before he made any complaint, etc., that would make you feel more than doubtful as to whether this occlusion had any connection whatever with any ordinary walk downhill for half a mile. Wouldn't you say there must be some real doubt about it?—
A. I do not think so, I have seen many a man working and after effort get occlusion.

Q. And you have known many a man to get an occlusion after he 30
has been asleep for some hours, you have no evidence one way or the other, that is what you mean?—
A. Yes.

Q. All I am putting to you is this, having regard to your very frank answer to me a little while ago, isn't it on your evidence not much more than pure speculation on your part when you say this walking effort precipitated the occlusion?—
A. To my mind you cannot deny that a man with a pre-existing heart disease, that if he does undertake a fairly long walk to a tram, it is probable if he were sitting at home it could not have happened.

Q. Can you give me any medical reason for that?—
A. No. 40

Q. Aren't you really in the same position as a layman, in effect, when you venture the opinion that that effort of walking in the circumstances I have recounted here accelerated the occlusion. You told me you cannot offer any medical reason why there should be any connection between the effort and the occlusion, and all I am asking about is that your opinion seems to be more speculation than a medical opinion?—
A. I would not say it is entirely speculation because probably 50 per cent. of occlusions occur during effort.

Q. I thought you had agreed with me a little while ago that statistics taken by research people show that the same proportion of occlusions 50
occur during rest and sleep as occur during work?—
A. That does not prove that effort does not accelerate some; you are speculating too as far as that is concerned.

Q. I am only trying to elicit what your evidence is. There are many cases, as I think you will more or less agree with me, where occlusion occurs after a man has been sleeping peacefully for a number of hours, many such cases?—A. Yes.

Q. It is obvious that in these cases there was no connection between effort and the occurrence of the occlusion. That is elementary?—A. Yes.

Q. You cannot offer me any reason why an occlusion should occur after a man has been asleep for five or six hours—why it should happen at that particular time?—A. No.

10 Mr. WALL: Your opinion is based on your general medical experience plus your reading?—A. Yes.

(Witness retired.)

No. 8.
Cross-
examina-
tion of
Dr. Max
Robert
Morey,
continued.

No. 9.

GORDON MACQUARIE McJANNETT,

Re-called, on his former oath:

Mr. WALL: Do you remember whereabouts in the tram you sat on the 29th May, that is the tram at Daceyville?—A. Four compartments back from the driving portion.

20 Q. About the centre of the tram?—A. Yes.

Q. You got in first?—A. Yes.

Q. You were already seated?—A. Yes.

(Witness retired.)

No. 9.
Re-called
and
examina-
tion of
Gordon
Macquarie
McJannett.

No. 10.

ROLAND CLYDE TRIMINGHAM,

Re-called, on his former oath:

Mr. WALL: Whereabouts in the tram did you sit that morning?—
A. In the back car.

(Witness retired.)

No. 10.
Re-called
and
examina-
tion of
Roland
Clyde
Trimingham.

No. 11.
Examina-
tion of
Reveil
Hearne.

No. 11.

REVILL HEARNE,

Sworn, examined, deposed :

To Mr. WALL : I live at 1001 Anzac Parade, Maroubra. I am 14½ years of age.

Q. I do not know whether you remember the date, but do you remember some time in May you saw a man who was sick ?—A. Yes.

Q. Whereabouts was that ?—A. At the corner of Gardeners Road and Anzac Parade, Daceyville.

Q. You were selling papers at that stage ?—A. Yes.

Q. And you saw this man get off a tram ?—A. Yes, and he walked over to a stop and sat down. 10

Q. How did he look ?—A. He looked very sick.

Q. I think you got a taxi for him ?—A. Yes.

Q. And he was put into that and that is the last you saw him ?—A. Yes.

Mr. WALLACE : No questions.

(Witness retired.)

No. 12.
Examina-
tion of Dr.
Leopold
Calov.

No. 12.

Dr. WALTER LEOPOLD CALOV,

20

Sworn, examined, deposed :

To Mr. WALL : I am a legally qualified medical practitioner practising my profession in Macquarie Street, Sydney.

Q. Certain facts were put before you with a view to you forming an opinion as to the relationship between Mr. Milligan's walking to the tram on the 29th May of this year and the onset of a coronary occlusion ?—A. Yes, certain documents were forwarded to me.

Q. What facts did you base your opinion on ?—A. His age was 63 years and his occupation was that of a labourer, I do not know the class of work that he was doing. The cause of his death was given as coronary occlusion secondary to coronary arterial degeneration. According to Dr. Morey he had symptoms of heart failure for 12 months prior to his death. On the morning of the 29th May, 1947, Mr. C. Trimmingham, who lived with Milligan, went off to catch the tram, and, as it was raining he hurried to the tram stop three-quarters of a mile away. While he was waiting for a tram (this is how I read Trimmingham's statement) Milligan arrived. Apparently he had hurried also. Trimmingham noted that Milligan looked sick. On the way to work in the tram, after travelling a few hundred yards, Milligan was seized with severe pain in the chest. I do not know how far they travelled before he and McJannett reached their usual stop, but when they did reach it Milligan was unable to leave the 30 40

tram. He was helped out at the next stop by McJannett. After some delay (I do not know how long) McJannett put him in the care of two passengers on a tram returning to Kingsford. He died at home several hours later.

No. 12.
Examina-
tion of Dr.
Walter
Leopold
Calov,
continued.

10 *Q.* Assume that this happened somewhere between a quarter to seven and seven o'clock—as far as the getting out of the tram is concerned and that he died somewhere before nine o'clock—on those facts what opinion did you form as to the relationship between the effort of going to the tram from his home and the coronary occlusion or the heart catastrophe that he had?—*A.* I consider that the exertion of hurrying to the tram did, according to this statement, cause him distress, no doubt it threw too great a strain on his heart; for Trimmingham noted that he looked sick on his arrival at the tram stop. Apparently he had coronary insufficiency. But it is doubtful whether occlusion had occurred at this stage. In my opinion the occlusion occurred in the tram. The hurried walk to the tram raised the blood pressure and increased the pulse rate. These conditions lessened, but remained at a higher level than normal, and eventually they were responsible for an intramural hæmorrhage or the lifting of an artheromatous plaque and so coronary occlusion.

20 *Q.* In your opinion what was the pathological cause of the man's death?—*A.* Occlusion in a coronary artery.

Q. I think you have said that occlusion occurred in the tram on the way to work?—*A.* Yes.

Cross-examination :

Mr. WALLACE : *Q.* In your opinion which you have just given to my learned friend about the nexus between the effort of the occlusion you rely, do you not, quite a deal, on Trimmingham's evidence about him looking sick and hurrying, you rely a good deal on that?—*A.* Yes.

No. 12.
Cross-
examina-
tion of
Dr. Walter
Leopold
Calov.

Q. You say that there must have been coronary insufficiency prior to the occlusion occurring?—*A.* Yes.

30 *Q.* Where the coronary insufficiency exists you must find, must you not, some objective signs such as breathlessness, abnormal appearance or the like?—*A.* Not always, there are not always sufficient objective signs of it to base a diagnosis.

Q. Wouldn't you expect breathlessness?—*A.* No, not always.

Q. By a far greater rule you would expect breathlessness?—*A.* No, the most frequent symptom is pain and when he gets the pain he stops before breathlessness comes on.

40 *Q.* The occlusion is a matter of sequence of events, when it does occur it follows the insufficiency?—*A.* Not necessarily insufficiency, it follows disease of the coronary arteries.

Q. If there is insufficiency that insufficiency manifests itself?—*A.* Yes.

Q. And you rely on Trimmingham's evidence about the man looking sick and hurrying?—*A.* As to his condition on that morning, yes.

Q. Supposing I ask you to assume very different facts, then what would you say, and the facts are these:—

(1) That he was walking at least during the last 50 yards before the tram;

(2) That when he got into the tram his appearance, far from being sick, was perfectly normal to an intimate friend;

50 (3) That there was no sign of breathlessness;

No. 12.
Cross-
examina-
tion of
Dr. Walter
Leopold
Calov,
continued.

(4) No sign of abnormal colouring ;

(5) That after he got into the tram he sat down and chatted in a perfectly normal manner for five minutes before the tram moved off and that

(6) The tram had gone another two minutes before he made the first complaint of pain.

I ask you to accept those as being the facts and to reject altogether from your mind the statement by Mr. Trimmingham that he looked sick and was hurrying and so on ; reject that altogether from your mind. Now I ask you to say what would be your opinion on the assumed facts I have given you ?—A. Having those facts only and no knowledge of what Dr. Morey thought—

Q. Reject Dr. Morey. I concede this. The man had a heart history, he had arteriosclerosis ?—A. The information that you have given me there does not in any way suggest coronary insufficiency.

Q. Would you agree with this, that the research experts or the statisticians in the medical world have shown to the profession that the proportion of occlusions occurring during sleeping and resting hours is much the same as the proportion occurring during waking and working hours, having regards to the respective times spent in those activities ?— A. I think that that is a little bit confusing. 20

Q. You know what I mean by the question ?—A. I think you mean that it has been shown that a man is just as likely to get an occlusion while he is working as when he is sleeping ? A. Roughly, that is the conception although the way I put it is the way I understand it to read in your professional books. I think the way you have put it is fairly satisfactory to me ?—A. I agree with that.

Q. Develop it another step, it is a commonplace that occlusions occur in bed after the patients may have been asleep for five or six hours ? —A. Yes, they do. 30

Q. In other words, it is not necessary that there should be a pre-existing condition of insufficiency for an occlusion to occur ?—A. No, it is not necessary for insufficiency but it is necessary to presuppose a disease.

Q. We are on common ground there ; would you agree with this, that in the assumed facts which I have presented to you and I will put it on a fairly lay basis, but assuming these to be the real facts of the case, it is much less likely than not that the walking had nothing to do with the acceleration of the occlusion, on my assumed case ?—A. No, I would not agree with that. 40

Q. Would you agree that there would be appreciable doubt on those facts, whether walking had any bearing on the onset of the occlusion ? —A. Yes.

Q. Do you agree with this statement—if I may preface my question, do you agree with me that A. M. Masters, of America, is one of the accepted world experts on the subject of heart diseases. Will you agree with his statement to this effect, that if unusual effort induced coronary occlusion men and women with coronary sclerosis would sustain this vascular disease daily by the thousand after any extreme effort ?—A. No.

Q. "This is not so despite the fact that we repeatedly run for a 50 train, move a piece of heavy furniture" and he gives other examples, and he says "If coronary occlusion were induced by strenuous effort

our life span would be 40 to 50 years, not 60 to 70 ” Do you agree with those observations of Mr. A. Masters ?—A. No.

Q. Have you ever yourself seen what doctors call a piece of plaque that has broken off from higher up in the blood stream and then drifted down to a point where the coronary occlusion has occurred ?—A. No.

Q. Will you agree with me that there is no medical writer, or any medical writer, who has seen such a piece of drifted plaque occurring at the occlusion ?—A. No.

10 Q. Can you name me any writer who claims to have seen such a thing ?—A. I can name a writer who claims to have seen a piece of plaque, as he believes, blocking an artery, but of course he did not know how it got there.

Q. Did that writer say that the plaque had obviously been detached from some other portion of the artery ; I ask you this : Whilst it is conceded on the one hand for the purpose of this question that occlusions do occur as the result of the internal building up of these lime deposits on the one hand and thereby causing an occlusion, I am asking you is there any medical evidence that an occlusion has occurred as the result of a piece of plaque breaking off higher up, drifting down and ultimately causing an occlusion ?—A. Yes, a man named Paterson wrote on those lines—

Q. Who is Dr. Paterson ?—A. I cannot quote chapter and verse for him.

Q. Where did he write that ?—A. In America.

Q. What publication ?—A. I think it was in the Journal of the American Medical Association, but there is an article in the Medical Journal of Australia and it quotes Masters, Dack and Jaffe and also Boas and Paterson.

30 Q. Where is that article and what does it say on this particular aspect ?—A. I cannot give you a date ; it would be about 1942, I should think.

Q. Does that article suggest that any medical authority as a result of post-mortem examination has actually seen and can vouch for a piece of plaque having moved and caused an occlusion ?—A. That article merely quotes the authorities.

Q. What does it say ?—A. The leading article in the Medical Journal of Australia leaves the matter in some doubt. Its tendency is to concur with Masters, Dack and Jaffe, that it is not as the result of effort.

40 Q. Do you yourself feel any different from Mr. Masters when he expresses the results of his research and his experiences in the following terms : “ Over a period of years my associates and I have analysed with utmost care the histories of 1,700 episodes of coronary occlusion and have come to the conclusion that this is an entirely fortuitous end result of progressive coronary arteriosclerosis. It is as frequent in the sedentary as in the physically active. Coronary occlusion is not related to effort, to occupation or to a particular social class. The percentage of attacks which occur during sleep, rest and mild or moderate activity coincides with the proportion of the 24 hours usually spent in these respective states.
50 Only 2 per cent. of the attacks were related in time to severe exertion. For the reasons given we concluded that the small percentage is expected coincidence.” “ The percentage of attacks which occur during sleep, rest

No. 12.
Cross-
examina-
tion of
Dr. Walter
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No. 12.
Cross-
examina-
tion of
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Calov,
continued.

and mild or moderate activity coincides with the proportion of the 24 hours usually spent in these respective states"; do you agree with the last sentence? "It is as frequent in the sedentary as in the physically active." Do you agree with that?—A. Yes, I think that is pretty right.

Q. He says: "Coronary occlusion is not related to effort, to occupation or to a particular social class."—A. No.

Q. Do you agree that it is not related to a particular social class?—A. That means that any person in any walk of life might get a coronary occlusion.

Q. The only thing you do not agree with there is that coronary 10 occlusion is not related to effort?—A. I disagree with that.

Q. And yet you concede that the proportion of attacks which occur during sleep coincides with the proportion of moderate activity—on the other hand "coincides with the proportion of the 24 hours usually spent in these respective states"; do you agree with that?—A. Yes.

Q. Your opinion is that there was intra mural hæmorrhage or a lifting of an artheromatous plaque?—A. Yes, those are the two likelihoods.

Q. I suggest to you that there is no medical ground for saying that this intra mural hæmorrhage—there is no medical evidence to prove that 20 that occurs in association with effort?—A. I do not think it has been proven, but there is very strong evidence to suggest that it does.

Q. What is the strong evidence?—A. First of all, we know that the onset of pain of coronary occlusion very commonly occurs at times when the blood pressure is raised and the pulse rate is increased.

Q. Stopping, if I may; we also know it very commonly occurs when the blood pressure is not raised and when the pulse rate is not increased; in other words, when they have been asleep?—A. That is where I disagree with Masters, Dack and Jaffe. I do not think their statistics prove 30 anything of the sort.

Q. Are you aware of the fact that his experiments were by injecting different coloured fluids into the mural walls of the arteries and subjecting them to incredible pressure of 500 m.m.'s of mercury; it has been shown that that pressure has had no tendency to cause intimal hæmorrhage; are you aware of those tests?—A. No. I have just got some recollection of them.

Q. They are tests you could expect an expert to carry out; my friend seems to suggest they were not done on a live man?—A. I think they probably were not done on a live man.

Q. Would you agree with this: supposing a man walked half a mile 40 to a railway station and then sat in a comfortable carriage on his way to Orange for six hours, completely at rest, and when the train got to Bathurst, or as it was going into Bathurst six hours later, he suddenly had a coronary occlusion; would you agree or not with the proposition that the half-mile walk six hours earlier could have a connection or a bearing on the occurrence of that coronary occlusion?—A. It is possible that the train of events that eventually were responsible for the coronary occlusion commenced while he was walking.

Q. What would they be?—A. The commencement of bleeding in the walls of the artery may have taken place while he was walking. I 50 consider that is possible. The bleeding goes on.

Q. No sign of coronary insufficiency?—A. No, not necessarily.

Q. And after six hours he suddenly has an anginal attack?—A. Yes, it is possible.

Q. And the bleeding has gone on; what has been happening?—
A. The bleeding may stop now and again and increase as the pressure in the vessel increases. This is a pure supposition, of course.

Q. I think you will agree it would be highly unlikely?—A. I do not know about that, and I do not think anybody knows about it.

Q. Do you think it likely there would be any connection?—A. I do not think I can answer it yes or no.

10 Q. Do you think it would be anything more than pure speculation even for a specialist such as yourself to say in such circumstances without a post-mortem either that there had been intimal bleeding or that the effort of the half-mile walk, even if there were such bleeding, that the effort of the walk had caused such bleeding—would it be more than speculation?—A. I think it would be more than speculation.

Q. Not much more?—A. Perhaps not much more.

Mr. WALL: You were asked to assume that Dr. Morey's evidence amounted to the deceased suffering from arteriosclerosis; what fact, so far as Dr. Morey was concerned, did you base your opinion on; I think
20 you had two reports of his?—A. There is one report here dated 17th September—both reports I have here are dated the 17th September.

(Two reports tendered and marked Exhibit "A".)

(Witness retired.)

— NASH,

Admitted: That the taxi Driver Nash took Mr. Milligan from Gardners Road to his home and that during the whole of the time he saw him he appeared to be seriously ill and in a state of collapse.

Case for applicant closed.

No. 13.

30

Dr. FRANK AUGUSTUS LAWES,

Sworn, examined, deposed:

To Mr. WALLACE: I am a legally qualified medical practitioner practising my profession at 185 Macquarie Street, Sydney.

Q. You specialise in what subject?—A. I am a consulting physician with a special interest in heart disease.

Q. You have been in Court and you have heard the evidence of Dr. Calov and you have heard me put certain assumed facts to him?—
A. Yes.

40 Q. On those assumed facts—I will not go through them again—on those assumed facts will you express an opinion as to whether there was any connection between the walking on this morning of the deceased

No. 12.
Cross-
examina-
tion of
Dr. Walter
Leopold
Calov,
continued.

No. 13.
Examina-
tion of
Dr. Frank
Augustus
Lawes.

No. 13.
Examina-
tion of
Dr. Frank
Augustus
Lawes,
continued.

and the coronary occlusion which occurred some seven minutes after he got into the tram?—A. I could find no evidence whatever to suggest any connection between the walking and the coronary occlusion. I have heard the questions and I think that the matter is speculative only. I have heard no concrete evidence brought forward to make any connection between the walking and the coronary occlusion.

Q. Do you attach any importance to the lack of breathlessness and the normal pulse of the man?—A. Yes, I do, I think that he was normal then and he had not had an occlusion. I deduce that he had no ill effect from his walking. 10

Q. Dr. Calov concedes that on these assumed facts there would be no evidence of insufficiency prior to the occlusion, do you agree with that?—A. Yes.

Q. Speaking generally on the matter of association of effort, the association, if any, between effort and occlusions, what is your opinion on the matter?—A. I have never been satisfied that any evidence has been brought forward to prove that coronary occlusion is the direct result of effort.

Q. Is exercise at any time a treatment for heart patients?—A. Yes, in some cases we order gently graduated exercise under supervision. 20

Q. For sclerotic conditions?—A. Yes.

Q. There has been a theory expressed here, it may even be an opinion that the occlusion in this case or in similar cases could be due to intimal hæmorrhages occurring earlier as the result of effort, what do you say as to that theory or opinion?—A. Intimal hæmorrhages have been found at post-mortem and they have been found in people who have had no effort, such as a patient confined to bed with cancer, and they have been found in people who have had effort also. An equal number of cases. It is the opinion of A. M. Masters who has carefully studied this matter and who is a world authority that intimal hæmorrhages are naturally a consequence of arteriosclerosis and not of effort. When you say that it is due to effort it is my opinion that is speculative. 30

Q. With regard to any theory or opinion put forward here by Dr. Calov, namely that relating to the displacement or movement of an atheromatous plaque, have you yourself any views on that?—A. I have never seen any evidence brought forward by any doctor who has found a plaque which has moved from its original site to block a small vessel. Again I feel there is an assumption in that view.

Q. As far as you are concerned, you do not subscribe to that theory?—A. No. 40

Q. Did you place any emphasis on the word "direct" a moment or two ago?—A. No, I should have said no effect, it was really an unnecessary word.

Q. You did not intend His Honor to attach any significance to it?—A. No, I will omit that word if I may.

Q. What, if any, are the signs you expect to see where there is a coronary insufficiency?—A. Unusual breathlessness on effort is a prominent sign of a coronary occlusion. A man who was accustomed to walking up 20 steps now finds that he can only walk up 10 without becoming breathless, and secondly, pain on effort is a symptom of coronary insufficiency. 50

Q. Anything to do with temporary colouring?—A. Yes, a patient may become pale.

Cross-examination :

No. 13.
Cross-
examina-
tion of
Dr. Frank
Augustus
Lawes.

Mr. WALL : I understand you do not accede to the theory that effort is related to coronary occlusion at all. It is your opinion that effort is not related to coronary occlusion ?—A. Yes.

Q. And there is the other school of thought that effort is related to coronary occlusion ?—A. Yes.

Q. Intramural hæmorrhage is quite a recognised condition ?—A. Yes.

Q. And that can end in occlusion ?—A. Yes.

10 Q. And the detachment of artheromatous plaques is a recognised condition ?—A. No, it has not been found.

Q. You recognise in Peart's case there was evidence of finding debris in the occluded artery ?—A. Yes, at the site of the atheroma, if I remember rightly, is where the occlusion was. The theory of carrying a plaque from the original place and then flowing down the bloodstream to block a vessel has never been proved.

Q. You may or may not remember that there was evidence of finding debris in the occluded artery in Peart's case ?—A. I do not remember the details.

20 Q. You find nothing in medical theory that satisfies you that either an intramural hæmorrhage or an atheromatous plaque—that an intramural hæmorrhage is caused or an atheromatous plaque is detached ?—A. Yes.

Q. The article by Dr. Masters has been contradicted by other articles in the medical journal ?—A. There have been other writers who did not accept Masters entirely.

30 Q. That is not important from the point of view of your opinion, whether the man was suffering from coronary insufficiency at the time he arrived at the tram or not ?—A. It is very important in forming an opinion as to whether effort had anything to do with his death ; I would think that if effort had played a part in his death he would have been distressed when he arrived at the tram.

Q. I gather that you think that the effort might have played a part in bringing about his death in this particular case ?—A. No, I do not, because I was informed that he arrived at the tram perfectly well.

Q. Assuming that he was distressed when he arrived at the tram. I gather then you think the effort might have played a part ?—A. I was informed that he walked to the tram.

40 Q. Assuming that he was distressed at the time he arrived at the tram ; I gather from what you have already said you would form an opinion that the effort was related to his heart condition ?—A. If he was distressed while he was walking and continued to be distressed when he stopped walking and remained distressed to the time of his death, then I would say there was probably some connection.

Q. You are basing your opinion on the evidence of his friend in the tram who said he thought he looked all right ?—A. Yes, apparently, because I was informed that he was all right.

Q. And you think it is necessary that he must have essential signs of breathlessness ?—A. Breathlessness and pain and change of colour.

50 Q. On what Dr. Morey told us it is quite reasonable to assume that he had coronary insufficiency for some period before the time he died ?—A. Yes.

No. 13.
Cross-
examina-
tion of
Dr. Frank
Augustus
Lawes,
continued.

Q. I do not know whether you were told that one of the complaints was that he used to get breathless on hurrying?—A. That would be quite likely, that he would be short of breath on walking any distance.

Q. And that would affect his coronary insufficiency?—A. It would not alter the progress of the disease. I do not know how it would affect his coronary insufficiency.

Q. It would have this bearing on his coronary insufficiency, that it would be likely to get less?—A. It has never been proved that any effort hastens the arteriosclerotic process.

Q. We are assuming that he has a condition of arteriosclerosis and 10 coronary sclerosis and was suffering from coronary insufficiency?—A. Yes, relative coronary insufficiency we call that; relative to the effort.

Q. Some efforts are going to make that insufficiency so great as to incapacitate him?—A. Yes, if he walks upstairs or runs he would have to pull up.

Q. You say that this coronary sclerosis is a progressive disease?—A. Yes.

Q. So it is reasonable to assume the man is progressively reaching the stage where less effort is going to bring him to an incapacitated state?—A. Yes, you cannot say that effort alters the arteriosclerotic process, 20 he will reach a stage where he can undertake less effort because of his arteriosclerosis.

HIS HONOR : As that advances so his tolerance to effort will be less.

Mr. WALL : A decreasing response to effort?—A. Yes.

Q. Less effort is going to strain the heart?—A. That is not true, less effort will pull him up or make him short of breath or give him a pain. Less effort will cause symptoms, that is all I can say.

Q. That will damage his heart by putting more effort on it than it can take?—A. What do you mean by damage?

Q. Cause damage to the heart muscle?—A. During the effort, yes, 30 I will agree that if a person with severe arteriosclerosis undertakes a very great effort it is possible for him to die during that effort, but I have never found a man who undertook an effort feel quite well for an interval of time and then die; then I cannot trace the connection.

Q. All this depends on his feeling quite well; that effort could diminish his cardiac reserve?—A. During the effort, yes.

Q. And it could do it permanently?—A. No.

Q. There are people who think that it can do it permanently?—A. There is no maxim for that.

Q. There are doctors and specialists who think effort on a damaged 40 heart permanently diminishes the cardiac reserve?—A. I do not agree with that, it has not any permanent effect. It is the arteriosclerosis.

Q. Effort, of course, could cause heart failure?—A. During the performance of the effort.

Q. Or at an appreciably close time?—A. One or two minutes.

Q. It would be longer?—A. I do not think it would be longer, no. I cannot imagine that man being distressed by effort and dying an hour later after a free interval.

Q. This part of your evidence is related to damage by effort on an arteriosclerotic heart?—A. I do not say he got any damage, during the 50 effort.

Q. But this is part from your evidence with regard to occlusion and those other matters?—A. Yes.

Mr. WALLACE: One of the assumptions here is that it was seven minutes from the time the man got into the tram until he made the first complaint; does that throw any light on the connection, if any?—A. If that statement that you have made is correct then I cannot trace any connection between the effort and his coronary occlusion.

Q. Seven minutes of apparent complete normality?—A. Yes.

(Witness retired.)

10 *Case for respondent closed.*

No evidence in reply.

Counsel addressed.

HIS HONOR: I will reserve my decision in this matter.

No. 13.
Cross-examination of Dr. Frank Augustus Lawes, continued.

No. 14.

RULE of Supreme Court of New South Wales on Case Stated.

Term No. 93 of 1948.

IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the Workers' Compensation Act 1926–1947.

20 IN THE MATTER of a case stated by the Chairman of the Workers' Compensation Commission of New South Wales referring questions of law which arose in proceedings before the Commission for the decision of the Supreme Court of New South Wales in accordance with the provisions of Section 37 (4) of the Workers' Compensation Act 1926–1947

AND IN THE MATTER of a determination

Between MINNIE GERTRUDE MILLIGAN (the Respondent herein) - Applicant

and

30 SLAZENGRS (AUSTRALIA) PTY. LTD. (the Appellant herein) - Respondent.

No. 14.
Rule of the Supreme Court of New South Wales on Case stated, 1st June 1948.

Tuesday the First day of June One thousand nine hundred and forty-eight.

THIS MATTER coming on to be heard on the Twenty-fourth day of May One thousand nine hundred and forty-eight

No. 14.
Rule of the
Supreme
Court of
New South
Wales on
Case stated,
1st June
1948,
continued.

WHEREUPON AND UPON HEARING READ the Case stated at the request of the above-named Appellant Slazengers (Australia) Pty. Ltd. by His Honour Judge Perdriau the Chairman of the Workers' Compensation Commission of New South Wales pursuant to the provisions of Section 37 (4) of the Workers' Compensation Act 1926-1947 dated the Third day of May One thousand nine hundred and forty-eight and filed herein WHEREIN the questions of law hereinafter set out were referred to this Court in order that the same might be answered for the guidance of the Workers' Compensation Commission namely :—

(1) On the Commission's findings of fact, did the Commission 10
err in law in holding that the deceased John Samuel Milligan
"received injury" within the meaning of Section 7 (1) (b) of the
Workers' Compensation Act 1926-1947 ?

(2) Did the Commission err in law in holding—

(A) that the Commission had jurisdiction to excuse the
Appellant's failure to comply with the time limit fixed by
sub-rule (2) of rule 69 of the Workers' Compensation Rules made
by the Commission ?

(B) that in the circumstances the Appellant retained its
right to proceed with the case stated ? 20

AND UPON HEARING what was alleged by Mr. Wallace of King's
Counsel with whom was Mr. Langsworth of Counsel on behalf of the
above-named Appellant and by Mr. McClemens of King's Counsel with
whom was Mr. Wall of Counsel on behalf of the above-named Respondent
IT WAS ORDERED on the said Twenty-fourth day of May One thousand
Nine hundred and forty-eight that the matter stand for judgment and the
same standing in the list this day for judgment accordingly IT IS
ORDERED that the questions referred to this Court and set out above be
and the same are hereby answered in the negative AND IT IS FURTHER
ORDERED that the costs of the Respondent Minnie Gertrude Milligan of 30
and incidental to this Case Stated including the costs of the proceedings
before this Court be taxed by the proper Officer of this Court and that
such costs when so taxed and allowed be paid by the said Appellant
Slazengers (Australia) Pty. Ltd. to the said Respondent Minnie Gertrude
Milligan or to her Attorney Mr. Val Ackerman.

By the Court

For the Prothonotary,

C. T. HERBERT,

Chief Clerk.

IN THE SUPREME COURT OF NEW SOUTH WALES.

CORAM : JORDAN, C.J.
DAVIDSON, J.
STREET, J.

31st May, 1948.

MILLIGAN V. SLAZENGRS (AUST.) PTY. LTD.

JUDGMENT.

10 JORDAN, C.J. : This is a case stated pursuant to s. 37 (4) of the Workers' Compensation Act 1926-1947.

According to the facts as found by the Commission, a worker, whilst on a daily journey from his place of abode to his place of employment, died as the result of the occurrence of a coronary occlusion which had no causal connection with the journey.

On this part of the case, the following question is submitted at the request of the employer :—

20 (1) On the Commission's findings of fact, did the Commission err in law in holding that the deceased John Samuel Milligan "received injury" within the meaning of s. 7 (1) (b) of the Workers' Compensation Act 1926-1947 ?

The Appellant Company, the employer, complied with the provisions of Rule 69 (1) with respect to its request for the statement of a case, but did not in all respects comply with the provisions of regulation 69 (2).

On this point, at the request of the respondent, the widow of the deceased worker, the following question of law was stated :—

(2) Did the Commission err in holding—

30 (A) that the Commission had jurisdiction to excuse the appellant's failure to comply with the time limit fixed by sub-rule (2) of Rule 69 of the Workers' Compensation Rules made by the Commission ?

(B) that in the circumstances the appellant retained its right to proceed with the case stated ?

In my opinion, the first question submitted is completely covered by the reasons of this Court in *Peart v. Hume Steel Limited* (47 S.R. 384), where the majority of the Court based its answer on a broad ground which covers the present case also. It would be wrong to regard this Court's decision as a mere dictum, upon a view that it could have arrived at it on a narrower ground : *N.S.W. Taxation Commissioners v. Palmer* 40 (1907 A.C. 179 at 184-5); cf. *London Jewellers Limited v. Attenborough* (1934 2 K.B. 206 at 222). When the case was taken on appeal to the High Court, three of the learned Judges, the Chief Justice and Rich and McTiernan, JJ., agreed with the reasons of the majority of this Court.

No.15.
Judgment,
31st May
1948,
continued.

The two other members of the Court, Starke and Dixon, JJ., took into account the fact that in *Peart's* case the worker's injury was to some extent contributed to by his exertions in riding a bicycle from his home to his place of work, but their Honours do not appear to have done so because they were prepared to express disagreement with our reasons, nor do they explain why they regarded the fact as sufficiently significant to deserve mention. It is reasonably plain that their Honours took the course which they did because they preferred to base their decision on a narrow rather than a broad ground.

As regards the second question, s. 37 (4) provides that the Commission 10 may, of its own motion, and shall, if in the manner and within the time prescribed by rules, any party to the proceedings so requests, state a case for the decision of the Supreme Court thereon. It is observed that the Commission has an unfettered discretion to state a case on a question of law, but it is not compelled to do so at the request of a party, unless the request is made in the manner and within the time prescribed by rules. I think it reasonably plain that it is Rule 69 (1) which deals with the manner and time of making a request. The provisions of Rule 69 (2) are in my opinion merely directory as to what is to be done after a request has been duly made, and the Commission has power to excuse failure 20 to comply with the times prescribed in this sub-rule. I may add that if a party who desires that a case should be stated fails to make a request which complies with Rule 69 (1), it does not necessarily follow that the question of law cannot be submitted to this Court. If it is one upon which the Commission itself desires enlightenment, there is nothing to prevent the Commission from stating the case itself. Section 37 (4) says "of its own motion," not "but only exclusively at its own initiative."

For the reasons which I have stated, I am of opinion that the questions submitted should be answered in the negative, and that the costs of the case stated, including the costs in this Court, should be paid by the 30 appellant.

DAVIDSON, J. : I concur.

STREET, J. : I concur.

IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the Workers' Compensation Act, 1926-1947.

IN THE MATTER of a case stated by the Chairman of the Workers' Compensation Commission of New South Wales referring questions of law which arose in proceedings before the Commission for the decision of the Supreme Court of New South Wales in accordance with the provisions of Section 37 (4) of the Workers' Compensation Act, 1926-1947.

10

AND IN THE MATTER of a determination

Between MINNIE GERTRUDE MILLIGAN (the Respondent herein) - - - - - Applicant

and

SLAZENGERS (AUSTRALIA) PTY. LTD. (the Appellant herein) - - - - - Respondent.

Monday the twenty-eighth day of June One thousand nine hundred and forty-eight.

20

UPON MOTION made unto this Honourable Court this day in pursuance of Notice of Motion filed herein on the eleventh day of June instant for leave to appeal to His Majesty in His Majesty's Privy Council from so much of the Judgment and Order of this Honourable Court sitting in Banco given and made herein on the first day of June instant as ordered that the first question submitted in the Case Stated by the Chairman of the Workers' Compensation Commission should be answered in the negative and that the costs of the said case including the costs in this Court, should be paid by the Appellant WHEREUPON AND UPON READING the said Notice of Motion and the Affidavit of George Hunt sworn on the tenth day of June instant and filed herein AND UPON HEARING what was alleged by Mr. Wallace of King's Counsel with whom was Mr. Langsworth of Counsel on behalf of the Appellant and by Mr. Wall of Counsel on behalf of the Respondent IT IS ORDERED that subject to the performance by the Appellant of the following conditions namely :—

30

(1) Within three months from this day the Appellant shall deposit with the Prothonotary the sum of Three hundred pounds (£300) as security for the due prosecution of the appeal, and

40

(2) Within twenty-one days from this day the Appellant shall deposit with the Prothonotary the sum of Sixty pounds (£60) as security for the cost of preparation of the transcript record of proceedings.

AND subject to the final Order of this Court upon the due performance of such conditions leave to appeal to His Majesty in His Majesty's Privy

No. 16.
Rule
granting
Conditional
Leave to
Appeal,
28th June
1948,
continued.

Council from the said part Judgment and Order be and the same is hereby granted to the Appellant AND IT IS FURTHER ORDERED that execution be stayed pending final leave to appeal.

By the Court

For the Prothonotary,

(L.S.) C. T. HERBERT,

Chief Clerk.

No. 17.
Certificate
of the
Protho-
notary of
compliance
with
conditions,
30th July
1948.

No. 17.

CERTIFICATE of the Prothonotary of compliance with conditions.

Term No 93 of 1948. 10

IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the Workers' Compensation Act,
1926-1947

IN THE MATTER of a case stated by the Chairman of the Workers' Compensation Commission of New South Wales referring questions of law which arose in proceedings before the Commission for the decision of the Supreme Court of New South Wales in accordance with the provisions of Section 37 (4) of the Workers' Compensation Act 1926-1947

AND IN THE MATTER of a determination 20

Between MINNIE GERTRUDE MILLIGAN (the
Respondent herein) - - - - Applicant

and

SLAZENGERS (AUSTRALIA) PTY. LTD.
(the Appellant herein) - - - - Respondent.

I, WILLIAM HENRY HAZELTON of the city of Sydney in the State of New South Wales in the Commonwealth of Australia Prothonotary of the Supreme Court of the said State and being the Officer having ordinarily the custody of the records of the said Court in its Common Law Jurisdiction DO HEREBY CERTIFY :— 30

1. That on the sixteenth day of July instant the Appellant gave security for the prosecution of the Appeal by payment of the sum of Three hundred pounds (£300) into the proper office of this Honourable Court, and

2. That on the sixteenth day of July instant the Appellant gave security for the cost of preparation of the transcript record of proceedings by payment of the sum of Sixty pounds (£60) into the proper office of this Honourable Court.

AND I DO FURTHER CERTIFY that on the twenty-seventh day of July instant the Appellant took out an appointment to settle the index 40 to the transcript record of proceedings.

Dated this 30th day of July 1948.

(Sgd.) W. H. HAZLETON,

Prothonotary.

IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the Workers' Compensation Act, 1926-1947

IN THE MATTER of a case stated by the Chairman of the Workers' Compensation Commission of New South Wales referring questions of Law which arose in proceedings before the Commission for the decision of the Supreme Court of New South Wales in accordance with the provisions of Section 37 (4) of the Workers' Compensation Act, 1926-1947

10

AND IN THE MATTER of a determination

Between MINNIE GERTRUDE MILLIGAN (the Respondent herein) - - - Applicant

and

SLAZENGERS (AUSTRALIA) PTY. LTD. (the Appellant herein) - - - Respondent.

Monday the fifteenth day of November One thousand nine hundred and forty-eight.

20 UPON MOTION made unto this Honourable Court this day in pursuance of Notice of Motion filed herein on the fourteenth day of September last past WHEREUPON AND UPON READING the said Notice of Motion and the affidavit of Alfred Owen Ellison sworn on the fourteenth day of September last past the affidavit of Ivy Phyllis Eileen Burnett sworn on the twenty-third day of September last past and the affidavit of Geoffrey George Tremlett sworn on the Twelfth day of November instant and all filed herein AND UPON HEARING what was alleged by Mr. Wallace of King's Counsel with whom was Mr. Langsworth of Counsel on behalf of the Appellant and by Mr. Wall of Counsel on behalf of
30 the Respondent IT IS ORDERED that Ivy Phyllis Eileen Burnett, as Administratrix of the Estate of the Respondent Minnie Gertrude Milligan, who died after this Court by an Order on the twenty-eighth day of June last past granted to the Appellant Slazengers (Australia) Pty. Ltd. conditional leave to appeal herein to His Majesty in His Majesty's Privy Council, be made a party to the proceedings herein and to the said appeal AND THAT the said Order be revived AND THAT the said appeal may be carried on and prosecuted by the Appellant against the said Ivy Phyllis Eileen Burnett as such Administratrix in like manner as if the said Minnie Gertrude Milligan had not died AND IT IS FURTHER ORDERED
40 that final leave to appeal to His Majesty in His Majesty's Privy Council

No. 18.
Rule
granting
Final Leave
to Appeal,
15th
November
1948,
continued.

from so much of the judgment and order of this Honourable Court sitting in Banco given and made herein on the first day of June last past as ordered that the first question submitted in the Case Stated by the Chairman of the Workers' Compensation Commission should be answered in the negative and that the costs of the said case including the costs in this Court should be paid by the Appellant, be and the same is hereby granted AND liberty is hereby granted to either party to apply as they may be advised.

By the Court,

For the Prothonotary,

10

C. T. HERBERT,

Chief Clerk.

EXHIBIT " A ".

Dr. M. R. Morey

Phone FX 4993

" Lorne "

337 Anzac Parade
Kingsford
Sydney

17.9.47.

Exhibits.

" A. "

Two
Reports of
Dr. M. R.
Morey,
17th
September
1947.

Re : JOHN SAMUEL MILLIGAN Decd.

10 I attended the late Mr. Milligan shortly before death. The cause of death was a coronary occlusion the first indication of which was an onset of pain in chest and feeling of collapse which occurred while travelling in tram to work. I had seen him frequently for about Ten(?) years and he had definitely shown evidence of early signs of cardiac disease during the last year of life. This was induced by rising blood pressure decreasing response to effort and occasional pain in chest and shoulders on exertion.

M. R. MOREY.

CORAM : PERDRIAU J.

The Workers'
Compensation Commission
of New South Wales.

20

Sydney 24 : 10 : 1947.

Exhibit A

M. G. MILLIGAN.

Dr. M. R. Morey.

Phone FX 4993

" Lorne "

337 Anzac Parade,
Kingsford.
Sydney

17.9.47.

30 This is to certify that I attended John Samuel Milligan during his last illness. He suffered a coronary occlusion whilst on his way to work and died a few hours later at his home.

I had attended him for some years and he did not show much evidence of serious heart disease except slight dyspnoea on exertion and tendency to feel pain in region of shoulders and neck on effort such as hurrying unduly and lifting heavy weight.

His blood pressure has been in the region of $\frac{160}{100}$ — $\frac{170}{100}$

M. R. MOREY.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF NEW SOUTH WALES.

BETWEEN

SLAZENGERS (AUSTRALIA) PROPERTY LIMITED - - *Appellant*

AND

IVY PHYLLIS EILEEN BURNETT Administratrix of the Estate
of **Minnie Gertrude Milligan, deceased** - - - - *Respondent*

RECORD OF PROCEEDINGS

NICHOLAS WILLIAMS & CO.,
4 ARUNDEL STREET,
STRAND,
LONDON, W.C.2,
Solicitors for the Appellant.

KINGSFORD, DORMAN & CO.,
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