CIVIL REFERENCE.

Before Rankin C. J. and C. C. Ghose J.

AROTH

v.

CRAIG JUTE MILLS, LIMITED.*

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Feb. 7.

Employer and Workman—Workman's Compensation—Natural or probable consequence of disregard of medical officer's instruction—Workmen's Compensation Act (VIII of 1923), s. 11 (6).

The words "if it is thereafter proved that the workman has not been "regularly attended by a qualified medical practitioner" in the sixth sub-section of section 11 of the Workmen's Compensation Act cannot apply to the case of a workman who has been disabled by his own disregard of the instructions of the employer's medical officer whose services the workman accepted.

In such a case, if it be found that the workman acted unreasonably in disregarding the instructions of the medical officer and that his injury was aggravated thereby, the concluding words of the sub-section must take effect and the workman's claim for compensation must be assessed upon the basis of an injury of the same nature and duration as might reasonably have been expected if the workman had been regularly attended by a qualified medical practitioner.

REFERENCE under section 27 of the Workmen's Compensation Act.

The facts shortly were that the applicant, who was an employee of the Craig Jute Mills, Limited, claimed compensation for loss of use of his right thumb and forefinger. His case was that while joining threads in a beaming machine, his right hand had been caught between the drum and steam-heated cylinder and smashed. The employer, in answer, said that the hand had only been scalded and not smashed and that

* Civil Reference No. 8 of 1927, under section 27 of the Workmen's Compensation Act, VIII of 1923, in Claim Case No. 50 of 1927.

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the man ought to have been back at work in a week, but that his injuries had been aggravated owing to his disregard of their medical officer's instructions to keep his hand in bandages, as a result of which it became septic. The employer, accordingly, claimed the protection of section 11 (*6*) of the Workmen's Compensation Act.

On the evidence in the case, the Commissioner, Workmen's Compensation, Bengal, accepted the employer's version.

The Commissioner, however, had doubts about the application of that section and made this Reference to the High Court. The material position of the reference was as follows:—

"Section 11 (*6*) protects the employer where the workman's injury has "been aggravated by refusal to be attended by the employer's doctor, or if his "services are accepted, by deliberate disregard of his instructions. I have "found that there was deliberate disregard in this case. The employer to "take advantage of this protection has further to prove that (*i*) the work- "man has not been regularly attended by a qualified medical practitioner "and (*ii*) that his refusal, failure or disregard was unreasonable in the "circumstances of the case. There is no doubt about the disregard being "unreasonable. The difficulty is about the first point. If the section is "read literally, the point has not been proved. The workman never ceased "attending the mill dispensary and had his wound dressed every day. The "employer, however, argues with much force that the words must refer to "another medical practitioner, not the one whose instructions have been "disregarded. The words 'having accepted such offer', it is argued pre- "suppose that the man is being attended by the employer's doctor, so if "the clause in question includes attendance by him, it completely nullifies "the protection intended to be given in case of deliberate disregard of his "instructions. The section is badly drafted, but it is quite possible to "apply it literally by laying the main emphasis on the word 'regularly'. "If the workman accepts the service of the employer's doctor but disregards "his instructions, then if he comes irregularly to the dispensary, the "employer is protected, but not if he comes regularly, or is in hospital, and "therefore receiving regular attendance. In that case if the employer's "doctor cannot enforce his instructions, the employer is not protected. As "the section appears to be capable of literal interpretation in a sense

"favourable to the workman, I hesitate to interpret it otherwise by making "a possibly incorrect assumption as to the intention of the Legislature.

"Question of law referred for decision: In section 11, sub-section "(6), do the words 'if it is thereafter proved that the workman has not "been regularly attended by a qualified medical practitioner' include "attendance by the medical practitioner provided by the employer whose "instructions he has disregarded, or should they be construed as if they "read 'by another medical practitioner'. How should these words be "applied to the case before me?"

Mr. Atulchandra Gupta (with him *Babu Satish Chandra Sinha*), for the workman. Sub-sections (*1*) to (*5*) of section 11 of Act VIII of 1923 correspond to sections 17 to 20 respectively of the English Act of 1925. 15 and 16 Geo. 5, c. 85. Sub-section (*6*) is an addition of the Indian Legislature and the drafting is bad. For example, "thereafter" cannot go with "proved", but seems to refer to "regularly attended"—an almost impossible syntax. Again "such failure" is meaningless, for, no failure is previously mentioned; nor can it mean failure to be attended by a qualified medical practitioner—because this has been made one of the co-ordinate conditions of total exoneration of the employer.

On a reasonable construction of the sub-section, it seems to lay down that *two* conditions must exist to bring it into operation—(1) unreasonable refusal or disregard, and (*2*) consequential aggravations. But this is subject to the *proviso* that "the workman "has not been attended by a qualified medical "practitioner."

Therefore, when a workman has all along been attended by a qualified medical practitioner, as in the present case, sub-section (*6*) does not come into operation at all. The Commissioner's difficulty arises from his attempt to apply that sub-section to the present case, to which the proviso makes it totally inapplicable.

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From the point of view of affording protection to the employer, it is immaterial whether the two doctors are the same or different. Where is the employer's protection under sub-section (*6*), if the workman places himself under another doctor, but disregards the latter's instructions leading to aggravation?

Hence, in a case like the present one, the employer must seek for protection not in sub-section (*6*) of section 11, but in section 3 of the Act. He is protected if the "disregard of instructions" amounts to a *novus actus interveniens*, so as to be a good defence under section 3 that the injury has *not* been caused by the accident. See *Ashutosh Seal* v. *Gouripore Co. Ld.* (1) following *Dunham* v. *Clare* (2) and *Brintons, Limited* v. *Survey* (3).

No one for the opposite party.

Cur. adv. vult.

RANKIN C. J. This is a Reference under the Workmen's Compensation Act (VIII of 1923), made by the Commissioner, Workmen's Compensation, Bengal, under the power conferred on him by section 27 of the Act, which is as follows:—"The Commissioner may, if "he thinks fit, submit any question of law for the "decision of the High Court and, if he does so, shall "decide the question in conformity with such deci- "sion." The question of law referred to us has reference to the true construction of sub-section (*6*) of section 11 of the Act, and arises upon the following facts which have been found by the Commissioner. The applicant alleged that while joining threads in a beaming machine his right hand was caught between the drum and steam-heated cylinder and was smashed

(1) (1926) 31 C. W. N. 286. (2) [1902] 2 K. B. 292, 296 C. A.
(3) [1905] A. C. 230, 233-4.

The employer contended that the hand was not smashed, but only scalded and that owing to the applicant's disregard of the medical officer's instruction to keep his hand in bandages it became septic. The Commissioner has found that the employer's version is the correct one, that the applicant's disability is due to Ankylosis of the joints, which is the result of sepsis, and that the present condition of his hand is due to his own conduct in disregarding the medical officer's instructions. In other words, that his injury has been aggravated by his disregard of those instructions. The Commissioner has accepted the evidence of the employer's doctor that the original injury was only a very slight burn.

The question is whether in these circumstances the sixth sub-section of section 11 applies to the case. The sub-section is as follows:—"Where an injured "workman has refused to be attended by a qualified "medical practitioner whose services have been "offered to him by the employer free of charge or "having accepted such offer has deliberately disregard-"ed the instructions of such medical practitioner, then "if it is thereafter proved that the workman has not "been regularly attended by a qualified medical prac-"titioner and that such refusal, failure or disregard "was unreasonable in the circumstances of the case "and that the injury has been aggravated thereby, the "injury and resulting disablement shall be deemed to "be of the same nature and duration as they might "reasonably have been expected to be if the workman "had been regularly attended by a qualified medical "practitioner, and compensation, if any, shall be pay-"able accordingly."

The difficulty which presents itself to the Commissioner arises from the fact that in the present case the workman was attended, and regularly attended, by the

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qualified medical practitioner whose services were offered to him by the employer free of charge and the question of law referred to us is stated as follows:—

"In section 11, sub-section (*6*), do the words 'if it is "thereafter proved that the workman has not been "regularly attended by a qualified medical practitioner, "include attendance by the medical practitioner pro-"vided by the employer whose instructions he has "disregarded, or should they be construed as if they "read 'by another medical practitioner'? How should "these words be applied to the case before me."

It is to be observed that the sub-section (*6*) has been enacted in the interest of the employer. It deals with the case where an injury has been received and where the injury has afterwards been aggravated by a refusal of medical attention offered to the applicant by the employer or by disregard of the instructions of the medical practitioner whose services had been so offered to the applicant by the employer. The sub-section is very carelessly drafted, but the words with which the present case is chiefly concerned "if it is thereafter "proved that the workman has not been regularly "attended by a qualified medical practitioner" have a clear and reasonable purpose. To take first the case where the workman has refused to be attended by the employer's doctor. These words operate to prevent the workman suffering prejudice from this refusal if he has been regularly attended by a qualified medical practitioner, that is, *ex hypothesi* by some qualified medical practitioner other than the employer's doctor. Coming then to the second case, where the workman having accepted the services of the employer's doctor "has deliberately disregarded the instructions of such "medical practitioner". The words in question operate to prevent any prejudice resulting under this sub-section to the workman's claim for compensation if

the workman has put himself in the hands of some other doctor. In that case disregard of the instructions given by the employer's doctor will not have the result of prejudicing the workman's claim for compensation.

It seems to me to be quite impossible that these words "if it is thereafter proved that the workman "has not been regularly attended by a qualified medical practitioner" should apply to the case of regular attendance by the employer's doctor whose instructions have been disregarded. If, therefore, in the present case the Commissioner is of opinion that the workman acted unreasonably in the circumstances of the case in removing the bandages from his hand and that his injury has been aggravated thereby, then the concluding words of the sub-section must take effect and the workman's claim for compensation must be assessed upon the basis of an injury of the same nature and duration as might reasonably have been expected if the workman had been regularly attended by a qualified medical practitioner. RANKIN C. J.

It is possible to suggest that the words in question were intended to apply only to the case of a refusal by the workman to be attended by the employer's doctor. The concluding words of the sub-section give some slight foundation to this contention; but I am not of opinion that such a construction is permissible, as it would involve doing considerable violence to the language actually employed by the Legislature.

A case might arise in which the workman had refused to be attended by the employer's doctor acting as such but had engaged the same doctor on his own account. This case may be unlikely, but in view of possibilities of this character I hesitate to go beyond the necessities of the present case to say that for all purposes the phrase "that the workman has not been

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"regularly attended by a qualified medical practitioner" should be construed as if it read "by another "qualified medical practitioner". For the purposes, however, of the present case, and cases of the same character, that is necessarily the meaning of the phrase. The question referred to us for our decision is thus answered. There will be no order as to costs.

GHOSE J. I agree.

S. M.

APPELLATE CIVIL.

Before Page and Mallik JJ.

AGHORE NATH HALDAR

v.

DWIJAPADA CHATTERJEE.*

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Feb. 9.

Occupation—"Persons occupying holdings", construction of—Bengal Municipal Act (III of 1884), ss. 85 (a), 6 (3), 15 (iii).

Occupation of a holding in order to render a person amenable to a personal tax imposed upon "persons occupying holdings" under section 85 (*a*) of the Bengal Municipal Act connotes actual possession by the person liable to be assessed, or by his servant or agent in furtherance of the duties which such servant or agent has engaged to perform for the assessee.

In re Chelsea Waterworks (1), *Cory* v. *Bristow* (2) and other cases discussed and referred to.

* Appeal from Appellate Decree, No 2013 of 1925, against the decree of B. Mukerjee, District Judge of Murshidabad, dated April 27, 1925, reversing the decree of Tarak Nath Bose, Munsif of Jangipur, dated Sep. 27, 1924.

(1) (1833) 5 B. & Ad. 156. (2) (1877) 2 A. C. 262.