APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Mya Bu.

1931
Jan. 12.

THE CONSOLIDATED TIN MINES OF BURMA, LTD.
v.
MAUNG TUN E.*

Workmen's Compensation Act (VIII of 1923), s. 10—Period for proceedings for compensation—'Sufficient cause' for extension of time—Workman's ignorance and illiteracy.

Under s. 10 of the Workmen's Compensation Act, a workman must institute his proceedings for compensation before the Commissioner within six months of the occurrence of the accident. The fact that he is illiterate and ignorant of the provisions of the Act is not sufficient cause within the meaning of the proviso to s. 10 of the Act for extending the time in his favour.

Roles v. *Pascall & Sons*, (1911) 1 K.B. 982—*referred to.*

Paget for the appellant.

HEALD, J.—Appellants are owners of a tin mine in the Tavoy District and respondent worked for them as a miner being one of a gang employed by Wu Pin, one of their labour contractors. The gang, which was working in adit No. 25, consisted of respondent and his father Po Hlaing and brother Thein Pe who were working one branch of the adit, and Po Thin and his son Saw Nyun, who were working another branch of the same adit. Blasting was necessary in the branch worked by Po Hlaing and his two sons and Po Hlaing held a blasting ticket issued by the Mine Manager under Regulation 71 of the Regulations under the Indian Mines Act. Po Hlaing says that he knew nothing about blasting and that his son Tun E, the respondent, always did the blasting for him, and respondent himself admits that he always did the blasting. On the first of April

* Civil Miscellaneous Appeal No. 132 of 1930 from the order of the District Magistrate's Court of Tavoy is Civil Miscellaneous No. 2 of 1930.

1931

THE CONSOLIDATED TIN MINES OF BURMA, LTD. v. MAUNG TUN E.

HEALD, J.

1929 soon after noon respondent laid a charge of dynamite and, after calling Saw Nyun out of his part of the adit, lit the fuse. Respondent and Saw Nyun went outside the adit and shortly afterwards an explosion was heard. That explosion was evidently in a neighbouring adit but the members of the gang thought that it was the explosion of the charge which respondent had laid, and respondent and Saw Nyun went into the adit again. Regulation 80 of the Regulations under the Mines Act says that unless it is certain that the charges have exploded no person shall enter an adit until half an hour has elapsed after the blasting, and by the rules of this particular mine, which were admittedly known to the members of this gang, no one must enter until it was certain that the charge had exploded, and if a charge failed to explode no one must enter until at least an hour had elapsed. An attempt was made by respondent and his witnesses to show that respondent and Saw Nyun waited at least an hour before entering the adit but the evidence to this effect was clearly false because it is certain that the members of the gang believed that the charge laid by the respondent had exploded, and if they believed that there was no reason why they should wait at all, while there was every reason why they should enter and begin extracting ore as soon as possible since they were being paid according to the amount of ore which they extracted. Further even respondent's own witness, Po Thin, says that the explosion took place at about half past one and respondent and Saw Nyun went in again at about two. Respondent says that when they went in he saw that the fuse had burned but saw no signs of an explosion. He saw a crack in the rock at the place where he had laid the charge and tried to dislodge some rock and just then the explosion

1931

THE CONSOLIDATED TIN MINES OF BURMA, LTD. v. MAUNG TUN E.

HEALD, J.

occurred. He was injured by flying pieces of rock and his eyes were hurt. He called out to Saw Nyun who helped him out of the adit. He was taken at once to the Mine Hospital where he was treated by the Compounder in charge. The Compounder and the Overseer and the Manager say that respondent refused to allow the Compounder to do anything to his eyes. The respondent's witnesses on the other hand say that the Compounder cleared respondent's eyes of dust and dirt. It is immaterial for the purposes of this case which of the two conflicting stories is true. Similarly the Manager and the Overseer and Compounder say that the Manager wanted to send respondent to the Civil Hospital at Tavoy while respondent's witnesses say that the Manager told them not to go to the Hospital at Tavoy. On this point also it is immaterial for the purposes of this case which story is true because it is not alleged that the procedure for medical examination laid down in the Rules under the Workmen's Compensation Act was followed. Respondent was in fact taken by his relatives to his village where he was treated by various unqualified Burmese practitioners. He admittedly instituted no proceedings under that Act until the 29th of April 1930, more than a year after the accident, when he sent appellants a lawyer's letter, and on the 5th of May 1930, he instituted the present proceedings before the Commissioner under the Act. Section 10 of the Act so far as it is applicable to this case, says that no proceedings for the recovery of compensation under the Act shall be maintainable unless the claim for compensation has been instituted within six months of the occurrence of the accident, but there is a *proviso* to that section which says that the Commissioner may admit and decide a claim to compensation

notwithstanding that the claim has not been instituted within six months if he is satisfied that the failure to institute the claim was due to sufficient cause. The cause alleged by respondent for his failure to institute the claim within six months was that he did not know the rules about the Workmen's Compensation Act, and the Commissioner, holding that such ignorance was "sufficient cause," awarded respondent a sum of Rs. 2,100 as compensation.

Appellants appeal and the appeal lies under section 30 of the Act because the question of sufficiency of cause is a question of law.

A similar question arose in the case of *Roles* v. *Pascall & Sons* (1) under the corresponding provisions of the English Act. In that case the workman failed to institute proceedings under the Act within the six months allowed by the Act and gave as his reason that he did not know of the existence of the Act. The County Court Judge held that such ignorance was "reasonable cause" within the meaning of the Act and awarded compensation. The employers appealed and the Court of Appeal held that ignorance of the Act was not "reasonable cause" within the meaning of those words in the Act. The Master of the Rolls said: "In my opinion we should be in fact really repealing the six months' period of limitation, which is distinctly imposed by the Act, if we were to say that any person could escape from that and bring his claim at any time afterwards if he could prove that he had never heard of the existence of the Act or did not know anything about its contents."

The learned Commissioner in this case seems to have been referred to that decision, but distinguished

(1) (1911) 1 K.B. 982.

1931

THE CONSOLIDATED TIN MINES OF BURMA, LTD. v. MAUNG TUN E.

HEALD, J.

the present case on the ground that in Burma coolies are for the most part ignorant and often illiterate. I do not think that that is a good reason for interpreting similar provisions of law differently in Burma, and in my opinion the learned Commissioner was wrong in holding that respondent's failure to institute the claim within the six months allowed was due to sufficient cause.

I would therefore set aside the order for compensation and would dismiss respondent's claim.

In the circumstances of the case I would make no order for costs in either Court.

MYA BU, J.—I concur.

PRIVY COUNCIL.

DAWOOD HASHIM ESOOF AND ANOTHER
v.
C. TUCK SEIN.

1931
J.C.*

Jan. 19.

(On Appeal from the High Court at Rangoon.)

Navigable Waters—Tidal Creek—Alleged Public Waterway—Evidence—Tidal Limits of Waterway—Riparian owner—Access to Waterway—Intervening Foreshore.

The plaintiff constructed a saw-mill and timber pond upon his land which adjoined the upper part of a creek communicating with a tidal river, and proposed to float logs to the pond by an entrance cut into the creek. The defendant who owned the soil of the upper creek, planted piles in it opposite to the entrance so as to prevent the passage of logs. The plaintiff sued for an injunction alleging that the upper creek was a public waterway. The evidence showed that at certain periods of the month the tide reached the most remote part of the upper creek, but that usually it was practically dry; for a few hours high tide on five to ten days in each month there was sufficient water to float ordinary teak logs to the end; between 1905 and 1914 the plaintiff's predecessor used to float logs to a former mill, and before 1906 persons living in huts (since removed) had used the upper creek for boats when there was sufficient water. Any claim by the plaintiff to an easement admittedly was barred by limitation.

Held, that the suit failed as the evidence did not establish that the upper creek was a public waterway.

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* *Present*: LORD TOMLIN, LORD MACMILLAN, SIR JOHN WALLIS, SIR LANCELOT SANDERSON AND SIR GEORGE LOWNDES.