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A further question, however, remains as to how we ought to dispose of the present appeal. In my opinion it must be dismissed. If the application out of which the appeal arose was an application for leave to appear and defend the suit on the merits, then, inasmuch as no such defence was, or could be, substantiated, the application was rightly dismissed. If, on the other hand, the application is treated merely as one for leave to appear for the purpose of applying to the Court for an order that the decretal amount should be paid by instalments the application was misconceived, for no such leave was required, as the applicant was entitled to make such an application without the leave of the Court.

In these circumstances the appeal will be dismissed without costs.

DAS, J.—I agree.

APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Das.

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June 1.

ABDUL HOOSEIN

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL.*

Workmen's Compensation Act (VIII of 1923), s. 2 (1) (n)—Workman, who is a—Employment in business of employer—Employment of a casual nature.

If a man is employed for the purpose of the trade or business of the employer, even though the employment is of a casual nature, he is a workman within the meaning of s. 2 (1) (n) of the Workmen's Compensation Act.

If such a person suffers injury as the result of an accident arising out of and in the course of an employment to which the Act applies he is entitled to compensation.

Manton v. *Cantwell*, (1920) A.C. 781—*referred to.*

* Civil Misc. Appeal No. 171 of 1932 arising out of the order of the Commissioner for Workmen's Compensation, Minbu, in his Trial No. 1 of 1932.

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ABDUL HOOSEIN v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

A. Eggar (Government Advocate) for the respondent. The definition of "workman" in s. 2 (*1*) (*n*) of the Workmen's Compensation Act, 1923, follows the definitions given in ss. 13 and 3 (*2*) (*b*) respectively of the English Workmen's Compensation Acts, 1906, and 1925. If a person is employed for the purposes of the employer's trade or business and not otherwise, the fact that his employment was of a casual nature does not deprive him of any compensation that he may be entitled to under this Act. The decision in *Manton* v. *Cantwell* (1) may be referred to in this connection.

Sanyal for the appellant was not called upon.

PAGE, C.J.—This appeal must be allowed.

The appeal is brought under s. 30 (*1*) (*a*) of the Workmen's Compensation Act by a workman who claims to be entitled to compensation under the Workmen's Compensation Act (VIII of 1923), but whose claim was disallowed *in toto*.

It appears that the appellant was employed at the Linzin headworks under the Executive Engineer of the Salin Canal Division, and the claim should not have been against the Executive Engineer who has been made the respondent, but against the Secretary of State for India in Council who employed the workman. The proceedings, therefore, will be amended in that sense.

Now, it is common ground that the injury for which the appellant claims compensation was the result of an accident that arose out of and in the course of an employment to which the Workmen's Compensation Act applies. The only defence to the claim was that the appellant was not a "work-

(1) (1920) A.C. 781, 786.

man" within the meaning of that term in s. 2 (*1*) (*n*) of the Act, because, although he was employed for the purpose of the employer's trade or business, his employment was of a "casual nature." That contention found favour with the Commissioner for Workmen's Compensation, Minbu, and upon that ground the appellant's claim for compensation was rejected *in toto*. In my opinion, the Commissioner for Workmen's Compensation misdirected himself as to the law material to the case before him. Under s. 2 (*1*) (*n*) "workman" means "any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) . . ." The definition of "workman" in s. 13 of the English Workmen's Compensation Act, 1906, for the purpose in hand is identical with the definition of workman in s. 2 (*1*) (*n*). In *Manton* v. *Cantwell* (1), the House of Lords had occasion to consider the meaning of the words "whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business," and in his speech in the House of Lords Lord Birkenhead L.C., referring to s. 13 of the Workmen's Compensation Act, 1906, observed :

"the language of the passage I have just read is perhaps somewhat open to criticism on the question of draftsmanship, but the effect of it is nevertheless plain. The meaning of the second limb of the sentence is that if a man be employed for the purposes of the trade or business the employer is liable to him even though the employment be of a casual nature."

The same construction, in my opinion, is to be put upon the words "whose employment is of a casual nature and who is employed otherwise than

(1) (1920) A.C. 781 at p. 786.

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for the purposes of the employer's trade or business" in s. 2 (*1*) (*n*) of the Act. It follows, therefore, in the present case that inasmuch as it is common ground that the appellant was not employed otherwise than for the purposes of the employer's trade or business, and suffered injury as the result of an accident arising out of and in the course of an employment to which the Act applies, the decision of the Commissioner for Workmen's Compensation cannot be upheld.

The result is that the appeal is allowed, the order of the Commissioner for Workmen's Compensation, Minbu, is set aside, and the proceedings will be returned to the Commissioner for the assessment of compensation to be determined. The appellant is entitled to costs, four gold mohurs.

DAS, J.—I agree.

CRIMINAL REVISION.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Das.

1933

June 13.

KING-EMPEROR *v.* AH KIM.*

Opium preparations—Possession of beinsi *and* beinchi—*Opium Act* (*I of* 1878), *ss.* 3, 5, 9—*Conviction under s.* 9—*Dangerous Drugs Act* (*II of* 1930), *s.* 40, *second schedule—Amendments—Rule* 11, *second proviso, under s.* 5 *of Opium Act,* ultra vires—*Prepared opium—Illegal possession under s.* 10 (*b*) *of Act II of* 1930.

Under the Opium Act of 1878, the definition of opium in s. 3 included such preparations of opium as *beinsi* and *beinchi*. Under the second proviso to Rule 11, made pursuant to s. 5 of the Act, it was an offence punishable under s. 9 for a person who was not a registered smoker to possess such preparations. Under s. 40 and the second schedule to the Dangerous Drugs Act opium, as now defined in s. 3 of the Opium Act, does not include these preparations, and clauses (*a*) and (*b*) of s. 5 and clauses (*a*) and (*b*) of s. 9 have been deleted. The result is that the second proviso to Rule 11 is now *ultra vires* as not being

* Criminal Revision No. 158A of 1933 from the order of the Second Additional Magistrate of Mergui in Criminal Regular No. 69 of 1932.