1952 *Present :* **Rose C.J.**

MAILENTHINONA, Appellant, *and* PEIRIS & DE SILVA & CO., Respondents

S. C. 408—Workmen's Compensation C/39/51

Workmen's Compensation Ordinance—Accident—Death caused by workman's disease alone—Liability of employer.

Deceased workman, a carpenter by trade, was 60 years of age and was suffering from fatty degeneration of the heart. He was at the time of his death engaged upon light work. Upon the facts it was found by the Commissioner that the death was due to the disease alone and was not attributable to the nature of his work.

Held, that the workman's death did not arise out of, and in the course of, his employment.

APPEAL from an order of the Commissioner for Workmen's Compensation.

M. A. M. Hussein, for the appellant.

S. J. Kadirgamar, with *G. L. L. de Silva*, for the respondent.

Cur. adv. vult.

[1] *(1944) 45 N. L. R. 367*

[2] *(1920) 21 N. L. R. 389.*

July 23, 1952. ROSE C.J.—

This is an appeal by the dependant of a deceased workman against a finding of the learned Commissioner that his death did not arise out of, and in the course of, his employment. The facts of the case appear to be that the deceased man, who was 60 years of age, was suffering from fatty degeneration of the heart. According to Dr. Jayewardene, the J. M. O. of Kandy who performed the post-mortem, the valves of the heart were atheromatous (thickened and whitish). The doctor was of opinion that death was due to heart failure as a result of the diseased condition of the heart. He stated that severe exertion could cause death in a heart of this type ; moreover that even people who lead a sedentary life might suddenly die if the heart was in such condition. It appears that the deceased, who was a carpenter by trade, was at the time of his death engaged upon light work. He was, according to the evidence, engaged upon making a mould and for this purpose required 4 light pine wood planks each of which appears to have been 2 in. wide and 1 in. thick. It appears that pine boards are commonly used for this purpose, and, according to the evidence of a fellow workman of the deceased, are very light, and these particular planks could not have weighed more than a few pounds. Upon these facts the learned Commissioner found that the death was due to the disease alone and could not fairly be said to be attributable in any degree to the nature of his work.

In coming to his decision the learned Commissioner appears to have been guided by the correct test which is laid down in *Clover Clayton and Co., Ltd. v. Hughes.*[1] In that case a workman suffering from a serious aneurism was engaged in tightening a nut with a spanner when he suddenly fell down dead from rupture of the aneurism. The County Court Judge found upon conflicting evidence that death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of the body which was such as to render the strain fatal. Three of the five Law Lords who heard the appeal held that there was evidence to support the finding that it was a case of personal injury by accident arising out of and in the course of the employment. The two dissenting Law Lords held that there was insufficient evidence to justify such a finding. Lord Loreburn, who delivered the principal judgment, says at page 247, " in each case the arbitrator ought to consider whether in substance, as far as he can judge on such a matter, the accident came from the disease alone, so that whatever the man had been doing it would probably have come all the same, or whether the employment contributed to it. In other words, did he die from the disease alone or from the disease and employment taken together ? Looking at it broadly, I say, and free from over-nice conjectures, was it the disease that did it, or did the work he was doing help in any material degree ? ". This is the test that the learned Commissioner endeavoured to apply in the present case. It is significant that two of the three Law Lords who affirmed the finding of the County Court judge conceded that they themselves might well have come to a different conclusion on the facts, Lord Loreburn saying at page 247, " In the present case I might have

[1] (*1910*) *A.C. 242.*

come to a different conclusion on the facts had I been an arbitrator, but I am bound by the finding if there was evidence to support it ". Lord Macnaghten says at page 249, " The real question as it seems to me is this : ' Did it arise out of his employment ? ' On this point the evidence before the County Court Judge was undoubtedly conflicting but he has held that it did, and I think there was sufficient evidence to support that finding, though I do not say I should have come to the same conclusion myself " .

Applying Lord Loreburn's test to the present matter and having regard to the consideration that an appellate court should not disturb the finding of a Commissioner in matters under the Workmen's Compensation Ordinance unless there is no, or insufficient, evidence to support it, I have come to the conclusion that it would not be proper for me to disturb the finding in the present case. It seems to me that this is eminently one of those matters in which the inferences to be drawn from the evidence might vary with the individual adjudicator, but it is, in my opinion, impossible to say that the learned Commissioner's finding is unsupported by the evidence.

For these reasons the appeal is dismissed with costs.

Appeal dismissed.