1948 *Present:* **Gratiaen J.**

DE SILVA (Additional Controller of Establishments), Appellant, *and* **PREMAWATHIE**, Respondent

S. C. 1,259—Workmen's Compensation No. C 2/47/45

Workmen's Compensation Ordinance—School teacher distributing bread to pupils—Bitten by cat—Death from hydrophobia—Accident arising out of employment—Not workman—Chapter 117.

The deceased was a Government teacher one of whose official duties was to supervise the distribution of the pupils' mid-day meal. One day a cat entered the kitchen and attempted to eat the bread intended for the pupils. The deceased in trying to save the bread from the cat was bitten in the finger and subsequently died of hydrophobia.

Held, (i) that the accident was one which arose out of the employment of the deceased within the terms of the Workmen's Compensation Ordinance.

(ii) that the deceased was not, however, a "workman" within the meaning of the Ordinance.

APPEAL against an award of the Commissioner of Workmen's Compensation.

V. Tennekoon, Crown Counsel, for the appellant.

Corbett Jayewardene, for the respondent.

Cur. adv. vult.

December 21, 1948. GRATIAEN J.—

This is a very sad case. A gentleman named A. D. A. Seneviratne (whom I shall hereafter refer to as "the deceased") was the Head Teacher of a Government School at Dorake. One of his many official duties was to supervise the preparation and the distribution of the pupils' mid-day meal. On December 13, 1945, while he was so engaged a stray cat which subsequently turned out to be mad, entered the kitchen and attempted to eat the bread which was intended for the children's meal. The deceased saved the bread from the designs of the cat who retaliated by biting his finger. In consequence of this injury the deceased died of hydrophobia on December 31, 1945.

The terms of the deceased's employment were apparently such that notwithstanding even the circumstances of his death, his widow was not entitled to receive any pension or gratuity from the Government. The question of paying some compensation by reason of his having met his death in consequence of the performance of his official duties was then raised, but on this matter the Director of Education referred her to the Commissioner of Workmen's Compensation, to whom she accordingly applied for relief. Her application for compensation under the Workmen's Compensation Ordinance (Chapter 117) was resisted by the Controller of Establishments on behalf of the Government of Ceylon on various grounds some of which were of an extremely technical nature. After inquiry the Commissioner made an award in favour of the widow for a sum of Rs. 3,000. It is from this award that the Controller has appealed.

The Crown's objections to the Commissioner's award have been restricted in appeal to two submissions.

It is contended—

(*a*) that as a matter of law there was no evidence to support the finding that the deceased died in consequence of an accident " arising out . . . . of his employment " within the meaning of section 3 of the Ordinance ;

(*b*) that in any event the deceased was not a " workman " within the meaning of the Ordinance.

I have had the benefit of a very full argument from learned Counsel who appeared before me in appeal, and I am much indebted to them for their assistance.

I shall deal first with the question whether the accident arose " *out of* " the deceased's employment. That it arose " in the course of " that employment is conceded. The question is not free from authority in England where persons who have been injured by animals in somewhat similar circumstances have claimed compensation from their employers under the corresponding provisions of the Workmen's Compensation Acts. Where the offending animal, like the proverbial " ship's cat ", forms what has been judicially described as " part of the necessary furniture " of the establishment, the problem presents no difficulty. In *Rowland v. Wright* [1], a stableman was eating his meal in the stable where he was entitled to be and which was his proper place, when a stable cat suddenly and without provocation sprang at him and bit him. The Court of Appeal held that the accident arose " out of and in the course of " the stableman's employment because his duties took him into the stable where, to his knowledge and his master's knowledge, there was a cat habitually kept. " If it had been a strange cat ", said the Master of the Rolls, " the case would have presented a totally different aspect ".

Does it then follow that in each case the sole question for determination is whether the animal which caused the injury belonged to the employer's establishment or was an uninvited stranger ? The later decisions which have been brought to my notice satisfy me that this is by no means the true *ratio decidendi*. In *Craske v. Wigan* [2], a lady's maid met with an unusual accident in consequence of the incursion of a cockchafer through an open window into the room where she was employed. She was held not to be entitled to compensation from her employer. The Court of Appeal ruled that it was not sufficient for the applicant who claimed that the accident arose " out of " his employment to say, " the accident would not have happened if I had not been engaged in that employment or if I had not been in that particular place." *He must go further and say, " The accident arose because of something I was doing in the course of my employment or because I was exposed by the nature of my employment, to some peculiar danger ".* (*Per* Cozens-Hardy, M.R.). Buckley L.J. similarly held that it must be proved " that the accident was in some sense *due to the employment.* It must be a *risk reasonably incident to the employment* ". This principle was followed in *Warner v. Couchman* [3]

[1] *(1909) 1 K. B. 963.*
[2] *(1909) 2 K. B. 635.*
[3] *(1911) 1 K. B. 351.*

and *Amys v. Barton* [1] which decided that no compensation was payable under the Acts in respect of accidents which were " due to a risk common to all mankind ".

It seems to me that the principle laid down in *Craske v. Wigan* supports the case of the widow in the present case. It was the clear duty of the deceased in terms of his employment to protect from the designs of any intruder, be he man or animal, the food which was in his charge for distribution among the school-children under his care. The injury sustained by him therefore arose *because of* and not merely *in the course of* something which he was doing in the course of his employment. Moreover, in *Simpson v. Sinclair* [2] the House of Lords adopted a view which was perhaps even more favourable to the workman in such cases than the principle laid down in *Craske v. Wigan*. It was there decided by Lord Shaw that the expression " arising out of employment " applies to the nature, the conditions, the obligations, and the incidents of the employment. " *If by reason of any of these the workman is brought within the zone of special danger*, and so injured or killed, the broad words of the statute apply." On this line of reasoning, it necessarily follows that the conditions and obligations attaching to the deceased's employment brought him within what proved on this particular occasion to be " a zone of special danger ". Indeed, his quarrel with the cat was not of his own seeking, but was undertaken solely in defence of his employer's property. The accident therefore arose " out of " his employment within the meaning of section 3 of the Ordinance, and the appellant's objection to the award on this ground must be rejected.

There remains the question whether the deceased was a " workman " as defined in the Ordinance. If the answer is in the negative, his widow's claim to compensation must fail. The Workmen's Compensation Ordinance of 1934 (Chapter 117) introduced for the first time provision entitling certain classes of workmen (and their dependants) to claim compensation from their employers in respect of injuries sustained in the course of their employment. It is clear that the Legislature intended to give the enactment only a fairly restricted range of operation, and that it was not intended to benefit all classes of employees. The scope of the Ordinance was confined only to " workmen " who were defined in section 2 as persons " employed on wages not exceeding Rs. 300 per mensem *in any such capacity as is for the time being specified in Schedule 2* ". From these words one observes that, apart from introducing an income limit, no general definition of the term " workmen " was attempted. An employee could not qualify for any statutory benefit unless he came strictly within one or other of the various occupations specified in Schedule 2. It is common ground that the teaching profession did not come within any of the 22 occupations originally caught up in the Schedule. Indeed, an analysis of these occupations indicates that even humbler employees such as those serving " *in a clerical capacity* " were and are still expressly excluded. One is driven to the conclusion that when this early and very commendable experiment in social legislation was introduced, the intention was to embark upon no more far-reaching reform

[1] *(1912) 1 K. B. 40.* [2] *(1917) A. C. 127.*

than that contemplated in England by the original Workmen's Compensation Act of 1897. It is I think very significant that although the draftsman of the Ceylon Ordinance had available to him as a model the very much wider definition of " workman " in the later English Act of 1925, he in fact adopted a definition and a schedule with a far more restricted scope similar to what was in operation under the definition (long since repealed) of the 1897 Act. I think that the language of the local Ordinance and of its relevant Schedule catches up only the occupations of persons who belong to what are popularly described as " the working classes " engaged in manual labour and earning " wages " as distinct from " salaries ". (*Vide Simpson v. Ebbw Vale Steel Iron and Coal Co.* [1] and *Bagnall v. Levinstein* [2].)

Learned Counsel for the widow conceded that the view which I have expressed correctly represents the position at the time when the Ordinance was first introduced. He referred me, however, to an amendment of the Schedule which was introduced in 1944 (*Ceylon Government Gazette* No. 9,264 of April 28, 1944), whereby certain additional occupations were added to the original list in the Schedule, including among others (item 29) persons " employed in *any occupation ordinarily involving out-door work* in any Government Department." The suggestion is that these words are wide enough to catch up the case of the deceased and of any other Government teacher whose occupation occasionally involves the supervision of work and the taking of classes in the open air, as well as certain ancillary outdoor duties such as gardening and food-production. With great respect I feel that to accept this argument would be to strain the language of the amending section to a degree which is quite unwarranted. If the Legislature had in 1944 decided to extend to School Teachers the benefits of the Workmen's Compensation Ordinance which had previously been reserved for persons employed in very much humbler occupations, I think that the necessary amendment could and would have been introduced in much clearer language. The test as to whether any occupation " ordinarily involves outdoor work " must be decided not with reference to some duty which a man is rarely or occasionally require to perform, but with reference to " the *real and substantial character of his service* ". (*Vide* in this connection *Jaques v. Alexandria* [3]). If this test be applied to the occupation of a school teacher, the question has only to be asked in order to be answered without hesitation in the negative. Indeed, I believe that if the Legislature were to decide to confer the benefits of the Workmen's Compensation Ordinance to the noble profession of teachers, it would hardly be considered necessary or desirable to insist upon the artificial and wholly unreal qualification of some outdoor work. I can see no reason for giving any special priority to the organisation of an occasional paper-chase over the very important forms of instruction which can only be imparted in the class-room. This would surely be extending the doctrine of *mens sana in corpore sano* beyond its legitimate limits. It is also highly improbable that Government Teachers could have been intended to

[1] *(1905) 1 K. B. 433.* [2] *(1907) 1 K. B. 531.*
[3] *(1921) 2 A. C. 339.*

benefit to the exclusion of other teachers performing precisely similar functions in a private or State-aided School.

In the result, I hold that the deceased was not a " workman " within the meaning of the Ordinance and that his widow's claim must fail. The appeal must therefore be allowed, and the award of compensation in favour of the widow must be set aside. I propose to make no order as to the costs of this appeal because although the Crown has succeeded, it has failed before the Commissioner on certain objections, some of which were so technical that they would have brought little credit to an even less enlightened employer. The case of this unfortunate widow deserved to be treated on its merits, and I for one would have preferred to see the Crown as the so-called " model employer " willing on this occasion at least to adopt the attitude of a model litigant. Some of the technicalities relied on in the proceedings before the Commissioner were very properly discarded in appeal. In all the circumstances I see no reason to interfere with the Commissioner's order that the widow should receive from the Crown her costs of the inquiry. In the result the award of compensation made by the Commissioner will be set aside, but his order as to costs will stand. There will be no costs of appeal.

Appeal allowed.