1946 *Present :* **Wijeyewardene J.**

CHARLES APPU, Appellant, and THE CONTROLLER OF ESTABLISHMENTS, Respondent.

368—Workmen's Compensation, C 30/6,882/43.

Workmen's Compensation—Accident—Assault by one workman on another—No risk of assault in the nature of the employment—No liability—Workmen's Compensation Ordinance (Cap. 117), s. 3.

Where a workman was injured in consequence of an assault by another workman in the premises where they were employed but it was not one of the risks of his employment that he might be assaulted—

Held, that the accident did not arise out of his employment.

APPEAL against an order rejecting a claim made under the Workmen's Compensation Ordinance.

H. Wanigatunga, for the applicant, appellant.

D. Jansze, C.C., for Crown.

Cur. adv. vult.

October 17, 1946. WIJEYEWARDENE J.—

This is an appeal against an order rejecting the claim of the applicant under the Workmen's Compensation Ordinance.

The applicant was employed as an Engine Turner and Lighter under the Ceylon Government at the time of the accident. He was transferred in December, 1943, to Kurunegala where there were rooms on the Railway premises and these were available to the workmen desiring to occupy them. He reported for duty at the Running Shed there on December 6, 1943, and was given by the Fitter-in-Charge a key for a room in the middle of a line of five rooms usually occupied by unmarried workmen. He found that his predecessor had occupied the room at the end of the line and insisted on having that room. The Fitter-in-Charge explained to him that all the five rooms were of the same size and type and that some days ago the corner room was allotted to another workman, Fernando, as Fernando's sisters who were staying with Fernando found it rather inconvenient to occupy a room in the middle of a line occupied by unmarried men. Though there was no hard and fast rule that a workman would be given the room occupied by his predecessor, the Fitter-in-Charge asked Fernando to give the corner room to the applicant in order to avoid any unpleasantness. Fernando agreed to vacate his room the next day. Shortly afterwards, when the applicant was returning from the room of a workman after making arrangements to leave his luggage there for the day, Fernando assaulted him at the Running Shed and bit his right index finger. That finger had to be amputated as a result of the injury.

It was agreed at the argument before me that the loss of earning capacity was 10 per cent. and that the claim was in respect of a personal injury caused to a workman by an accident arising in the course of his employment. The only question that has to be decided is whether the accident arose out of the employment.

This case does not fall within the class of cases (*e.g.*, *Trim Joint District Board of Management v. Kelly* [1]; *Reid v. British & Irish Steam Packet Company* [2]) where the nature of the employment was such that the likelihood of an assault was connected with and incidental to the employment. Here there is a specific finding by the Commissioner that there was no proof whatever "that there was attached to his employment a risk of being assaulted". This case is similar to *Lee v. S. & J. Breckman, Limited* [3]. In that case Lee, a porter employed by a firm of upholsterers, was carrying furniture from his employers' premises to a railway collecting van in charge of Debuse, the van driver. In the course of the loading an altercation arose between the two men owing to a remark made by Lee regarding Debuse's method of work. Debuse struck Lee and the injury resulted in the loss of one eye. The Court of Appeal held that those facts did not justify a finding that the accident arose out of the employment.

[1] (*1914*) *Appeal Cases 667.* [2] (*1921*) *2 King's Bench Division 319.*
[3] (*1928*) *21 Butterworths Workmen's Compensation Cases 32.*

Mr. Wanigatunga who appeared for the appellant sought to bring this case within the fourth proposition laid down by Russell, L.J. in *Lawrence v. George Mathews (1924) Limited*[1] :—

> " A sufficient causal relation or causal connection between the accident and the employment is established if the man's employment brought him to the particular spot where the accident occurred, and the spot in fact turns out to be a dangerous spot. If such a locality risk is established, then the accident " arises out of " the employment, even though the risk which caused the accident was neither necessarily incident to the performance of the man's work, nor one to which he was abnormally subjected ".

That proposition based on the decision in *Thom or Simpson v. Sinclair*[2] was stated in those terms in a case where the Court was considering the death of a commercial traveller who was riding on a road when he was struck down by a falling tree which was blown down by a severe gale then prevailing in the locality. Commenting on that proposition, Lawrence L.J., said in *Holden v. Premier Waterproof & Rubber Company Limited*[3] :—

> " What is meant by a dangerous spot in this connection is a spot which owing to its locality is in fact inherently dangerous although the danger may be a lurking danger and not known to any one, such as a wall with a bad foundation which may collapse—a tree which may fall ; it does not mean that because the accident happened at a particular spot, and because the workman did in fact incur danger at that spot, that therefore it was dangerous spot within the fourth proposition ".

I do not think that the applicant is entitled to claim the benefit of that proposition.

I dismiss the appeal. I make no order as to costs.

Appeal dismissed.