

DE VILLIERS, J.P., }
 BRISTOWE & CURLEWIS, } BRIESCH vs. JOHANNESBURG, CIVIL
 JJ. Nov. 21st, 1911. } MAGISTRATE OF, AND ANOTHER.

Review.—Irregularity.—Decision of Magistrate in Workmen's Compensation Case.—Workmen's Compensation.—Interpretation of Answer of Court in Case stated.—Act 11 of 1910.

An objection to the decision of a Magistrate in a Workmen's Compensation Case merely on the ground that he has given a wrong interpretation to the answer given by the Court on a case stated to it under the Act cannot be raised by way of review.

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Application for an order to set aside a certain judgment delivered by the Civil Magistrate, Johannesburg, on the ground of gross irregularity.

The irregularity complained of was that the Magistrate had disregarded the answer given by the Supreme Court to a certain question reserved for its decision under sec. 4 of Act 11 of 1910 (Workmen's Compensation Act). The further facts appear from the judgment.

R. Gregorowski, for the applicant: No costs are asked against the magistrate. This matter was before the Court on a previous occasion (see *supra* p. 707) when three questions were reserved by the Magistrate, the first of which the Court decided in favour of the applicant. The magistrate has disregarded the answer of the Court on question 3, and we are entitled to bring his action in review: *Honey vs. C.S.A.R.* (1910, T.S. 592).

S. S. Taylor (with him *J. T. Barry*), for the Geduld Proprietary Mines: Even if the decision of the Magistrate is contrary to case law, his decision cannot be reviewed by this Court. It can only be reviewed on the ground of gross irregularity, as, for example, that this Court, having specifically answered the question, he has ignored the answer and decided contrary to it. No question was specifically answered. The magistrate was

simply told to give compensation under section 17 (b). He has now done so, and given his interpretation of the section. Whether that interpretation is right or wrong in law applicant cannot cancel it on review.

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R. Gregorowski replied.

DE VILLIERS, J.P.: The plaintiff has summoned the Civil Magistrate of Johannesburg and the Geduld Proprietary Mines, Limited, to show cause why a certain judgment delivered by the magistrate should not be set aside on the ground of gross irregularity. It appears that the plaintiff, who was in the employ of the second respondents, met with an injury and instituted action against them for compensation under the Workmen's Compensation Act, 1907. Under sec. 4 of Act 11 of 1910, at the request partly of the defendants and partly of the plaintiff, three questions were reserved for the decision of this Court. Questions 1 and 2 are not material to the present issue. Question 3 reads as follows: "If the requirements of the Act as to personal injury caused by any accident are satisfied, is the plaintiff entitled to compensation on the basis of a period of three years, or only on the basis of the period by which incapacitation has been precipitated by the strain on the 9th of January last." It appears that on that date the plaintiff, who had an incipient rupture before, sustained a complete rupture. The answer given by the Supreme Court in reference to question 3 was as follows: "That if the plaintiff is found by the magistrate to have been incapacitated through personal injury caused by accident, he is entitled to the amount of compensation fixed by sub-sec. (b) of sec. 17 of Act No. 36 of 1907." Mr. *Gregorowski*, on behalf of the applicant, has argued that the Magistrate has been guilty of gross irregularity because he has disregarded the decision which this Court gave on question 3; that if we read the third question and the answer to it together, the decision clearly was that the magistrate was bound to follow the three years' basis, and that, not having done so, his judgment ought, on the ground of gross irregularity, to be set aside. I desire first to

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point out, with regard to the judgment which was delivered, that there seems to have been a misconception with regard to the third question. The question referred to partial permanent incapacitation under sub-sec. (b), and not to total incapacitation under sub-sec. (a). But the reasons given by Sir William SMITH in his judgment would seem to refer to total incapacitation under sub-sec. (a), because he says: "The third question appears to me to be too plain for argument. Sec. 17 of the Act defines the amount of compensation payable to a workman who has been totally incapacitated through personal injury caused by accident, *i.e.*, an amount equal to three years' wages. The magistrate has no jurisdiction to award a less amount, by reason of the fact that the workman would have been incapacitated in the ordinary course of things without the intervention of any accident. The answer to the third question, therefore, is that if the plaintiff is found by the magistrate to have been incapacitated through personal injury caused by accident, he is entitled to the amount of compensation fixed by sub-sec. (b) of sec. 17 of the Act." We are informed that this at first read "sub-sec. (a)." It seems that there was a misconception in the mind of the learned judge when the judgment was prepared, probably due to the fact that counsel for the party at whose instance the question was stated by the magistrate to have been reserved disclaimed responsibility for it, and the Court apparently did not attach importance to the question. But whatever was in the minds of the learned judges who decided the case, we have to determine the present dispute upon the question and the answer, and we have then to say whether the magistrate was guilty of a gross irregularity. He gave a certain construction to sec 17 (b), with which I am not at present concerned, and to which, therefore, I do not wish to make any further reference. In the view I take, it seems to me he was perfectly correct in giving to sub-sec. (b) the construction which he considered was the correct construction. Mr. *Gregorowski* says the answer given by the Court is meaningless. I do not think it can be said to be meaningless; but I do not gather from it that the learned judges wished to put a particular con-

struction upon sec. 17 (b). They merely referred the magistrate to sub-sec. (b) of sec. 17, in order that he might construe it. That being so, I can see no reason to hold that the magistrate has disregarded the answer given to the third question by this Court, and has therefore been guilty of gross irregularity. The summons must be dismissed with costs.

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BRISTOWE, J.: I agree. I do not think that there is such an irregularity in this case as would justify us in interfering under the review jurisdiction. The answer given to question 3 by the Court is, in effect, that the magistrate was to award compensation in accordance with sub-sec. (b) of sec. 17. It may be that reading that answer in conjunction with the question, it means that the three years basis is to be taken, and the three months basis excluded. But I do not know that the magistrate was bound to go beyond the actual answer. He had to take the answer as it stands. Moreover, there was a certain difficulty in construing the answer in the way I have suggested, because it is plain from the last paragraph but one of the judgment that the learned judge who wrote it had in his mind sub-sec (a), and not sub-sec. (b). Whether the magistrate has decided the case rightly or wrongly is not a question of review: it is a question of appeal, if an appeal lies. If no appeal lies, the Court cannot interfere. That is the position in which I think this case stands. If an appeal had lain in this case, it might have been a proper case for appeal. But as there is no appeal, I do not think it is a case in which the Court can interfere under its review jurisdiction.

CURLEWIS, J.: I concur.

[Attorney for Applicant, MAX COHEN.
[Attorneys for Geduld Proprietary Mines, Ltd., MACINTOSH & KENNERLEY.]

[Reported by ADOLF DAVIS, Esq., Advocate.]
