The question whether it was his duty under these circumstances to dismount is one not free from difficulty, but if, as I believe, the municipality is not liable for the condition of non-repair in which Bedford Road was found in June of last year, the question does not arise for decision.

There must, therefore, be judgment for the defendant with costs.

Plaintiff's Attorney: *J. G. Kerr*; Defendant's Attorneys: *Lance & Hoyle.*

[G. H.]

VAN RYN DEEP GOLD MINING COMPANY, LTD. v. DIRECTOR OF NATIVE LABOUR.

1915. *October* 21. MASON, J.

Miners' Phthisis Compensation.—Act 19 *of* 1912, *sec.* 30.—*Native labourers' claims.—Regulations as to procedure.—Medical adviser's certificate.—Interpretation.*

Act 19 of 1912, sec. 30 (2), provides that the procedure for claiming or recovering any sum under the section shall be as prescribed by regulation. *Held*, that the word "procedure" must be interpreted in its widest sense and that, accordingly, the Governor-General-in-Council may by regulation constitute the Director of Native Labour a court not merely to assess the amount of compensation payable, but also to determine all the matters referred to in the section as conditions precedent to any award being made.

The medical adviser's certificate which, as provided by sec. 30 (2), must be furnished to the Director before he can make an award is not conclusive evidence that the native labourer is suffering from miners' phthisis, and may be rebutted by the defendant, whom the Director is bound to hear on all issues at the inquiry.

Application for an order setting aside an award of the Director of Native Labour, made in pursuance of regulations framed under sec. 30 of Act No. 19 of 1912. The applicant alleged that these regulations (Regulations 4, 5, 6, and 7, promulgated under Government Notice No. 1,348, of October 3, 1912, as amended by Government Notice No. 299 of March 16, 1915), were *ultra vires*, on the ground that sec. 30 gave the Director no power to adjudicate upon any other

issue than the amount of the compensation to be paid, whereas the regulations contemplated the decision by the Director of the facts specified in sec. 30 (1) as conditions precedent to his assessment. The applicant took the further point that the assessment of the Director was bad by reason of the fact that he treated the medical adviser's certificate furnished to him under sec. 30 (2) of the Act as conclusive, notwithstanding that the applicant desired to prove that the native labourer to whom compensation was awarded was not suffering from miners' phthisis at all. The regulations in question will be found in Hortor's 1915 edition of the *Native Labour Regulation Act*, at page 78.

J. Stratford, K.C. (with him *C. T. Blakeway*), for the applicant: Regulation 4 is bad because it does not provide for hearing the other side.

[MASON, J.: It provides for notice to the employer. Does not that necessarily imply hearing him?]

Not necessarily.

[MASON, J.: I think it does. The point was decided in *Abramovitz* v. *Johannesburg Municipality* (1913, T.P.D. 216).]

If that is so, I do not challenge Regulation 4. Regulations 5, 6 and 7 must be read together. Under sec. 30 the Director is called upon only to assess the amount of compensation. He is not concerned with the determination of the other questions, which are conditions precedent to the award being made. Cf. *Halsbury*, Vol. 6, at p. 76, and *King* v. *Henderson* (L.R. 1898, A.C. 720). In the absence of express statutory authority a litigant will not be deprived of recourse to the ordinary Courts of the land. The provision in sub-sec. 2, that "the procedure for claiming or recovering any sum.....shall be as prescribed by regulation," does not contemplate the establishment of a tribunal by regulation. For the two meanings of the word, see *Stroud's Judicial Dictionary, sub voce Procedure.* I submit that the narrower interpretation must be given here. As to the medical adviser's certificate, the section says no sum shall be payable unless the Director shall have been furnished with a certificate that the labourer is suffering from phthisis, but it does not say that having that certificate the Director is to regard it as conclusive.

J. P. R. van Hoytema, for the respondent: The general scope of the Act shows that the intention of the Legislature was to provide a very summary way of determining the claims of native labourers.

If the certificate is not to be taken as conclusive, then the procedure with regard to natives would be less summary than that with regard to white miners. See sec. 23 of the Act. This could not have been the intention. With regard to the regulations, the word "procedure" in sub-sec. 2 must be interpreted in the widest possible sense. If that is done the regulations are reasonable, and, indeed, necessary.

Stratford replied.

MASON, J.: This application raises somewhat difficult questions of construction in regard to Act No. 19 of 1912, and regulations framed thereunder. The substantial question, in the first place, is whether under sec. 30 of this Act the Governor-General-in-Council may constitute a tribunal to determine not only the amount but also those facts which alone entitle a native to compensation. *Prima facie,* it might seem, the Director of Native Labour is entrusted only with the assessment of the amount of compensation, and not with the determination of other questions such as whether the native has been a labourer employed on the specified work in a particular class of mine, and whether he has contracted phthisis. But sub-sec. 2 of sec. 30 goes on to say: "The procedure for claiming or recovering any sum under this section shall be as prescribed by regulation made under this Act." Now, as has been pointed out by Mr. *Stratford,* the word "procedure" may mean one of two things. It may have reference merely to the internal regulations of a Court; or, in a wider sense, it may mean that branch of legislation which provides for the enforcement, as distinct from the conferring of rights. In this latter sense "procedure" covers the establishment of Courts, not merely the rules for their internal management. Should the narrower or the wider meaning be given to the word in this case? I come to the conclusion that the wider interpretation should be given, and I am very much urged in that direction by the wording of sub-sec. 3 of the section. The result of giving the narrower construction would be that in case of a native labourer's death the Director would have the power to inquire as to whether he suffered from miners' phthisis, whereas there would be no such power of inquiry if the labourer did not die. This would admittedly be a great anomaly, and, therefore, construing the section as a whole, it is consistent with the establishment of the Director as a tribunal to determine all the questions referred to in

it. It is quite true that one must not infer too readily that the Legislature has conferred upon the Governor-General-in-Council the power to establish a tribunal; but, having regard to the whole scope of the Act, I feel bound to draw the inference in this case. Sec. 11, which deals with the recovery of compensation by white miners, speaks of an action in any competent Court. Here there are no such words. Again, if by "procedure" were meant merely rules to be framed for the internal regulation of Courts another extraordinary result would follow. The existing Courts, both the Supreme Court and the magistrates' courts, already have such rules, and it could not have been intended that special rules should be framed for these Courts, when they dealt with questions under this section. The intention of the Legislature, as I think, was that a special and speedy tribunal should be constituted where persons not cognisant of ordinary legal procedure could have their claims determined and enforced.

Another question I have to determine is, whether the medical adviser's certificate mentioned in sub-sec. 2 of sec. 30 is binding on the Director. Is one such certificate conclusive or may it be rebutted by other medical evidence? If it is conclusive, clearly the Director would not be entitled to hear what the defendant had to say if the latter wished to prove that there had been an error. The language of the sub-sec. appears to me to preclude such an idea; and the provisions of sec. 23 with regard to medical certificates in the case of white miners have been deliberately omitted here as unnecessary, presumably, in view of the smallness of the amount of compensation payable to native labourers. I need not say anything about Regulation 4, except that under it the tribunal is bound to hear both sides in accordance with the decision in *Abramovitz's* case.

The result is that the application fails as to the claim that the regulations are *ultra vires*, but succeeds with costs as to the other point.

Applicant's Attorneys: *Webber & Wentzel*; Respondent's Attorneys: *Van Hulsteyn, Feltham & Ford.*

[P. M.]