

*Privy Council Appeals Nos. 127 and 128 of 1916.*

**The Australian Alliance Assurance Company** *Appellants,*

*v.*

**The Attorney-General for Queensland and  
Another** - - - - - *Respondents.*

**Same** - - - - - *Appellants,*

*v.*

**George Arthur Carter** - - - - - *Respondent.*

*Consolidated Appeals.*

FROM

**THE SUPREME COURT OF QUEENSLAND.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 18TH JUNE, 1917.

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*Present at the Hearing :*

EARL LOREBURN.  
VISCOUNT HALDANE.  
LORD ATKINSON.  
LORD SUMNER.  
LORD PARMOOR.

[*Delivered by LORD SUMNER.*]

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These are consolidated appeals in two actions, which in substance were brought to assert rights and to obtain relief under section 7 of the Queensland Workers' Compensation Act of 1916; but section 8 of that Act also came in question, and, further, the validity of various Regulations made under the Act. These Regulations, however, are not now material. In the course of the proceedings it was ordered that certain questions of law should be argued, and these appeals contest only the answers given to the questions which arose upon the above-named sections 7 and 8.

The Workers' Compensation Act of 1916 repealed the previous Workers' Compensation Acts and Employers' Liability Acts and took their place. Under them, companies, like the appellants, had insured employers against their liability to work-

men for industrial accidents. Section 7 of the new Act fixes the conditions, upon which thereafter they may carry on in Queensland the business of "accident insurance," that is to say, "insurance against liability in relation to workers' compensation under this Act."

The section is threefold. Firstly, "the Governor in Council may approve that any company" (such as the appellants are) may carry on the business of accident insurance. Secondly, "such approval shall be granted upon such applicant giving security" to a maximum amount of 5,000*l.*, "or such less sum as the Treasurer may fix." Thirdly, "on the making of such deposit, the Governor in Council shall grant to the applicant a certificate to the effect that such deposit has been made, and that the Governor in Council has approved that the applicant may carry on in Queensland the business of accident insurance." These are three separate things, and the words "may approve" and "shall be granted" are significant. The Governor in Council acts as chief of the executive, and acts constitutionally on the advice of his Ministers. Approval or disapproval is an act involving a choice, which (subject to his constitutional obligation) is his choice. This act, therefore, is not merely ministerial. He approves or disapproves in his discretion. If he disapproves, there is an end of the matter. No appeal lies from his refusal to approve, nor is he subject in this matter to control by any Court. If he approves, then, and only then, there arises a question as to the grant of that approval, that is, a grant to the applicant. Its form is prescribed: the grant is by certificate; and a condition of the grant, performable by the applicant, is also prescribed, namely, the deposit of money by way of security.

To avoid any question with the Treasurer, who would clearly have had a discretion in fixing the security at less than the maximum, the appellants deposited the whole 5,000*l.*, and then applied to the Governor for his approval as a matter of right. In his discretion he withheld approval, and the appellants brought these actions to enforce what they now allege to be his statutory duty towards them. In their Lordships' opinion these actions so far fail. There is no such statutory duty as is alleged.

If relief under section 7 cannot be obtained, little more need be said, the Regulations being no longer in question. Section 8 provides that "it is obligatory for every employer to obtain from the Insurance Commissioner a policy of accident insurance for the full amount of the liability to pay compensation under this Act to all workers employed by him." The employer is liable to the Commissioner under the Act to reimburse to him his payments to the injured worker or his dependants, for, under the scheme of the Act, these are recoverable from the Commissioner directly, and, by the first words of the section, it is this liability that the employer must cover with the Commissioner as a State insurer.

The appellants say that to impose such an obligation on the

employer would make the business of accident insurance futile, even if they were to obtain leave to carry it on under section 7. Probably it would, for no one would take out a second policy with the appellants after effecting a first policy with the State Commissioner, covering the same subject-matter and the same liability. This is, however, what the section says, and it cannot be read otherwise without rewriting it. The provision is not unexpected, since under section 7 the Governor in Council is already free to exclude such companies from this field of business altogether, and section 8 only does indirectly what he may do directly. Their Lordships are not concerned with the policy of the Act, nor can they find, either in the novelty of the provision or in the language of other parts of the Act, such as the penalty clause in section 8, sufficient ground for disregarding the plain words of the enactment. During the argument before the Supreme Court of Queensland there appears to have been some suggestion that one section gave only that the other might take away, as the result of a legislative accident. It may be so. Since, for all its vigilance, no legislature can be immune from such mishaps, no legislature need shrink from promptly correcting its error, if error there be; but, be this as it may, the matter is wholly for the legislature itself, and can have no bearing upon the interpretation of the language of the enactment.

In the result, their Lordships are of opinion that, so far as the questions of law raised by these appeals are concerned, they were correctly answered by the judgments appealed against, and they will humbly advise His Majesty that the appeals should be dismissed with costs.

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In the Privy Council.

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THE AUSTRALIAN ALLIANCE  
ASSURANCE COMPANY

*v.*

THE ATTORNEY-GENERAL FOR  
QUEENSLAND AND ANOTHER.

SAME

*v.*

GEORGE ARTHUR CARTER.

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DELIVERED BY  
LORD SUMNER