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No 40 of 1933

## In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL  
FOR BRITISH COLUMBIA

BETWEEN:

MERRILL RING WILSON LIMITED, ET AL  
Plaintiffs (Appellants)

—and—

WORKMEN'S COMPENSATION BOARD  
Defendant (Respondent)

## APPELLANT'S CASE

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Appellants'  
Case.

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### CASE FOR THE APPELLANTS'

1. This is an appeal from a judgment of the Court of Appeal for British Columbia, dated the 10th day of January, 1933, affirming a judgment of the Supreme Court of British Columbia, dated the 18th day of April, 1932, delivered by Mr. Justice Murphy, which dismissed the Appellants' action.

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2. The point raised by the Appellants is a point of law, arising on the construction of Section 33 of the Workmen's Compensation Act (R. S. B. C. 1924, C. 278).

20 3. This Act deals with compensation to injured workmen, and creates a Board to administer the provisions of the Act, and amongst other things, to raise a fund for the medical aid of disabled workmen, by levying contributions partly from the workmen and partly from the employers.

4. The Section of the Act devoted to this purpose is Section 33, which reads as follows:—

30 33. (1) Every employer who is required to contribute to the Accident Fund by way of assessment under this Part is hereby authorized and required to retain from the moneys earned by each workman in his employment the sum of one cent for each day or part of day the workman is employed as a contribution toward the cost of medical aid, and to pay the sum so retained to the Board from time to time at the time

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each assessment is due and payable by the employer, and at such other times as the Board may direct.

(2) The moneys received by the Board under subsection (1) shall form part of the Accident Fund, and shall constitute a special fund to be used only in defraying the cost of medical aid. Such additional amounts as are required from time to time to meet the cost of medical aid shall be provided by the Board by assessment upon employers generally in all industries within the scope of this Part, except in respect of employments embraced in any plan for providing medical aid approved by the Board under subsection (4) of section 23. For the purpose of levying and collecting assessments under this subsection, the Board may charge the additional amounts required to meet the cost of medical aid against the funds to the credit of the several classes in such a manner as, on the annual adjustments of assessments under this Part, will result in a general assessment of such additional amounts upon those employers only who are liable to assessment under this subsection. 10

5. The Appellants' submission is that the "additional amounts . . . . required . . . . to meet the cost of medical aid" should be obtained by the Board by means of an uniform "assessment upon employers generally in all industries:" that is to say, that the Board should act in accordance with the language of the Section itself. 20

6. The Respondent's contention is that it should divide the employers into classes, and assess them according to the proportion which the amount levied for compensation for injury upon each class bears to the total amount of compensation levied upon all the classes. 30

7. It seems to be conceded that if the language of Section 33 is to be followed, the Appellants' contention is correct. In fact, Mr. Justice Macdonald says in terms: "it is, I think, clear that if we were concerned solely with the interpretation of this clause (i. e. Section 33) the Appellants' view would have to prevail." 30

8. It is respectfully submitted that this is the correct view, viz. that Section 33, which deals expressly with medical aid, is the Section to be regarded.

9. His lordship, however, proceeds to decide that Section 33 is marred by "faulty draftmanship," and that it is Section 32, Sub-section 1, which is the "controlling section." 40

10. From the point of view of the Appellant, two things are to be observed: in the first place, Section 33 deals entirely and ex-

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clusively of all other subjects with the matter of raising "a special fund to be used only in defraying the cost of medical aid:" and in the second place, Sub-section 1 of Section 33 imposes a tax of one cent a day upon each workman employed anywhere or anyhow in British Columbia, irrespectively of the particular class to which the industry, in which he is employed, may have been assigned.

10 11. The burden of the Respondent's argument rested on the suggestion that it would be grossly unjust to impose on a class of employers, in which no accidents at all had happened, the same tax as upon a class, in which accidents had been numerous.

12. It is, however, impossible for the Respondent to escape, along this avenue of reasoning, from the obstacle that the Legislature has actually inflicted this suggested injustice upon the workmen.

20 13. The provision of medical aid is regulated by Section 23, and it is clear that, under the first Sub-section of Section 33, all the workmen, in some safe and sheltered industry, in which perhaps no accident may have occurred and no medical aid at all had been required, would certainly be taxed to provide that medical aid for some other class of industry, where the need for medical aid might be very considerable.

14. It is respectfully submitted that this circumstance would furnish a very assistant light in the consideration of the second Sub-section of Section 33, if, indeed, any further light were needed than that furnished by its own language.

30 15. That language, however, seems to need no further illumination. The concluding words "upon those employers only who are liable to assessment under this Sub-section" refer back to the words in the middle of the Sub-section "upon employers generally in all industries within the scope of this part except in respect of employments embraced in any plan for providing medical aid approved by the Board under Sub-section 4 of Section 23." These latter words provide for the circumstance that an employer and his workmen may agree on a plan for the furnishing of medical aid to those particular workmen, subject to the approval of the Board, and that the accord of such approval has the effect of entirely excluding such workmen and their employers from the provisions of Section 33.

40 16. Sub-section 2 of Section 33, therefore, provides that "such additional amounts (i. e. over and above the uniform levy on all workmen) as are required from time to time to meet the cost of medical aid shall be provided by the Board by assessment upon all employers generally in all industries within the scope of this part except "those employers who have approved plans in force."

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And the Board is permitted by the Sub-section to "charge the additional amounts required to meet the cost of medical aid against the funds to the credit of the several classes," but only "in such a manner as, on the annual adjustment of assessments under this part, will result in a general assessment of such additional amounts upon those employers only" who have no approved plans in force.

17. It is very strongly and respectfully submitted that the Legislature has, by its obvious recognition of and insistence upon the antithesis between classes of employers and employers generally endeavoured clearly to express its intention that the tax for medical aid should be levied upon employers generally, and not upon the classes of employers. It would seem a needless refinement of cruelty to suggest that this careful choice of language is the result of faulty draftmanship. 10

18. Some of the learned judges considered that Section 32 and not Section 33 was the dominant section.

19. It is submitted, on the contrary, that the very language of Section 32 rebuts this assumption.

20. Section 32 begins thus:—

(1) For the purpose . . . . . estimate to be made by the Board:— 20

(a) to provide . . . . . cost of medical aid.

21. The effect of this language, it is submitted, is to refer the Board to the provisions of Section 33, when it comes to deal with the question of raising contributions towards "the special fund to meet the cost of medical aid."

23. Section 32 is the general clause: Section 33 is the special clause, dealing and dealing only with this particular subject.

24. In Section 33 the Legislature has laid down the principle upon which the Board is to proceed in raising the special fund, and it is submitted that the Board cannot reject that principle or act in contradiction to the statutory prescriptions. 30

25. It is humbly submitted that the judgments delivered in this cause violate the fundamental principles of the construction of statutes, references to which may be found in the following decisions:

*Pretty v. Solly* (1859), 26 Beav. 606, at p. 610;

*British Columbia Electric Railway v. Stewart* (1913),  
A. C. 816 at 828;

*The King v. Justices of Middlesex* (1831), 2 B. and Ad. 818 at p. 821; Appellants' Case.

*Wood v. Riley* (1867), L. R. 3, C. P. 26, per Keating J. at p. 27;

*Lumsden v. Inland Revenue Commissioners* (1914), A. C. 877 at pp. 896, 897.

26. It may be asked, if the Legislature had indeed intended the effect contended for by the Appellant, what other and more apt language could it have employed?

10 27. While a consideration of the results, which flow from one or other mode of construction, may not be of very great assistance, it certainly arrests the attention to consider some of the remarkable consequences of the Respondent's contention.

28. A particular class of employers may encounter no accidents during the course of the year, and consequently pay no contribution to the deficit, which may, however, be very heavy. Is this an assessment upon employers generally?

20 29. A bad disaster may occur in a coal mine or a fishing fleet may be destroyed in a storm; every workman concerned may be killed: owing to this event, the assessment for compensation to the families of the deceased upon the class concerned may be very heavy; this class requires no medical aid; yet according to the Respondent it must bear a very large proportion of the cost of the medical aid for other classes whose requirements may be very extensive.

30 30. The existence of the approved plans involves another very grave hardship. In some of the classes, all the large industries may have approved plans, which exempts them from all contribution. In one of these industries a disaster occurs, involving a heavy outlay for compensation. The class to which this industry belongs must, therefore, according to the Respondent, bear a correspondingly heavy share of the contribution to medical aid. The industry, which is the source of the disaster, pays nothing: neither do any of the other industries in that class, which have approved plans. The whole burden falls upon the few small industries of the class, which have not, by reason of geographical or financial causes, been able to set up approved plans.

40 31. These and other like considerations may well have moved the Legislature to enact Section 33 in the language actually used, relying on the ordinary rules of construction for the carrying out of its intention.

32. It is submitted that the appeal should be allowed for the following reasons:—

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(a) Because the matter falls to be determined under Section 33 of the Act;

(b) Because the language of Section 33 is clear and unambiguous;

(c) Because Section 33 is the special clause, dealing specifically with this particular subject matter;

(d) Because Section 33 is the later Section;

(e) Because the Act so far as this matter is concerned, is a taxing statute, and should be construed strictly in accordance with its terms.

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All of which is respectfully submitted.

Vancouver, this 20th day of April, 1933.

E. C. MAYERS,  
Counsel for the Appellants.

## APPENDIX (Appellants')

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Extracts from "Workmen's Compensation Act," R. S. B. C. 1924, Cap. 278.

2. (1.) In this Act, unless the context otherwise requires:— Interpretation

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"Accident Fund" shall mean the fund provided for the payment of compensation, outlays, and expenses under Part 1.:

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"Compensation" shall include Medical Aid:

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10        7. (1.) Where, in any industry within the scope of this Part, personal injury by accident arising out of and in the course of the employment is caused to a workman, compensation as provided by this Part shall be paid by the Board out of the Accident Fund. Compensation in cases of industrial accident.

20        23. (1.) In addition to the other compensation provided by this Part, the Board shall have authority to furnish or provide for the injured workman such medical, surgical, and hospital treatment, transportation, nursing, medicines, crutches, and apparatus, including artificial members, as it may deem reasonably necessary at the time of the injury, and thereafter during the disability to cure and relieve from the effects of the injury, and the Board shall have full power to adopt rules and regulations with respect to furnishing medical aid to injured workmen entitled thereto and for the payment thereof. Medical aid.

30        (4.) Any plan for providing medical aid in force between an employer and his workmen or otherwise available to the workmen, and which in the opinion of the Board, after investigation of the facts, is found on the whole to be not less efficient in the interests both of the employer and of the general body of workmen than the provisions for medical aid contained in this section, may by order of the Board, subject to such conditions as the Board may require, be declared to be a plan approved by the Board. So long as the order of the Board approving the plan is in force and unrevoked the provisions of subsections (1), (2), and (3) of this section and of subsection (1) of section 33 shall not apply to any of the workmen in any employment embraced in such plan, and during the like period the provisions of section 12 of the "Master and Servant Act" shall not apply in respect of any such workmen. Upon the making of the order approving a plan under this subsection, the Approved plans of medical aid.

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employer shall from time to time deduct the amount of the monthly or other periodical payment settled by the plan from the moneys earned by the respective workmen, and shall pay the same forth with to the person entitled thereto as settled by the plan or determined by the Board. If the employer fails, neglects, or refuses to make such deductions, or any of them, or to pay over the same to the person entitled thereto, the Board may summarily determine the amount in arrear, and may enforce payment thereof from the employer as a debt due to the Board, and for that purpose the Board shall have the like powers and be entitled to the like remedies as it possesses or is entitled to in respect of assessments. Upon recovery of the amount, the Board shall pay the same to the person entitled thereto. 10

Classification of industries.

28. For the purpose of assessment in order to create and maintain a fund, to be called the "Accident Fund," for the payment of the compensation, outlays, and expenses under this Part, all industries within the scope of this Part shall, subject to sections 29 and 30, be divided into the following classes:—

Class 1.—Lumbering; logging; sawmills; planing-mills; manufacture of pulp and paper: 20

Assessments to provide Accident Fund.

32. (1.) For the purpose of creating and maintaining an adequate Accident Fund, the Board shall every year assess and levy upon and collect from the employers in each class by an assessment or by assessments made from time to time rated upon the pay-roll, or in such other manner as the Board may deem proper, sufficient funds, according to an estimate to be made by the Board:

(a.) To provide in connection with section 33 a special fund to meet the cost of medical aid:

(b.) To meet all other amounts payable from the Accident Fund under this Part during the year: 30

(c.) To provide a reserve by way of a contingent fund in aid of industries or classes which may become depleted or extinguished:

(d) To provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all accidents which occur during the year; and

(e) To provide a reserve fund to be used to meet the loss arising from any disaster or other circumstance which, in the opinion of the Board, would unfairly burden the employers in any class. 40

Assessments, how made.

(2.) Assessments may be made in such manner and form and by such procedure as the Board may deem adequate and expedient,

and may be general as applicable to any class or sub-class, or special as applicable to any industry or part or department of an industry.

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(3.) Assessments may, wherever it is deemed expedient, be collected in half-yearly, quarterly, or monthly instalments, or otherwise; and where it appears that the funds in any class are sufficient for the time being, any instalment may be abated or its collection deferred.

Assessments, when collected.

10 (4.) In case the estimated assessments in any class prove insufficient, the Board may make such further assessments and levies as may be necessary, or the Board may temporarily advance the amount of any deficiency out of any reserve provided for that purpose, and add such amount to any subsequent assessments.

Additional assessments.

(5.) The Board shall give notice to each employer of the amount of each assessment due from time to time in respect of his industry and the time when the same is payable. The notice may be sent by post to the employer, and shall be deemed to be given to him on the day on which the notice is posted.

Notice of assessments.

20 33. (1.) Every employer who is required to contribute to the Accident Fund by way of assessment under this Part is hereby authorized and required to retain from the moneys earned by each workman in his employment the sum of one cent for each day or part of day the workman is employed as a contribution toward the cost of medical aid, and to pay the sum so retained to the Board from time to time at the time each assessment is due and payable by the employer, and at such other times as the Board may direct.

Contribution from workmen towards medical aid.

30 (2.) The moneys received by the Board under subsection (1) shall form part of the Accident Fund, and shall constitute a special fund to be used only in defraying the cost of medical aid. Such additional amounts as are required from time to time to meet the cost of medical aid shall be provided by the Board by assessment upon employers generally in all industries within the scope of this Part, except in respect of employments embraced in any plan for providing medical aid approved by the Board under subsection (4) of section 23. For the purpose of levying and collecting assessments under this subsection, the Board may charge the additional amounts required to meet the cost of medical aid against the funds to the credit of the several classes in such a manner as, on the annual adjustment of assessments under this Part, will result in a general assessment of such additional amounts upon those employers only who are liable to assessment under this subsection.

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Employers to be assessed for additional amounts required.

(3.) In the case of any workman employed as a master, mate, engineer, seaman, sailor, steward, fireman, or in any other capacity on board of any vessel on which duty has been paid for the purposes of the Sick Mariners' Fund under Part V. of the "Canada Shipping

Case of workmen under Sick Mariners' Fund.

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Separate accounts to be kept for each class.	42. Separate accounts shall be kept of the amounts collected and expended in respect of each class and of each fund set aside by way of reserve or as a special fund for any purpose, but for the purpose of paying compensation the Accident Fund shall, nevertheless, be deemed one and indivisible.	
Annual adjustments of assessments.	43. (1.) On or before the first day of March in each year the amount of the assessment for the preceding calendar year shall be adjusted upon the actual requirements of the class and upon the correctly ascertained pay-roll of each industry, and the employer shall forthwith make up and pay to the Board any deficiency, or the Board shall refund to the employer any surplus, or credit the same upon the succeeding assessment as the case may require.	10
Audit of accounts.	54. The accounts of the Board shall be audited by the Comptroller-General or by an auditor appointed by the Lieutenant-Governor in Council for that purpose, and the salary or remuneration of the last-mentioned auditor shall be paid by the Board.	20
Annual report.	55. (1.) The Board shall, on or before the first day of March in each year, make a report to the Lieutenant-Governor of its transactions during the next preceding calendar year, and such report shall contain such particulars as the Lieutenant-Governor in Council may prescribe.	
Report to be laid before Legislature.	(2.) Every such report shall be forthwith laid before the Legislature if the Legislature is then in session, and if it is not then in session, within fifteen days after the opening of the next session.	
Board to publish and distribute information.	(3.) It shall be the duty of the Board from time to time to publish and distribute among employers and workmen such general information in respect of the business transacted by the Board as in its judgment may be useful.	30
"The Workmens Compensation Board."	63. The Commission constituted for the administration of this Part, called "the Workmen's Compensation Board," shall exist and continue as a body corporate, and shall consist of three members to be appointed by the Lieutenant-Governor in Council.	
Jurisdiction of Board.	74. (1.) The Board shall have exclusive jurisdiction to inquire into, hear, and determine all matters and questions of fact and law arising under this Part, and the action or decision of the Board thereon shall be final and conclusive and shall not be open to question or review in any Court, and no proceedings by or before the Board shall be restrained by injunction, prohibition or	40

other process or proceeding in any Court or be removable by certiorari or otherwise into any Court; and without restricting the generality of the foregoing the Board shall have exclusive jurisdiction to inquire into, hear, and determine:—

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(a.) The question whether an injury has arisen out of or in the course of an employment within the scope of this Part:

(b.) The existence and degree of disability by reason of any injury:

10 (c.) The permanence of disability by reason of any injury:

(d.) The degree of diminution of earning capacity by reason of any injury:

(e.) The amount of average earnings:

(f.) The existence, for the purpose of this Part, of the relationship of any member of the family of a workman as defined by this Act:

(g.) The existence of dependency:

20 (h.) Whether or not any industry or any part, branch, or department of any industry is within the scope of this Part, and the class to which any industry or any part, branch, or department of any industry within the scope of this Part should be assigned:

(i.) Whether or not any workman in any industry within the scope of this Part is within the scope of this Part and entitled to compensation thereunder:

(j.) Whether or not any person, firm, or body corporate is an employer within the scope of this Part.

30 (2.) Notwithstanding the provisions of sub-section (1), the Board shall have full discretionary power to at any time reopen, rehear, and redetermine any matter which has been dealt with by it.

Power to review decisions.