8,1980

IN THE PRIVY COUNCIL No. 31 of 1979

ON APPEAL

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF NEW SOUTH WALES NO. 148 OF 1977

BETWEEN:

T.H. BUSHBY — First Appellant

- and -

GLENMORE PTY. LIMITED — Second Appellant

- and -

SYDNEY BLAIR MORRIS, R.D. GEORGE, F.W. McKERN, C.F. WHITEHOUSE and THE REGISTRAR OF THE WORKERS' COMPENSATION COMMISSION OF NEW SOUTH WALES — Respondents

CASE FOR THE RESPONDENT, SYDNEY BLAIR MORRIS

INTRODUCTORY — Record

1. This Appeal is brought by leave of the Supreme Court of New South Wales (Court of Appeal) granted on 12 December, 1977 from a unanimous decision of that Court (Moffitt P., Hope & Glass JJ.A.) given on 28 November, 1977. — p.227 ll.9-11; p.228 ll.12-15

2. The proceedings before the Court of Appeal were by way of a Case Stated by the Workers' Compensation Commission of New South Wales (Williams J.) in which the answers to 7 questions of law were sought following the making of 3 Awards of compensation in favour of the first Respondent. — p. 5 l. 25-p.20 l. 3; p. 18 l.9-p.20 l. 3

3. The Stated Case arose out of 5 Applications which were heard by the Workers' Compensation — p.96 l. 1-p.108 l. 21

Record

Commission in 1976. By these Applications the first Respondent claimed compensation in respect of periods of incapacity for work which had resulted from injuries to his back sustained in the course of his employment as a bricklayer with various persons. These applications were heard together. A sixth Application claiming payment of compensation from the Uninsured Liability Fund pursuant to Section 18C of the Workers' Compensation Act of New South Wales was heard together with the other five Applications.

p.40 ll. 17-23
p.43 l.25

4. The law governing Workers' Compensation in New South Wales is contained in the Workers' Compensation Act 1926 as amended. For present purposes, the relevant provisions of that Act are:-

> "6.(3)(a) Where any person (in this sub-section referred to as the principal) in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation under this Act which he would have been liable to pay if that worker had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he is immediately employed:
>
> 7.(1)(a) A worker who has received an injury whether at or away from his place of employment (and in the case of the death of the worker, his dependants) shall receive compensation from his employer in accordance with this Act.
>
> 8.(1) Where death results from the injury, and the worker leaves any dependants wholly dependent for support upon the worker, the amount of compensation payable by the employer under this Act shall be -

Record

9.(1) Subject to the provisions of this section and of sections 10 and 11, where total or partial incapacity for work results from the injury the compensation payable by the employer under this Act shall include:-

10.(1) Where as a result of an injury received by a worker -

(a) it is resonably necessary that any medical or hospital treatment be afforded, or any ambulance service rendered, to him; or

(b) it is appropriate that any such treatment, being treatment by way of rehabilitation, be afforded to him,

his employer shall, subject to and to the extent provided by this section, be liable to pay, in addition to any compensation otherwise provided, the cost of that treatment or service.

11.(1)(a) In the case of partial incapacity, the weekly payment shall in no case exceed the difference between the weekly amount which the worker would probably have been earning as a worker but for the injury and had he continued to be employed in the same or some comparable employment, and the average weekly amount he is earning, or is able to earn, in some suitable employment or business, after the injury, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper."

5. At the hearing of his Application against the Second Appellant, the first Respondent alleged that on the 16 November 1964 he had received an injury to his low back arising out of and in the course of his employment as a bricklayer with the Respondents R.D. George and F.W. McKern. The first Respondent further claimed that those Respondents were contractors executing work undertaken by the second Appellant and that the second Appellant was a principal within the meaning of Section 6(3)(a) of the Workers' Compensation Act and liable to pay compensation. p.40 l.24-p.41 l.11

6. At the hearing of his Application against

Record

p.42 ll. 3-5

the first Appellant the first Respondent alleged that on 17 June 1966 he had received a further injury to his low back arising out of and in the course of his employment as a bricklayer with the first Appellant.

FINDINGS OF THE WORKERS' COMPENSATION COMMISSION

7. The basic findings of the Workers' Compensation Commission are summarised in the Judgment of Hope J.A. as follows:-

p.157 l.14-
p.148 l.19

"1. On 16th November, 1964, the applicant received an injury arising out of and in the course of his employment with the respondents R.D. George and F.W. McKern. The injury was a lumbar disc strain, and occurred when the applicant tripped and fell in the course of his work as a bricklayer.

2. The respondent Glenmore Pty. Limited was a principal within the meaning of s. 6(3) of the Workers' Compensation Act at the time this injury occurred.

3. On 17th June, 1966, the applicant suffered an injury in the course of his employment with the respondent T.H. Bushby. This injury was an aggravation and exacerbation of a pre-existing condition of the lumbar spine and arose as a result of his carrying out bricklaying work for a long period of time in a stooped position.

4. On 1st April, 1968, a laminectomy operation was performed on the applicant at the L-5 level of his spine.

5. In the years 1970, 1971 and 1973 the applicant had medical treatment in respect of his lumbar spine condition, and between 21st April, 1974, and 7th May, 1975, had medical and hospital treatment, including a spinal fusion operation, and post-operative medical treatment and rehabilitation treatment at the Mount Wilgar Centre. The Commission found that this medical, hospital and rehabilitation treatment was reasonably necessary as a result of each of the injuries of 16th November, 1964, and 17th June, 1966.

Record

6. The applicant was at particular times partially incapacitated for work, and this partial incapacity resulted from each of the injuries of 16th November, 1964, and 17th June, 1966. The applicant was at other times totally incapacitated for work as a result of the effects of, and necessary treatment for the effects of, each of the injuries of 16th November, 1964, and 17th June, 1966."

8. As the result of the above findings, the Workers' Compensation Commission made separate Awards of compensation against each Appellant and also against the Respondents George and McKern. The compensation awarded under Sections 7, 9, 10 and 11(1) of the Act was identical in each Award. The Commission also ordered that compensation paid to the first Respondent under each of the Awards should, pro tanto, discharge the liability of the other parties under their respective Awards. p.21 l. 1- p.22 l.23

THE STATED CASE AND THE APPELLANTS' SUBMISSIONS IN THE COURT OF APPEAL

9. Of its own motion, the Workers' Commission stated seven questions of law for determination by the Court of Appeal. p. 5 ll.25-26

10. The present Appellants, who were also the Appellants in the Court of Appeal, did not argue three of these questions and only made a formal submission in respect of one other question.

11. Before the Court of Appeal, the Appellants argued that Questions 1, 2 and 6 of the Stated Case should be answered in their favour because:-

(a) Section 6(3)(a) of the Act did not permit the making of Awards against both the principal and the employer in respect of the same injury. p.168 ll.18-21

(b) That there was no power or jurisdiction under the Act to make an Award against more than one employer in respect of the same incapacity. p.168 ll.21-24

12. The Appellants also formally argued that Question 7 should be answered in their favour because there was no power in the Commission to order that compensation paid to an Applicant

Record

under an Award should, pro tanto, discharge the liability of other Respondents under separate Awards made against them.

p.189 l.3-p.190 l.27

13. The Court of Appeal rejected these arguments of the Appellants and answered all questions favourably to the first Respondent.

THE QUESTIONS IN THIS APPEAL

14. The Appellants now appeal against the Judgment of the Court of Appeal. They no longer argue that Section 6(3)(a) prohibits the making of Awards against a principal and an employer in respect of the same injury. The questions to be decided in this appeal, therefore, are:-

(a) Does the Workers' Compensation Act allow Awards to be made against two successive employers in respect of the same incapacity in the circumstances which existed in the present case?

(b) Is the Workers' Compensation Commission entitled to order that compensation paid by one Appellant under his Award should, pro tanto, discharge the liability of the other Appellant under its Award?

THE JUDGMENTS OF THE COURT OF APPEAL

MOFFIT P.

15. Moffit P. accepted that in Noden -v- Galloways Limited (1912) 1 K.B. 46 it was directly stated that incapacity can result only from one injury. Further, His Honour rejected the notion that it is sufficient for the purposes of the Act that the injury is a contributing cause of incapacity. However, he thought that the cases clearly established that incapacity may be found to result from a particular injury although another cause may have contributed to the incapacity. Nevertheless, he thought that in authority and perhaps practice there was much to support the view that a particular incapacity can result from but one injury. However, he rejected the argument that the matter turned on the absence of legislative machinery to provide for apportionment or contribution between employers.

p.137 l.20
p.139 ll. 17-27
p.140 ll.3-6
p.145 ll. 10-13
p.145 ll. 15-21

16. His Honour then examined the decision of the

South Australian Supreme Court in Bratovich -v- Rheem (Aust.) Pty. Limited (1971-72) 2 S.A.S.R. 33 and the passage in the judgment of Dixon J. in Ward -v- Corrimal-Balgownie Collieries Ltd. 61 C.L.R. 120 which is referred to therein. Moffit P. concluded from his examination of the cases that to say that once two injuries were causally related to each other, the final incapacity necessarily resulted from both, was inconsisent with authority. Something more was required. However, he found it difficult to discern why an incapacity is not open to be found to result from each of two injuries where the second is caused by the first. His Honour also thought that there might be other ways in which two injuries were causally interrelated in a sequence of events which culminated in one incapacity. Thus two injuries, whether or not they were independent, might each cause an event or further injury from which incapacity resulted.

Record
p.145 l.22-p.148 l.8
p.148 l.26-p.149 l.2
p.152 ll.3-9
p.152 l.28-p.153 l.3
p.153 ll.3-10

17. His Honour thought that in the present case the view was open that the first two injuries were causally related and that the 1968 operation and perhaps the 1975 operation were rendered reasonably necessary by each of these injuries. Accordingly, some periods of the first Respondent's incapacity were the direct result of one or other of the operations as were the continuing limitations on the first Respondent's ability to do certain classes of work. His Honour thought that no precise conclusion as to these matters fell for decision because the Appellants had argued the case on the broad ground that no finding of any kind was open which made both employers liable. On the findings this was not the case. Accordingly, he upheld the Awards.

p.153 ll.22-25
p.153 ll.26-p.154 l.2
p.154 ll.2-9
p.154 ll.26-28

HOPE J.A.

18. Hope J.A. thought that there was nothing in the legislation to point to the construction upon which the Appellants' submission depended, save perhaps the absence of any provision for apportionment or contribution. Accordingly, if a finding was precluded that incapacity did result in fact from two injuries, the inability to make that finding must be the result of some judicial gloss upon the legislation.

p.160 ll.14-17
p.161 ll.3-11

19. His Honour thought that the laminectomy on the 1st April, 1968 joined together the effects of the injuries of 1964 and 1966 and that to some

p.162 ll.3-8

Record

extent this joinder was reinforced by the fusion operation in April 1975. He thought that this was sufficient to support the findings of the Commission that the partial and total incapacities resulted from each injury. His Honour thought that there was nothing in any authorities, binding on the Court of Appeal, which would preclude its confirmation of the Awards made pursuant to those findings.

p.162 11.9-13

p.162 11.11-13

p.162 1.24- p.163 1.1

20. Further, Hope J.A. thought that the decision of the High Court of Australia in Conkey & Sons Limited -v- Miller (1977) 51 A.L.J.R. 583 leads to the conclusion that a particular incapacity may result from each of two injuries and enable Awards to be made against two different employers, even though the injuries are independent injuries. In that case the worker had sustained an injury in the course of his employment which so damaged his heart muscle that he was unlikely to survive a second infarction. He later died from a second infarction. The High Court held that it was open to find that death resulted from the first work caused infarction, although, of course, it was the second infarction which had killed him. His Honour also agreed with the conclusion of Glass J.A. that the treatment accorded to questions of causation at common law should also be applied to the question under the Act whether death or incapacity has resulted from a particular injury.

p.166 11.29-36

p.166 11.37-39

21. Accordingly, there was no reason in law why a finding could not be made that a particular incapacity has resulted from two independent injuries.

GLASS J.A.

22. Glass J.A. saw the decision in Noden -v- Galloways Limited (1912) 1 K.B. 46 as affirming that, where two injuries contribute to a particular incapacity, it cannot result from both and must result from the second injury. His Honour thought that if the first proposition was sound, it would mean that something in the Workers' Compensation Act required that questions of causation should receive treatment under that Act which was different from that accorded to them at common law. He said that acceptance that one event may have a plurality of causes was embedded in the approach to questions of causation outside the Workers' Compensation Act: Stapley -v- Gypsum Mines Limited

p.177 11.26-28

p.178 11.19-26

p.180 11.21-25

(1953) A.C. 663 at p. 681. He also referred to Lord Reid's statement that causation in tort and under the Workers' Compensation Act cannot be treated differently: Baker -v- Willoughby (1970) A.C. 467 at p. 492.

Record

p.180 ll.25-27

23. His Honour thought that under the Act there are at least three different situations which may arise in the relationship between multiple injury and muliple incapacity. According to the state of the evidence, independent injuries may combine to cause a single incapacity or to cause two separate incapacities which severally disable to the same extent or to cause two separate incapacities which combine as parts to produce incapacity as a larger whole. His Honour thought that the judgment of Dixon J. in Ward -v- Corrimal-Balgownie Collieries Ltd. 61 C.L.R. 120 at p. 141 was authority for the following three propositions:-

p.181 ll.6-8

p.181 ll.8-13

p.181 l.14-p.182 l.16

> "1. A worker may suffer from a double disability due to two independent injuries which equally incapacitate him. Although neither injury is the only cause, his incapacity for work is nevertheless the result of each of them.
>
> 2. A worker may suffer from a single disabling condition which has been produced by the combined operation of two independent injuries. His incapacity may be treated as the result of both.
>
> 3. A worker may suffer from an overall incapacity resulting from the combined effect of two disabilities independently caused by two injuries. The employer responsible for part of that incapacity is not responsible for the whole incapacity resulting from the addition to it of the other part."

p.182 ll.1-16

24. His Honour thought that the second proposition applied to the present case.

25. His Honour also thought that the decision of the High Court of Australia in Miller -v- Conkey & Sons Ltd. 51 A.L.J.R. constituted clear authority for the view that under the Act death may result from two successive injuries.

p.184 ll.1-3

Record

p.184 11.8-10
p.184 11.10-17

26. His Honour rejected the argument that the absence of machinery for apportionment or contribution of compensation was a ground for denying jurisdiction to make double Awards. His Honour thought that if insurers were unable to agree on apportionment, proceedings for contribution would lie in accordance with the general principles of law and equity: Albion Insurance Co. Ltd. -v- Government Insurance Office (N.S.W.)(1969) 121 C.L.R. 342 at pp. 350-1.

p.184 11.18-21
p.184 11.21-22

27. His Honour recognised that he had advanced fairly meagre support for a proposition, the adoption of which would require a radical alteration in the practice of the Workers' Compensation Commission. However, he thought that the contrary point of view depended entirely on Noden and that it could not stand against the considerations to which he had earlier referred.

p.190 l.27

28. Since the Appellants only formally argued the question as to whether there was power to make the "pro tanto" order, none of the judgments dealt with this question. The Court of Appeal answered Question 7 in the Stated Case, which raised this issue, in favour of the first Respondent.

SUMMARY OF THE FIRST RESPONDENT'S SUBMISSIONS

29. The first Respondent's submissions may be summarised as follows:-

1. Whether death or incapacity results from a particular injury is a question of fact and involves issues of causation? (Paragraphs 30-32)

2. There is no reason in principle and no prohibition in the Workers' Compensation Act of New South Wales which precludes the Workers' Compensation Commission from finding that a particular incapacity resulted from either the first or second of successive injuries. (Paragraphs 33-34)

3. There is nothing in the Act which precludes a finding that a particular incapacity resulted from two injuries or from ordering two employers to pay compensation in respect of the same incapacity. (Paragraphs 35-41)

4. The Commission has power to make an order that compensation paid under one Award shall, pro tanto, discharge a liability to pay compensation under another Award when both Awards are made in respect of the same incapacity. (Paragraphs 42-43)

30. Whether death or incapacity resulted from an injury is one of fact: Dunham -v- Clare (1902) 2 K.B. 292 at pp. 296, 297; Ystradowen Colliery Company Limited -v- Griffiths (1909) 2 K.B. 533 at pp. 536, 537; George Taylor & Co. -v- Clark (1914) 7 B.W.C.C. 871 at p. 873; Hogan -v- Bentinck West Hartley Colliers (Owners) Ltd. (1949) 1 All E.R. 588, H.L. at pp. 593, 595, 602; Garner -v- Burns Philp (49 S.R.) (N.S.W.) 270 at p. 273

31. Whether or not incapacity "results from" an injury is a "problem of cause and effect": Hogan -v- Bentinck West Hartley Collieries (Owners) Ltd. (1949) 1 All E.R. 588, H.L. at p. 598 per Lord Simonds. It involves "an idea of causal sequence": Commonwealth -v- Butler 102 C.L.R. 465 at p. 480 per Windeyer J. Incapacity results from an injury if it follows and is caused by that injury, and it may be properly held so to result even though some supervening cause has aggravated the effects of the original injury and prolonged the period of incapacity: Rothwell -v- Caverswall Stone Company Limited (1944) 1 All E.R. 350, C.A. at p. 365; Hogan -v- Bentinck West Hartley Collieries (Owners) Ltd. (supra) pp. 592, 596, 598 and 607.

32. From a very early period in the administration of Workers' Compensation legislation, it was also recognised that no question arises as to whether the incapacit y was the natural or probable or reasonable consequence of the employment injury: Dunham -v- Clare (1902) 2 K.B. 292 at pp. 296, 297; Ystradowen Colliery Company Limited -v- Griffiths (1909) 2 K.B. 533 at pp. 536 and 537. As long as the chain of causation is complete and unbroken the employer will be liable: Commonwealth -v- Butler 102 C.L.R. 465 at p. 476 per Taylor J. Apart from the qualification that the incapacity need not be the probable or natural consequence of an injury, the principles applicable in a Workers' Compensation case are the same as those applicable in tort actions: Baker -v- Willoughby (1970) A.C. 467 at p. 492 per Lord Reid; Hogan -v- Bentinck West Hartley Collieries (Owners) Ltd. (ibid) at p. 595 per Lord Normand.

Record

33. Since the question is one of fact involving issues of causation, the Courts have long rejected the artificial argument that only the second of two successive injuries must be regarded as the cause of that incapacity when it is open to the tribunal of fact to find that either was the cause: See Hutchinson -v- Devon County Council (1931) 24 B.W.C.C. 320 at pp. 329, 330-31; Astill -v- Orange Bluemetal Pty. Limited (1969) 43 W.C.R. 39; Pyrmont Publishing Company Pty. Limited -v- Peters (1972) 46 W.C.R. 27.

34. It is only when an existing incapacity ought fairly to be attributed to a second injury which has occurred and ought no longer to be attributed to the original injury that it is proper to hold that the incapacity results from the second injury and not the original injury: Baker -v- Willoughby (1970) A.C. 467 at pp. 492-93 per Lord Reid. Accordingly, insofar as the dicta in Noden -v- Galloways Limited (1912) 1 K.B. 46 suggests that incapacity arising from two injuries can in law be but the result of the second, it is incorrect and must be rejected.

35. In every case where the consequences of two injuries or causes combined to produce incapacity, a question of fact, capable of various answers, is involved. The question may be answered in a particular case, by saying that the incapacity results from one or other or both injuries or causes. Or it may be answered by saying that part of the incapacity is attributable to one injury or cause and that the other part is attributable to the second injury or cause. Or it may be answered by saying that part of the incapacity is the result of the first injury and the total incapacity is the result of the second injury or cause. The answer will depend upon the precise facts and not upon any fixed rule of law.

36. It is, of course, plain that, for the purposes of the Workers' Compensation Act, incapacity is not necessarily the result of two injuries or causes even though they are closely related. This is made clear by the case of the workman who loses each eye as the result of successive but independent injuries. In such a case, only the incapacity resulting from the loss of the first eye is attributable to the first injury; Hargrave -v- Haughhead Cole Company

Limited (1912) A.C. 319; Hart -v- Cory Brothers (1916) 1 K.B. 172. As Dixon J. said in Ward -v- Corrimal-Balgownie Collieries Limited 61 C.L.R. 120 at p. 144:-

> "When the total disablement of the worker is made up of a partial incapacity due to the injury for which the employer is liable and of a later disability or disabilities due to independent causes, it is, in my opinion, impossible, consistently with these decisions, to hold that the total disablement results from the injury. And this remains true notwithstanding that at the time of the injury there existed the pathological causes of the subsequent disability or even that disability itself in an incipient form not yet amounting to incapacity."

37. The employer, however, takes the workman as he finds him. The latter may bring to his employment the consequences of an earlier injury which, however, produces no actual incapacity for work. But if the effects of a work injury combine with the consequences of the earlier injury to produce incapacity, the employer is liable for that incapacity. It is no answer that but for the consequences of the pre-employment injury there would have been no incapacity: see Salisbury -v- Australian Iron & Steel Limited 44 S.R. (N.S.W.) 157 at pp.161-162. In this class of case, the only answer is that the incapacity results from the second injury. Thus, where a workman who has lost one eye by injury loses the other eye by injury, his incapacity from total blindness results from the second injury; Doudie -v- Kinneil Cannel & Coking Coal Company Limited (1947) A.C. 377 at p. 384.

38. Conversely, an employment injury may produce effects which do not cause incapacity for work. The effects of that injury may then combine with another cause to produce incapacity. In an appropriate case, it will nevertheless be open to the tribunal of fact to hold that the incapacity resulted from the employment injury. Thus in Hodgson -v- Robins, Hay, Waters & Hay 7B. W.C.C. 232 a worker slipped and twisted her leg, which left her with pain and a limp. It was held open to the County Court Judge to find that a subsequent fall at her home resulted from the work injury. In Conkey and Sons Limited -v- Miller (1977) 51 A.L.J.R.

Record

583, the facts of which are set out in paragraph 20 above, the High Court of Australia held that it was open to the Commission to find that death resulted from the first work caused infarction although it was a second infarction which had killed the worker.

39. If it can be said that, as a matter of fact, incapacity does result from two injuries, then there is nothing in the Workers' Compensation Act which precludes such a finding. Indeed, in some cases, it is impossible to see how any conclusion could be open other than that incapacity did result from two separate injuries. If a workman injures one knee and then the other in a later unconnected incident and the cartilages of both knees have to be removed, his incapacity for work as a result of the operation is clearly the result of both injuries.

40. Further, where the effect of one injury causes a second injury which results in incapacity, it is always open as a question of fact to find that the incapacity is the result of both injuries.

41. In the present case, no challenge is made to
p.15 l.24- p.16 l.15 the finding of the Workers' Compensation Commission that the incapacity of the first Respondent was in fact the result of both the 1964 and 1966 injuries.
p.16 ll.16-24 Further, no challenge is made to the finding that at times the first Respondent's incapacity was the result of the effect of and the necessary treatment for each of his 1964 and 1966 injuries.

42. In the Court of Appeal, the Appellants made a formal submission that there was no jurisdiction in the Workers' Compensation Commission to make an Order that compensation paid under one Award should, pro tanto, discharge the liability to pay compensation under another Award. No argument was submitted in support of this proposition. Indeed, so perfunctory was the submission that the Court of Appeal apparently thought the point was not
p.187 l.11 argued at all. In these circumstances, it is submitted that the Board, not having had the assistance of any judgments in the Courts below on this point, should not allow the matter to be raised in these appeals.

43. Alternatively, if the Board allows the point to be raised, it is submitted that the Workers'

Compensation Commission did have power to make the Order in question. If the Legislature has conferred upon the Commission the power to make more than one Award in respect of the same incapacity, then the Commission is entitled to deal with each application as justice and common sense demand; Inland Revenue Commissioners -v- Joicey (1913) 1 K.B. 445 at pp. 451, 454-6; Edgar -v- Greenwood (1910) V.L.R. 137 at pp. 144-5; Browne -v- Commissioner of Railways 36 S.R. (NSW) 21 at pp. 28-29; Moate -v- Darnell 65 W.N. (NSW) 9; R. -v- Commonwealth Court of Conciliation and Arbitration; Ex parte Grant 81 C.L.R. 27 at pp. 58-59.

SUBMISSION

44. The first Respondent therefore respectfully submits that the Appeals should be dismissed with costs for the following among other:-

R E A S O N S

(1) THE Judgments of the Court of Appeal are correct.

(2) THE Workers' Compensation Commission has power to make more than one Award in respect of the same incapacity.

(3) THE Workers' Compensation Commission has the power to make an Order that compensation paid under one Award should, pro tanto, discharge a liability to pay compensation under another Award in respect of the same incapacity.

(4) NO challenge is made to the finding of the Workers' Compensation Commission that on the evidence the relevant incapacity of the first Respondent resulted from both the 1964 and 1966 injuries.

M. McHUGH

COUNSEL FOR THE FIRST RESPONDENT

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CASE FOR THE RESPONDENT SYDNEY BLAIR MORRIS

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