

C E S S A R I N I

- vs. -

H A Z E L L .

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This is an appeal from the order of His Honour Judge McNeill ordering the applicant to give security for costs.

In Bodner v. West Canadian Collieries 3 W.W.R. 529 this Court held in view of differences in the terms of the English Act and the Alberta Workmen's Compensation Act while under the former Act the County Court Judge is persona designata only, yet under the latter Act the District Court Judge is not persona designata but acts as Judge of the District Court and that the proceedings are proceedings in Court and consequently that the ordinary practice of the District Court is to be applied so far as it can reasonably be applied and is not inconsistent with the provisions of the Act and the different character of the proceedings. On this principle the Court in that case held that the District Court Judge had power to order the issue of a Commission<sup>ss</sup> to take evidence. This of course is subject to the express provisions of the Act relating to rules of Court. There are a number of such provisions in the Act, e.g. Schedules (b); Sched. i (5); (6), (7), (9), (12), (15); Sched. ii (3) (5) (6) (8) (10) (12).

Sched. ii (10) appears to give at most plenary powers in this respect. It says :

"The duty of District Courts under this Act shall,

subject to rules of Court, be part of the duties of such Courts, and the officers of such Courts shall act accordingly, and rules of Court may be made both for any purpose for which this Act authorizes rules of Court to be made, and also generally for carrying into effect this Act so far as it relates to such Courts and proceedings therein," and (Schedules (b)) enacts that Rules of Court shall mean rules of Court made and promulgated as provided for in The District Courts Act.

The power to make Rules of Court is by the District Courts Act conferred upon the Lieutenant Governor in Council with power to confer the same power upon the Judges of the Supreme Court.

The Lieutenant Governor in Council passed a body of rules of Court about the date on which the Act came into force - the 1st January 1908 - the published copies bear no date.

These Rules declare (sec. 16) ) that they are to be read and construed with the rules governing procedure in District Courts, being the Rules of Court of the Supreme Court of Alberta in so far as the same are from their nature applicable, and the rules of subsequent date amending the same.

Even had no new rules been promulgated and had we consequently to deal with the matter in view only of the general practice of the District Court applicable to proceedings under the Act I should have held that the practice relating to security for costs was not applicable to pro-

ceedings under the Act.

Sched. ii (6) says that the costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee arbitrator or Court subject as respects such Court to rules of Court. It also says that the costs x x x shall be taxed in manner prescribed by those rules and such taxation may be reviewed by the Court. The Act thus expressly provides for two things in relation to costs namely (1) Costs being incurred, their disposition is in the discretion of the Court (2) the ordinary practice relating to taxation is to apply.

The requiring of security for costs is something quite different from either of these two subjects. It is so treated in the existing general Rules of Court. The Rules relating to Costs (Jud. Ord. 1908, c. 21) are Rules 517 to 534. They compose Order XLIII. They are divided into three sub-heads: "i. Generally; ii Security for costs; iii Taxation & Tariff of Costs".

Sched. i (6) it seems to me clearly intended to introduce the provisions - so far as applicable - only of sub-heads i and iii and by implication to exclude sub-head ii; although there is perhaps nothing under sub-head i which is applicable. The new rules make the matter I think even clearer.

The subject of "Costs" is dealt with at large in Rules 53, 54, 55 and 56 and only from the point of view of the quantum of costs and their taxation. The implication of

an intention to exclude the practice relating to security for costs is to my mind unquestionable. This conclusion too is I think in clear accordance with the policy of the Workmen's Compensation Act. The obvious purpose of the Act is to assist a class of persons who/<sup>it</sup>is to be supposed are poor people of little, if any, means - either those who have themselves met with accidents which either wholly or partially incapacitate them from earning their livelihood or those, as poor, dependent upon them; and to provide this assistance by a procedure much less formal and intricate and much less expensive than that perhaps necessarily required in relation to the determination of ordinary disputes.

For the reasons indicated I think the appeal should be allowed with costs with result that the order for security for costs will be set aside with costs.

W. O. Deacy  
J.S.C.

Edmonton, *alta*  
March 30<sup>th</sup> 1914.

S. C. A.

EN BANC.

*8/18/15*

*no record*

CESSARINI

- VS. -

HAZELL.

JUDGMENT

of BECK, J.

*Conner  
Anna Harvey  
Chas Stewart  
W. Chumney  
(Scott absent)*

