

It has been suggested in consequence of this decision that the above sections should be amended in order to avoid this result. I strongly recommend, however, that the sections be wholly repealed instead of any attempt being made by amendment to make them workable and intelligible. I do not think that at the present day they serve any useful purpose, having regard to the recent developments of the law as to workers' compensation and as to employers' liability. So far, indeed, from serving any useful purpose, they are, I think, a mere trap to miners, as illustrated by the case above mentioned. There seems to be no reason to suppose that miners will not be adequately protected by the ordinary law as to damages and workers' compensation—a law which is found adequate and just in respect of all other classes of workers.

These sections, indeed, are so badly drafted, and their relationship to the ordinary law as to damages and compensation is so obscure, that their retention on the statute-book is more likely to give rise to heedless litigation and injustice than to produce any good result for the miners.

In other respects than that which was the subject of the above-mentioned Supreme Court decision these special sections are less advantageous to the worker than the general law. For example, they contain provisions as to damages and compensation being a charge on the mine and mining plant, and these provisions are much less advantageous than the corresponding provision contained in section 41 of the Workers' Compensation Act, 1908. Similarly, there is no provision in these sections which corresponds to the provisions of section 46 of the Workers' Compensation Act enabling a plaintiff, if unsuccessful in his claim for damages, to obtain an assessment of workers' compensation in the same Court and in the same action.

It may be thought, indeed, that section 60 of the Coal-mines Act and the corresponding sections of the Mining Act provide for miners certain benefits which they would not have under the ordinary law and which more than counterbalance the corresponding disadvantages. I do not, however, think that this is so. It is true that subsection (1) of section 60 of the Coal-mines Act provides that an accident occurring in a mine shall be *prima facie* evidence that the accident was due to the negligence of the owner. Apart altogether from any question as to the justice of such a provision, it is not, I think, of any practical use to a plaintiff. I think that miners may well be left to the same protection which is afforded to the rest of the community by the ordinary law as to proofs and presumptions of negligence.

It is true also that subsection (2) of the same section gives a right of action for damages for injury caused by the non-observance of any of the provisions of the Coal-mines Act. I am of opinion, however, that this would be equally the case if no such provision was contained in the Act. If, however, there is any doubt on this point, a special provision can be enacted to that effect at the same time that section 60 was repealed as here suggested.

Summing up the matter, therefore, I do not think that it is either necessary or practicable to make satisfactory special provisions as to claims by miners for compensation or damages. The existing law as to other occupations seems to me not only to be adequate to miners, but in important respects to confer superior advantages over those conferred by the special provisions to which I have referred.

JOHN W. SALMOND, Solicitor-General.

Crown Law Office, 19th July, 1918.

*Re Sections 267 and 268 of the Mining Act, and Section 60 of the Coal-mines Act.*

In the recent case of the Westport-Stockton Coal Company *v.* Watterson (1918, N.Z.L.R. 177) it was decided that an injured miner lost his right to recover damages for the negligence of the mine-owner under section 60 of the Coal-mines Act by accepting weekly payments of compensation under the Workers' Compensation Act. This provision is similar to the provision in section 268 of the Mining Act. On further consideration of these sections I am of opinion that they ought to be repealed, because as at present they constitute a mere trap to the miners, as is illustrated by the case I have mentioned. If those sections are repealed, then all miners are protected by ordinary law as to damages and workers' compensation, a law which is found adequate and just in respect of all other classes of workers; and I am of opinion that the miners will be in a far better position by a repeal of these provisions than they are at present, for the reasons—

- (1.) That acceptance of worker's compensation does not prevent the worker from bringing an action for damages.
- (2.) The mining provisions as to damages and compensation being a charge on the mine and mining plant: these provisions are not merely so advantageous as the corresponding provisions contained in section 41 of the Workers' Compensation Act, 1908.
- (3.) There is no provision in the sections in the Mining Acts which corresponds to the provisions of section 46 of the Workers' Compensation Act enabling a plaintiff if unsuccessful in his claim for damages to obtain an assessment of worker's compensation in the same Court and in the same action. In my opinion (excepting the Mining Acts) the existing law as to workers in other occupations confers superior advantages over those conferred by the special provisions of the Mining Acts.

I therefore recommend that Mr. Semple's Bill should not be accepted.

P. S. K. MACASSEY, Crown Solicitor.

Crown Law Office, Wellington, 11th October, 1919.

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