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Workmen's Compensation

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claim with the bureau; that bureau held there was no insurance at time of injury, and entered award against plaintiffs; that plaintiffs, after suit on the award, denied liability on ground that the injury was not in course of employment; judgment was entered against plaintiffs for $2,500 and 50% penalty; that, on appeal to Supreme Court, the penalty was stricken out; that plaintiffs paid judgment, totalling $3,000, in 1925, which is damage claimed against defendant. HELD: "The Compensation Bureau may not be regarded as a legal entity for the purpose of suit, and a suit against it is in legal effect a suit against the State;" that neither the limited right of appeal provided in the Compensation Act, nor Section 8175 of the Laws of 1913, support plaintiff's contention. The statement: "With reference to the Workmen's Compensation Fund the statute expressly authorized suit to be brought against the officers charged with the duty of administering the law," found in *Wirtz vs. Nestos*, 51 *N. D.* 626, is also explained, as referring to appeals and not to original actions.

WORKMEN'S COMPENSATION

An employee, on business for his employer, was traveling in an auto at a speed of 40 to 50 miles per hour as he approached a railroad crossing. He collided with a train and was killed. A special statute prohibited the operation of cars in such cases at more than 10 miles per hour, and the compensation law provided that no compensation was payable for injury or death due to "willful misconduct or willful failure or refusal to perform a duty required by statute." HELD: That the employee's acts would not prevent recovery by his dependents. There must be affirmative evidence in addition to the mere omission or failure to take statutory precautions, and mere negligence is not sufficient to show willfulness and wantonness.—Carroll vs. Insurance Co., 146 S. E. 788 (Georgia, Dec. 1928).

A large rock in a coal mine had been exposed or loosened by a charge of dynamite. The next morning an employee, working near the place, was told "that it was a very dangerous rock, to be sure and take it down, and not to work under it." The compensation law provided that compensation was not payable in case of willful misconduct. Acting on his own judgment, after the instruction, the employee undertook to support the rock with timber and then proceeded with the loading of coal. The rock fell, killing him. HELD: The willful and deliberate disobedience of the order amounted to such "willful misconduct" as is contemplated by the statute, and compensation was properly denied.—Collins vs. Collieries, 13 S. W. (2nd) 332 (Tennessee, Feb. 1929).

The Texas Penal Code prohibits the employment of minors under 17 in a mine, quarry or place where explosives are used. Another Section prohibits employment of minors under 15 more than 8 hours a day or 48 hours a week. A road construction crew employed a boy under 15 as errand boy 10 hours a day. Explosives were handled, but the boy was always removed to a safe place. Evidence indicated that the parents of the boy also worked for the same employer. The boy was killed, but not in connection with the use of explosives. HELD: The liability of the insurance carrier is contractual. The contract is for the benefit of lawful employees. There is no cause of action against the insurance carrier (workmen's compensation). The only cause of action is against the employer.—Aetna Ins. Co. vs. Gilley, 12 S. W.

(2nd) 821 (Texas, Dec. 1928). (N. B.—Section 9 of the North Dakota Compensation Law says this: Employers who pay premiums shall not be liable to damages during the period of insurance, "provided that this section shall *not* apply to minors employed in violation of the law, in which case *both* remedies shall be applicable.")

FIXING RESPONSIBILITY

Mr. Lloyd N. Scott, member of the committee on legal education and admission of the New York City Bar, and a special student of the subject that is the major consideration of such committees, recently made the following statement:

"Ships are given a trial run before being put into commission. Automobiles are given the equivalent of a road test. A lawyer might well be given a chance to see what he can do under actual practice conditions before being granted a lifelong franchise to practice law.

"A junior admission to the Bar for such a period as two years might be provided which would carry with it the right to practice in all courts for that period, subject to final admission after two years, provided:

"1. The candidate shall have kept a complete diary of his legal work during the two years.

"2. He shall have subjected himself to a quiz by his sponsors for interlocutory admission, who should be members of the Bar Association in good standing. This quiz might include the following: (a) Has the candidate for final admission kept a diary of his legal work during two years? (b) If so, has he conducted his legal work and pecuniary transactions in a satisfactory and businesslike manner? (c) Has he followed the code of ethics prescribed by the Bar Association in the conduct of his professional activities? (d) Does he speak and write English accurately and with a knowledge of the value of words so that he might be entrusted with the drawing of wills, agreements and other legal papers? (e) Does he impress you as one for whom you would be willing to assume the responsibility of recommending for final admission to the Bar?

"By proceeding as above we would bring about a closer relationship between members of the Bar and the candidates for admission. Members of the Bar would again assume responsibility which they have lost through the development of law schools, bar examiners and character committees. As a result, the Bar would again be put in control of its own membership and members of the Bar would develop the facts of a candidate's fitness. A judicial responsibility would rest upon the makers of affidavits to hear and determine the facts as to fitness. A decision as to fitness on the record of two years of actual work of the junior member, should give results comparable with the old apprenticeship system in vogue in the earlier years of our country."

ON THE WAY TO WORK AND PROOF OF DEPENDENCY

North Dakota lawyers who have had occasion to appear before the Workmen's Compensation Bureau on behalf of clients, have found themselves somewhat at sea with respect to two questions. These are: 1. Is an injury compensable if sustained on the way to or from work? 2. What proof is required to establish dependency?

With respect to the first, the cases in courts of last resort have been so numerous that one may state the rules with some degree of