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On the Way to Work and Proof of Dependency

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(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

certainty. Generally speaking, a person injured going to or from work is not in the course of employment, and the injury is not compensable. As soon, however, as the premises of the employer, or some road or way which supplies the only means of access to the premises, is reached, the person is in the course of employment. In this connection it might be of interest to cite the case of *Hornburg vs. Morris,* 157 *N. W.* 556, where it is held that the streets and sidewalks of a city are not premises so far as their use by a city employee, using them solely for the purpose of going to a definite place of employment, is concerned. The use of a conveyance to and from work, when supplied by the employer, and used because required or as a matter of right by virtue of the contract of employment, brings the one using it within the term "in the course of employment."

The question of dependency arises in death cases. The lines of proof required in such cases are: 1. What sum of money is required and necessary to maintain the alleged dependent in the manner and style to which he or she has been accustomed? 2. What income has the alleged dependent, and what are the sources of such income? 3. What has been the contribution of the decedent during the twelve months preceding death, and what was the purpose of such contribution?

It is usually in cases where the dependency is less than total that attorneys fail to present competent testimony upon which the Bureau may base a fair decision. Where the dependency is total, the law itself provides the amount of the award. Where it is less than total, however, it becomes important that all the evidence bearing upon the percentage of that dependency be presented, if a fair and equitable award is to be entered. A widow need not prove dependency if she was living with her husband at time of injury resulting in death.

DISSENTING OPINION

Mr. W. H. Stutsman voices his disagreement with the review of the case of Chrysler vs. Belfield in last month's issue of Bar Briefs in the following: "With all due regard to 'A. E. A.' I cannot but feel that the Supreme Court decision of Chrysler Light & Power Co. vs. City of Belfield has gone right over his head. At any rate, the paragraph in Bar Briefs for May will mislead the thoughtless lawyer who looks no farther than the statement made. The Supreme Court did not hold that the Board of Railroad Commissioners could not change service rates fixed in the franchise for the general consumer, for that was not in issue. The question there was whether the franchise fixing rates for street lighting, and service furnished directly to the city, as distinguished from the inhabitants of the city, was a binding contract which prevented a change of rates by the Board of Railroad Commissioners. The Court held that the Utility Act, passed subsequently to the adoption of the franchise, did not confer any such power on the Commission." (Ed.—We appreciate the criticism, and wish there were more of them, favorable or unfavorable, but respectfully direct attention to the following: That the general consumers were not parties to the action, hence, the only rates "in issue" were the rates charged to the corporate city; that it is agreed that the reviewing statement might "mislead the thoughtless lawyer"; but that there are few, if any, "thoughtless lawyers" in North Dakota, hence, few would draw an unwarranted inference from the statement of the reviewer, whose "head" may or may not be properly designated by "his.")