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Case Notes

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Strangulation of a pre-existing hernia is an accident within the terms of the compensation law.—*Krenz vs Ferguson Coal Co.*, 154 *N. E.* 35 (*Ind.*) (This is contra to the great majority of decisions, though most states now handle the matter by special clauses in the law.)—(*Krueger vs King Midas Co.*, 210 *N. W.* 871, *should be read in connection with this one.*)

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Disability which is the direct result of mental disorder that was brought on by a physical injury is compensable. (This agrees with the N. D. Bureau's decision last year in a case where the injured person, as a result of severe physical injuries, became mentally unbalanced and committed suicide."—*Armour Grain Co. vs Industrial Commission*, 153 *N. E.* 699 (*Ill.*)

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The term "complete and permanent loss of use of right arm," within the terms of the Compensation Act, means that the claimant is not able to use it in any character of employment to earn wages, and it is not sufficient to show that the use is so impaired that he cannot use it to perform his former work or similar work.—*Bell & Zoller Co. vs Industrial Commission*, 153 *N. E.* 580 (*Ill.*)

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Widow, whose husband was killed in course of employment, brought suit against a third party liable, later settling for $1,000. She then applied for compensation, the $1,000 being deducted from amount of the regular award. It was held that this was proper and that it did not deprive the employer of his rights under the provision of the law subrogating him to rights of the injured against third parties.—*Benoit Mining Co. vs Moore*, 109 *Southern* 878 (*Ala.*)

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An award of compensation can not be based on possibilities or probabilities but must be based on evidence, the preponderance of which shows that claimant incurred a disability in the course of employment. Claimant failed in proving that endocarditis was caused or aggravated by blows received in altercation with customer.—*Standard Oil Co. vs Industrial Commission*, 153 *N. E.* 660 (*Ill.*)

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On April 19 an employee sustained a fracture of the fourth metacarpal bone of left hand. This was treated from time to time. In May it was discovered, through X-rays, that there was a foreign substance in the finger. This was found to be a piece of steel imbedded in finger several years before, while working for another employer. June 2nd following the necessary minor operation for removal of the steel was performed. The operation lasted about five minutes, and returned to work a few minutes thereafter the employee began coughing. He walked up six flights of stairs to doctor's office and there died, the cause being assigned as acute dilation of the heart. The widow sought compensation, but it was held that she failed to prove that there was any connection between the fracture and the employee's death.—*Armour & Co. vs Industrial Commission*, 153 *N. E.* 716 (*Ill.*)

CASE NOTES

WITNESSES - IMPEACHMENT - INCONSISTENT STATEMENTS. Witness on cross-examination was asked whether he had not, on a specified occasion, made a statement which was inconsistent with his testimony. An objection to this question was sustained. *Held,*

Error. Such statements are admissible for the purpose of impeaching the credibility of the witness. *Bryngelson v. Farmers' Grain Co.*, (N. D.) 210 N. W. 19 (1926).

There are said to be four modes of impeaching the credit of a witness: (1) By cross-examination; (2) By disproving his statements made in court, by the testimony of other witnesses; (3) By proving statements of the witness made out of court, inconsistent with or contradictory to those made by him on the witness stand; (4) By proving his general bad character for veracity. JONES ON EVIDENCE, 2d. ed. sec. 844. The principal case illustrates the third of these modes, and it is the most familiar practice in judicial procedure for the purpose of impeaching the witness. It is well settled that before such inconsistent statements can be shown by testimony of other witnesses, a foundation must be laid as in the principal case, by first interrogating the witness with reference to such statements. *Big Three Min., etc., Co. v. Hamilton,* 157 Cal. 130, 107 Pac. 301, Note: 41 L. R. A. (N. S.) 914. This requirement is reasonable, in all fairness to the witness. He must be questioned as to whether or not he made such inconsistent statements. *Rice v. Rice,* 104 Mich. 371, 62 NW. 833; so that he may have an opportunity to deny, admit, explain or qualify its meaning. *Rooker v. Deering S. W. Ry Co.,* (Mo.) 226 S. W. 69; *Brown v. Gillett,* 33 Wash. 264, 74 Pac. 386; Note: 21 L. R. A. 428. His attention must be called to the conversation on which it is proposed to contradict him, and also to the time, place and person to whom he is supposed to have made such statements. *Standard Oil Co. v. Van Etten,* 107 U. S. 325, 27 U. S. (L. Ed.) 319; *Koehler v. Buhl,* 94 Mich 496, 54 N. W. 157; Note: 15 Am. Dec. 99. If the witness admits having made inconsistent statements there is no reason for proof by other witnesses, and some courts specifically exclude further proof. *Atchison T. N S. F. Ry. Co. v. Feehan,* 149 Ill. 202, 36 N. E. 1036; but there is authority to the contrary. *Markel* v. *Moudy,* 13 Neb. 322, 14 NW. 409, WIGMORE ON EVIDENCE, sec. 1037. If he denies them, after proper foundation has been laid and the prior inconsistent statements are proved by other witnesses, the question then arises, what weight is to be given by the jury to such statements and how can the proper consideration be secured? It is elementary that the credibility of witnesses is in all cases for the jury. *Lincoln v. Felt,* 132 Mich. 49, 92 N. W. 780; and it is for the jury to determine the credibility of a witness whose testimony has been impeached, *Hedrick v. Ball,* 84 Ill. App. 523; or how far his credibility is affected thereby, *Banker's Union v. Schiverin,* 67 Neb. 303, 92 N. W. 158; or whether a witness has been successfully impeached. *Oliver v. Pate,* 43 Ind. 132. But the effect of proving contradictory statements extends no further than the question of credibility; it does not tend to establish the truth of the matters embraced in the contradictory statements; it simply goes to the credibility of the witness. *Harriman v. Ry. Co.,* 173 Mass. 28, 53 N. E. 156; Note: 82 Am. Rep. 39; and it is the duty of the court to so instruct the jury. *Day v. Sampsell,* 148 Ill. App. 88, approved in *Ferrier v. Chicago R. Co.,* 185 Ill. App. 326. Such statements are admissible *solely* to impeach the witness and *for no other purpose.* To admit them as affirmative proof of the facts to which they relate would be to substitute the statements of a witness, generally when not made under oath, as evidence between the parties, for his evidence given under the sanction of an oath upon the trial.

This would in truth be obnoxious to the hearsay rule. WIGMORE ON EVIDENCE, Vol. 2, sec. 1018. As stated by Shaw, C. J. in 1852, in the case of *Goul v. Norfolk Lead Co.*, 9 Cush. (Mass.) 338, "It is no evidence whatever that the facts are as he formerly stated them, and though appeals are sometimes made to the jury that it is so, it is the province of the court to inform them that it is not so." To properly charge the jury in this regard is of primary importance so that they will not be confused as to the probative value of evidence offered. Therefore the proper consideration can be secured only through instruction by the court as to the weight and effect of proved prior inconsistent statements. Instructions which embody these general principles are encouraged and are generally held to be sufficient and proper. *Nussbaum v. Louisville Ry. Co.*, (Ky.) 57 SW. 249.

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OUTLINE OF JUDICIAL COUNCIL BILL

The Judicial Council Bill, House Bill No. 216, introduced by the House State Affairs Committee, may be summarized as follows:

Section 1 provides for establishment of the Council, consisting of all Judges of the Supreme and District Courts, one Judge of the County Court to be selected by the Supreme Court, the Attorney General, the Dean of the University Law School, and five members of the Bar to be selected by the Executive Committee of the State Bar Association. This would make a rather large group, and there may, therefore, be some objection on that ground.

Section 2 provides for terms of office, the members of Courts retaining membership during their incumbency except the County Judge and members of the Bar, who will be chosen for two years, commencing the first Monday of January in odd numbered years.

Section 3 provides for organization, the Chief Justice to be president and an Executive Secretary to be selected from within or without the Council.

Section 4 provides for meetings at least twice a year, the first meeting to be within six months after the act takes effect.

Section 5 makes it the continuous duty of the Council to seek the simplification of procedure, the expediting of court business, and the better administration of justice generally.

Section 6 empowers the Council to hold public meetings and hearings, require the attendance of witnesses and the production of books and documents, the District Courts being granted power to enforce obedience to subpoenas and compel the giving of testimony.

Section 7 provides for organization of a bureau of statistics and provides for reports from various officials of courts and public institutions.

Section 8 provides for an annual report to the Governor, including legislative recommendations and recommendations for change of rules of court.

Section 9 provides for meetings of the Judges of the Supreme and District Courts immediately following each meeting of the Council for the purpose of considering the recommendations of the Council.

Section 10 provides that the expense incurred in work of the Council by members of the Supreme and District Courts shall be deemed expense in their official positions, and that expenses of other members of the Council shall be paid out of the State Bar Fund.

Section 11 repeals acts or parts of acts in conflict with the bill.