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What the Founders Said

Gouverneur Morris

The dependency of a parent on a deceased employee must be proved. It can not be surmised or conjectured. A bare statement that money was received from the deceased is insufficient. It must be shown that the contribution was made and required for support of the parent at the time of the injury.—*McLennan Constr. Co. vs. Industrial Commission,* 157 *N. E.* 26. (*Ill.*)

Dermatitis is not an occupational disease, but where disability is due to dermatitis, resulting from frequent contacts with sulphuric acid during employment as electric battery man, and which could not be attributed to any single contact with the acid, nor to any cut or other injury, but which developed gradually, the same is not compensable under workmen's compensation law.—*Wright vs. Used Car Exchange.* 223 *N. Y. Sup.* 245 (*N. Y.*).

Determinations of fact by the Industrial Accident Board are binding on the Court, but where all the evidence is reported the question whether it is sufficient to warrant a particular conclusion is a question of law; so, where it is shown that a worker, over the protest of his helper, refuses to put up protecting staging, material for which has been supplied, he is guilty of serious and wilful misconduct, and compensation can not be recovered.—*Silver's Case,* 157 *N. E.* 342 (*Mass.*).

The claimants were parents of adult workman killed in the course of employment. The father earned $80 to $85 per month, and his living expenses were about $50 per month. The living expenses of the mother were about $40 per month. The son stayed with his parents, did the chores and performed other labor to the value of about $30 per month. In addition he furnished chicken feed for the mother's chickens to the extent of about $4.50 per week. He also paid board and room of $9.00 per week to the mother, $4 of which was found to be profit. Upon the basis of that showing it was held that the father was not a dependent, and the mother only partially dependent, the only basis upon which compensation could be paid her being the $4 per week profit. Her dependency was, therefore, fixed at 16-40ths.—*Young vs. Mill and Elevator Co.,* 256 *Pac.* 992. (*Kan.*)

WHAT THE FOUNDERS SAID

Letter of Gouverneur Morris to Uriah Tracy, January 5, 1804: "The idea, that two-thirds of the whole number of Senators and of the whole number of Representatives are required by the Constitution to propose an amendment, is certainly correct. There are, I believe, only six cases in which the majority of a quorum cannot act. In one of these cases, viz: the choice of a President by the House of Representatives, a majority of all the States is required, and the reason is evident.

"In two other cases, which respect only the Senate, two-thirds of the members present are required. One of them is the case of treaties. To have bound the whole union by the act of a mere majority of Senators present would, in effect, have given the power of making treaties

to the President, since, by watching opportunities, he could always have secured such majority. And to have demanded a majority of the whole number might have occasioned delay, dangerous in many cases, and especially when a treaty of peace should be under consideration. By a provision of that sort, absentees would have given an efficient negative without direct responsibility. Of course, cunning men, some of whom will always be found in legislative bodies, would frequently have lain by to approve or disapprove, according to subsequent circumstances, which, in affairs so urgent as the ratification of national compacts, might have proved fatal.

"In the case of impeachment the same reasoning applies. If a mere majority could convict, public officers might be made the victims of party rage. If a majority of the whole number were required, members might, by absenting themselves, screen the guilty without incurring direct reproach. In the one case, faction would have too much, and in the other, justice would have too little power.

"There remain three cases in which two-thirds of the whole number are required. These are, first, the expulsion of a member; secondly, the passage of a law disapproved of by the President; and, thirdly, amendments to the Constitution. In these three cases a provision is carefully made to defend the people against themselves, or, in other words, against that violence of party spirit, which has hitherto proved fatal to republican government. The constitutional restriction presumes, that, to a measure of indispensable necessity, or even of great utility, two-thirds of the whole number of Senators and Representatives would agree, and that, if they should not, no great danger would ensue. The public business might go on, though a member of the legislature should be unworthy of his seat. Neither would the union materially suffer from the want of a particular law, especially of a law rejected by the first magistrate.

"The case of war may indeed be supposed, and the additional case of corrupt opposition by the President to the organization of public force; but even, if it were allowable to reason from extreme cases, which as every one knows, would be fatal to all legal and constitutional provisions, yet, in this extremest case, the corrupt President could, with less danger of detection, do more evil by a misapplication of the public force, than by opposing its existence.

"So in the case of amendments to the Constitution, it was presumed, that America might enjoy a tolerable share of felicity under the existing compact, and that, if a case should arise to point out the necessity of amendment, two-thirds of the whole number of each legislative body would concur in the recommendation."

Letter of James Madison to Jared Sparks, April 8, 1831: "The finish given to the style and arrangement of the Constitution fairly belongs to the pen of Mr. Morris; the task having, probably, been handed over to him by the chairman of the committee, himself a highly respectable member, and with the ready concurrence of the others. A better choice could not have been made, as the performance of the task proved. It is true, that the state of the materials, consisting of a reported draft in detail, and subsequent resolutions accurately penned, and falling easily into their proper places, was a good preparation for the symmetry and phraseology of the instrument, but there was suffi-

cient room for the talents and taste stamped by the author on the face of it. The alterations made by the committee are not recollected. They were not such, as to impair the merit of the composition. Those, verbal and others, made in the convention, may be gathered from the Journal, and will be found also to leave that merit altogether unimpaired."

Letter of Gouverneur Morris to Timothy Pickering, December 22, 1814: "But, my dear Sir, what can a history of the Constitution avail towards interpreting its provisions? This must be done by comparing the plain import of the words, with the general tenor and object of the instrument. That instrument was written by the fingers which write this letter. Having rejected redundant and equivocal terms, I believed it to be as clear as our language would permit; excepting, nevertheless, a part of what relates to the judiciary. On that subject, conflicting opinions had been maintained with so much professional astuteness, that it became necessary to select phrases, which expressing my own notions should not alarm others, nor shock their self-love, and to the best of my recollection, this was the only part which passed without cavil.

"But, after all, what does it signify, that men should have a written Constitution, containing unequivocal provisions and limitations? The legislative lion will not be entangled in the meshes of a logical net. The legislature will always make the power, which it wishes to exercise, unless it be so organized, as to contain within itself the sufficient check. Attempts to restrain it from outrage, by other means, will only render it more outrageous. The idea of binding legislators by oaths is puerile. Having sworn to exercise the powers granted, according to their true intent and meaning, they will, when they feel a desire to go farther, avoid the shame if not the guilt of perjury, by swearing the true intent and meaning to be, according to their comprehension, that which suits their purpose."

ARE WE ALL COMMUNISTS?

There are those who answer that question in the affirmative, but most of them qualify the affirmation by saying that it is true, not in fact, but in theory, not as applied to our private and business lives, but as applied to our governmental pronouncements.

It has been our habit to take notes on interesting articles and addresses and put them away for future reference, and a recent magazine article, dealing with the observance of Constitution Week, brought to mind the fact that sometime in the not too long ago we took some notes on an address by a Mr. Kingsley, in which he intimated, with some gusto, that the opening phrase of our Declaration of Independence was highly communistic. He then re-processed that statement, through the medium of so-called fact and logic and more or less picturesque speech, into an impressive warning that the great danger to our democracy lay in the full and complete acceptance of that Jeffersonian doctrine—we should say, rather, in its misinterpretation.

It is true that one needs but to review the record of the past decade to become aware that there is need for some warning voice. Ignorance and irresponsibility have repeatedly lent their ears to demagoguery, with more or less resulting disorder, an occasional note of