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STUDENT NOTES

ASSAULT IN WORKMEN'S COMPENSATION CASES

Of the increasing list of workmen's compensation decisions throughout the country, numerous cases involve an assault by one employee upon another while at work. The recent West Virginia case of *Claytor v. State Compensation Comm'r*¹ with its accompanying dissenting opinion by Judge Browning is representative of many borderline cases which decide whether an assault upon a worker by a fellow employee, provoked by words of the claimant, does or does not arise from employment.

In the *Claytor* case, the court held that an injury received by the decedent by being struck over the head with a shovel by a fellow-employee, which was the result of the decedent's kidding the fellow-employee concerning the speed of his work, was purely a personal matter between them, and not rising from the employment was not compensable. Judge Browning's dissent sees the assault arising from a spirit of competition between employees and would allow recovery for the injury or death which results.

¹ 106 S.E.2d 920 (W. Va. 1959).