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Constitutional Law--Impairment of Contract--Retrospective Limitations on Claims Under Optional Compensation System

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was held not to apply where defendant stopped his truck on and temporarily blocked the highway to tow another's car out of a ditch and plaintiff was injured in a collision with the truck. The word "park" in such statutes is frequently interpreted as not referring to emergency stops or those made for similar purposes.⁸ *A fortiori* this meaning seems proper where the stationary vehicle is a wrecking truck maintained for that express purpose.⁹ In any event decedent in the instant case was probably not a member of the class which the legislation was designed to protect, being neither motorist nor pedestrian but only an onlooker.¹⁰

However it should be observed that exemption of disabled vehicles and those rendering assistance thereto from the application of the statutes does not release such vehicles from the basic requirement of reasonable care.¹¹

D. D. J., JR.

CONSTITUTIONAL LAW — IMPAIRMENT OF CONTRACT — RETROSPECTIVE LIMITATIONS ON CLAIMS UNDER OPTIONAL COMPENSATION SYSTEM. — A 1939 amendment to the Code¹ provided that no further award should be allowed on claims for workmen's compensation resulting from injuries incurred prior to March 2, 1929, unless written application for redetermination were made before September 15, 1939.² The amendment took effect March 11, 1939, thus leaving six months to apply for redetermination. Claimant, injured in 1919 when there was no time limitation on redetermination of awards,³ received an award, which was modified twice, and which expired June 21, 1923; he filed application for redetermination August 2, 1940. *Held*, that the amendment, in depriving the

⁸ *Leveillee v. Wright*, 300 Mass. 382, 15 N. E. (2d) 247 (1938).

⁹ *Bowmaster v. DePree Co.*, 258 Mich. 538, 242 N. W. 744 (1932) *Shearer v. Puent*, 166 Minn. 425, 208 N. W. 182 (1926); *Duke v. Mitchell*, 153 Miss. 880, 122 So. 189 (1929).

¹⁰ *Sprayberry v. Snow*, 59 Ga. App. 744, 1 S. E. (2d) 756 (1939).

¹¹ *Montgomery v. National Convoy & Trucking Co.*, 186 S. C. 167, 195 S. E. 247 (1938); *Body, Fender & Brake Corp. v. Matter*, 172 Va. 26, 200 S. E. 589 (1939); *Kastler v. Tures*, 191 Wis. 120, 210 N. W. 415 (1926); 42 C. J. 1007, 1009, 1012.

¹ W. VA. CODE (Michie, 1937) c. 23, art. 4, § 16.

² " . . . no further award may be made in either fatal or non-fatal cases arising on account of injuries occurring prior to March seventh, one thousand nine hundred twenty-nine, unless written application for such award, signed personally by claimant, or, in case of claimant's infancy or physical or mental incapacity, by his or her guardian, next friend, or committee, be filed with the commissioner on or before September fifteenth, one thousand nine hundred thirty-nine." W. Va. Acts 1939, c. 137, art. 4, § 16.

³ W. VA. CODE (Barnes, 1923) c. 15P, § 40.

compensation commissioner of jurisdiction to reconsider the case, did not impair the obligation of a contract under the contract clause of the Federal Constitution.⁴ *Greer v. Workmen's Compensation Comm'r.*⁵

The general principles respecting constitutionality of statutes of limitations under the contracts clause of the Constitution are well settled. Statutes creating, extending, or shortening a time limitation are upheld as constitutional under the contracts clause when applied to prior contracts, if they leave a reasonable time in which to bring action and do not take away or unreasonably encumber all remedies.⁶ What constitutes a reasonable time is a legislative and not a judicial question, unless the time allowed by the new statute is so short as to render assertion of claims practically impossible.⁷ In upholding the constitutionality of statutes of limitations, the courts justify their decisions on the ground that such statutes affect only the remedy, not a substantive right under the contract.⁸

The West Virginia workmen's compensation law being voluntary, a contract exists between the employer and employee who accept the law.⁹ The contract is embodied in the compensation law existing at the time the employment is entered into, and becomes a part of the employment contract.¹⁰ Claimant contended that, since the law existing at the time of the injury contained no time limitation on applications for redetermination, a later limitation on such applications would impair his rights under the contract, and would thus be unconstitutional. This argument raises a question as to the effect of a statute of limitations on a workmen's compensation contract, entered into at a time when no limitation was placed on claims arising from such contracts. While authority on the subject is meagre, a Washington case involving similar facts

⁴ U. S. Const. Art. I, § 10.

⁵ 15 S. E. (2d) 175 (W. Va. 1941).

⁶ *Union County Bldg. & Loan Ass'n v. Weltchek*, 12 N. J. Misc. 847, 175 Atl. 625 (1934). *Accord*: *Smith & Marsh v. Northern Neck Mut. Fire Ass'n*, 112 Va. 192, 70 S. E. 482 (1916); 16 C. J. S. 846.

⁷ *Wilson v. Iseminger*, 185 U. S. 55, 22 S. Ct. 573, 46 L. Ed. 804 (1902); *Terry v. Anderson*, 95 U. S. 628, 24 L. Ed. 365 (1877); 12 Am. Jur. 89, 90.

⁸ *Dobson v. Wilson & Co.*, 152 Kan. 820, 107 P. (2d) 676 (1940); *State Land Board v. Lee*, 84 Ore. 431, 165 Pac. 372 (1917); 1 WOOD, LIMITATIONS (4th ed. 1916) 45, 46.

⁹ *Accord*: *Gooding v. Ott*, 77 W. Va. 487, 87 S. E. 862, L. R. A. 1916D 637 (1916); *Patton v. New Amsterdam Casualty Co.*, 36 S. W. (2d) 1000 (Tex. Comm. App. 1931).

¹⁰ *Walsh v. Waldron*, 112 Conn. 579, 153 Atl. 298, 78 A. L. R. 1301 (1931); *Thomas v. Parker Rust Proof Co.*, 284 Mich. 260, 279 N. W. 504 (1938); 1 SCHNEIDER, WORKMEN'S COMPENSATION LAW (2d ed. 1932) 87, 88.

adds support to the decision of this case. A statute imposing a three year limitation on applications for readjustment of a compensation award was held constitutional when applied to deny a claim which had vested before this amendment was passed,¹¹ and the decision was affirmed by the United States Supreme Court.¹² The case, while distinguishable from the instant case, since the Washington statute was compulsory,¹³ not contractual, is similar in that when the right to compensation had vested, at the time of the injury, there was no time limitation on applications for redetermination. In both cases, the contention that the claimant had a vested right in the provisions of the statute providing no time limitation on applications for redetermination of awards was denied.

Most cases dealing with statutes of limitation on compensation claims have had to do with modifications of existing limitations. In these cases, courts have upheld the constitutionality of amendments extending,¹⁴ reducing,¹⁵ and completely withdrawing¹⁶ the limitation. It is submitted that claimant's contention that the statute was unconstitutional, because at the time of the injury the statute provided for unlimited redetermination of awards, is inconsistent with the holdings of these cases. It is difficult to see why one claimant's right to a twelve months' limitation is not just as strong as another's right to a claim on which there is no limitation at all, and, if it is not unconstitutional to reduce the limitation from twelve months to six months, it would seem that it should not be unconstitutional to impose a six months' limitation on claims previously unlimited.

E. I. E.

¹¹ *Mattson v. Dep't of Labor & Industries*, 176 Wash. 345, 29 P. (2d) 675 (1934).

¹² *Mattson v. Dep't of Labor & Industries*, 293 U. S. 151, 55 S. Ct. 14, 79 L. Ed. 251 (1934).

¹³ WASH. REV. STATS. (Remington, 1933) §§ 7673, 7674.

¹⁴ *Dobson v. Wilson*, 152 Kan. 820, 107 P. (2d) 676 (1940); *Ferguson Co. v. Seaman*, 119 N. J. L. 575, 197 Atl. 245 (1938); *Streng's Piece Dye Works v. Galasso*, 118 N. J. L. 257, 191 Atl. 874 (1937).

¹⁵ *Duquoin Tp. High School District v. Industrial Comm.*, 329 Ill. 543, 161 N. E. 108 (1928); *Chicago v. Industrial Comm.*, 292 Ill. 409, 127 N. E. 46 (1920).

¹⁶ *Smolen v. Industrial Comm.*, 324 Ill. 32, 154 N. E. 441 (1926).