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Workmen's Compensation--Filing Application Within Statutory Period

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devised his property to his second wife and children, and included only one of his first wife's children. To the children of the first wife he gave one dollar each. The court held "The testator has here clearly shown, by necessary implication, his intention to give all his property to his children by his last wife, as a class." The court further stated that this implication need not be absolutely irresistible but only such as satisfies the mind of the court of the intention of the testator. Apparently in the principal case, the mind of the court was not satisfied as to the intention, even though the plaintiffs in this case were children of the testator's first wife, to whom he had bequeathed one dollar each. It would seem that the real intent of the testator was to exclude his first children from his property, which could have been made effective by the court's application of the presumption against intestacy.18

However, the court does not necessarily pursue the real or true intent of the testator. "In interpretation of a will, the true inquiry is not what the testator meant to express, but what do the words used express."19 "It is not, what did he mean? but it is, what do his words mean?"20 Thus, the court may have rested the decision on what they considered to be the apparent or indicated intent of the testator, to limit his devise to the three certain tracts of 109 acres. Had the real intent as evidenced by the tenor of the instrument and the whole scheme of the testator's devise and bequests been given effect, as was done in the *Runyon* case, then a contrary result might have been reached.21

J. S. M.

WORKMEN'S COMPENSATION — FILING APPLICATION WITHIN STATUTORY PERIOD. — Claimant was injured and four months later the employer reported the injury to the state compensation commissioner. Thereafter upon receipt of application forms from the commissioner and within six months from the date of injury, claimant went to the office of his employer, made out and signed the application for compensation, leaving it there with the expectation that it would be promptly forwarded to the commissioner.

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18 "... where two modes of interpretation are possible, that is preferred which will prevent either total or partial intestacy," Honaker v. Starks, 114 Va. 37, 39, 57 S. E. 741 (1912). To the same effect, Carney v. Kahn, 40 W. Va. 758, 23 S. E. 650 (1896); (1921) 28 R. C. L. 227.
21 J. HARRISON, WILLS & ADMINISTRATION (3d ed. 1927) 380, § 193 (2).
Inadvertently, the application was not filed until more than six months after the date of injury. Compensation was denied, and upon appeal the workmen's compensation appeal board affirmed the action of the commissioner. From this ruling an appeal was allowed by the supreme court. Held, two judges dissenting, that the filing of an application for compensation in the office of the employer of the claimant in the belief, or expectation that it would be forwarded to the compensation commissioner within the six months' period provided by statute, was not a filing thereof in the office of the commissioner within the meaning of the Code. Young v. State Compensation Commissioner.¹

Courts have generally recognized that workmen's compensation acts are remedial, and as such should be liberally construed,² but certain provisions thereof are incapable of being interpreted other than strictly,³ for their limitations are inherent. Such a provision is the requirement of the statute that all claims be filed in the office of the compensation commissioner within six months from the date of injury.⁴ The view taken in the majority of jurisdictions is that the act creates a new right, that in establishing this right time has been made of the essence, and that fulfillment of this requirement is precedent to and is an essential ingredient of the right.⁵ This provision is mandatory and jurisdictional,⁶ and thus

¹ 3 S. E. (2d) 517 (W. Va. 1939). The decision in this case governed the holding in Pridgen v. Compensation Comm'r, 3 S. E. (2d) 522 (W. Va. 1939), in which case the application for compensation was not verified until after the expiration of the six months' period, and was not filed within that period. There was no dissent.

² "The Workmen's Compensation Act, being remedial, should not be strictly construed, but a spirit of liberality should be employed in its interpretation." Caldwell v. Compensation Comm'r, 106 W. Va. 14, 18, 144 S. E. 568 (1928).

³ "It is not our duty either to justify or criticize the provisions of compensation statutes, but merely to construe them ... liberal construction does not imply strained construction." Wood Coal Co. v. Compensation Comm'r, 119 W. Va. 581, 583, 105 S. E. 528 (1938). "Save only as expressly modified by the proviso the six months' limitation must be respected and applied by the commissioner and this court. Neither has authority to enlarge the proviso by liberal construction or otherwise." Moorefield v. Compensation Comm'r, 112 W. Va. 229, 230, 164 S. E. 26 (1932).

⁴ W. VA. REV. CODE (Michie, 1937) c. 23, art. 4, § 15.


⁶ 2 SCHNEIDER, WORKMEN'S COMPENSATION (2d ed. 1932) § 545. In Note (1932) 78 A. L. R. 1294, it is said that most jurisdictions hold that limitation of time for filing claim under act is jurisdictional and condition precedent to right to maintain an action thereunder — but that several states support the view that limitations of time for filing claim is not jurisdictional, but merely directory, and a matter of defense which may or may not be raised. O'Esau v. Blies Co., 188 App. Div. 335, 177 N. Y. Supp. 205 (1919) (is not properly
where the terms of the statute are plain, unambiguous, and cer-
tain, the statute speaks for itself. Nothing can be added to it, and
nothing can be omitted, though an exception is made where a
treaty with a foreign country is involved, for being part of the
supreme law of the land it supersedes state statutory provisions.
The doctrine of liberal construction may be applied in determining
whether there has been a compliance with the statute.

The statute specifically requires that to entitle an employee to
compensation his application must be "filed in the office of com-
misssioner". No provision is made for an alternative place of filing;
and a filing with the employer will not prevent the statute from
running against such claim. The employer has not been made an
agent of the commissioner so that an application filed with him will
satisfy the statutory provision, but has been required only to have a
supply of application blanks available. If there is any possibility
of an agency relationship existing under the facts of the instant
case, it would seem more reasonable to assume that the employer
became an agent of the employee, and as such might be liable
for a failure to perform, but this would not alter the effect of a
noncompliance with the statutory requirement.

It must be recognized that there does not appear in the prin-
cipal case any clear proof of fraud. But even where fraud has been
established, some jurisdictions hold that the statute is not tolled.

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7 Chmielewska v. Butte & S. Mining Co., 81 Mont. 36, 261 Pac. 616 (1927).
8 Papadaki v. Compensation Comm'r, 111 W. Va. 15, 160 S. E. 224 (1931);
Urbus v. Compensation Comm'r, 113 W. Va. 563, 169 S. E. 164 (1933). These
cases involved treaties governing the prompt transmission of information
in case of death and no known heirs.
9 Culurides v. Ott, 78 W. Va. 696, 90 S. E. 270 (1916). A claim was filed
but was signed by a brother of the deceased instead of his widow. It was held
to be a filing within the meaning of the statute.
10 State v. Industrial Comm'n, 123 Ohio St. 86, 174 N. E. 11 (1930).
11 "... if the principal requests another to act for him with respect to a
matter, and indicates that the other is to act without further communication
and the other consents so to act, the relationship of principal and agent exists."
RESTATEMENT, AGENCY (1933) § 15 (Comment b). 1 MECHM, AGENCY (2d ed. 1914) § 26.
12 Claimant was induced by his employer not to file a claim on the promise
that he would be given employment for life. As soon as the period for filing
had elapsed, the employee was fired, and action for compensation was brought.
Claim dismissed because of failure to file within designated period. The court
said: "If it were merely a statute of limitations, we have no doubt that the
defendant would be estopped from setting up the failure of the plaintiff to
bring his action within two years by reason of its agreement with him ... .
The time within which the suit must be brought operates as a limitation of
If, under the West Virginia statute, the requirement as to time for filing is mandatory and jurisdictional even in the presence of fraud, the claimant would be deprived of his right to compensation and be left to an uncertain action against his employer. It is submitted that this possibility should be prevented by a statutory provision allowing additional time for filing, if, due to false representations of the employer, the employee should not file his claim within the six months' period. Such a proviso would eliminate all benefits arising from the fraud, and secure to the employee his right to compensation.

A. A. A.

**Workmen’s Compensation — Permanent Total Disability Rating — Effect of Returning to Work.** — The claimant suffered an injury to his right leg necessitating amputation about two inches above the knee. Afterwards osteomyelitis developed in the remaining portion of the right thigh and spread to the left forearm, requiring bone surgery which resulted in permanent deformity of the left forearm and wrist. The medical evidence proved conclusively that the claimant had little use of his left arm; that a slight bruise or strain thereto would probably bring about a recurrence of the osteomyelitis; that the condition of the arm is such that the serious reappearance of this affection would necessitate surgical treatment, perhaps to the extent of amputation, and there would be a strong likelihood that osteomyelitis would spread to other members of the body. It was contended that a permanent total disability award should not be granted as the claimant had returned to work in the employer's lamp house and was receiving wages. Held, that this employee's right to compensation on a permanent total disability rating was not defeated by his returning to work and receiving wages. *Gay Coal & Coke Co. v. Workmen's Compensation Commissioner.*

Disability results from the loss of parts of the body or the efficient use thereof. The purpose of the act is to compensate the employee for the impairment of his physical efficiency, and in determining the percentage of present disability the claimant's

the liability, and not of the remedy alone. It is a condition attached to the right to sue at all.’’ *Keser v. U. S. S. Lead Refinery*, 88 Ind. App. 246, 163 N. E. 621 (1928).

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1 2 S. E. (2d) 265 (W. Va. 1939).  
2 Johnson v. Compensation Comm'r, 109 W. Va. 316, 154 S. E. 766 (1930);  
2 Schindele, **Workmen's Compensation** (2d ed. 1932) 1341.  
3 Ashworth v. Compensation Comm'r, 117 W. Va. 73, 183 S. E. 912 (1936).