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Workmen's Compensation--Death Benefit Awards to Partial and Total Dependents

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doubt it seemed thoroughly inequitable to the trial chancellor that *B* should now claim a right in the rents.

The appellate court here wisely refrained from determining the extent of *B*'s surface rights, including the use of the houses in question, if and when further development of the coal takes place.

J. L. G. JR.

WORKMEN'S COMPENSATION — DEATH BENEFIT AWARDS TO PARTIAL AND TOTAL DEPENDENTS. — *X* was fatally injured while at work for the *Y* company, a subscriber to the workmen's compensation fund. *X*'s widow, separated from him for several years, was not dependent. The commissioner awarded benefits to *X*'s dependent child but denied benefits to *X*'s partially dependent mother. The appeal board reversed the commissioner's order denying benefits to *X*'s partially dependent mother. *Held*,¹ two judges dissenting, that it is within the sound discretion of the commissioner to make an award to a partially dependent mother, though there is also an award to a dependent child. *Hudson v. State Compensation Commissioner*.²

The Workmen's Compensation Act provides, "If the deceased employee be an adult and there be no dependent widow, widower or child under sixteen years of age, or wholly dependent person, but there are partly dependent persons at the time of death, the payment shall be . . ."³ A succeeding section reads, "The benefits, in case of death, shall be paid to such one or more dependents of the decedent . . . as may be determined by the commissioner. . . . Payment to a dependent subsequent in right may be made if the commissioner deems proper. . . ."⁴

The latter provision modifies the meaning of the prior provision and gives the commissioner a discretion in awarding death benefits, because, by the generally accepted rule of construction, if different parts or sections of the same statute are found to be in irreconcilable conflict, the last in order of position or arrangement will prevail.⁵ This view finds support in a California case⁶ giving

¹ It is noted that the compensation commissioner appealed from the ruling of the appeal board.

² 5 S. E. (2d) 108 (W. Va. 1939).

³ W. VA. CODE (Michie, 1937) c. 23, art. 4, § 10 (f).

⁴ W. VA. CODE (Michie, 1937) c. 23, art. 4, § 11.

⁵ Board of Education v. Tyler County Court, 77 W. Va. 523, 87 S. E. 870 (1916); Speidel Grocery Co. v. Warder, 56 W. Va. 602, 49 S. E. 534 (1904); Harvey Coal & Coke Co. v. Tax Com'r, 59 W. Va. 605, 53 S. E. 928 (1905); BLACK, CONSTRUCTION & INTERPRETATION OF LAWS (2d ed. 1911) 102.

similar statutory provisions the same construction. Generally, cases from other states are of little help due to the difference in wording of the statutes involved. However, the related provisions of the California act are substantially the same as the provisions of our statute and the facts of the case are identical. The West Virginia court has consistently given the compensation act, a remedial statute, a liberal construction.⁷ Rarely, if ever, will a strict and literal interpretation of any statute meet all of the situations that arise. In the construction of a statute, its spirit, rather than its letter, is the guiding star.⁸ The purpose of the act and the reasons which induce the act become predominant.⁹ One purpose of workmen's compensation acts is to give an income to the dependents to supplant the aid formerly given by the deceased employee. Bearing this in mind it cannot be doubted that the principal case reached a just result. Further, every word and section of a statute must, if possible, be given effect.¹⁰ It is conceded that subsection (f), section 10,¹¹ designates *prima facie* who should receive benefits, but it seems that section 11¹² vests in the commissioner a discretion to change or vary this rule as the circumstances of the case may demand. The last phrase of section 11, ". . . Payment to a dependent *subsequent in right* may be made if the commissioner deems proper . . .," would bear this construction. The next succeeding section¹³ strengthens the conclusion.

A Maryland case,¹⁴ construing a statute somewhat like the West Virginia act, reached a contrary result. That may, however, be distinguished because the legislative intent to make the absence

⁶ Pacific Gas & Elec. Co. v. Industrial Accident Comm., 124 Cal. App. 303, 12 P. (2d) 649 (1932).

⁷ Sole v. Kindelberger, 91 W. Va. 603, 114 S. E. 151 (1922); Kincannon v. State Compensation Comm'r, 107 W. Va. 533, 149 S. E. 665 (1929); Vandall v. State Compensation Comm'r, 110 W. Va. 61, 158 S. E. 499 (1931).

⁸ Wellsburg & S. L. R. Co. v. Panhandle Trac. Co., 56 W. Va. 18, 48 S. E. 746 (1904); McVey v. C. & P. Tel. Co., 103 W. Va. 519, 138 S. E. 97 (1927).

⁹ When the whole context of the law demonstrates a particular intent of the legislature to effect a certain purpose, some degree of implication may be called to aid the intent. Gas Co. v. Wheeling, 8 W. Va. 320 (1875); Daniel v. Simms, 49 W. Va. 554, 39 S. E. 690 (1901).

¹⁰ State v. Hall, 86 W. Va. 1, 102 S. E. 694 (1920); State v. Harden, 62 W. Va. 313, 58 S. E. 715 (1907); State *ex rel.* Herald v. Surber, 83 W. Va. 785, 99 S. E. 187 (1919).

¹¹ W. VA. CODE (Michie, 1937) c. 23, art. 4, § 10 (f).

¹² *Id.* at § 11. Italics ours.

¹³ *Id.* at § 12: "The dependent or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the finding and direction of the commissioner."

¹⁴ Harvey v. George J. Roche & Son, 148 Md. 363, 129 Atl. 359 (1925).

of full dependents a condition precedent to the recognition of partial dependents is more clearly implied, being based on an amendment of the original statute.

It is suggested that the problem of construction raised in the principal case is properly one for legislative clarification by amendment or revision of the provisions in question.

R. A. P.