Volume 45 | Issue 1 Article 13

December 1938

Workmen's Compensation--Aggravation of Hernia under West Virginia Statute

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that under certain circumstances acknowledgment of a signature is tantamount to signing "in the presence of."[7] Just what the exact limits of the circumstances would be is indefinite except the requirement that there be no indicia of fraud. In its adoption and application of the principle the court has extended the doctrine far beyond that of any of the cases it cited. Most of the decisions held that witnesses signing in the next room with immediate subsequent acknowledgment were "in the presence of",[8] but none have gone so far as to say that acknowledgment ten days later amounted to signing as is required by the statute. However, on the facts of the instant case, it does not seem that the principle is particularly strained. Furthermore, the court definitely limits the application when it says that it is confined to cases where the circumstances preclude any possibility of fraud.

Such interpretation of the statute is probably contrary to the accepted doctrine[9] that provisions of statutes governing transfer and disposition of property should be rigidly adhered to. Nevertheless, the interpretation certainly can not be said to defeat the purpose of preventing fraud which is generally held to be the motivation of such legislative regulation,[10] and viewed in this light is a forward step in judicial interpretation.

After all, it is the province of the court to see that the manifest intent of the legislature is carried out. It certainly would appear that rigid application of a rule to the extent that the purpose of the testator is lost, is far less desirable than the result reached here.

R. B. G.

WORKMEN'S COMPENSATION — AGGRAVATION OF HERNIA UNDER WEST VIRGINIA STATUTE. — A workman in the employ of a subscriber to workmen's compensation by lifting a heavy piece of slate in the course of his employment suffered an aggravation of hernia which, although existent from childhood, had not interfered seriously with his work. Death resulted from the operation performed for relieving the ensuing strangulated hernia. The dependent

[7] Sturdivant v. Birchett, 10 Gratt. 67 (Va. 1853).

[8] *In re* Lane's Estate, 265 Mich. 539, 251 N. W. 590 (1933).

[9] McKee v. McKee's Ex'r, 155 Ky. 738, 160 S. W. 261 (1913). It is interesting to note that this case is cited in appellant's brief for the proposition that purpose of statute is only to prevent fraud but case holds that strict conformance is required. Walker v. Walker, 342 Ill. 376, 174 N. E. 541 (1930).

[10] Green v. Crain, 12 Gratt. 252 (Va. 1855).

widow appealed from a judgment of the Compensation Appeal Board affirming a finding of the commissioner denying compensation. *Held,* that under West Virginia statute providing that "In all claims for compensation for hernia resulting from personal injury received in the course of and resulting from the employee's employment, it must be definitely proven to the satisfaction of the commissioner: First, that there was an injury resulting in hernia; second, that the hernia appeared suddenly; third, that it was accompanied by pain; fourth, that the hernia immediately followed an injury, fifth, that the hernia did not exist prior to the injury for which compensation is claimed",[1] payment of compensation in all hernia claims is limited to cases developed under conditions prescribed, and for injury resulting in disability or death from aggravation of hernia existing at time of injury no compensation is permitted. *Jordan v. State Compensation Commissioner.*[2]

It is well-established law that under workmen's compensation acts aggravation of pre-existing disease or physical weakness, hernia cases excepted, is compensable.[3] Likewise, in states having no special statutory requirements in the act concerning proof of hernia, aggravation of hernia has the same status as other accidental aggravations.[4] It is obvious, therefore, that any provision that might exclude aggravation of hernia from compensability is contrary to the general tenor of the compensation act, and must be construed as an exception.[5]

In a prior West Virginia case, *Aniel v. State Compensation Commissioner,*[6] compensation for strangulated hernia was refused, the court citing the statute as a bar. In the *Aniel* case the precise question of the instant case, *i.e.,* the interpretation to be placed upon

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[1] W. VA. REV. CODE (Michie, 1937) c. 23, art. 4, § 7.

[2] 197 S. E. 20 (W. Va. 1938).

[3] Goble v. Com'r, 111 W. Va. 404, 162 S. E. 314 (1932) (aggravation of weakened condition produced by arthritis and bad teeth); Hall v. Com'r, 110 W. Va. 551, 159 S. E. 516 (1931) (Buerger's disease); Sedinger v. Com'r, 109 W. Va. 51, 152 S. E. 857 (1930) (eye ailment); Conley v. Com'r, 107 W. Va. 546, 149 S. E. 666 (1929) (heart ailment); Caldwell v. Com'r, 106 W. Va. 14, 144 S. E. 568 (1928) (aggravation of gunshot wound).

[4] Ludd v. Van Hoose, 14 La. App. 276, 129 So. 375 (1930); Krenz v. Ferguson Coal Co., 85 Ind. App. 347, 154 N. E. 35 (1926); McEwan v. Industrial Com'n, 61 Utah 585, 217 Pac. 690 (1923); 1 SCHNEIDER, WORKMEN'S COMPENSATION (2d ed. 1932) 606, note 26, for collection of cases.

[5] Furferi v. Pennsylvania R. Co., 117 N. J. L. 508, 509, 189 Atl. 126 (1937) ("The special provision relating to hernia is in the nature of an exception, and, by the same token, is to be strictly construed. A case not within its precise letter is to be excluded.").

[6] 112 W. Va. 645, 166 S. E. 366 (1932).

a statute limited in application by its express terms to "claims . . . for hernia resulting from personal injury received in the course of and resulting from . . . employment . . .", but silent as to the further matter of *aggravation* of hernia — does not seem to have been urged.

Other courts in construing statutory stipulations restrictive as to hernia claims have not been in accord in results. The interpretation placed on the Illinois statute,[7] presenting proof requirements in hernia cases not unlike those of the West Virginia provision concurs in holding and in *ratio decidendi* with the instant case.[8] The Illinois proviso, however, applying to "an injured employee . . .", placing requirements on the claimant "to be entitled to compensation for hernia . . .", but omitting definition as to the *how* and the *when* of the hernia's occurrence, would seem more inclusive in its scope than the West Virginia statute. In New Jersey a statute establishing as prerequisite to hernia compensation "conclusive proof . . . that the hernia . . ."[9] resulted and was manifested in manner similar to that stipulated in the West Virginia statute is construed as pertaining only to inception of hernia and not to aggravation.[10] In agreement with New Jersey the Pennsylvania rule places a strict, literal construction on a statute directed to claims for "hernia", with no further definition of the injury,[11] and refuses to extend by implication the meaning of the term to

[7] ILL. REV. STAT. (Smith-Hurd, 1929) c. 48, § 145 (d-1), "an injured employee, to be entitled to compensation for hernia, must prove . . ." recent origin, appearance accompanied by pain, that trauma immediately preceded, that the hernia did not exist prior to the injury.

[8] Cuneo Press Co. v. Industrial Com'n, 341 Ill. 569, 173 N. E. 470 (1930); Mirific Products Co. v. Industrial Com'n, 356 Ill. 645, 191 N. E. 203 (1934); Wagner Malleable Iron Co. v. Industrial Com'n, 358 Ill. 93, 192 N. E. 660 (1934).

[9] N. J. REV. STAT. (1937) Tit. 34, c. 15, art. 12 (x), stipulating that to be compensable hernia must have as its immediate cause sudden effort or severe strain so that descent of hernia followed at once, that there was severe strain in the hernial region, prostration compelled employee to leave work, that injury was so severe as to be noticed and communicated to employer within twenty-four hours, and physician required within twenty-four hours.

[10] Furferi v. Pennsylvania R. Co., 117 N. J. L. 508, 189 Atl. 126 (1937); New York Switch & Crossing Co. v. Mullenbach, 92 N. J. L. 254, 103 Atl. 803 (1918).

[11] PA. ANN. STAT. (Purdon, 1931) Tit. 77, c. 5, § 652, requiring that it be proven that the hernia was immediately precipitated by sudden effort so that descent of hernia followed immediately, that pain was so severe as to be noticed and communication with employer made in regard to the injury within forty-eight hours after occurrence.

include aggravation.[12] Similarly, under a statute applicable to "all claims for compensation for hernia . . .", and including all the requirements as to proof specified in the West Virginia provision,[13] the Maryland court adopts a rule of construction identical with that of New Jersey and Pennsylvania.[14]

Looking to the express terms of the West Virginia provision in question, it would seem that the phrase, "all claims for compensation for hernia resulting in personal injury received in the course of and resulting from . . . employment", would limit the application of the provision to accidental injuries arising directly from employment and would be effective to exclude completely from the purview of the statute pre-existing physical impairment arising perhaps years before, as in the instant case, and from causes without the scope of the compensation act. Should this position be taken, that the statute applies only to present injuries, *aggravation* of hernia, apparently differing in its nature and descriptive features from *inception* of hernia, a distinction made in most of the cases found,[15] would seem to demand separate and distinct consideration.

In view of the failure of the statute to deal with *aggravation* of hernia in express terms, and until the legislature clarifies this doubtful point,[16] it would seem that a result opposite to that

[12] Pastva v. Forge Coal Mining Co., 119 Pa. Super. Ct. 455, 179 Atl. 919 (1935); Tragle v. Hollis Chocolate Co., 111 Pa. Super. Ct. 98, 169 Atl. 472 (1933); Petrusko v. Jeddo Highland Coal Co., 109 Pa. Super. Ct. 288, 167 Atl. 242 (1933).

[13] MD. ANN. CODE (Bagby, 1924) art. 101, § 36, as amended by Md. Acts 1931, c. 363, requires that there was accidental injury causing hernia; that the hernia appeared suddenly and immediately followed the injury; that the hernia did not exist prior to the injury for which compensation is claimed; that the injury was reported to employer within twenty-four hours.

[14] Ross v. Smith, 169 Md. 86, 179 Atl. 173 (1935).

[15] Furferi v. Pennsylvania R. Co., 117 N. J. L. 508, 189 Atl. 126 (1937); Ross v. Smith, 169 Md. 86, 92, 179 Atl. 173 (1935), "The old hernia with which the servant was suffering for some years before the accident occurred is not the hernia for which compensation is claimed.

"The compensable injury here is a strangulated hernia which did not exist before the accident but which was directly caused by the accident."

[16] After cause of action arose in Ross v. Smith, 169 Md. 86, 179 Atl. 173 (1935), Code was further amended, MD. ANN. CODE (Flack, Supp. 1935) art. 101, § 36, ". . . for hernia compensation may be allowed only upon definite proof . . . That the hernia did not exist prior to the injury for which compensation is claimed; provided that if as the result of an accidental injury arising out of and in the course of the employee's employment a pre-existing hernia becomes so strangulated that an immediate operation is necessary, the provision of this sub-paragraph requiring proof that the hernia did not exist prior to the injury for which compensation is claimed shall not apply." Thus the problem is clarified.

reached in the instant case in avoiding a derogation from the general construction of the compensation act would have been more in accord with the spirit of this humane and remedial legislation.

W. E. N.