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Workmen's Compensation--Injury in Course of Employment--Transportation to Work in Employer's Conveyance

Since it may be contended that the purpose of interrogatories is to ascertain property concealed by the debtor, it can be argued that this remedy is limited to circumstances where there is concealment.[19] It follows from the foregoing analysis that the statutory suit in equity is the advisable procedure, unless the facts clearly warrant the adoption of one of the suggested concurrent remedies.

WORKMEN'S COMPENSATION —INJURY IN COURSE OF EMPLOYMENT — TRANSPORTATION TO WORK IN EMPLOYER'S CONVEYANCE. — A coal company transported by bus, for compensation, such of its employees as elected to avail themselves of the service. The company carried liability insurance as required by statute.[1] The plaintiff, a coal loader, joined the coal company and the insurance company as defendants in a suit in assumpsit on an independent contract of carriage for injuries sustained while riding to his place of employment. The defendant insurance company demurred to the plaintiff's declaration, contending that the injury arose in the course of employment and was compensable under workmen's compensation.[2] *Held*, that the injury did not arise in the course of employment. Demurrer overruled. *Cramblitt v. Standard Accident Insurance Company.*[3]

The case presents for initial consideration in West Virginia the problem whether or not an injury sustained by an employee while going to or from work on a vehicle furnished by his employer is within the course of employment. Previous West Virginia cases have held that an injury sustained by an employee in going to or from work is not within the course of employment where no vehicle was furnished by the employer, unless the injury occurred on or

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[19] The facts in this case do not require a consideration of the remedy of Suggestions on Judgment (W. VA. REV. CODE (1931) c. 38, art. 5, § 10) because there is no personalty in the possession of third parties. It is believed that if such a state of facts existed, procedure by suggestion would be available to the judgment creditor.

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[1] W. VA. REV. CODE (1931) c. 17, art. 6, § 6.

[2] W. VA. REV. CODE (1931) c. 23, art. 4, § 1. The Workmen's Compensation Act requires that for an injury to be compensable it must have been received "in the course of and resulting from" the employment. In the principal case it is clear that the injury resulted from the employment and the only problem is whether or not it occurred in the course of employment.

[3] 180 S. E. 434 (W. Va. 1935).

near the employer's premises.[4] Other courts have generally held that injuries occurring in a vehicle furnished by the employee are compensable.[5] That the transportation in the instant case was not furnished by the employer in fulfillment of an obligation arising under the contract of employment but was furnished for pay and was wholly independent of the contract of employment is a basis on which most of the authorities in other jurisdictions may be distinguished. The only circumstances in the present case tending to make the injury compensable under workmen's compensation were the relation of employer and employee between the parties,[6] the mutual benefit from the transportation,[7] and the system of charging the fare against the employer's earnings.[8] The court merely held that such factors were not sufficient to bring the injury within the course of employment.

The West Virginia decisions[9] are in accord with the doctrine elsewhere[10] that workmen's compensation acts should be liberally construed to carry out their beneficent purpose. Inasmuch as the reasons for liberal interpretation are founded upon the desire to favor the injured employee, the appropriateness of liberal interpretation in a case where such interpretation will be adverse to the interests of the employee may be open to challenge. However, whether the employee seeks compensation or whether he is suing

[4] De Constantin v. Public Service Comm., 75 W. Va. 32, 83 S. E. 88 (1914); Hager v. Comm'r, 112 W. Va. 492, 165 S. E. 668 (1932); Canoy v. Comm'r, 113 W. Va. 914, 170 S. E. 184 (1933); Buckland v. Comm'r, 175 S. E. 785 (W. Va. 1934); Taylor v. Comm'r, 178 S. E. 71 (W. Va. 1935). See (1933) 40 W. VA. L. Q. 90, 91, n. 7.

[5] See Note (1929) 62 A. L. R. 1438.

[6] Rausch v. Standard Shipbuilding Corp., 111 N. Y. Misc. 450, 181 N. Y. Supp. 513 (1920).

[7] Harlan v. Industrial Accident Comm., 194 Cal. 352, 228 Pac. 654 (1924); Campagna v. Zeskind, 287 Pa. 403, 135 Atl. 124 (1926); Jett v. Turner, 215 Ala. 352, 111 So. 702 (1926).

[8] American Coal Mining Co. v. Crenshaw, 77 Ind. App. 644, 133 N. E. 394 (1921).

[9] Vandall v. Comm'r, 110 W. Va. 61, 158 S. E. 499 (1931); Conley v. Comm'r, 107 W. Va. 546, 149 S. E. 665 (1929); McVey v. Telephone Co., 103 W. Va. 519, 138 S. E. 97 (1927).

[10] All American courts have been liberal in their construction of the terms of workmen's compensation acts. Baltimore, *etc.* Steamboat Co. v. Norton, 284 U. S. 408, 52 S. Ct. 187 (1932); Scott County School Board v. Carter, 156 Va. 815, 159 S. E. 115 (1931). See cases collected 7 A. L. R. 1305. The English courts were equally liberal until 1924 when the House of Lords reversed this liberal trend in St. Helen's Colliery Co. v. Hewitson, (1924) A. C. 59: upon facts very similar to those of the principal case it was held that the injury did not occur in the course of employment, since the employee was not obliged to use the conveyance. Newton v. Gust, Keener & Nettefolds, (1926) 135 L. T. N. S. 386, (H. L., special); Taylor v. Sir Robert McAltines & Sons, (1924) 130 L. T. N. S. 793, (C. A., special); McPherson v. Reid, McFarland & Son, (1926) S. E. (Scot) 359 (special).

his employer or his employer's insurer in a negligence action the vital question whether or not the injury occurred in the course of the employment is the same; and the statute probably should be liberally construed in both cases, even though such construction operates to the advantage of the employee in the one case and to his detriment in the other.[11] Thus, the present decision ought probably to be deemed authoritative on the question whether an injury is in the course of employment in a future case in which an employee seeks to recover compensation.[12]

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[11] In DeCamp v. Youngstown Municipal Ry., 110 Ohio St. 376, 144 N. E. 128 (1924), a case in which an employee sued an employer in a negligence action, the employer defending on the ground that the injury occurred in the course of employment, Allen, J., declared: "A liberal construction of the Workmen's Compensation Act requires us to consider this case from the standpoint, not only of this particular plaintiff, but also from the standpoint of employes applying for compensation under the Workmen's Compensation Act." See also Kellogg, P. J., dissenting, in Murphy v. Ludlum Steel Co., 182 N. Y. App. Div. 139, 169 N. Y. Supp. 781 (1918). Decisions determining whether or not an injury occurred in the course of employment are generally cited in judicial opinions without distinguishing negligence actions against employers from proceedings for compensation.

[12] But see two New York decisions in which opposite results were reached on this point. In Matter of Littler v. George A. Fuller Co., 223 N. Y. 369, 119 N. E. 554 (1918), it was held that an employee might obtain workmen's compensation for injuries received while being transported to work in the employer's conveyance. Yet in Tallon v. Interborough Rapid Transit Co., 232 N. Y. 410, 134 N. E. 327 (1922), four years later, the same court permitted recovery in a wrongful death action, where the employee had been negligently injured while riding to work in his employer's conveyance. Three members of the court dissented, holding that the earlier decision was binding on the issue whether such facts made the injury compensable, only.