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Workmen's Compensation

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that irrespective of the contents of such documents appeals to the court of appeals from a denial of the admission thereof to probate are not equitable in nature and therefore do not invoke the chancery powers of the court, requiring trials *de novo.*

No Right to Purchase Mansion House Where Property Specifically Devised

It was held in In re *Reed's Estate* [18] that a devise by testatrix to her husband for life of all realty owned by testatrix in Donnelsville, Ohio, with a remainder to testatrix' daughter, constituted a specific devise within the statute[19] giving the surviving spouse the right to purchase at the appraised value the mansion house "if not specifically devised." Therefore, the relict husband who elected to take against the will and under the law did not have the right to purchase at the appraised value that part of the property specifically devised to the daughter.

Right of Murderer to Take Property Exempt From Administration

In *Tyack v. Tipton,*[20] where a husband murdered his wife and the wife died intestate, it was held that the statute[21] prohibiting a convicted murderer from taking any part of the estate of the person killed, whether under intestate succession or under the will of the victim, does not apply to a surviving spouse's right to take property exempt from administration, since exempt property does not come to the murderer by intestate succession.

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WORKMEN'S COMPENSATION

Procedural matters furnished the bulk of materials for judicial decisions in this field during 1953. Amenability was involved in two cases. A husband and wife operating a grocery store employed two persons plus an odd-job workman who had full-time employment elsewhere. The workman was injured while installing storm windows in the private apartment of the grocery operators. The court held that the workman was not an employee in the regular course of business; hence the grocery

[18] 65 Ohio L. Abs. 129, 114 N.E.2d 314 (Clark Probate 1952).
[19] OHIO REV. CODE § 2113.38 (OHIO GEN. CODE § 10509-89).
[20] 65 Ohio L. Abs. 397, 115 N.E.2d 29 (App. 1951)
[21] OHIO REV. CODE § 2105.19 (OHIO GEN. CODE § 10503-17).

operation did not employ the three or more persons required for amenability.[1]

In proceedings by the state to collect an Industrial Commission award for an employee from a non-complying employer, the question of amenability cannot be raised when the issue was settled in the prior proceedings which determined the award.[2]

When the factual issue of right to participate in the State Insurance Fund has been determined against the claimant by the common pleas court, on appeal, the court of appeals can, at most, reverse on the weight of the evidence and remand. It cannot hold as a matter of law that the claimant is entitled to participate.[3] The supreme court will also deny a mandamus writ to order the Industrial Commission to find that no injury was received in the course of and arising out of the employment. This issue of fact is within the Commission's jurisdiction for determination.[4] The statute of limitations allowing two years after the injury in which to file a claim will not permit a modification of an award to include a new back injury. No evidence of its relation to the original injury was presented; a new and distinct injury was barred because the two years period had expired.[5] The Industrial Commission, however, has authority to change an award, if acted upon in a timely manner, from a temporary partial disability to a temporary total disability. Substantial evidence of error in the initial order is required for this alteration.[6]

Two cases presented important decisions on the crucial medical testimony for a workmen's compensation claim. A doctor who attended the claimant was held not precluded by the physician-patient privilege in giving expert testimony for the Commission in response to a hypothetical question. What the doctor had learned or observed while attending the workman and opinions formed therefrom must be disregarded, however.[7] But for a doctor to testify as to the correctness of another physician's testimony and to state his own conclusion as to what the other physician found, invades the province of the trier of fact — the jury. Such testimony is incompetent.[8]

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[1] Hoffman v. Powell, 94 Ohio App. 80, 114 N.E.2d 593 (1952).

[2] State v. Hinkle, 113 N.E.2d 146 (Summit Com. Pl. 1953).

[3] Miller v. Industrial Comm'n, 158 Ohio St. 551, 110 N.E.2d 481 (1953).

[4] State *ex rel.* New Way Family Laundry v. Industrial Comm'n, 115 N.E.2d 406 (Ohio App. 1952).

[5] Miller v. Spicer Mfg. Co., 159 Ohio St. 571, 113 N.E.2d 4 (1953)

[6] State *ex rel.* Kilroy Struct. Steel Co. v. Morse, 159 Ohio St. 372, 112 N.E.2d 322 (1953).

[7] Strizak v. Industrial Comm'n, 159 Ohio St. 475, 112 N.E.2d 537 (1953).

[8] Fox v. Industrial Comm'n, 65 Ohio L. Abs. 343, 114 N.E.2d 451 (Muskingum Com. Pl. 1953).

In applying the New York workmen's compensation law, the Ohio Court of Appeals held that the two year statute of limitations barred the personal injury claims of the workman's assignee as against the tortfeasor. New York general law gives a six year limitation period for causes of action created by statute. Workmen's compensation is not such a cause of action. Common law personal injury rights, not new statutory causes of action, are the foundation for workmen's compensation.[9]

Substantive issues in 1953 included causal relations between the accident incident and the claimant's physical or mental condition, who was an employee and what is an accident in the course of and arising out of employment.

A worker subjected to police investigation on the suspicion that his truck injured a pedestrian, suffered a cerebral hemorrhage claimed to be caused by anxiety and worry. Such injury was not compensable.[10] No causal connection could be established where the expert medical witness answered a hypothetical question which included the fact that claimant's exertion was a normal exertion and not an unusual one.[11] Likewise, where a hypothetical question to the doctor included the fact that dust particles entered claimant's eye on a certain day, a fact not testified to, a verdict that plaintiff contracted purulent conjunctivitis and should participate in the fund cannot be supported.[12] Also, it is proper to charge the jury that before a claimant can participate in compensation benefits for an eye injury, a 25% loss of vision must be proved under the statute.[13]

When a novelty manufacturer furnished materials and told workers what to do and how to do it, the workers were employees for purposes of workmen's compensation coverage even though the work was done in the workers' homes because a fire had destroyed the plant.[14]

An ice company's night supervisor was killed while a pedestrian some distance from the plant during work hours. When a worker has a fixed situs for work and is killed at a distance from it, the presumption is that death did not occur in the course of or arise out of the employment. Evidence to the contrary is necessary to refute.[15]

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[9] Hartford Acc. & Indem. Co. v. Proctor & Gamble Co., 91 Ohio App. 573, 109 N.E.2d 287 (1952).

[10] Toth v. Standard Oil Co. 160 Ohio St. 1, 113 N.E.2d 81 (1953)

[11] Heath v. Standard Oil Co., 112 N.E.2d 405 (Ohio App. 1953)

[12] Peterchak v. Carnegie-Illinois Steel Corp., 92 Ohio App. 431, 109 N.E.2d 509 (1951).

[13] Bacetti v. Nat. Tube Co., 65 Ohio L. Abs. 80, 113 N.E.2d 925 (App. 1952)

[14] Look v. Hinkle, 113 N.E.2d 611 (Summit Com. Pl. 1950)

[15] Jump v. City Ice & Fuel Co., 92 Ohio App. 329, 110 N.E.2d 29 (1952)