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Workmen's Compensation

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gleaned from this opinion. In constructing a written memorandum of a prior verbal antenuptial agreement, for execution after the marriage of the parties, counsel should be mindful of the court's statement that, "It seems to be essential . . . that the written agreement expressly refer to the antenuptial agreement and affirmatively shows that it is a memorandum of the oral antenuptial agreement."[54]

GEORGE N. ARONOFF

WORKMEN'S COMPENSATION

In 1960, judicial decisions in this area were surprisingly few in number and less significant in importance. Unlike prior years when the definition of injury in *Dripps v. Industrial Commission*[1] created much litigation, the 1959 amendment redefining injury appears to have reduced the litigious contentions of prior years.[2] Undoubtedly, the half-decade which has expired since the major procedural amendments of 1955 went into operation has caused most judicable issues in this area to have run their course.

In general, the areas covered by judicial decisions last year concerned the general regulations pertaining to the workmen's compensation fund, certain procedural matters and various evidentiary problems.

THE WORKMEN'S COMPENSATION FUND

In *Corrugated Container Company v. Dickerson*,[3] the Ohio Supreme Court reiterated that the State Insurance Fund was "a trust fund for the benefit of employers and employees."[4] Further, the court held that no part of this fund could be transferred into the General Revenue Fund even when authorized by the General Appropriation Act to provide for administrative costs. Both the Ohio Constitution[5] and the Ohio Revised Code[6] prohibit any such use of this fund.

In another case which concerned the workmen's compensation fund, the Industrial Commission was considered to have authority to approve a compromise settlement of a death claim benefit and to charge it against an employer's account even if the employer had no knowledge of the settlement.[7] The administrator of the Bureau had recommended settlement and, subsequently, payment had been made under this recommendation. A writ of prohibition was denied since what was to be prohibited had already been performed.

54. *Id.* at 574, 167 N.E.2d at 103.

PROCEDURAL MATTERS

Two cases last year involved practice before the Commission and the Bureau. A sweeping injunction barring laymen from any appearances on behalf of claimants, or preparation of forms and giving advice on claimants' rights was invoked by the Stark County Common Pleas Court.[8] The effect of this ruling on all practice by laymen will become a major problem. On October 19, 1960 a public hearing was conducted by the Advisory Council to the Bureau of Workmen's Compensation and the Industrial Commission, at which the broad implications of this Stark County ruling were discussed by employer and employee representatives.[9] As the year closed, the problem of what rules of practice pertaining to laymen should be adopted still confronted the Commission.

Attorney's fees also were considered in 1960.[10] A court of first instance upheld a contingent fee contract for prosecuting a claim even though it would exceed the amount of the fee set by the Commission.[11]

In considering the judicial procedures of appeal, the Ohio Supreme Court this year held that a motion to the Commission to re-evaluate a permanent partial disability claim was appealable to the courts. The decision was based on something other than the extent of disability, which is not appealable to the courts under the statute. The Commission had determined that this claim was included within a lump sum settlement.[12] Further, a court of appeals held that Ohio Revised Code section 2323.04, authorizing dismissal of a petition for want of prosecution, was inapplicable to appeals by petition from final orders of the Industrial Commission under section 4123.51 of the Code.[13] Also, mandamus can compel the Commission to pay a claim after the Commission has affirmed the award

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1. 165 Ohio St. 407, 135 N.E.2d 873 (1956).
2. See Schroeder, *Legislative Amendments to Ohio Workmen's Compensation in 1959*, 20 OHIO ST. L. J. 601 (1959).
3. 171 Ohio St. 289, 170 N.E.2d 255 (1960).
4. *Id.* at 291, 170 N.E.2d at 256.
5. OHIO CONST. art. II, § 35.
6. OHIO REV. CODE § 4123.30.
7. State *ex rel.* Gem Coal Co. v. Young, 109 Ohio App. 457, 164 N.E.2d 190 (1959).
8. McMillen v. McCahan, 167 N.E.2d 541 (Ohio C.P. 1960). See also discussion in *Administrative Law and Procedure* section, p. 445 *supra* and *Attorneys at Law* section, p. 453 *supra.*
9. Minutes, Workmen's Compensation Advisory Council, October 19, 1960.
10. See Schroeder, *Workmen's Compensation, Survey of Ohio Law — 1959*, 11 WEST. RES. L. REV. 453, 458 (1960).
11. Burgess v. Oakley, 169 N.E.2d 512 (Ohio Munic. Ct. 1960).
12. Butler v. Pittsburgh Plate Glass Co., 171 Ohio St. 19, 168 N.E.2d 150 (1960).
13. Cleere v. Inland Mfg. Div., General Motors Corp., 109 Ohio App. 192, 164 N.E.2d 595 (1959).

granted by the Regional Board of Review even though the employer has appealed to the court.[14]

EVIDENTIARY PROBLEMS

Again in 1960 there were several judicial decisions on the weight of medical proof necessary to substantiate a workmen's compensation claim. In one case it was held that the failure of a medical witness to testify as to a direct causal relationship between the injury and the disability precluded compensability.[15] In still another case, a medical witness was allowed to consider the causal relationship between an injury suffered in 1944 and a 1955 heart lesion.[16] However, before the witness could state that the 1944 injury probably aggravated, accentuated and also accelerated some underlying disease, he must base such a statement on his own knowledge or other facts shown by the evidence.[17]

Where a claimant was injured when he stooped to pick up a quarter of beef from the floor during an unloading process, his back strain did not result from a sudden mishap or unusual event which occasioned increased effort or strain. Compensation was denied for this injury occurring in 1953. The court noted the 1959 amendment which would permit compensation had the event occurred after the effective date of the amendment, November 2, 1959.[18]

A disability arising from a fall on ice and snow in the employer's driveway, which was the sole entrance to the plant, was held compensable.[19] The unusual condition of the driveway had been called to the employer's attention. The combined and concurring acts of the elements and the employer provided a compensable claim. *Walborn v. General Fireproofing Company*[20] was distinguished because in this earlier case the supreme court had stated that nothing in the ice and snow conditions of employer's parking lot made the lot "in the slightest degree different from that experienced by the general public."[21] In the instant case, there was substantial difference as a result of the employer's failure to clear the ice and snow after being notified.

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14. State *ex rel.* Hatfield v. Industrial Comm'n, 165 N.E.2d 211 (Ohio Ct. App. 1960). See also discussion in *Administrative Law and Procedure* section, p. 443 *supra.*

15. Neighbors v. Administrator, Bureau of Workmen's Compensation, 110 Ohio App. 464, 168 N.E.2d 403 (1959).

16. Smith v. Young, 109 Ohio App. 463, 168 N.E.2d 3 (1958).

17. *Id.* at 469, 168 N.E.2d at 8, quoting Burens v. Industrial Comm'n, 162 Ohio St. 549, 124 N.E.2d 724, 725 (1955).

18. Swift & Co. v. Wreede, 110 Ohio App. 252, 168 N.E.2d 757 (1959).

19. Barret Div., Allied Chem. & Die Corp., 110 Ohio App. 316, 169 N.E.2d 453 (1960).

20. 147 Ohio St. 507, 72 N.E.2d 95 (1947).

21. *Id.* at 510, 72 N.E.2d at 97.