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Workmen's Compensation -- Falls Due to Dizziness, Vertigo, Epilepsy and Like Causes

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ment in any event to the mortgagee, it is submitted that a statute in the nature of the one in Alabama would best serve the interests of both. It should include, in addition, a clause providing that only so much property should be sold as is necessary to satisfy the debt then due. Under such a statute partial foreclosure would then operate to cut off the lien of the mortgage in one case: that is, where only a portion of the debt had matured and the mortgagee foreclosed on the whole property without preserving the lien.

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Workmen's Compensation—Falls Due to Dizziness, Vertigo, Epilepsy and Like Causes

It was recently held by the Georgia Court of Appeals that a fractured skull sustained by a department store salesman, when he suffered an epileptic attack and fell against a sharp cornered table, was an accident arising out of the employment. The State Board of Workmen's Compensation granted the award on a finding that the exertion of the work brought on the attack.[1] Without rejecting the finding of the Board, the Court rather ambitiously advanced an entirely different theory. It was said that irrespective of whether the exertion caused the attack, the injury was compensable, since the table which claimant struck constituted a "special hazard" of the employment.[2] That anything so commonplace as a table should be denominated a "special hazard" and made the basis of liability for an injury may shock those employers who are not aware of some of the recent trends in workmen's compensation.

The Georgia statutes[3] do not make the employer liable for every accident which happens while the worker is on the job, but require the employment in some manner contribute to the injury. In theory, at

[1] The finding of exertion was not based on any immediate act, instead the whole nature of the employment was examined, which included climbing stairs and standing for a ten-hour work day.

Note that North Carolina apparently requires some particular act of exertion beyond the usual requirements of the employment. Neely v. Statesville, 212 N. C. 365, 193 S. E. 664 (1937); Moore v. Engineering & Sales Co., 214 N. C. 424, 199 S. E. 605 (1938); For annotations of N. C. Industrial Commission decisions, see N. C. W. C. A. Ann. (1946) p. 25-26. *But see* Edwards v. Piedmont Publishing Co., 227 N. C. 184, 187, 41 S. E. 2d 592, 594 (1947) (concurring opinion).

[2] United States Casualty Co. v. Richardson, — Ga. App. —, 43 S. E. 2d 793 (1947). Compare language of same court twelve years before where workman fainted and fell at water fountain. The decision was found not to be in conflict with the main case. "The better and more generally followed rule would seem to be that followed by Judge Stanley of the Department of Industrial Relations, to the effect that an injury arising from a physical seizure not induced by or related to the employment is not such an accident as would afford compensation, even though it might appear that the particular consequences of the seizure were such as would not have resulted elsewhere than at the place of the employment." Bibb Mfg. Co. v. Alford, 51 Ga. App. 277, 179 S. E. 912, 914 (1935).

[3] GA. CODE ANN. (Park, 1937) §114-102 (1935). "'Injury' and 'personal injury' shall mean only injury by accident arising out of and in the course of the employment. . . ."

least, this contributing factor must be one peculiar to the employment and not common to the general public.[4] The courts, torn between a desire to construe the statute liberally in favor of the employee, and at the same time bedeviled with common law notions of proximate cause, have not always reached uniform nor logical decisions.

In early cases where an employee's fall was brought on solely by a personal disease,[5] compensation was granted only when the employment required the worker to be in such a position or location that any fall would result in almost certain injury. This "location doctrine" seems to stem from an English case where an epileptic fell into a hatchway near which his employment required him to stand.[6] The case was followed in American courts where a painter became dizzy and fell eleven feet from a scaffold,[7] where a factory worker fell into a nearby machine from a heart attack,[8] and where an epileptic fell into a pit of hot ashes.[9] The "special hazard" of these situations was apparent. However, some American courts took the view that although the distance one fell or the object one fell against might increase the injury, it did not change the liability for a fall caused by a personal condition of the employee.[10] The courts which accepted the "location doctrine," rationalized that the fall itself constituted an accident and was the immediate proximate cause of the injuries. If the employment in any manner increased the risk or contributed to the injury, then the original cause of the fall, i.e., the physical condition of the employee, was too remote for the court to consider.[11] Simply put, the difference in the two theories seems to be,

[4] "But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause, and comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work, and not common to the neighborhood." Liberty Mutual Ins. Co. v. Neal, 55 Ga. App. 790, 191 S. E. 393, 399 (1937).

[5] To be distinguished are cases where the employee falls from some known cause connected with the employment, and not from a personal condition. In such cases, compensation is almost universally given. Horovitz, *Current Trends in Workmen's Compensation,* 12 LAW SOCIETY JOURNAL 611, 649 (1947).

[6] Wicks v. Dowell & Co., 2 K. B. 225 (1905); *Accord,* Wilson v. Chatterton, K. B. 360 (1946) (Agriculture worker had epileptic fit, fell into furrow half full of water and drowned). *Contra:* Butler v. Burton-on-Trent Union, 106 L. T. N. S. 824, 5 B. W. C. C. 355 (1912) (where employee suffering from tuberculosis, in fit of coughing fell down stairways).

[7] Gonier v. Chase Companies, 97 Conn. 46, 115 Atl. 677 (1921).

[8] Dow's Case, 231 Mass. 348, 121 N. E. 19 (1918).

[9] Rockford Hotel Co. v. Industrial Commission, 300 Ill. 87, 132 N. E. 759 (1921). For annotations of many cases see: 19 A. L. R. 95; 28 A. L. R. 204; 60 A. L. R. 1299; 5 SCHNEIDER, WORKMEN'S COMPENSATION TEXT §1376 (3d ed. 1946); Horovitz, *Current Trends in Workmen's Compensation,* 12 LAW SOCIETY JOURNAL 611, 649 (1947).

[10] Cox v. Kansas City Refining Co., 108 Kan. 320, 195 Pac. 863, 19 A. L. R. 90 (1921) (epileptic fell on hot pipes); Van Gorder v. Packard Motor Car Co., 195 Mich. 588, 163 N. W. 107 (1917) (epileptic fell off scaffold); Brooker v. Industrial Commission, 176 Cal. 275, 168 Pac. 126 (1917) (epileptic fell thirty-nine feet off scaffold).

[11] See note 9 *supra.*

that in the former the court isolates the reason for the fall and looks solely to the injury, while in the latter, the court examines only the factors producing the fall and ignores the injury. Obviously, the correct rule depends on the particular fact situation. If the employment truly creates a "special hazard" which enhances the injuries, an award of compensation is proper. The great majority of courts today hold that falls from purely personal physical conditions are compensable if from a height, on a stairway, or against any object.[12] But what of a fall to the bare floor,[13] or against some objects found in every home? How then, can the fall be said to be an "accident arising out of the employment"? Perhaps the only answer is in the often repeated statement "that this is an act for the giving and not the withholding of compensation."[14] But with only this guide the decisions are likely to go to ridiculous lengths. The court which finds that a concrete floor is more apt to cause an injury than one of wood, will soon be called on to determine that oak is harder than pine, that pine is harder than rubber and *ad absurdum*. Unfortunately, many courts continue to give lip service to the term, "special hazard" and find in these situations that except for the employment the particular consequences of the accident would not have occurred. New terms such as "contributing cause"[15] and "concurring cause"[16] have flourished but have added little to the formulation of a clear test.

Some courts have revised their definitions of "arising out of" to include not just "special hazards" of the employment, but also risks which are common to the general public, and which in hindsight can be said to have contributed to the injury.[17] But once the test of "special hazard" is abandoned, the courts are in effect striking from the statutes the phrase "arising out of." While such a step would no doubt eliminate

[12] National Automobile & Casualty Ins. Co. v. Industrial Accident Commission, 75 Cal. App. 2d 677, 171 P. 2d 594 (1946) (epileptic fell against sawhorse—court in reviewing many cases said overwhelming majority favor compensation where the injury is contributed to by some factor peculiar to the employment, even though the fall has its origin in some idiopathy of the employee); Connelly v. Samaritan Hospital, 259 N. Y. 137, 181 N. E. 76 (1932) (fall against a laundry table due to cardiac condition); Tavey v. Industrial Commission, 106 Utah 479, 150 P. 2d 379 (1944) (fainted and fell against bookshelf). For annotations of recent cases, see 5 SCHNEIDER, WORKMEN'S COMPENSATION TEXT §1376 (3d ed. 1946).

[13] National Automobile & Casualty Ins. Co. v. Industrial Accident Commission, 75 Cal. App. 2d 677, 171 P. 2d 594 (1946) (court says states are about evenly divided where fall is to bare floor).

[14] 62 L. Q. REV. 300, 301 (1946).

[15] Reynolds v. Passaic Valley Sewerage Commission, 130 N. J. L. 437, 33 A. 2d 595 (1943), *aff'd*, 131 N. J. L. 327, 36 A. 2d 429 (1944).

[16] Connelly v. Samaritan Hospital, 259 N. Y. 137, 181 N. E. 76 (1932).

[17] Savage v. St. Arden's Church, 122 Conn. 343, 350, 189 Atl. 599, 601 (1937); Connelly v. Samaritan Hospital, 259 N. Y. 137, 181 N. E. 76 (1932); *accord*, Goodyear Aircraft Corp. v. Industrial Commission, 62 Ariz. 398, 409; 158 P. 2d 511, 516 (1945). *See* Burroughs Adding Machine Co. v. Dehn, 110 Ind. App. 483, 493, 39 N. E. 2d 499, 507 (1942).

much litigation, it would make the employer the insurer of his employees subject to falls from idiopathic conditions. Any fall, while on the job, resulting in injury would be compensable. Without concern as to whether the Workmen's Compensation Statute should be so extended, it seems clear that the matter should be left to the legislatures and not to the courts.

The marked trend towards greater liberality in this field is particularly noticeable from an examination of the decisions of the North Carolina Industrial Commission over the last fifteen years. In 1931, when a filling station employee had a convulsion and fell into a showcase, the Commission found the resulting injuries did not arise out of a risk incident to the employment.[18] Similar results were reached when workers fell due to fainting,[19] cerebral hemorrhages,[20] and dizziness.[21] In 1935, however, compensation was allowed where a worker became dizzy and fell from a roof.[22] And in 1940, the Commission clarified their position by stating that when the employment subjects the worker to especial danger from falls, injuries received thereby are compensable, "irrespective of whether or not the condition of the employee, which originally set in motion the dangerous hazard of the employment was foreign or connected with his employment."[23] The gamut was completed in 1946 when the Commission said it was immaterial whether an epileptic seizure caused a worker to fall backwards on a cement floor, since the cement constituted a "special hazard" and a greater risk than the worker would have been subjected to outside the employment.[24]

It is not entirely clear just where the North Carolina Supreme Court stands in this controversial field in the absence of a decision directly in point. When a fire chief, during a fire, collapsed on a stairway from a heart attack, compensation was denied since the court could find no accident.[25] But when a millworker fell backwards from some undetermined cause, compensation was allowed. It was pointed out that when the cause of a fall is unknown it is presumptive that it arose out of the employment.[26] In a dictum the court distinguished cases where the fall was due to a physical infirmity or some other force external to

[18] Boyette v. Thompson-Wooten Oil Co., 2 I. C. 378 (1938).
[19] Beam v. Presbyterian Hospital, 4995 (1935) N. C. W. C. A. Ann. (1946) p. 24.
[20] Kirkman v. Greensboro, 8530 (1939) N. C. W. C. A. Ann. (1946) p. 24.
[21] Cooke v. Roanoke Mills Co. No. 2, A-1288 (1942) N. C. W. C. A. Ann. (1946) p. 24.
[22] Garland v. Bordner & Co., 4809 (1935) N. C. W. C. A. Ann. (1946) p. 24.
[23] Howard v. J. L. Miller, 9324 (1940) N. C. W. C. A. Ann. (1946) p. 24.
[24] Record, p. 61, Devine v. Dave Steel Co., 227 N. C. 684, 44 S. E. 2d 77 (1947).
[25] Neely v. Statesville, 212 N. C. 365, 193 S. E. 664 (1937) (evidence that death was due to the heart attack instead of the fall).
[26] Robbins v. Bossong Hosiery Mills, 220 N. C. 246, 17 S. E. 2d 20 (1941).

the employment.[27] In 1946, the court handed down a decision which appears to overrule that dictum; in fact the Georgia court in the principal case cited the North Carolina decision as supporting the theory of compensation for a fall irrespective of its cause if the employment enhances the injuries. In that case an employee, suffering from a disease which caused fainting, fell from the window of a washroom on the eleventh floor of an office building. While there was at least strong circumstantial evidence that the deceased fainted, the hearing commission found as a fact, based on investigations conducted ten months later, that in an effort to get air at the open window, the deceased slipped on the "very slick tile floor" which constituted a "special hazard." On appeal the court treated this as a case of first impression and favorably reviewed cases from other jurisdictions where compensation had been granted for falls due to idiopathic diseases.[28] But it should be noted these cases are distinguishable in light of the findings of the commission. Here, the slippery floor, not the disease, caused the fall and compensation could have been granted by virtue of the "special hazard."[29] Unless one is to believe that the court was dissatisfied with the finding of facts of the commission and felt that the fall was actually the results of fainting, it is difficult to see why the court relied on a line of decisions to support that point.

A 1947 decision has failed to throw any light on the position of the North Carolina Supreme Court. In this case a watchman, while lowering a flag, fell backwards onto the cement on which he was standing, and received a fractured skull from which he never regained consciousness. Although there was evidence that deceased suffered from epilepsy, the commission rejected any inference that this fall was the results of an epileptic attack. Instead the cause of the fall was left undetermined, but the commission found death arose out of the employment because deceased was required to stand on cement.[30] The court, without adopting all of the reasons assigned by the commission, affirmed the award.[31] Since the cause of the fall was unexplained the court was not called on

[27] "If, however the cause is known and is independent of, unrelated to, and apart from the employment—the results of a hazard to which others are equally exposed—compensation will not be allowed." Robbins v. Bossong Hosiery Mills, 220 N. C. 246, 248, 17 S. E. 2d 20, 22 (1941).

[28] Rewis v. New York Life Ins. Co., 226 N. C. 325, 38 S. E. 2d 197 (1946).

[29] Howell v. Standard Ice & Fuel Co., 226 N. C. 730, 40 S. E. 2d 197 (1946) (fell from trestle); Brown v. Carolina Aluminum Co., 224 N. C. 766, 32 S. E. 2d 320 (1944) (pushed backward on cement floor by fellow worker); Gorden v. Thomasville Chair Co., 205 N. C. 739, 172 S. E. 485 (1934) (slipped on ice); Clark v. Carolina Cotton & Woolen Mills, 204 N. C. 529, 168 S. E. 816 (1933) (slipped on stairway).

[30] Record, p. 37, Devine v. Dave Steel Co., 227 N. C. 684, 44 S. E. 2d 77 (1947) (There was expert medical testimony that a fall onto concrete is more likely to produce a fractured skull than one onto dirt.).

[31] Devine v. Dave Steel Co., 227 N. C. 684, 44 S. E. 2d 77 (1947).

to decide the effect of a fall which resulted from a condition personal to the employee.[32]

However, one gathers from the tenor of these decisions that the court is willing to go along with a liberal interpretation of the Workmen's Compensation Act. Until an employee survives his fall and gives direct testimony as to the cause, leaving no room for favorable presumptions or fact finding based on circumstantial evidence, we can only guess as to the real position of the court. But if one can rely on dicta and the overall trend toward liberality, it seems probable that any fall resulting in injuries will be compensable in the future. It will be interesting to see how long the court can reconcile such awards with their traditional requirement that for injury to arise out of the employment it must be by a peculiar risk, uncommon to the general public.[33] Liability without fault has become generally accepted, but it now appears employers are facing liability without practical means of avoidance.[34] Some employers may find the only alternative to upholstering their entire premises will be to refuse to hire those suffering from physical infirmities.[35]

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[32] Robbins v. Bossong Hosiery Mills, 220 N. C. 246, 17 S. E. 2d 20 (1941).

[33] Bryant v. T. A. Loving Co., 222 N. C. 724, 24 S. E. 2d 751 (1943); Lockey v. Cohen, Goldman & Co., 213 N. C. 356, 196 S. E. 342 (1938); Plemmons v. White's Service Inc., 213 N. C. 148, 195 S. E. 370 (1938).

[34] Much the same trend has occurred where the injury is on the street or by act of God. "The street hazard constitutes a well-recognized relaxation of this rule: If an employee has been sent out on the streets and sustains an injury there, he can recover compensation, although, he was exposed to no more danger than the general public on the streets at the time." Note, 20 TEX L. REV. 387, 388 (1942); See Note, 23 N. C. L. REV. 159 (1945). For examples of injury by act of God, see Caswell's Case, 305 Mass. 500, 26 N. E. 2d 328 (1940) (when hurricane caused wall of factory to fall on employee, compensation allowed even though it was conceded that, by remaining in the brick building, employee was subjected to less hazard than he would have been at home). For recent cases see Horovitz, *Current Trends in Workmen's Compensation*, 12 LAW SOCIETY JOURNAL 466, 511 (1947).

[35] 42 *Science N. L.* 307 (1942) (It is estimated that there are 350,000 epileptics in the United States, two thirds of whom are capable of doing useful work, but can't get jobs because many employers fear they will be made liable for the consequences of an attack while on the job. It is estimated that more than 15% of the brain injuries of the last war, will result in epilepsy.).