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Workmen's Compensation -- Injuries Sustained by Employee While Going to and from Work

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all his estate, describing it as "being the one-half interest in the community property now owned by me and my said wife." It was found that the testator owned the property individually, and the court held that his descriptive language could only be regarded as the expression of his opinion and did not convert the property into community property or operate as a devise of half thereof to his wife. The children took all.11

By the holding in the principal case it is apparent that the North Carolina Supreme Court has extended the doctrine of devises and bequests by implication further than it had yet done. The result it reaches is in conflict with the holdings of the jurisdictions discussed above. Yet it seems that the result may well be the more desirable one, since it more probably accords with the testator's intent as to whom the property should go.

Paul McMurray

Workmen's Compensation—Injuries Sustained by Employee While Going to and from Work

In Hardy v. Small1 deceased, a thirteen year old boy, lived with his family on the farm of defendant under an arrangement whereby the family paid no rent, but was allowed to occupy a house owned by defendant in return for farm labor supplied by the family. Deceased lived on the east side of a public highway which ran through defendant's farm, and he had the duty of feeding defendant's livestock at a barn located 350 to 400 feet from his home on the west side of the highway. Deceased was required to feed the livestock twice a day and was paid $1.50 per week for this service. On November 30, 1955, deceased had crossed the highway, gone to the barn, fed the livestock, and was returning to his home when he was struck by an automobile on the highway and killed. Compensation proceedings were instituted.2 The Industrial Commission found that the death was by accident rising out of and in

11 See Circuit v. Perry, 23 Beav. 275, 53 Eng. Rep. 108 (Rolls 1856). Where X willed all his real and personal property to Y but stated that on his death, part of his father's property would, under his father's will, devolve upon his nephews, when in fact the property then belonged to X, held, the property of the father's estate did not pass to the nephews under X's will.

2 N.C. GEN. STAT. § 97-13 (b) (1950) expressly excepts farm labor from the provisions of the Workmen's Compensation Act, but provides that if any employer of farm labor has purchased workmen's compensation insurance or insurance to cover his compensation liability the employer shall be conclusively presumed, during the life of the policy, to have accepted the provisions of the act. Defendant in this case had such a policy which was active at the time of the death of the decedent.
the course of the employment within the purview of the Workmen’s Compensation Act and granted compensation. On appeal this was affirmed by the superior court and the supreme court.

The opinion recognized the general rule that an injury by accident is not compensable if sustained by the employee while on his way to or returning from the premises where the work of his employment is performed. However, exceptions to this rule have developed in North Carolina and compensation has been allowed where the employee was going to or returning from the place of his employment if: the employer either expressly or impliedly furnished a vehicle for that purpose; the employer pays the expense of transportation; the employer provides a method for transportation of the employees as an incident of the contract of employment; the employee was performing a “special mission”

The court rejected the contention made by defendant that the employee was an independent contractor. See McCraw v. Calvine Mills, Inc., 233 N.C. 524, 64 S.E.2d 658 (1951); Hayes v. Elon College, 224 N.C. 11, 29 S.E.2d 137 (1944).

The employer provided employee with a truck to be used for the purpose of going to and coming from work. Employee was killed in a collision while on his way from his home to the employer’s plant. Compensation award was affirmed.

Employer paid automobile expenses and employee drove his own car to the place of employment. An accident occurred on one such trip and employee was injured. The award of compensation was affirmed. Hunt v. State, 201 N.C. 707, 203 (1931); 1 Larson, Workmen’s Compensation Law § 15.10 (1952); 8 Schneider, Workmen’s Compensation Text § 1710 (1951).

Employer furnished a truck which picked the employees up and transported them from their homes to the place of employment. Employees were entitled to use the conveyance by virtue of their contract of employment. Employee was allowed compensation when injured while on the conveyance being transported to work. Lassiter v. Carolina Tel. & Tel. Co., 215 N.C. 227, 1 S.E.2d 203 (1931) (compensation was refused when the transportation was furnished gratuitously or as a mere accommodation). See also Mion v. Atlantic Marble Co., 217 N.C. 743, 9 S.E.2d 501 (1940). Employer-provided conveyance was overcrowded. Employer’s foreman gave employee the option of “crowding in” or riding with another employee who had driven his own car for personal convenience. Employee chose the latter and was fatally injured when that automobile had an accident. Held, compensation allowed.
at the request of the employer;\textsuperscript{10} the employee makes use of the streets after the hours of his regular employment in the performance of a duty connected to the employment, as shown by an established custom.\textsuperscript{11}

The question presented in the \textit{Hardy} case was one of first instance in North Carolina and, by affirming the award of compensation, the court aligned itself with other jurisdictions which on one of several theories have allowed compensation in specific instances for street injuries\textsuperscript{12} and closely analogous railroad crossing injuries sustained by an employee while going to or coming from work.\textsuperscript{13} Most of the cases have adopted the theory that if the point at which the injury occurred, even though it is not on the premises of the employer, lies on the only route, or at least the normal route, which the employees must traverse to reach the place of employment, then the hazards of that route become the hazards of the employment.\textsuperscript{14} The North Carolina Supreme Court

\textsuperscript{10} Massey v. Board of Education, 204 N.C. 193, 167 S.E. 695 (1933). Claimant was employed as a janitor at a rural school and had been instructed by the principal to stop by a grocery store and purchase cleaning supplies. Claimant left his home on the way to work and was crossing a street to the grocery store when he was struck by an automobile. Compensation award affirmed. \textit{But see} Davis v. North State Veneer Corp., 200 N.C. 263, 156 S.E. 859 (1931). The employee made a voluntary "special errand" during his off duty hours, and it was held that injury occasioned when the employee was struck by an automobile and killed while on this mission was not an injury arising out of and in the course of the employment. See also Wilkie v. Stancil, 196 N.C. 794, 147 S.E. 296 (1929).

\textsuperscript{11} Hinkle v. Lexington, 239 N.C. 105, 79 S.E.2d 220 (1953), 32 N.C.L. Rev. 372 (1954). Employee was a cemetery keeper for the city. His duties were to care for the city cemeteries, to cut the grass, sell cemetery lots, dig graves, remove surplus dirt, and perform such other duties as were incidental to the position of cemetery keeper. It was his custom nearly every evening, and had been for many years, to visit the funeral homes of the city to learn if any graves were to be dug, funerals arranged, or cemetery lots sold. On the night of his death employee had finished his duties at the cemetery and set out on his usual rounds from his home to the funeral homes, but in crossing a street he was struck by an automobile and killed. Compensation was awarded on the ground that the injury arose out of and in the course of the employment.

\textsuperscript{12} Canoy v. State, 113 W.Va. 914, 918, 170 S.E. 184, 186 (1933), is closely analogous to the \textit{Hardy} case. In the \textit{Canoy} case the employer operated a mine, with the mine site located on one side of the highway and housing owned by the employer located on the other side. An employee was killed by an automobile as he crossed the highway while returning from his day's work at the mine. Compensation was allowed. The court stated, "[W]e are of the opinion that the use of the place of injury at the time thereof is shown to have been within the course of and resulting from the employment of claimant's decedent, by an express or implied requirement of the contract of employment of its use by the workman in going to and returning from his work." It was shown that crossing the road was the only method by which the employee could reach his home.

\textsuperscript{13} A somewhat related problem, on the question of the extent of coverage afforded "travelling employees" under the workmen's compensation laws, is the subject of a Note appearing in 23 N.C.L. Rev. 159 (1944).

\textsuperscript{14} Judson Mfg. Co. v. Industrial Comm'n, 184 Cal. 300, 184 Pac. 1 (1919); Jaynes v. Potlach Forest, Inc., 75 Idaho 297, 271 P.2d 1016 (1954); Fennimore v. Union Constr. & Holding Co., 22 N.J. Misc. 33, 35 A.2d 32 (1943); 1 LARSON, \textit{WORKMEN'S COMPENSATION LAW }§ 15.13 (1952). Two Utah cases, Bountiful Brick Co. v. Industrial Comm'n, 68 Utah 600, 151 Pac. 555 (1925), and Cudahy Packing Co. v. Industrial Comm'n, 60 Utah 161, 207 Pac. 148 (1922), are based
recognized, but refused to adopt this theory in *Bryan v. T. A. Loving Co. & Associates.* A second theory for allowing compensation in the going and coming cases is based upon the concept that the premises of the employer should be extended for a "reasonable time and distance" to afford the employee protection after he has come within the "zone" of employment. This theory is troublesome in its application and gives inconsistent results, as there is no established basis for determining what is a reasonable distance. The third theory allows compensation whenever the employee is injured by employment hazards which extend beyond the premises of the employer. The fourth theory

on this theory. In both cases the employee was killed as he crossed a railway track in order to reach his employer's premises. From a judgment in each case awarding compensation, appeal was taken to the United States Supreme Court, where the cases were heard as *Bountiful Brick Co. v. Giles,* 276 U.S. 154 (1928), and *Cudahy Packing Co. v. Farramore,* 263 U.S. 418 (1923), respectively. The court held that an award of compensation in these circumstances was in violation of the due process clause of the fourteenth amendment of the United States Constitution. The court rejected this contention, and in affirming the holding of the *Parramore* case said: "Here the location of the plant was at a place so situated as to make the customary and only practicable way of ingress and egress one of hazard. Parramore could not, at the point of the accident, select his way. He had no other choice than to go over the railway tracks in order to get to his work; and was in effect invited to do so. And this he had to do regularly and continuously as a necessary concomitant of his employment, resulting in a degree of exposure to the common risk beyond that to which the public generally was subjected." *Id.* at 426. The *Giles* case was also affirmed even though there were other routes of entrance available.

The employee, who worked as a guard at the gate of a marine base, arrived at work on a bus which discharged him across the highway from the entrance. He was killed by an automobile as he attempted to cross to the gate. A part of the employee's duties included directing traffic in the highway during rush hours. The court specifically held that defendant's premises did not include the street where the employee sometimes worked. In reversing the judgment awarding compensation the court held that the employee was subjected to no more extraordinary risk than any other person using the highway. *Cf.* Guient v. Mathieson Chemical Corp., 41 So. 2d 493 (La. App. 1949). In the *Bryan* case the court discussed *Bountiful Brick Co. v. Giles,* *supra* note 14, as precedent but rejected that case on the grounds that: (1) the Utah Workmen's Compensation Act makes injuries arising out of or in the course of employment compensable, whereas the North Carolina Act requires the injury to arise out of and in the course of the employment, and that because of this difference the Utah courts interpreted "in the course of" the employment to include "a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done"; and (2) the United States Supreme Court only decided that the Utah Workmen's Compensation Act as so applied does not contravene the due process clause of the fourteenth amendment.

* Barnett v. Britling Cafeteria Co.,* 225 Ala. 462, 143 So. 813 (1932) (this case was also rejected in the *Bryan* case on the grounds that it was in direct conflict with prior North Carolina decisions); *Leatham v. Thurston & Braidich,* 264 App. Div. 449, 35 N.Y.S.2d 887 (1942); *Industrial Comm'n v. Barber,* 117 Ohio St. 373, 159 N.E. 363 (1927).

*Compare* *Barnett v. Britling Cafeteria Co., supra* note 16, in which the employee was "immediately" outside of the entrance to the employer's premises and preparing to enter, *with* *Boles v. Service Club,* 208 Ark. 692, 187 S.W.2d 321 (1925), where employee was 31 feet from the entrance.

*Freire v. Matson Navigation Co.,* 19 Cal. 2d 8, 118 P.2d 809 (1941). This was a common law action in which employee was injured by a taxicab in a
allows compensation where the employee travels along or across a public road between two portions of his employer's premises, whether going or coming or pursuing his active duties. The reasoning here is that once the employee has come onto the premises of the employer he is within the scope of his employment and subject to the control of his employer. Thus if while in the performance of his duties he is required to cross a highway or railroad track which runs through his employer's premises he does so as an incident of the employment, and if injured while negotiating the hazard, then such injury is within the scope of his employment and compensable.

This theory, apparently the one adopted in the *Hardy* case, has been applied in allowing compensation in cases where an employee is injured while crossing a highway or railroad track which separates the employer's plant from company owned housing or from a parking lot maintained by the employer for the convenience of the employees. But in *Horn v. Sandhill Furniture Co.* the employee was

public street while on the way to work. As the traffic congestion was created by vehicles and persons which had come to do business with the employer, it was held that the employee's exclusive remedy was under the Workmen's Compensation Act. The argument of the *Freire* case is based on much the same reasoning as was rejected in the *Bryan* case. In the *Bryan* case the hearing commissioner found that more than 90% of the traffic where employee was working was composed of employees of defendant employer and other workmen who were erecting the marine base and that employee was subjected to an extraordinary and greater hazard of being injured by an automobile than that to which the public generally was subjected or that was common to the neighborhood. This reasoning was adopted by the full Industrial Commission, which found that the employee was in the "ambit" of his employment and affirmed the hearing commissioner. The supreme court rejected this argument and held that on the contrary, he was at the time on the way to his place of employment. The *Freire* case, cited in the opinion, was held to be factually distinguishable, as the hazard in that case was created by other employees of the company as such and not as members of society at large. See also 1 *Larson*, *Workmen's Compensation Law* § 15.31 (1952).


20 Corvi v. Stiles & Reynolds Brick Corp., 103 Conn. 449, 130 Atl. 674 (1925); McMillin v. Calco Chemical Co., 157 N.J. Misc. 68, 188 Atl. 694 (1936); Texas Employer's Ins. Ass'n v. Anderson, 125 S.W.2d 674 (Tex. Civ. App. 1939). See also Meissner v. Good Samaritan Hospital, 271 App. Div. 1041, 68 N.Y.S.2d 507 (Sup. Ct. 1947). Employee slept in one building owned by employer and worked in another. He was killed as he crossed a street between the two buildings. The award of compensation was affirmed in a per curiam opinion on the grounds that an "inference" could be drawn that decedent was "in the precinct of his employment" when the accident occurred. Compare, supra note 18, "precinct" as used in this case with "ambit" in the *Bryan* case, and "zone" in *Barnett v. Britling Cafeteria Co.*, 225 Ala. 462, 143 So. 813 (1932). All of these terms are used by the courts to denote instances where the compensation laws are broadened beyond the premises of the employer.

In the *Hardy* case the court, though citing *American Law Reports* notes, did not cite specific cases from other jurisdictions, and for that reason it is difficult to ascertain the exact theory adopted, but the case seems to fit in this category.

22 See note 12 supra.


injured while crossing a public highway which separated the employer's plant from a parking lot which was owned by the employer and used by the employees with its consent. Compensation was refused on the grounds that the injury did not arise out of and in the course of the employment, as the employee's duties as a laborer in the plant did not require him to be in the highway at the place where the automobile struck him.\textsuperscript{25}

The decision in the \textit{Hardy} case is another, but it is believed reasonable, step in the general trend\textsuperscript{26} of broadening the concept of injuries arising out of and in the course of the employment. It does not abrogate the rule regarding injuries sustained by employees while going to and coming from the premises of the employer, but allows an exception which is not so broad as to open a gap which would let in a flood of other "off the premises injuries cases."

\textbf{Giles R. Clark}

\textsuperscript{25} In the \textit{Horn} case employee was injured as he crossed the street to eat his lunch which he had left in his automobile. He was not paid during his lunch hour and the court held that he was on a "personal errand" at the time of his injuries. If going to and from the place of employment for lunch is not to be distinguished from going to and from work in general, it would seem that the holding of this case is somewhat weakened by the holding of the \textit{Hardy} case.

\textsuperscript{26} Probably the best example of this trend is found in two Idaho cases. In \textit{State ex rel. Gallet v. Clearwater Timber Co.}, 47 Idaho 295, 274 Pac. 802 (1929), employee was killed by a train as he attempted to cross a railroad track lying across the only road giving access to the employer's plant. Compensation was denied on the grounds that employee was not on the premises of the employer at the time of his death, but rather was coming to work, and as he had not actually reached the premises he had not come into the area where protection was given. In \textit{Jaynes v. Potlach Forest, Inc.}, 75 Idaho 297, 271 P.2d 1016 (1954), a similar accident happened at the same location. The court in allowing compensation expressly overruled the \textit{Gallet} case declaring that changing trends in the workmen's compensation law justified such a change.