St. John's Law Review

Volume 6, December 1931, Number 1 Article 17

Workmen's Compensation Act--Employer's Liability to Contribution for Subsequent Accident

Harry B. Sames

number of cases [16] that the mortgagee's contract of insurance under the mortgagee clause is not invalidated by breach of warranty by owner or mortgagor committed before or at the time the policy was issued, although such breach voided the policy as to the insured. In the *Hastings* case, Rapallo, *J.*, in his concurring opinion, referring to the mortgagee clause, said:

> "Although the clause might be construed so as to exempt the mortgagees from the consequences only of acts of the owners done after the making of the agreement, I do not think, in view of its apparent purpose, that any such distinction was intended."

One of our foremost writers [17] on the law of insurance holds that the mortgagee clause, making the mortgagee the payee and stipulating that the insurance should not be invalidated by the mortgagor's acts, constitutes an independent contract between mortgagee and insurer, and in such case, the subject matter of insurance is the mortgagee's insurable interest, and not the real estate; and the risk will not be avoided by any acts of the mortgagor, whether done prior or subsequent to, or at the time of the issuance of the policy.

The decision of the Court of Appeals is founded not only on good law but sound reason. If it were not for the holding in the instant case, what safeguards would a mortgagee have, if unknown to him, a policy covering his interest could be avoided by an insurer for misrepresentations or concealments by an owner? Surely, it cannot be said that a mortgagee is under obligation constantly to follow the acts of an owner so as to inform himself and the insurer of any breach by an owner of his warranties or representations in the policy between him and an insurer. Under a mortgagee clause, the contract is primarily between a mortgagee and an insurer, and acts of an owner should not be allowed to vitiate or interfere with such a contract.

HELEN L. BROTMAN.

WORKMEN'S COMPENSATION ACT—EMPLOYER'S LIABILITY TO CONTRIBUTION FOR SUBSEQUENT ACCIDENT.

The right of an employee to receive compensation from his employer depends upon whether the injury resulted from accident arising out of the employment. Frequently the accident results from

---

[16] Allen v. St. Paul Fire & Marine Insurance Co., 167 Minn. 146, 208 N. W. 816 (1926); Hanover Fire Ins. Co., *et al.* v. Bohn, 48 Neb. 743, 67 N. W. 774 (1896); Federal Land Bank v. Globe & Rutgers Fire Insurance Co., 187 N. C. 97, 121 S. E. 37 (1924); Fayetteville Building & Loan Assn. v. Mutual Fire Insurance Co., 105 W. Va. 147, 141 S. E. 634 (1928).

[17] 2 JOYCE, INSURANCE (1918) §2795.

a previous accident which occurred in a prior employment. In such cases it is necessary to determine which employer shall make the compensation.

In a recent New York case, *Matter of Anderson* v. *Babcock & Co.*,[1] claimant while in the employ of Carl Pierleoni fell from a scaffold striking his left hip on the ground, fracturing one of the pelvic bones. Thereafter X-ray reports showed a good union and healing of the fracture. A few months later he obtained employment with Babcock & Wilson Company. About nine months after the first accident, while lifting a heavy timber with several workmen the partly united bone broke again. *Held,* on the evidence the present disability exists by reason of the two accidents and the compensation should be equally apportioned between the two insurers. This holding was achieved by reasoning that the second accident would not have happened had it not been for the first injury, but it was immediately due to the strain caused by heavy lifting. This reasoning is sound. In the ordinary course of events a fractured pelvic bone does not result from the strain of lifting a heavy object. In this case claimant's subsequent injury was made worse and aggravated by the original injury. To quote Pound, *J.*, "Unjust it is that the first insurer should bear the entire liability when the second accident was related in large measure to the first. No less unjust it is that the first insurer should bear the entire liability if it appears that without the second accident an earlier recovery might have been had." [1a]

In the *Matter of Phillips* v. *Holmes Express Co.*,[2] the first insurer was compelled to bear the entire liability. Claimant suffered a fracture of his arm while cranking an automobile. About four months thereafter while engaged in the same occupation the fracture parted again. It was held that there was no evidence of an accident on the second occasion, except that the condition caused by the first accident was made worse. There was only one accident—the one in May. If he had not fractured his arm then he would not have sustained the injury in September. This case was correctly decided. A casual relationship was shown to have existed between the original and the subsequent accident. The present disability exists by reason of the first accident. The first insurer was justly compelled to bear the entire liability.

In contrast to the cases cited above, in *Matter of Blackley* v. *Niagara Roofing Co.*,[3] the second insurer bore the entire liability. Claimant suffered a fracture of the breast bone in 1922, receiving

---

[1] 256 N. Y. 146, 175 N. E. 654 (1931).

[1a] *Ibid.* at 149, 175 N. E. at 655.

[2] Matter of Phillips v. Holmes Express Co., 229 N. Y. 527, 129 N. E 901 (1920). See Colvin v. Emmons & Whitehead, 216 App. Div. 577, 215 N. Y. Supp. 562 (3rd Dept. 1926).

[3] Matter of Blackley v. Niagara Roofing Co., 225 App. Div. 432, 233 N. Y. Supp. 376 (3rd Dept. 1929).

compensation therefor. Later while in the employ of another, a slip as he was holding a heavy weight resulted in a fracture of the breast bone. The prior accident was held to have had no relation to the present one, which was caused by slipping. Here there were two accidents. Each was separate and unconnected with the other. The slip could, and did, of itself cause such an accident while one was holding a heavy weight.

From the foregoing it is deduced that: (A) if a casual relationship exists between the first and second accidents, the first employer is liable. (B) If the second accident is separate and independent of the first then the second employer is liable. (C) When there are two distinct accidents, but the subsequent one is aggravated by the original one, then both employers become equally liable and the compensation will be apportioned between them. These rules are just and equitable. They have arisen to satisfy the requirements of that great piece of paternal legislation, the Workmen's Compensation Law, which seeks to alleviate and soften our "harsh common law rules giving the master such defenses as the fellow servant rule and others furnishing just ground for the charge of class selfishness." [4] The liability for compensation is placed upon the employer under whom the accident occurs. This is the motivating purpose behind the Act. The above rules give power and expression to the motive.

HARRY B. SAMES.

CRIMINAL INTENT GENERALLY AND AS APPLIED TO CRIMES MALA IN SE AND CRIMES MALA PROHIBITA.

Criminal intent and criminal acts, as well as the laws governing attempts to commit crimes, have been discussed and analyzed in numerous treatises and periodicals by contemporary legal writers.[1] And yet it would seem that that most elusive term "criminal intent" is still beyond explanation.

We say in discussing a case such as *State* v. *White* [2] where the defendant was found guilty of beating a drum within the compact part of the town, contrary to the provisions of the statute, that the criminal intention is to be inferred from the criminal act. On the other hand, we say that in larceny the prosecution must establish both the criminal intent and the criminal act to prove its case.[3] At the

---

[4] EDGAR, LAW OF TORTS (1st ed. 1927) §58 at p. 41.

[1] CLARK, CRIMINAL LAW (3d ed. 1915); Walter Wheeler Cook, *Act, Intention, and Motive in the Criminal Law* (1917) 26 YALE L. J. 645; Beale, *Criminal Attempts* (1903) 16 HARV. L. REV. 491.

[2] 68 N. H. 48, 5 Atl. 828 (1891).

[3] People v. Jackson, 8 Barb. 637 (N. Y. 1850).