



Volume 41 | Issue 3

Article 16

April 1935

Workmen's Compensation--Risks Covered--Shock and Exhaustion from Being Lost in Coal Mine

John L. Detch
West Virginia University College of Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Oil, Gas, and Mineral Law Commons](#), and the [Workers' Compensation Law Commons](#)

Recommended Citation

John L. Detch, *Workmen's Compensation--Risks Covered--Shock and Exhaustion from Being Lost in Coal Mine*, 41 W. Va. L. Rev. (1935).

Available at: <https://researchrepository.wvu.edu/wvlr/vol41/iss3/16>

This Recent Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

irrevocable and no subsequent condition may be imposed.¹³ There is ample authority that when a street is laid out according to a plat, but the public travel is confined to a strip or part of the entire width of the easement, such use will be deemed to be evidence of the acceptance of the entire width.¹⁴

Although the result in the instant case is eminently satisfactory, the decision is based upon the rather narrow ground of the right of the public to control and regulate an easement in a street.¹⁵ That theory might have proved impotent had the tracks, for example, already been laid at the extreme side of the avenue, since the court holds that the dedicator can reasonably impose as a condition the use of the highway for steam railway purposes.¹⁶ It is believed that to consider the recordation of a plat as establishing a binding dedication of designated streets would better serve the public interest.

—CHARLES C. WISE, JR.

WORKMEN'S COMPENSATION — RISKS COVERED — SHOCK AND EXHAUSTION FROM BEING LOST IN COAL MINE. — P, while employed as a coal loader, left his working place and went in search of the mine foreman to make an inquiry in regard to his work. While in a haulage entry he was confronted by an approaching motor trip and to avoid injury he stepped into what he thought was a "man-hole", but what in fact was a "cross-cut". His light was bad, he became confused, and instead of re-entering the entry, turned, and losing his bearings, walked into the air course. He was lost in the mine for seven days, during which time he suffered from hunger, shock, and exhaustion. The Compensation Commissioner ruled that the event did not happen because of his employment. *Held*, on appeal, that such shock and exhaustion constitute a "personal injury" within the meaning of the Compensation Act and the injury was received "in the course of and resulting from" claimant's employment. *Montgomery v. Commissioner*.¹

¹³ 1 ELLIOTT, *op. cit. supra* n. 4, §§ 186, 172.

¹⁴ 3 DILLON, *op. cit. supra* n. 10, § 1088; *Southern Pacific Ry. Co. v. Ferris*, 93 Cal. 263, 28 Pac. 828 (1892), which held in regard to a railway's right under a franchise to use a street for its tracks that the public user of a part of the street constituted an acceptance of the whole.

¹⁵ *State Road Commission v. Chesapeake & Ohio Ry. Co.*, *supra* n. 1.

¹⁶ *Ibid.*

¹ 178 S. E. 425 (W. Va. 1935).

The statute permitting workman's compensation is remedial and is liberally construed.² The injury complained of need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.³ Each case rests on its own facts.⁴ A miner injured on the public highway, while going home, the home being on company premises, was injured "in the course of" his employment.⁵ Another miner who "walked off" the incline because the hoist was not being worked and was injured due to falling was injured in the course of his employment.⁶ A foreman injured while crossing a street to make a telephone call,⁷ an employee while on his way to the toilet,⁸ an election inspector while getting water for a co-worker who fainted,⁹ a farm hand whose injury was instanced by fainting due to the sight of mutilation of a new born calf,¹⁰ were injured while in the course of their employment.

As to the nature of the injury it has been held that inhaling carbon monoxide gas in dangerous quantities for two days,¹¹ the effect of drinking poison, mistaken for water,¹² paint poisoning contracted from a single exposure during a five hour period¹³ are personal injuries within the meaning of the act. But poisoning from breathing silica dust permeating the air is not such injury.¹⁴

In view of these cases it seems that the decision of the court in the principal case is a sound application of the statute in keeping with its purpose, — to shift the risk of industrial accidents from the employee to the industry.

—JOHN L. DETCH.

² *Caldwell v. Com'r*, 106 W. Va. 14, 18, 144 S. E. 568 (1928); (1927) 12 TENN. L. REV. 257, 259.

³ *McNicols Case*, 215 Mass. 497, 102 N. E. 697 (1913).

⁴ *Canoy v. Com'r*, 113 W. Va. 914, 170 S. E. 184 (1933).

⁵ *Ibid.*

⁶ *Hager v. Com'r*, 112 W. Va. 492, 165 S. E. 668 (1932).

⁷ *Mueller Construction Co. v. Industrial Board*, 283 Ill. 148, 118 N. E. 1028 (1918).

⁸ *Zabriskie v. Erie R. Co.*, 86 N. J. L. 266, 92 Atl. 385 (1914).

⁹ *County of Los Angeles v. Industrial Accident Commission*, 55 Cal. App. 982, 265 Pac. 362 (1928).

¹⁰ *Hall v. Doremus*, 171 Atl. 181 (N. J. L. 1934).

¹¹ *Conley v. Com'r*, 107 W. Va. 546, 149 S. E. 666 (1929).

¹² *Archibald v. Com'r*, 77 W. Va. 448, 87 S. E. 791 (1916).

¹³ *Lockhart v. Com'r*, 174 S. E. 780 (W. Va. 1934).

¹⁴ *Jones v. Rinehart*, 113 W. Va. 414, 168 S. E. 482 (1933).