Volume 37 | Issue 4 Article 15

June 1931

Workmen's Compensation--Application to National Guardsman

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the former.[5] This doctrine has been applied where the money was paid by the grantee to the grantor by way of a loan to a third party, and the grantee of legal title was held a resulting trustee for the third party.[6] The parol evidence to show the land was bought for another was admitted to show the money was advanced as a loan, thus overcoming the objection that such evidence is inadmissible to prove a parol trust. Where B promised to convey one-half interest in his land to C if C would pay one-half the expenses in pending litigation to acquire the land, and C paid no money, there was no resulting trust. The court held such a contract to be one for the sale of land within the statute of frauds.[7] To raise a resulting trust it is necessary that C pay or assume a binding obligation at or before the time of conveyance of legal title to B. This requirement was not satisfied in the principal case. A payment subsequent to conveyance will not attach a trust.[8] But a payment after the contract of sale is made, but before conveyance, will raise a resulting trust.[9]

—AUGUST W. PETROPLUS.

WORKMEN'S COMPENSATION — APPLICATION TO NATIONAL GUARDSMAN. — The North Carolina Supreme Court, in the case of *Baker v. State*,[1] decided that a North Carolina National Guardsman was an employee of the state within the meaning of their Workmen's Compensation Act.[2] The Act provides that the word "employment" includes all employees of the state and that the word "employee" means every person engaged in any employment under any appointment or contract of hire or apprenticeship. The plaintiff was injured while engaged upon his duties as National Guardsman. He was a regularly enlisted member of that organization, having signed an enlistment contract. He received fifty cents per week from the state for his services as a militiaman. It was insisted that the plaintiff was not an employee of the state within the meaning of the act, since his status

[5] Scott, *Resulting Trusts Arising Upon the Purchase of Land* (1927) 40 HARV. L. REV. 669.
[6] McDonough v. O'Neill, 118 Mass. 92 (1873).
[7] Woods v. Ward, 48 W. Va. 652, 37 S. E. 520 (1900).
[8] Currence v. Ward, 43 W. Va. 367, 27 S. E. 329 (1897).
[9] Bright v. Knight, 35 W. Va. 40, 13 S. E. 63 (1891).

[1] Baker v. State, 156 S. E. 917 (N. C. 1931).
[2] North Carolina Pub. Laws 1929, c. 120, § 2(a).

was not contractual in that the relation of master and servant was not established in accordance with recognized legal standards.[3] The court thought that the relation of an employer and employee may exist, as contemplated by the Compensation Act, otherwise than in strict accordance with legal standard.[4] The state had waived its sovereign rights and its exemption of liability and had voluntarily become a self-insurer of its compensation liability.

The West Virginia Compensation Act provides that "All persons in the service of the employers as herein defined and employed by them for the purpose of carrying on the industry, business or work in which they are engaged, are subject to this act".[5] Providing our state waived its immunity and the question arose as it did in the Baker case our court would hardly be faced with the difficult problem of construction that confronted the North Carolina Court. It would seem that our statute is more favorable to the imposition of liability.

Perhaps sound policy may warrant the state's assumption of this burden but circumstances might arise wherein this ordinarily slight responsibility would assume great proportions. What if the militia were called upon to quell a race riot and several hundred were injured, was this situation within the contemplation of the General Assembly when they considered this act? Ordinarily a liberal construction of a Compensation Act seems desirable.[6] The question here is so clearly one of policy that it is doubtful whether it should be settled simply by way of the court so construing the statute as to fit the requirements. If the state were buying compensation insurance and not insuring itself the decision in the principal case would pave the way to higher premiums. Military risks should be covered but should it be on a workmen's compensation basis?

—JOHN K. CHASE.

[3] Sibley v. State, 89 Conn. 682, 96 Atl. 161 (1915); Hines v. Dept of Labor and Industry, 150 Wash. 230, 272 Pac. 734 (1928).

[4] *Supra* n. 1.

[5] W. VA. REV. CODE (1931) c. 23, art. 2, § 1.

[6] Johnson v. Hosiery Co., 199 N. C. 38, 153 S. E. 591 (1930); Sgathone v. Mulholland, 290 Pa. 341, 138 Atl. 855 (1927); Carter v. Woods Bros Const. Co., 120 Kan. 481, 244 Pac. 1 (1926); Smith v. Jones, 102 Conn. 471, 129 Atl. 50 (1925).