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Libel--Privileged Communications--Communications Sent to Compensation Commissioner After Award

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failure of issue is valid whether the gift is by will or deed. *Van Horn v. Campbell*, 100 N. Y. 287, 3 N. E. 316; *Harder v. Matthews*, 309 Ill. 548, 141 N. E. 422; 11 R. C. L. pp. 470-471; 21 C. J. 1022-1025. The principal case is in accord with the weight of authority and prior West Virginia decisions. *Ocheltree v. McClung*, 7 W. Va. 232; *Tomlinson v. Nickell*, 24 W. Va. 148; *McKown v. McKown*, 93 W. Va. 689, 117 S. E. 557. The courts of this state are bound to uphold such limiting clauses not only by virtue of precedent, but also by statutory directions. CODE, ch. 71, §§5 and 10. The court in construing the word "heir" departed from the strict common-law meaning. The rule is that "heir" will be taken in its technical sense, as a word of limitation, and the grantor will be presumed to have so intended. *Reid v. Stuart*, 13 W. Va. 346. If, in the principal case, the court had construed "heir" in its technical sense, the grantors would have said, "and should Laura die without an heir at law, the land should be divided between John and William, two of her heirs at law." In order to avoid that absurdity and give effect to the intention of the grantors as evidenced by the circumstances surrounding the transaction, the court properly construed "heir" to mean "heir of the body". *Chippis v. Hall*, 23 W. Va. 512; *Tomlinson v. Nickell*, 24 W. Va. 148. This construction brings the case within the operation of §10 of ch. 71, CODE, which renders valid the limitation which would be otherwise invalid as violative of the rule against perpetuities.

—Howard Caplan.

LIBEL — PRIVILEGED COMMUNICATIONS — COMMUNICATIONS SENT TO COMPENSATION COMMISSIONER AFTER AWARD.
 —The plaintiff was receiving compensation from the West Virginia State Compensation Commissioner for an injury received in the defendant's mine. The defendant wrote a letter to the State Compensation Commissioner which caused this compensation to be cut off. The plaintiff brought an action for libel alleging that because of false statements in the letter the award had been set aside and not reinstated until nine months later, thereby damaging plaintiff's good name and reputation. *Held*, demurrer to the declaration sustained. In view of CODE, c. 15P, §40, giving

State Compensation Commissioner continuing jurisdiction, the award did not close the case and the defendant being an interested party was absolutely privileged to make statements relevant to the injury. *Williams v. Pocahontas Coal Co. et al.*, 138 S. E. 112 (W. Va. 1927).

The class of communications absolutely privileged is narrow and is practically limited to legislative or judicial proceedings and acts of state. *Hassett v. Carroll*, 85 Conn. 23, 81 Atl. 1043. The object is to eliminate from the speaker's mind the fear of vexatious litigation, or even of damages at the hands of a jury which may mistake apparent for actual malice and which might deter him from saying what the court wants to hear. *Dawkins v. Lord Rokeby*, L. R. 7 H. L. 744, 755. In judicial proceedings the rule of absolute privilege "is broad and comprehensive, including within its scope all proceedings of a judicial nature, whether pending in some court of justice or before a tribunal or officer clothed with judicial or quasi-judicial powers." 36 C. J. 1250. The following proceedings before quasi-judicial bodies were held to be absolutely privileged: Communications to state banking board concerning an application for a charter to do banking business, *Shummway v. Warrick*, 108 Nebr. 652, 189 N. W. 301; communications to a railroad commission, *Arkansas Harbor Terminal Ry. Co. v. Taber*, 235 S. W. 841 (Tex. Comm. of App. 1921); statements before Interstate Commerce Commission under a California statute, *Duncan v. Atchison, etc. Ry. Co.*, 72 Fed. 808, 123 Am. St. Rep. 647, 17 R. C. L. 335; communications to a real estate commission, ACTS 1924, c. 138 (Ky.). In view of CONST. Art. 1 §27, declaring that citizens of a state shall have the right to apply to those invested with the power of government for redress of grievances, an application to the governor for a pardon is absolutely privileged, and nothing therein stated, though the statement be made with malice, will expose one applying to the governor for a pardon to an action for libel. *Connellee v. Blanton*, 163 S. W. 404. In 27 HARV. L. REV. 745 the above case is severely criticized. In 2 A. L. R. 1376 it is discussed and noted that the courts are not in agreement upon the point. Testimony under oath before a committee of aldermen investigating charges against the city board of public works is not absolutely

privileged. *Blakeslee v. Carroll*, 64 Conn. 223, 29 Atl. 473. Cases similar to this have not arisen heretofore in West Virginia, the nearest being *Johnson v. Brown*, 13 W. Va. 71, which states that libelous matters published in due course of legal procedure are not actionable, if the court in which they were published had jurisdiction of the cause and they were pertinent to the suit. The rule does not apply to a tribunal which is not judicial or quasi-judicial in its character or nature. 36 C. J. 1251. There is no definite line of demarcation between those boards and commissions which are quasi-judicial and those which are not. The difficulty in determining whether a given body is or is not a quasi-judicial tribunal explains much of the apparent conflict of authority. In view, of the fact that the plaintiff in the principal case concedes that the Compensation Commissioner acts in a quasi-judicial capacity the case seems to be correct.

—Fred L. Davis

TORTS—NEGLIGENCE—DEGREES OF.—Plaintiff's decedent with others was engaged in repairing a highway on which defendant was driving an automobile at a rate of speed variously estimated from twenty to sixty miles per hour. Defendant had passed a warning and danger sign a thousand feet before her car struck plaintiff's decedent and killed him. *Held*, that "in cases of such extraordinary hazard and danger the rule of reasonable care applicable in other cases is incomplete; a greater degree of care should be enforced, and a workman so at work on the public road has a right to rely on that degree of care by operators thereon which will protect him from injury * * * * *"
Chaney v. Moore, 101 W. Va. 621, 134 S. E. 204.

There was a time when the courts were pretty generally committed to the doctrine of degrees of care and corresponding degrees of negligence. Such adjectives as ordinary, great and utmost, were used to describe the care required, while negligence was divided into slight, ordinary and gross. There is still respectable authority for these distinctions among the decisions, and some statutes require them. However, decisions of present day courts show a marked trend away from such distinctions. They lay down a variable rule of ordinary care, which is defined as that care