Marquette Law Review

Volume 12
Issue 4 *June 1928*

Article 15

Master and Servant; Workmen's Compensation Act; Indemnity to Permanently Disabled Minor Employee

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creditor and cited the cases of *Whetherell* v. *O'Brien*,[6] *Chickering* v. *Bastress*,[7] *Richardson* v. *Olmstead*,[8] and *Longergan* v. *Stewart*,[9] to support its contentions.

The Court in construing the criminal statute, which resembles our own Section 343.17, says: "There must, however, in any event, be a bailment in order that the relationship of bailee exists. There is no bailment here, and therefore no bailee or larceny as bailee. The relationship existing between plaintiff in error and the complaining witness is that of debtor and creditor."

In the case of *Burns* v. *State, supra,* the Court held that a person picking up money that was thrown away by an insane individual became a bailee of the money and when he converted it, he could be prosecuted under the statutes for the crime of larceny as bailee. The two cases are easily distinguishable; in the Wisconsin case, the person picking up the money had to return the same money to the bailor; in the Illinois case, the broker had no such duty imposed upon him by his contractual engagement.

An extended annotation on the "relation between customer and broker receiving bonds or other securities for sale or exchange" can be found in 52 A.L.R. 501.

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Master and Servant; Workmen's Compensation Act; Indemnity to Permanently Disabled Minor Employee.

"Proper administration of the Workmen's Compensation Act requires appreciation of the manifest legislative purpose thereof, i.e., to abolish the common law system of compensating injured employees as unsuitable to modern conditions and conceptions of moral obligations, *and substitute therefor one based on the highest present conception of man's humanity to man and obligations to the employee class.*"[1]

The instant case[2] presents an interpretation of a heretofore unconstrued provision contained in the Workmen's Compensation Act, which interpretation serves to carry out the above quoted purpose.

In brief substance, the facts of the case are these: the defendant in this action (plaintiff below) a minor, was permanently disabled while in the employ of the appellant, and was awarded a weekly compensation of $22.50 under the following provision:

"If an employee is a minor and is permanently disabled, his weekly earnings on which to compute the indemnity accruing to him for permanent disability shall be determined on the basis of the earnings that such minor, if not disabled, probably would earn after attaining the age of twenty-one years. Unless otherwise established his earnings shall be taken as equivalent to the amount upon which maximum weekly indemnity is payable."[3]

[6] 140 Ill. 146, 333 Am. St. Rep. 221, 29 N.E. 904.

[7] 130 Ill. 206, 17 Am. St. Rep. 309, 22 N.E. 542.

[8] 74 Ill. 213.

[9] 55 Ill. 44.

[1] *City of Milwaukee* v. *Miller*, 154 Wis. 652.

[2] *Badger Carton Co.* v. *Industrial Commission of Wisconsin*, 218 N.W. 190, — Wis —.

[3] Section 102.11, sub section 1, Wis. R.S., 1925.

The defendant was a high school graduate, earning, at the time of the accident which disabled her, $12.50 per week.

The award of $22.50 per week was set aside by the Circuit Court, stating as its ground that compensation must be based upon the wages paid by the industry. On appeal, the question was presented: Where a minor is permanently disabled, and has earned but trivial wages up to the time of the disability, upon what basis may the Industrial Commission adequately compute such minor's probable earnings after he or she arrives at majority?

Any award as to probable future earnings is at best mere conjecture; and this is especially true in the instance of attempting to adequately determine what a minor, who has never had the opportunity to demonstrate his full earning capacity, will probably earn upon reaching his majority. The major consideration of the court in the present case, then, is to define a scientific and fair method of determining awards in such cases so as to render the statute workable, and secondarily, to employ such method and thus determine the award in this case.

There were three standards from which the court had a choice for determining awards. The first was that the compensation should be computed upon what the minor would earn *immediately* after arriving at the age of twenty-one years; the second, that it may be computed on an *unlimited* amount of time subsequent to reaching majority; or third, that the compensation should be based upon a *reasonable* time after reaching majority. The first proposition, embracing the word "immediately," implies an abruptness, an impulsiveness, which is, under the circumstances, repugnant to the judicial mind. The earnings of a working person immediately upon reaching majority certainly are not representative of the earning capacity of such person during his more mature years. The second proposition, while more acceptable than the first, involved too much speculation. Good fortune at times enriches men far beyond what the average person of the same ability, education, and experience attains. And the converse is not untrue. Hence the speculative attribute of the word "unlimited" as used in the second proposition warranted its rejection by the court. The key-word of the third proposition denotes the essence of the basis of computation adopted. The word "reasonable" is not arbitrary. It is elastic, rendering the rule adaptable to practically any situation. Combined with a consideration of the ability, education, and experience of the minor, this basis of computation allows the court to award the fairest compensation humanly possible.

Ultimately, the third proposition fulfills the purpose of the act, as denoted in the above quotation, and renders the platitude of "man's humanity to man" full of meaning. And having determined the above basis as the most reliable method of computation, the court proceeded to affirm the award of the Industrial Commission as an amount which the said minor would probably earn within a reasonable time after reaching her majority.

STEWART G. HONECK