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Obiter Dicta

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"An *obiter dictum,* in the language of the law, is a gratuitous opinion, an individual impertinence, which, whether it be wise or foolish, right or wrong, bindeth none—not even the lips that utter it."*

CRADLE TO GRAVE

"Men the workers, ever reaping something new." LOCKSLEY HALL, TENNYSON

Workmen's Compensation Law, Article 2, Section 10, states every employer shall "pay or provide compensation for their [workers'] disability or death from injury *arising out of and in the course of the employment.*" (Emphasis added.) The courts of the several states, in keeping with the humane purpose of these laws, have very often given an extremely broad and liberal construction to the statute. In truth, it may be said that any similarity between injuries *"arising out of and in the course of the employment,"* and the injuries in the following cases, is purely coincidental.

The question of "horseplay" among employees was before the court in *Mutual Implement & Hardware Ins. Co. v. Pittman,* 214 Miss. 823, 59 So. 2d 547 (1952).

From Little Acorns

A co-employee of the claimant, during a lull in work, hit the claimant with a small piece of paper as a practical joke. The claimant, joining in the fun, threw back a small pebble. The instigator of the game somehow lost its true spirit, and picked up a shovel and struck the claimant a violent blow on the head with the same shovel. Compensation was granted on the theory that the unprovoked assault was one of the hazards of the employment, which brought the employees into close contact.

Compensation was awarded to claimant sheriff in *Andreski v. Industrial Commission,* 261 Wis. 234, 52 N.W. 2d 135 (1952), despite some evidence of intoxicating beverage. There was testimony that the sheriff was seen leaving his office at 10:30 a.m. and arriving at his favorite tavern almost immediately. He spent the next six hours making certain that the peace was kept, and also that the liquor was not watered. He was later seen in another tavern, where he stood a round of beers; it being election year, and he knew a good thing when he had it. Soon after leaving that particular tavern, he was found in his wrecked car, which was his own, but which was required for employment. The court in granting compensation looked sympathetically upon the vast and diverse duties of a law enforcement agent.

In the Line of Duty

A waitress, in *Clower v. Grossman,* 55 N.M. 546, 237 P. 2d 353 (1951), sat down to a meal which was given in part payment for services. The hours of work were over, and she was eating on her own time. She became violently ill from the food and she sought compensation for injuries suffered in the course of employment. The court, in granting compensation, rejected the argument that employment had terminated. They also looked askance at the plea of the restaurateur that the "assumption of risk" doctrine or at least the "prudent person" rule be applied.

Food for Thought

The "coffee break" as a facet of employment came under the close scrutiny of the court in *Biagi v. United States,* 115 F. Supp. 697 (D. Ct. Cal. 1953). The plaintiff

*BIRRELL, OBITER DICTA (1885) title pages.

American Way of Life

incurred injury during a five minute coffee break, which was permitted by the employer. The court took judicial notice of the national habit of workers, and held the injuries suffered in the scope of his employment.

The claimant, in *University of Denver v. Nemeth*, 127 Colo. 385, 257 P. 2d 423 (1953), was literally playing his way through college, as a member of the varsity football team.

Horatio Alger Story

Misfortune struck when he received an injury in spring practice. Much to the chagrin of his alma mater, he initiated this claim for compensation. The claimant alleged he was hired to play football and was given a position not only on the ball field, but also on the tennis courts, as a part-time janitor. There was testimony that he did not know where the tennis courts were, but his pay check was regular nevertheless. The court, in awarding compensation, held that his employment was dependent on his playing football. Further testimony in the record stated that "it would be decided on the football field who receives the meals and the jobs." Let the worries of the snow shovelers on the varsities of our Southern Universities cease; their football injuries are compensable.

Injuries sustained at the annual Christmas party was the question before the court in *Moore's Case*, 330 Mass. 1, 110 N.E. 2d 764 (1953). The claimant was invited,

Holiday Spirits

as were all the other employees, to attend the company Christmas party. Liquor, in more than sufficient quantity, was served and there was conflicting evidence as to the claimant's sobriety at the time of the injury. The claimant, no wallflower she, began to do a "solo" and as she was rapidly depleting her repertoire, a co-worker playfully grabbed her ankle. As a result, she fell and suffered a fractured coccyx. The court held her injury to the coccyx was incurred in the course of employment.

Keeping in line with the season, the claimant, a silk salesman, as reported in the "Indianapolis Times," September 30, 1952, at the request of one of his better customers, agreed to play Santa Claus at a Christmas party. On

Now Dasher, Now Dancer

Christmas Eve he donned his rented suit with padding, wig and beard, and began to drive to the party. En route, the wig slipped over his eyes, and he skidded into a parked car, suffering a fractured hip. The court found sufficient relation to his employment for the silk company and compensation was granted. All in the spirit of giving.

However, there have been instances where the courts have been slightly more conservative in construing the phrase "in the course of employment." In *Brookhaven Steam Laundry v. Watts*, 214 Miss. 569, 59 So. 2d 294

Above and Beyond

(1952), the claimant was a route driver delivering and picking up laundry, furthering the cause of "less work for mother." On one of his regular stops, as he was about to pick up a suit to be cleaned, he was confronted by a wrathful husband, who exclaimed just before he shot him, "Well, I caught y'all." In the best Southern tradition, he shot first and asked questions later. Compensation was denied, because as it turned out, the agitated husband had cause for concern. It seems that the same suit had been cleaned the day before.

A deer and its natural habitat confronted the court in *Saily v. 500 Bushel Club*, 332 Mich. 286, 50 N.W. 2d 781 (1952). The claimant, a waitress for a club deep in

Disney Refuted

the woods, was attacked by a deer, while walking in off-duty hours. The argument was made that this attack would not have occurred but for her employment. The court, in denying compensation, stated that all others were subject to the

same risk in the locality and further that she was not working when the injury occurred.

Directly contra to *Saily v. 500 Bushel Club,* supra, is *Lepow v. Lepow Knitting Mills, Inc.,* 288 N.Y. 377, 43 N.E. 2d 450 (1942). Here, the claimant was a traveling salesman and the territory assigned to him was the wilds of Africa. While in the course of employment, he was bitten by a malarial mosquito. In granting compensation, the court did not find it necessary to consider whether or not he was bitten during working hours.

Quick, Henry

A nickel cannot buy much in these days of inflation, but it was the subject of the dispute which gave rise to the claimant's injury in *Long v. Schultz Shoe Co.,* 257 S.W. 2d 211 (Mo. Ct. App. 1953). Two fellow workers of the claimant were busily engaged in their work when one of them saw a five-cent piece. Delighted with his found income, he stooped to pick it up when another worker declared his ownership of the booty. The first finder exerted the complete defense of "finder's keepers, loser's weepers." The other worker, ignoring this plea, presented prima facie evidence of his claim, a .38 revolver. Several shots followed, one of which struck the claimant, the innocent by-stander. The court, in denying the claim, stated that the quarrel must grow out of or have some direct relation to the details of the work itself.

A Mite Tight

The claimant, in *Congdon v. Klett,* 307 N.Y. 218, 120 N.E. 2d 796 (1954), was a television repairman, who complained of an injury in the course of employment. His employer, a member of a new class of Robber Barons, had constructed a swimming pool on the second floor of his building. The employee was permitted to use the pool during working hours, when business was a little slow. While taking advantage of this luxury, the claimant suffered an injury in a dive into the pool. The court in denying compensation found insufficient relation to his work.

Nouveau Riche

It is an evitable conclusion that many of our jurists are men possessed of unlimited imagination and creativeness, when it is their purpose to give a liberal construction on the wording of a statute. However, it can be seen from the latter cases that there are judges who are not given to flights of fancy, even if in the interest of humanity.