

1936

## ADMINISTRATIVE LAW-OPERATION OF FEDERAL STATUTE CREATING PRESUMPTION AGAINST SUICIDE IN COMPENSATION CASES

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## RECENT DECISIONS

ADMINISTRATIVE LAW—OPERATION OF FEDERAL STATUTE CREATING PRESUMPTION AGAINST SUICIDE IN COMPENSATION CASES—A carpenter making repairs nearby, hearing a sharp report followed by groans, found plaintiff's husband lying upon the floor. He died without recovering consciousness from a bullet wound through the breast. The pistol to which the fatal bullet was traced lay in a partly closed drawer which was spattered with blood as was the counter near by. The ejected shell lay some feet away in the position where it would be found had the pistol been discharged directly in front of deceased's breast. There were powder burns on his clothes. Contradictory evidence of deceased's mental state was adduced toward the determination of whether the death was accidental or suicidal. Plaintiff, in proceeding to recover an award against deceased's employer under the Longshoremen's and Harbor Workers' Compensation Act in force in the District of Columbia as a workmen's compensation statute<sup>1</sup> relied upon section 20 (d) of the act<sup>2</sup> creating a presumption to the effect that in the absence of substantial evidence to the contrary it shall be presumed that a fatal injury was not willfully self-inflicted and that resultant death therefrom was not suicidal. *Held*, the statutory presumption does not constitute affirmative evidence but is operative only when there is a complete absence of competent evidence. *Del Vecchio v. Bowers*, 296 U. S. 280, 56 S. Ct. 190 (1935).

Implicit in this holding and probably the most significant feature of the decision is the recognition by the Supreme Court of the constitutionality of presumptions created by legislative enactment which place upon the employer the burden or risk of non-persuasion.<sup>3</sup> However, the Court holds that the presumption is effective only in the event no competent evidence of any sort is adduced;<sup>4</sup> likewise it must represent and not do violence to the common experience of mankind. The presumption vanishes never to return once legitimate evidence is before the court; what it does not do is operate to tip the scales to one side if the evidence is in equipoise.<sup>5</sup> That is what the case actually decides. But in the absence of any evidence whatever on the part of the employer it would seem that the statutory presumption would be sufficient to satisfy the requirement of *Crowell v. Benson*<sup>6</sup> that the finding of an administrative officer or tribunal must be supported by evidence. This attitude of the Supreme Court in countenancing a presumption statute which places such a burden or risk upon the defendant employer is in striking contrast to that of the Appellate Division of

<sup>1</sup> 45 Stat. L. 600, 33 U. S. C., § 901 (1928).

<sup>2</sup> 44 Stat. L. 1424 at 1436, 33 U. S. C., § 920 (1927): "In any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary: . . . (d) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another." Section 3(b) of the act provides that no compensation will be awarded if the death is suicidal.

<sup>3</sup> Cf. 5 WIGMORE, EVIDENCE, 2d ed., 448-449, § 2489 (1923).

<sup>4</sup> Cf. 5 WIGMORE, EVIDENCE, 2d ed., 451-452, § 2491 (1923).

<sup>5</sup> Cf. 5 WIGMORE, EVIDENCE, 2d ed., 445, § 2487 (d), 451-453, § 2491 (1923).

<sup>6</sup> 285 U. S. 22, 52 S. Ct. 285 (1932).

the New York Supreme Court as exemplified by the decision in *Joseph v. United Kimono Company*,<sup>7</sup> wherein the majority of a divided court completely ignored an almost identical state statute<sup>8</sup> and rested their decision upon the "principle" that if two equally probable inferences of fact are possible the trier shall accept that which avoids rather than that which necessitates liability.

F. K. B.

<sup>7</sup> 194 App. Div. 568, 185 N. Y. S. 700 (1921).

<sup>8</sup> N. Y. Consol. Laws (Birdseye 1918), 9296: "In any proceeding for the enforcement of a claim for compensation under this chapter, it shall be presumed in the absence of substantial evidence to the contrary . . . 3. That the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another. . . ." Sherman, "Evidence and Proof under Workmen's Compensation Laws," 68 UNIV. PA. L. REV 203 (1920), reviews the cases construing statutes in various states. The effect of the presumptions thereby created is far from clear, even within a single state.