

SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Plaintiff

-vs-

Ethyl Gasoline Corp., et al

Defendants

No. 248 (AT DAYTON)

Plaintiff

-vs-

Ethyl Gasoline Corp., et al

Defendants

No. 249 (AT DAYTON)

Plaintiff

-vs-

Ethyl Gasoline Corp., et al

Defendants

No. 250 (AT DAYTON)

Plaintiff

-vs-

Ethyl Gasoline Corp., et al

Defendants

No. 254 (AT DAYTON)

MORNING SESSION, TUESDAY, MAY 8, 1928.

Court not pursuant to adjournment. Mr. J.F. Henderson, Columbus, Ohio, was present on behalf of plaintiffs, and Mr. Robert Cowden, of Dayton, Ohio, on behalf of defendants.

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THE COURT: In reference to the four cases of [REDACTED] and [REDACTED] against the Ethyl Gasoline Corporation, I understand, Mr. Henderson, that the plaintiffs raise no dispute that the defendant in each of these cases was a contributor to the Industrial Commission fund or Workmen's Compensation fund?

MR. HENDERSON: There is no dispute that they were contributors, your Honor.

THE COURT: Upon those circumstances and upon discussion of the case with counsel the court is of the opinion that by such contribution to the Workmen's Compensation fund the defendant has gained immunity from suit under the present Ohio Constitution, Section 35, Article II. The federal courts have felt constrained or at least do follow the decisions of the Supreme Court of the State in all matters of construction of the State Constitution or State laws. Thus Section 35 of Article II has received construction, at least in the form of Oliver v. State, in two very recent decisions, that of State, ex rel. Williams, v. Industrial Commission, 116 Ohio St. 45, 55 (decided March 8, 1937), in which, in the controlling opinion, the court says:

"The employer, having paid his premium to the state, has acquired not only insurance, but has also obtained immunity from suit--has obtained his quid pro quo--meanwhile the fund is held in trust by the state, solely for the benefit of injured workmen and their dependents."

That is the expression of the majority opinion. And the majority opinion in the case of State, ex rel. Rudd, v. Industrial Commission, 116 Ohio St. 67, 73 (decided March 8, 1937), contains a similar statement:

"In the meantime, the employers have obtained their insurance and their immunity from suits for damages." In the dissenting opinion in the Rudd case Chief Justice Warren states (116 Ohio St. 78):

So that it seems to be the consensus of opinion not only by the majority of the Supreme Court of Ohio upon these Industrial Commission cases but by the spokesman for the minority, Chief Justice Marshall having dissented in most, if not all of the recent decisions, upon this question of additional compensation or compensation payable because of failure to comply with some specific requirement where the employer was not contributing to the fund or subsequently became insolvent.

Feeling constrained to follow this construction given to Section 35 of Article II by the Supreme Court of the State, we likewise feel obligated to hold that compliance with the Workman's Compensation Act and contribution to the Workman's Compensation Fund under the Industrial Commission of Ohio gives to the employer immunity from all suits on behalf of the employee for personal injury, death or industrial occupational disease. In other words, the right of action heretofore existing on behalf of the servant against the master is specifically abrogated or destroyed, voided and annulled by the Ohio Constitution under the Workman's Compensation Acts. If this be so, in none of these cases can the plaintiff recover, and an entry may be drawn in such comending the compliance with the Workman's Compensation Acts and contributions to the Industrial Insurance Fund of the State, and entering judgment for the defendant.

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we have here for decision, and that is whether such employee can, notwithstanding the provisions of the Constitution and the Workman's Compensation Acts, still maintain a suit founded upon alleged wilful injury. This question we are constrained to decide in the negative, that he cannot maintain such suit. It seems to the court that in the use of the language of the amendment to the Constitution that such compensation allowed by the Industrial Commission shall be in lieu of all other damages and that the employer who has contributed to the fund shall not thereafter be open to suit or liable to suit for damages is entirely comprehensive and includes not only the action formerly existing at common law for so-called simple negligence, but the action for wilful negligence or for damages alleged to have been suffered by reason of failure to comply with lawful requirements. In all these cases the wrong of the employer, whether it be wilful, negligent or arising from a failure to perform some lawful requirement, simply gives rise to a cause of action, and if that cause of action be barred by the Constitution and laws by its generic name and comprehensively by all-inclusive words, all such actions are barred without regard to the specific basis for the action, without regard to the facts upon which the cause of action is founded.

We feel, therefore, that there is, upon the admission in open court, no question to be submitted to the jury, and judgment entry may be drawn as indicated.