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Torts - Workmen's Compensation - Injury Arising Out of and In the Course of Employment - Finn v. Industrial Commission of Colorado, 437 P.2d 542 (Colo. 1968)

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skiers are still relatively new in the law. We may, however, expect to see more litigation in this field commensurate with the growing popularity of the sport, especially in Colorado where skiing is a major tourist attraction.

Richard M. Kennedy

TORTS — WORKMEN'S COMPENSATION — INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT. — *Finn v. Industrial Commission of Colorado*, 437 P.2d 542 (Colo. 1968).

The claimant, John B. Finn, was seen by his supervisor shortly after reporting to work at his place of employment, the Adolph Coors Company. Minutes later he was found lying on the floor nearby in a semiconscious and contorted condition. cursory examination revealed that blood was running from his ears, his eyes were blackened, he had facial abrasions, and his forearms were badly bruised. It developed that the claimant had also sustained a skull fracture. Finn's work clothes were torn and showed evidence of an external force, and he later surmised that he had been struck by a forklift truck. However, he was unable to produce any witnesses to the purported accident or any direct evidence as to the exact nature of the event which caused his injuries. The referee determined that, although Finn had been injured while at work, he had failed to prove that his injury arose out of his employment. At the Industrial Commission hearing, evidence of the claimant's perfect health prior to the injury was excluded. Expert medical testimony tended to eliminate the possibilities of latent disease, seizure, or heart attack, and there was no clinical or observable evidence of any such endogenous condition. The Industrial Commission concurred in and adopted the referee's findings and denied the claimant compensation based on the belief that "this otherwise healthy man may have contorted himself into these injuries from some innerbody malfunction."¹ The district court upheld the ruling, and on appeal, the Colorado Supreme Court, *held*, affirmed. There is no rebuttable presumption in Colorado in favor of an injured employee to the effect that, in the absence of any proof of the event causing his injury, the accident will be held to have arisen in the course of his employment and thus compensable under the Colorado Workmen's Compensation Act. Furthermore, the *res ipsa loquitur* doctrine or some variation thereof does not apply to such an unwitnessed accident.²

¹ *Hearing of Finn v. Adolph Coors Co. & Liberty Mut. Ins. Co. before the Industrial Comm'n of Colo.*, #1-803-503 (1964).

² *Finn v. Industrial Comm'n*, 437 P.2d 542 (Colo. 1968).

I. THE PRESENT STATE OF THE LAW IN COLORADO

In every employment accident case, the Industrial Commission and the courts must reach a decision as to whether a claimant's injury did in fact "arise out of and in the course of" employment as prescribed by statute.³ In sustaining his burden of proof, the claimant must show by sufficient, substantial, and admissible evidence that an accident occurred within the scope of employment;⁴ thus, compensation cannot be awarded on the basis of speculation, conjecture, or mere possibility.⁵ This seemingly innocuous requirement often becomes an insurmountable obstacle in unwitnessed accident cases which result in the injury or death of a workman. As stated in *Industrial Commission v. London & Lancashire Indemnity Co.*: "There is nothing in the Colorado Workmen's Compensation Act which creates a statutory presumption of accident . . ."⁶

A. *Prima Facie* Requirements

The elements of proof that must be established in order to make out a *prima facie* case for compensation in an industrial accident are (1) that the accident occurred at the time and place of employment and (2) that the event was the proximate cause of the injury.⁷ In unwitnessed accident cases, the essential issue is the *kind* of evidence necessary to establish that (1) an event did in fact occur, (2) the event caused the injury, and (3) the event was related to the employment.⁸ It is within the exclusive province of the Industrial Commission to make these findings of fact. The func-

³ Workmen's Compensation Act, COLO. REV. STAT. ANN. § 81-13-2 (1963):

Conditions of recovery. — (1) . . .

(c) Where, at the time of the accident, the employee is performing service arising out of and in the course of his employment;

(d) Where the injury or death is proximately caused by accident arising out of and in the course of his employment, and is not intentionally self-inflicted.

See *Industrial Comm'n v. London & Lancashire Indem. Co.*, 135 Colo. 372, 376, 311 P.2d 705, 707 (1957): "An accident 'arising out of the employment' . . . involves the idea of causal relationship between the employment and the injury. The term 'in the course of' relates more particularly to the time, place and circumstances under which the injury occurred."

⁴ *Hamilton v. Industrial Comm'n*, 132 Colo. 408, 289 P.2d 639 (1955); *Industrial Comm'n v. Strome*, 107 Colo. 54, 108 P.2d 865 (1940); *Rocky Mountain Fuel Co. v. Kruzic*, 94 Colo. 398, 30 P.2d 868 (1934); *Lallier Constr. & Eng'r Co. v. Industrial Comm'n*, 91 Colo. 593, 17 P.2d 532 (1932); *Olson-Hall v. Industrial Comm'n*, 71 Colo. 228, 205 P. 527 (1922).

⁵ *Deines Bros., Inc. v. Industrial Comm'n*, 125 Colo. 258, 242 P.2d 600 (1952); *United States Fidelity & Guar. Co. v. Industrial Comm'n*, 122 Colo. 31, 219 P.2d 315 (1950); *Arvas v. McNeil Coal Corp.*, 119 Colo. 289, 203 P.2d 906 (1949); *Resler Truck Line v. Industrial Comm'n*, 113 Colo. 287, 156 P.2d 132 (1945); *Coors Porcelain Co. v. Grenfell*, 109 Colo. 39, 121 P.2d 669 (1942).

⁶ 135 Colo. 372, 376, 311 P.2d 705, 707 (1957).

⁷ *Industrial Comm'n v. Havens*, 136 Colo. 111, 314 P.2d 698 (1957).

⁸ See *Finn v. Industrial Comm'n*, 437 P.2d 542 (Colo. 1968) (by implication). The court found that the claimant proved only that something happened to him during his employment.

tion of the court on appeal is only to determine whether the evidence submitted was substantial and if it supported the Commission's findings. "If there is any evidence, whether direct or by reasonable inference, which will support the finding and award of the Commission, a reviewing court has no power to disturb it."⁹

The court therefore has severely limited discretion in examining the facts and drawing inferences therefrom. However, it will not be bound by findings of fact which it concludes are based on conjecture.¹⁰ In reviewing the evidence, the court must rely on such phrases as proper evidence, substantial evidence, direct or reasonable inference, rational mind, and conjecture. All this comes perilously close to sheer word play. Such phrases "have little fixed meaning in themselves, and are probably more often statements of a conclusion than workable guides toward the conclusion."¹¹

In *Industrial Commission v. Havens*,¹² the claimant suffered a heart attack shortly after being struck by a loaded handcar. The nature of the accident was clear, but the issue was whether the accident was the proximate cause of the heart attack.¹³ The court stated as a necessary corollary for the guidance of the Commission that awards cannot be *denied* either as the result of speculation or conjecture or upon evidence not in the record. It is obvious that the finding of the referee in the *Finn* case is in conflict with this corollary.¹⁴

The case most similar to *Finn* on its facts is *Employers Mutual Liability Insurance Co. v. Industrial Commission*.¹⁵ There the claimant was found injured in an unwitnessed accident. He died having related only to a fellow employee that he had slipped on some ice. The court reaffirmed the *Havens* corollary disallowing a presumption against the claimant and stated: "If this were not so, an unattended injury or death in many cases would not be compensated."¹⁶

The apparent inconsistencies in the Colorado Supreme Court decisions concerning causation in workmen's compensation cases are

⁹ *University of Denver v. Nemeth*, 127 Colo. 385, 399, 257 P.2d 423, 430 (1953).

¹⁰ Cases cited note 5 *supra*.

¹¹ 2 A. LARSON, LAW OF WORKMEN'S COMPENSATION § 80.31, at 321-22 (1961).

¹² 136 Colo. 111, 314 P.2d 698 (1957).

¹³ The referee made a finding of overexertion, but also found that overexertion does not cause heart attacks, since just as many people die from heart attacks suffered in their sleep as from those that occur during exertion.

¹⁴ *Hearing of Finn v. Adolph Coors Co. & Liberty Mut. Ins. Co. before the Industrial Comm'n of Colo.*, #1-803-503, at 2 (1964): "[I]t would appear that this otherwise healthy man may have contorted himself into these injuries from some mysterious inner-body malfunction." (emphasis added).

¹⁵ 145 Colo. 91, 357 P.2d 929 (1960).

¹⁶ *Id.* at 96, 357 P.2d at 931.

traceable to the court's reluctance to overrule the findings of fact by the Commission.¹⁷ *Finn* is orthodox for this proposition.

B. Inconsistent Criteria

In Colorado, the criteria for proof of causation in disease cases are inconsistent with the legal requirements in unwitnessed accident cases. There are a number of instances of claims arising out of diseases where the claimant has been granted compensation without medical proof of the etiological relation to the injury.¹⁸ Perhaps the most significant case is *Industrial Commission v. Corwin Hospital*,¹⁹ which has been construed to hold that medical proof of causation is not necessary.²⁰ This decision was extended in *City & County of Denver v. Pollard*²¹ to compensate a public health nurse who had contracted a streptococcal infection. No medical proof was required by the court, despite the fact that the etiological agent involved could have been traced²² and that the infection could have been either endogenous or contracted elsewhere.²³ Definitive proof was available in the *Pollard* case, but the court did not require it. Yet, in *Finn's*

¹⁷ The following table indicates the percentage of Industrial Commission awards upheld on appeal by the Colorado Supreme Court. Interview with Peter L. Dye, Assistant Attorney General for Colorado, in Denver, July 25, 1968.

Year	Total of Cases Tried	Awards Affirmed	Awards Reversed	Percentage of Awards Upheld	Year	Total of Cases Tried	Awards Affirmed	Awards Reversed	Percentage of Awards Upheld
1951	11	9	2	82%	1960	10	6	4	60%
1952	10	7	3	70%	1961	21	17	4	81%
1953	18	11	7	61%	1962	18	14	4	78%
1954	6	6	0	100%	1963	28	17	11	61%
1955	5	4	1	80%	1964	10	9	1	90%
1956	12	8	4	67%	1965	8	6	2	75%
1957	16	10	6	63%	1966	22	18	4	82%
1958	8	5	3	63%	1967	18	10	8	56%
1959	9	4	5	44%	*1968	23	15	8	65%

* Supplementary interview with Peter L. Dye, February 17, 1969.

¹⁸ *Colorado Fuel & Iron Corp. v. Industrial Comm'n*, 152 Colo. 25, 380 P.2d 28 (1963); *Southern Colo. Power Co. v. Industrial Comm'n*, 118 Colo. 186, 193 P.2d 885 (1948); *Industrial Comm'n v. Swanson*, 93 Colo. 354, 26 P.2d 107 (1933); *Columbine Laundry Co. v. Industrial Comm'n*, 73 Colo. 397, 215 P. 870 (1923); *Canon Reliance Coal Co. v. Industrial Comm'n*, 72 Colo. 477, 211 P. 868 (1923).

¹⁹ 126 Colo. 358, 250 P.2d 135 (1952).

²⁰ *Industrial Comm'n v. Havens*, 136 Colo. 111, 119, 314 P.2d 698, 702 (1957); In *Industrial Commission, et. al. v. Corwin Hospital* . . . this court in effect held that *no medical proof of causation was necessary* to prove that the claimant contracted polio while at work, and we now add that if the rule were otherwise an unattended injury or death in many cases could never be compensated.

²¹ 160 Colo. 306, 417 P.2d 231 (1966).

²² ZINSER, MICROBIOLOGY 416-26 (13th ed. D. Smith, N. Conant, J. Overman, *et al.* ed. 1964).

²³ "[I]t has been long known that 8 to 10% of apparently normal individuals carry hemolytic streptococci in their throats; under conditions of crowding, especially in the winter months, the percentage of normal carriers may be increased to 75%." *Id.* at 423-24. In *Pollard*, the claimant's infection was in mid-November.

unwitnessed accident, where he had neither recollection nor knowledge of what had happened, and where no proof was possible, the court refused any presumption in his favor and barred recovery.²⁴

II. IMPLICATIONS OF THE *Finn* DECISION

Workmen's compensation acts developed as an answer to a highly technical and complicated society in which the individual workman had become merely a pawn in the industrial economy. The general principle underlying workmen's compensation is that of spreading the risk.²⁵ In effectuating the intent of the legislature, the dilemma involved in unwitnessed accident cases is to what extent the court should go in assisting the claimant in sustaining his burden of proof. It is in this context that *Finn* must be reviewed.

Judicial precedent has defined legislative intent by the insertion of common law rules of evidence and procedure. "The early courts construed the acts with caution and erroneously inserted into workmen's compensation cases inapplicable common-law doctrines in disguised garb."²⁶ The Colorado Workmen's Compensation Act abrogates the employer's common law defenses of assumption of risk and negligence of the injured employee or his fellow servant,²⁷ but nowhere does the Act limit the employee's utilization of common law doctrines of evidence and procedure. Nevertheless, in the *Finn* case, the court emphatically stated that the doctrine of *res ipsa loquitur* or some variation of it does not apply. The inconsistency is apparent. On the one hand, the common law principle of placing the burden of proof on the claimant is insisted upon, while on the other, the common law doctrine of *res ipsa loquitur* is denied.²⁸

Moreover, the Colorado Workmen's Compensation Act provides that acceptance by the employee of workmen's compensation bars recovery at common law.²⁹ But if an employee gives up all common law remedies for injuries arising out of his employment, does he also

²⁴ A gambit which is employed by many attorneys in attempting to establish proof of causation in unwitnessed accident cases could be termed "negative evidence." Such evidence is designed to eliminate all possibilities inherent to the injury except the one the claimant is attempting to establish. However, the court has generally held that negative evidence will not suffice to prove the accident and that the event itself must be proved. *Deines Bros., Inc. v. Industrial Comm'n*, 125 Colo. 258, 242 P.2d 600 (1952).

²⁵ See generally Horovitz, *Workmen's Compensation: Half Century of Judicial Developments*, 41 NEB. L. REV. 1 (1961).

²⁶ *Id.* at 99.

²⁷ Workmen's Compensation Act, COLO. REV. STAT. ANN. § 81-31-1 (1963).

²⁸ The court in *Finn* also stated that COLO. REV. STAT. ANN. § 81-3-2 (1963) abolishes all common law rights and remedies of the claimant in this type of case except as provided in the Act. 437 P.2d at 543. However, § 81-3-2 actually concerns only the liability of the employer; it states nothing whatsoever about either the rights or remedies of the employee.

²⁹ Workmen's Compensation Act, COLO. REV. STAT. ANN. § 81-4-4 (1963).

give up all common law remedies for those injuries which the supreme court decides do *not* arise out of his employment? The court held that Finn's claim for compensation was denied because he had failed to prove that his injury arose out of his employment. Should he therefore be barred from recovery at common law where the doctrine of *res ipsa loquitur* would provide him with the presumption he needs? More significantly, ignoring any possible consequences of the statute of limitations, does not such a ruling indirectly permit the case to be reopened under negligence procedures? In a case involving the reverse proposition, the court held that an injured employee who sued at common law did *not* prejudice his claim under workmen's compensation and that the judgment obtained at common law was not *res judicata*.³⁰

The definition of "accident" within the Colorado Workmen's Compensation Act has been an elusive concept which has been the focus of much legislative and judicial attention. Prior to the 1963 legislative definition, injuries were designated "accidents" to distinguish them from intentional injuries or injuries caused by disease.³¹ The claimant did not have to prove that anything extraordinary occurred in or about the work itself, such as a sudden slipping or falling. He had only to prove that the harm had been unexpected and unintended.³² Thus the court in *Industrial Commission v. Royal Indemnity Co.* stated: "If the evidence, and the logical inferences therefrom, can be said to warrant a conclusion that the accident, within a reasonable probability, resulted in the disability, the claimant is entitled to compensation"³³

In 1963, the term "accident" was strictly defined by statute to include "one or more determinate act or acts of a traumatic nature, which caused an injury."³⁴ Claimant Finn was held to a strict interpretation of the 1963 definition. Thus, he was required to prove by definitive evidence the *event* which caused his injury, an ironic requirement when judicial interpretation of the 1963 definition is examined.

Shortly after the legislature enacted the statutory definition, the Industrial Commission of Colorado and the State Compensation Insurance Fund litigated two cases before the supreme court.³⁵ These actions were based upon the premise that the statutory definition

³⁰ *Varsity Amusement Co. v. Butters*, 155 Colo. 330, 339, 394 P.2d 603, 607 (1964).

³¹ *Central Sur. & Ins. Corp. v. Industrial Comm'n*, 84 Colo. 481, 490, 271 P.2d 617, 621 (1928).

³² *Martin Marietta Corp. v. Faulk*, 158 Colo. 441, 407 P.2d 348 (1965); *Carroll v. Industrial Comm'n*, 69 Colo. 473, 195 P. 1097 (1920).

³³ 124 Colo. 210, 214, 236 P.2d 293, 295-96 (1951).

³⁴ *Workmen's Compensation Act*, COLO. REV. STAT. ANN. § 81-2-9 (1963).

³⁵ *Industrial Comm'n v. Milka*, 159 Colo. 114, 410 P.2d 181 (1966); *Plummer v. State Compensation Ins. Fund*, 159 Colo. 122, 410 P.2d 185 (1966).

had overruled the caselaw construing "accident," and the court should therefore reverse awards made to the claimants. In the *Milka* case, the Commission contended that proof of "some demonstrative external violence . . . visited upon the body 'causing a wounding, breaking, tearing, puncturing or disruption of the continuity of the body of the injured employee or his bodily tissue'"³⁶ was the statutory requirement. The court rejected this theory at the time and held that this amendment merely provided for the first time a legislative definition of the term "accident" and "did not overrule . . . former decisions."³⁷ This thesis is clearly discredited by the *Finn* decision.

The Colorado legislature in 1965 supplanted the 1963 definition of "accident" with a new definition.³⁸ The 1965 statute is similar in its requirements to the situation prior to 1963 in that it does not contain the rigid requirement of evidence to establish determinate acts. The 1965 definition requires only "the effect of an unknown cause"³⁹ It is submitted that *effect* in this sense means *result*, something that is produced by an agent or cause. The *effect* is the *result*, the *result* being the *injury* sustained by the claimant. Since the *cause* may be unknown, the *event* producing the injury need not be proved by definitive evidence. The resulting injury and the circumstances surrounding it may properly establish an "accident" and grounds for a workmen's compensation claim.

It could be argued that the *Finn* case can be reopened as a result of the revision of the "accident" definition. The Colorado statute⁴⁰ provides for the reopening of a case on the ground of error, mistake, or change in condition, and "mistake" has been held to include mistakes of fact and law.⁴¹ Theoretically, then, legislative alteration of statutes, such as the clarification of the "accident" definition, could be the basis for reopening and rehearing the *Finn* case on this issue. Practically, however, such an attempt would presumably fail on the basis of a prior Colorado Supreme Court decision viewing the reopening statute as being permissive and, as

³⁶ *Industrial Comm'n v. Milka*, 159 Colo. 114, 118, 410 P.2d 181, 183 (1966).

³⁷ *Id.* at 121, 410 P.2d at 184. The court held that "the language of an amendment must be construed in the light of previous decisions by courts of last resort construing the original act" *Id.* at 120, 410 P.2d at 184. *Plummer v. State Compensation Ins. Fund*, 159 Colo. 122, 410 P.2d 185 (1966) was decided along with *Milka*, and the court, in a terse opinion, reversed a grant of compensation on the basis of the *Milka* rationale.

³⁸ Workmen's Compensation Act, COLO. REV. STAT. ANN. § 81-2-9 (Supp. 1965).

³⁹ *Id.*

Definitions. — (1) The term "accident", as used in this chapter, shall mean an unforeseen event, occurring without the will or design of the person whose mere act causes it; an unexpected, unusual, or undesigned occurrence; or the effect of an unknown cause, or, the cause being known, an unprecedented consequence of it.

⁴⁰ Workmen's Compensation Act, COLO. REV. STAT. ANN. § 81-14-19 (1963).

⁴¹ *Gregorich v. Industrial Comm'n*, 117 Colo. 423, 188 P.2d 886 (1947); *Industrial Comm'n v. Lockard*, 89 Colo. 428, 3 P.2d 416 (1931).

such, permitting but not requiring the Commission to reopen a case upon the stipulated grounds.⁴² In addition, the supreme court has ruled that a previous alteration in the statutory definition of "accident" by the legislature did not announce any change in the law,⁴³ thus indicating that the court would not now require the Commission to reopen the *Finn* case as a result of the latest statutory alteration of the same term.

III. SUGGESTION — REBUTTABLE PRESUMPTION

Courts in Colorado and in other states have been wrestling with the problem of whether injuries which occur from unknown causes and without witnesses are to be compensated. There has been a definite trend not to limit the scope of workmen's compensation but to fulfill the purpose of the act, which is highly remedial and which "must be given a liberal construction to accomplish its beneficial purposes."⁴⁴

Recent events in other jurisdictions indicate that the trend in workmen's compensation procedure, both by statute⁴⁵ and by judicial precedent,⁴⁶ is to create a rebuttable presumption in favor of the claimant. In Colorado, the *Havens* corollary implies such a presumption, but the burden of proof is still on the claimant as at common law. The Colorado statute outlines the burden of proof requirement *only* in the section on occupational diseases.⁴⁷ Consequently, the omission of any reference to burden of proof elsewhere in the act would lead to the conclusion that a presumption in favor of the claimant was intended.

There is no inherent human right to recovery for any and all injuries sustained during the hours of employment. It is incumbent upon the legislature, the courts, and the Industrial Commission to

⁴² *Industrial Comm'n v. Cutshall*, 433 P.2d 765 (Colo. 1967).

⁴³ See note 36 *supra* and accompanying text.

⁴⁴ *Industrial Comm'n v. Havens*, 136 Colo. 111, 119, 314 P.2d 698, 702 (1957).

⁴⁵ See, e.g., N.Y. WORKMEN'S COMPENSATION LAW § 21 (McKinney 1965):

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

1. That the claim comes within the provisions of this chapter;

...

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.

⁴⁶ See, e.g., *Steele v. Adler*, 269 F. Supp. 376 (D.D.C. 1967); *Foust v. Birds Eye Div. of General Foods Corp.*, 91 Idaho 418, 422 P.2d 616 (1967); *Taylor v. Director Pub. Works*, 121 Ind. App. 650, 100 N.E.2d 831 (1951); *Blair Fork Coal Co. v. Blankenship*, 416 S.W.2d 716 (Ky. 1967); *McClelland v. Hagerty Wrecking Co.*, 384 S.W.2d 93 (Mo. Ct. App. 1964); *King v. Johnson Bros. Constr. Co.*, 155 N.W.2d 183 (S.D. 1967).

⁴⁷ Workmen's Compensation Act, COLO. REV. STAT. ANN. § 81-18-10(1)(b) (1963): "The burden of proof shall be upon the employee to establish each and every such fact by competent medical evidence."

establish proper limits for recovery within the Workmen's Compensation Act. Yet, it certainly was not intended that legitimate claims should fail merely on the ground that there were no eyewitnesses, or that those employees who did witness the accident refuse to testify for fear of losing their own jobs or pensions. It was not anticipated that the individual's right to compensation would depend upon an expensive and time consuming skirmish of lawyers and doctors. A rebuttable presumption in favor of the claimant would be more equitable to the employee. It would prevent the denial of valid claims on the basis of embattled principles of common law doctrine applied by the courts under the guise of legislative intent. At the same time, it would allow the employer to submit evidence which could justify a bar to the claimant's recovery. In the final analysis, the Colorado Supreme Court should not allow interpretation of the Workmen's Compensation Act to work a denial of legitimate claims by employees injured while performing their work-related duties, simply because the event which is the cause of the injury is unwitnessed.

*G. Landon Feazell, Jr.**

CONSTITUTIONAL LAW — EQUAL PROTECTION — CLASSIFICATION OF THE CRIMINALLY INSANE FOR PURPOSES OF RECOVERING COSTS OF CONFINEMENT. — *State v. Estate of Burnell*, 439 P.2d 38 (Colo. 1968).

Having been adjudicated not guilty by reason of insanity of the charge of murder, Arlester L. Burnell was committed to the Colorado State Hospital's ward for the criminally insane. In subsequent proceedings in the probate court, Burnell was civilly adjudicated a mental incompetent and an estate was opened. After a period of time in which funds had accumulated in Burnell's estate, the hospital filed a claim against the estate for costs of Burnell's care and maintenance, pursuant to a Colorado recovery statute.¹ The probate court

* The author wishes to acknowledge the research and contributions of Mrs. Gladys Oppenheimer to this Comment.

¹ Ch. 224, § 1, [1951] Colo. Laws 557, as amended COLO. REV. STAT. ANN § 71-7-1(1) (Supp. 1965). The statute, before the 1964 amendment and relocation, provided:

Estates liable. — Whenever any person is admitted, committed or transferred to any public institution of this state, maintained for the care, support, maintenance, education and treatment of insane persons, mentally incompetent persons, criminally insane persons, feeble-minded or epileptic persons, and such person or persons have real or personal estate or both, the estate of such person or persons, irrespective of its source, composition or origin, shall be primarily liable for the payment of the claims of the said public institution for the care, support, maintenance, education and treatment of said person equal to the cost per capita per month of care and treatment of other patients in said institution.