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## Appellate Practice in Missouri

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## APPELLATE PRACTICE IN MISSOURI\*

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### THE JURISDICTION OF THE SUPREME COURT

The most important decision of the year, so far as appellate jurisdiction is concerned, is the opinion of Commissioner Coil for the court en banc in *Snowbarger v. M.F.A. Cent. Co-op.*,<sup>1</sup> a workmen's compensation case involving the referee's award of a death benefit in the amount of \$8,535 to the widow, plus additional amounts for burial and medical expenses, in which the court held that even though the single death benefit was in excess of \$7,500, the amount in actual dispute *independent of all contingencies*, did not exceed \$7,500. The contingencies, as shown by the opinion, are the possibility of the death or remarriage of the widow which would terminate the weekly benefits. Taking those into consideration the court states:

It seems crystal clear to us, therefore, that when an appeal is taken from a judgment encompassing such an award the amount which the transcript affirmatively shows to be in dispute, independent of all contingencies, is the amount then due and payable. But all of such an award will be due and payable or only a portion thereof, depending on the contingency of how long the widow lives, unmarried, after the date of the award. It must follow that the transcript in such a case would not and could not affirmatively show that there was in dispute, independent of all contingencies, an amount exceeding \$7,500, exclusive of costs, unless the amount accrued at the time of the appeal exceeded \$7,500.<sup>2</sup>

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\*This Article contains a discussion of selected 1958 and 1959 Missouri court decisions.

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1. 317 S.W.2d 390 (Mo. 1958) (en banc).

2. *Id.* at 394.

The Workmen's Compensation Act<sup>3</sup> was enacted in 1925. Ever since that date, and certainly, as the opinion points out, since the decision of the court in 1930 in the case of *Wahling v. Krenning-Schlapp Grocer Co.*,<sup>4</sup> the court had uniformly held to the rule that where the single total death benefit was in an amount in excess of \$7,500, appellate jurisdiction was in the supreme court. Somewhat later, in *Shroyer v. Missouri Live-stock Comm'n Co.*<sup>5</sup> the court en banc, in an opinion by the late Judge Atwood, made an analysis of the question involved and reached the conclusion that the amount involved and in dispute at the time the appeal was taken is the single death benefit award and retained jurisdiction because that benefit was in excess of \$7,500. Ever since the *Shroyer* case the court has adhered to it uniformly; and, as pointed out by Commissioner Coil, there have been a great number of cases between the time of the early opinion in the *Sayles*<sup>6</sup> case and the present time in all of which the reasoning of the *Shroyer* case has been reaffirmed.

It would seem to the writer of this Article that this departure from a rule settled for more than thirty years contravenes the fundamental principles of stare decisis. In addition, the court has not given consideration to the fact that the prior decisions (now overruled) had been announced and adhered to by the court continuously for many years before the constitutional convention which submitted to the people for adoption the constitution of 1945. Both under the old constitution, and under the constitution of 1945, the question here presented is controlled by the phrase "amount in dispute."<sup>7</sup> Apparently the constitutional convention had been satisfied with the supreme court's construction of those words in compensation death cases. It will be noted that the departure from this long standing rule is based upon the fact that the court has construed the words in other cases, as modified by the word "actually" and by the phrase "independent of all contingencies." Neither that word nor the phrase appears in the constitution.

Other cases dealing with the jurisdiction of the court resulted in a transfer, for lack of jurisdiction, of a total of eight cases to the courts of appeal during the year. They need not be considered in detail. In

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3. §§ 287.010—800, RSMo 1949.

4. 325 Mo. 677, 29 S.W.2d 128 (1930).

5. 61 S.W.2d 713 (Mo. 1933) (en banc).

6. *Sayles v. Kansas City Structural Steel Co.*, 128 S.W.2d 1046 (Mo. 1939) (en banc).

7. Mo. CONST. art. 4, § 3.

*Vannorsdel v. Thompson*,<sup>8</sup> a suit on a contract where a counterclaim was involved, the court draws the usual distinction between "amount involved" and "amount in dispute" holding that the amount in dispute there was less than the jurisdictional amount necessary to give the supreme court jurisdiction.

In two cases, *Kansas City Power & Light Co. v. Riss*,<sup>9</sup> where land under an easement was the subject of the appellate issue, and *Fort Osage Drainage Dist. v. Foley*,<sup>10</sup> involving a maintenance tax levy against real estate, it was held that title to real estate was not involved in the constitutional sense and the cases were transferred to the court of appeals. So, also, where jurisdiction was attempted to be sustained upon the ground that a constitutional question was involved, but the cases only involved questions of statutory construction, the cases were transferred to the court of appeals.<sup>11</sup> In *Swift & Co. v. Doe*,<sup>12</sup> a labor injunction case, even though a constitutional question was raised, the court declined jurisdiction on the ground that the identical question had been settled by prior decisions and that, therefore, the case no longer was one involving a "construction" of the constitution. The constitution, said the court, has already been construed with respect to the point involved. So, also, in *Cohen v. Ennis*,<sup>13</sup> the court again transferred the case because of its view that the mere assertion that a constitutional question is involved does not of itself raise that question.

#### THE RIGHT OF APPEAL

In *State v. Local 8-6, Oil Workers*<sup>14</sup> where the constitutionality of the King-Thompson Act<sup>15</sup> was exhaustively considered by the court, a motion to dismiss the appeal was filed on the ground that the questions at issue had become moot by the termination of the strike. The court, however, pointed out that:

where the matters connected with or growing out of the original cause have not been fully and finally disposed of and the questions presented are of public importance and likely to recur in

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8. 315 S.W.2d 121 (Mo. 1958).

9. 312 S.W.2d 846 (Mo. 1958).

10. 312 S.W.2d 144 (Mo. 1958).

11. *Shaver v. Moyer*, 317 S.W.2d 414 (Mo. 1958); *Community Fire Protection Dist. v. Board of Educ.*, 312 S.W.2d 75 (Mo. 1958).

12. 311 S.W.2d 15 (Mo. 1958).

13. 308 S.W.2d 669 (Mo. 1958).

14. 317 S.W.2d 309 (Mo. 1958) (en banc).

15. §§ 295.010—.210, RSMo 1949.

the courts of the state, an appeal need not be dismissed as being moot although the immediate controversy has ceased to exist.<sup>16</sup>

In another case, *Critcher v. Rudy Fick Inc.*,<sup>17</sup> the court observed that the plain error rule is not a refuge for those who have failed to make proper objection and the court refused to consider on appeal questions raised for the first time in the appellate court because those questions had not properly been presented to the trial court. Also, in *Logsden v. Duncan*,<sup>18</sup> the court held that where on a subsequent appeal the record and issues were substantially the same as in the prior appeal the opinion on the former appeal is clearly the law of the case.

#### RECORDS AND BRIEFS

In only one case did the court find it necessary to dismiss an appeal because of failure to comply with its rules with respect to appellant's brief. In that case, *Turner v. Calvert*,<sup>19</sup> the court pointed out that although the suit was in equity on a record containing 185 pages, the statement of facts in the brief consisted of only 17 typewritten lines and the points and authorities were merely abstract statements of law not directed to any action or ruling of the court claimed to be erroneous. Under the circumstances, the appeal was dismissed for failure to comply with rules 1.08 and 1.09. However, in *Camarata v. Payton*,<sup>20</sup> the court declined to dismiss the appeal for deficiencies in appellant's brief, pointing out that the questions presented are readily understandable and the brief as a whole was sufficient to inform opposing counsel and the court of the essential merits of appeal. In addition, the brief of respondent had supplied the deficiencies of which respondent complained.

In *Lakin v. Postal Life & Cas. Ins. Co.*,<sup>21</sup> respondent filed no brief although pointing out that there is no provision in the rules which require a respondent to file a brief. The court commented that "such a practice certainly is not to be encouraged."<sup>22</sup> The case there presented was not one in which the respondent had the burden of showing appellate issues, as would have been the case had the appeal been taken from an order sustaining a motion for new trial.

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16. 317 S.W.2d at 314.

17. 315 S.W.2d 421 (Mo. 1958).

18. 316 S.W.2d 488 (Mo. 1958).

19. 315 S.W.2d 118 (Mo. 1958).

20. 316 S.W.2d 474 (Mo. 1958).

21. 316 S.W.2d 542 (Mo. 1958).

22. *Id.* at 549.