Appeals but assailed as marked because of the name "Dionisio Tapero" written on the space for senator, special election. This ballot is valid for lack of showing that the name "Dionisio Tapero" was written to mark the ballot; evidently this is a stray vote.

COUNTER-ASSIGNMENT OF ERROR XI

Under this counter-assignment, respondent claims that the 107 ballots counted by the Court of Appeals as valid votes for petitioner should be disregarded as the same were cast by unregistered voters. This error was raised before the Court of Appeals and decided against respondent on the ground that said voters admittedly appear in the voters' list of the precincts concerned, and that as long as they are not stricken off, the list stands as conclusive proof that they were duly registered voters. In his brief, petitioner admits that the names of these voters are really registered in the permanent list of voters for the year 1955 in the municipality of Alitagtag; that their names were not the subject of exclusion proceedings in the Court of First Instance, and that their right to vote was not contested during the election. In the absence of refutation of the fact that these voters appear in the permanent list of voters for 1955, we find no reason for disturbing the finding of the Court of Appeals that these 107 votes were validly cast.

In conclusion, we hold that the 12 ballots Exhibits 1-Q, 3-UU, 4-CCC, 5-E, 5-H, 12-E, 12-Q, 3-L, 11-T, 1-S, 8-A and 6-PP individually discussed above should be added to the 1916 votes adjudicated by the Court of Appeals to the petitioner, thus increasing the number of votes cast in his favor to 1928. On the other hand, from the 1933 votes adjudicated to the respondent, one vote (Exhibit C-1) should be deducted therefrom, leaving a total of 1932 votes. To this, however, four votes (Exhibits K-29, L-10, I-54 and L-16) should be added, thus making a total of 1936 votes cast in his favor.

WHEREFORE, with the modification of the decision appealed from along the lines above indicated, the same is hereby affirmed, and respondent Telesforo Reyes declared elected to the office of municipal mayor of Alitagtag, province of Batangas, with a majority of eight votes. With costs against petitioner.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes A, Bautista Angelo, Labrador, and Concepcion, JJ., concurred.

III

Cayetano Dangue, Petitioner, vs. Franklin Baker Company of the Philippines and Workmen's Compensation Commission, Respondents, G.R. No. L-15838, April 9, 1960, Barrera, J.

1. WORKMEN'S COMPENSATION LAW; INJURY RECEIVED BY EMPLOYEE OUTSIDE OF HIS EMPLOYMENT BUT AGGRAVATED IN THE COURSE OF EMPLOYMENT IS COMPENSABLE. — In the case at bar, petitioner's right eye was injured while he was engaged in the performance of work outside of his employment, but said injury became worse or was aggravated by the accident which he met, while performing work in the course of his employment in respondent company and, therefore, he is entitled to compensation.

2. ID.; EFFECT OF FAILURE OF EMPLOYER TO CONTROVERT EMPLOYEE'S CLAIM FOR COMPENSATION. — The rule is that when the employer does not controvert the claim of the employee for compensation, he is also deemed to have waived his right to interpose any defense, and he could not prove anything in relation thereto.

DECISION

This is a petition for review on certiorari of the decision dated March 12, 1959 of respondent Workmen's Compensation Commission, and its resolution, *en banc*, of June 23, 1959.

In the morning of July 17, 1954, while petitioner Cayetano Dangue, an employee of respondent Franklin Baker Company of the Philippines, was cleaning his *kaingin*, his right eye was hit by the leaves of a shrub known as "payang-payang". Since his right eye was becoming reddish in color, he consulted respondent company's physician on July 19, 1954. Apparently finding nothing serious, he was allowed to work. On the following day, July 20, 1954, while petitioner was in the course of his work as sheller (shelling coconuts), his right eye was struck by flying speck of coconut shell. As a result, there developed an unbearable pain and blurring of vision. On July 21, 1954, upon the advice of respondent company's physician, petitioner was given leave of absence, which was extended from time to time, until November 10, 1954, when he resumed work. During this time, he was thrice operated on his injured eye and sustained a 16.4% loss of vision, thus causing his temporary total disability and permanent partial disability. For the entire period of his said leave of absence, from July 21, to November 10, 1954, petitioner was not paid any compensation by respondent company.

On September 6, 1954, petitioner filed with the Department of Labor a complaint against respondent company praying, *inter alia*, for payment of compensation in accordance with the Workmen's Compensation Act.[1]

On June 10, 1957, after due hearing, the Hearing Officer of respondent Commission at San Pablo City rendered a decision (Annex A) ordering respondent company to pay petitioner the amount of P460.77, as compensation pursuant to Sections 14 and 17 of the aforecited Act.

Onn June 21, 1957, respondent company filed with respondent commission a petition for review of said decision of the Hearing Officer. On March 12, 1959, respondent Commission rendered a decision dismissing petitioner's claim for compensation and absolving respondent company from liability. From this decision, petitioner filed a motion for reconsideration, which motion, was denied by respondent Commission in its resolution *en banc* of June 23, 1959 (Annex C).[2] Hence this petition for review.

Petitioner claims that respondent Commission erred in dismissing his claim for compensation.

We agree with petitioner. It is not disputed that petitioner, after consulting the company physician about his eye, was allowed to report for work. This fact indicates that the first injury, if at all, received on July 17, 1954 was not serious. If it were so, respondent company would have undoubtedly, and by all means, advised or even prevented him from reporting for work, and petitioner himself would not have been able to go about his tasks, considering the extreme sensitiveness of the human eye. It appears, however, that after he met the second accident while working for the company as a sheller, petitioner was, on the following day, or on July 21, 1954, advised to go on leave, which indicates that this second accident was serious, as in fact it was, as he had to be operated on thereafter and his leave continued until November 10, 1954. True it is, that petitioner's right eye was injured while engaged in the performance of work outside of his employment, but said injury become worse or was aggravated by the accident which he met, while performing work in the course of his employment in respondent company. Consequently, he is entitled to compensation.

> "Recovery will not be prevented because the consequences of the injury received in the accident were aggravated by the employee's physical condition at the time the injury was received." (71 C.J. 606.)
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> "But even assuming that appellant's left eye was already defective when he entered appellee's employ, nevertheless it is clear that the defect was somehow aggravated or accelerated by his employment and ultimately necessitated an operation by reason of the accident in question. Appellee is not

[1] Act No. 3428, as amended.

[2] With Associate Commissioner Nieves Baens del Rosairo dissenting in a separate opinion.

therefore relieved of responsibility under the Workmen's Compensation Law, for acceleration of a previously existing disease in an injury under the Workmen's Compensation Laws (Brightman v. Aetna Life Insurance Company, 220 Miss. 17, 107 E.E. 527), and it is sufficient that the injury and a preexisting disease combined to produce disability in order to make the injury compensable." (71 C.J., 614; Isar v. Kellog and Sons, 40 O.G. 167).

"The fact that the employee suffered from impaired vision prior to the accident does not prevent the loss or further impairment of his vision from constituting an injury such as the statute authorizes compensation for." (Hicatur v. Hunter, 39 Pa. Super. 393.)

"Where a steel chip flew into an employee's eye, accelerating the development of a cataract and causing the loss of sight, he suffered an injury within the statute." (Kucinic v. United Engineering and Foundry Co., 160 A. 344; 110 Pa. Super. 261.)

"Where a miner while at work was struck so hard a blow on the left eye by a piece of coal that it accelerated the development of a cataract in that eye, and made necessary an operation which resulted in the loss of the vision of the eye, he suffered an injury with the statute." (Sakunas v. Philadelphia and Reading Coal and Iron Co., 78 Pa. Super. 261.)

"An employee was struck in the eyes by a stream of analyne. His eyes were injured and he was advised by the employer's physician to wear dark glasses. A month later while wearing these glasses, he fell downstairs and permanently injured one eye. The second injury was held the natural and proximate result of the first accident." (VI Schneider's Compensation Text, 30-40, and cases therein cited.)

"The Workmen's Compensation Act is a social legislation designed to give relief to the workman who has been the victim of an accident in the pursuit of his employment and must be liberally construed to attain the purpose for which it has been enacted." (71 C.J. 341-352; Ramos v. Poblete, 73 Phil. 241; Francisco v. Consing, 633 Phil. 354.)[3]

Petitioner also contends that respondent Commission erred in absolving respondent company from liability, in spite of its noncontroversion of petitioner's claim and admission of his injury in the performance of his regular work.

There is also merit in the contention. Examination of the records of the case discloses that the Employer's Report of Accident or Sickness, signed by respondent company's personnel manager, Mr. Gregorio Imperial, contains the following: (1) as to controversion, said report stated "No", indicating that respondent company will not controvert petitioner's claim; (2) as to the question, "was he (petitioner) injured in regular occcupation?", the answer is "Yes"; and (3) as to the description of the accident, said report stated: "while taking off the shell from a coconut, a speck of coconut shell hit his (petitioner's eye." As a rule, when the employer does not controvert the claim of the employee for compensation, he is also deemed to have waived his right to interpose any defense, and he could not prove anything in relation thereto. (Victorias Milling Co., Inc. v. Compensation Commissioner, G. R. No. L-10533, prom. May 13, 1957.)

WHEREFORE, the appealed decision and resolution of respondent Commission are set aside. Respondent Franklin Baker Co. is hereby ordered to pay petitioner, the amount of P460.77, as compensation in accordance with Section 14 and 17 of the Workmen's Compensation Act, and to pay the amount of P5.00 to respondent Commission, pursuant to Section 55 of the same Act. With costs against respondent company.

SO ORDERED.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Concepcion and Endencia, JJ. concurred.

J.B.L. Reyes, J., on leave, took no part.

[3] See II Francisco, Labor Laws (3rd Ed.) 137-145.

IV

Trinidad de los Reyes Vda. de Santiago, for herself and in behalf of her minor children, Mamerto, Leonila, and Andrea, all surnamed Santiago, Petitioners, vs. Angela S. Reyes and Workmen's Compensation Commission, Respondents, G.R. No. L-13115, *February 29, 1960, Labrador, J.*

1. WORKMEN'S COMPENSATION LAW; PRESUMPTION OF PERFORMANCE OF DUTIES BY EMPLOYEE. — In the case at bar, it is a fact that before leaving Manila, the deceased was engaged in his employment, and the presumption is that he performed his duties legally and in accordance with the rules and regulations because that was his regular obligation and it is incumbent, therefore, upon the respondent to prove that the deceased voluntarily went out of his route and drove his jeepney towards the province of Quezon, not that the deceased voluntarily went to that province thereby going beyond the route provided for the vehicle that he was driving.

2. ID.; PRESUMPTION THAT EMPLOYEE DIED IN THE COURSE OF EMPLOYMENT. — In the case at bar, the death of the employee must be presumed to have arisen out of his employment because there is a presumption that the deceased died while in the course of his employment.

DECISION

This is a petition to review the decision of the majority of the members of the Workmen's Compensation Commission, denying a claim for compensation of petitioners for the death of Victoriano Santiago, driver of a jeepney operated by the respondent. The said deceased was the driver of an auto-calesa belonging to respondent and was last seen operating said auto-calesa at 9:00 in the evening of September 26, 1955. In the morning of September 27, 1955, his dead body was found in Tayabas, Quezon, obviously a victim of murder by persons who were at large and whose identities were not known. Apparently the driver must have been attacked with blunt instrument or instruments as an examination of his head disclosed that it was heavily fractured, fragmenting it into many pieces, crushing and lacerating the brains. (Stipulation of Facts). Other pertinent facts in the stipulation of facts submitted by the parties are as follows:

> "That there is a specific instruction given by the respondent to the deceased to follow the route prescribed by the Public Service Commission. In the case of jeep driven by the deceased, its route is within Manila and suburbs;
>
> That it has always been the practice of the respondent that, whenever the driver is accepted, specific instruction is given to him to follow faithfully the traffic rules and regulations, especially speeding and overloading, and he is requested also not to operate beyond the route given by the Public Service Commission. In case the driver goes beyond the route prescribed by the Public Service Commission, a fine of P50.00 is imposed which is paid by the respondent. However, in case of the traffic violations, especially speeding, it is the driver who pays. (p. 2, Annex "E").

Two of the members of the Commission made the following finding on the question as to whether or not the death of Victoriano Santiago arose of and was occasioned in the course of his employment.

> "There is nothing in the record which justified the assumption that he was forcibly taken away, at the point of a gun or a knife from his regular orbit or employment. The most that may be conceded, however remote it seems, is the possibility that, to use the referee's own word, "he, the driver, might have been lured." by his assasins to get away from his regular route, only to be robbed of his earnings,