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EXTRATERRITORIAL APPLICATION OF WORKMEN'S COMPENSATION ACTS

GEORGE E. HALL, JR.

FROM the advent of the machine and the growth of the factory system, following what is known in history as the Industrial Revolution, from about the year 1750¹ to the end of the nineteenth century, the lot of the workingman was a sorry one indeed. In economics, politics, philosophy, and sociology the doctrine of laissez faire—free trade and free competition—was the controlling ideal. The only laws that it was thought should be controlling were natural laws, and governments were to keep their hands off in regard to everything except the actual determination of these laws.

These laws are the rules of justice, of morality, of conduct, useful to all and to each. Neither men nor governments make them nor can make them. They recognize them as conforming to the supreme reason which governs the universe; they declare them; they present them to the obedience of good men, even to the conscience of the wicked. . . . These laws are irrevocable, they pertain to the essence of men and things; they are the expression of the will of God; and the more one reflects, the more one reveres them.²

With a doctrine such as this controlling the minds of the middle class leaders of the time—that is, the heads of the factories—it is easy to see that the laboring class did not have much chance to better its own condition, and it is a matter of common knowledge how bad those conditions really were. One has but to read a bit of the literature of the period, especially "Hard Times" by Charles Dickens, to appreciate fully the absolute inequality which the laboring man suffered. As time wore on, however, the ranks of the workers produced leaders and sympathizers who were willing to fight for them, and gradually unions were organized. Whether or not we favor

the ideals and methods of the present-day union, we must admit that were it not for the heroic struggles of the early union men, no workmen's compensation legislation would exist today. The trend, though long and hard-fought, was a natural one. The great mass of people, then and now, were in favor of any measures that would benefit the common man, and once they were awakened to the conditions that existed during the latter part of the eighteenth and most of the nineteenth centuries, they hastened to make strong demands upon their law makers that such conditions should be eradicated or at least greatly bettered. This new ideal of regulation and control has been recognized and described by Woodrow Wilson in these words:

Human freedom consists in perfect adjustments of human interests and human activities and human energies. Now, the adjustments necessary between individuals, between individuals and complex institutions amidst which they live, and between those institutions and the government, are infinitely more intricate today than ever before. Life has become complex; there are many more elements, more parts to it than ever before. And, therefore, it is harder to keep everything adjusted—and harder to find out where the trouble lies when the machine gets out of order. You know that one of the interesting things that Mr. Jefferson said in those early days of simplicity which marked the beginnings of our government was that the best government consisted in as little governing as possible. And there is still a sense in which that is true. It is still intolerable for the government to interfere with our individual activities except where it is necessary to interfere with them in order to free them. But I feel confident that if Jefferson were living today he would see what we see: that the individual is caught in a great confused nexus of all sorts of complicated circumstances, and that to let him alone is to leave him helpless as against the obstacles with which he has to contend; and that, therefore, law in our day must come to the assistance of the individual. It must come to his assistance to see that he gets fair play; that is all, but that is much. Without the watchful interference, the resolute interference, of the government, there can be no fair play between
individuals and such powerful institutions as the trusts. Freedom today is something more than being let alone. The program of a government of freedom must in these days be positive, not negative merely.\(^3\)

The governments gradually came to realize the appalling number of deaths and injuries that arose yearly in the great factories and began to inquire as to the recourse that the worker had for such injuries as he sustained. It was found that the "let alone" policy had so infected the minds of the employers and the courts that the worker not only had to take the employment if, as, when, and under such conditions as the employer wished to furnish and exact, but also that the employee was forced to bear the burden of proof in establishing the liability of the employer in case he did receive an injury of any kind during the course of his employment. Even within this limited field in which the employer could be held liable, he had in aid of his position those three common law defenses which were so valuable—contributory negligence, assumption of the risk, and the fellow servant doctrine. Clearly the workman had a very expensive addition to his welfare in such a case. It was as a substitute for such an inequitable system that workmen's compensation acts finally came into existence.

The principles underlying workmen's compensation are: First, the employer is automatically responsible for the financial loss to the worker arising from all accidents within the industry; second, industrial accidents should be reckoned as a part of the cost of production; therefore, the employer is expected to shift, if possible, the cost to the consumer. These principles will be more fully illustrated by the discussion of the cases which will follow, and they are mentioned here merely to enable us better to understand the background of the acts themselves. The scope of the present acts is quite varied; some laws cover practically the whole range of industrial employments, others are limited to what are commonly known as hazardous or extrahazardous employments.\(^4\)

\(^3\) Ibid., p. 614.
Stated broadly, our present quest is the ascertainment of the extent to which the workmen’s compensation acts of one state are recognized and enforced in the courts of its sister states. The answer falls into two main divisions: First, to what extent will one state enforce the act of another state when the accident occurs inside of its own boundaries although the contract of employment was made in another state; second, to what extent will a state enforce its own act when the accident occurs outside of its own boundaries. Within each of these divisions there is a great deal of conflict in the decisions of the various states; so great, in fact, is the variance, that the Minnesota and Iowa courts have openly declared that a discussion of the decisions of other states will be of little value in determining the operation of their own statutes; that different arguments appeal to different courts. Hence, we must necessarily direct our attention to the arguments which have caused the courts of one state to reach one conclusion and of other states to reach another. It must be pointed out that the type of the act, whether elective or compulsory, the place where the contract of employment was entered into, the place where the parties resided, and the place where the work is to be performed are all factors which must be considered in determining the extent of application of the particular act. It must be remembered also that the specific provisions of the statute in any state will distinctly affect the conclusion reached in that particular jurisdiction. From these considerations we will turn to the operation of state acts where there is a Federal statute, and then will conclude with a review of the cases which have arisen in the Illinois courts involving any of these situations.

Even now, with the statement of the problem before us, we should not proceed before the following settled principles of conflict of laws have been reiterated: First,

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5 State ex rel. Chambers v. District Court of Hennepin County, 139 Minn. 205, 166 N. W. 185 (1918).
the law of the place where the accident occurred will control a tort action in regard to the measure of damages, the party entitled to maintain the action, the beneficiaries of the action, and all other questions of substantive law which determine whether or not there has in fact been a tort committed;\(^7\) second, the law of the place where the contract was made will determine all questions of essential validity of the contract, unless it is to be entirely performed in another place, in which case the law of the place of performance will govern;\(^8\) third, the statutes of another state are only enforced because of comity and are not entitled to full faith and credit under the Constitution of the United States.\(^9\)

**Difference in Application of Elective and Compulsory Acts**

Courts base their reasoning not only on the rules of conflict of laws in applying an act to cases involving the problem of its extraterritorial effect but also upon matters of expediency. By that is meant only that the courts have held their statutes to apply to injuries occurring outside the state, because they have felt that it would be contrary to the intentions of the legislatures which passed them to hold otherwise. The theory of such cases is that accidents are to be considered as a cost or expense of carrying on the business, and that the work done under the contract of employment is just as beneficial to the employer when it is consummated beyond the state lines as when it is entirely performed within the boundaries of the state.\(^10\) The courts have also said that the fact that the amount paid into the compensation fund by the employer is based upon the total salaries which he pays, regardless of where the work is done, makes it hardly

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\(^7\) Cuba R. Co. v. Crosby, 222 U. S. 473, 56 L. Ed. 274 (1912).

\(^8\) Milliken v. Pratt, 125 Mass. 374 (1878).


\(^10\) Post v. Burgber and Gohlke, 216 N. Y. 544, 111 N. E. 351 (1916). The court also said that the idea of the act was to prevent dependents of such injured persons from becoming subjects of charity, and that such danger was just as great if the accident occurred out of the state as in it.
believable that merely crossing the state line temporarily would deprive the employee of that protection intended to be afforded by the statute.\footnote{Spratt v. Sweeny and Gray Co., 153 N. Y. S. 505 (1915); Post v. Burgher and Gohlke, 216 N. Y. 544, 111 N. E. 351 (1916); Kennerson v. Thames Towboat Co., 89 Conn. 367, 94 A. 372 (1915); Anderson v. Miller Scrap Iron Company, 169 Wis. 106, 170 N. W. 275 (1919); Pierce v. Bekins Van and Storage Co., 185 Iowa 1346, 172 N. W. 191 (1919); State ex rel. Chambers v. District Court, 139 Minn. 205, 166 N. W. 185 (1918).}

In the Nebraska case of \textit{McGuire v. Phelan-Shirley Company},\footnote{111 Neb. 609, 197 N. W. 615 (1924).} the contract was made in Nebraska, and the injury was sustained in the state of Iowa. Compensation was allowed under the Nebraska act, the court saying,

The Workmen’s Compensation Act is one of general interest, not only to the workman and his employer, but as well to the state, and it should be so construed that technical refinements of interpretation will not be permitted to defeat it.

One of the best examples of such expeditious reasoning is to be found in \textit{Anderson v. Miller Scrap Iron Company},\footnote{169 Wis. 106, 170 N. W. 275.} here quoted:

As has been said, the Workmen’s Compensation Act is based upon the economic theory that it is in the interest of the general welfare that damages arising from injuries sustained by persons engaged in a particular industry shall be borne by that industry. The liability of the employer at common law was limited to cases where negligence could be established. Where negligence was established, the burden was borne in the first instance by the employer, who ordinarily had an opportunity to pass all or a part of the burden on. In cases where negligence could not be established, the injured employee bore the entire burden, with no opportunity to pass it on. Under the Workmen’s Compensation Act the burden falls upon society at large, and is not borne entirely either by the employer or by the employee. If the application of the law be limited to injuries occurring within this state, then in the case of injuries sustained without the state the employer will not be liable, except he be negligent, and where he is not negligent the whole loss must be borne by the employee, and the whole legislative purpose is, as to injuries sustained
without the state, defeated. We have extensive borders; thou-
sands of employees are passing out of and into Wisconsin daily,
and almost hourly, in the discharge of their ordinary duties.
Can it be that the legislature intended that every time these
employees crossed the state line their right to compensation for
injuries incidental to and growing out of their employment
should be changed, and that as to injuries which occur beyond
the state line the old system instead of the new should apply?

If the Workmen’s Compensation Acts of the several states are
to be given effect, so as to make them general in their application,
they must be held to apply to injuries to employees wherever
they occur. If accidents occurring without the state are to be
in one class, and accidents occurring within the state are to be in
another class, every state might have a workmen’s compensation
act, and yet both the old and the new systems would still be in
force, and the legislative purpose would not be accomplished.
The construction here placed upon the act will give the legis-
lative intent full effect, and if recognized by the courts of sister
states, will give every employee the remedy provided by the
Workmen’s Compensation Act under which his contract of em-
ployment was made.

In other states less reliance is placed on expeditious
reasoning and more is placed on the principle of conflict
of laws. In the application of these principles it is deemed
necessary to distinguish in construction and application
between acts which are optional and those which are
compulsory. One eminent text writer says that
it may be stated on the weight of authority that acts not con-
strued to be contractual in character do not, in the absence of
unequivocal language to the contrary, apply where the injury
occurs outside the state, while, on the other hand, acts construed
to be contractual protect one injured outside the state, where
the contract of employment was made within the state and is
governed by the laws of the state.14

Hence, it may be said that the general rule is that
where the provisions of the act are optional, the relation-
ship is contractual as to parties who have accepted its

14 Arthur B. Honnold, Workmen’s Compensation, (Kansas City, Missouri:
Vernon Law Book Co., 1917) I, par. 8.
provisions, and hence that it makes no difference where the injury occurs, if the court is applying the statute of its own jurisdiction,\textsuperscript{15} and sometimes even when it is applying that of another jurisdiction, but where the statute is compulsory, it cannot be considered contractual, and, hence, it is not generally held to apply to injuries occurring outside the state.\textsuperscript{16}

In \textit{State ex rel. Brewen-Clark Syrup Company v. Missouri Compensation Commission},\textsuperscript{17} the contract of employment was entered into in Missouri, and the parties had elected to come under the provisions of the act, which was elective. The Missouri court held that therefore the Missouri act had become a part of the contract and would thus be applied and enforced wherever the contract was enforced, regardless of where the injury occurred. In the New York case of \textit{Barnhart v. American Steel Company},\textsuperscript{18} the court discussed the question at length and finally arrived at this conclusion:

The New Jersey statute is different. Under that statute the rights which it creates and the duties which it imposes are contractual in the strict sense. It is optional with the employer, as well as the employee, whether or not the compensation, in case of injury or death, shall be paid. If a servant prefers to retain his common-law remedies he may give notice within a certain time after his employment, and the remedies will be retained. If he chooses to renounce them in return for the statutory scheme

\textsuperscript{15}Crane v. Leonard, Crossette & Riley, 214 Mich. 218, 183 N. W. 204 (1921), followed in Hulswit v. Escanaba Mfg. Co., 218 Mich. 331, 188 N. W. 411 (1922), where the court said that since the act was voluntary it was part of the contract, and so could be enforced wherever the contract could.

\textsuperscript{16}"Where the statute compels submission by the employer and employee, there is no contract, as a general rule, enforceable outside of the state. But where . . . the statute makes acceptance optional, and the parties freely enter into the contract of employment with reference to the statute, the statute should be read into the contract as an integral part thereof, binding the parties, and enforceable in any jurisdiction the same as any other contract." Gooding v. Ott, 77 W. Va. 487, 87 S. E. 862 (1916). See also Foughty v. Ott, 80 W. Va. 88, 92 S. E. 143 (1917); In re Gould, 215 Mass. 480, 102 N. E. 693 (1913); Union Bridge and Const. Co. v. Industrial Commission, 287 Ill. 396, 122 N. E. 609 (1919); North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1, 162 P. 93 (1916).

\textsuperscript{17}320 Mo. 893, 8 S. W. (2d) 897 (1928).

\textsuperscript{18}227 N. Y. 531, 125 N. E. 675 (1920).
of compensation, his voluntary choice is the source and origin of his right.

The plaintiff's intestate, having the right to accept or reject the statutory scheme of compensation, exercised the option to accept it, and contracted accordingly with the defendant. Such contract became binding upon him, and, like any other valid contract, enforceable in the State of New York, unless opposed to its public policy.

The Indiana court held that it had jurisdiction of an injury sustained in Indiana even though the contract of employment, made in Ohio, was to be performed in the District of Columbia, on the ground that the employer, an Indiana corporation, had not elected not to be bound by the act of the District, and hence was presumed to have accepted it and to have made it a part of the contract. Rhode Island holds that under its statute the relation of employer and employee is contractual and therefore it matters not where the accident happens. The Washington court has gone so far as to say that not only does the act itself become a part of the contract when it is of the elective type, but that all constructions placed upon the act by the supreme court of the state also become a part of the contract.

On the other hand, in Arizona, where the statute is construed to be compulsory, it has been held in regard to Arizona injuries that the local statute must apply regardless of where performance is to take place or where the contract was made. California and Oklahoma, like-

19 Carl Hagenbeck and Great Wallace Show Co. v. Randall, 75 Ind. App. 417, 126 N. E. 501 (1920); Carl Hagenbeck, etc. v. Ball, 75 Ind. App. 454, 126 N. E. 504 (1920); Schweitzer v. Hamburg-Americanische P. A. G., 138 N. Y. S. 944 (1912). The German act was a bar to a recovery under the New York statute when the contract was made in Germany and had special compensation provided. But the New York court enforced the German act. These cases are fine examples of the extraterritorial recognition of a foreign compensation act under the guise of enforcing a contract.

22 Ocean Accident and Guaranty Corp. v. Industrial Commission, 32 Ariz. 275, 257 P. 644 (1927).
wise hold that where the act is compulsory, its provisions arise not by contract, and therefore, it must be construed as any other statute is construed, and in order to operate as to injuries occurring outside the state there must be clearly expressed in the statute such intention.

In the case of Altman v. North Dakota Compensation Bureau, we find one of the best, although not one of the most recent, examples of this type of case. The plaintiff was hired by one Pifer to work in North Dakota. When his work on that job was finished, he entered into another contract with Pifer for work to be performed in Montana or Washington. Pifer had paid the plaintiff for the first job but had not paid his compensation insurance for that job. He had, however, paid insurance for the men in Washington, the state in which the plaintiff was injured. The North Dakota court held for the compensation bureau on the ground that since the North Dakota authorities could not collect premiums for work done in Washington, it should not be liable for injuries sustained there. "In general, the field within which compensable injuries arise should be coterminous with the field within which premiums may be collected in order to create the compensation fund." The North Dakota act was there held to be compulsory.

In summary, then, it is quite clear that the greatest latitude is allowed in those states in which the acts are construed to be elective and voluntary; therefore, the major part of this study will deal with the various rules of conflict of laws as they are applied to such elective acts.

GENERAL PRINCIPLES OF CONFLICT OF LAWS APPLICABLE.

To actions brought in the various states to recover under workmen’s compensation acts, the courts in the main, apply the same rules of conflict of laws as are fol-


lowed in the enforcement of most other types of contracts—the law of the place where the contract is made will govern, unless the entire performance is to take place elsewhere, in which case the *lex solutionis* will govern. As we shall see, many states prefer to follow the *lex loci contractus*, even though the contract is, in some instances, entirely to be performed at another place.

In *Kennerson v. Thames Towboat Company*, the plaintiff’s intestate entered into the contract of employment with the defendant in Connecticut for employment that was to take place in that state, on the high seas, and in, or on, the waters of some of the other states. While in the course of his employment on waters controlled by New York, the plaintiff’s intestate was drowned. The Connecticut court held that since the contract was made in Connecticut, the Connecticut (elective) act became a part of the contract and that the *lex loci contractus* governed.

New York, applying its compulsory act, has given us a varied group of decisions on this subject. When all of the cases are considered together and analyzed, it quite definitely appears that the place where the contract was entered into is the controlling factor and not the place where the performance is to take place. Hence, in *State Industrial Commission v. Barene*, where the contract was to be entirely performed in Connecticut, and the injury was sustained in that state, the New York court held that the New York act should apply, because the contract was entered into in the latter state. The same court, in *Baggs v. Standard Oil Company*, held that the New York act did not apply where the contract was made out of the state, the entire performance was to take place elsewhere, the injury occurred elsewhere, and the injured

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27 89 Conn. 367, 94 A. 372 (1915); Pettit v. T. J. Pardy Const. Co., 103 Conn. 101, 130 A. 70 (1925), where the Connecticut act applied to an injury received outside the state in the case of performance to be done outside the state, but the contract was entered into within the state; Falvey v. Sprague Meter Co., 111 Conn. 693, 151 A. 182 (1930), held that the Connecticut act applied although performance was outside the state.

28 177 N. Y. S. 689 (1919).

29 180 N. Y. S. 560 (1920).
party was not a New York resident. It has also held that the fact that the main place of business of the employer was in New York made no difference if the contract was made, the performance was to take place, and the injury occurred all in another state. In *Madders v. Fox Films Corporation*, where the contract was made in New York, and the performance (outside the state) from which the accident arose was merely temporary and incidental to the main performance within the state, the court held that the New York act did not apply. And in the recent case of *Proper v. Polly*, the injury occurred in the state of New York, but the court held that the New York act did not apply, because the contract of employment was made in Pennsylvania, and the work in New York was temporary in character. In New York, where the contract is made in the state and it is clear that the entire performance is to take place in another jurisdiction, the New York act is held to be inapplicable; and, in any event, before the New York act is held to apply, the work must be incidental to a general employment in that state.

California and Georgia, also having compulsory acts, apply them in the same way. Hence, in Georgia, the local act would apply in cases of foreign injuries, if the contract was made in Georgia and the main performance was to take place there.

In West Virginia, where the act is elective, it was held that the *lex loci contractus* was the controlling law in a case where the contract was entered into in West Virginia and the injured person was injured in the Maryland part.

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31 200 N. Y. S. 344 (1923). See also Donahue v. H. H. Robertson Co., 199 N. Y. S. 470 (1923), where the same principle is announced but where the evidence was held insufficient. There was also an insufficiency of evidence in *Anderson v. Jarrett Chambers Co.*, 206 N. Y. S. 458 (1924).
32 253 N. Y. S. 530 (1931).
of a mine which underlay both Maryland and West Virginia. Minnesota, which likewise has an elective act, has held that the employee of a corporation having its northwest business localized in Minneapolis, the contract of hiring being completed in Minnesota, and the work being performed incidental to employment in Minnesota, could recover under the Minnesota act, although the injury occurred outside the state. Nebraska has placed its decisions under its elective act squarely on the *lex loci contractus*. In *McGuire v. Phelan-Shirley Company*, the recovery was allowed under the act of Nebraska, where the contract of hiring was made, although the performance in which the injury was received was executed in another state. The court said: "The Workmen's Compensation Act is one of general interest, not only to the workman and his employer, but as well to the state, and it should be so construed that technical refinements of interpretation will not be permitted to defeat it." The same rule was applied in *Skelly Oil Company v. Gaugenbaugh*, and more rightly, perhaps, because the outside employment was only of a temporary nature. Iowa also is in accord with these principles.

Missouri, where the act is elective, is decidedly in favor of applying only the *lex loci contractus*. Recovery was allowed under the Missouri act where the employer was a Missouri corporation and the contract was made in Missouri, even though all of the sales work of the plaintiff was to be done out of the state. In *State ex rel.*

36 Gooding v. Ott, 77 W. Va. 487, 87 S. E. 862 (1916); Foughty v. Ott, 80 W. Va. 88, 92 S. E. 143 (1917).

37 Stansberry v. Monitor Stove Co., 150 Minn. 1, 183 N. W. 977 (1921); *State ex rel. Chambers v. District Court of Hennepin County*, 139 Minn. 205, 166 N. W. 185 (1918); *Ginsburg v. Byers*, 171 Minn. 366, 214 N. W. 55 (1927); Bradtmiller v. Liquid Carbonic Co., 173 Minn. 481, 217 N. W. 680 (1928), providing the entire performance is not to take place outside of the state.

38 111 Neb. 609, 197 N. W. 615 (1924).


41 Zarnecke v. Blue Line Chemical Co., 54 S. W. (2d) 772 (Mo. App. 1932); Muse v. Whitney & Son, 56 S. W. (2d) 848 (Mo. App. 1933); and Shout v. Gunite Concrete and Construction Co., 41 S. W. (2d) 629 (Mo. App. 1931), where the injured party was only temporarily out of the state.
Brewen-Clark Syrup Company v. Missouri Compensation Commission, the contract was made in Missouri; so the court held that the Missouri Compensation Act became a part of the contract and would be applied no matter where the accident happened.

In Wisconsin the act is elective. The courts there apply the *lex loci contractus* but in addition are influenced by the fact that either the plaintiff or his employer is a resident of the state. For example, in Thresherman's National Insurance Company v. Industrial Commission and in Van Blatz Brewing Company v. Gerard, it was held that the act of Wisconsin may even apply where no services are to be performed within the state provided the contract was made there and both of the parties were residents. In Interstate Power Company v. Industrial Commission the court held the act applied; in Wandersee v. Moskowitz, it held that the Wisconsin act did not apply, the only difference between the two cases being that in the latter case the plaintiff was not a citizen of Wisconsin, while in the former case he was. The rule stated in these cases is extended in the more recent case of McKesson-Fuller-Morrison Company v. Industrial Commission, where the court said that the controlling factor was whether or not the party had acquired a status as an employee within the state, and that it did not matter where the contract was made or whether or not the plaintiff was a resident of the state. In the last mentioned case, the contract of hire was made in Illinois between an Illinois employer and employee, and the injury was received while in the state of Illinois;

42 320 Mo. 893, 8 S. W. (2d) 897 (1928).
43 201 Wis. 303, 230 N. W. 67 (1930).
44 201 Wis. 474, 230 N. W. 622 (1930).
45 203 Wis. 466, 234 N. W. 889 (1931).
46 198 Wis. 345, 223 N. W. 837 (1929).
47 212 Wis. 507, 250 N. W. 396 (1933). See also Zurich Accident and Liability Insurance Co. v. Industrial Commission, 193 Wis. 32, 213 N. W. 630 (1927), where an employee of a Wisconsin company and under a Wisconsin contract went to another state and had charge of hiring and firing employees and took out compensation for such employees under the acts of such other states. The court held that he was still subject to the Wisconsin act because his services grew out of and were incidental to his Wisconsin employment.
however, the sales territory (place where the contract was to be performed) was Wisconsin. Hence, in Wisconsin, nothing more is needed to invoke the Wisconsin act than an employee status there.

The Michigan court said that all that was necessary was that the contract be made in the state and the employer be found there, even though the employment is to be entirely performed elsewhere. The Michigan act is elective. In Colorado, the test under its elective statute seems to be a Colorado contract plus a substantial portion of the services performed in that state. The general rule of the lex loci contractus is followed under elective acts in Louisiana, Maine, Massachusetts, Indiana, Rhode Island, and Montana; and it is also followed in the Federal courts. Therefore, it can be seen

48 Roberts v. I. X. L. Glass Corp., 259 Mich. 644, 244 N. W. 188 (1932); this case was followed in Wearnr v. Michigan Conference, S. D. A., 260 Mich. 540, 245 N. W. 802 (1932); on almost identical facts; and in two earlier cases, Klettke v. C. and J. Commercial Driveway, 250 Mich. 454, 231 N. W. 132 (1930), and Deakins v. C. and J. Commercial Driveway, 250 Mich. 572, 231 N. W. 133 (1930), the same rule was laid down where the accident was sustained while only temporarily within another state.


50 Selser v. Dragman’s Bluff Lumber Co., 146 So. 690 (La. 1933); Festervand v. Laster, 15 La. App. 159, 150 So. 634 (1930).

51 Saunder’s Case, 126 Me. 144, 136 A. 722 (1927).

52 Migue’s Case, 281 Mass. 373, 183 N. E. 847 (1933); McLaughlin’s Case, 274 Mass. 217, 174 N. E. 338 (1931); Pedersoli’s Case, 269 Mass. 550, 169 N. E. 427 (1930). It is interesting to note that between the date of In re Gould, 215 Mass. 480, 102 N. E. 693 (1913), and that of these other three cases a change was made in the Massachusetts statute which permitted recovery under the statute for injuries received outside the state provided only that the contract of hire was made in Massachusetts and the services were to be performed for a Massachusetts employer. Prior to such change Gould’s Case had been cited as an authority in almost every state in the union to support the doctrine that the benefits of the act should apply to purely local injuries. The result was completely to remove this precedent and to cause Massachusetts to fall in line with the majority of the states. It is interesting to note, too, that it required a legislative act to do this—a liberal construction by the courts could not accomplish it.


56 In re Spencer Kellogg and Sons, 52 F. (2d) 129 (1931); Scott v. White Eagle Oil and Refining Co., 47 F. (2d) 615 (1930).
readily that a number of courts (although not the majority) hold that an elective act becomes a part of the contract, and that when the contract is made within their particular jurisdiction such act will be enforced regardless of where the accident took place, even if the entire performance is to take place outside the state boundaries.

As has been intimated before, some courts stray from the rule of the *lex loci contractus* in cases where all of the performance, by the terms of the contract, is to occur at a location different from that at which the contract itself was actually entered into. As a matter of conflict of laws, this is not in the least strange, since all cause or right to presume that the parties to the contract intended to act with reference to the law of the place where the contract was made naturally fails. There is, in truth, no longer any necessity for such a presumption, since the parties have dispelled it by the wording of the contract. Therefore, the courts, and by far the majority of them, have held that the law of the place where the entire performance is to take place must determine all questions of validity and legal obligations—an application of the *lex solutionis*.57 Two states have held that their respective acts would apply chiefly because of the fact that the defendant corporation was, in each case, located in the state or had its principal place of business there; and therefore the last act necessary to complete the contract

had to be done within their boundaries. But on the whole, it can safely be said that the foregoing two general rules of conflict of laws are followed in most of the states.

**Enforcement of Foreign Acts**

As may be gathered from the cases already cited, most states have treated the obligations arising under workmen’s compensation acts as being contractual and have enforced them or refused to enforce them according to the laws pertaining to contracts, but a few states, even as late as 1925, have persisted in regarding such acts purely as statutes and enforcing them as such; they look at the injury received as a tort and not a breach of contract. In these cases it is the act of the state where the injury occurred that is being considered and not the local act or the act of the state where the contract was made (unless the injury occurs there); consequently no distinction is made between elective and compulsory statutes. Therefore, there must have been a cause of action in the place where the injury occurred, or the court in such case will not grant relief. Of course, the general rule in regard to the enforcement in one state of the statutes of any other state is that the enforcement depends entirely upon the doctrine of comity and that it will not be enforced if it contravenes the positive law or settled public policy of the forum. Since the courts which have acted in this manner are in the minority, it will avail us little to go on with a consideration of their decisions.

**Injuries Incurred on United States Property**

One phase of the question with which we must concern ourselves briefly is the effect of the Federal Employers’

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58 Brameld v. Albert Dickinson Co., 186 Minn. 89, 242 N. W. 465 (1932); Stone v. Thompson Co., 124 Neb. 181, 245 N. W. 600 (1932). The statutes in both of these states are elective.

Liability Act upon injuries incurred on property belonging to the United States or being used by the United States for a particular purpose. In such a situation, is the Federal act or the state act the one which will govern the right of the injured party to recover compensation from his employer? The better opinion today, regardless of what it might have been in the past, seems to be that the state act will apply to injuries arising out of a contract pertaining to such property.

In *State v. Wiles,* the plaintiff was hired for the purpose of carrying mail from a main post office to various sub-stations. He had to use his own car and furnish his own license. The court held that the plaintiff was an independent contractor and not an employee of the Federal government, and that therefore the state and not the Federal act must furnish him any relief to which he would be entitled. In *State ex rel. Loney v. State Industrial Accident Board,* the plaintiff and the defendant, both residents of the state of Montana, contracted to build a road in Glacier National Park, which was located partly in the state of Montana and partly in lands donated by the state to the national government for park purposes. The injury was received on that part of the road which was located in the United States grant, and the court held that the state act extended to such injuries, saying that it was not the intention of the legislature that the compensation should cease in a case like that. In *Mickell v. Department of Labor and Industries,* the court held the state act to apply in an analogous situation where the parties were engaged in the construction of a bridge in a national park. Massachusetts held the same way in *Lynch's Case,* but its reasons are different. Lynch worked for the N. P. Severin Company, general contractors, in the construction of a new Federal post office in Boston, and the contract of hire was entered into

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60 116 Wash. 387, 199 P. 749 (1921).
61 87 Mont. 191, 286 P. 408 (1930).
62 164 Wash. 589, 3 P. (2d) 1005 (1931).
63 281 Mass. 454, 183 N. E. 834 (1933).
in Massachusetts. The ground on which the post office was being built belonged to the United States government, and Lynch's duties carried him onto this property as well as onto the adjacent property belonging to the state. The injury was received while Lynch was actually working on the Federal property. The sole defense interposed by the defendant was that since the accident occurred on land owned by the United States and under its sole control and jurisdiction, the state act could not apply. The court granted compensation to Lynch, reasoning that since the Massachusetts statute provided for compensation no matter where the accident took place if the contract was made in the state, and since the contract was made in the state of Massachusetts, the plaintiff could recover there. In other words, the court treats Federal land within a state just as though it were the land of another state. The decision seems absolutely sound. The most recent case on the question, *Murray v. Gerrick and Company,* holds differently, however, on very much the same state of facts. In 1891, the state of Montana ceded to the Federal government a tract of land to be used as a navy yard and yielded jurisdiction to it. The plaintiff was erecting a crane for his employer on this property at the time of the accident which resulted in his death. The court held that a demurrer to the complaint was rightly sustained, because the state act could not have any effect over accidents occurring on property controlled by the Federal government. There is the additional factor in this case that the state compensation act was not in force at the time the property was ceded to the Federal government, and also the fact that the action was brought by the widow and not by the personal representative; hence, it was unnecessary to consider the point in question.

Two other lines of cases exist in which it is held that the right to recover under Federal and not state acts cannot be disputed. The first of these is where the employee happened to be engaged in interstate commerce

64 291 U. S. 315, 78 L. Ed. 821 (1934).
at the time the accident occurred. The states are nearly all in accord, in such a case, in holding that where the employee is engaged in interstate commerce he has no right to recover under the act of the state in which the injury occurred. The rule is clearly stated by the Illinois Supreme Court in *C. R. I. & P. Ry. Co. v. Industrial Board*, although in that case the court felt that the facts did not justify such a finding and gave judgment to the plaintiff. The same rule has also been enunciated in New York, Wisconsin, West Virginia, and Washington.

The other line of cases before referred to is that which concerns the maritime jurisdiction of the United States. Probably the most recent case in which the question was raised is *Ciaramitaro's Case*. The workman was hired in Boston by a fishing company operating out of that city in the business of catching crabs in Boston Harbor and the surrounding waters. The work was done by the use of nets, which were placed at various spots in the water. It was the duty of the deceased to go out in a boat and hook these nets at certain intervals and to empty them, leaving them there for future catchings. At the time of the accident which resulted in his death, he was in the act of hooking one of these nets from a small boat in which he was working. The hook slipped, and he fell into the water and was drowned. The court held that the Massachusetts Workmen's Compensation Act did not apply, because the accident occurred within the admiralty jurisdiction of the United States courts, and it cited a number of Federal decisions to sustain its views, among which were the cases of *Spencer Kellogg and Sons v. Hicks* and *London Guarantee and Accident Company, Ltd. v. Industrial Accident Commission of California*.

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65 273 Ill. 528, 113 N. E. 80 (1916).
72 279 U. S. 109, 73 L. Ed. 632 (1928).
In the latter case, the court considered all the cases that had arisen in the United States Supreme Court up to that time and clearly stated the principle involved and the way it had been treated. In the London Guarantee case, John Brooke was engaged by Morris Pleasure Fishing, Inc., a company which carried on the business of maintaining and operating from Santa Monica Bay a small fleet of fishing vessels for the accommodation of the public seeking recreation in deep-sea fishing. Brooke, who was an apprentice seaman, was trying to save a vessel which had broken loose from her moorings during a storm. The small boat which he, with two other men, was using, capsized, and all three were drowned. The court held that the employment of the deceased was clearly maritime in its nature and that there could be no recovery under the state compensation act. A review of the cases cited in this latter decision discloses that the state acts can have absolutely no application where the accident is a maritime accident and within the admiralty jurisdiction of the United States courts.

Whether or not the facts actually do bring the case within the admiralty jurisdiction is a preliminary question, which must be decided on the facts before any relief may be given, and the deciding question here is: Is the employment or activity at the time of the injury directly related to navigation? It is not necessary that the business be for commerce rather than for pleasure, that the business be foreign or interstate, or that the person in-

\[73\] Southern P. Co. v. Jensen, 244 U. S. 205, 61 L. Ed. 1086 (1916); Clyde Steamship Co. v. Walker, 244 U. S. 255, 61 L. Ed. 1116 (1916); Knickerbocker Ice Co. v. Stewart, 253 U. S. 149, 64 L. Ed. 834 (1919); Union Fish Co. v. Erickson, 248 U. S. 308, 63 L. Ed. 261 (1918); Washington v. Dawson and Co., 264 U. S. 219, 68 L. Ed. 46 (1924); Robbins Dry Dock Co. v. Dahl, 266 U. S. 149, 69 L. Ed. 372 (1924), where the tort was held to be maritime when it was suffered by one doing repair work on a completed vessel; Grant Smith-Porter Ship Co. v. Rohde, 257 U. S. 469, 66 L. Ed. 321 (1921), where the employment was held to have no direct relation to navigation when the work was on an incompletely vessel, even though the vessel was lying in navigable water; Miller’s Indemnity Underwriters v. Braud, 270 U. S. 59, 70 L. Ed. 470 (1925); Sultan Ry. & T. Co. v. Department of Labor and Ind., 277 U. S. 135, 72 L. Ed. 820 (1927); Smith and Son v. Taylor, 276 U. S. 179, 72 L. Ed. 520 (1927). It is interesting to compare the latter case with the Murray case cited in footnote 64. In each case the injury occurred on dry land, but opposite results are reached.
jured be a passenger on the boat instead of a seaman. A determining factor that must also be considered is whether or not the accident occurred on the high seas or navigable waters, since such fact is very strong evidence that the employment was directly related to navigation. Aside from the cases discussed in this section, however, there seems to be no exception to the general application of the state acts to accidents occurring within state boundaries.

In summary, then, it may be said that the compensation act of the state in which the contract was made or the injury occurred will be applied except in these three cases: First, where the injured party is an employee of the Federal government; second, where the employee is engaged in interstate commerce at the time; and, third, where the accident arises under such circumstances as bring it within the admiralty jurisdiction of the Federal courts. In most cases these will be jurisdictional questions, but they may conceivably have a bearing on the relief obtained.

Illinois Decisions

Few cases are to be found in the Illinois reports bearing upon the question of the applicability of the state Workmen's Compensation Act to injuries which happened outside of the state, and the decisions of those found seem to rest entirely on the provisions of the Illinois act. The first case in which the question appears to have been raised is Friedman Manufacturing Company v. Industrial Commission. This case has been cited by the courts in later cases as bearing on the point, but in reality it decides nothing of value in that regard. The duties of the deceased, Melvin Goodrode, a traveling salesman for the plaintiff, Friedman Manufacturing Company, took him to various places in the states of Illinois and Indiana. While he was driving his car in Indiana, the car went down an embankment into a pond of water, and Goodrode was drowned. The defendant

74 284 Ill. 554, 120 N. E. 460 (1918).
raised the point that the Industrial Board was in error in awarding compensation, because the accident occurred outside of the state of Illinois. The statute provided, however, that the judgment of the Industrial Commission should be binding unless certiorari was issued within twenty days. In the present case, it was not issued within the required time, and so the Supreme Court merely affirmed the award of the Industrial Commission without discussing the merits of the case.

In the prior case of *Harvester Co. v. Industrial Board*, the deceased died in Michigan as a result of a bus accident. The award of the commission was reversed by the Supreme Court on the ground that the accident did not arise out of, and in the course of, the worker’s employment, and hence it was unnecessary for it to decide definitely whether or not the act applied to out-of-state injuries.

In 1919, the point was first actually raised and passed upon in the case of *Union Bridge Company v. Industrial Commission*. The plaintiff in error was engaged in constructing a railroad bridge across the Ohio River from Metropolis, Illinois, to the Kentucky shore. The construction gang, working on a bridge pier, 1185 feet south of the low water mark of the Illinois shore, was taking out sand and mud to sink a caisson in the river. One of the men, an Eloy Williams, while attempting to cross a gangplank connecting the pier with a barge, fell into the river and was drowned. An award was allowed. The plaintiff in error contended that the Circuit Court erred in holding the Workmen’s Compensation Act to apply to injuries occurring outside the state. The act at that time was entitled “An act to promote the general welfare of the people of this state by providing compensation for accidental injuries or deaths suffered in the course of employment within the state.” Holding that this statute was the same as that which existed in Massachusetts at the time *In re Gould* was decided, the Illinois Court

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75 282 Ill. 489, 118 N. E. 711 (1918).
76 287 Ill. 396, 122 N. E. 609 (1919).
77 215 Mass. 480, 102 N. E. 693 (1913).
likewise ruled that the act did not apply to accidents arising outside the state. However, though in anticipation of subsequent legislation, the court said, "It would have been competent for the General Assembly to provide by the Workmen's Compensation Act that the employer should pay compensation for injuries suffered outside of the State."

Following this suggestion, whether aware of it or not, the legislature did so amend the act that in 1930 the court was obliged to render a different decision. Here again, the change is exactly analogous to the change made in the Massachusetts statute and decisions. In Beale Brothers Supply Company v. Industrial Commission,78 the injured party, a resident of Illinois, was there engaged by the plaintiff in error as a traveling salesman, with territory between Denver, Colorado, and the Pacific coast. By agreement with the employer, he had moved his home to Denver for convenience. While he was driving his car near Sapinero, Colorado, on a mountain road which was very wet and muddy, the car skidded and rolled down the mountainside, pinning him beneath it and causing him severe injuries. The title of the act at this time had been changed to read "An act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State, and without this State where the contract of employment is made within this State." Section 5 of the act as amended provides that the term "employee" shall be construed to mean "every person in the service of another under any contract of hire, express or implied, oral or written, including persons whose employment is outside of the State of Illinois where the contract of hire is made within the State of Illinois." Therefore, the court held that the award of the commission was perfectly right, since the contract was here entered into in Illinois. The Union Bridge Company case, just discussed, was relied upon by counsel for the plaintiff in error, but the court disposed

78 341 Ill. 193, 173 N. E. 64 (1930).
of that case in these words, "This decision was rendered in 1919. At that time the statute contained no provision for injuries out of the State. Since that time the statute has been amended as above set forth." Thus, it appears that the courts of this state are definitely aligned with those other states which adhere to the contract theory of accidents arising under the Workmen’s Compensation Act; that is, if the contract is made in this state, compensation may be recovered. That this is so is very definitely determined by the recent case of Cole v. Industrial Commission. In that case, the injured party, Fred Thews, was hired by the plaintiff in Indiana for contracting work to be done in Illinois. Thews worked on the necessary machinery in Indiana for four days, helped load it on the cars, and followed it to Illinois, where he worked until the time of the accident which caused his death. His widow applied for compensation under the Illinois act and the granting of an award was affirmed in the circuit court. The employer appealed on the ground that the Indiana rather than the Illinois act applied, since the employment was not strictly speaking an Illinois employment. The court held that it was Indiana employment but refused to enforce the statute of Indiana because it was not bound to do so under the full faith and credit clause of the Federal Constitution. Illinois, therefore, allows compensation under its own act if the contract is made in the state, regardless of where the accident takes place, but it refuses to enforce the act of any other state when the contract was made in that other state.

**Summary**

As was noted at the beginning of this study, some courts in this country have stated clearly that, in their opinion, the decisions on the question at hand are so conflicting that they would not aid in reaching their own decision. From a study of the cases cited, it would appear that this is not entirely so. It is true that there

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79 353 Ill. 415, 187 N. E. 520 (1933).
is a great deal of conflict apparent at first blush, but when one differentiates between elective and compulsory acts, a fairly certain tendency may be noted.

In the case of compulsory statutes, by far the majority of the courts enforce the statutes of their own states, with strict regard to their terms, of course, if the injury occurred in the state unless the statute specifically provides that injuries occurring out of the state may be included. Compulsory statutes of other states will not be enforced, as a matter of right, except as any other statute is enforced, that is, as a matter of comity, and comity will not influence decisions when the foreign act is contrary to the public policy or positive law of the state of the forum.

With regard to elective statutes, however, the situation is different. The courts, almost without exception, hold that an elective statute, when the parties have elected to come under its terms, becomes a part of the contract of employment, and therefore may be enforced in the state in which the contract is made without regard to the place where the accident occurs, unless the entire performance is to take place elsewhere. It is right here, however, that the courts seem to retreat from their definite declaration that it is a contract. They announce that the rule of conflict of laws—the validity and effect of the contract will be governed by the law of the place where the contract is made—will apply, and therefore find no difficulty in enforcing the statutes of their own jurisdictions when the contract is made there; but they still refuse, with one or two notable exceptions (especially New York), to enforce the statute of another state when the contract is made in that other state or the


entire performance is to take place there.\textsuperscript{82} If the contract of employment, made under such circumstances, is to be treated purely as a contract, of which the statute of the place where it is made is a part, why should the courts refuse to enforce the statute of such other state any more than they would refuse to enforce a contract made in another state? A suit on a contract is in general, a transitory action and may be enforced anywhere that service may be obtained on the defendant, regardless of where the contract was entered into or what its terms were. Therefore, since the action under the compensation act is a suit on a contract, of which the statute is a part, and since the suit is transitory in nature, it would seem that the court could not fully enforce the contract without enforcing the statute which is a part thereof. The vast majority of the courts, however, have refused to go this far, feeling, perhaps, that such action would be an extraterritorial recognition of a statute that might be contrary to the public policy or settled law of the forum. This is not true, strictly speaking, because the court under those circumstances would not be enforcing a statute but would be enforcing a contract. Perhaps this logic will someday appeal to the courts. It will then no longer be necessary to dismiss the plaintiff’s complaint merely because the action is brought in a jurisdiction other than that in which the contract is made or the performance is to take place.

\textsuperscript{82} Local act said to have extraterritorial effect: Colorado, Connecticut, Indiana, Kentucky, Maine, Nevada, New Jersey, New York, Ohio, Vermont, West Virginia, Georgia, Missouri.

Local act said not to have extraterritorial effect: California, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Pennsylvania, Texas, Washington.