UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 11 | Number 1 Article 23

12-1-1932

Workmen's Compensation -- Conflict of Laws -- Injury to Employee Outside State of Employment

A. T. Allen Jr.

tween the two funds. But the question remains whether the conclusion reached by the courts is justified. As a practical matter the present-day stockholder is far removed from either ownership or control of the corporate property. To hold that a dividend fund is a trust necessitates indulgence in a process of abstract theorizing which should never be resorted to in the absence of cogent reasons of public policy. And if public policy is at all involved, it would seem to favor the creditor of the corporation rather than the stockholder.

FRANK P. SPRUILL, JR.

Workmen's Compensation—Conflict of Laws—Injury to Employee Outside State of Employment.

The deceased, a resident of Vermont, was employed in that state by a Vermont corporation, and was killed while doing temporary work in New Hampshire. The administratrix of deceased, a resident of New Hampshire, brought suit in that state for the death of her intestate. The Vermont Compensation Act provides that the employee's acceptance of the Act bars a recovery in a suit at law; whereas the New Hampshire Act permits the employee to elect, subsequent to the injury, either to take compensation under the Act or to sue at law. The Vermont Act also provides that workmen employed within the state shall be entitled to compensation though injured outside the state. The case was removed to the federal court on the ground of diversity of citizenship; and defendant interposed as a defense that the Vermont Act would not permit the action. The Supreme Court of the United States held the Vermont Act a bar to the action brought in New Hampshire.[1]

Where the injury occurs outside the state of employment the confusion among the courts as to what law governs is occasioned by the conflicting tort and contract theories of workmen's compensation and the differences among the statutes themselves.[2] The earlier tendency

[1] Bradford Electric Light Co. v. Clapper —— U. S. ——, 52 Sup. Ct. 571, 76 L. ed. 757 (1932).

[2] See an excellent article by Dwan, *Workmen's Compensation and the Conflict of Laws* (1927) 11 MINN. L. REV. 329.

In connection with the general problem, see GOODRICH, CONFLICT OF LAWS (1927) §§202-206; CONFLICT OF LAWS RESTATEMENT (Am. L. Inst. 1926) §§434-443; Angell, *Recovery Under Workmen's Compensation Act for Injury Abroad* (1918) 31 HARV. L. REV. 619; (1918) 27 YALE L. J. 113; (1927) 5 TEX. L. REV. 416; (1931) 79 U. OF PA. L. REV. 86; (1930) 16 VA. L. REV. 701; (1925) 10 CORN. L. Q. 364. On extraterritorial operation of workmen's compensation acts, see Note (1919) 3 A. L. R. 1351; Note (1929) 59 A. L. R. 735.

was to hold the act strictly territorial, and allow compensation only for injuries occurring within the state.[3] But the modern trend is to allow a recovery under the act of the state of employment for injuries received elsewhere.[4] Where the injury occurs outside the state but arises from employment merely incidental to the main employment within the state, most courts give their acts extraterritorial effect and allow compensation.[5] But where the parties are in one state and the contract contemplates permanent employment in another state, it has been held that the act of the state of injury applies.[6] The majority of cases, however, allow compensation in the state of hiring although the duties of the employee are to be performed outside that state.[7] Conversely, where recovery was sought under the

[3] Gould's Case, 215 Mass. 480, 102 N. E. 693 (1913) (changed by MASS. STAT. (1927) c. 309, §93); North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1, 162 Pac. 93 (1916) (changed by CAL. GEN. LAWS (Deering, 1931) act 4749, §58).

In some states the application of the act is limited to injuries received in the state. PA. STAT. (West, 1920) §21916.

[4] Rounsaville v. Cent. R. Co., 87 N. J. L. 371, 94 Atl. 392 (1915); Smith v. Van Noy Interstate Co., 150 Tenn. 25, 262 S. W. 1048 (1924); Metropolitan Casualty Ins. Co. of N. Y. v. Hahn, 165 Ga. 667, 142 S. E. 121 (1928); Miller Bros. Const. Co. v. Maryland Casualty Co., 155 Atl. 709 (Conn. 1931).

In some states it is expressly provided that recovery may be had under the act when injury occurs outside the state. But even where it is not so provided, such construction has been read into the contract of employment and compensation allowed according to the law of the place where the contract was made. Crane v. Leonard, Crossette & Riley, 214 Mich. 218, 183 N. W. 204 (1921). See Note (1925) 34 YALE L. J. 453.

Jurisdiction of a state to enact such a statute upheld: Quong Ham Wah Co. v. Industrial Commission, 184 Cal. 26, 192 Pac. 1021 (1920); writ of error dismissed, 255 U. S. 445, 41 Sup. Ct. 373, 65 L. ed. 723 (1921). See Note (1921) 9 CALIF. L. REV. 230.

[5] Industrial Commission v. Aetna Life Ins. Co., 64 Col. 480, 174 Pac. 589 (1918); State *ex rel.* Maryland Casualty Co. v. District Court, 140 Minn. 427, 168 N. W. 177 (1918); Texas Employer's Ins. Ass'n. v. Volek, 44 S. W. (2d) 795 (Tex. Civ. App. 1931); Norwich Union Indemnity Co. v. Wilson, 43 S. W. (2d) 473 (Tex. Civ. App. 1931).

[6] Durrett v. Eicher-Woodland Lumber Co., 140 So. 867 (La. 1932) (recovery of employee hired in Louisiana to do work in Mississippi held to depend upon the law of the state of injury regardless of where the contract of hiring was made); Ginsburg v. Byers, 171 Minn. 366, 214 N. W. 55 (1927); N. C. CODE ANN. (Michie, 1931) §8081 (rr).

In Interstate Power Co. v. Industrial Commission, 203 Wis. 554, 234 N. W. 889 (1931), the defendant, a Wisconsin corporation, made the contract in Iowa with the deceased, a resident of that state, to work in Iowa, and he was killed while working temporarily in Wisconsin. It was held the Wisconsin Act applied to all injuries within the state without regard to the place where the employment contract was made. See Note (1931) 6 WIS. L. REV. 243.

[7] Hulswit v. Escanaba Mfg. Co., 218 Mich. 500, 188 N. W. 411 (1922); McGuire v. Phelan-Shirley Co., 111 Neb. 609, 197 N. W. 615 (1924); Beal Bros. Supply Co. v. Industrial Comm., 341 Ill. 193, 173 N. E. 64 (1930); Skelly Oil Co. v. Gaugenbaugh, 119 Neb. 698, 230 N. W. 688 (1930); Pettiti v. T. J. Pardy Construction Co., 103 Conn. 101, 130 Atl. 70 (1925), noted in

act of the state of injury it was denied because the contract of employment was made in another state.[8] But a number of jurisdictions allow compensation in the state of injury regardless of where the contract of employment was made.[9]

A workmen's compensation act creates a statutory relationship between employer and employee. Although this relationship is not purely contractual, it arises out of the contract of hire; and it is therefore submitted that the act of the state of employment, rather than that of the state of injury, should govern the rights of the parties.[10] It may be hoped that the principal case, a decision of the United States Supreme Court, will aid in securing more uniform decisions, and lessen the existing confusion in workmen's compensation cases where the injury occurs outside the state of employment.[11]

The instant case is entirely in harmony with a practically uniform line of decisions holding that any other form of relief will be denied if the plaintiff has a remedy under the compensation act of another jurisdiction.[12] But apparently the North Carolina cases decided prior to the enactment of the Workmen's Compensation Act in this state are to the contrary.[13] In *Johnson v. Carolina C. & O. Ry. Co.*,[14] the

(1925) 35 YALE L. J. 118. *Contra:* Tripp v. Industrial Commission, 89 Col. 512, 4 Pac. (2d) 917 (1931) (Colorado Act held inapplicable where salesman hired in Colorado by foreign corporation was killed while performing services outside the state).

[8] Hopkins v. Matchless Metal Polish Co., 99 Conn. 457, 121 Atl. 828 (1923). *Contra:* Ginsburg v. Byers, *supra* note 6.

[9] American Radiator Co. v. Rogge, 86 N. J. L. 463, 92 Atl. 85 (1914); Ginsburg v. Byers, *supra* note 6; Ocean Accident & Guarantee Corp. v. Industrial Comm., 32 Ariz. 275, 257 Pac. 644 (1927) (Arizona Act held to control rights of employee injured there though hired in California), noted in (1928) 1 So. CALIF. REV. 274.

New York appears to be one of the few states that have adopted a definite test for all situations. In Cameron v. Ellis Const. Co., 252 N. Y. 394, 169 N. E. 622 (1930), it was held that the place specified in the contract as that of employment was the sole and conclusive test of what law governs. Neither the place of the contract, site of injury, or residence of the parties is controlling.

[10] In Scott v. White Eagle Oil & Refining Co., 47 Fed. (2d) 615 (D. Kan. 1930), it was held that the Workmen's Compensation Act of Missouri, where the employment contract was made, governs the parties' rights in an action brought in Kansas by the employee injured there. Also see cases *supra* note 7.

[11] *Cf.* Swift v. Tyson, 16 Pet. 1, 10 L. ed. 865 (1842). See Fordham, *The Federal Courts and the Construction of Uniform State Laws* (1929) 7 N. C. L. REV. 423.

[12] Shurtliff v. Oregon Short Line R. Co., 66 Utah 161, 241 Pac. 1058 (1925) (recovery denied in suit at law where compensation act of the state of injury was pleaded); Albanese v. Stewart, 78 Misc. Rep. 581, 138 N. Y. Supp. 942 (1912); Wasilewski v. Warner Sugar Refining Co., 87 Misc. Rep. 156, 149 N. Y. Supp. 1035 (1914).

[13] Farr v. Babcock Lumber & Land Co., 182 N. C. 725, 109 S. E. 833 (1921) (Tennessee employee injured in North Carolina allowed recovery at

plaintiff, a citizen of North Carolina, made a contract in Tennessee with the railroad to perform work in that state, and the injury occurred there. It was held that the plaintiff could maintain a suit at law in North Carolina regardless of the Tennessee Act. The North Carolina Workmen's Compensation Act[15] provides that a workman hired in the state shall be entitled to compensation for injury received outside the state.[16] Following the reasoning of the principal case, the North Carolina Act would be a defense to a suit at law instituted in another state by an injured employee hired in North Carolina. Therefore, it is submitted that if the question presented in *Johnson v. Carolina C. & O. Ry. Co.* were to arise again, the North Carolina court should reverse its position and fall in line with the principal case.

A. T. ALLEN, JR.

law in North Carolina regardless of the Tennessee Compensation Act); Johnson v. Carolina C. & O. Ry. Co., 191 N. C. 75, 131 S. E. 390 (1926), noted in (1926) 24 MICH. L. REV. 852, (1926) 40 HARV. L. REV. 130, and (1926) 21 ILL. L. REV. 184.

[14] *Supra* note 13.

[15] N. C. CODE ANN. (Michie, 1931) c. 133a.

[16] N. C. CODE ANN. (Michie, 1931) §8081 (rr). "Where an accident happens while the employee is employed elsewhere than in this State . . . the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, if the employer's place of business is in this State, and if the residence of the employee is in this State; provided his contract of employment was not expressly for service exclusively outside of the State; . . ."

In Kleinfeld v. Radiator Specialty Co., 3 N. C. I. C. 255 (1932), deceased, a resident of New York, was employed by a North Carolina company, and the accident resulting in death occurred in Michigan. It did not appear from the record whether the contract of employment was made in North Carolina or not, or whether it was for services exclusively outside the state. Compensation was denied because deceased was not a resident or citizen of North Carolina.