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The Conflict of Laws and Workmen's Compensation

THE extensive development of workmen's compensation[1] during the past thirty years in the United States has given rise to new problems in the field of conflict of laws. In a simple situation a contract of hire is made in state *X* for work to be done in state *Y*, and the employee is injured in the course of his employment in state *Y*. Under what law may he secure an award of compensation? The matter is not, however, simple enough to be solved by an answer to this single question. The courts were first confronted with the question: when, if ever, may an award be made under the local act for an injury occurring outside the state? Many of the state compensation acts have been without express provision on the subject, with the result that the courts have been left to develop the law, interpreting the local act in the light of its specific provisions and the general principles underlying workmen's compensation. The decisions of the state courts, both with and without express statutory provisions on the subject, have laid down a variety of conflicting rules and theories. In view of the large amount of material[2] on this

[1] Forty-four states as well as the District of Columbia and the territories of Alaska, Hawaii, Philippine Islands, and Puerto Rico have enacted compensation laws. ARMSTRONG, INSURING THE ESSENTIALS (1932) 253.

This note does not include any treatment of questions as to jurisdiction between a local enactment and the various federal enactments, including Federal Employers' Liability Act, 35 STAT. (1908) 65, 45 U. S. C. (1926) §§ 51-59; Merchant Marine Act of 1920 (Jones Act) 41 STAT. (1920) 1007, 46 U. S. C. (1926) § 688; Longshoreman's and Harbor Workers' Compensation Act, 44 STAT. (1927) 1424, 33 U. S. C. Supp. IV (1931) § 901 *et seq.* See Athern, *The Longshoreman's Act and the Courts* (1935) 23 CALIF. L. REV. 129; Edises, *Multiplicity of Remedies in the Field of Industrial Accident Law* (1933) 21 *ibid.* 430.

[2] GOODRICH, CONFLICT OF LAWS (1927) § 98; Angell, *Recovery under Workmen's Compensation Acts for Injury Abroad* (1918) 31 HARV. L. REV. 619; Dwan, *Workmen's Compensation and the Conflict of Laws* (1927) 11 MINN. L. REV. 329, 332; Notes (1921) 9 CALIF. L. REV. 230; (1931) 11 B. U. L. REV. 413; (1922) 22 COL. L. REV. 263; (1923) 21 MICH. L. REV. 449; (1934) 12 NEB. L. BULL. 275; (1932) 80 U. OF PA. L. REV. 1139; (1930) 16 VA. L. REV. 701; (1923) 2 WIS. L. REV. 237; (1933) 27 ILL. L. REV. 571.

See also, the collection of cases on the subject matter of this note in Notes (1919) 3 A. L. R. 1351; (1922) 18 A. L. R. 292; (1924) 28 A. L. R. 1345; (1925) 35 A. L. R. 1414; (1926) 45 A. L. R. 1234; (1929) 59 A. L. R. 735; (1933) 82 A. L. R. 709; (1934) 90 A. L. R. 119.

subject it will not be treated here in any greater detail than is necessary to provide a background for the main subject of this article.

Writers have found three theories underlying the various decisions. The earliest view has been called the tort theory. It is based on the idea that workmen's compensation is a substitute for tort liability, in which case it is the established rule of conflict of laws that the law of the place of the injury shall govern; therefore, in the absence of express language in the statute providing for recovery for an injury received outside the state, the court will not presume that the legislature intended any such departure from the well-recognized rule that our law is territorial in its application.[3] This view has had but slight and temporary following in the United States.[4] The argument against it is that workmen's compensation, not being founded on fault, is something different from tort liability, and that it is necessary to allow a recovery for an outside injury to fully carry out the purpose of the legislation, namely, that the industry should bear the burdens of industrial accidents as a part of the cost of production.[5] The courts have realized, however, that our law is essentially territorial in its application,[6] and that therefore there must be some incident or incidents of the employment within the state on which to base the application of the local act to an injury received outside. Two theories have been developed, depending on whether the act is elective or compulsory. Under most elective acts it is said that the act of the state where the contract is made or where the employment is located, becomes a part of the contract which may be enforced no matter

[3] Gould's case (1913) 215 Mass. 480, 102 N. E. 693, Ann. Cas. 1914D 372; Union Bridge & Const. Co. v. Industrial Comm. (1919) 287 Ill. 396, 122 N. E. 609, Note (1920) 14 ILL. L. REV. 156. In North Alaska Salmon Co. v. Pillsbury (1916) 174 Cal. 1, 162 Pac. 93, and Kruse v. Pillsbury (1917) 174 Cal. 222, 162 Pac. 891, the California court reaches this result, but it is intimated that had the California act been elective instead of compulsory it would have been applicable to an out of state injury.

[4] Statutes have changed the rule in the three states that adopted this view. Cal. Stats. 1915, p. 1101, superseded by Cal. Stats. 1917, p. 831, CAL. GEN. LAWS act 4749, § 58; Ill. Laws 1925, p. 380, ILL. REV. STAT. ANN. (Smith-Hurd, 1929) c. 48, § 142; Mass. Laws 1927, c. 309, § 3, MASS. CUM. STAT. (Supp. 1929) c. 152, § 26.

The English act, with certain exceptions expressly provided for, has been held not to apply to injuries outside the country. Tomalin v. Pearson & Son [1909] 2 K. B. 61; Schwartz v. India Rubber etc., Co. [1912] 2 K. B. 299; Dwan, *op. cit. supra* note 2, at 335. In Delaware by express statute the act does not apply to injuries received outside the state. Del. Laws 1919, c. 203, § 1.

[5] Industrial Comm. v. Aetna Life Ins. Co. (1918) 64 Colo. 480, 174 Pac. 589, 3 A. L. R. 1336; Kennerson v. Thames Towboat Co. (1915) 89 Conn. 367, 94 Atl. 372, L. R. A. 1916A 436; State *ex rel.* Chambers v. District Court (1918) 139 Minn. 205, 166 N. W. 185; Esau v. Smith Bros. (1933) 124 Neb. 217, 246 N. W. 230; Post v. Burger & Gohlke (1916) 216 N. Y. 544, 111 N. E. 351, Ann. Cas. 1916B 158; SCHNEIDER, THE LAW OF WORKMEN'S COMPENSATION (1922) § 1.

[6] Angell, *loc. cit. supra* note 2; Dwan, *op. cit. supra* note 2 at 344.

where the injury occurs.[7] The contract view has been subjected to much criticism,[8] for under most elective acts the consent is not real but implied and is the result of compulsion, and the parties are subject to subsequent changes in the act and cannot contract away a part of it. The third view, followed particularly where the act is compulsory, treats the act as a statutory regulation of the status of employment entered into or existing within the state, which imposes as an incident of that status the right to receive compensation for an outside injury.[9]

These underlying theories do not settle the precise tests for the applicability of the local act.[10] A great variety of tests,[11] not depending necessarily on whether the act is elective or compulsory, have been

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[7] Industrial Comm. v. Aetna Life Ins. Co., *supra* note 5 (*cf.* Home Ins. Co. v. Hepp (1932) 91 Colo. 495, 15 P. (2d) 1082); Kennerson v. Thames Towboat Co., *supra* note 5; Pettiti v. T. J. Pardy Const. Co. (1925) 103 Conn. 101, 130 Atl. 70; Hagenback v. Leppert (1917) 66 Ind. App. 261, 117 N. E. 531 (*cf.* Johns-Manville v. Thrane (1923) 80 Ind. App. 432, 141 N. E. 229); Pierce v. Bekins Van & Storage Co. (1919) 185 Ia. 1346, 172 N.W. 191; State *ex rel.* Chambers v. District Court, *supra* note 5; Daggett v. Kansas City Structural Steel Co. (Mo. 1933) 65 S.W. (2d) 1036; Rounsaville v. Central R. Co. (1915) 87 N.J.L. 371, 94 Atl. 392, *rev'd* on other grounds (1917) 90 N.J.L. 176, 101 Atl. 182; Grinnell v. Wilkinson (1916) 39 R.I. 447, 98 Atl. 103; Texas Employers' Ins. Ass'n v. Price (Tex. Civ. App. 1927) 300 S.W. 667; Gooding v. Ott (1916) 77 W.Va. 487, 87 S. E. 862, L.R.A. 1916D 637; see Ford, Bacon & Davis v. Volentine (C.C.A. 5th, 1933) 64 F. (2d) 800.

[8] Ocean Acc. & Guar. Corp. v. Industrial Comm. (1927) 32 Ariz. 275, 257 Pac. 644; Anderson v. Miller Scrap Iron Co. (1919) 169 Wis. 106, 170 N.W. 275; Dwan, *op. cit. supra* note 2, at 341; Notes (1924) 37 HARV. L. REV. 375; (1923) 21 MICH. L. REV. 449; (1933) 10 N.Y.U.L. REV. 518, 519; (1921) 30 YALE L.J. 71.

[9] Quong Ham Wah Co. v. Industrial Acc. Comm. (1920) 184 Cal. 26, 192 Pac. 1021, 12 A.L.R. 1190, dismissed for want of jurisdiction (1921) 255 U.S. 445; Anderson v. Miller Scrap Iron Co., *supra* note 8; Van Blatz Brewing Co. v. Gerard (1930) 201 Wis. 474, 230 N. W. 622; McKesson Fuller Morrisou Co. v. Industrial Comm. (1933) 212 Wis. 507, 250 N.W. 396; see North Alaska Salmon Co. v. Pillsbury, *supra* note 3; Ocean Acc. & Guar. Corp. v. Industrial Comm., *supra* note 8. In New York under an act, compulsory for hazardous employments, the court at first adopted a "constructive contract" theory in allowing a recovery for an injury abroad. Post v. Burger & Gohlke, *supra* note 5. Later, in Smith v. Heine Safety Boiler Co. (1918) 224 N.Y. 9, 11, 119 N. E. 878, Judge Cardozo, after using the phrase *quasi ex contractu* to describe the liability goes on to say "Contractual in a strict sense, of course, the liability is not . . . The contract creates the relation to which the law attaches the duty . . . ."

Though the Wisconsin decisions, cited *supra*, were under an elective act, the court refused to follow the contract view.

[10] Under the contract view, for instance, the variety of established rules in the field of conflict of laws as to what law shall govern a contract—law of the place where the contract is made, law of the place of performance, law of the place intended by the parties—leaves room for a great diversity of tests in the field of workmen's compensation. Angell, *op. cit. supra* note 2, at 622.

[11] See authorities cited in note 2, *supra*; Notes (1933) 10 N.Y.U.L. REV. 518; (1933) 11 N.C.L. REV. 116; (1930) 79 U. OF PA. L. REV. 86.

developed by the courts or provided for by statute.[12] A number of states look to the place where the contract is made,[13] and hold the local act applicable to an out of state injury whenever the contract was made within the state. Some other states qualify this with the view that at least some of the work must be done within the state.[14] Some courts have adopted as a test the location of the industry within the state where the work outside is but an incident to the industry within.[15] Another test is the principal situs of the particular employee's employment.[16] In some cases the employee's residence has been treated as a

[12] For a collection of statutes accompanied by brief annotations see JONES, DIGEST OF WORKMEN'S COMPENSATION LAWS (12th ed. 1931) Topic 7 under the digest of laws for each state; 1 SCHNEIDER, THE LAW OF WORKMEN'S COMPENSATION (2d ed. 1932) 428-433.

[13] Quong Ham Wah Co. v. Industrial Acc. Comm., *supra* note 9; Globe v. Industrial Acc. Comm. (1923) 64 Cal. App. 307, 221 Pac. 658; Pettiti v. T. J. Pardy Const. Co., *supra* note 7; Johnston v. Industrial Comm. (1933) 352 Ill. 74, 185 N. E. 191; Kennedy-Van Saun Mfg. & Eng. Corp. v. Industrial Comm. (1934) 355 Ill. 514, 189 N. E. 916; Migues' Case (1933) 281 Mass. 373, 183 N. E. 847; Roberts v. I. X. L. Glass Corp. (1932) 259 Mich. 644, 244 N. W. 188; Daggett v. Kansas City Structural Steel Co., *supra* note 7; Rounsaville v. Central R. Co., *supra* note 7; Hi-Heat Gas Co. v. Dickerson (1934) 12 N. J. Misc. 151, 170 Atl. 44, *aff'd*, 113 N. J. L. 329, 174 Atl. 483; ALA. CODE (Michie, 1928) § 7540; IDAHO CODE ANN. (1932) § 43-1415; RESTATEMENT OF CONFLICT OF LAWS (1934) § 398.

[14] Foughty v. Ott (1917) 80 W. Va. 88, 92 S. E. 143 (*cf.* Gooding v. Ott, *supra* note 7); see Platt v. Reynolds (1929) 86 Colo. 397, 282 Pac. 264; Home Ins. Co. v. Hepp (1932) 91 Colo. 495, 15 P. (2d) 1082; Texas Employers' Ins. Ass'n v. Volek (Tex. Comm. App. 1934) 69 S. W. (2d) 33; (*cf.* Texas Employers' Ins. Ass'n v. Hoehn (Tex. Civ. App. 1934) 72 S. W. (2d) 341).

[15] State *ex rel.* Chambers v. District Court, *supra* note 5; Krekelberg v. M. A. Floyd Co. (1926) 166 Minn. 149, 207 N. W. 193; Brameld v. Albert Dickinson Co. (1932) 186 Minn. 89, 242 N. W. 465; Stone v. Thomson Co. (1932) 124 Neb. 181, 245 N. W. 600; Esau v. Smith Bros., *supra* note 5 (stating that the Nebraska decisions also take into consideration the place of the contract and the residence of the parties); Penwell v. Anderson (1933) 125 Neb. 449, 250 N. W. 665; see NEV. COMP. LAWS (Hillyer, 1929) § 2723; Pa. Laws (1929) p. 853.

The rule has been stated that the Indiana act only applies to employers who are resident or localized in the state. Smith v. Menzies Shoe Co. (Ind. 1934) 188 N. E. 592. But in Bement Oil Corp. v. Cubbison (1925) 84 Ind. App. 22, 149 N. E. 919, the court held that this factor was not enough to make the local act applicable. In Hagenback v. Leppert, *supra* note 7, the court stresses the place where the contract is made while in other cases the place of performance of the contract has been stressed. Johns-Manville v. Thrane, *supra* note 7; Leader Specialty Co. v. Chapman (1926) 85 Ind. App. 296, 152 N. E. 872.

[16] American Mutual Liab. Ins. Co. v. McCaffrey (C. C. A. 5th, 1930) 37 F. (2d) 870 (place of performance); Smith v. Heine Safety Boiler Co., *supra* note 9; Anderson v. Jarrett-Chambers Co. (1926) 242 N. Y. 580, 152 N. E. 435; Cameron v. Ellis Const. Co. (1930) 252 N. Y. 394, 169 N. E. 622; Zeltoski v. Osborne Drilling Corp. (1934) 264 N. Y. 496, 191 N. E. 532, *rev'g* 239 App. Div. 235, 267 N. Y. Supp. 855; Altman v. Workmen's Comp. Bureau (1923) 50 N. D. 215, 195 N. W. 287. But *cf.* Hospers v. J. Hungerford Smith Co. (1921) 230 N. Y. 616, 130 N. E. 916, *aff'g* 194 App. Div. 945, 184 N. Y. Supp. 927; Smith v. Aerovane Utilities Corp. (1932) 259 N. Y. 126, 181 N. E. 72; Tallman v. Colonial Air Transport (1932) 259 N. Y. 512, 182 N. E. 159, *aff'g* 234 App. Div. 809, 253 N. Y. Supp. 938; Seely v. Phoenix Transit

material factor,[17] but in no case has it been the sole test, and in many cases it has been considered immaterial.[18] These general statements of the various tests by no means cover all the ramifications and combinations of them that have been used. Some courts do not seem to have evolved any very definite rule, and sometimes even in a single jurisdiction different cases may stress different factors in sustaining or reversing an award.[19] The tests of locus of the industry or of the particular employee's employment would seem to provide a more real basis of jurisdiction and to carry out more precisely the underlying theory of workmen's compensation of placing the burden of industrial accidents on the industry. On the other hand these tests are less definite and may be more difficult to apply, than that of the place of making the contract, which, though in itself more arbitrary, is generally accompanied with some other factor to give the state a real interest,[20] and should be easier to apply.[21] In view of the desirability of a speedy and certain remedy for the employee, this should be of importance.[22]

Co. (1934) 241 App. Div. 183, 272 N. Y. Supp. 127. In the latter group of cases the court holds the New York act applicable as to an industry within the state so long as there is no fixed place of the employee's employment outside the state.

In Wisconsin the test of applicability of the local act is the status of the employer-employee relationship within the state. It may be either an actual or a constructive status. Van Blatz Brewing Co. v. Gerard; McKesson Fuller Morrison Co. v. Industrial Comm., both *supra* note 9; *cf.* Interstate Power Co. v. Industrial Comm. (1931) 203 Wis. 466, 234 N. W. 889.

[17] Platt v. Reynolds (1929) 86 Colo. 397, 282 Pac. 264; Van Blatz Brewing Co. v. Gerard, *supra* note 9. (But *cf.* McKesson Fuller Morrison Co. v. Industrial Comm., *supra* note 9); see Penwell v. Anderson, *supra* note 15; Texas Employers' Ins. Ass'n v. Volek, *supra* note 14; GA. CODE ANN. (Michie, 1926) § 3154(37); MD. ANN. CODE (Bagby, 1924) art. 101, §§ 32 (43), 65 (3, 12); N. C. CODE ANN. (Michie, 1931) § 8081(rr); VA. CODE ANN. (Michie, 1924) § 1887 (37).

[18] Falvey v. Sprague Meter Co. (1930) 111 Conn. 693, 151 Atl. 182; Roberts v. I. X. L. Glass Corp., *supra* note 13; Bolin v. Swift & Co. (Mo. 1934) 73 S. W. (2d) 774. In Quong Ham Wah Co. v. Industrial Acc. Comm., *supra* note 9, a limitation to residents was held unconstitutional. See *infra*, p. 449.

[19] Selser v. Bragmans Bluff Lumber Co. (La. App. 1933) 146 So. 690 (reviewing previous Louisiana cases); Colorado cases, *supra* note 14; Indiana cases, *supra* note 15; New York cases, *supra* note 16; Texas cases, *supra* note 14; Wisconsin cases, *supra* note 16.

[20] See Note (1933) 10 N. Y. U. L. REV. 518, 520, suggesting that, in all cases where the local act has been held applicable because the contract was made in the state, there has been some other factor, such as residence of employee or employer within the state, to give the state a real interest in the matter.

[21] In some cases, however, even the determination of the place where the contract was made has necessitated litigation. Glove Mills v. Industrial Acc. Comm. (1923) 64 Cal. App. 307, 221 Pac. 658; Johnson v. Industrial Comm., *supra* note 13; Kennedy-Van Saun Mfg. & Eng. Corp. v. Industrial Comm., *supra* note 13; Selser v. Bragmans Bluff Lumber Co., *supra* note 19; Daggett v. Kansas City Structural Steel Co., *supra* note 7; Stone v. Thompson Co., *supra* note 15; Hi-Heat Gas Co. v. Dickerson, *supra* note 13; Texas Employers' Ins. Ass'n v. Hoehn, *supra* note 14.

[22] *Cf.* Smith v. Heine Safety Boiler Co. (1918) 224 N. Y. 9, 119 N. E. 878 and (1921) 119 Me. 552, 112 Atl. 516, where the cause of the dependents of a workman had to be carried through the highest courts of two states to secure an award.

The converse of the problem heretofore considered arises when a recovery is sought under the local act for an injury occurring within the state, where the contract was made or the employment or industry was localized outside the state. Some courts have tried to be consistent in their theory and have held that the rules governing recovery for an injury within the state shall be the precise complement of the rules as to recovery for an injury without,[23] with an exception made in some cases[24] where the compensation act of the foreign state did not cover the injury. Thus the Connecticut court[25] in holding that a recovery could be had for an injury received outside the state merely because the contract was made in the state, assumed that it must necessarily overrule a previous case in which a recovery was allowed for an injury received within the state, where the contract was made outside the state. Other states, at least before 1932, do not seem to have considered themselves to be at all limited in their jurisdiction to award compensation for an injury within the state.[26]

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[23] Hall v. Industrial Comm. (1925) 77 Colo. 338, 235 Pac. 1073; Hopkins v. Matchless Metal Polish Co. (1923) 99 Conn. 457, 121 Atl. 828; Cole v. Industrial Comm. (1933) 353 Ill. 415, 187 N. E. 520, 90 A. L. R. 116; Smith v. Menzies Shoe Co., *supra* note 15; Proper v. Polley (1931) 223 App. Div. 621, 253 N. Y. Supp. 530, *aff'd,* (1932) 259 N. Y. 518, 182 N. E. 161; see Lenninger v. Jacobs (Mich. 1934) 257 N. W. 764; Esau v. Smith Bros., *supra* note 5. Some courts, purporting to be consistent in their theory and test as to an injury within the state, seem to have involved themselves in inconsistencies in the application of the test to the facts of the particular case, in sustaining awards for such injuries. Indiana cases, *supra* note 15; Nebraska cases, *supra* note 15; Wisconsin cases, *supra* note 16.

Where a common law recovery or recovery for wrongful death has been sought in the state where the injury occurred, most courts have held that the applicable compensation act of another state is a defense. Scott v. White Eagle Co. (D. Kan. 1930) 47 F. (2d) 615; Magnolia Petroleum Co. v. Turner (1933) 188 Ark. 177, 65 S. W. (2d) 1; Barnhart v. American Concrete Steel Co. (1920) 227 N. Y. 531, 125 N. E. 675; Schweitzer v. Hamburg Am. Line (1912) 78 Misc. 448, 138 N. Y. Supp. 944; Pendar v. H. B. American Mach. Co. (1913) 35 R. I. 321, 87 Atl. 1. *Contra*: Farr v. Babcock Lumber Co. (1921) 182 N. C. 725, 109 S. E. 833; Johnson v. Carolina C. & O. Ry. (1926) 191 N. C. 75, 131 S. E. 390. See Dwan, *op. cit. supra* note 2, at 347; Notes (1932) 11 N. C. L. Rev. 116; (1932) 18 Va. L. Rev. 432; (1927) 21 Ill. L. Rev. 184.

[24] Douthright v. Champlin (1917) 91 Conn. 524, 100 Atl. 97; see Hopkins v. Matchless Metal Polish Co., *supra* note 23 (also the act of the state where the contract was made must be contractual); see Proper v. Polley, *supra* note 23. But see Restatement of Conflict of Laws (1934) § 399.

[25] Pettiti v. T. J. Pardy Const. Co., *supra* note 7, overruling Banks v. Howlett Co. (1918) 92 Conn. 368, 102 Atl. 822; (1925) 35 Yale L. J. 118.

[26] Ocean Acc. & Guarantee Corp. v. Industrial Comm., *supra* note 9; American Radiator Co. v. Rogge (1914) 86 N. J. L. 436, 92 Atl. 85, *aff'd,* (1915) 87 N. J. L. 314, 93 Atl. 1083; Davidheiser v. Hay Foundry & Iron Works (1915) 87 N. J. L. 688, 94 Atl. 309; see DeGray v. Miller Bros. Const. Co. (Vt. 1934) 173 Atl. 556; Restatement of Conflict of Laws (1934) § 399. Many acts, including the California act, are apparently applicable to all injuries occurring within the state.

The subject has thus far been considered merely as a matter of local law, apart from any possible issues of constitutional law. Indeed, before 1932, but few cases were concerned with any question of the constitutionality of the application of the local rule. The problem as to what law a state will apply to a given situation has been mainly treated as being purely a matter of local law. It is elementary that the full faith and credit clause of the federal constitution,[27] which applies to the "public acts, records, and judicial proceedings," and congressional enactments in furtherance of its purpose, require a state to recognize and enforce judgments of sister states,[28] but the extent of its application to "public acts" has not been so well settled. In a limited group of cases, most of which dealt with insurance, or mutual benefit societies, the Supreme Court has asserted its power to dictate the rule of conflicts to be followed in the state courts, either on the ground that the state court must give full faith and credit to the properly applicable statute of another state,[29] or on the ground that for the state to apply its own law

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CAL. GEN. LAWS act 4749, §§ 3(4), 7, 8(a); WASH. COMP. STAT. (Rem. Supp., 1927) §§ 7674, 7675; WYO. REV. STAT. ANN. (1931) c. 124, § 106-7.

In jurisdictions following the theory that the compensation act is a statutory regulation of the employer-employee relationship it would seem that there is no real inconsistency in such a holding. Ocean Acc. & Guar. Corp. v. Industrial Comm., *supra*; Notes (1928) 1 So. CALIF. L. REV. 274; (1932) 18 VA. L. REV. 432, 436. In cases following the contract view the result is more difficult to justify. Thus in American Radiator Co. v. Rogge, *supra*, the court admitted that the obligation it was enforcing was implied by law, that it was quasi-contractual. In Douthright v. Champlin, *supra* note 24, the court said that new terms were introduced into the contract when the parties came into the state; in DeGray v. Miller Bros. Const-Co., *supra*, the court stressed the state's public policy of regulating industries within the state. Critics of these cases point out that they are a departure from the contract view which indicates its inadequacy, and a reversion to the tort theory. Notes (1922) 22 COL. L. REV. 263; (1932) 18 VA. L. REV. 432, 436; (1917) 27 YALE L. J. 113; (1920) 30 *Ibid.* 71; (1932) 32 COL. L. REV. 1427; (1927) 26 MICH. L. REV. 213.

[27] Art. IV, Sec. 1: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

On the extent to which this clause is self-executing as to public acts, or has been given effect by the acts of Congress in furtherance of it, R. S. (2d ed. 1878) §§ 905, 906, 28 U. S. C. (1926) §§ 687, 688; see Atchison, Topeka, & Santa Fe Ry. v. Sowers (1909) 213 U. S. 55; Field, *Judicial Notice of Public Acts under the Full Faith and Credit Clause* (1928) 12 MINN. L. REV. 439; Langmaid, *The Full Faith and Credit Required for Public Acts* (1929) 24 ILL. L. REV. 383. As to the extent to which congressional legislation could carry it; see Beach, *Uniform Interstate Enforcement of Vested Rights* (1918) 27 YALE L. J. 656; Field, *loc. cit. supra.*

[28] Huntington v. Attrill (1892) 146 U. S. 657; Fauntleroy v. Lum (1908) 210 U. S. 230.

[29] Supreme Council of the Royal Arcanum v. Green (1915) 237 U. S. 531; Aetna Life Ins. Co. v. Dunken (1924) 266 U. S. 389; Modern Woodmen of America v. Mixer (1925) 267 U. S. 544; *cf.* Hancock Nat. Bank v. Farnum (1900) 176 U. S. 640; Converse v. Hamilton (1912) 224 U. S. 243. The last two cases cited dealt with the

to a transaction in which it has no sufficient interest is a denial of freedom of contract or a deprivation of property without due process of law,[30] and therefore prohibited by the Fourteenth Amendment. In another case,[31] however, the Court has denied its power to dictate generally the rules of conflict of laws that the state courts are to follow. These cases have lead to a good deal of comment from the law reviews as to the possibility and desirability of the Supreme Court's determining as a matter of constitutional law the whole field of the conflict of laws, or at least certain highly controversial and nationally important phases such as insurance.[32] But the cases have not been explicit as to just how far this doctrine is to be extended.

In 1932 the Supreme Court in *Bradford Electric Light Co. v. Clapper*[33] extended the application of this doctrine to the field of workmen's

question of whether a state must recognize the liability under the statutes of another state of stockholders of a corporation to its judgment creditors or its receiver. In both cases the Supreme Court reversed the state court, which bad failed to enforce the foreign statute and judgment and had given judgment for the defendant stockholders. Though the decisions are largely based on the requirement that the judgment or decree of the other state must be recognized, it would seem that they necessarily require recognition of the statute as well and it has been contended that they are authority for the proposition that a state must affirmatively enforce causes of action arising under the statutes of another state. Langmaid, *op. cit. supra* note 27, at 393. But it would seem that they only necessarily stand for the proposition that the state court must enforce the law of another state if it chooses to entertain the case and proceed with it to a final judgment which would be *res judicata*.

[30] New York Life Ins. Co. v. Head (1914) 234 U. S. 149; New York Life Ins. Co. v. Dodge (1918) 246 U. S. 357; Aetna Life Ins. Co. v. Dunken, *supra* note 29; Home Ins. Co. v. Dick (1930) 281 U. S. 397.

[31] Kryger v. Wilson (1916) 242 U. S. 171. In this case the North Dakota court applied its own law as to giving notice to a vendee in default in a contract for the sale of North Dakota land in preference to the statute of another state where the vendee lived and the contract was executed and was to be performed. Justice Brandeis said, "The most that the plaintiff in error can say is that the state court has made a mistaken application of the doctrines of the conflict of laws . . . But that, being purely a question of local common law, is a matter with which this court is not concerned." *Ibid.* at 176. In this case no issue was made under the full faith and credit clause, for the court had urged upon it only the due process and contract clauses.

[32] Dodd, *Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws* (1926) 39 HARV. L. REV. 533; Field, *loc. cit. supra* note 27; Langmaid, *op. cit. supra* note 27 at 383; Ross, *Has the Conflict of Laws Become a Branch of Constitutional Law?* (1931) 15 MINN. L. REV. 161; Schofield, Note (1918) 13 ILL. L. REV. 43. See also Beach, *loc. cit. supra* note 27; Cook, *The Powers of Congress under the Full Faith and Credit Clause* (1919) 28 YALE L. J. 421; Schofield, *The Supreme Court of the United States and the Enforcement of State Law by the State Courts* (1908) 3 ILL. L. REV. 195.

Professors Beale and Yntema seem to favor a strict confinement of this doctrine. Beale, *Two Cases on Jurisdiction* (1935) 48 HARV. L. REV. 620; Yntema, *The Hornbook Method and the Conflict of Laws* (1928) 37 YALE L. J. 468, 481.

[33] (1932) 286 U. S. 145, noted in Beale, *loc. cit. supra* note 32; Notes (1932) 12 B. U. L. REV. 576; (1932) 46 HARV. L. REV. 291; (1933) 10 N. Y. U. L. REV. 518; (1932) 11 N. C. L. REV. 116; (1932) 80 U. OF PA. L. REV. 1139; (1932) 18 VA. L. REV. 432; (1932) 42 YALE L. J. 115; (1932) 32 COL. L. REV. 131; (1933) 27 ILL. L. REV. 573.

compensation. Clapper was a resident of Vermont, and was employed mainly in Vermont by the defendant, a Vermont corporation. He was killed while in the course of his employment on an emergency repair job in New Hampshire. The Vermont act was elective and provided that the employer and employee, if they did not object in the manner provided, became bound by it. It provided for a recovery for an injury received outside the state, and that such recovery should be the exclusive remedy if there were no stipulation of the parties to the contrary. Clapper left no dependents, and the Vermont act provided that in such a case no substantial award could be made. Action was brought in the New Hampshire courts by Clapper's administratrix under the New Hampshire death statute, such procedure being proper under the local laws which allowed the employee, or those claiming under him to elect after the accident the remedy to be pursued. The case was removed to the federal courts.[34] The Supreme Court, reversing the district court and the circuit court of appeals, held that it was a denial of full faith and credit to refuse to allow the Vermont act to be set up as a defense. Justice Brandeis, in delivering the opinion, argues that the Vermont statute is within the scope of that state's jurisdiction as a statutory regulation of the employer-employee relationship even as to acts occurring without the state; and that, while the full faith and credit clause does not require the affirmative enforcement of a statutory cause of action of another state where the forum has provided no appropriate remedy or where the enforcement would be obnoxious to the public policy of the forum, it does require that the statute of another state be followed when set up as a defense. This latter argument is weakened somewhat by the further contention that, there being no New Hampshire decisions to the contrary, there was nothing to show that to permit the Vermont act to be set up as a defense would be contrary to the public policy of New Hampshire.[35] This was the ground upon which Justice Stone, who was unable to accept the conclusion of the majority as to the application of the full faith and credit clause, concurred—that the New Hampshire courts would be presumed to accept the Vermont act as a defense on grounds of comity.

Thus the court could have decided the case on grounds of comity, but the majority of the court depart from the frequently cited doctrine

[34] The federal courts are required by R. S. (2d ed. 1878) §§ 905, 906, 28 U. S. C. (1926) §§ 687, 688, to accord the same full faith and credit to public acts, judgments, etc., as the state courts.

[35] For an argument *contra*—that the New Hampshire statute, permitting an election by the employee after the injury, should have been an indication of the state's public policy even in the absence of a decision from the state court, see Note (1932) 12 B. U. L. REV. 576.

that they will not decide a constitutional issue where there are other grounds for the decision.[36] Such a ruling should therefore be entitled to a good deal of weight. It has been suggested that it was a conscious effort to impart some uniformity to an important and very confused branch of the conflict of laws, as the court had previously done in the insurance cases.[37] While it is a step in that direction it gives no indication as to how far the court will go in the application of this doctrine either in the field of workmen's compensation or otherwise.[38] The decision is confined to the particular facts of the case, Justice Brandeis saying "The interest of New Hampshire was only casual," and "We have no occasion to consider whether, if the injured employee had been a resident of New Hampshire, or had been continuously employed there, or had left dependents there, recovery might validly have been permitted under the New Hampshire law."[39] It has been further suggested that the case is authority only where the remedy sought is under the common law or death statute of the state of the injury.[40] In the later case of *Ohio v. Chattanooga Boiler & Tank Company*[41] it was held that the rule of the *Clapper* case did not apply where the Tennessee act set up as a defense under the full faith and credit clause did not purport to create an exclusive remedy so far as out of state injuries were concerned. Though actually there was little difference between the words of the Vermont statute and the Tennessee statute as to exclusiveness of the remedy except that the Vermont act had a particular provision that it should be exclusive as to injuries abroad, the court seized upon statements of the Teunessee Supreme Court as indicating that the Tennessee act did not purport to be exclusive in this respect. Under the rule stated in some cases that an improper construction by a state court of the statute of another state does not raise a federal question,[42] it is possible to hold

[36] Liverpool, etc., S. S. Co. v. Comm'rs of Emigration (1885) 113 U. S. 33, 39; Note (1932) 42 YALE L. J. 115.

[37] Notes (1932) 46 HARV. L. REV. 291; (1932) 42 YALE L. J. 115.

[38] Professor Beale predicts dire results if the rule is extended to other branches of conflict of laws. Beale, *op. cit. supra* note 32 at 624.

[39] *Supra* note 33, at 162, 163.

[40] See Note (1933) 10 N. Y. U. L. REV. 518, 525, suggesting that had a remedy been sought under the New Hampshire compensation act, the state would have had an added interest to be considered because of the temporary existence of the employee-employer relationship within its boundaries.

The Restatement apparently adopts this view as a limitation of the Clapper case; but it applies the rule, as thus limited, whenever the act of the state where the contract was made abolishes the other remedies by the employees subject to it. RESTATEMENT OF CONFLICT OF LAWS (1934) § 401(b).

[41] (1933) 289 U. S. 439.

[42] Johnson v. New York Life Ins. Co. (1903) 187 U. S. 491; Western Life Indemnity Co. v. Rupp (1914) 235 U. S. 261; Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co. (1917) 243 U. S. 93.

accorded full faith and credit[53] and it is for the Supreme Court to determine the extent to which the statute of one state may govern acts occurring within another state "by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight;"[54] in some cases the statute of one state will thus prevail both at home and abroad, while in other cases each state may apply its own law, regardless of the statute of another state; and in the instant case the interest of Alaska was not shown to be superior to that of California. The *Clapper* case is distinguished on the ground that the interest of the state of New Hampshire was less than the interest of California in the instant case, and because in the instant case the California court had indicated that it would be against the public policy of the state to allow the Alaska law to control. In view, however, of the extensive scope allowed to the public policy argument in many state conflicts decisions, it would seem that if, as the cases indicate, the Supreme Court is going to decide these questions as a matter of constitutional law, it should not be swayed by declarations in the state courts of the local public policy.

In a speculation as to whether or not Alaska would be required to give full faith and credit to the California act and recoguize it as a defense, had the employee sought compensation in Alaska, Justice Stone seems to minimize the decision in *Ohio v. Chattanooga Boiler & Tank Company*;[55] he indicates that whether or not a state act purports to provide an exclusive[56] remedy for out of state injuries is merely one of

[53] The court points out that a literal following of the clause would lead to the result that in any case of a conflict a court would have to apply the foreign statute and never the local statute. The court states that Congress has not prescribed the extra-state effect of statutes, thus indicating that Congress could prescribe a different effect to be given them.

In its reasoning under the full faith and credit clause the Court assumes that California would have enforced the Alaska law, but for the conflict. (See *infra*, note 60, as to the peculiar provisions of the Alaska act.) But it is not apparent just how this point should make any difference in the decision. The Court's reasoning under the due process clause was based on the fact that the employee would not be able to recover under the Alaska law in California. At any rate, in making this assumption the Court certainly did not mean that the full faith and credit clause requires California to enforce affirmatively the statute of another state.

[54] — U. S. at —, 55 Sup. Ct. at 524.

[55] *Supra* note 41.

[56] Ordinarily when an act provides that the remedy given shall be exclusive, it would seem that the legislature means exclusive so far as any common law remedy is concerned. In the Vermont statute, considered in the Clapper case, there is more reason to believe that "exclnsive" was intended to preclude a remedy in any other state, because there was a particular provision that as to injuries outside the state the remedy provided should be exclusive. The Tennessee act, considered in the Chattanooga case, merely had a general provision as to exclusiveness, but that decision was not rested on this distinction, but rather on certain declarations of the Tennessee court as indicating that the act did not preclude a recovery under the act of some other state. In the instant case the court treated the California statute as not

several factors to be considered in determining whether or not it must be given full faith and credit. The decision further indicates that the bounds set by the due process clause in this field are not coextensive with those of the full faith and credit clause; and that if a state has a real interest in the matter it is not to be denied the power to apply its own law by the due process clause, though the mere fact that the contract is made in a state may not be enough to give it a sufficient interest. The court forestalls the fears of Professor Beale,[57] that any extended application of the decision in the *Clapper* case would result in a race between states for prior enactment, by its statement that not all statutes are entitled to full faith and credit, but it possibly outlines for itself a large future task, namely, the prescribing of rules of conflict of laws to be followed by the states in these cases. It will be seen that the Supreme Court is proceeding slowly in the development of this doctrine, both in the field of workmen's compensation and otherwise, by the gradual process of judicial inclusion and, possibly, exclusion. Though Justice Stone lays down a general plan to be followed in the determination of these questions, as in the *Clapper* case the decision is confined to the particular facts of the case, and no indication is given as to the extent of the application of the doctrine to other branches of the conflict of laws. Regardless of how far the Court should go in other matters, it is submitted that in the field of workmen's compensation the Court should not attempt to lay down any mechanically uniform, hard and fast rule as to what law must govern as between two states each having a real interest. It should not attempt to weigh the respective interests of each state in the matter and hold if the interests of state *X* are superior to those of state *Y* that the law of the former must govern. That is, it should go no farther than it committed itself to go in the *Clapper* case.

In workmen's compensation the problem is broader than the usual problem in the conflict of laws for it also usually involves the determination of the question of where the employee may recover. The remedy under most compensation acts is in effect a local action. The great majority of acts provide for proceedings before a specially constituted commission with special rules as to procedure, and in the few states where the administration of the act is left for the courts, the remedy provided is summary and subject to special administrative supervision;[58] and even

purporting to provide a remedy exclusive in this respect. But section 6 CAL. GEN. LAWS, act 4749 provides generally that the act shall be exclusive of any other remedy, as in the Tennessee act. Possibly the declaration of the California court in the instant case that "The jurisdiction of both Alaska and California may be sustained . . ." 1 Cal. (2d) at 259, 34 P. (2d) at 720, indicates that the California act is not exclusive in this respect.

[57] Beale, *op. cit. supra* note 32, at 625.

[58] ARMSTRONG, *op. cit. supra* note 1, pp. 267-269; SCHNEIDER, *op. cit. supra* note 5, §§ 549 *et seq.*

the rule of the *Clapper* case inapplicable where the law set up as a defense is the result of judicial interpretation under the act, rather than the express mandate of the statute. But under the rule established in the insurance cases it would seem that full faith and credit must be given not only to the statute itself, but to the decisions construing it.[43] The *Clapper* decision does not require the alteration of any of the previously established state rules on the subject as to when the local act may govern,[44] except the rule allowing a recovery for an injury within the state where all the main incidents of the employment are located outside the state, for Vermont in the case was both the *loci contractus* and the situs of the employment and the industry. It merely requires that the state allowing a local recovery though the act of another state is applicable must have some real interest in the matter, and holds that the mere fact that the injury occurred within the state is not a sufficient interest.

In the recent case of *Alaska Packers' Association v. Industrial Accident Commission*,[45] which arose under the California act, the Supreme Court had an opportunity to expound further the doctrines of the *Clapper* case, and the extent of their application. Section 58[46] of the California Workmen's Compensation Act of 1917 provides:

> "The commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state, and such employee or his dependents shall be entitled to the compensation or death benefits provided by this act."

The Industrial Accident Commission had made an award to a non-resident alien[47] who was hired in California for work to be performed exclusively in Alaska, and was there injured. The contract of employment provided for transportation to Alaska and back to California at the conclusion of the salmon canning season, with wages to be paid after

[43] Modern Woodmen of America v. Mixer, *supra* note 29; see Supreme Council of the Royal Arcanum v. Green, *supra* note 29; Langmaid, *op. cit. supra* note 27, at 399.

[44] Thus it has been variously cited in support of the previously established state rules. Cole v. Industrial Comm., *supra* note 23; Selser v. Bragmans Bluff Lumber Co., *supra* note 19; Seely v. Phoenix Transit Co., *supra* note 16; De Gray v. Miller Bros. Const. Co., *supra* note 26; *cf.* Daggett v. Kansas City Structural Steel Co., *supra* note 7, *cert. den.* (1934) 292 U. S. 630; Joseph H. Wiederhoft, Inc., v. Neal (W. D. Mo. 1934) 6 F. Supp. 798.

[45] (March 11, 1935) — U. S. —, 55 Sup. Ct. 518, *aff'g*, (1934) 1 Cal. (2d) 250, 34 P. (2d) 716; Note (1935) 44 YALE L. J. 869.

[46] CAL. GEN. LAWS, act. 4749, § 58.

[47] The California court treated the requirement of the statute as to residence as being completely nullified by the decision in Quong Ham Wah Co. v. Industrial Acc. Comm., *supra* note 9. See *infra*, p. 449, for a discussion of this aspect of the holding.

the return to California. It further stipulated that the parties were to be governed by the Alaska Workmen's Compensation Law. The employer contended that the application of the California act was a denial of due process of law, and a denial of the full faith and credit[48] required to be accorded the Alaska statute. The California supreme court sustained the award, holding, among other things, that section 27(a)[49] of the California act, which provides that any contract attempting to avoid liability under the act is void, rendered the stipulation as to the Alaska law ineffective. The Supreme Court of United States, in affirming this decision, answered the employer's contentions as to due process and full faith and credit. Justice Stone in writing the opinion states that the due process clause prevents a state from applying its own law to contracts neither made nor to be performed within its jurisdiction;[50] but that it may to some extent exercise its authority over contracts made within the state to be performed elsewhere;[51] thus California has the power to make some regulations of the status of employment created within the state,[52] provided that the exercise of that power in the particular case is not arbitrary or unreasonable; and that in this case, since the employee was to be transported back to California where he was to receive his full salary and it was unlikely that he should then be able to return to Alaska to secure compensation, California had a real interest in the matter in seeking to prevent his becoming a public charge. Therefore the application of the California act was not unreasonable, in spite of the stipulation as to Alaska law, for in furtherance of its otherwise justified power and policy California might restrict freedom of contract to prevent evasions.

With regard to the full faith and credit issue the Court expounds more fully the doctrine of the *Clapper* case: all statutes need not be

[48] The full faith and credit clause has no application to territorial statutes or judgments. But Congress has prescribed that a similar effect shall be given them. R. S. (2d ed. 1878) §§ 905, 906, 28 U. S. C. (1926) §§ 687, 688. This legislation has been sustained as within the power of Congress because of constitutional provisions as to the judicial power of the federal government, its power over the territories, and the "necessary and proper clause." Embry v. Palmer (1882) 107 U. S. 3; Atchison, Topeka & Santa Fe Ry. v. Sowers (1909) 213 U. S. 55. In the instant case the court assumes for purposes of the decision that territorial statutes must be accorded the same full faith and credit as state statutes.

[49] CAL. GEN. LAWS, act 4749, § 27(a).

[50] Citing the insurance cases, *supra* note 30.

[51] Citing Selover, Bates & Co. v. Walsh (1912) 226 U. S. 112; Manhattan Life Ins. Co. v. Cohen (1914) 234 U. S. 123; Mutual Life Ins. Co. v. Liebing (1922) 259 U. S. 209.

[52] Quong Ham Wah Co. v. Industrial Acc. Comm., *supra* note 9; Post v. Burger & Gohlke, *supra* note 5; Van Blatz Brewing Co. v. Gerard, *supra* note 9; *cf.* New York Central R. R. v. White (1917) 243 U. S. 188; Mountain Timber Co. v. Washington (1917) 243 U. S. 219.

as between two states with administrative tribunals, the make-up of the tribunal and the procedure to be followed may vary greatly. Therefore, under the generally followed principle of conflict of laws that a state will not enforce a right arising under the laws of another state that is tied up with a special remedy provided, if it lacks a tribunal properly equipped to provide that remedy, it is held that the state under whose act an award is sought is the only place where such an award may be had.[59] Where the remedy provided is in the courts, a few cases have allowed the enforcement of the act of another state.[60] Suggestions have been made for a uniform set of compensation laws, so that rights under the act of one state may be enforced in another,[61] bnt even assuming the desirability of such a uniform system, its attainment is not likely for some time. Thus, unless the Supreme Court is also going to require states to affirmatively enforce the act of another state regardless of procedural difficulties, it may cause considerable hardship if it attempts to lay down any hard and fast rules, with the result that an award may be had in only one jurisdiction. For in each case different factors may determine where the proceeding may be conveniently entertained. Residence of the employee, in spite of its repudiation as a definite test, would seem important. It will be likely to coincide with the place of employment, or

[59] Logan v. Missouri Valley Bridge & Iron Co. (1923) 157 Ark. 528, 249 S. W. 21; Mosley v. Empire Gas & Fuel Co. (1926) 313 Mo. 225, 281 S. W. 762, 45 A. L. R. 1223; Verdicchio v. McNab & Harlin Mfg. Co. (1917) 178 App. Div. 48, 164 N. Y. Supp. 290; *cf.* Slater v. Mexican Nat. R. R. (1904) 194 U. S. 120; Osagera v. Schaff (1922) 293 Mo. 333, 240 S. W. 124; see Douthright v. Champlin, *supra* note 24. But see Zurich v. General Acc. & Liability Ins. Co. (C. C. A. 9th, 1926) 15 F. (2d) 906.

[60] Texas Pipe Line Co. v. Ware (C. C. A. 8th, 1926) 15 F. (2d) 171; United Dredging Co. v. Lindberg (C. C. A. 5th, 1927) 18 F. (2d) 453; Lindberg v .Southern Casualty Co. (S. D. Tex. 1926) 15 F. (2d) 54; see Zurich v. General Acc. & Liability Ins. Co., *supra* note 59; American Mutual Liab. Ins. Co. v. McCaffrey, *supra* note 16; Ford Bacon & Davis v. Volentine, *supra* note 7. *Contra*: Verdicchio v. McNab & Harlin Mfg. Co., *supra* note 59.

Compensation acts in some states provide that rights arising under the act of another jurisdiction may be enforced in the local tribunals if there is a substantial similarity of remedy. ARIZ. CODE (Struckmeyer, 1928) § 1429; IDAHO CODE ANN. (1932) § 43-1415; UTAH COMP. LAWS (1917) § 3126; VT. GEN. LAWS (1917) § 5771. In some other states the jurisdiction of the industrial board is limited to cases arising under the local act. CAL. GEN. LAWS act 4749, § 7(5); CONN. GEN. STAT. (1930) § 5242; N. Y. ANN. CONS. LAWS (2d ed. 1917) c. 67, § 20.

The Alaska act provides that it may only be enforced in local courts if the employer may be served within the jurisdiction. Alaska Laws, 1929, c. 25, § 25. In Martin v. Kennecott Copper Corp. (W. D. Wash. 1918) 252 Fed. 207, a recovery under the Alaska act was denied because of this provision. If the right under the Alaska act is not so tied up with a special remedy as to make it other than a transitory cause of action, the limitation should be ineffective. See Atchison, Topeka & Santa Fe Ry. v. Sowers (1909) 213 U. S. 55; Tennessee Coal & Iron Co. v. George (1914) 233 U. S. 354; Texas Pipe Line Co. v. Ware, *supra*. In the Alaska Packers case the Supreme Court adopts this view.

[61] (1932) 32 COL. L. REV. 420; see Dwan, *op. cit. supra* note 2, at 352.

with the place where the contract is made, but not necessarily with either one. Both the *Clapper* and *Alaska Packers' Association* cases seem to indicate that residence is important.[62] In some cases it may be important to consider where the employer may be reached with process. In other cases which require some determination as to the facts of the accident, it will be more convenient for the parties to secure evidence at the place where the injury occurred. If the Supreme Court were to make for itself the task of deciding as between these and other conflicting factors the state having the superior interest in every case, the effect would be more toward further uncertainty than uniformity in the field. Therefore as between states with a real interest in the matter there should be no constitutional limitations.[63]

What are the consequences of this lack of uniformity? There will remain some doubt as to when a recovery may be had under a particular act. But this is a problem for the individual states to clarify. Indeed the Supreme Court could not impose any absolute uniformity. It may set the maximum limit for the application of the state act, but it cannot require the states to come up to this limit any more than it can require them to have a compensation act. Another result of the lack of uniformity and consequent overlapping is the possibility of a double recovery. It has not been decided by the Supreme Court whether or not a compensation award by a commission is entitled to the same full faith and credit as a judgment of a court of record.[64] But assuming that it is so entitled,

[62] Professor Beale, approaching the problem from something other than a practical point of view, argues that domicile should be immaterial. Beale, *op. cit. supra* note 32, at 625.

[63] *Cf.* the cases holding that an interstate carrier may not be sued on a foreign cause of action in any place that it may be reached with process, because this would constitute an undue burden on interstate commerce; but that it may be sued where the cause of action arose, or where the carrier has lines and its principal office, or where the plaintiff has resided since before the cause of action arose. Davis v. Farmer's Coop. Equity Co. (1923) 262 U. S. 312; Missouri *ex. rel.* St. Louis, etc., Ry. v. Taylor (1924) 266 U. S. 200; Denver, etc., R. R. v. Terte (1932) 284 U. S. 284. But even in this field the cases have not been altogether precise. Farrin, *Suits against Foreign Corporations as a Burden on Interstate Commerce* (1933) 17 MINN. L. REV. 381.

[64] In Chicago, R. I. & P. Ry. v. Schendel (1926) 270 U. S. 611, suits had been brought under the Federal Employers' Liability Act in Minnesota. For this act to be applicable the employee and the employer must have been engaged in interstate commerce at the time of the injury. As a bar to the actions were pleaded prior determinations under the Iowa compensation act that the employees were at the time engaged in intrastate commerce, and that therefore a recovery could be had under the state act. In the first case the award had been made by the commission, and an appeal had been taken to court where the award was sustained. In the second case the award had been made by the commission but had not become final because of the pendency of an appeal to a commissioner. *Held,* that in the first case the final determination on appeal that the employee was engaged in intrastate commerce, was a judgment entitled to full faith and credit and therefore *res judicata*; but that in

though it might be argued that a prior award should preclude by merger a later recovery,[65] the more widely adopted view is that, since the legislative jurisdiction of each state over a given case is based on different circumstances, there is nothing illogical about recognizing separate rights under separate acts.[66] But the courts, with the exception of one jurisdiction, which allowed a double recovery until the rule was altered by statute,[67] have dealt with the problem in a fairly sane manner. Some cases hold that a recovery under the act of one state does not preclude a later recovery under the local act, but that the amount previously recovered is to be deducted in making the award.[68] Other courts hold that the employee is estopped from proceeding under the local act when he has already brought proceedings and recovered under the foreign act.[69] Thus there would seem to be no serious difficulties on this score.

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the second case, since the award had not become final, it was not entitled to full faith and credit. The court leaves open the question whether or not the final award of a commission is in itself entitled to full faith and credit.

In *In re* Phillips (1923) 206 App. Div. 314, 200 N. Y. Supp. 639, the award of a Texas commission was held to be entitled to full faith and credit in a suit to secure payment of it. In Williams v. Southern Pacific (1921) 54 Cal. App. 571, 202 Pac. 356, the court held an award of the California commission to be *res judicata*, in a problem similar to that in the Schendel case, *supra*. Other cases, where issues other than full faith and credit have been involved, have held that the industrial accident commission is not a judicial body. Joseph H. Weiderhoff v. Neal, *supra* note 44; Keller v. Industrial Comm. (1932) 350 Ill. 390, 183 N. E. 237.

[65] See Langmaid, *op. cit. supra* note 27, at 407.

[66] Interstate Power Co. v. Industrial Comm., *supra* note 16; see Rounsaville v. Central R. Co., *supra* note 7, at 374, 94 Atl. at 393; RESTATEMENT OF CONFLICT OF LAWS (1934) § 403; Dwan, *op. cit. supra* note 2, at 347; Notes (1931) 11 B. U. L. REV. 413, 417; (1933) 10 N. Y. U. L. REV. 518, 523.

[67] Texas Employers' Ins. Ass'n v. Price (Tex. Civ. App. 1927) 300 S. W. 667; see also Norwich Union Indem. Co. v. Wilson (Tex. Civ. App. 1929) 17 S. W. (2d) 68. The rule was changed by TEX. REV. CIV. STAT. (Vernon, 1928) art. 8306, § 19(c). See (1930) 2 ROCKY MT. L. REV. 134; (1928) 6 TEX. L. REV. 404. In Anderson v. Jarrett-Chambers Co. (1924) 210 App. Div. 543, 206 N. Y. Supp. 458, while the court held that a prior award in New Jersey was not a bar, presumably, though the court made no statement in this regard, the prior award was deducted in the New York proceedings before the commission, so that there was no double recovery.

[68] McLaughlin's case (1931) 274 Mass. 217, 174 N. E. 338; Migues' case (1933) 281 Mass. 373, 183 N. E. 847; Sweet v. Austin Co. (N. J. 1934) 171 Atl. 684; Jenkins v. T. Hogan & Sons (1917) 177 App. Div. 36, 163 N. Y. Supp. 707; Gilbert v. Des Lauriers Column Mold Co. (1917) 180 App. Div. 59, 167 N. Y. Supp. 274; Interstate Power Co. v. Industrial Comm., *supra* note 16; *cf.* Leach v. Mason Valley Mines Co. (1916) 40 Nev. 143, 161 Pac. 513; see American Mutual Liability Ins. Co. v. McCaffrey, *supra* note 16; RESTATEMENT OF CONFLICT OF LAWS (1934) § 403. In some of the cases above there was no prior award, but merely a settlement under the foreign act. The courts have been influenced by provisions of the act that the employer's liability cannot be released by any settlement. In some of the cases the courts have considered that the foreign commission was without jurisdiction to make an award.

[69] Minto v. Hitchings (1923) 204 App. Div. 661, 198 N. Y. Supp. 610 (probably overruled in Anderson v. Jarrett-Chambers Co., *supra* note 67); DeGray v. Miller Bros. Const. Co., *supra* note 26; see Hughey v. Ware (1929) 34 N. M. 29, 276 Pac. 27.

The problem of insurance in these situations has not, however, been as satisfactorily treated,[70] nor is it as easy of solution. The various state acts provide for a variety of means of insuring the employer—through a state insurance fund, either monopolistic or competitive, through private insurance, and through self-insurance.[71] The procedure in many cases of private insurance has been to insure under each act with a separate policy. The employer may thus be faced with the dilemma of having to pay double premiums, or being held liable for an award under an act for which he has taken out no insurance. The solution to this problem would seem to lie in securing specific provisions in the insurance policies to provide for these contingencies, and the issuance of policies to cover liability under more than one act; compulsory state fund insurance acts might be amended to take care of the problem.

The difficulties alluded to in the last two paragraphs would be to some extent[72] alleviated if the Supreme Court should lay down a set of hard and fast rules as between two states each having a real interest in the matter; but it is submitted that the hardship that would result from such rules, in limiting the places where an award may be obtained, outweighs any advantages to be gained.

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[70] Ohio v. Chattanooga Boiler & Tank Co., *supra* note 41; Home Life & Acc. Co. v. Orchard (Tex. Civ. App. 1921) 227 S. W. 705; Norwich Union Indem. Co. v. Wilson, *supra* note 67; Pickering v. Industrial Comm. (1921) 59 Utah 35, 201 Pac. 1029; De Gray v. Miller Bros. Const. Co., *supra* note 26; see Industrial Comm. v. Aetna Life Ins. Co., *supra* note 5; Altman v. Workmen's Comp. Bureau, *supra* note 16.

Where an injury takes place in one state due to the negligence of a third person, and a recovery is had by the employee under the compensation act of another state against the employer or his insurer, the courts have generally endeavored to follow the provision for subrogation in the act of the state where the recovery was had, where a suit is brought against the third party in the state of the injury. Betts v. Southern Ry. (C. C. A. 4th, 1934) 71 F. (2d) 787; Hartford Acc. & Indem. Co. v. Chartrand (1924) 239 N. Y. 36, 145 N. E. 274; Solomon v. Call (1932) 159 Va. 625, 166 S. E. 467; Reutenik v. Gibson Packing Co. (1924) 132 Wash. 108, 231 Pac. 773, 37 A. L. R. 830. But *cf.* Hendrickson v. Crandic Stages (1933) 216 Iowa 643, 246 N. W. 913; see Rorvik v. North Pac. Lumber Co. (1920) 99 Ore. 58, 190 Pac. 331, 195 Pac. 163. In this last case the court held that the subrogation provision of the California act, under which compensation was obtained, would not deprive the claimant of the right to sue the third party in Oregon where the accident occurred, because such causes of action were not assignable under the Oregon law. On rehearing the court withdrew from this position, but reached the same result on other grounds.

[71] ARMSTRONG, *op. cit. supra* note 1, at 263.

[72] The opinion in the Alaska Packers case indicates that there will be at least some cases where the law of either state is properly applicable. Therefore, at the most, the Supreme Court is not going to prescribe absolute uniformity and prevent all overlapping.