THE EXTRA-TERRITORIAL APPLICATION OF COMPENSATION ACTS

BY

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1. *In General.*

A goodly number of the compensation acts are by their terms extra-territorial: that is to say, having application to injuries sustained by employees subject to the act outside of the state. Others, not by their terms extra-territorial, have been so interpreted. This gives rise to a notable number of cases where a given injury may come within the scope of more than one law. If the injury is sustained in a state which has no compensation act, and there is an element of legal fault, there may be a right of action under the laws of that state to recover damages. If in a state which has a compensation act of its own, there may be rights under that act.

The problem created by this situation comes under the branch of jurisprudence known as Conflict of Laws. It is measurably different from the problem which exists when a state law infringes upon the Federal jurisdiction over interstate commerce or the Federal maritime jurisdiction. There the issue is essentially constitutional. Under the Federal Constitution the jurisdiction reserved to the Federal Government is paramount to the jurisdiction of the states. There are situations where the lack of a Federal law may justify the application of a state statute or a state common-law remedy to fill the vacancy; but once the Federal Government has acted, its jurisdiction is exclusive of that of the state, and the state law thereupon ceases to have application. The state has no option in the matter. Its courts may entertain jurisdiction of a cause of action; but the law applicable is the Federal law and an attempt to apply its own law can be summarily annulled.

When, however, a cause of action comes before the tribunal of a state, and the question is whether to apply the law of the forum or the law of some other state, there is no question of constraint, save in so far as the Federal Constitution may compel recognition of the laws of that other state. Save for the restrictions of the Federal Constitution, the states of the Union are sovereign states. Within its territorial boundaries a sovereign state has plenary

jurisdiction over persons and property found therein. It can regulate rights and duties. It can empower its courts to enforce its laws with respect to any persons within reach of its courts' processes.

On the other hand its jurisdiction stops at the state boundaries. Beyond these boundaries its laws have no effect. This does not prevent it from establishing rights and duties which will be recognized by its own courts with respect to acts and events transpiring beyond its bounds: but there is no obligation on the courts of another state to recognize those rights: nor indeed any obligation on the courts of another state to recognize any rights created by its law. Such recognition as is given by one state to the laws of another state is not by obligation but by the principle of comity. And the principle of comity is the basis of Conflict of Laws.

2. *Comity.*

Comity is, as its derivation implies, a principle of good-fellowship among states. As a practical matter, intercourse between states is a very difficult thing unless the states concerned do give some recognition to each others' laws. With regard to public affairs there is a fairly well defined code of international law. With regard to private affairs there is, strictly speaking, no international code. The extent to which one state will recognize the laws of another is essentially a matter of public policy; in other words a state does not have to be a good fellow in regard to private rights and recognize the laws of another state as having application thereto unless it so chooses. Public policy is a matter essentially legislative. Save as controlled by legislation, however, principles of comity have been developed in the private law of every state, interpreted and declared by its courts in the same manner as the principles of the common law. These principles have to some degree been recognized in all states, and follow along fairly uniform lines. Such principles as are pertinent to the matter in hand may be briefly noted.

(a) The principle of comity applies only to rights essentially private. No principle of comity requires one state to enforce the penal laws of another.

(b) The principle of comity requires a state to give recognition to and enforcement of private rights arising in another

state under the provisions of the laws of that state. Comity however does not require a state to enforce a right definitely contrary to its public policy, or one calculated to work injury to it or to its inhabitants.

No distinction is made between common law rights and statutory rights. If, however, the statute creating the right couples it with a statutory remedy unknown to the law of the forum, i. e. the law of the state in which action is begun; or if the statute provides that it shall not be the subject of an action outside the state, comity does not require the enforcement of the right.

12 C. J., 438-441.

(c) Causes of action arising in another jurisdiction will be enforced under the principle of comity only if the courts of that jurisdiction would enforce similar causes of action arising under the law of the forum.

12 C. J., 441.

(d) Comity does not require the application of a remedy unknown to the law of the forum. A state in recognizing and enforcing rights arising under the laws of other states applies the remedies provided by its own laws.

12 C. J., 447.

(e) In causes of action in tort, the question whether a particular act or event gives rise to an actionable tort is generally recognized as determined by the law of the state within whose bounds the act or event takes place. If, by the law of the state, there is no actionable tort, no right of action exists elsewhere, even in a state where the same acts or events would have constituted an actionable tort. Conversely, if the act or event, under the law of the state where the same takes place, does constitute an actionable tort, action may be maintained even in a state wherein the same act or event would not have constituted an actionable tort.

The law of the state where the right of action arises is generally applied to determine, not merely the existence of the right, but all questions strictly appurtenant thereto, such as questions of survivorship, defences, and limitations on the amount which can be recovered. Limitations of the time within which action must be brought are generally regarded as going to the remedy rather than to the right. These, therefore, and all other questions appurtenant to the remedy, are determined by the law of the forum.

12 C. J., 453-454.

(f) In causes of action in contract, the existence and validity of the contract are generally determined in accordance with the law of the state where the contract was made, i.e. the state in which the last act necessary to the completion of the contract was effected. A contract valid where made is generally recognized as valid everywhere, though it will not be enforced in a state where the making of such a contract is contrary to public policy. The law of the state of making the contract generally determines its interpretation and rights arising thereunder. If, however, a contract is to be performed in a state other than that where the contract was made, courts frequently assume that the parties contracted with a view to the law of the place of performance. Courts recognize also the right of parties to make stipulation in the contract as to what law shall govern: but this right must be exercised in good faith and without intent to evade the law of the forum.

12 C. J., 449-451.

(g) In causes of action based on quasi-contractual rights, the existence of the right is generally determined by the law of the place where the circumstances giving rise to the right occur.

(h) In causes of action based on status, the right is generally determined in accordance with the law of the domicile of the person, so long as the right concerns acts and events occuring within the domicile. When a person goes, even temporarily, into another jurisdiction, he does not necessarily take rights of status conferred by the law of his domicile with him. The state's exclusive control over persons within its territorial limits extends to the right of regulating status and its incidents.

12 C. J., 457-462.

The above principles are generally, but not uniformly observed: and their observance may in a given case be materially modified by the public policy of the state. There is, also, so far as the United States is concerned, a constitutional side to the question. Failure on the part of a state to give due recognition to rights arising under the laws of other states may in some instances at least raise issues under the "Full Faith and Credit" provision of the Federal constitution and also under the "Due Process" provision of the Fourteenth Amendment.

3. *The Nature of Rights to Compensation Benefits.*

The Compensation acts are long and complex statutes out of which grow various kinds of rights of action or modifications of existing rights of action. A good part of these are statutory actions sounding in tort. The right to compensation benefits, which is the most characteristic feature, is, however, of a peculiar nature, not the same under all compensation acts. It has been variously termed a right of contract, a quasi-contractual right, and a right of status.

In case of a compensation act which specifically refers to the right to compensation benefits as a statutory annexation to the contract of employment, it is more or less natural for a court to regard it as essentially a right of contract, and to settle questions of conflict of law on that basis, taking as a test the law of the place of making the contract, or the law of the place of performance, or a combination of the two. If the act is elective, and if the rights are regarded as written into the contract of employment by aid of a system of statutory presumption, there is a certain contractual element, i.e. neither party needs to have the element in the contract of employment unless he so wishes. But when the act is compulsory in character, there is no element of contract in the process. The incidents are appurtenant to the contract or to the relationship whether the parties wish it or not. Courts have tended in such case to regard the rights either as quasi-contractual or as rights of the status of employer and employee. If this is the case, the location of the employment and the domicile of the parties become elements more important than the mere place where the contract is made, and the place where the injury occurs is likewise of importance.

In addition, the right is not only a statutory right, but is very frequently coupled with a statutory remedy, so phrased as to indicate that it is to be enforced only by a proceeding before a local tribunal. As previously indicated, in such case the principle of comity does not require its enforcement: though in a proper case the court might still recognize the applicability of a foreign law and leave the parties to their remedy under it. When the law provides for the enforcement through ordinary court process, the remedy may be such as a court of another state can apply.

United Dredging Co. v. Lindberg, 18 F. 2nd 453.
Floyd v. Vicksburg Cooperage Co., 126 So. 395.

Again, the right is very frequently not an unconditional right. It is a right which arises by virtue of an agreement between the parties, with or without official approval: or a right which arises only after the approval of an agreement for compensation or the making of an award by a statutory tribunal. Frequently the approval of an agreement or the making of an award does not close the matter, the tribunal having power to modify the award, or even reopen the matter after payments have terminated. Many laws provide means for transforming an award into a judgment debt. Until this is done, however, the obligation to pay compensation under an award is not a debt, but has been termed essentially like a decree in alimony. It is neither provable in bankruptcy nor dischargeable in bankruptcy.

Lane v. Industrial Commissioner, 54 F. 2nd 338.

Indeed, if the analogy to alimony holds good, compensation claims would not be provable in bankruptcy even when reduced to judgment.

Audubon v. Shufeldt, 181 U. S. 575.

The nature of the right to compensation benefits is therefore of a puzzling character, and as stated above, not the same under all laws. Even apart from the question of public policy, which is capable of great variations as between state and state, it is necessary, in passing on a question involving conflict of laws to take cognizance of the statutes and the decisions thereunder in both states involved.

4. *The Constitutional Limitations.*

The extent to which the obligation of the states to recognize the laws of other states is not merely a matter of comity but is mandatory under the constitution of the United States has entered into a number of compensation cases, and bids fair to do so to a greater extent in the future. Art. IV sec. 1 of the Constitution provides:

> "Full Faith and Credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."

A compensation act, and any other statute for that matter, is a public act.

Bradford Electric Light Co. v. Clapper, 286 U. S. 145.

As to whether a proceeding under a compensation act constitutes a "judicial proceeding", depends upon the nature of the process. If the act is enforced by ordinary court process and takes effect as a judgment it is doubtless a judicial proceeding. If enforced by an administrative tribunal, it seems more properly classed as a quasi-judicial proceeding. Some recognition must therefore be given to the laws of other states, and this is more than a mere recognition that the law exists and is valid. The fact that persons within this jurisdiction of the state have rights and duties thereunder must also be recognized.

An arbitrary and oppressive use of the state's jurisdiction in the form of a wanton disregard of such rights and duties under the law of another state might also raise issues under the "due process" clause of the Fourteenth Amendment.

Alaska Packers Ass'n v. Ind. Acc. Com., 294 U. S. 532.

This is not to say that the provisions quoted above write into the Federal Constitution any definite code of conflict of laws: if they did, the matter would be simple enough—for everybody but the Supreme Court. In cases involving actions in tort only, a definite rule has been adopted by the Supreme Court. It is the law, so recognized by that court, that when a person brings an action in one jurisdiction based on a tort committed in another, he does so on the ground of an obligation incurred at the place of the tort that accompanies the defendant elsewhere: and this obligation is not only the ground, but the measure of the maximum recovery.

Western Union Tel. Co. v. Brown, 234 U. S. 542.
Alaska Packers Ass'n. v. Ind. Acc. Comm., 294 U. S. 532.
Slater v. Mexican Nat'l R. Co., 194 U. S. 120, 126.
Cuba R. R. Co. v. Crosby, 222 U. S. 473.

Practically this is the generally followed rule of conflict of laws, i.e., that the law of the place where the tort is committed determines the right, the law of the forum the remedy.

In compensation cases, the Supreme Court is as yet reasonably far from adopting a definite rule: and this is probably due to the highly uncertain nature of the right to compensation previously noted.

Bradford Electric Light Co. v. Clapper, 286 U. S. 145 involved the case of an employee of a light and power company doing busi-

ness in both New Hampshire and Vermont. The employee in question was employed in Vermont, resided in Vermont and habitually worked there. He and his employer were subject to the compensation act of Vermont. This Act provided a remedy for injuries incurred outside the state, and this remedy under the terms of the act was exclusive.

The employee was sent to a sub-station in New Hampshire to replace burned-out fuses, and was killed there.

His administratrix, a resident of New Hampshire, brought an action in tort under the New Hampshire law to recover damages for the death. The employer had brought itself within the terms of the New Hampshire compensation act, but that act permits an election of remedy even after accident. The employer pleaded the Vermont act by way of defence.

This, the court held, the employer was entitled to do. In its opinion, the following points may be noted:

(a) That the Compensation Act of Vermont was a "public act" within the terms of the "Full Faith and Credit" clause.

(b) That where parties by their conduct subject themselves to obligations under a compensation act, giving a remedy in terms exclusive, for injuries sustained outside the state, this is not to deemed an extra-territorial application of the law of the state creating the obligation.

(c) That rights thus created under the Vermont act were entitled to protection when set up in New Hampshire by way of defence.

(d) That while the "Full Faith and Credit" clause does not require the enforcement of any right conferred by a statute of another state in case the forum has no court with jurisdiction of this controversy, or in case the forum has no procedure adequate to its determination, or in case the enforcement of the right conferred would be contrary to public policy, or in case the liability is a penal one, none of these considerations were applicable here. The right under the Vermont act was set up, not by way of relief, but by way of defence. It was a right similar to rights recognized under the laws of New Hampshire, and was in no sense penal.

(e) That it did not appear that it would be obnoxious to the public policy of New Hampshire to give effect to the Vermont act in cases involving merely the rights of residents of Vermont: and that it did not appear that the State of New Hampshire had any interests to be subserved by apply-

ing to own law, the deceased not having been a resident of New Hampshire, and having left no dependents there.

(f) That the acceptance of the New Hampshire act by the employer did not refer to any but New Hampshire employees, nor operate to bring within the New Hampshire law any employees not otherwise subject to it.

This case, while the opinion is very cautiously worded, serves at least to establish the principle that in some cases a state must give force and effect to rights and duties created under the compensation act of another state, even though the injury occurs within its own borders.

State of Ohio v. Chattanooga Boiler & Tank Co., 289 U. S. 439

involved the case of the employee of a Tennessee firm, killed while erecting a tank in the state of Ohio. The employee was a resident of Tennessee and his contract of employment was made there, and both employee and employer were subject to the Tennessee compensation act.

The employer had no place of business in Ohio, had not complied with the Ohio compensation act, and had not qualified under the Ohio laws to do business there as a foreign corporation.

The widow, who had transferred her residence from Tennessee, made application for compensation under the Ohio law. The employer appeared specially to challenge the Commission's jurisdiction. This plea was overruled. The employer did not defend further, and the Commission made an award for $4,900. The maximum which could have been recovered under the Tennessee law was $2,200.

The employer did not pay the award. The Industrial Commission of Ohio paid the award out of the State Fund, and brought action against the employer to recover. The first suit failed for want of jurisdiction, and a second suit was brought in the name of the State of Ohio under the original jurisdiction of the Supreme Court over controversies between a state and citizens of another state.

Meanwhile the widow made application for compensation under the Tennessee law. The employer defended on the ground that by seeking and obtaining an award under the Ohio law she had waived her right to exclusive remedy, in case of injuries sustained outside the state. The court upheld the employer's contention, but added rather significantly that it did not see exactly how the employer, having taken this position, was going to avoid liability for the Ohio award.

Tidwell v. Chattanooga Boiler & Tank Co., 43 S. W. 2nd 221.

This proved to be the case. The Supreme Court distinguished this case from Bradford Electric Light Co. v. Clapper on the ground that in view of the decision of the Tennessee Court it was evident that the remedy provided by the Tennessee act was not exclusive, and gave judgment against the employer.

This case does not limit the Clapper case, and is of value merely as illustrating the extreme peril of inconsistent positions. The widow was entitled to compensation under the one law or the other; and the employer having in one case taken the position that she was not entitled under the Tennessee law might have anticipated that the Supreme Court would not look very kindly on a plea that the matter was governed by the Tennessee law rather than the Ohio law.

Alaska Packers Ass'n v. Ind. Acc. Com., 294 U. S. 532,

involved the case of a non-resident alien employee, hired in California to work during the fishing season in Alaska, a period of about three months. The contract involved transportation to Alaska, and transportation back to California at the end of the season. The work was to be performed wholly in Alaska, and the contract contained a stipulation that it should be subject to the Alaska compensation act, The contract, however, being made in California, in this respect ran counter to a provision of the California law, which is extra-territorial in terms, and which provides that no contract of employment shall exempt the employer from liability for the compensation fixed by the act.

The employee was injured in Alaska, and on his return to California, sought compensation under the California act. Compensation was awarded, and sustained by the state courts.

Alaska Packers Ass'n v. Ind. Acc. Com., 34 P. 2nd 716.

This decision was affirmed by the Supreme Court. The following points in the opinion may be noted.

(a) The "due process" clause of the Fourteenth Amendment does not necessarily prevent a state from regulating the incidents of a contract to be performed elsewhere.

(b) While under the rule laid down in Western Union Telegraph Co. v. Brown, 234 U.S. 542, a state has no power to control the legal consequences of a tort committed elsewhere, liability under the compensation acts is not a tort, but a liability imposed as an incident of the employment relationship.

(c) In the present case, the exercise of control over a contract to be performed entirely outside the state was not so arbitrary or unreasonable as to constitute denial of due process of law. The court however significantly left open the question as to what its position would be had it appeared that the parties were both domiciled in Alaska, or that the state had a less adequate reason to control the particular contract of employment. The present contract involved seasonal employees, hired in California, transported some 2000 miles to Alaska and returned at the end of the season. If injured, and brought back, they would be in no position to secure their rights under the Alaska law, which by its terms cannot be enforced outside Alaska: and the responsibility for their care might well devolve upon California.

(d) California was under no obligation under the 14th amendment to prescribe the Alaska remedy rather than its own. The obligation, if it existed, was under the "Full Faith and Credit" provision.

(e) California did not exceed its constitutional power by prohibiting employers from making contracts of employment which exempt them from liability for the compensation fixed by the act.

(f) The "Full Faith and Credit" clause does not require a state rigidly to apply the statute of another state which by its terms is applicable. The conflict is to be resolved by appraising the governmental interests of each jurisdiction in the particular case, and turning the scale of decision in accordance with the relative weights of those interests. The result of this is stated by the court in the following manner:

> "It follows that not every statute of another state will override a conflicting statute of the forum by virtue of the 'Full Faith and Credit' clause: that the statute of a state may sometimes override the conflicting statute of another, both at home and abroad: and again, that the two conflicting statutes may each prevail over the other at home, though given no extra-territorial effect in the state of the other."

This last quotation is one which involves the whole subject in obscurity. The meaning appears to be that in passing on questions of conflict of law in the compensation field, the court does not intend to observe technical rules, but to be guided in the final analysis by a rule of reason, based on the facts in the particular

case. This issue is apparently not drawn upon the nature of the right to compensation benefits, nor upon the application of any particular theory of conflict of law, but essentially upon the question, which state is the one which should properly regulate this particular employment: which state has the major interest in controlling the incidents of this particular employment. One thing is certain: the above decisions do not consistently support the application of either the law of the place of making or the law of the place of performance of the contract. It seems not improbable that the considerations of major interest will ultimately be found to follow in the main the application of the law of the place where the employment is localized: but this is by no means conclusively shown, and it is very doubtful if such a rule would be technically or rigidly applied. If a case is taken to the Supreme Court, it will probably be found necessary to buttress any argument of legal theory with considerations of substantive merit derived from the facts of the particular case.

5. *Conflicts between rights under Compensation Acts and rights of action in tort.*

In the early days of compensation, the situation of a conflict between a right of action in tort and a right under a compensation act was more frequent than it is today. The situation, however, still occurs, occasionally with respect to rights to compensation benefits, more frequently with respect to rights under the compensation acts which sound in tort.

(a) *When the injury occurs in the forum.*

If the injury under the laws of the forum gives rise to an action of tort, the question is, whether the compensation act of another state can be pleaded in bar.

Where it appears that the injured employee and his employer were both subject to the compensation act of another state, and that act provided that the compensation benefits applied to injuries sustained outside the state and were by the terms of the act the employee's exclusive remedy, there seems to be reason for recognizing the validity of the compensation act of the other state by way of comity as a bar to the action.

Barnhart v. American Concrete Steel Co., 125 N. E. 675 (New York).

The Linseed King, 48 F. 2nd 311.

In re Spencer Kellogg & Sons, 52 F. 2nd 129.

As has been seen, in some cases the "Full Faith and Credit" clause of the Federal Constitution requires this.

Bradford Electric Co. v. Clapper, cited above.

There are, however, cases where this has not been done. When the contract is with a resident of the forum, for work to be done wholly within the forum, principles of comity would not seem positively to require the application of the law of the state where the contract of employment was made: and a stipulation in the contract that the compensation act of that state should apply might properly be regarded as an endeavor to evade the laws of the forum.

Standard Pipe Line Co. v. Bennett, 66 S. W. 2nd 637.

The case of *Farr v. Babcock Lumber Co., 109 S. E. 833 (N. C.),* is not so easily explainable. The employee was hired in Tennessee for work in Tennessee and elsewhere. He and his employer were subject to the Tennessee compensation act. He was injured in North Carolina, and the North Carolina court held that the Tennessee Act, which is in terms extra-territorial, did not bar an action at law.

The case of *Paulus v. State of South Dakota, 201 N. W. 867 N. D.,* involved a different principle. Here an employee of the state of South Dakota was injured while working in a coal mine operated by that state in North Dakota. The court declined to entertain the suit on the ground of comity, but the comity was apparently on the principle that a sister state could not be sued without its consent.

If the injury occurs in the forum, and the forum has a compensation act, it need not give cognizance to the fact that the employee came from a state where like injuries would give rise to an action in tort. By familiar rule a right sounding in tort must be founded on the law of the place where the tort is committed: and the only question is, whether the employee, the employer and the injury come within the terms of the local compensation act. If not, the remedy is under the liability laws of the forum.

(b) *When the injury occurs outside of the forum.*

If the forum has no compensation act applicable to the injury in question, it can entertain an action in tort for an injury occuring outside the forum; but on familiar principle, that action must be founded on the law of the place

where the injury occurs. This principle, as has been seen, is recognized by the United States Supreme Court.

Hence, ordinarily if the injury under the law of the State where it occurs gives rise to rights under the compensation act of that state and does not give rise to rights of action in tort, that should be a conclusive defence to an action of tort brought in the forum.

Singleton v. Hope Engineering Co., 137 So. 441 Ala.
Logan v. Missouri Valley Bridge and Iron Co., 249 S. W. 21 Ark.
Magnolia Petroleum Co. v. Turner, 65 S. W. 2nd 1 Ark.
Floyd v. St. Louis Smelting & Refining Co., 215 S. W. 506 Mo.
Anderson v. Standard Oil Co., 209 N. Y. S. 493 N. Y.
Shurtliff v. Oregon Short Line, 241 P. 1059 Utah.
Prdich v. N. Y. C. R. R. Co., 183 N. Y. S. 77 N. Y.
Wasilewski v. Warner Sugar Ref'g. Co., 149 N. Y. S. 1035 N. Y.
Reynolds v. Day, 140 P. 681 Wash.

There are two North Carolina cases to the counter which seem bad in principle. In the first case the employee was hired in North Carolina, by a corporation subject to the Tennessee compensation act, and was injured in Tennessee. In Tennessee his remedy was apparently under the compensation act. The court however, permitted an action in tort to be maintained, on the very peculiar ground that since the Tennessee act was enforceable locally only, there was not a case for the exercise of comity.

Johnson v. Carolina C. & O. R. Co., 131 S. E. 390.

The other case involved a resident of North Carolina, hired in Tennessee and injured there. The court held, however, that the Tennessee act did not bar an action for damage.

Lee v. Chemical Construction Co., 136 S. E. 848.

These cases seem contrary to the general trend of decision.

If the compensation act of the state where the injury occurs does not apply to the case in question, it cannot of course be pleaded in bar.

Dillard v. Justus, 3 S. W. 2nd 392 Mo.

In *Shurtliff v. Oregon Short Line,* cited above, a principle involved may be noted namely, that the law of another state must be proved like any other question of fact. The Utah court in that case, in the absence of evidence, assumed

that the Idaho compensation act was, like the Utah compensation act, exclusive in terms.

If the state has a compensation act applicable, it would seem unquestionable that no action at law can be maintained in that state, even though the act constitutes an actionable tort under the law of the state where committed.

In the case of *St. Louis & S. F. R. v. Carros, 93 So. 455,* this principle was held not to prevent an action where the compensation act was not pleaded in defence.

(c) *Effect of Compensation Act of Forum on Foreign Torts.*

i. If there is a right of action based on an injury outside the territorial bounds of the state, and the local compensation act gives no remedy for that particular injury, there seems no reason why an action may not be maintained despite the fact that so far as local injuries are concerned the state has generally substituted a remedy of a different kind. Thus, it has been held that the abolition of common law remedies in compensation cases does not affect the right to maintain an action at law for an injury occurring outside the state.

Reynolds v. Day, 140 P. 681.

ii. The provisions of the compensation acts abolishing common law defences, are in general restricted to cases involving employers, employees and injuries which come within the scope of the act. Attempts to invoke these provisions in case of a right of action based on an injury to which the compensation act has no application are generally negatived. Such attempts are not infrequently made in case of injuries coming within the scope of the maritime jurisdiction of the United States.

There is, however, one case where the abolition of common law defences has been applied in an action of tort involving an out-of-state injury. Generally, defences are matters touching the right, and as such are governed by the law of the place where the tort occurs. This particular case involved an injury to the employee of a railroad, employed in Massachusetts, and injured in intrastate commerce outside of Massachusetts. The railroad had not complied with the Massachusetts compensation act, and was therefore liable to action at law. The action was brought in Massachusetts, and the court held that the provisions of the Massachusetts act abolishing common law defences was applicable; and this position was sustained by the Supreme Court. This is apparently on the ground that the abolition of common law defences

is so annexed to the employment as to operate extra-territorially, as the compensation provisions would have, had the employer accepted the act. Had the employee been engaged in interstate commerce, or had the employee been hired outside the state, the same result could hardly have obtained.

Armburg v. Boston & Maine R. Co., 177 N. E. 665, 285 U. S. 234.

iii. Provisions of the compensation acts creating special rights of action in tort are effective only as to torts committed within the state. A right of action in tort cannot be created with respect to an act not tortious under the law of the state where it is committed.

So held in case of a statutory right of action to recover the amount of an award paid on account of an injury caused by the wrongful act of the defendant outside the bounds of the state.

Travelers Ins. Co. v. Central R. of N. J., 258 N. Y. S. 35 (N. Y.).

So also in case of a statutory provision empowering the industrial commission to bring an action in tort to recover for injuries to an uninsured employee. Here, however, not only were the injuries received outside the state, but an attempt was made by the injured employee to maintain an action.

Osagera v. Schiff, 240 S. W. 124 (Mo.).

(d) *Subrogation Rights Under the Compensation Act of the Forum.*

Nearly every compensation act has a provision expressly authorizing the bringing of actions by employees entitled to compensation, and providing for subrogation to the employee's rights in favor of the employer or insurer paying compensation. Where the injury occurs in another state, question arises as to how far rights under these provisions are applicable.

i. The third party provisions are not essentially the creation of a new right of action, but the preservation of a right of action already existing. It would seem therefore that an employee or beneficiary subject to the local compensation act is not barred from maintaining a right of action arising under the laws of another state, whether

he sues as an individual or by virtue of an appointment as administrator.

Smith v. Arkansas Power & Light Co., 86 S. W. 2nd 411 (Ark.)
Bernard v. Jennings, 244 N. W. 589 (Wisc.)
In re Hertel's Est., 237 N. Y. S. 655 (N. Y.).
Rorvik v. North Pacific Lumber Co., 190 P. 331, 195 P. 163.
Betts v. Southern R. Co., 71 F. 2nd 787.

ii. The fact that compensation has been paid properly has no standing in the action against a third party, being a transaction in which the third party has no concern. The verdict therefore cannot be diminished by the amount of compensation paid.

Smith v. Arkansas Power & Light Co., cited above.
Bernard v. Jennings, cited above.
Rorvik v. North Pacific Lumber Co., cited above.
Betts v. Southern R. Co., cited above.

iii. The subrogation sections occasionally raise difficult questions as to whether the employer or the insurer who has paid compensation is a necessary party in an action brought without the state. On general principles, the state cannot confer on them a right of action based on a foreign tort, nor is its action in making them parties in actions brought in its own courts binding on a foreign forum. It may be noted that subrogation rights may exist independently of statute.

In *Smith v. Arkansas Power and Light Co., 86 S. W. 2nd 411,* the question was raised but found immaterial, both employer and insurer having waived their rights under the statute.

The same question occurred in *Goldsmith v. Payne, 133 N. E. 52* and *Hendrickson v. Crandic Stages, 246 N. W. 913.* The first case indicated that a railroad operating in interstate commerce could not set up the subrogation provisions of an act to which it was not subject. The second case, involving an Illinois employee, was decided, partly on the authority of the first, partly on the ground that the subrogation provisions were not extra-territorial in operation.

The extent to which a subrogation provision transfers rights of action to the employer is similarly no easy ques-

tion when rights under the laws of other states are involved.

Anderson v. Miller Scrap Iron Co., 170 N. W. 275, 171 N. W. 935, 182 N. W. 852, 187 N. W. 746 (Wisc.).

Here the court indicated that the subrogation section of the Wisconsin law does not operate to transfer to the employer a right of action arising under the laws of Michigan.

Bernard v. Jennings, 244 N. W. 589 (Wisc.).

Similarly held as to rights of action under the laws of Indiana.

Hartford Acc. & Ind. Co. v. Chartrand, 204 N. Y. S. 791.

Here the New York Court refused to recognize the subrogation section of the New Jersey act as operating to create a lien on a New York judgment.

Rorvik v. North Pac. Lumber Co., 190 P. 331, 195 P. 163.

Here the Oregon Court refused to recognize the subrogation section of the California compensation act as operating to transfer a right of action under an Oregon statute which was by the terms of the law unassignable.

In re Hertel's Estate, 237 N. Y. S. 655. This held that a widow, having taken compensation under the New York law, was bound by the subrogation section, even though the cause of action rose under the laws of Michigan.

Betts v. Southern R. Co., 71 F. 2nd 787. This held that a widow, having received compensation under the North Carolina law, might maintain suit under the Virginia death statute: but indicated she was subject to a lien on the judgment under the North Carolina subrogation section for the amount of compensation paid.

With regard to the above cases it may be stated that except in so far as this is directly contrary to the law of a state, under whose laws the right of action arises, there seems to be no good reason why a state which has required an employer to pay compensation, should refuse to recognize his right to be subrogated to such rights as the employee or his beneficiary may have against a third party, to the extent at least of the amount of compensation paid or payable. When the beneficiary sues not in his or her own right, but by virtue of an ap-

pointment, the subrogation should go merely to the extent of the beneficiary's interest, as was apparently held in the Hertel's Estate case cited above. There seems to be no reason, however, why the state in which an action is pending should be required to recognize the rights of any parties save those which are, under its own laws, proper parties to the suit.

It may be observed that the above is in no sense an endeavor to cover all phases of the intricate subject of subrogation, but merely of such phases thereof as have reference to the laws of more than a single state.

6. *Conflicts between Compensation Acts.*

(a) *In General.*

The most frequent case of conflict between compensation acts is in case of an injury, compensable under the terms of the act of the state where it occurs, compensable also under the act of the state where the contract of employment is made, or where the employment is located. In such case it is necessary to determine whether to apply the one act to the exclusion of the other, or whether to regard both acts as having some application.

This is a matter which is determined primarily on considerations of the public policy of the forum, or if there has been no declaration of public policy, on considerations generally of comity. Public policy is very frequently declared in the compensation acts in regard to the extent to which its acts shall operate extra-territorially, that is to say, with respect to injuries sustained outside the state: and these declarations often indicate fairly well the theory on which they are founded, so that, in determining concrete problems the courts have a clue as to the principles to be applied. Declarations of public policy as to the extent to which the compensation acts of other states shall be recognized in connection with injuries in these states, or in connection with injuries in the forum are much less frequent: and in a considerable number of states there are no declarations at all. It may be stated at once, that express declarations of public policy differ very widely, and that the principles followed by the courts in supplementing declarations of public policy or in supplying them are by no means uniform.

i. The acts of Delaware and Oklahoma do not apply extra-territorially. In Alaska, New Hampshire and Wyoming, there is no provision for extra-territorial application, and no indication of the decision of the courts as to such application.

Delaware has an express statutory declaration that its act applies to all injuries sustained within the state.

ii. The acts of Arizona, Missouri, New Jersey, and Pennsylvania have extra-territorial application, in case of Arizona, Missouri and Pennsylvania by statute, in case of New Jersey by decision. In case of Missouri and Pennsylvania there is a statutory declaration as to injuries sustained within the state similar to that of Delaware, and in Arizona and New Jersey a similar policy has been indicated by judicial decision.

iii. The rest of the states have acts which are extra-territorial either expressly or by judicial construction. The policy with respect to injuries sustained within the state is in most cases uncertain. In case of Colorado, Connecticut, Indiana, New York and Vermont, however, the courts apparently apply to injuries sustained within the state the same principles that govern the application of their own acts to injuries sustained without their bounds.

Comity properly has application only to the extent that the state whose law is in question gives effect to the law of the forum in like cases. In case of the laws of Arizona, Missouri, New Jersey and Pennsylvania, therefore, it is to be presumed that a state would not feel constrained on grounds of comity to withhold application of its own law in case of an injury within its own bounds, merely because of the existence of a remedy under the laws of these states. As indicated previously, on constitutional principles, some recognition of the rights under the laws of other states is, in a proper case, obligatory.

(b) *Principles of Contract.*

i. *In General.*

In case of the greater number of the states which have given extra-territorial application to these laws, this application is based on the fact that the contract of hire is made within the state. The early tendency of the courts was to rate rights to compensation benefits as contractual rights, and in cases involving conflict of laws to apply principles derived from decisions on the subject of contracts generally and this tendency received no little support from the wording of the compensation acts.

These principles are fairly well established. A contract is governed as to its validity and its incidents by the law of the place of making, with the exception that where it is to be performed in a particular location, the parties may be presumed to have intended the laws of that place to govern.

In accordance with this principle, if a contract of employment is made in a state which annexes to the contract the incident of compensation benefits, that incident should follow him wherever he goes, regardless of space and time. This is true whether the contract is to be performed within the state in whole or in part, or actually outside its bounds, with the one exception that, if it is to be performed entirely within another state, it may be presumed that the parties intend the laws of that state to govern.

This principle afforded a facile means for justifying the extra-territorial application of compensation acts, which in many cases was desirable. On the other hand, it tended in some cases to carry the compensation acts far beyond the sphere in which they could effectively be applied, and beyond the sphere where the state had a legitimate interest to conserve in applying them. Moreover, the reciprocal principle was just as clearly indicated, namely that a state was bound to recognize the application of the act of another state to injuries within the state if the contract of employment was made in that state, unless the contract of employment was exclusively for services within the forum. And this principle resulted in applying the compensation acts of other states to cases of employment wherein the state had a very legitimate interest to conserve in applying its own laws.

For this reason, states have been inclined to draw away from the contract theory, either by reservations in their laws, or by court decisions. An appendix gives a brief summary of the statutory provisions in each state, and of decisions thereunder.

ii. *Where the Contract is Made in the Forum and the Injury is Outside the Forum.*

Most states give extra-territorial application to their laws in cases where the contract of hire is made within the state.

This formula appears in the laws of Alabama, Arizona, California, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts,

Michigan, Missouri, Nevada, North Carolina, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia and West Virginia.

In most of these states there are statutory limitations. In Arizona, the extra-territorial provision applies also to workmen regularly employed in the state. This brings Arizona within the class of states which do not follow the contract theory.

Outside of statutory provisions, the state act has been given extra-territorial application on principles of contract in Colorado, Connecticut, Indiana, Iowa, Louisiana, Minnesota, Nebraska, New Jersey, New York, Rhode Island, Washington, and Wisconsin. But in Indiana, Minnesota, Nebraska, New York and Wisconsin there has developed a tendency away from the contract theory, towards the theory of localization, or in case of Wisconsin of status.

As to states not included in the above, the following will indicate the general situation.

Alaska	Act probably not extra-territorial.
Arkansas	No compensation act.
Delaware	Act not extra-territorial.
Dist. of Col.	Act extra-territorial on localization principle.
Florida	Act extra-territorial. Principle not stated in law.
Mississippi	No compensation act.
Montana	No extra-territorial provision.
New Mexico	No extra-territorial provision.
New Hampshire	No extra-territorial provision.
North Dakota	Extra-territorial to very limited extent.
Oklahoma	Act not extra-territorial.
Pennsylvania	Extra-territorial to very limited extent, apparently on localization principle.
Wyoming	No extra-territorial provision.

The exceptions and limitations of the contract theory in the states where it applies are discussed under later headings.

It seems natural to classify a state which applies its law extra-territorially on the basis of a contract of hire made within the state as definitely committed to the con-

tract theory. Unfortunately, as will be seen, some do not follow the theory consistently: and in most the statutory limitations are inconsistent with the theory.

The contract theory serves very well to give an extra-territorial application of the state act in most cases where such application is desirable. There is, however, a class of cases, consisting of employees regularly employed in the state and even residing there permanently, who cannot get the benefit of extra-territorial provisions because the contract of hire was made elsewhere. This entails in many cases a peculiar hardship, and constitutes one practical reason for a trend to the localization theory. Another reason is discussed under the following heading.

iii. *Where the Contract is Made Outside the Forum and Injury Occurs Inside the Forum.*

This is the converse of the preceding rule. Ordinarily it would seem to follow that if a state extends its act extra-territorially on the theory that the contract of employment is made in the state, the principle of comity would require a reciprocal application of the rule when the question is of an injury within the state and the contract of employment is made in a state whose law is extra-territorial. It is not, of course, bound to apply the law of the other state to an extent beyond what that law requires.

On this point, states have hesitated to go to the extreme limit of the rule, which would indeed have far-reaching results. Some have invoked the law of the place of performance, which is legitimate enough, providing the contract is for services exclusively in the state, and providing also that the principle is really applicable. The law of the place of performance is applied on the theory that the parties intended the law of the place of performance to govern: but under many compensation acts, parties are strictly forbidden to limit the scope of the act by contract. It will be remembered that this point was involved in the case of Alaska Packers Ass'n v. Ind. Acc. Com., 294 U. S. 532. Where an employee is a resident of the state and the state or a subdivision thereof is liable for his support, undoubtedly it has a proper governmental interest to see that he is properly compensated for the injury, and the consideration that the contract of employment was made outside the state is technical.

So technical, indeed, that as compared with cases

under the preceding heading, cases under this heading are relatively few. The following note indicates the policy of the states as far as this can be inferred.

Alabama .....No decided cases. Extra-territorial feature of act based on place of making contract.

Alaska .....Probably not extra-territorial.

Arizona .....Act contains a provision for enforcing the law of other states in case of workmen hired without state. But this provision has been held not to apply to any case when the injury is sustained in Arizona.

Ocean Acc. & Guar. Corp'n v. Ind. Acc. Com., 257 P. 645.

California .....No cases. Act extra-territorial on contract theory.

Colorado .....Act does not apply when contract of employment is made outside of Colorado and not to be performed principally in Colorado.

Hall v. Ind. Acc. Com., 235 P. 1073.

Connecticut .....Very properly applies law of state in case where contract of employment was made in a state where law was not extra-territorial and where employer and employee had accepted Connecticut act.

Douthwright v. Champlin, 100 Conn. 97.

Applies law of Connecticut when contract is to be performed in Connecticut.

Banks v. Albert P. Howlett Co., 102 A. 822.

Does not apply law of Connecticut when contract is not for performance of services exclusively in Connecticut.

Hopkins v. Matchless Metal Polish Co., 121 A. 828.

Delaware .....Act not extra-territorial, and made expressly applicable to all injuries in state, irrespective of where contract of employment was made.

Dist. of Col. .....Act has been applied to injury in District of Columbia when contract of employment was made in another state and services were performed in a number of states. Cases in the District of Columbia will probably not be settled in accordance with the contract theory, but on localization theory.

U. S. Cas. Co. v. Hoage, 77 F. 542.

Florida .....Not known.

Georgia .....No cases. Extra-territorial feature is on contract theory, but restricted.

Hawaii .....No cases. Act is on contract theory as to extra-territoriality, and contains a provision similar to that noted in Arizona for enforcing the law of other states in case of workmen hired outside state.

Idaho .....No cases. Act similar to that of Hawaii.

Illinois .....No cases. Extra-territorial feature of act on contract theory.

Indiana .....Indiana act held applicable in case of contracts made outside state for services to be performed in Indiana.

Hagenbeck & Great Wallace Show Co. v. Randall, 126 N. E. 501
Same v. Ball, 126 N. E. 504.
Johns Manville Inc. v. Thrane, 141 N. E. 229.

But not applicable when services in Indiana are incidental to an outside employment.

Darsch v. Thearle-Duffield Fire Works Display Co., 133 N. E. 525.
Norman v. Hartman Furniture & Carpet Co., 150 N. E. 416.
Bishop v. International Sugar Feed Co., 162 N. E. 71.
Smith v. Menzies Shoe Co., 188 N. E. 592.

Iowa ..... No cases. Cases on extra-territoriality follow contract theory.

Kansas ..... No cases. Act extra-territorial on contract theory.

Kentucky ..... No cases. Act extra-territorial on contract theory.

Louisiana ..... No cases. Cases on extra-territoriality on contract theory except Durrett v. Eicher-Woodland Lumber Co., 140 So. 867, which appears to tend towards localization theory.

Maine ..... In the only case involving the situation, the employer had apparently brought himself under the Maine act: and was not subject to the compensation act of his own state. The Maine act was held to apply, although the contract of service was made in Massachusetts.

Smith v. Heine Safety Boiler Co., 112 A. 516.

Maryland ..... No cases. Act extra-territorial on contract theory but to limited extent.

Massachusetts .. No cases. The cases on extra-territoriality seem to follow the contract theory.

Michigan .....Extra-territorial features of act on contract theory as are cases on extra-territoriality. But the case of Leininger v. Jacobs, 257 N. W. 764, where compensation was awarded under the Michigan act in case of a contract of employment made outside the state for trucking between Toledo, Ohio, and parts in Michigan does not fit in very well with the contract theory.

Minnesota .....Minnesota follows localization theory, but the case of Ginsburg v. Byers, 214 N. W. 55, might well have been decided the same way on the contract theory. Here the contract of employment was made by a Minnesota employer outside the state. The employee worked on a job in Iowa till it was finished, and then came to work on a different job in Minnesota.

Missouri ..... Act provides that it shall apply to all injuries in state regardless of where contract of employment was made.

Montana .....(Uncertain).

Nebraska .....The case of Esau v. Smith Bros., 246 N. W. 230, appears to fit in better with localization theory than contract theory. Here the employee was hired in Kansas, where the employer was located. Subsequent to the employment, he moved his headquarters to Nebraska. It did not appear that the contract was for services solely in Nebraska. The Nebraska act was, however, held applicable.

Nevada .....No cases. Extra-territorial feature of act on contract theory but limited.

New Hampshire . Uncertain. But inasmuch as act authorizes an alternative remedy in tort, the principle is not of the same importance as elsewhere.

New Jersey..... Act held to apply to injuries sustained in New Jersey, irrespective of place of ruling contract.

American Radiator Co. v. Rogge, 92 A. 85, 93 A. 1083.
Davidheiser v. Hay Foundry Co., 94 A. 309.
Rounsaville v. Central R. Co. of N. J., 94 A. 392.
West Jersey Trust Co. v. Phila. & Reading R. Co., 95 A. 753.

These cases are frankly inconsistent with the principle of contract.

New Mexico .... No cases.

New York ..... New York does not follow the contract theory but the localization theory. The application of the New York law is made to depend on the question whether the employment was localized in New York.

North Carolina.. No cases. Extra-territorial features of act on contract theory, but with limitations.

North Dakota ... No cases. Little indication as to policy.

Ohio ..... The Supreme Court case of State of Ohio v. Chattanooga Boiler & Tank Company, 289 U. S. 439, indicates that Ohio does not adhere to the contract theory in passing upon injuries sustained within the state.

Oklahoma ..... No cases. The act is not extra-territorial.

Oregon ..... No cases. The act is extra-territorial on the contract theory but to a very limited extent.

Pennsylvania ...Act applies to all injuries sustained within state, regardless of where contract of employment is made.

Rhode Island....No cases. The one case on extra-territoriality went on lines of contract.

South Carolina ..No cases. Act extra-territorial on contract theory, but to limited extent.

South Dakota ...No cases. Little indication as to policy.

Tennessee .....No cases. Act extra-territorial on contract theory.

Texas .....No cases. Act extra-territorial on contract theory, with some limitations. But inasmuch as an employee comes within the Texas act only by insuring, the case is not likely to arise.

Utah .....No cases. Act extra-territorial on contract theory and contains provisions for enforcement of remedies under laws of other states in case of workers hired without the state.

Vermont .....The act is extra-territorial on contract theory and contains provisions similar to that of Utah. In the only recorded case, De Gray v. Miller Bros. Const. Co., 173 A. 556, the court applied the Vermont act, but indicated that ordinarily, in case of a foreign contract of employment, it would, on principles of comity, decline to take jurisdiction, leaving the parties to their remedy in the state where the contract was made.

Virginia .....No cases. Act extra-territorial on contract theory with limitations.

Washington ....No cases. Policy of state uncertain.

West Virginia...No cases. Act extra-territorial to limited extent on contract theory.

Wisconsin .....The state follows the theory of localization or status, rather than the theory of contract.

The case of Johnson v. Wilson, 150 N. W. 620, might have been decided the same way under the contract theory, the employee having accepted the Wisconsin act.

The case of Interstate Power Co. v. Ind. Com., 234 N. W. 889, where an employee was injured in Wisconsin while there only temporarily, does not seem to fit in with the contract theory.

Wyoming .....No indications of state policy.

The above will indicate that in this branch of the question there is no little confusion. It must be admitted that in this particular field the contract theory does not assort well with the lines followed by the Supreme Court of the United States.

iv. *The Law of the Place of Performance.*

This well-known principle of conflict of laws has been recognized in the compensation field chiefly as a convenient reason to avoid applying the law of another state to domestic injuries. Recognition as to restricting application of the laws of the forum to injuries sustained in other states is not so common. The principle is a difficult one to apply in view of various provisions of the compensation act. The greater part of the acts have specific provisions that the act shall apply in case of contracts of employment made within the state to injuries sustained outside the state: and while in a number of cases exception is made of contracts to be performed entirely outside the state, in the absence of such provision the principle can hardly be applied. Again, as previously mentioned, if the compensation act provides, as many do, that employees and employers may not by contract escape from its provisions, there is no room for a doctrine which is based on a presumption that the parties intended the law of the place of performance to

apply. Here again, some acts specifically provide or by implication authorize, contracts to exempt foreign injuries from the provisions of the act.

The cases on the subject come, as might be expected, chiefly from states where extra-territoriality is not by virtue of express statutory provisions, but is read into the act by interpretation. They may be cited as follows:

Colorado .....*Platt v. Reynolds, 282 P. 264.* This seems to have been decided, however, on the point that relation of employer and employee never existed in Colorado.

Connecticut ....*Banks v. Albert P. Howlett & Co., 102 A. 822.* As interpreted by court, this was case of a contract to be performed in Connecticut.

Indiana .....*Hagenbeck & Great Wallace Show Co. v. Randall, 126 N. E. 501.*

Hagenbeck & Great Wallace Show Co. v. Ball, 126 N. E. 504.

Johns-Manville Inc. v. Thrane, 141 N. E. 229.

Bement Oil Corp'n v. Cubbison, 149 N. E. 919.

Leader Specialty Co. v. Chapman, 152 N. E. 872.

New York .....*Perles v. Lederer, 178 N. Y. S. 449, 189 A. D. 425.*

Baum v. N. Y. Air Terminals, Inc., 245 N. Y. S. 357, 230 A. D. 531.

v. *Where Contract of Employment is Made Outside State and Injury Occurs Outside State.*

Ordinarily under any contract theory, there is no possible reason for a state to apply its law to such a case. This has generally been held. The reason why the question should be raised at all would seem to be on the ground that the right to compensation benefits is in some way connected with the fact that the employee is domiciled in the state, i.e., that it is a right of status. But the status doctrine, as will be seen, is adopted in

very few states and in these is not developed to any great extent. Some cases are brought up, doubtless, on question as to where the contract of employment was made.

State law held not applicable—

Indiana ..... *Finkley v. Eugene Saenger Tailoring Shop, 196 N. E. 536.*

Kansas ..... *Dawes v. Jacob Dold Packing Co., 38 P. 2nd 107.*

Louisiana ..... *Abood v. Louisiana Oil Refining Corp'n, 155 So. 484.*

Maryland ..... *Liggett & Meyers Tobacco Co. v. Goslin, 160 A. 804.*

Nebraska ..... *Freeman v. Higgins, 242 N. W. 271.*
Rigg v. Atlantic, Pacific & Gulf Oil Co., 261 N. W. 900.

New Jersey ..... *Hamm v. Rockwood Sprinkler Co., 97 A. 730.*

New Mexico .... *Hughey v. Ware, 276 P. 27.*

New York ..... *Cameron v. Ellis Const. Co., 169 N. E. 622* (not decided on principles of contract).
Thompson v. Foundation Co., 177 N. Y. S. 58, 188 A. D. 506.
Baggs v. Standard Oil Co., 180 N. Y. S. 560.
Prdich v. N. Y. C. R. Co., 183 N. Y. S. 77.
Kalfatis v. Commercial Painting Co., 254 N. Y. S. 519, 233 A. D. 649 (on localization theory).

Texas ..... *Texas Employers Ins. Ass'n v. Hoehn, 72 S. W. 2nd 341.*

State law held applicable—

Georgia ..... *Aetna Life Ins. Co. v. Menees, 167 S. E. 335.* Here, however, the employer had entered into an agreement for compensation, and it was held that it was too late to raise the question.

Illinois .....*Kennedy-Van Saun Mfg. Co. v. Ind. Com., 189 N. E. 916.* This can be justified on the localization theory, though not on principles of contract.

Minnesota .....*Stansberry v. Monitor Stove Co., 183 N. W. 977.* Decided on localization theory.

Brameld v. Albert Dickinson Co., 242 N. W. 465. Decided on localization theory.

Wisconsin .....*McKesson-Fuller-Morrison Co. v. Ind. Com., 250 N. W. 397.* Theory none too clear, but probably status.

vi. *Contract to be Performed Exclusively Outside State.*

This is a well established statutory exception to extra-territorial provisions, occurring in the laws of Georgia, Maryland, Nevada (by necessary implication), North Carolina, North Dakota (by necessary implication), Oregon (by necessary implication), Pennsylvania (by necessary implication), South Carolina, Virginia, West Virginia (by necessary implication). It has been established in some states by decision. Under the contract theory, the fact that the contract is not to be performed within the state is not material as regards the application of the law of the state of making. The decisions under the compensation acts seem to be based on the principle that the acts were intended to regulate domestic employments, and not employments no part of which is to be within the state. States which apply the contract theory to its full extent do not, of course, make this exception.

Held not subject to state law—

Colorado .....*Platt v. Reynolds, 282 P. 264. Tripp v. Ind. Com., 4 P. 2nd 917.*

Louisiana .....*Durrett v. Eicher Woodland Lumber Co., 140 So. 867.*

Ohio .....*Ind. Com. v. Gardinio, 164 N. E. 758.*

Wisconsin .....*Wandersee v. Moskewitz, 223 N. W. 837.* (But see *Val Blatz Brewing Co. v. Gerard, 230 N. W. 622.*)

vii. *Contracts Performed in Substantial Part Without State.*

This covers a number of statutory exceptions to the extra-territorial provisions, the obvious effect of which is to confine the operation of the act within reasonable distance of local employments, which are, after all, those which the state has most interest in protecting. They constitute, of course, a narrowing down of the contract theory.

Maryland .....Act applicable to "casual, occasional or incidental employment outside of the state by the Maryland employer of an employee regularly employed by such employer within the state."

Nevada .....Extra-territorial provisions restricted to employees hired in the state whose usual or ordinary duties are confined to the state.

North Dakota ...Act not extra-territorial except under contract of insurance against extra-territorial injuries. Such contracts available only to employers whose plant and main or general office is in the state and who expired two-thirds of payroll for services performed in North Dakota.

Oregon .....Extra-territorial provisions restricted to employers "temporarily" leaving the state.

Pennsylvania ...Extra-territorial provisions limited to Pennsylvania employees whose duties require them to go outside state for not exceeding 90 days.

Texas .....Extra-territorial provision not applicable in case injury occurs more than a year after employee leaves state.

West Virginia . . . Extra-territorial provisions applicable only to employees absent temporarily from state, and where absence is directly incidental to carrying on a business in this state.

This policy is more or less in line with the principle of the localization theory as applied in New York, though not as applied in Minnesota or Wisconsin.

viii. *Residence*

The practice of confining the application of the extra-territorial provision to residents or citizens of the state appears with a fair degree of frequency. Residence has no place in the contract theory. It is more in line with the doctrine of status, which is much involved with the question of domicile.

Residence restrictions appear in the laws of California, Georgia, Maryland ("citizens or residents," in case of salesmen), Michigan, North Carolina, Pennsylvania ("Pennsylvania employees"), South Carolina, Virginia.

The requirement has been held unconstitutional in California.

Quong Ham Wah v. Ind. Acc. Com., 192 P. 1021.

It does not appear to be observed in Michigan.

Roberts v. I. X. L. Glass Corp'n, 244 N. W. 108.
Wearner v. Michigan Conference, 7th Day Adventists, 245 N. W. 802.

In Maryland, however, it is held constitutional.

Liggett & Meyers Tobacco Co. v. Goslin, 160 A. 804.

Residence is frequently referred to in the compensation cases, but seldom seems a decisive element. There is perhaps an exception to this in a case in Wisconsin, where the residence of the claimant seems about all that links him to the Wisconsin Act, the residence of the employer, the place of making the contract and of the injury all being outside.

McKesson-Fuller-Morrison Co. v. Ind. Com., 250 N. W. 397.

But residence alone does not appear sufficient to support the application of the compensation act.

Hamm v. Rockwood Sprinkler Co., 97 A. 730.

ix. *Location of Business Within State.*

This appears in a number of acts as a condition for the application of the extra-territorial provisions. In this form it appears in the laws of District of Columbia, Georgia, North Carolina, Pennsylvania, South Carolina, and Virginia. It is pretty clearly implied in the laws of Maryland, Nevada, Oregon and West Virginia.

As to Pennsylvania see Bock v. D. B. Frampton & Co., 161 A. 762. It is clear enough that a compensation act cannot apply to an employee who is wholly at all times without the state, save for the presence of his employer within the state. If, however, he is within the state long enough to make a contract of employment, that in the strict terms of the contract theory would suffice to cause the compensation incidents of the law of the state of making to attach, provided of course, he came within the statutory definition of "employee" and was subject to the act. But the purpose of the acts is not to regulate such transitory birds of passage; but to regulate a relation substantially existing within the state.

There will at some time be litigation to test the necessity of the exceptions, on the point of how far an employer has to be within the state to comply with the condition: i.e., whether the employer must as in North Dakota have his plant and main office there, or whether it suffices to maintain an office, branch, or agency, or to comply with the laws as to foreign corporations qualifying to do business, or merely to be carrying on some work there.

In the Indiana, the Minnesota and Wisconsin decisions, constant mention is made of the standing of the employer as an employer of the state in question: and it would in general appear to be a real item as determining the application of the localization theory. Certainly the state has its most proximate interest to regulate employment in case of employers who are regularly carrying on business within the state, and this interest diminishes in the proportion their principal operations are somewhere else.

x. *Contracts as to What Law Shall Apply.*

Under the doctrines of conflict of laws, contracting parties can make a valid stipulation as to what law shall govern the contract, provided this is done in good faith and without intent to avoid the laws of the forum.

In case of contracts of employment generally, such

contracts run counter to the express terms of the compensation acts, and are therefore void. In case, however, of the extra-territorial application of the compensation acts, some measure of contracting is either authorized, or countenanced.

Alabama ..... Act extra-territorial "unless otherwise specified in said contract."

California ..... Such agreements held illegal. *Alaska Packers Ass'n v. Ind. Acc. Com., 32 P. Ind. 716, 294 U. S. 532.*

Indiana ..... Stipulation that contract should be governed by laws of District of Columbia void when contract contemplated work within Indiana.

Kansas ..... Same provision as Alabama.

Kentucky ..... Employers who hire employees to work in whole or in part outside state permitted to make written agreements with them exempting from the operation of act injuries incurred outside state.

Missouri ..... "Unless the contract of employment in any case shall otherwise provide".

Ohio ..... Recognition given to a contract stipulating that it was made in another state and subject to its laws. *Johnson v. Ind. Com., 186 N. E. 509.*

Tennessee ..... "Unless otherwise expressly provided by said contract."

Contracts providing for extending the extra-territorial operation of the act are authorized in the laws of Nevada and North Dakota (between the employer and the Bureau).

Contracts providing for making the remedies of the compensation act exclusive in case of extra-territorial injuries are authorized in the laws of Idaho, Maine and Vermont.

xi. *Election of Remedy.*

This may take several forms. The most common, naturally, is the seeking and acceptance of compensation under the act of one state: the question naturally raised being whether it bars or affects the right to seek compensation under the act of another.

In case of ordinary contract rights the question could hardly arise. The right would be enforced in an action at law, and a composition and settlement, whether in accordance with the terms of one law or another, or of no law at all, for that matter, would be recognized as valid and binding in the absence of fraud. Similarly if the cause went to trial, and the court found the law of one state applicable, and judgment was duly rendered, a party litigant could not subsequently maintain a suit on the same subject matter in another jurisdiction. But the enforcement of rights under the compensation acts is a very different matter. Each law provides its own remedy, and each law provides a method whereby settlement shall be effected: and a settlement valid in one jurisdiction does not necessarily close the matter so far as another jurisdiction is concerned. Further, settlements under a compensation act are frequently not final and conclusive even within the jurisdiction in which they are made, owing to the very liberal provisions made in some laws for the reopening of cases because of new developments or other cause.

In some states, either by statute or by decision, it would seem that an award of compensation under the law of another state will preclude an action for compensation under the law of the forum.

New Mexico .... *Hughey v. Ware, 276 P. 27.*

Oregon ..... Statute excludes from extra-territorial operation of act employees who have a remedy under the compensation act of another state.

Texas ..... Statute excludes from extra-territorial operation of act employees who have elected to pursue a remedy in the state where the injury occurs.

More commonly, the trend of statutes and of decisions is to regard an award or the receipt of compensation in another state as not barring an award in the forum.

This is on the ground that the policy of the statute is against a party by his own act waiving or foregoing the rights provided by the statute. The general procedure is, however, not to permit a total recovery for the same injury greater than is allowed by the law of the forum.

This rule appears in the statutes of Georgia, Maryland, North Carolina, South Carolina and Virginia.

See also

McLaughlins' Case, 174 N. E. 338 Mass.

Shout v. Gunite Concrete Const. Co., 41 S. W. Ind. 629 Mo.

Sweet v. Austin Co., 171 A. 684 New Jersey.

Interstate Power Co. v. Ind. Com., 234 N. W. 889 Wisc.

Claims for benefits under one law after receiving compensation or an award under another law, also figured in

Finkley v. Eugene Saenger Tailoring Shop, 196 N. E. 536 Ind.

Minto v. Hitchings & Co., 198 N. Y. S. 610, 210 App. Div. 661 N. Y.

Anderson v. Jarrett Chambers Co., 206 N. Y. S. 458, 210 App. Div. 543.

Tidwell v. Chattanooga Boiler & Tank Co., 43 S. W. 2nd 221.

State of Ohio v. Chattanooga Boiler & Tank Co., 289 U. S. 439.

There are two Texas cases which hold that receipt of compensation under the law of one state not only does not bar recovery of compensation under the law of the forum, but the award in the forum need not take cognizance of what has been paid in other states. This is now impossible through an amendment of the statute in 1931 to the form noted above.

Texas Employers Ins. Assn. v. Price, 300 S. W. 667, 672.

Norwich Union Ind. Co. v. Wilson, 173 W. 2nd 68, 43 S. Co. 2nd 473.

Another form of election is effected by the employer accepting the compensation act of the particular state in which he does business, or taking out insurance under that act. The acceptance of the compensation act of a particular state will avail to make certain the fact that the employer is subject to the act, but does not necessarily preclude the employee from making claim that his case is subject to the compensation act of another state.

Nor can the employer by this means take himself out of the operation of another act if otherwise subject thereto.

In connection with other circumstances, however, the act of the employer may have a certain weight in determining the application or non-application of a particular law.

Douthwright v. Champlin, 100 A. 97 Conn.
Miller Bros. Const. Co. v. Maryland Cas. Co., 155 A. 709 Conn.
Premier Const. Co. v. Grinstead, 170 N. E. 561 Ind.
Smith v. Heine Safety Boiler Co., 112 A. 516 Maine.
Pickering v. Ind. Com., 201 P. 1029 Utah.
De Gray v. Miller Bros. Const. Co., 173 A, 556 Vermont.
Johnson v. Nelson, 150 N. W. 620 Wisc.
Zurich Etc. Ind. Co. v. Ind. Com., 213 N. W. 630 Wisc.

Acceptance of the compensation act is of course a material issue where the act is elective or where the employer comes under the act only by insuring. Insuring may be material under some laws, as determining the nature of the liability of the employer.

Another type of election is the election to reject, or failure to come under the provisions of a non-compulsory act. In this type of case the laws commonly provide for a liability to action at law with common-law defences removed, and the question has been raised as to how far the provisions removing the defences are extra-territorial in effect: that is, whether they apply to an action at law based on an injury outside the forum. There is a Texas case holding that the extra-territorial provision does not apply to a non-subscriber.

McGuire & Cavender v. Edwards, 48 S. W. 2nd 1010.

In a Massachusetts case a different result was reached.

Armburg v. B. & M. R. Co., 177 N. E. 665. app. 285 U. S. 234.

This is contrary to the general principle of conflict of laws, for the actions, being actions in tort, ought to be governed as to defences by the law of the state where the tort occurs. Such an extra-territorial application of rights seems justified only on the theory that the rights are annexed to a status created under the law of the state.

xii. *Summary.*

From the foregoing it will appear that while some states have sought to apply orthodox principles of conflict of law on the theory that compensation rights are essentially rights of contract, and while the theory has considerable support from the language of the statutes, in most states, either by statutory modification or by court decision a considerable variation of orthodox principle prevails. Applying the law of the state where the contract was made has been subjected to considerable modification in cases where the attempt is to apply the law of the state of the forum to extra-territorial injuries: and has met with considerable difficulties where the attempt is to apply the law of another state to injuries sustained in the forum. The doctrine of the law of the place of performance has had a restricted application only, due to the fact that it runs counter in many states to the policy of the compensation act.

So far as the contract theory goes, therefore, the doctrine of conflict of laws as applied to compensation cases is a very hybrid affair. It seems destined to be further hybridized because of the decisions of the Federal Courts in applying the principles of the Full Faith and Credit clause.

(c) *Principles of Status.*

A status is a relationship which a person holds to the state or to another individual, to which relationship the law of the state annexes certain legal incidents. In some sense, the relationship of employer and employee may be regarded as a status: and in certain cases the courts have indicated an opinion that the rights to compensation benefits are rights of status.

Lane v. Ind. Com., 54 F. 2nd 338.

Ocean Accident & Guarantee Corp'n v. Ind. Com., 257 P. 645 Arizona.

Val Blatz Brewing Co. v. Gerard, 230 N. W. 622 Wisconsin.

It may be admitted that the contract theory does not fit very well into some compensation acts, especially those which are by these terms compulsory. In New York and New Jersey, the courts have referred to the rights to compensation benefits as rights quasi-ex-contractu, annexed by the law to the relationship.

American Radiator Co. v. Rogge, 92 A. 85, 93 A. 1083.

Cameron v. Ellis Const. Co., 169 N. E. 622.

This much seems reasonable enough. But the traditional principles of status have been developed in connection with relationships relatively stable and assort very ill with a relationship often very casually and informally created, and usually dissoluble at the will of either party. Rights of status are very closely linked with domicile: and it is entirely clear that compensation acts are not framed with the idea that the rights depend in any way upon the domicile or legal residence of either employer or employee.

At all events, there has been no very substantial attempt to develop a theory of conflict of laws in compensation cases based on status. There are several cases in Wisconsin which profess to go upon this theory, and several cases elsewhere which fit in with this theory fairly well: but the localization theory, next to be discussed, appears not to follow traditional lines of status. It concerns itself, not with the individuals, but with the employment.

(d) *The Localization Theory.*

This has been followed in New York, and also in Minnesota. It is uncertain whether Wisconsin should be placed in this category or in the preceding. There are cases in other states which seem to be influenced by this theory also. In the case of Cameron v. Ellis Construction Co., 169 N. E. 622, the court made the following statement:

> "When the course of employment requires the workman to perform work beyond the borders of the state, a close question may at times be presented as to whether the employment itself is located here. Determination of that question may at times depend upon the relative weight to be given under all the circumstances to opposing considerations. The facts in each case, rather than juristic concepts, will govern such determination. Occasional transitory work beyond the state may reasonably be said to be work performed in the course of employment here: employment confined to work at fixed place in another state is not employment within the state, for this state is concerned only remotely, if at all, with the conditions of such employment."

This, it is submitted, lays down a very sensible rule, and one which accords very well with the spirit of compensation acts generally. The state's direct concern is a regulation of employment within the state. It is not the fact that employer or employee resides within the state, which is material, but the fact that the two are, within the state, in a

relation which the state has an interest in regulating. That relation may entail work outside the state, and if that work be properly incidental to the relation existing within the state, the state has a sound reason for making its regulation extend to such work. But when the employer and employee carry on work in another state which may fairly be said to be located there, the state's interest diminishes and the other states' interest is superior.

This, it may be noted, comes within very reasonable distance of the position of the Supreme Court of the United States. That court also decried the settling of conflicts between compensation acts on theoretical juristic concepts, and laid down as a principle that the decision should turn upon which state had the principal interest in regulating the employment.

This case was followed in Smith v. Aerovane Utilities Corp'n, 181 N. E. 72, giving compensation for an injury sustained in Pennsylvania while working for a New York corporation.

See also

Baum v. N. Y. Air Terminals Inc., 245 N. Y. S. 357, 230 A. D. 531.

Amaxis v. Vassilaros, 250 N. Y. S. 201, 232 A. D. 397.

Proper v. Polley, 253 N. Y. S. 530, 233 A. D. 621.

Kalfatis v. Commercial Painting Co., 254 N. Y. S. 519, 233 A. D. 649.

Zeltoski v. Osborne Drilling Corp'n, 267 N. Y. S. 855, 239 A. D. 235.

Ind. Com. v. Underwood, Elliott Fisher Co., 276 N. Y. S. 519, 243 A. D. 658.

Goddard v. Taylor Instrument Co., 282 N. Y. S. 182, 244 A. D. 836.

The rule has been applied very consistently and fairly, and the courts have not hesitated to deny compensation under the New York law when the injury occurred in New York, if it appeared to have been sustained in work transitory in character and incidental to the work of an out of state employment. It will be noted that under the localization theory, the place where the contract was entered into is immaterial. The sole test is the localization of the employment.

The localization theory has been applied in Minnesota. Some of the cases would doubtless have been decided the same way on the contract theory: but the localization theory is a facile means to justify the extra-territorial application

of the law in case of employees of an out-of-state corporation operating a branch within the state.

State ex. rel. Maryland Casualty Co. v. Dist. Court, 168 N. W. 177.
Stansberry v. Monitor Stove Co., 183 N. W. 977.
State ex. rel. McCarthy Bros. v. Dist. Court, 169 N. W. 274.
Krekelberg v. M. S. Floyd Co., 207 N. W. 193.
Ginsburg v. Byers, 214 N. W. 55.
Bradtmiller v. Liquid Carbonic Co., 217 N. W. 680.
Brameld v. Albert Dickinson Co., 242 N. W. 465.

The same may be said of the Nebraska cases. There, too, the localization of the employment, and more particularly the situs of the chief operations of the employer appears the determining factor. Thus, the law applies to out-of-state injuries to the employee of a Nebraska firm or to one affiliated with the Nebraska office of an out-of-state employer.

McGuire v. Phelan Shirley Co., 197 N. W. 615.
Skelly Oil Co. v. Gaugenbaugh, 230 N. W. 688.
Stone v. Thompson Co., 245 N. W. 600.
Penwell v. Anderson, 250 N. W. 665.

But not when the operations of the employee in Nebraska are purely incidental.

Rigg v. Atlantic Pacific Gulf Oil Co., 261 N. W. 900.

Nor when employer after making the contract but before accident moves his headquarters out of the state.

Watts v. Long, 218 N. W. 410.

On the other hand, if an out-of-state employer moves his headquarters into the state, he comes within the law as to employees hired outside the state.

Esau v. Smith Bros., 246 N. W. 230.

The Wisconsin cases are not so easily understood. The earlier cases were based on the contract theory, rather than the localization theory. The case of Interstate Power Co. v. Ind. Com., 234 N. W. 889, was very similar on the facts to Bradford Electric Light Co. v. Clapper: i.e., an employee of a power company, resident in Iowa and working there regularly, was transferred to work temporarily in Wisconsin, where he was killed. The court held that the business of the employer was localized in the state and awarded compensation. Here, however, the contract of employment was entered into in Wisconsin, which distin-

guishes it from the Clapper case. The cases of Val Blatz Brewery Co. v. Gerard, 230 N. W. 622, and McKesson, Morrison Co. v. Ind. Com., 250 N. W. 397, seem flatly inconsistent. In the first case, the court applied the Wisconsin law to the case of an out-of-state injury to a salesman employed by a Wisconsin concern to sell its products in Missouri and Arkansas. This accords fairly well with the localization theory, or as the court puts it, the status theory, since the work was transitory in character, and incidental to the Wisconsin operations; though to be sure it practically overrules Wandersee v. Moskewitz et al, 223 N. W. 837, where compensation was denied a buyer, no part of whose service was in Wisconsin. But the second case involved the salesman of an unlicensed foreign corporation without even a working address in Wisconsin, and the injury took place in Illinois. The localization theory could not justify the award of compensation to him under the Wisconsin law: in fact, the one element linking the case to Wisconsin at all seems to have been the residence of the employee in Wisconsin.

Other cases which seem to reflect the localization theory are

Kennedy-Van Saun Mfg. Co. v. Ind. Com., 189 N. E. 916 Ill. This involved the extra-territorial application of the Illinois law to the employee of a New York corporation, sent to work with an Illinois subsidiary.

Bishop v. International Sugar Feed Co., 162 N. E. 71 Ind.

Smith v. Menzies Shoe Co., 188 N. E. 592 Ind.

Finkley v. Eugene Saenger Tailoring Shop, 196 N. E. 536 Ind.

In all these cases the emphasis seems to be on the fact that it is not an Indiana employment.

Durrett v. Eicher Woodland Lumber Co., 140 So. 867 La.

Abood v. Louisiana Oil Ref'g Corp'n, 155 So. 484 La.

U. S. Casualty Co. v. Hoage, 77 F. 2nd 542 D. C.

The localization theory has much to recommend it from the practical standpoint. It avoids technicalities, and along the lines indicated in New York makes a rule which brings under the act about what a state is really interested in regulating. There is to be sure a no-man's-land between outside operations clearly transitory and incidental, and outside operations at fixed locations: but this is as nothing compared with the difficulties often met with in deciding where a contract of employment is made, to say nothing of the

various other pitfalls incidental to the contract theory. It seems also reasonably close to the lines followed by the Supreme Court. For this latter reason it seems likely to receive in the future a further extension.

7. *Collateral Questions.*

(a) *The Enforcement of the Compensation Acts of Other States.*

Assuming that a court finds the compensation act of another state applicable to a question before it, the matter of how that act shall be given effect is important. In case of some laws, where the remedy provided is such as can be enforced by the courts, the courts can and do give a direct enforcement.

Floyd v. Vicksburg Cooperage Co., 126 So. 395 Miss.
United Dredging Co. v. Lindberg, 18 F. 2nd 453.
Texas Pipe Line Co. v. Ware, 15 F. 2nd 171.

But the remedy normally provided by the compensation acts is not of a kind which can be administered by the courts, being a special statutory process enforceable by a specific administrative tribunal. In that case the only remedy the courts can give is to decline to entertain the case, leaving the parties to their remedy under the law which applies.

Singleton v. Hope Engineering Co., 137 So. 441 Ala.
Logan v. Missouri Valley Bridge and Iron Co., 249 W. 21 Ark.
Verdicchio v. McNab & Harlin Mfg. Co., 164 N. Y. S. 290, 178 A. D. 48.
De Gray v. Miller Bros. Const. Co., 173 A. 556.

A number of states have legal provisions authorizing the enforcement of the law of another state if the remedy is of a character which can be enforced within the state.

See acts of Arizona, Hawaii, Idaho, Utah and Vermont.

Where the law of the state provides that action shall not be maintained under it outside the state, it will, on well established principles, not be enforced extra-territorially.

Martin v. Kennecott Copper Corp'n, 252 F. 207.
Hicks v. Cudahy Packing Co., 241 S. W. 960 Mo.

Provisions of the act can however be set up by way of defense, as in Bradford Electric Light Co. v. Clapper, or awards in the act proven by way of set-off to an award of compensation, or if the law so permits, in bar of an award.

(b) *Insurance Contracts.*

One collateral effect of the extra-territorial effect of compensation acts is to be noted in case of a contract of insurance which by its terms or by requirement of law covers generally an employer's liability under the compensation act, or which, as in Massachusetts and Texas is for the purpose of making an employer an "insured person" under the compensation act.

It would seem in any of these cases, and, where the obligation to give full coverage is statutory, the policy covers not only injuries within the state, but extra-territorial injuries to which the law applies as well, any provisions in the policy contract to the contrary notwithstanding.

Wright's case, 197 N. E. 5 Mass.
State ex rel. London and Lancashire Ind. Co. v. Dist. Ct. 170 N. W. 218 Minn.
Venuto v. Carter Lake Club, 178 N. W., 760 181 N. W. 377 Neb.

In the last named case, however, the decision was based on estoppel, the premises on which the injury occurred having been named in the policy declarations, although outside the state boundaries.

Home Life Ins. Co. v. Orchard, 227 W. 705 Tex.

This case involved a policy issued prior to the amendment of the law inserting the extra-territorial provisions. The policy was held to cover an extra-territorial injury sustained during the policy term, and subsequent to the amendment.

This rule does not hold good, of course, if the policy can be validly restricted, and is restricted to operations within the state.

There is one Connecticut case, Miller Bros. Const. Co. v. Maryland Casualty Co., 155 A. 709, which involved two policies in different companies, one on the Connecticut business and one on the Vermont business of the assured. An injury happened in Vermont. The employee was entitled under the Connecticut extra-territorial provisions to compensation under the Connecticut law. The court in this case held that the injury came within the coverage of the Vermont policy, rather than the Connecticut policy: This, in spite of the fact that the Vermont policy gave no coverage under the Connecticut law, so that if an award were made under the Connecticut law it would of necessity be paid by the employer. A case in the Federal courts, McCaffrey v.

American Mutual Liability Ins. Co., 32 F. Ind. 791, 37 F. Ind. 870, brought up the problem in another way. The employee was hired in Tennessee and injured in Texas. The Tennessee act is extra-territorial—very much so—but the employer had insured his liability under the Texas Act with the defendant. The employee elected to proceed under the Texas act, and received an award. It was held that the insurer was bound under its contract.

8. *Conclusion.*

The principles of conflict of law as applied to compensation will be seen from the above to be in no very orderly condition. There are several theories for applying principles of comity and there is also the Federal jurisdiction under the Full Faith and Credit clause and the Due Process clause which does not regard technical rules under any one of them, but decides cases on grounds of substantive merit. It is not claimed that there is no agreement in the decided cases. The great majority of states make some application of the rules of conflict of law derived from the contract theory. But the application is not uniform, and is very extensively modified by legislative policy.

The contract theory, while the oldest and best established of any, seems destined to be less relied on in the future. It was a natural theory to adopt, but it simply does not fit the needs of the situation. It affords a convenient theory for the extra-territorial application of compensation acts: but its full application in case of contracts made out of the state would remove from the influence of the local compensation acts cases which the state has a clear interest in protecting. A state cannot well refuse protection to one who is regularly employed within its bounds, merely because the contract of employment was made years before outside its bounds. To admit such a principle would afford a facile means of avoiding its compensation act altogether. And yet, to inject the terms of its own act into a contract of employment made beyond its bounds is to trespass on the sovereignty of another state and run dangerously near the constitutional mandate against impairing the obligation of a contract. To say, that because the services contemplated are to be rendered within the state, provisions of the state compensation act become automatically a part of the contract, is untrue in fact,

although true in the sense that it sets forth the policy the court intends to pursue. Again, the very facility with which the theory justifies the extra-territorial application of the law, tends to bring within the scope of the law activities in which the state has no possible interest. Compensation acts have been held to cover injuries sustained in Europe, in Nicaragua and on the high seas: in fact there is no limit to their extension. This is not so much of an objection as the possibility that it may bring within the act enterprises in other states, carried on at fixed locations, and in every way properly subject to the law of the state of location.

The very natural result has been a most undesirable variation in state policy. A few states have in effect closed their borders to the law of other states. Others have written limitations into their extra-territorial provisions, or have by judicial decision educed limitations unknown to the principles of conflict of law applicable to contracts. Still others have discarded the contract theory entirely, and the Supreme Court has, as above stated, turned its back on theoretical considerations.

Ultimately the lines of procedure must come nearer to those followed by the Supreme Court, though it may be anticipated that the program of uniformity will take some little time. It seems probable that the ultimate result will be in fair accord with the theory of localization as worked out and applied by the courts of New York. This theory is simple and logical. It lays down very natural lines as a limit to the jurisdiction of the state, including the greater part, certainly, of what the state is really interested in protecting, and leaving out the greater part of that in which the state has no protective interest. It substitutes a practical test for a theoretical test. It obviates the enormous difficulty of going into past history and disentangling the various steps by which a contract of employment was made, and substitutes therefore the simple and easily provable test of where the employee is characteristically employed. All this is a great gain. It is not claimed that the theory will serve in all cases: but it is thought it comes closer to the idea of the Supreme Court than any other theory.

Meanwhile, and until this branch of the law crystallizes into more permanent form it is necessary, in dealing with a problem of conflict of law to read carefully the statutes and decisions in each of the states concerned, and also the decisions of the Supreme

Court. It may be assumed that the temporary and incidental employment of an employee in another state will as a rule be no interruption of the application of the law of the state where he is employed. It may also be assumed that if the employment is at fixed location in another state for a substantial period, that generally the law of that state will govern the operation. That this will be held in all states is by no means certain: but it seems as likely an ultimate result as any.

APPENDIX

CASES AND STATUTORY REFERENCES

1. *Federal.*

Bradford Electric Light Co. v. Clapper, 286 U. S. 145.

State of Ohio v. Chattanooga Boiler & Tank Co., 289 U. S. 439.

Alaska Packers Ass'n v. Ind. Acc. Com., 294 U. S. 532.
(application of "Full Faith and Credit" provision to conflicts of laws involving compensation acts)

Western Union Tel. Co. v. Brown, 234 U. S. 542.

Slater v. Mexican Nat'l R. Co., 194 U. S. 120, 126.

Cuban R. R. Co. v. Crosby, 222 U. S. 473.
(application of "Full Faith and Credit" provision and "Due Process" provision to conflicts of law involving actions in tort)

Texas Pipe Line Co. v. Ware, 15 F. 2nd 171.

United Dredging Co. v. Lindberg, 18 F. 2nd 453.
(enforcement of compensation act by Federal court)

McCaffrey v. American Mutual Liability Co., 32 F. 2nd 791, 37 F. 2nd 870, 281 U. S. 751.
(liability of insurer when employee, having remedy under two compensation acts, elects remedy under law covered by insurer's policy)

Scott v. White Eagle Oil & Ref'g Co., 47 F. 2nd 615.
(Law of place of making contract of hire applied to extra-territorial compensable injury)

The Linseed King, 48 F. 2nd 311.

In Re Spencer Kellogg & Sons, 52 F. 2nd 129.
(compensation act of state of employment held to prevail over action under death statute of place of injury)
(these cases were reversed in Supreme Court on point of Federal maritime jurisdiction. Spencer Kellogg Co. v. Hicks, 285 U. S. 502)

Ford, Bacon & Co. v. Volentine, 64 F. 2nd 800.
(discussion as to whether law of place of performance should not apply)

Betts v. Southern Railway Co., 71 F. 2nd 787.
(effect of subrogation section of compensation act on action to recover damages for wrongful death in another state)

U. S. Casualty Co. v. Hoage, 77 F. 2nd 542.
(compensation act of District of Columbia applicable to injury there sustained though contract of employment was made elsewhere)

Joseph Wiederhoff Inc. v. Neal, 6 F. Supp. 798.

(Illinois compensation act held to apply to injury in Missouri, when contract of employment was made in Illinois and both employer and employee resides there)

2. *Alabama.*

Compensation act (sec. 7540) gives exclusive remedy for injuries sustained outside state where contract of employment is made in state, unless contract of employment expressly otherwise provides.

St. Louis S. F. R. Co. v. Carros, 93 So. 445.

Deft. in action for damages for out-of-state injury cannot avail himself of statute unless it is specifically pleaded in bar.

Singleton v. Hope Engineering Co., 137 So. 441.

Action of tort for injury in another state cannot be maintained if compensation act of that state gives an exclusive remedy therefor.

Note: See U. S. Cas. Co. v. Hoage, 77 F. 2nd 542, which held that above provision did not, under the circumstances, prevent award under law of District of Columbia for injury sustained there.

3. *Alaska.*

No extra-territorial provision. Section 2185 of compensation acts stipulates that no action shall be maintained under act outside territory, unless service of process cannot be had within territory.

Martin v. Kennecott Copper Corp'n, 252 F. 207.

Action to recover compensation in suit brought outside territory held barred by above provision.

4. *Arizona.*

Compensation act, Sec. 1429 gives remedy under act for injuries sustained outside state, if the workman is hired or is regularly employed in the state. Provision made for enforcement of remedies to which workmen hired outside state may be entitled under compensation act of state of hiring.

Ocean Accident & Guarantee Corp'n v. Ind. Com., 257 P. 645.

Holds that intent of act is that law of Arizona shall apply to all injuries sustained in Arizona, the right to compensation being a right of status.

5. *Arkansas.*

No compensation act.

Logan v. Missouri Valley Bridge & Iron Co., 249 S. W. 21. An action of tort cannot be maintained in Arkansas when the injury took place in Oklahoma and came within the terms of the compensation act of that state. Remedies provided by that act not enforceable by Arkansas courts.

Magnolia Petroleum Co. v. Turner, 65 S. W. 2nd 1. Where resident of Arkansas was employed there to do work in Texas, and was injured there, court held it not contrary to public policy to give effect to provision of Texas compensation act, barring an employee from bringing common-law action against insured employer.

Standard Pipe Line Co. v. Bennett, 66 S. W. 2nd 637. Where Arkansas resident is hired by Louisiana corporation to do work in Arkansas, and contract stipulates that injuries shall be settled under the Louisiana compensation act, that stipulation is contrary to the public policy of Arkansas, and is void.

Smith v. Arkansas Power & Light Co., 86 S. W. 2nd 411. Question of proper parties to third party suit for injury in Arkansas by Employee who had received compensation under Tennessee Act.

6. *California.*

Compensation act, Sec. 58. Gives remedy for extra-territorial injuries in cases where employee is resident of state at time of injury, and contract of hire was made in state.

Act not originally extra-territorial.

North Alaska Salmon Co. v. Pillsbury, 162 P. 93.
Kruse v. Pillsbury, 162 P. 891.

Validity of extra-territorial provision sustained, but limitation as to residence declared void.

Quong Ham Wah v. Ind. Acc. Com., 192 P. 1021.

Stipulation in contract of hire made in California for seasonal work to be performed wholly in Alaska, that Alaska compensation act should apply to injuries, held void as contrary to provision of act forbidding agreements to forego remedies provided by act.

Alaska Packers Ass'n v. Ind. Acc. Com., 34 P. 2nd 716, 294 U. S. 532.

Contract made in California for performance of services in Utah on railroad construction work held governed by California law as to injuries sustained outside state, the court finding that employee was not engaged in interstate commerce.

Los Angeles & S. L. R. Co. v. Ind. Acc. Com., 43 P. 2nd 282.

California law not applicable where contract of hire is made and performed and injury sustained on military reservation of United States.

Allan v. Ind. Acc. Com., 43 P. 2nd 787.

7. *Colorado.*

Compensation act not extra-territorial in terms.

Held, that where contract of hire is made in Colorado, to work in Colorado and elsewhere, the Colorado act applies to an injury sustained outside state.

Ind. Com. v. Aetna Life Ins. Co., 174 P. 589.
Home Ins. Co. v. Hipp, 15 P. 2nd 1082.

But act does not apply if contract is for services entirely outside Colorado.

Platt v. Reynolds, 282 P. 264.
Tripp v. Ind. Com., 4 P. 2nd 917.

Where contract of hire is made outside state, and services are not to be performed principally in Colorado, Colorado act does not apply to injury sustained in Colorado.

Hall v. Ind. Com., 235 P. 1073.

8. *Connecticut.*

Under provisions of sec. 5223 the term "employee" includes one who has entered into or works under a contract of service "whether such contract contemplated the performance of duties within or without the state."

The act has been held to apply to extra-territorial injuries, where contract of employment is made in Connecticut.

Kennerson v. Thames Towboat Co., 94 A. 372.
Harivel v. Hall-Thompson Co., 120 A. 603.
Petitti v. T. J. Pardy Const. Co., 130 A. 70.

This has been held true, even though the contract of employment was made before the taking effect of the compensation act, and the employee was a non-resident when act took effect.

Falvey v. Sprague Meter Co., 151 A. 182.

Conversely, the application of the act to intra-territorial injuries is affected by the law of the place where the contract is made. Thus, where the contract is made in a state whose law is not extra-territorial, and the parties have accepted the Connecticut act, the Connecticut act applies.

Douthright v. Champlin 100 A. 97.

Where the contract is made in a state whose act is extra-territorial, the Connecticut act applies if the contract is for services in Connecticut.

Banks v. Albert P. Howlett Co., 102 A. 822.

But it does not apply if the services are not to be performed exclusively in Connecticut.

Hopkins v. Matchless Metal Polish Co., 121 A. 828.

Where an employer separately insured its employees in Connecticut and in Vermont, an injury in Vermont to an employee hired in Connecticut was held to come under the Vermont policy rather than the Connecticut policy, even though the Vermont policy did not contemplate coverage under the Connecticut law.

Miller Bros. Const. Co. v. Maryland Casualty Co., 155 A. 709.

This last case is rather hard to reconcile with the others.

9. *Delaware.*

Under Sec. 3193a of the compensation act it is definitely provided that the act applies to all injuries within the state, irrespective of where contract of hire is made, and that it does not apply to any accident occurring outside the state.

10. *District of Columbia.*

P. A. No. 419, 70th Congress, Sec. 1. Provides that the act applies to injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of where the injury or death occurs.

This indicates that the act is not extra-territorial on the contract theory, but probably on localization theory.

The case of U. S. Casualty Co. v. Hoage, 77 F. 542, declined to apply law of Alabama to injury received in District of Columbia, though contract of employment was made in Alabama.

11. *Florida.*

Sec. 25c. makes provision for place of hearing in cases where injury occurs outside state.

12. *Georgia.*

Sec. 37 of the compensation act gives remedy for extra-territorial injuries

(a) if the contract of hire is made in the state
(b) and if the employer's place of business is in the state
(c) or if the residence of the employee is in the state.

But not if the contract of employment is expressly for services outside the state.

A proviso is added, that if an employee receives compensation or damages under the law of any other state, the above provision shall

not entitle him to a total compensation for the same injury greater than provided by this act.

Extra-territorial application of act sustained.

Empire Glass-Decoration Co. v. Bussey, 126 S. E. 912.
Metropolitan Cas. Co. v. Huhn, 142 S. E. 121.

Where agreement for compensation for extra-territorial injury has been entered into, it is too late to move to dismiss the claim on the ground that the contract of employment was not made in Georgia.

Aetna Life Ins. Co. v. Menees, 167 S. E. 335.

13. *Hawaii.*

Sec. 7523 of compensation act gives remedy for extra-territorial injuries, if the workman is hired in the territory. Act contains a provision for enforcement of remedies under the compensation laws of any other state to which employees hired under the law of that state may be entitled.

14. *Idaho.*

Sec. 6275 of compensation act is same as Hawaii provision quoted above.

Sec. 6219 authorizes employers who hire workmen in state to work outside state to make agreements with such workmen that remedies under act shall be exclusive as to injuries sustained outside state. Contracts of hire made in state presumed to include such agreement.

Extra-territorial application of act sustained.

Dameron v. Yellowstone Trail Garage, 34 P. 2nd 417.

15. *Illinois.*

Sec. 5 of compensation act gives remedy for extra-territorial injuries where contract of hire is made in Illinois.

The act was originally not extra-territorial.

Friedman Mfg. Co. v. Ind. Com., 120 N. E. 460.
Union Bridge & Const. Co. v. Ind. Com., 122 N. E. 609.
Joyce-Watkins Co. v. Ind. Com., 156 N. E. 346.

Extra-territorial feature added by amendment sustained.

Beall Bros. Supply Co. v. Ind. Com., 173 N. E. 64.
Johnston v. Ind. Com., 185 N. E. 191.

Extra-territorial feature of act held to apply to employee of Illinois subsidiary of New York concern, though contract of employment was made in New York. This seems more in accord with localization theory than contract theory.

Kennedy-Van Saun Mfg. Co. v. Ind. Com., 189 N. E. 916.

For subrogation feature of act, see

Goldsmith v. Payne, 133 N. E. 52.

16. *Indiana.*

Sec. 20 of compensation act indicates that every employer and employee under the act are bound by the provisions thereof whether injury occurs in Indiana or in another state or foreign country.

The early cases followed the contract theory. Thus, the act applies extra-territorially where contract is made in Indiana.

Hagenbeck v. Leppert, 117 N. E. 531.

But not where contract is wholly to be performed in another state.

Leader Specialty Co. v. Chapman, 152 N. E. 872.

Even when both employer and employee are residents of Indiana (here contract was made in Illinois for work in Arkansas).

Bement Oil Co. v. Cubbison, 149 N. E. 919.

Conversely, act covers intra-territorial injuries in cases where the contract is made outside the state, but to be performed exclusively in Indiana.

Hagenbeck & Great Wallace Show Co. v. Randall, 126 N. E. 501.

Same v. Ball, 126 N. E. 504.

Johns-Manville Inc. v. Thrane, 141 N. E. 229.

But not where services are to be performed elsewhere than in Indiana.

Darsch v. Thearle-Duffield Fireworks Display Co., 133 N. E. 525.

Norman v. Hartman Furniture & Carpet Co., 150 N. E. 416.

Indiana law held not applicable to contract of employment made in Indiana for work there and in other states, where employee had accepted compensation act of state where accident occurred.

Premier Construction Co. v. Grinstead, 170 N. E. 561.

The later cases appear to stress the fact that the employment is not an Indiana employment. This seems at least a tendency toward localization theory.

Bishop v. International Sugar Feed Co., 162 N. E. 71.

Smith v. Menzies Shoe Co., 188 N. E. 592.

Finkley v. Eugene Saenger Tailoring Shop, 196 N. E. 536.

17. *Iowa.*

Sec. 1440 of act makes provision for hearing in case of extra-territorial injuries.

Act held extra-territorial in case of contracts of employment made in Iowa.

Pierce v. Bekins Van & Storage Co., 172 N. W. 191.

Chicago, R. I. & P. R. Co. v. Lundquist, 221 N. W. 228.

Cullamore v. Groneweg & Schoentgen Co., 257 N. W. 561.

As to extra-territoral operation of subrogation feature of foreign compensation act, see

Hendrickson v. Crandic Stages, 246 N. W. 913.

18. *Kansas.*

Section 6 of compensation act indicates that act applies extra-territorially if contract of hire is made in state, unless contract otherwise specifically provides.

Has no extra-territorial application where contract of hire is made outside state for work outside state.

Dawes v. Jacob Dold Packing Co., 38 P. 2nd 107.

19. *Kentucky.*

Sec. 4888 of compensation act provides that remedies of acts are exclusive as to employees hired in state with respect to injuries sustained outside state, unless employer and employees have agreed in writing to exempt such injuries from operation of act.

20. *Louisiana.*

No provision, but held extra-territorial as to contracts of employment made in state.

Hargis v. McWilliams Co., 119 So. 88.
Durrett v. Eicher-Woodland Lumber Co., 136 So. 112.
Selser v. Bragman's Bluff Lumber Co.

Not extra-territorial, if contract is with out-of-state employer, for work exclusively out of state.

Durrett v. Eicher-Woodland Lumber Co., 140 So. 867.
Abood v. Louisiana Oil Ref'g Corp'n, 155 So. 484.

A beneficiary under Louisiana act does not forfeit exemption from garnishment of benefits by leaving state.

Festervand v. Laster, 130 So. 112.

21. *Maine.*

Sec. 2 II(b) of act provides that employers who hire workmen within state to work outside state may agree with such workmen that remedies of act shall be exclusive as to extra-territorial injuries. Contracts of employment made in state, unless otherwise specified, are presumed to include such agreement.

Extra-territorial application of act sustained as to injury in Canada.

Saunders' Case, 136 A. 722.

Where contract of employment is made outside state, but employer is carrying on work in Maine, and is an assenting employer under Maine act, that act applies to injury sustained in Maine.

Smith v. Heine Safety Boiler Co., 112 A. 516.

22. *Maryland.*

Section 32(43) of act indicates that it applies extra-territorially to salesmen and sales managers who are citizens or residents of state, employed by an employer having a place of business within state.
Section 65(3) of act indicates that it does not apply to employees employed wholly outside state, but that it does apply to casual, occasional or incidental employment outside state by Maryland employer of employee regularly employed within state.
Both sections contain provisions that if an employee receives compensation or damages under law of another state, he shall not by reason of this provision, receive greater compensation for same injury than is provided by this article.

Section 65(12) provides that act shall apply to miners working outside state bounds if tipple, mouth or principal entrance of mine is in Maryland.

Validity of restriction of Sec. 32(43) to "citizens or residents" upheld.

Liggett & Myers Tobacco Co. v. Goslin, 160 A. 804.

23. *Massachusetts.*

Sec. 26 of act indicates that act applies to extra-territorial injuries unless employee has given notice of his claim to rights of action under the laws of jurisdiction where injury occurs, and applies where employee, having given such notice has waived it.

Sec. 24. Employee deemed to have waived rights of action at common law or under law of any other jurisdiction.

Acts 1927 C. 309 Sec. 13. Employee deemed to have waived rights of action under laws of any other jurisdiction as to injuries therein occurring unless he gives employer notice that he intends to claim such rights within 30 days of effective date of act.

As originally drafted, act not extra-territorial.

In re American Mutual Liability Co., 102 N. E. 693.
In re Gould, id.
In re B. F. Sturtevant Co., id.

Act now extra-territorial as to contracts of employment made in Massachusetts with Massachusetts employer.

Pederzoli's Case, 169 N. E. 427.

Applies even though employee has accepted compensation under law of another state.

McLaughlin's Case, 174 N. E. 338.
Migues' Case, 183 N. E. 847.

Insurer liable for extra-territorial injuries, regardless of policy limitations.

Wright's Case, 197 N. E. 5.

As to effect of abolition of common law defences in case of extra-territorial injuries, see

Armburg v. B. & M. R. Co., 177 N. E. 665, 285 U. S. 234.

As to application of act on land owned by United States, see

Lynch's Case, 183 N. E. 834.

(Questionable in view of decision in Murray v. Joe Gerrick & Co., 291 U. S. 315)

24. *Michigan.*

Pt. III Sec. 19 gives remedy for extra-territorial injuries where employee is resident of state at time of injury, and contract of hire is made in state.

Extra-territorial application of act upheld.

Crane v. Leonard, Crossette & Riley, 183 N. W. 204.
Hulswit v. Escanaba Mfg. Co., 188 N. W. 411.
Klettke v. C. & T. Commercial Driveaway, Inc., 231 N. W. 132.
Deakins v. Same, 231 N. W. 133.

Residential requirements not observed.

Roberts v. I. X. L. Glass Corp'n, 244 N. W. 188.

Wearner v. Michigan Conference, 7th Day Adventists, 245 N. W. 802.

Act has been held to apply to injuries sustained in Michigan where contract of hire is made outside state (but with Michigan employer) for work to be done, partly in Ohio, partly in Michigan.

Leininger v. Jacobs, 257 N. W. 764.

25. *Minnesota.*

No provisions: but act held to apply to extra-territorial injuries.

The earlier cases seem to be based on contract theory.

State ex rel. Chambers v. Dist. Ct., 166 N. W. 185.

The later cases apparently apply act extra-territorially on basis of an employment localized in Minnesota.

State ex rel. Maryland Casualty Co. v. Dist. Ct., 168 N. W. 177.
State ex rel. McCarthy Bros. v. Dist. Ct., 169 N. W. 274.
Krekelberg v. M. A. Floyd Co., 207 N. W. 193.

Irrespective of whether the employer is a Minnesota resident or an out of state concern with office only in Minnesota.

Stansberry v. Monitor Stove Co., 183 N. W. 977.
Bradtmiller v. Liquid Carbonic Co., 217 N. W. 680.

Intra-territorial application of act apparently uses same test, without regard to where contract was made.

Ginsburg v. Byers, 214 N. W. 55.

As to effect of extra-territorial feature on insurance policies, see

State ex rel. London & Lancashire Ind. Co. v. Dist. Ct., 170 N. W. 218.

Residence of employee has no effect on extra-territorial application of act.

Brameld v. Albert Dickinson Co., 242 N. W. 465.

26. *Mississippi.*

No compensation act. Compensation act of Louisiana recognized as barring action of tort for injury in Mississippi, and remedy under that act enforced.

Floyd v. Vicksburg Cooperage Co., 126 So. 395.

27. *Missouri.*

Sec. 3310b of act states that act applies to all injuries in state, regardless of where contract of employment was made.

Act applies extra-territorially where contract is made in Missouri, unless contract otherwise provides.

Prior to enactment of compensation act, held that no action of tort could be maintained upon injury sustained in state where proceeding under compensation act was sole remedy.

Mitchell v. St. Louis Smelting & Refining Co., 215 S. W. 506.

Action not barred if employer not subject to compensation act in state of injury.

Dillard v. Justus, 3 S. W. 2nd 392.

Action not permitted to enforce rights under compensation act of another state, where act prohibits maintaining of actions

Harbis v. Cudahy Packing Co., 241 S. W. 960.

Subsequent to enactment of act, courts have applied act extra-territorially where contract of hire was made in Missouri.

State v. Missouri Compensation Commission, 8 S. W. 2nd 897.

Wadley v. Employers Liability etc. Corp'n, 37 S. W. 2nd 665.

Hartman v. Union Electric Light & Power Co., 33 S. W. 2nd 241.

Muse v. E. A. Whitney & Son., 56 S. W. 2nd 848.

Even though contract is for work entirely outside state.

Zarnecke v. Blue Line Chemical Co., 54 S. W. 2nd 772.

Daggett v. Kansas City Structural Steel Co., 65 S. W. 2nd 1036.

And irrespective of employee's residence.

Bolin v. Swift & Co., 73 S. W. 2nd 774.

Right to compensation not barred by acceptance of compensation under act of another state.

Shout v. Gunite Concrete & Construction Co., 41 S. W. 2nd 629.

The federal courts have in one case applied act of another state to injury in Missouri, enjoining industrial commission from entertaining case.

Joseph Wiederhoff Inc. v. Neal, 6 F. Supp. 798.

28. *Montana.*

No extra-territorial provision.

Act has been held to apply to injury on territory of United States.

State ex rel. Loney v. State Ind. Acc. Board, 286 P. 408.

29. *Nebraska.*

Laws 1935 C. 37 Sec. 15 makes provision for hearings in case of extra-territorial injuries.

Decisions as to extra-territorial application of act seem upon localization theory rather than on contract theory.

Thus, Nebraska law applies where work is for a Nebraska employer.

McGuire v. Phelan-Shirley Co., 197 N. W. 615.

Penwell v. Anderson, 250 N. W. 665.

Or where work is for out of state employer maintaining headquarters or an office in Nebraska, and work is directed from or incidental to the work of such headquarters or office.

Skelly Oil Co. v. Gaugenbaugh, 230 N. W. 688.

Stone v. Thomson Co., 245 N. W. 600.

But not when headquarters have been moved to another state.

Watts v. Long, 218 N. W. 410.

Or where employer has no place of business or merely incidental operations in Nebraska.

Freeman v. Higgins, 242 N. W. 271.

Rigg v. Atlantic, Pacific & Gulf Oil Co., 261 N. W. 900.

Similarly act applies to injury to employee hired outside state by non-resident employer, where employer moves headquarters to Nebraska and employee is injured there.

Esau v. Smith Bros., 246 N. W. 230.

30. *Nevada.*

Sec. 2723 of act gives act extra-territorial application where employee is hired in state and whose usual and ordinary duties are confined to state.

Provision whereby Nevada employers and any employees thereof may by joint election elect to come under act as to injuries outside of state.

31. *New Hampshire.*

No provision as to extra-territoriality.

As to application of compensation acts of other states to injuries in New Hampshire, see

Bradford Electric Light Co. v. Clapper, 286 U. S. 145.

32. *New Jersey.*

No provision as to extra-territoriality.

State act held applicable to injuries in state, irrespective of where contract of hire was made.

American Radiator Co. v. Rogge, 92 A. 85, 93 A. 1083.
Davidheiser v. Hay Foundry & Iron Works, 94 A. 309.
Rounsaville v. Central R. Co. of New Jersey, 94 A. 392.
West Jersey Trust Co. v. Phila. & Reading R. Co., 95 A. 753.

But act held to apply extra-territorially where contract of hire is made in state.

Foley v. Home Rubber Co., 99 A. 624.
Frank Desiderio Sons Inc. v. Blunt, 167 A. 29.
Hi-Heat Gas Co. v. Dickerson, 170 A. 44, 174 A. 483.

Even though the work is to be performed outside the state.

Sweet v. Austin Co, 171 A. 684.

Award under act not barred by receipt of compensation in another state.

See preceeding case.

Act does not apply extra-territorially if contract is made outside state, for work to be performed in state of injury, even though employee resides in New Jersey and employer has place of business there.

Hamm v. Rockwood Sprinkler Co., 97 A. 730.

33. *New Mexico.*

No provision as to extra-territoriality.

Court has declined to make award for injury in New Mexico where compensation has been awarded under law of state where contract of hire was made.

Hughey v. Ware, 276 P. 27.

34. *New York.*

No provision as to extra-territoriality.

A. *Decisions Prior to Compensation Act.*

Court recognizes compensation act of New Jersey as barring action of tort for injury sustained in New Jersey, where contract of hire is made in New Jersey with New Jersey corporation.

Wasilewski v. Warner Sugar Ref'g Co., 149 N. Y. S. 1035.

Also, when injury is sustained in New York, where contract of employment is made in New Jersey, between resident of New Jersey and New Jersey corporation, for services to be performed, part in New York, part in New Jersey.

Barnhart v. American Concrete Steel Co., 125 N. E. 675. See also, 167 N. Y. S. 475, 181 A. D. 881.

But where contract of hire is made in New York for services to be performed partly in New York, partly in New Jersey, an action of tort for an injury in New Jersey is not barred by New Jersey compensation act.

Pensabene v. F. & J. Auditore Co., 140 N. Y. S. 266.

Subrogation Section of New Jersey act does not create lien on New York judgment.

Hartford Acc. & Ind. Co. v. Chartrand, 204 N. Y. S. 791.

B. *Decisions Under Compensation Act. Contract Theory.*

Act held extra-territorial where contract of hire is made in New York.

Post v. Burger & Gohlke, 111 N. E. 351.
Spratt v. Sweeny & Gray Co., 111 N. E. 1100.
Valentine v. Smith, Angevine & Co., 111 N. E. 1102.
Klein v. Stoller & Cook Co., 116 N. E. 1055.
Jenkins v. Hogan & Son, Inc., 163 N. Y. S. 707, 177 A. D. 36.
Gilbert v. Des Lauriers Column Mould Co., 167 N. Y. S. 274, 180 A. D. 59.
Holmes v. Communipaw Steel Co., 167 N. Y. S. 475, 181 A. D. 881.
State Ind. Com. v. Barene, 177 N. Y. S. 689.

But not where contract of employment is for services exclusively in another state.

Gardiner v. Horse Heads Const. Co., 156 N. Y. S. 899. 171 A. D. 156.
Perlis v. Lederer, 178 N. Y. S. 449, 189 A. D. 425.
Prdich v. N. Y. C. R. Co., 183 N. Y. S. 77. (This involved an action of tort, not a proceeding under compensation act.)

An act has no application when contract of employment is not made in New York, and services are not to be performed in New York.

Thompson v. Foundation Co., 177 N. Y. S. 58, 188 A. D. 506.
Baggs v. Standard Oil Co., 180 N. Y. S. 560.

For extra-territorial application of law on vessel risk, see

Edwardsen v. Jarvis Lighterage Co., 153 N. Y. S. 391, 168 A. D. 368.

Refusal to administer remedies under compensation act of another state.

Verdicchio v. McNab & Harlin Mfg. Co., 164 N. Y. S. 290, 178 A. D. 48.

Effect of receipt of compensation under law of another state.

Gilbert v. Des Lauriers Column Mould Co., 167 N. Y. S. 274, 180 A. D. 59.
(Held not to bar award.)

Minto v. Hitchings & Co., 198 N. Y. S. 610, 210 A. D. 661.
(Held to bar award.)

New York act held not applicable extra-territorially in case of employer who moved plant from state prior to passage of act, though contract of hire was made in New York.

Smith v. Heine Safety Boiler Co., 119 N. E. 878.

C. *Decisions Under Compensation Act. Localization Theory.*

Test of extra-territoriality held to be whether employment is located in New York.

Matter of Cameron v. Ellis Construction Co., 169 N. E. 622.
Smith v. Aerovane Utilities Corp'n, 181 N. E. 72.

New York law held applicable.

Smith v. Aerovane Utilities Corp'n, 181 N. E. 72. Case of New York employee doing work in Pennsylvania incidental to New York employment.

Madderns v. Fox Film Corp'n, 200 N. Y. S. 344, 205 A. D. 791. Moving picture actor on boat, injured on New Jersey side.

Amaxis v. Vassilaros, 250 N. Y. S. 201, 232 A. D. 397. Painter doing transitory work in New Jersey.

Zeltoski v. Osborne Drilling Corp'n, 267 N. Y. S. 855, 239 A. D. 235. Driller making foundation tests for New York Co. in Tennessee.

Ind. Com. v. Underwood Elliott Fisher Co., 276 N. Y. S. 519, 243 A. D. 658. Repair man on machines, working out of New York office.

Goddard v. Taylor Instrument Co., 282 N. Y. S. 182, 244 A. D. 836. Travelling salesman, working out of Rochester, N. Y. office.

New York law held not applicable.

Cameron v. Ellis Const. Co., 169 N. E. 622. Canadian employee of Massachusetts concern, working at gravel pit in Canada.

Donohue v. H. H. Robertson Co., 199 N. Y. S. 470, 205 A. D. 176. Employee of foreign corporation, located in Pennsylvania, hired in New York, but never employed in hazardous work there.

Anderson v. Jarrett Chambers Co., 206 N. Y. S. 458, 210 A. D. 543. Rigger, hired in New York, but never performing hazardous work there.

Baum v. New York Air Terminals Inc., 245 N. Y. S. 357, 230 A. D. 531. Employee of construction co., employed exclusively on New Jersey job.

Kalfatis v. Commercial Printing Co., 254 N. Y. S. 519, 233 A. D. 649. Painter, working on bridge job, including work to be done in both Pennsylvania and New York, but never having worked in New York.

Similarly, New York law not applicable to injury in New York, if employee is only temporarily in New York, location of employment being elsewhere.

Proper v. Polley, 253 N. Y. S. 530, 233 A. D. 621.

Third Party Actions.

In Re Hertel's Est., 237 N. Y. S. 655. Extra-territorial effect subrogation provision.

Travelers Ins. Co. v. Central R. Co. of N. J., 258 N. Y. S. 35. Extra-territorial effect statutory right of action.

35. *North Carolina.*

Sec. 36 of act gives remedy for extra-territorial injuries:

(a) if contract of hire is made in state, and
(b) if employer's place of business is in state, and
(c) if employees residence is in state.

Act not extra-territorial if contract is expressly for services exclusively outside state.

Provision that if employee receives compensation or damages under law of any other state, he shall not receive a total compensation for same injury greater than provided by this act.

Prior to enactment of compensation act, court refused to recognize compensation act of another state as barring action of tort in North Carolina.

(a) Where plaintiff was resident of North Carolina, hired in Tennessee, and injured in North Carolina. Farr v. Babcock Lumber Co., 109 S. E. 833.
(b) Where plaintiff was employed in North Carolina, and injured in Tennessee. Johnson v. Carolina, C. & O. R. Co., 131 S. E. 390.

(c) Where plaintiff was employed and injured in Tennessee. Lee v. Chemical Const. Co., 136 S. E. 848.

The last two cases seem contrary to sound principle.

36. *North Dakota.*

Sec. 396-a 10 of act provides that act shall not apply extra-territorially except in case of county peace officers, and except in case the employer has contracted for extra-territorial protection, no employer can obtain extra-territorial protection unless his plant and main office are in North Dakota, and unless he expends two-thirds of payroll in employment in North Dakota.

Act not applicable extra-territorially in case of employment located in Washington.

Altman v. North Dakota Workmen's Compensation Bureau, 195 N. W. 287.

Act not applicable extra-territorially in case of county peace officer unless county has purchased extra-territorial protection.

McArthur v. North Dakota Workmen's Compensation Bureau, 244 N. W. 259.

37. *Ohio.*

Sec. 1465-68 and 1465-90 indicate that act applies extra-territorially.

Not extra-territorial as to contracts for services wholly to be performed outside state.

Ind. Com. v. Gardinio, 164 N. E. 758.

Not extra-territorial as to employee engaged in construction entirely in another state, and who signed a contract stating that contract was made in such other state and was governed by its laws.

Johnson v. Ind. Com., 186 N. E. 509.

38. *Oklahoma.*

Act not extra-territorial.

Sheehan Pipe Line Const. Co. v. State Ind. Com., 3 P. 2nd 199.
Continental Oil Co. v. Pitts, 13 P. 2nd 180.

As to extra-territorial effect of statutory right of action against uninsured employer, see

Osagera v. Schiff, 240 S. W. 124 (Mo).

39. *Oregon.*

Sec. 49-1813-a. Act extra-territorial as to workman who is hired to work in state, and temporarily leaves it, provided he is not at time of accident subject to compensation act of another state.

Sec. 49-1815-a. Act not extra-territorial as to employers of interstate carriers of goods by motor vehicle between fixed termini.

As to effect of subrogation section of foreign compensation act, see
Rorvik v. North Pacific Lumber Co., 190 P. 331, 195 P. 163.

40. *Pennsylvania.*

Sec. 1. Provides that act shall apply to all injuries in commonwealth irrespective of where contract of hire was made.

Act applies extra-territorially only to Pennsylvania employees performing services for employers whose places of business are in commonwealth, and whose duties require them to be temporarily absent from the commonwealth not exceeding 90 days.

The term "Pennsylvania employees" does not mean merely employees of a Pennsylvania employer, but only such as perform the major part of their services in Pennsylvania.

Bock v. D. B. Frampton & Co., 161 A. 762.

41. *Rhode Island.*

No provision as to extra-territoriality.

Act held to apply to extra-territorial injury of employee hired in Rhode Island.

Grinnell v. Wilkinson, 98 A. 103.

42. *South Carolina.*

Sec. 36. Act extra-territorial.

(a) If contract of hire is made in state, and
(b) If employer's place of business is in state, and
(c) If residence of employer is in state.

Act not extra-territorial if contract is expressly for services exclusively outside of state.

Provision that if employee receives compensation or damages under the law of any other state, he shall not receive a total compensation for same injury greater than provided by act.

43. *South Dakota.*

Sec. 9453. Act stated to apply extra-territorially.

44. *Tennessee.*

Sec. 6870. Act applies extra-territorially if contract of hire is made in state, unless otherwise expressly provided in contract.

Held to apply extra-territorially even if contract is for service exclusively in another state.

Smith v. Van Noy Interstate Co., 262 S. W. 1048.

Receipt of award for compensation under law of another state bars award under Tennessee law.

Tidwell v. Chattanooga Bolier & Tank Co., 43 S. W. 2nd 221.

45. *Texas.*

Part 1 Sec. 19. Act applies extra-territorially in case of employees hired in state, provided

(a) That injury occurs within 1 year after leaving state, and

(b) That employee has not elected to pursue his remedy and has not recovered in courts of state where injury occurs.

Act applies extra-territorially where contract is made in Texas.

Texas Employers' Insurance Ass'n v. Volek, 44 S. W. 2nd 795, 69 S. W. 2nd 33.

But not if contract is not made in Texas.

Texas Employers' Insurance Ass'n v. Hoehn, 72 S. W. 2nd 341.

Extra-territorial provisions have no application if employer is non-subscriber.

McGuire & Cavender v. Edwards, 48 S. W. 2nd 1010.

Insurance policy issued before enactment of extra-territorial provision held to cover extra-territorial injuries sustained after enactment and during policy term.

Home Life & Acc. Co. v. Orchard, 227 S. W. 705.

Prior to amendment of act, receipt of award under law of another state was not available in bar or as set-off.

Texas Employers' Insurance Ass'n v. Price, 300 S. W. 667, 672.

Norwich Union Ind. Co. v. Wilson, 17 S. W. 2nd 68, 43 S. W. 2nd 473.

46. *Utah.*

Sec. 3126. Act extra-territorial as to workmen hired in state.

Provision for enforcement of remedies under laws of other states in case of workmen hired outside state.

Contractor's employee hired in Utah held entitled to award for injuries in Colorado although employer had taken out insurance in Colorado State Fund to protect employees working in Colorado.

Pickering v. Ind. Com., 201 P. 1029.

Action for damages based on injury in Idaho held barred by Idaho compensation act.

Shurtliff v. Oregon Short Line R. Co., 241 P. 1058.

47. *Vermont.*

Sec. 6506. Act applies extra-territorially as to workmen hired in state.

Sec. 6507. Provision for enforcement of remedies under laws of other states in case of workmen hired outside state.

Sec. 6510. Provisions for agreements between employers and employees hired within state to work outside that remedies under act shall be exclusive as to extra-territorial injuries. Contracts of hire made in state presumed to include such agreement.

Held that Vermont act applies to injuries received in Vermont, wherever contract of employment is made: but that ordinarily the court would, on principles of comity, leave parties to remedy under law of state where contract was made.

De Gray v. Miller Bros. Const. Co., 173 A. 556.

48. *Virginia.*

Sec. 37. Act applies extra-territorially.

(a) If contract of hire is made in state, and
(b) If employer's place of business is in state, and
(c) If residence of employee is in state.

Does not apply extra-territorially if contract of hire is expressly for services exclusively outside of state.

Provision that an employee who receives compensation or damages under law of another state, shall not receive for the same injury total compensation greater than that provided by act.

49. *Washington.*

No extra-territorial provision: but act held to apply to extra-territorial injury received by Washington employee temporarily absent from state.

Hilding v. Dept. of Labor & Industries, 298 P. 321.

Compensation Act held not to prevent courts from entertaining suit based on foreign tort.

Reynolds v. Day, 140 P. 681.

50. *West Virginia.*

Part 2. Sec. 1. Act extra-territorial as to employers regularly employing persons for carrying on business or industry within state, and as to employees temporarily and necessarily absent from state, such absence being directly incidental to carrying on industry within state.

Act extra-territorial as to employees of mines if main opening is located wholly within state.

Act held extra-territorial as to employees in mine.

Gooding v. Ott, 87 S. E. 862.

Act held extra-territorial as to employee regularly employed in West Virginia, but temporarily in Kentucky.

Foughty v. Ott, 92 S. E. 143.

51. *Wisconsin.*

No provision as to extra-territoriality.

Act originally held extra-territorial where contract of hire was made in state.

Anderson v. Miller Scrap Iron Co., 170 N. W. 275, 171 N. W. 935, 182 N. W. 852, 187 N. W. 746.

Zurich etc. Co. v. Ind. Com., 213 N. W. 630.

Thresherman's Nat. Ins. Co. Ltd. v. Ind. Com., 230 N. W. 67.

But not where no part of service is performed in Wisconsin.

Wandersee v. Moskewitz et al., 223 N. W. 837.

Act applies to injuries in Wisconsin under Minnesota contract of service, where employer accepts Wisconsin act.

Johnson v. Nelson, 150 N. W. 620 (Minn).

The later cases go on theory of status or localization.

Val Blatz Brewing Co. v. Gerard, 230 N. W. 622.

Contract of hire made in Wisconsin to sell products in Missouri and Arkansas. Held that employee was under Wisconsin law until he acquired status of employee in another state.

This would seem to overrule Wandersee v. Moskewitz, cited above.

Interstate Power Co. v. Ind. Com., 234 N. W. 889.

Wisconsin act held to cover death by injury in Wisconsin of Iowa resident, employed to work in Iowa, but sent temporarily to do work in Wisconsin.

McKesson-Fuller-Morrison Co. v. Ind. Com., 250 N. W. 397.

Wisconsin act held to apply to death of travelling salesman, a resident of Wisconsin, killed in Illinois. The employer was an unlicensed foreign corporation without even mailing address in Wisconsin. (A very extreme case.)

For cases on extra-territorial effect of subrogation section, see

Anderson v. Miller Scrap Iron Co., cited above.

Bernard v. Jennings, 244 N. W. 589.

52. *Wyoming.*

No provision as to extra-territoriality.