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CONFLICT OF LAWS - WORKMEN'S COMPENSATION - LOCAL STATUTE AS A DEFENSE TO A LOCAL CAUSE OF ACTION

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CONFLICT OF LAWS — WORKMEN'S COMPENSATION — LOCAL STATUTE AS A DEFENSE TO A LOCAL CAUSE OF ACTION — Plaintiff resided and was employed in Texas as the manager of a local store owned by a corporation

which operated a chain of stores in various states. While visiting the main office of his employer in Illinois, he was injured through the negligence of the defendant taxicab company. After applying for and receiving compensation from his employer under the Workmen's Compensation Law of Texas, plaintiff then brought action in Illinois against defendant to recover damages for his personal injuries. Under the Workmen's Compensation Act of Texas an employee who has received compensation under the act may bring an action against a third party tortfeasor to recover an amount in excess of compensation paid.[1] However, the Illinois Workmen's Compensation Act provides that the employee's right of action against a third party shall be transferred to his employer by way of reimbursement when the third party is one who is also operating under the terms of the act.[2] Defendant claimed that all three parties were under the Illinois law at the time of injury, and that plaintiff could not maintain this action in view of the statute. Defendant had judgment on the pleadings, and plaintiff appealed. *Held*, judgment reversed. Plaintiff's rights are to be determined by the law of Texas, and there is nothing in the public policy of Illinois which would be opposed to the maintenance of this action. *Miller v. Yellow Cab Co.*, 308 Ill. App. 217, 31 N. E. (2d) 406 (1941).

The court rested its decision squarely upon the doctrine of *Bradford Electric Light Co. v. Clapper*[3] which had formerly been applied by the Illinois courts.[4] The opinion in the *Clapper* case has been criticized as a holding that a contract made in one state can abrogate the statute of another,[5] but a limitation has since been placed upon this doctrine to the effect that the law of the foreign state will not be applied in those cases in which it is against the public policy or governmental interest of the forum.[6] It was urged in the present case that to allow the action against the third party who was operating under the Illinois Workmen's Compensation Act was contrary to the public policy of the state as set forth in

[1] Tex. Civ. Ann. Stat. (Vernon, 1926), art. 8307, § 6a.

[2] Ill. Ann. Stat. (Smith-Hurd, 1935), c. 48, § 166.

[3] 286 U. S. 145, 52 S. Ct. 571 (1932). In this case the employer and employee, both residents of Vermont, made a contract of employment in that state for work to be performed there and in New Hampshire. Employee was killed while working in New Hampshire. In an action by the personal representative for the wrongful death brought under the New Hampshire law, the employer pleaded the exclusive remedy given by the Vermont Workmen's Compensation Law as a defense. The Court held that the full faith and credit clause of the Constitution of the United States required that New Hampshire give effect to the defense under the Vermont statute.

[4] Cole v. Industrial Commission, 353 Ill. 415, 187 N. E. 520 (1933).

[5] Beale, "Two Cases on Jurisdiction," 48 HARV. L. REV. 620 (1935). A somewhat similar criticism was voiced by Justice Stone in the later case of Alaska Packers Assn. v. Industrial Accident Commission of California, 294 U. S. 532 at 547, 55 S. Ct. 518 (1935): "A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own."

[6] Alaska Packers Assn. v. Industrial Accident Commission of California, 294 U. S. 532, 55 S. Ct. 518 (1935); Pacific Employers Ins. Co. v. Industrial Accident Commission, 10 Cal. (2d) 567, 75 P. (2d) 1058 (1938), affirmed in 306 U. S. 493, 59 S. Ct. 629 (1939).

the act, but this the court denied. Thus, it can be asked, what factors determine this public policy? In cases involving the question whether the award of compensation is to to be made under the law of the forum or of another state, the courts look to various facts as determining the governmental interest of each state. Some consider the situs of the employer's business, on the theory that the burden is to be borne as a cost of doing business.[7] Others are influenced by the interest of the state in which the injured party is likely to become a public charge.[8] The law of the state of injury has been applied in order to protect the doctors and hospitals from being forced to go into another jurisdiction to collect their fees.[9] Likewise, the courts have considered the inconvenience to the widow of the employee in forcing her to seek compensation in a distant jurisdiction.[10] It has also been suggested by way of dictum that the court should apply the law which would impose the liability on an insurance carrier in view of the policy of the state of protecting the employee from having to seek compensation from a financially irresponsible employer.[11] But when the question is, as in the instant case, whether the statute of the forum should be a defense against a local cause of action in tort against a negligent third party, different considerations of public policy are presented. The problem of which state's law should govern the compensation award has already been determined,[12] and there remains only the claim that the legislature has declared the public policy of the forum in denying this cause of action to employees covered by its own law. However, the courts have uniformly refused to hold that this is such a declaration of policy as to be a defense to the right of the employee to enforce in the local courts a local cause of action.[13]

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[7] Esau v. Smith Bros., 124 Neb. 217, 246 N. W. 230 (1933).

[8] United States Casualty Co. v. Hoage, (App. D. C. 1935) 77 F. (2d) 542; Alaska Packers Assn. v. Industrial Accident Commission of California, 294 U. S. 532, 55 S. Ct. 518 (1935).

[9] Pacific Employers Ins. Co. v. Industrial Accident Commission, 10 Cal. (2d) 567, 75 P. (2d) 1058 (1938), affirmed in 306 U. S. 493, 59 S. Ct. 629 (1939).

[10] United States Casualty Co. v. Hoage, (App. D. C. 1935) 77 F. (2d) 542.

[11] DeGray v. Miller Bros. Construction Co., 106 Vt. 259 at 277, 173 A. 556 (1933).

[12] The Texas commission would have determined that it had jurisdiction before it made the award. Further, it is quite likely that if application had been made for compensation in Illinois the courts there would have refused to take jurisdiction under their own law. Cole v. Industrial Commission, 353 Ill. 415, 187 N. E. 520 (1933); Biddy v. Blue Bird Air Service, 374 Ill. 506, 30 N. E. (2d) 14 (1940). However, the fact that an award had already been made under the Texas law would not in itself preclude the Illinois courts from making an award under their own law. Migue's Case, 281 Mass. 373, 183 N. E. 847 (1933); Salvation Army v. Industrial Commission, 219 Wis. 343, 263 N. W. 349 (1935); Anderson v. Jarrett Chambers Co., 210 App. Div. 543, 206 N. Y. S. 458 (1924); CONFLICTS RESTATEMENT, § 403 (1934).

[13] Solomon v. Call, 159 Va. 625, 166 S. E. 467 (1932); Betts v. Southern Ry., (C. C. A. 4th, 1934) 71 F. (2d) 787; Wintersteen v. National Cooperage & Woodenware Co., 361 Ill. 95, 197 N. E. 578 (1935). See also Reutenik v. Gibson Packing Co., 132 Wash. 108, 231 P. 773 (1924).