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## Liability of Employer Under Workmen's Compensation Act for Accidents Sustained by Employee on Way to or from Work

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## LIABILITY OF EMPLOYER UNDER WORKMEN'S COMPENSATION ACT FOR ACCIDENTS SUSTAINED BY EMPLOYEE ON WAY TO OR FROM WORK

The present discussion relates to the question of whether or not injuries sustained by an employee on his way to or from work are within the meaning of the terms "arise out of," and "in the course of" employment, as used in the workmen's compensation statutes. A majority of the acts require the accident to "arise out of *and* in the course of the employment," but in a few states the act is worded in the disjunctive, *or*.<sup>1</sup>

It is difficult to lay down a single rule governing all cases,<sup>2</sup> but the courts have generally recognized that an injury which occurs while an employee is on his way to and from work and away from the employer's plant, does not "arise out of and in the course of the employment."<sup>3</sup> To be sure, there have been a number of exceptions or glosses to the aforementioned doctrine, all of which may be classified into three groups: (1) where the employer contracts to and does furnish transportation to and from work;<sup>4</sup> (2) where the contract of employment contemplates expressly or impliedly the use of a road or other

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<sup>1</sup> Liability always depends upon the express wording of the statute, *Archibald v. Ott*, 87 S. E. 791, for while compensation laws abolished the defenses of contributory negligence (Section 3 of the Missouri Act pronounces liability "irrespective of negligence"), all of them, in some form, require that the injury shall have occurred "in the course of the employment." Others require that the injury must also "arise out of the employment." The Missouri statute contains the common phrase, "arising out of and in the course of the employment." But the statutes of a small minority of the states are worded in the disjunctive, *or*. Obviously, a statute in the disjunctive imposes greater liability on the employer, because accidents "arising out of" do not necessarily come within, "the course of" employment, the latter provision being far more precise *Rayner v. Sleigh Furniture Co.*, 180 Mich. 166, 148 N. W. 665. Consequently, if the accident occurred in the course of the employment, it is not necessary to show that it arises out of the employment, *Twin Peaks Co. v. Indiana Commission*, 57 Utah 589; *Utah Copper Co. v. Industrial Commission et al.*, 62 Utah 33, 217 P. 1105. Nevertheless, it should be remembered that although the act is intended to do benefit where the injury, under like or similar circumstances would not permit a recovery in an ordinary action at law, *In re Madden*, 222 Mass. 488, 111 N. E. 379, that does not amount to a justification for straining constructions to the point that they might amount ultimately to a type of judicial legislation counter to the very purposes of the act. It is obvious that the determination of the question whether an injury "arose out of and in the course of the employment" within the meaning of the act depends upon the facts of each case, viz., the place of the accident, the time with relation to starting or stopping work, the conditions of employment, and the risk peculiar to the employment itself, *Hills v. Blair*, 182 Mich. 20; *In re Fumiciello*, 219 Mass. 488, 107 N. E. 349.

<sup>2</sup> *Nesbitt v. Twin City Forge Co.*, 145 Minn. 286.

<sup>3</sup> *De Constantin v. Public Service Comm.*, 75 W. Va. 32, 832 S. E. 88; *In re Sundine*, 218 Mass. 1105.

<sup>4</sup> *London Indemnity Co. v. District Court*, 141 Minn. 348, 170 N. W. 218; *Littler v. Fuller*, 223 N. Y. 369, 119 N. E. 554; *Hackley Co. v. Industrial Commission*, 165 Wis. 586, 162 N. W. 921.

way;<sup>5</sup> and (3) where the employee is subject to emergency calls,<sup>6</sup> as in the case of firemen.<sup>7</sup>

The most recent enunciation of the general rule denying liability is found in *Harris v. Henry Cheney Hammer Corporation, et al.*,<sup>8</sup> decided in May, 1927. Harris, the night watchman, while hurrying to work, was killed by a train at a regular crossing, which most employees customarily used, near his place of employment, a few minutes after he should have been at work. In crossing, he might have used a bridge about a half mile up the track. The court found that even on the theory that he was hurrying to work in the interest of his employer, if the accident "arose out of his employment,"<sup>9</sup> it did not arise "in the course of his employment" and was therefore not compensable.<sup>10</sup> The judge in rendering his decision referred to the ruling in the *Cudahy Packing Co. v. Parramore*,<sup>11</sup> which the claimant had relied upon, and rejected it, distinguishing between the wording of the New York and Utah statutes.<sup>12</sup> This case will be treated presently.

The decisions in *Bigelow v. St. Regis Paper Co.*,<sup>13</sup> and *Corvi v. Stiles & Reynolds Brick Company*<sup>14</sup> are more in accordance with the spirit of the compensation statutes than the doctrine enunciated in *Harris v. Henry Cheney Hammer Corporation* which was outlined above. In the Bigelow case deceased was injured when struck by a train while on way to dinner along a route customarily used by employees. The court stated that going to and from dinner was an ordinary incident of the employment, and hence compensable.<sup>15</sup> A tone of liberality flavors the Corvi decision. The facts were that the employee was injured on returning from lunch while crossing railroad tracks at a point opposite the plant. In crossing, he had used a path which shortened the route from five to seven minutes from what it would have been had he used an overhead bridge farther up the way. The court stated that the use of the path, by shortening the route, added to the employee's comfort and diminished the likelihood of his being tardy at the plant, and so benefited the employer. Hence it was held a risk of the employment which "arose out of and in the course of the employment." But this liberal

<sup>5</sup> Littlefield's Case, 136 A. 724 (Me. 1927); *Domingez v. Pendoln*, 46 Cal. App. 220, 188 P. 1025; *Swanson v. Latham*, 92 Conn. 87, 101 A. 492.

<sup>6</sup> *Papinaw v. Grand Trunk R. Co.*, 189 Mich. 441, 155 N. W. 545.

<sup>7</sup> *Frankfort General Insurance Co. v. Conduitt*, 127 N. E. 212.

<sup>8</sup> 223 N. Y. S. 738, Supreme Court of New York, Appellate Division.

<sup>9</sup> Compare with English case of *Watson v. Sherwood*, 2 B. W. C. C. 462, where the judge stated: "I have not found a single case where an accident befalling the workman on his way to and from work, can be held to arise out of the employment." Also *Barbeary v. Chuggs*, 8 B. W. C. C. 37.

<sup>10</sup> *Matter of Lampport v. Siemons*, 235 N. Y. 311, 313; 139 N. E. 278, accord.

<sup>11</sup> *Cudahy Packing Company of Nebraska v. Mary Ann Parramore*, 263 U. S. 418, 68 Law Ed. 369.

<sup>12</sup> The New York statute is worded "arising out of and in the course of the employment" while the Utah statute is worded in the disjunctive.

<sup>13</sup> 179 App. Div., 555, 166 N. Y. S. 874. <sup>14</sup> 130 A. 674.

<sup>15</sup> The New York Statute is worded in the conjunctive, "arising out of an in the course of."

construction shifts the focus from the phrases "arising out of" and "in the course of" to the term *employment*, by basing the decision not upon a differentiation of the two terms, but upon a status effected when the relationship of employer-employee was consummated. By way of approval it might be added that the recent current of authority has been to take a broad conception of that term,<sup>16</sup> not as confined merely to the nature of the work, or the particular service, but as reaching out and embracing all of the conditions, obligations, and incidents of the employment.<sup>17</sup>

In many instances courts have given compensation statutes a very rigid construction under even a disjunctive wording of the act. In *Paulanski's Case*,<sup>18</sup> a Maine tribunal flatly denied compensation to an employee injured on the way to work. In the practically unsupported holding in *Jotieb v. Village of Chisholm*,<sup>19</sup> the same ruling was invoked, though it certainly is not within the spirit of the statute. There a teamster, while unhitching after driving home at noon, was kicked by a mule, and died as a result. The injury was held not to "arise out of or in the course of the employment." Inasmuch as the team had to be unhitched to be fed so that it could have the strength to haul the employer's heavy loads, it would have been more reasonable to hold that the injury at least "arose out of the employment." But the court based its finding on the fact that the accident did not occur within the hours of actual employment—and this despite the well settled rule that the period of employment is not confined to the period for which wages are paid.<sup>20</sup> *Sedlock v. Carr Coal Mining and Manufacturing Company*<sup>21</sup> denied compensation to an employee on his way home from work who was injured before he left the defendant's mine.<sup>22</sup> And

<sup>16</sup> *Donovan's Case*, 217 Mass. 76, 104 N. E. 431.

<sup>17</sup> In *Procaccino v. E. Horton & Sons, et al.*, 95 Conn. 408, 111 A. 594, the claimant's husband was at a railroad crossing on property in an industrial district not belonging to defendant. The court in awarding compensation deemed that deceased met the injury within the "course of his employment" because the private property was within the zone of employment, and all the dangers and perils incident to the use of this method of approach were perils incident to and arising out of the course of employment. See *Merlino v. Connecticut Quarries*, 93 Conn. 57, 104 A. 396. In *re Sundine*, *supra*, note 3, is enlightening. The claimant, Miss Sundine, was injured while upon stairs over which her employer had no right of control. The holding was, that despite the fact that she may have been a licensee or trespasser on another's property, the use of the stairway was contemplated by her employment. Yet by analogy a number of rulings denying compensation to employees injured on employer's railroad siding which belong to railroad company, *Harris v. Henry Cheney Hammer Corporation*, *supra*, are incompatible with this Massachusetts holding. Indisputably, however, argument by analogy in compensation cases is well-nigh valueless, *Kitchenbaum v. Steamship Johannesburg*, A. C. 417; 4 B. W. C. C. 311, for each case must be decided on all the facts and circumstances surrounding, *Paulanski's Case*, 135 A. 824 (January, 1927), which, of course, are as varied as human experience.

<sup>18</sup> *Paulanski's Case*, *supra*.

<sup>19</sup> 211 N. W. 579 (Minnesota).

<sup>20</sup> *Larke v. John Hancock Mutual Life Insurance Company*, 97 A. 320.

<sup>21</sup> 98 Kan. 680, 159 P. 9.

<sup>22</sup> This was based on a Kansas Statute (Laws of 1913) providing that: "The

*State ex rel. Miller v. District Court*<sup>23</sup> refused an award to a messenger boy who had climbed on a truck in returning to the office from a short trip for which car fare had not been furnished to him, holding that the injury did not even "arise out of the employment." However, the more recent decisions savor of liberality of construction and view, without going to extremes.<sup>24</sup>

*Cudahy Packing Co. v. Parramore, supra*, illustrates a more liberal construction of the disjunctively worded statute. The facts of this case are analagous to those in the *Harris v. Henry Cheney Hammer Corporation, supra*, and though it was decided under a different statute, the holding was not based so much on the particular disjunctive wording of the Utah Act, as on the spirit of the workmen's compensation act. In the Cudahy case, an employee was killed on way to work at a railroad crossing on a public highway, which furnished the sole means of access to the plant. Compensation was granted on a finding of *peculiar abnormal exposure*, and the award was upheld by both the Utah Supreme Court and the Supreme Court of the United States. This decision has been the subject of extended comment and criticism<sup>25</sup> in other compensation awards. However, it seems to be well founded in both reasoning and experience as well as in a sensible interpretation of the intention of the legislature in passing such an act. There is no question but what the law authorizes or permits a recovery for an injury to an employee going to or from work over private property under particular circumstances or surroundings.<sup>26</sup> Accordingly, there does not seem to be any logical reason why such liability should not exist in favor of a workman going to or returning from work over a public road under similar circumstances or surroundings.<sup>27</sup> Why should the employee's benefits rest upon the employer's property holdings? If liability does exist, it rests not on property rights, but because dangerous approaches are the only means of practical ingress or egress. Moreover, liability under these circumstances does not depend upon a differentiation of the terms, "arising out of" and "in the course of," but is founded upon the inferrable fact that the danger incident to crossing this railroad track was the result of a status<sup>28</sup> which the terms of employment effected. Courts must not lose sight of the fact that such a type of social legislation, for it certainly may be classified as such, rests upon an idea of status, upon a conception that the injured workman is entitled to compensation for an injury sustained in the service of an

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words arising out of an in the course of employment as used in this act shall not be construed to include injuries to the employee occurring while he is on his way to assume the duties of his employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence."

<sup>23</sup> 138 Minn. 326.

<sup>24</sup> Mayor etc., of Jersey City v. Borst, 90 N. J. Law 454, 101 A. 1033.

<sup>25</sup> Harris v. Henry Cheney Hammer Corporation, *supra*.

<sup>26</sup> Sedlock v. Carr Coal Mining Company, *supra*.

<sup>27</sup> See Procaccino v. E. Horton & Sons, *supra*.

<sup>28</sup> Justice Sutherland states this in part in the Cudahy decision.

industry to whose operation he contributes his work as the owner contributes his capital. Upon analysis, it may be seen that this idea of status is a perfectly sensible one, for if an accident is caused merely by a normal risk, say a use of the public highway similar to the use of the general public, it even does not "arise out of" the employment.<sup>29</sup> But where an employment makes a risk of crossing tracks several times daily imperative, it necessarily results in an exposure in excess of the common risk.<sup>30</sup> For this reason it seems logical to conclude that such an accident should be compensable, since the very course of the employment required an abnormal exposure, which, if not for the status of employment would not have existed.

So much for the general rule.<sup>31</sup> As to the exceptions enumerated in the beginning of this note, all are well-defined and comparatively well-settled. The first exception is that the employer is liable for injuries sustained on way to and from work, if he contracts to and does furnish transportation on way to and from work. *Fisher v. Tidewater*<sup>32</sup> is exemplary. Fisher, after quitting work, went to board a train to go to a certain ferry station on his way home. While attempting to board the shuttle car, provided for the employees by the employer, he was struck by a train of another railroad and killed. The method of furnishing such transportation was for the company to give tickets which were surrendered to the conductor as fare. It was held that the accident "arose out of and in the course of the employment." Here the injury did not happen while the employee was being transported, but while he was on his way to be transported. Apparently, however, this is a difference without a legal distinction.<sup>33</sup> A similar conclusion was reached in *Donovan's Case*,<sup>34</sup> one of the leading decisions, where one was employed cleaning out catch basins two miles from his home, and

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<sup>29</sup> *Boyd*, WORKMEN'S COMPENSATION, No. 486; *Harper*, WORKMEN'S COMPENSATION, No. 34; and *Bradbury*, WORKMEN'S COMPENSATION (2nd ed) p. 404.

<sup>30</sup> English cases instructive on this aspect are *Pierce v. Provident Clothing and Supply Company*, (1911) 1 K. B. 997, 27 Times L. R. 299; *Martin v. J. Lovibond & Sons*, (1914) 2 K. B. 227, 6 B. R. C. 466; *Andrew v. Tailsworth Industrial Society*, (1904) 2 K. B. 32; 20 Times L. R. 429.

<sup>31</sup> *Cudahy v. Parramore*, *supra*.

<sup>32</sup> 114 A. 150.

<sup>33</sup> The court in *Harrison v. Central Construction Corporation*, *supra*, said: "When the injury occurs before the beginning or after the termination of work there are two general rules applicable to the question as to whether it arose out of and in the course of the employment. The first is that an employee while on his way to work is not in the course of his employment. The second is that where the workman is employed to work at a certain place, and as a part of his contract of employment there is an agreement that his employer shall furnish him free transportation to and from work, the period of service continues during the time of transportation, and if an injury occurs during the course of transportation, it is held to have arisen out of and in the course of the employment." *Accord*: *Swanson v. Latham*, 92 Conn. 87, 101 A. 492; *Holmes v. Great Northern Railroad Company*, 2 Q. B. 409, 16 Times L. R. 412; *Litter v. Geo. A. Fuller Company*, 223 N. Y. 369, 119 N. E. 554; *Cremins v. Guest*, 24 Times L. R. 189, 1 B. W. C. C. 160; *Hackley-Phelps-Bonnell Company v. Industrial Commission*, 165 Wis. 586.

<sup>34</sup> 44 N. Y. S. 1115.

was injured while riding home, after his day's work in a wagon furnished by the employer to take employees to the barn if they wished to ride, it was held that a finding was justified that the injury arose out and in consequence of his employment. And in *State ex rel. London & L. Indemnity Company v. District Court*,<sup>35</sup> where it appeared that a salesman was injured while returning home from a business trip in an automobile furnished him by the company, it was held that a finding was justified that the injury occurred in the course of the employment.<sup>36</sup> The benefits of the workmen's compensation act were denied in *Greeley Norwood v. Telbio River Lumber Company*,<sup>37</sup> although the employee was on his employer's logging train, the basis of the holding being that the accident took place on a Sunday, a time when the employee owed no duty to his employer. But the foundation of the exception is nevertheless unaltered.

*Fox v. Rees*<sup>38</sup> illustrates the second exception<sup>39</sup> whereby the employer is bound to compensate if the contract of employment contemplates expressly or impliedly the use of a road or other way. The employee of a contractor doing work in an out-of-the-way place was struck by a train while walking to work along a railway which led to the plant and which was the usual way of reaching it. The court found that the employment involved the reasonable means, which the employee had adopted with the employer's sanction, of getting from the boundary of that which must, *in substance*, be treated as the employer's land, to the actual spot on that land where he did work. Here again the court in finding that the accident "arose out of and in the course of" the employment had to take refuge with a liberal interpretation growing out of the status of employment, overlooking the conjunctive phrase which has been the sore-spot for compensation decisions. There are a number of American decisions in accord. Outstanding among them are *Judson Manufacturing Company v. Industrial Accident Commission*,<sup>40</sup> *Fumiciello's Case*,<sup>41</sup> and *Schweiss v. Industrial Accident Commission*.<sup>42</sup>

<sup>35</sup> 141 Minn. 348, 170 N. W. 218.

<sup>36</sup> *The American Coal Mining Company v. Crenshaw* (Ind. A.), 133 N. E. 394, granting benefits to employees injured on way home, is more of a mooted case. The mining company entered into a contract with the railroad company by which the latter undertook as a private carrier to transport employees of the mining company between the mine and a certain place. Then it withheld a stated sum per month from the salary of employees who used the railroad. The fact that each employee paid the railroad company for each passage deserves legal consideration. In fact, if the court had decided the other way on this basis, it would have had strong grounds to stand on.

<sup>37</sup> 146 Tenn. 682, 244 S. W. 490.

<sup>38</sup> 115 L. T. N. S. (Eng.) 358 practically overrules the old rule in *Holmess v. Mackay* (1899), 2 Q. B. 319.

<sup>39</sup> *Hannold* in his work on *WORKMEN'S COMPENSATION*, Vol. I, No. 122, p. 453, states: "Where the injury has arisen through the workmen using special modes of access provided by their employers to enable them to go to or come from the actual place of employment, the courts have uniformly held that it arose out of the employment."<sup>40</sup> 181 Cal. 300, 184 P. 1.

<sup>41</sup> 219 Mass. 488, 107 N. E. 349. This case explains the operation of the ex-

The last exception to the general rule was invoked by a Michigan court in *Papinaw v. Grand Trunk Railroad Company*,<sup>43</sup> in a finding that an injury to a section foreman whose duties required him to be "on call" at night at his home, and on stormy nights to keep certain switches clear, "arose out of and in the course of the employment." The injury occurred when the deceased left home on a stormy evening to get out some reports which the fact of the storm necessitated. "Under the circumstances," said the court, "he was performing a duty in the line of his employment out of and in the course of which the accident which caused his death befell him."<sup>44</sup> *St. L., A. & T. Ry. Co. v. Welch*,<sup>45</sup> went still further and awarded compensation to an employee, not actually at work but at rest in a car on a siding, holding that an employee is always on duty and within the course of his employment if he is required to be at a certain place "on call" and ready for work—so long as he is at that place.<sup>46</sup>

In regard to the right of municipal firemen and policemen to recover under the workmen's compensation acts, there are two lines of holdings, but they depend upon the meaning of the words, "workmen," "employees," and "laborers," within the various acts.<sup>47</sup> If the fireman or policeman is held to be an officer of the city, and not an employee thereof, he cannot recover.<sup>48</sup> Most tribunals hold that the compensation statutes are not intended to apply to disciplined, trained individuals such as are supposed to comprise the police and fire departments, but to employees of private corporations or persons, the latter group in contemplation of law being laborers in the lexical sense.<sup>49</sup> In *McCarl v. Houston*,<sup>50</sup> a policeman was held to be an employee and a municipal corporation his employer, because the act included *inter alia* municipal corporations. This differentiation seems to be more logical and practical, that is, a differentiation on the basis of nature of employer rather than on the comparative skill of the employee.

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ception under discussion, explaining why it could not operate on the peculiar facts at hand.

<sup>43</sup>292 Ill. 90, 126 N. E. 566. In this case the claimant was permitted to show that the employee was using the way he had been accustomed to use for five years, which was also used by other employees, and that the employer made no objection to this mode of access. He also was entitled to show that there was no other convenient mode of access.

<sup>44</sup>189 Mich. 441, 155 N. W. 545.

<sup>45</sup>The court further stated that the accident occurred while he was doing that which a man so employed can reasonably do, and ought to do and was injured at a place on his employer's premises where his combined duties made it reasonable that he should be. <sup>46</sup>72 Tex. 298, 10 S. W. 529.

<sup>47</sup>In *Porritt v. Detroit United Railroad Company*, 199 Mich. 200, 165 N. W. 674, an injury to a fence-builder on way to work while answering employer's emergency call was held to arise "out of and in the course of" the employment.

<sup>48</sup>*Devaney's Case*, 223 Mass. 270, 111 N. E. 788.

<sup>49</sup>*McDonald v. New Haven*, 109 A. 176.

<sup>50</sup>In *Griswold v. Wichita*, 99 Kan. 502, 162 P. 576, an amendment of the Workmen's Compensation Act, extending its application to "county and municipal work," was held not to extend to a police captain.

<sup>51</sup>263 P. 1.



The three exceptions above referred to, it should be noted, apply only to the conjunctive wording of the act, the reason being that the more inclusive scope of the disjunctive term would *ipso facto* include these exceptional situations in one of the component phrases. But an analysis of decisions based on the conjunctive wording of the statute shows a conscious effort on the part of tribunals to exclude as a contributing proximate cause injuries which cannot be fairly traced to the employment.<sup>51</sup> This is based on the theory that causative dangers entitling compensation should be peculiar to the specific employment, and not common to the entire neighborhood. As the court said in *Lena Kraft v. West Hotel Co.*,<sup>52</sup> "The danger must be incidental to the character of the employment, and not wholly independent of the relation of master and servant."

The fact that a person, in going to work, is compelled to use the streets in a certain dangerous district where accidents are more likely to occur does not justify an exception to the general rule, nor does the fact that if it were not for the location of employer's plant, the servant would not use this particular "risk-street" in going to and from work. The holding in *Brown v. Decatur*<sup>53</sup> is directly in point: "The cause of the injury must be a risk or exposure incidental to the employment and not common to the general public, regardless of the nature of the fact of employment; or, the risk being common to the general public, the employee must have been exposed to it in a greater degree than other persons by reason of his employment."<sup>54</sup> To make the argument more persuasive, it is not enough for the injured servant to say: "The accident would not have happened if I had not been engaged in that employment, and if I had not been in that particular place." He must go further and say, "The accident arose because of something I was doing in the course of my employment, or because I was exposed, by the nature of my employment, to some peculiar danger."

Generally, the relation of master and servant may extend beyond the hours of the servant's actual labor, and even to places other than the premises on which he is employed. Thus recovery is not precluded by the fact that the employee actually was not on the premises proper;<sup>55</sup> tho the protection of the law does not extend, except by special contract, beyond the locality or vicinity of the place of labor.<sup>56</sup> And the

<sup>51</sup> *De Constantin v. Public Service Commission*, *supra*.

<sup>52</sup> 193 Ia., 1288.

<sup>53</sup> 188 Ill. A. 147; *Accord*: *Zabriskie v. Erie Railroad Company*, 86 N. J. L. 266.

<sup>54</sup> *Accord*: *Union S. Mfg. Company v. Davis*, 64 Ind. App. 227.

<sup>55</sup> *Munn v. State Industrial Board*, 24 Ill., 70, 113 N. E. 110.

<sup>56</sup> *Hills v. Blair*, 182 Mich. 20, 27; 148 N. W. 243. This decision considered a claim of compensation for one Hill, a track worker, who was killed on the way home to eat dinner, while walking on his employer's tracks at a point considerably distant from where he left his section gang. The Michigan court, in denying compensation said in part: "One of the tests sometimes applied is whether the workman is still on the premises of his employer. This, while often a helpful consideration, is *by no means* conclusive. A workman might be

period of employment is not confined to the period for which wages are paid; for courts have not refused compensation without justifying the holding on some other ground as well.<sup>57</sup>

In conclusion it might be said that an injury incurred by a workman in the course of his travel to his place of work (and not yet on the premises of the employer) does not give him a right to participate in the compensation fund, unless the place of injury was in some way brought within the scope of employment by either an express or implied requirement in the contract of employment, or unless it appears that the injury would not have occurred if not for the employer-employee relationship.

ABRAHAM E. MARGOLIN, '29.

## Comment on Recent Decisions

### CONTRACTS—ACCEPTANCE—NECESSITY FOR KNOWLEDGE OF OFFER OF REWARD.—

The plaintiff seeks to recover a reward offered by the Arkansas Bankers' Association for the arrest and conviction of any person burglarizing or attempting to burglarize by forcible and violent breaking and entering any member bank of the association. The plaintiff has complied with the terms of the offer in so far as he has apprehended the thief and brought about his conviction, but he admits he had no knowledge of the reward at the time of the arrest and that his motives were not actuated by the offer. *Held*, that without knowledge of the offer the plaintiff was not entitled to recover. *Arkansas Bankers' Association v. Lignon*, 295 S. W. 4. (Ark., 1927.)

Although the decisions on this subject are in hopeless conflict the case seems to be supported by both the weight of authority and reason. The liability for a reward of this kind must be created, if at all, by contract (*Broadnax v. Ledbetter*, 100 Tex. 375, 91 S. W. 1111). Being a contractual liability it can only arise when there is a complete contract, a meeting of minds; and a contract of this species cannot be said to be complete unless there is both an offer and an acceptance thereof, either express or implied. (23 R. C. L. 1117). Therefore it would seem that the better rule is expressed in those cases holding that full knowledge of a reward and an intention to claim it at the time of performance of the specified services are essential to the right to recover the same. See *Morrell v. Quarles*, 35 Ala. 544; *Hewitt v. Anderson*, 56 Cal. 476; *Wilson v. Stump*, 103 Cal. 255, 37 Pac. 151; *Marvin v. Treat*, 37 Conn. 96; *Elkins v. Wyandotte County*, 86 Kan. 305; *Taft v. Hyatt*, 105 Kan. 35, 180 Pac. 213; *Ensminger v. Horn*, 70 Ill. App. 605; *Williams v. W. Chicago St. Ry.*, 191 Ill. 610, 61 N. E. 456; *Fidelity Co. v. Messer*, 112 Miss. 267, 72 So. 1004; *Smith v. Vernon*, 188 Mo. 501; *Howland v. Lounds*, 51 N. Y. 604; *Fitch v. Snedacker*, 38 N. Y. 248;

on the premises of another than his employer, or in a public place, and yet be so close to the scene of his labor, within its zone, environment, and hazards, as to be in effect at the place, and under the protection of the act, which, on the other hand, as in case of a railway stretching endless miles across the country, he might be on the premises of his employer, and yet far removed from where his contract of labor called for."

"*Larke v. John Hancock Mutual Life Insurance Company*, *supra*. *De Mann v. Hydraulic Engineering Company*, 159 N. W. 380.