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Workmen's Compensation - Applicability of Louisiana Act to Foreign Employments and Injuries

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Apparently, this is to be interpreted as meaning that entire control of traffic is to be vested in the state, and in the state is the power to delegate to, or withhold from, municipalities any specific authority.[24]

Local authorities are empowered by the statute to regulate traffic by ordinance providing for special devices, such as lights and semaphores.[25] This provision clearly would include special signs establishing "through" and "stop" streets; but it would not include ordinances setting off unmarked streets as having a right of way. In this latter instance the matter of right of way would probably be held subject to the paramount jurisdiction of state statutes in point.

However, the minority rule might be upheld by a liberal interpretation of the City Charter of Baton Rouge which reads in part,

> "The council shall have the power to enact all laws and ordinances necessary for the general welfare of said corporation, and the inhabitants thereof; and to this end, the council is specially empowered to pass ordinances."[26]

Nevertheless, when and if the problem is squarely presented in Louisiana, the supreme court will probably conform to the view that the purpose of the statute is to establish a consistent general scheme to control traffic and, under Louisiana Act 286 of 1938, declare any conflicting ordinance invalid.

B. N. H.

WORKMEN'S COMPENSATION—APPLICABILITY OF LOUISIANA ACT TO FOREIGN EMPLOYMENTS AND INJURIES—Plaintiff, a resident of Louisiana, was employed by the defendant Petroleum Company to work in its Louisiana fields and was later released because of lack of work. Subsequently, being advised of work in a Texas field, plaintiff reported to defendant's Lake Charles office and was sent to work in Texas. Plaintiff was injured in the course of this Texas employment. Defendant reported the accident to the Industrial Accident Board of Texas, and plaintiff was awarded compensation, which continued until his present attorneys filed a claim under the Louisiana Workmen's Compensation Act. The

24. Loewemberg v. Fidelity Union Casualty Co., 147 So. 81 (La. App. 1933), which expressed the California rule, supports this interpretation.
25. La. Act 286 of 1938, tit. II, § 3, Rule 20 [Dart's Stats. (1939) § 5225].
26. [Dart's Stats. (1939) § 6044].

Louisiana court found that the contract was made in Louisiana and concluded that the parties had intended to be governed by the Louisiana act. *Held,* that the Louisiana act is applicable and the proceeding in Texas, whose act was also applicable, was not res judicata. The fact that plaintiff accepted benefits under the Texas act did not operate as an estoppel. *Hunt v. Magnolia Petroleum Company,* 10 So. (2d) 109 (La. App. 1942).[1]

The Louisiana Workmen's Compensation Act is contractual in nature.[2] It is expressly stated that the act does not apply to any employer or employee unless prior to the injury they have so elected by agreement, either expressed or implied.[3] However, unless otherwise stipulated, most contracts of employment executed in Louisiana are construed as tacitly accepting the provisions of the act.[4] Since the Louisiana act is elective, it is sometimes difficult to ascertain whether or not it should be applied in a particular case; and for that reason an evaluation of the various factors that determine the applicability of the Louisiana act will be the purpose of this case note.[5]

Although the Louisiana act may be applied to contracts made in another state,[6] its primary object is to protect Louisiana contracts,[7] and it may be given extra territorial effect for that purpose.[8] In one case, the court indicated that the act applies to all Louisiana contracts executed by residents of this state.[9] But in

1. La. Const. of 1921, Art. 7, § 10, provides that suits under any state or federal Workman's Compensation Law or Employer's Liability Act will not be appealable to the supreme court. Thus, decisions of the courts of appeal are final unless the supreme court reviews the case in exercise of its supervisory power.

2. See Labourdette v. Doullut Co., 156 La. 412, 100 So. 547 (1924); Legendre v. Barker, 5 La. App. 618 (1927); Burson v. Ohio Oil Co., 6 La. App. 739 (1927); Dourrieu v. Board of Commissioners of Port of New Orleans, 158 So. 581, 584 (La. App. 1935).

3. La. Act 20 of 1914, § 3, as last amended by La. Act 85 of 1926, § 1 [Dart's Stats. (1939) § 4393]. Philps v. Guy Drilling Co., 143 La. 951, 79 So. 549 (1918).

4. La. Act 20 of 1914, § 3, as last amended by La. Act 85 of 1926, § 1 [Dart's Stats. (1939) § 4393].

5. The most important factors are the place of execution of the contract of employment, the location of the industry of the employer, the place of the principal employment and the place where the injury occurs.

6. See McKane v. New Amsterdam Casualty Co., 199 So. 175, 180 (La. App. 1940).

7. Hargis v. McWilliams Co., 9 La. App. 108, 109, 119 So. 88, 89 (1928).

8. Festervand v. Laster, 15 La. App. 159, 130 So. 634 (1930); Selser v. Bragmans Bluff Lumber Co., 146 So. 690 (La. App. 1933).

9. Selser v. Bragmans Bluff Lumber Co., 146 So. 690 (La. App. 1933). A Louisiana corporation employed a Louisiana citizen in Louisiana to work in Nicaragua where the injury occurred and the Louisiana act was applied. The court stated, "we are of the opinion that the Compensation Statute should be given extra-territorial effect in the instant case because the contract was

Durrett v. Eicher-Woodland Lumber Company,[10] where the employer's industry, the employment and the injury were all in Mississippi, the Louisiana act was not applied despite the fact that the contract of employment was executed in Louisiana. In all cases where the Louisiana act has been applied, the contract of employment was executed in this state;[11] but that fact alone does not make recovery under the act possible.[12]

"The location of the industry is important,"[13] but it does not necessarily determine the applicable compensation act.[14] Similarly, the place of employment is of some consequence,[15] yet in three cases[16] where the employment was in other states, the Louisiana act was applied. The dictum in *Watts v. Long*[17] to the effect that where the place of employment is not the same as the place of execution of the contract the former will govern. Although apparently accepted without limitation in the *Durrett* case,[18] this dictum has been limited to permanent employment in one case[19] and rejected entirely in several others.[20]

The place where the injury occurs is of no importance in

10. 19 La. App. 494, 140 So. 867 (1932). Accord: Watts v. Long, 116 Neb. 656, 218 N.W. 410, 59 A.L.R. 728 (1928). In the *Durrett* case it was stressed that the employer's industry was in Mississippi, whereas in the *Selser* case the employer's industry was located in Louisiana. The cases may be distinguished in this manner.

11. Hargis v. McWilliams Co., 9 La. App. 108, 119 So. 88 (1928); Festervand v. Laster, 15 La. App. 159, 130 So. 634 (1930); Selser v. Bragmans Bluff Lumber Company, 146 So. 690 (La. App. 1933); McKane v. New Amsterdam Casualty Co., 199 So. 175 (La. App. 1940).

12. Durrett v. Eicher-Woodland Lumber Co., 19 La. App. 494, 140 So. 867 (1932).

13. Durrett v. Eicher-Woodland Lumber Co., 19 La. App. 494, 501, 140 So. 867, 871 (1932).

14. McKane v. New Amsterdam Casualty Co., 199 So. 175 (La. App. 1940). The employer's industry was in Illinois but the Louisiana act was applied.

15. Durrett v. Eicher-Woodland Lumber Co., 19 La. App. 494, 140 So. 867 (1931); Abood v. Louisiana Oil Refining Co., 155 So. 484 (La. App. 1934).

16. Hargis v. McWilliams Co., 9 La. App. 108, 119 So. 88 (1928); Festervand v. Laster, 15 La. App. 159, 130 So. 634 (1930); Selser v. Bragmans Bluff Lumber Co., 146 So. 690 (La. App. 1933).

17. 116 Neb. 656, 218 N.W. 410, 59 A.L.R. 728 (1928).

18. Durrett v. Eicher-Woodland Lumber Co., 19 La. App. 494, 140 So. 867 (1931).

19. See McKane v. New Amsterdam Casualty Co., 199 So. 175, 182 (La. App. 1940), where it stated that from the opinions expressed in the *Durrett* and *Abood* cases, the judges of the second circuit court of appeals accept the view that "if the parties contemplate that the job will be of a permanent nature, then the law of the place of performance will govern. If, on the other hand, the work is of a temporary or transient nature, the law of the place where the contract was made will be applied."

20. Hargis v. McWilliams Co., 9 La. App. 108, 119 So. 88 (1928); Festervand v. Laster, 15 La. App. 159, 130 So. 634 (1930); Selser v. Bragmans Bluff Lumber Co., 146 So. 690 (La. App. 1933).

itself[21] because recovery is not had on the theory that a tort has been committed.[22] Even if the act expressly purported to be a substitute for tort liability, the mere fact that the injury occurred in this state would not be sufficient to render it applicable.[23]

In a recent case,[24] the Orleans Court of Appeal held that the intention of the parties must determine what act is applicable, and in so determining all of the factors and circumstances must be taken into consideration. In the instant case the court of appeal also employs that approach to a limited extent.[25]

A summary of the applicability of the Louisiana act is difficult, and a limited recognition of the so-called "intent" theory in the present case does not aid in clarification. Several pertinent observations may be made, however. The bare fact that the contract was executed in Louisiana does not render our act applicable;[26] but the execution of the contract, plus the presence of any other factor, should be sufficient to bring the case within the Louisiana act.[27] If other important factors are localized here, the Louisiana act may be applicable even though there was no Louisiana contract of employment.[28] No recovery can be had under the Louisiana act where neither the injury occurred nor the contract of employment was executed in this state.[29]

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entered into in the state of Louisiana between residents of the state and relief is sought in the courts of this state." (146 So. 690, 696.)

21. The act has been applied although the injury did not occur in Louisiana. See cases cited supra note 20.

22. Dourrieu v. Board of Commissioners of Port of New Orleans, 158 So. 581, 584 (La. App. 1935).

23. Bradford Electric Light Co. v. Jennie M. Clapper, 286 U. S. 145, 52 S. Ct. 571, 76 L.Ed. 1026 (1932) recognized the general rule that the law governing a tort suit is the law of the place where the injury occurred; but the United States Supreme Court held that New Hampshire's Workmen's Compensation Act, even if it is a substitute for the action in tort, is not applicable simply because deceased was injured in New Hampshire.

24. McKane v. New Amsterdam Casualty Co., 199 So. 175 (La. App. 1940).

25. Hunt v. Magnolia Petroleum Co., 10 So. (2d) 109, 112 (La. App. 1942).

26. Durrett v. Eicher-Woodland Lumber Co., 19 La. App. 494, 140 So. 867 (1932).

27. Louisiana act held applicable, where the contract was executed and the industry located in Louisiana. Hargis v. McWilliams Co., 9 La. App. 108, 119 So. 88 (1928); Festervand v. Laster, 15 La. App. 159, 130 So. 634 (1930); Selser v. Bragmans Bluff Lumber Co., 146 So. 690 (La. App. 1933). In McKane v. New Amsterdam Casualty Co., 199 So. 175 (La. App. 1940) the contract was probably executed in Louisiana where the employment was to be performed and where the injury occurred and the act was again applied. No case was found where the contract and the injury were the only factors occurring in Louisiana.

28. See McKane v. New Amsterdam Casualty Co., 199 So. 175, 180 (La. App. 1940).

29. American Law Institute, Restatement of the Law of Conflict of Laws (1934) 488, § 400. Durrett v. Eicher-Woodland Lumber Co., 19 La. App. 494,

It is not essential that the industry be located in Louisiana[30] nor that the employment be performed here;[31] however, the effect of the absence of both of these important factors is somewhat conjectural.[32] The presence of both of these factors without more would not probably result in the act being applicable.[33]

The *McKane* case[34] and the instant case[35] indicate a new approach to the problem. They declare that the Louisiana act is applicable only if the parties so intend. This is not as revolutionary a change of approach as it might appear at first blush. In determining the "intent of the parties," the courts will continue to look to the factors which previously controlled, namely, the place where the contract of employment was executed, the place where the employer's industry was located, the place where the employment was to be performed, and the place where the injury occurred. Actually the courts are merely adding one step to their process of reasoning. Previously they would use these factors to determine if the act was applicable, whereas now, they use them to ascertain if the parties intend the act to be applicable. However, residence of the parties, ignored in earlier cases,[36] is taken into consideration in both of these recent decisions.[37] Ap-

507, 140 So. 867, 869 (1932): "We think the location of the industry where plaintiff was to perform the services has more to do with his right of recovery than the place where he was employed." This statement, although indicating that the act would be applicable even though there was neither a Louisiana contract nor the occurrence of the injury here, does not show a departure from the rule because the injury was sustained where the industry was located. The injury being present, the rule of the American Law Institute, supra, is complied with.

30. McKane v. New Amsterdam Casualty Co., 199 So. 175 (La. App. 1940).

31. Hargis v. McWilliams Co., 9 La. App. 108, 119 So. 88 (1928); Festervand v. Laster, 15 La. App. 159, 130 So. 634 (1930); Selser v. Bragmans Bluff Lumber Co., 146 So. 690 (La. App. 1933).

32. Louisiana would have a sufficient interest to apply its act without violating the United States Constitution. Alaska Packers Association v. Industrial Accident Commission of California, 294 U.S. 532, 55 S.Ct. 518, 79 L.Ed. 1044 (1935). Durrett v. Eicher-Woodland Lumber Co., 19 La. App. 494, 140 So. 867 (1932), indicates that the Louisiana act would not be applicable in such a situation. The court states that the act is not applicable to a nonresident employer (who does no business in the state) where the services are to be performed in another state. But see dicta to the effect that the Louisiana act would be applicable. Hargis v. McWilliams Co., 9 La. App. 108, 110, 119 So. 88, 89 (1928); Selser v. Bragmans Bluff Lumber Co., 146 So. 690, 696 (La. App. 1933); McKane v. New Amsterdam Casualty Co., 199 So. 175 (La. App. 1940).

33. American Law Institute, Restatement of the Law of Conflict of Laws (1934) 488, § 400.

34. McKane v. New Amsterdam Casualty Co., 199 So. 175 (La. App. 1940).

35. Hunt v. Magnolia Petroleum Co., 10 So. (2d) 109 (La. App. 1942).

36. But see Selser v. Bragmans Bluff Lumber Co., 146 So. 690, 696 (La. App. 1933) where it was mentioned.

37. McKane v. New Amsterdam Casualty Co., 199 So. 175, 182 (La. App. 1940): "the court should examine all of the facts and circumstances of the

parently, the court will not categorically presume that the parties intended either the law of the place of the execution of the contract or of the place of the employment to govern their contract;[38] but it will take into consideration *all of the various factors* as tending to show the intent of the parties. The applicability of the act to any particular case will depend upon its peculiar facts. The place of the contract, the place of the employment and the place of the industry of the employer will still be of prime importance. The place of the injury and the residence of the parties, although of comparatively slight importance, will also be considered.

An additional procedural point in the decision is worthy of mention. The Louisiana court accepted the prevailing view in overruling the pleas of res judicata and estoppel. Proceedings may be brought in a state under its applicable Workmen's Compensation Act, although the act of another state also is applicable.[39] The fact that an award was made under the act of another state does not bar a subsequent proceedings, but a credit is allowed for the amount already received.[40] In this case credit was voluntarily given.

J. C. W.

WORKMEN'S COMPENSATION—RIGHT OF PERSONS NOT DEPENDENT TO RECOVER IN TORT—An employee was injured while in the course of employment, and died thirteen hours later as a result of having been burned and scalded by steam and hot water emanating from a defective stationary engine. Plaintiffs, a brother and sister, not dependents, but sole heirs of their brother, brought this action to recover damages *ex delicto* under Article 2315 of the Civil Code. The court *held* for the defendants saying that a contract of employment to do hazardous work is governed exclu-

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case with reference to the nature of the work to be done, the place of performance, the domicile of the parties, etc.—all with a view of discovering the true intent of the parties." Hunt v. Magnolia Petroleum Co., 10 So. (2d) 109, 112 (La. App. 1942): "and his proven intention not to reside permanently in the State of Texas where the last job was to be performed."

38. In contracts generally, the majority of the courts of the United States, while also seeking the intention of the parties, indulge in presumptions as to the place intended. It is usually presumed that the place of performance is intended. Cf. Stumberg, Principles of Conflicts of Laws (1937) 209.

39. American Law Institute, Restatement of the Law of Conflict of Laws (1934) 489, § 402.

40. Id. at 489, § 403.