Are Workmen's Compensation Cases Triable in Federal District Courts?

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It can be fairly estimated that the legal profession as a whole is now realizing nearly one-half of its annual gross revenue from handling matters before state and federal administrative agencies. This percentage probably will not decrease greatly even after the complete removal of wartime restrictions and regulations.

It is evident that administrative law is of rapidly increasing importance. The reasons for the passage of the recent Administrative Procedure Act,' emphasize the need for uniform federal review of the mass of federal administrative orders.

Most lawyers primarily trained in courthouse procedure want to know: Will state courts review state administrative orders? Will federal courts review federal administrative orders? Will federal courts review state administrative orders?

A fairly recent United States Supreme Court case has squarely raised the question of judicial review of the orders of state administrative bodies by federal district courts. Unfortunately, the case leaves its own inquiry open.

It is the dissenting opinion of Mr. Justice Frankfurter in Burford v. Sun Oil Company which has posed the question:

“This is not just an isolated case. To order the dismissal of this litigation, on this record and in the present state of the Texas law, is not merely to decide that the federal court in Travis County, Texas, should no longer entertain suits brought under the Texas conservation laws. We are holding, in effect, that the enforcement of state rights created by state legislation and affecting state policies is limited to the state courts. It means, candidly, that we should re-examine all of

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† Part-time member of faculty, Southern Methodist University School of Law. Legal Department, Safety Casualty Company and Magnolia Petroleum Company.
the cases—and there have been many—since the Reagan decision almost half a century ago. Do we not owe it to the lower federal courts, for example, to tell them where a case like Texas Pipe Line Co. v. Ware, 8 Cir., 15 F. 2d 171, now stands? In that case the federal court entertained a suit to enforce rights arising under a state workmen's compensation law. Would it be error for a federal judge to do so today?" (Italics supplied.)

An answer to the question of Mr. Justice Frankfurter invites an inquiry into the whole field of judicial review of administrative orders, but it is thought that a study of the underlying principles of one tract will give a clearer concept of the entire problem. It so happens that workmen's compensation orders afford an ideal cross-section of state boards and commissions involved in federal judicial review because the order allowing or disallowing compensation is usually made by an administrative board frequently exercising a combination of administrative, executive, judicial and legislative powers.

This discussion of the circumstances under which workmen's compensation cases may be triable in federal district courts has been approached first, from the standpoint that federal jurisdic-


Texas Pipe Line Co. v. Ware, 15 F.(2d) 171 (C.C.A. 8th, 1926), cert. denied 273 U. S. 742, 47 S.Ct. 335, 71 L.Ed. 869 (1926), was a case originally filed in an Arkansas state court but which was removed by the defendant to the Federal District Court. The action sought workmen's compensation based on the Louisiana statutes. The lower federal court allowed this compensation on the ground that the Louisiana statutes could be enforced in the courts of a foreign jurisdiction. The Eighth Circuit Court of Appeals held, and certiorari was denied, that the trial court rightly proceeded to try the case in Arkansas under Louisiana's compensation statutes.

The Reagan case, mentioned by Mr. Justice Frankfurter's dissent, is the case of Reagan v. Farmers' Loan & Trust Co., 154 U. S. 362, 14 S.Ct. 1047, 38 L.Ed. 1014 (1894). In this dissent, Mr. Justice Frankfurter said of the Reagan case: "On April 3, 1891, the Texas Legislature enacted a statute creating the Texas Railroad Commission. Section 6 provided that suits to set aside Commission orders could be brought 'in a court of competent jurisdiction in Travis County, Texas.' Acts Tex. 1891, c. 51, Vernon's Ann. Civ. St. Tex. Art. 6453. And naturally enough the question soon arose whether this provision prevented review in the federal court sitting in Travis County." (319 U. S. 315, 342, 63 S.Ct. 1098, 1111, 87 L.Ed. 1424, 1439.) In allowing federal review the Supreme Court of the United States, by unanimous decision in 1894, held in the Reagan case: "The language of this provision (Section 6 of the 1891 statute) is significant. It does not name the court in which the suit may be brought. It is not a court of Travis County but in Travis County. The language, differing from that which ordinarily would be used to describe a court of the state, was selected, apparently, in order to avoid the objection of an attempt to prevent the jurisdiction of the federal courts." (154 U. S. 362, 392, 14 S.Ct. 1047, 1052, 38 L.Ed. 1014, 1021.)
tion requires that the remedy provided under the state laws be judicial in nature and not administrative in character; second, from the proposition that the jurisdiction to be exercised by the federal court must be original jurisdiction and not a mere attempt at an appeal from workmen's compensation boards exercising either judicial or administrative functions; third, from the premise that federal jurisdiction may be affected by jurisdictional and venue provisions prescribed by the state in its constitution or statutes; fourth, by an analysis of the ways in which workmen's compensation cases may be filed in the federal district court and the problems incident to the obtaining of federal jurisdiction; fifth, by an examination of extraterritoriality and conflict of laws in workmen's compensation cases in the federal courts; sixth, from the possibility that the development of rule making powers by workmen's compensation commissions may affect the jurisdiction of federal courts; and seventh, from the postulate of the inapplicability of the doctrine of abstention to workmen's compensation cases which would have been on the law docket prior to the adoption of the present federal rules of civil procedure. It will be assumed that there is a proper diversity of citizenship and that an amount of over three thousand dollars is involved.

I. THE REQUIREMENT THAT THE PROCEEDINGS BE JUDICIAL, NOT ADMINISTRATIVE

To be cognizable by a federal court, a proceeding must be a "case or controversy" as distinguished from the exercise of legislative power or the exercise of a purely administrative function. The distinction between administrative and judicial tribunals does not rest in the nature of the judicial function, but in the manner in which that function is applied. The fact that the proceeding is carried on in a "court eo nomine" is not enough; this


body must be invested with judicial functions, and the proceed-
ings before it must have the elements of a judicial controversy; 6 that, adversary parties and an issue to be determined in which
the claim of one party is stated and answered in some form of
pleading. 7 The federal courts are not precluded from taking jur-
isdiction by a decision of the state court that the proceedings are
administrative, 8 but the state decisions are entitled to serious
consideration. 9 Whether federal courts will try workmen's com-
penation cases arising under state statutes, therefore, necessi-
tates the inquiry of whether the review provided for orders of
workmen's compensation commissions or industrial accident
boards is judicial in character, since the federal district court
will not take jurisdiction of proceedings originating before admin-
istrative boards unless the question involved presents itself as a
"case" of judicial cognizance. The constitutionality of compen-
sation acts, the doctrine of extraterritoriality, injuries occurring
on navigable waters, injuries occurring in interstate commerce,
and injuries occurring on land owned by the federal government
present examples of the problems arising where the federal
courts take jurisdiction and federal supremacy can no longer be
questioned. 10

The question as to the manner in which the order of the
compensation board is reviewed will lead in turn to an inquiry
into the separation of powers of the state government as declared
in its constitution and statutes and in order to ascertain the
source, scope and nature of the authority of the compensation
board. The separation and distribution of state power is a ques-
tion for the state itself. 11 There is nothing to hinder the state, in-
sofar as the federal constitution is concerned, from dividing gov-

L.Ed. 364 (1922). This definition was given in Prentis v. Atlantic Coast Line
Co., 211 U.S. 210, 229, 29 S.Ct. 67, 69, 53 L.Ed. 150, 158 (1908): "A judicial in-
quiry investigates, declares, and enforces liabilities as they stand on present
or past facts and under laws supposed to exist. That is its purpose and end."
364 (1922).
(1890). See 3 Moore, Federal Practice (1938) § 101.03.
10. Horovitz, Federal Supremacy in Five Workmen’s Compensation Prob-
L.Ed. 835 (1937); Crowell v. Benson, 285 U.S. 22, 52 S.Ct. 283, 76 L.Ed. 508
(1931). If jurisdiction is present otherwise, however, the federal courts will
even inquire into state constitutional questions of separation of powers and
delegation of authority. Red "C" Oil Manufacturing Co. v. Board of Agricul-
ture, 222 U. S. 390, 32 S.Ct. 152, 56 L.Ed. 240 (1911).
ernmental powers among more or less than the traditional three departments of government. Neither is there any substantial federal question raised merely because of a delegation of authority to or a blending or commingling of powers among state agencies. Some states, in fact, have provided for a blending of some governmental powers. Some state constitutions expressly authorize courts to exercise administrative power, while in other state constitutions, administrative power, as such, is impliedly excluded.

Administration is not capable of close definition because it may overlap both the legislative field and the judicial field. But the workmen's compensation board is definitely not of a legislative character and it is not exercising a delegated legislative function in passing upon claims for workmen's compensation. Neither is the board ordinarily executive in character. Most boards administering workmen's compensation by passing upon claims for compensation in the first instance provide themselves with a seal, issue notices and process, summon witnesses, administer oaths, conduct hearings, take testimony and have it transcribed, weigh evidence, make rulings on law and facts, and render awards which may be enforced in the regular courts. Some compensation boards have been held to exist primarily for the adjudication of controversies arising between parties over the payment of compensation under the compensation act, and complete judicial weight is given to the decisions of the board. Where the constitution and statutes have not set up the workmen's compensation board or commission as a court, the agency is substantially administrative in its nature, although it is frequently vested with some legislative, judicial and executive functions. Such boards, while exercising predominantly administrative powers, render awards which by statute become justiciable in the courts after rendition. In those few states in which no

15. Harmon v. State, 66 Ohio St. 249, 64 N.E. 117 (1902).
16. See Green, Separation of Governmental Powers (1920) 29 Yale L.J. 369, 374.
board or commission is provided for the administration of compensation acts, the right and remedy are completely judicial in nature.

II. THE REQUIREMENT THAT THE JURISDICTION MUST BE ORIGINAL, NOT APPELLATE

Section 1, Article III, of the Constitution of the United States provides that the judicial power shall be vested in one Supreme Court and in such inferior courts as Congress may establish. By Section 2 of Article III the judicial power shall extend to certain cases and controversies. As we have seen, the federal courts will take jurisdiction only if the case or controversy is judicial and the federal courts will not take jurisdiction if the case or controversy is merely administrative. The federal district court is a "legislative" court and as such has original jurisdiction of judicial cases and controversies only.19

Assuming that the jurisdiction of the federal district court is invoked as a court of original jurisdiction, and assuming that no equitable principles are involved, but the suit is merely for a sum of money as compensation with the defenses limited to such matters as scope of employment, accidental injury, extent of injury, duration of injury, wage scale, et cetera, the state statute creating workmen's compensation will largely determine whether or not a United States district court will try a workmen's compensation insurance case.20 In most states the claim is first presented to some sort of an administrative board for a hearing and an award. While some state statutes designate the suit brought

20. Exemplary damages are distinct from the ordinary claim for workmen's compensation and therefore are not subject to prior presentation before administrative boards before suit can be brought thereon in a federal court: Martin v. Consolidated Casualty Ins. Co., 138 F.(2d) 896 (C.C.A. 5th, 1943). Questions involving splitting of these causes of action, survival in death cases, res judicata where the claim for workmen's compensation is denied or sustained and the proportion which exemplary damages must bear to actual damages are all beyond the scope of this article.

So, in Oklahoma, actions involving deaths are not compensable [Okl. Stat. Ann. (1938) tit. 85, § 121], and no bar exists to trying such cases in federal courts, assuming other jurisdictional facts. The same is true of accidents in certain fields not defined as hazardous [id. at § 2].

Subrogation claims arising out of workmen's compensation payments are likewise not dealt with herein.

All states now, except Mississippi, have enacted some sort of workmen's compensation laws.
after the administrative award as an “appeal,” nevertheless such suits may be in fact original suits in the first instance and are not appellate in their nature. Assuming diversity of citizenship and a sufficient amount involved, especially where such suits bring all matters up for trial de novo, where no vestige of the administrative award remains and where no subsequent supervision or working partnership arrangement exists by and between the court and the administrative board, the federal district court


In North Dakota and Oregon, appeals are expressly limited to claimants only. Most of the references to state statutes are taken from Schneider, Workmen’s Compensation Statutes (1941).

22. See note 21, supra. This is true in all states mentioned except Nebraska, where the appeal is somewhat limited in its scope. This may be true of Montana.

23. See notes 21 and 22, supra. This is unqualifiedly true as to Hawaii, Maryland, North Dakota, Rhode Island and Texas. In Oregon, only issues raised in the rehearing before the Commission may be presented. In Vermont, only the issues certified by the commissioner may be heard. In Washington, no new evidence may be presented. In Montana, the court may for good cause permit additional evidence not introduced before the Board to be heard; other than this, the trial is wholly de novo.


In many states the reviewing courts may exercise close supervision over the workmen’s compensation board or commission. Typical of this “working partner” arrangement is the statute-created right of certifying questions, of remanding the case by the courts for obedience to the court’s judgment, or for further consideration by the board:


The same result is reached by court decisions in the absence of statute


has and will assume full jurisdiction to hear and try a case arising under the workmen’s compensation laws of the state in question.

Where the review of the board’s order is in effect appellate in its nature, the federal court, of course, would have no jurisdiction since the United States District Court’s jurisdiction is original in its nature and state statutes cannot confer appellate jurisdiction on or enlarge the jurisdiction of these federal courts.25

Where the workmen’s compensation law is so inseparable from and united with the remedy provided as to make its enforcement necessary by a particular method and in a particular tribunal, the United States District Court would have no jurisdiction to try a workmen’s compensation case.26 Ultimate review by the Supreme Court of the United States is preserved by certiorari from the decision of the highest state court.27

Where no board or commission is set up in the workmen’s compensation machinery, but a mere cause of action given by it with no implication that the enforcement of this right is restricted to state courts alone, then it is clear that, with the diversity of citizenship and with sufficient amount involved,28 the United States District Court would have jurisdiction of such claim.29

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28. Under Louisiana statutes providing for permissive review every six months (on the grounds of increasing or diminishing in incapacity) of a court’s judgment awarding weekly installment payments [Dart’s Stats. (1939) §§ 4391-4434], a federal court has recently held that it had no jurisdiction where the amount of any final judgment which it could render during any six months period would be far less than $3,000.00. Godfrey v. Brown Paper Mill Co., Inc., 52 F. Supp. 928 (D. C. La., 1943). Contra: Blount v. Kansas City Southern Ry., 5 F. (2d) 967 (D. C. La., 1925); McLaughlin v. Western Union Telegraph Co., 7 F. (2d) 177 (D. C. La., 1925), affirmed 17 F. (2d) 574 (D. C. La., 1927). A federal district court from Alabama, in a case involving the compensation laws of that state, has cited and followed the latter cases, Barrett v. Consolidated Coal Co., 65 F. Supp. 291 (D. C. Ala., 1946).
While no workmen's compensation cases have been found, one or more of these sometimes overlapping reasons have been offered for federal courts of original jurisdiction abstaining from taking jurisdiction in related fields:

1. Where a decision would determine or shape state policy;\(^{30}\)

2. Where a decision would interfere with state administrative agencies;\(^{31}\)

3. Where a decision would interfere with state courts, especially if another case is pending in the state court involving substantially the same issues between substantially the same parties;\(^{32}\)

4. In some exceptional instances, where the equity power, and therefore discretion, of the federal court is invoked;\(^{33}\)

5. Where a decision would make the federal court a working partner with or supervisor over the state workmen's compensation board;\(^{34}\)

6. Where the lower federal court would act as an appellate tribunal sitting in review of a state administrative agency;\(^{35}\)

7. Where the state statute has confined review to a particular named court or in some circumstances restricted venue so as to effect the same result;\(^{36}\)

8. Where the state law has interwoven the right and remedy, thereby made review in the state courts the only available tribunal;\(^{37}\)


32. Meredith v. City of Winter Haven, 320 U. S. 228, 64 S. Ct. 7, 88 L. Ed. 9 (1943).

33. Ibid.


35. Ibid.

36. Ibid.

37. See note 26, supra.
9. Where suit in the lower federal court on workmen's compensation would not be consistent with public policy or in the public interest; 38

10. Where decision would pass upon state constitutional questions; 39

11. Where federal decision would result in confusion; 40

12. Where state judicial review is expeditious and adequate; 41

13. Where no review is provided by the state legislature; 42

14. Where United States Supreme Court review, at least on federal constitutional questions, is preserved; 43

15. Where a jury trial is actually or inferentially excluded by state statute; 44

United States District Courts will take jurisdiction of workmen's compensation cases where:

1. In a judicial, as distinguished from administrative, proceeding, trial is wholly de novo, either on "appeal" or originally; 45

2. Complete relief may be granted or denied by the federal court; 46

3. No supervision or working arrangement is required between the federal court and the state agency; 47


41. Ibid.


45. See note 23, supra.

46. Ibid.

47. See note 24, supra.
4. The right and remedy granted by the state legislature are not otherwise so interwoven with the state judicial structure as to prohibit federal jurisdiction.48

III. Effect of State Limitations Upon Jurisdiction and Venue

Congress has the right to restrict review of administrative decrees to appellate courts,49 to restrict review to certain phases of administrative decrees,50 and to foreclose resort to the courts for review at all51 in the absence of constitutional questions.52 It would appear that review of the decrees of state boards may be subject to the same limitations by the state legislatures, in the absence of state constitutional limitations.

Though providing for full de novo review in the court of record, if the legislative intent is clear, a state statute may validly restrict the review as a matter of jurisdiction to a certain named state court,53 providing the right and remedy are interwoven, yet it is questionable as to whether a mere limitation on venue to a certain locality will ever have the effect of restricting review to state courts only.54 In Texas, review of the industrial

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48. See note 25, supra.
50. 29 U. S. C. A. § 160(e) (1928). The findings of the National Labor Relations Board, if supported by evidence, are conclusive. As a practical matter the reviews by these appellate courts are of law questions only.
52. But if the claimant has a personal right, as distinguished from mere general interest, the present Supreme Court would accord him judicial review of unfavorable administrative orders, if it can possibly be inferred from the compensation statute, though the legislature created no specific court review. Stark v. Wickard, 321 U. S. 288, 64 S. Ct. 559, 88 L. Ed. 733 (1944).
53. Ibid.
54. Only the clearest language in the state statutes should compel this holding. Some states do provide that the specified method and the named court constitute the sole method of review. See note 36, supra. Since the legislatures in states are ordinarily concerned merely with the jurisdiction and venue of their own courts, there is no presumption that they intended to exclude the federal courts from this subject matter; such statutes should
accident board's award is confined to a suit brought "in the county where the injury occurred," and it has been argued that federal review was confined to injuries occurring only in counties containing the twenty-five division points of the four districts constituting the Texas federal courts, but this view has previously been rejected. These venue restrictions are considered to be liberally construed in favor of the exercise of federal jurisdiction in order not to be held unconstitutional. Where a mere transitory right of action is created, state venue statutes should have no force in federal courts. Tennessee Coal, Iron & Railroad Co. v. George, 233 U. S. 354, 34 S. Ct. 587, 58 L. Ed. 997 (1913); Atchison T. & S. F. Ry. v. Sowers, 213 U. S. 55, 29 S. Ct. 397, 53 L. Ed. 695 (1909).

Because they are sui generis, a peculiar rule of law applies to suits in the United States District Courts against the state or its officials for the recovery of state taxes paid under protest under a state statute which would unquestionably allow the proceedings in a state court. Great Northern Life Ins. Co. v. Read, 322 U. S. 47, 44 S. Ct. 873, 88 L. Ed. 1121 (1944); Ford Motor Co. v. Department of Treasury, Indiana, 323 U. S. 459, 65 S. Ct. 347, 89 L. Ed. 389 (1945). In these tax cases, the usual "suspense statute," by naming the state court in which recovery may be sought, eliminates the question of consent of the state to be sued in the federal court under the Eleventh Amendment. Even though no state court is named in the statute, strict construction against implied consent of the state to be sued in the federal courts produces the same result, but in workmen's compensation cases (save in instances where state funds are involved, and where state boards are actually parties litigant), where the state is not a party this language in the dissenting opinion of Mr. Justice Frankfurter in the Read case, supra, must be the law whether or not the state has named one of its own courts as a reviewing body of workmen's compensation awards: "In the past, even when the jurisdictional grant has been couched in language giving substantial ground for the argument of restriction to the state court, this Court has not found denial by a State of the right to go to a federal court within that State when it in fact opened the doors of its own courts." 322 U. S. 47, 62, 64 S. Ct. 873, 880, 88 L. Ed. 1121, 1130.


A motion to dismiss on the ground that venue was improperly laid has been sustained in a suit in Texas on a Louisiana injury and arising under the laws of Louisiana, where neither plaintiff nor defendant resided in the federal district where suit was brought. Knobloch v. M. W. Kellogg Co., 58 F. Supp. 745 (S. D. Tex. 1944).

But where defendant is a foreign corporation, with a resident agent for service, venue may be governed by the rule announced in Mississippi Publishing Co. v. Murphee, 326 U. S. 438, 66 S. Ct. 242, 90 L. Ed. 207 (1946).
Since the Supreme Court's decision in *Burford v. Sun Oil Company,* a little doubt is now cast upon such decisions as *Ellis v. Associated Industries Insurance Corporation.* An absurd result would be reached admittedly if suits to set aside the award of the Industrial Accident Commission could be brought in counties constituting the twenty-five division points of the federal courts and in which injuries occurred, whereas such suits to set aside the commission's award could not be brought in the federal courts where injuries occurred in the remaining two hundred twenty-nine counties in the State of Texas.

The form and incidences of the proceedings are determined by the state constitution and laws. Where decisions of boards or commissions are involved and no constitutional question is raised, federal district courts will not assume jurisdiction of workmen's compensation claims unless their powers to hear and try these issues are clearly found in or inferred from the state statutes, but the opinion is here expressed that the mere naming of a state court of review or appeal in the statute creating workmen's compensation, without more, does not evidence an intention on the part of the state legislature to confine review to state courts alone. Given, of course, this form and incidences, the deter-

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59. See note 2, supra.
60. *Associated Industrial Ins. Co. v. Ellis et al.,* 16 F. (2d) 464 (N. D. Tex. 1926), affirmed 24 F. (2d) 809 (C. C. A. 5th, 1928), cert. denied 278 U. S. 649, 49 S. Ct. 92, 73 L. Ed. 561 (1928), which held: "The provision of the Texas statute that suit shall be brought in the county where injury occurred is not infringed by bringing suit in the [federal] District Court which includes the county within its territorial jurisdiction." 24 F. (2d) 809, 810.
61. Since *Burford v. Sun Oil Company* was decided actually hundreds of workmen's compensation cases have been filed in, removed to and tried in the federal courts without objection. Many of these cases involved injuries occurring in these remaining two hundred twenty-nine counties in the State of Texas. The judiciary and practitioners are practically unanimous in their opinion that in Texas all workmen's compensation cases are triable in the federal courts, regardless of the particular county in which the injury occurred, assuming diversity and proper amount.
mination of whether it is a judicial proceeding (a "case of controversy") will be decided by the application of federal standards and doctrines. This method of jurisdictional determination is not actually inconsistent with the general proposition that state legislatures may not enlarge or limit the jurisdiction of federal courts nor define the venue of federal courts.

By analogy to recent federal cases, the absence of a specified review of the awards of a state administrative agency may not imply an extra-statutory right of review, but, rather in the absence of any method of review, there may be a presumption that the legislature intended to withhold any review depending on the legislative or judicial history of the enactment. These cases just mentioned were the outgrowth of acts by the National


64. Burford v. Sun Oil Co., 319 U. S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424 (1943). Just as state statutes do not directly create, enlarge or lessen the federal court's jurisdiction, so also should not the state statute directly create, enlarge or lessen the venue of the action in the federal court. Hughes, Federal Practice, Jurisdiction and Procedure (1931) § 2082. The rule in Erie v. Tonopkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938) is not applicable. Comity as such is not involved.

65. See cases cited in note 51, supra.

66. See note 42, supra.

67. See cases cited in note 51, supra.

68. Ibid.
Since the membership of some workmen's compensation boards is made up of representatives of employees, employers and the public, it may well be contended that this award is in fact the result of mediation, arbitration and conciliation—under this contention no right of review would be presumed or inferred in the absence of express legislative grant.

As a helpful background in answering Mr. Justice Frankfurter's question, in examining state workmen's compensation laws, the following determinations should be made:

1. The make-up of the board, whether or not it is a quasi-court and whether or not its members are designated as representatives of industry, labor and the public.

2. The nature of the review provided, whether or not it exists at all, whether or not it is partial, de novo, or is appellate in its nature.

3. The jurisdiction and venue conferred on the appellate or reviewing court.

4. Whether or not supervision or a working partnership relationship exists over and between the reviewing court and the board itself.

5. When the cause becomes justiciable and, therefore, removable.

6. Whether or not the board has expressly granted rule-making power, whether or not rule-making power is inherent or implied in the board, and whether or not this rule-making power has been exercised or attempted to be exercised.

7. Whether or not any board or commission is provided to pass upon the claims.

8. A conclusion generally as to whether or not the right given by the state statute and the remedy of review are so interwoven as to restrict review to state courts alone.

69. Ibid.


71. See cases cited in note 51, supra.
The mere absence of statutory review would not preclude consideration of constitutional issues.\textsuperscript{72}

IV. THE WORKMEN'S COMPENSATION CASE IN THE FEDERAL COURT

Only when the proceedings are judicial in nature and only when the original federal jurisdiction is invoked, workmen's compensation cases reach nisi prius federal courts either upon removal from state courts,\textsuperscript{73} or upon being filed there originally to dispose of the entire controversy,\textsuperscript{74} or through declaratory judgment proceedings to settle isolated issues.

There is an utter lack of uniformity in the so-called "appeals" from the orders of certain workmen's compensation boards.\textsuperscript{75} In some instances the trial at nisi prius stage being wholly de novo;\textsuperscript{76} in other instances being confined to purely questions of law;\textsuperscript{77} in other instances confined to questions of law and fact;\textsuperscript{78} in other instances the findings of the board, in the

\textsuperscript{72} See Switchmen's Union of North America v. National Mediation Board, 320 U. S. 297, 64 S. Ct. 95, 88 L. Ed. 61 (1943).


\textsuperscript{74} 28 U. S. C. A. § 41.

\textsuperscript{75} See note 21, supra.

\textsuperscript{76} See notes 21, 22 and 23, supra.


Review in Arizona is by certiorari [Ariz. Rev. Code Ann. (Struckmeyer, 1928) § 1452]: "If necessary the court may review the evidence." Ibid.
absence of fraud, are conclusive; in other instances the reviewing court passes on only the evidence as contained in the record brought up from the board, and in other instances confined to specified grounds of review. Other differences arise out of the fact that in some states a designated court investigates facts as a sort of quasi-board, in other states a compensation court is set up, in other states an independent workmen’s compensation appeal board is provided, in other states review is discretionary with the court, and in still others arbitration of claims is provided at some stage of the proceedings. The question is not complicated, however, by whether or not the workmen’s compensation insurance carrier is a self-insurer or an insurance company writing a policy of workmen’s compensation insurance. The


81. Review is frequently confined to these grounds:

\[\text{"1. That the commission acted without or in excess of its powers.} \]
\[\text{"2. That the award was procured by fraud.} \]
\[\text{"3. That the facts found by the commission do not support the award.} \]
\[\text{"4. That there was not sufficient competent evidence in the record to warrant the making of the award."} \]


84. West Virginia [W. Va. Code Ann. (Michie & Sublett, 1937) § 2545(1)].

85. Id. at §2545(3).

86. 71 C. J. 965, 1043-1048.
opinion is expressed that federal courts will not take jurisdiction in any of these instances save and except where the trial is wholly de novo.87

It is elementary that a workmen's compensation claim would not be removable before it was filed. Since many workmen's compensation boards possess the framework and powers of quasi courts, it may be argued that the claim becomes removable upon being filed with such a board, but there is no indication that the courts will so hold.88 Many appeals from the workmen's compensation boards are to state intermediate appellate courts89 or to state civil courts of last resort.90 The cause does not become removable to the federal courts after being filed in such an appellate court because such an action could not have been filed in the federal courts in the first instance.91

With the question of removability in mind, many states have sought to circumvent the taking of the claim to the federal courts by statutes or legal fiction; but while the states have a right to deny permits to do business to foreign corporations and may require foreign corporations to reincorporate as domestic

87. Many states allow the employer to qualify as a self-insurer by filing evidence of its solvency.

Some states have optional state insurance carriers or compulsory and exclusive state funds into which employers pay premiums.

The state boards, or commissions, claimants, employers, insurance carriers, re-insurers and receivers variously have and have not been held to be "parties," "interested parties," "aggrieved parties," or "affected by" orders, boards, or commissions in particular states awarding or refusing compensation and as such entitled to appeal to the courts. 71 C. J. 1228.

88. For instance, in Oklahoma the State Industrial Commission is said to be a "tribunal of limited jurisdiction," Wilson Drilling Co. v. Beyer, 138 Okla. 248, 280 Pac. 246 (1929) and "administrative tribunal with limited jurisdiction," Spaulding & Osborne v. Pacific Employers Ins. Co., 192 Okla. 154, 134 P.(2d) 581, 192 Okla. 157, 134 P.(2d) 587 (1943); is "not a 'court' but is an administrative body clothed with quasi judicial powers," Sartin v. Moran-Buckner Co., 189 Okla. 178, 144 P. (2d) 958 (1943).

89. California, District Court of Appeal, or to supreme court [Calif. Civ. Code (Deering, 1937) § 5950]; New York, Appellate Division of Supreme Court [N. Y. Consol. Laws of 1914, c. 67, § 231].


corporations in order to do an intrastate business, nevertheless, it is settled that it may not be made a prerequisite to foreign corporations doing business within the state to surrender their right to remove their lawsuits to the federal courts. Likewise, the fiction that the corporation upon obtaining a permit to do business in a state accepts the terms of the state workmen's compensation law and ipso facto domesticates itself and surrenders its right of removal is legally untenable.

A word of caution is given to situations where the federal court remands the case after removal. There is no method by which even obvious error in the remanding order can be reviewed. The easiest way in which a test case can have the assurance of ultimate and complete disposition is for the state court to refuse removal, for the point to be preserved only through the state court of last resort and then brought up to the United States Supreme Court by certiorari. The point could be preserved, of course, if the federal court refuses to remand.

The principles governing workmen's compensation cases filed originally in federal court are identical with the principles governing the removability of workmen's compensation cases from state courts to the federal courts, the only distinction being which suit was filed first. Attention is merely called, without comment, to certiorari, prohibition, mandamus, injunction, proce-

95. But see holdings to the contrary in Bolin v. Swift Co., 335 Mo. 732, 73 S. W. (2d) 774 (1944); Elsa v. Montgomery Elevator Co., 38 F. (2d) 303 (D. C. Mo. 1929); McFall v. Barton-Mansfield Co., 338 Mo. 110, 61 S. W. (2d) 911 (1933). These cases may be correctly decided as to result on the grounds that any right of removal had been waived in trial participation and that the wording of the Missouri statute precluded federal review by combining the right and the remedy.
97. Some workmen's compensation cases are triable only in federal courts. The Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. A. § 901 et seq. (1927), which is by statute made the Employee's Compensation Act of the District of Columbia, 45 Stat. 600 [D. C. Code (1929) tit. 19, §§ 11, 12]. If any judicial review is allowed of the awards, United States Employee's Compensation Commission, 5 U. S. C. A. §§ 751 et seq., 757, it would have to be filed originally in the federal courts.
dendo and quo warranto proceedings which have been instituted in federal courts against similar state boards or their officials. Federal courts, under their so-called “denial of the enjoyment of the fruits” doctrine,\textsuperscript{93} may entertain suits alleging fraud in the entry of judgments in state courts or in the decrees of state boards which have the finality and effect of court judgments.\textsuperscript{95} Attention is again called to suits which may be filed in federal courts on workmen's compensation acts which set up no board or commission machinery and which do not otherwise confine the suit to any particular state court.\textsuperscript{100}

In advance of administrative hearings, however, suits in the nature of declaratory judgment proceedings have never met with favor insofar as they concern workmen's compensation questions, especially where state boards have been set up and state statutory proceedings prescribed.\textsuperscript{101} The courts either hold that the courts had no jurisdiction of declaratory judgment proceedings\textsuperscript{102} or hold that since an administrative remedy has been prescribed, it must be first exhausted.\textsuperscript{103} The federal courts will undoubtedly follow the rule announced by the state decisions.

Frequently a jury is not available at any stage of the proceeding beginning with the hearing before the state administrative agency and ending with the review provided under the state statute.\textsuperscript{104} This is further reason why federal nisi prius courts either would hold they had no jurisdiction or would refuse to exercise their jurisdiction.\textsuperscript{105} Where the review of the administrative boards is in fact appellate in its nature, the difficulty which appellate courts have always encountered in trying issues of fact

\textsuperscript{98. Moffett v. Robbins, 81 F. (2d) 431 (C. C. A. 10th, 1936), cert. denied 298 U. S. 675, 56 S. Ct. 939, 80 L. Ed. 1396 (1936).}

\textsuperscript{99. Gravitt v. Shell Oil Co., Inc., 36 F. Supp. 841 (D. C. Okla., 1941). In these equity suits to set aside awards or compromise and settlement agreements on the grounds of fraud, accident or mistake, the better practice is for federal courts to abstain from taking jurisdiction, however. See generally, Travelers Ins. Co. v. Kelly, 87 F. (2d) 46 (C. C. A. 5th, 1936).}

\textsuperscript{100. See note 29, supra.}

\textsuperscript{101. Anderson, Declaratory Judgments (1940) 69, 144, 642; Borchard, Declaratory Judgments (1934) 248, 342.}

\textsuperscript{102. Anderson, loc. cit. supra note 101.}


\textsuperscript{104. See, for example, Tennessee [Tenn. Code Ann. (Michie, 1938) § 6585]. See Note (1921) 35 Harv. L. Rev. 761. See Stumberg, Finality of Administrative Process under the Longshoremen's and Harbor Workers' Compensation Act (1932) 10 Texas L. Rev. 438.}

\textsuperscript{105. 42 Am. Jur. 486. But see McLaughlin v. Western Union, 7 F. (2d) 177 (D. C. La. 1925).}
presents another reason why federal courts would refuse to take jurisdiction.\(^{106}\)

V. EXTRATERRITORIALITY AND CONFLICT OF LAWS

Assuming that the federal courts of original jurisdiction may try workmen's compensation cases, and assuming that the cause of action is transitory in its nature, based on a statute having extraterritorial effect, then federal courts even in another state may try the question just as well as the state in which the injury occurred or in which the claimant resides.\(^{107}\) Federal courts have

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Assuming that the federal court may finally dispose of the instant case, many questions have arisen as to whether or not state courts are bound by law points previously decided by the intermediate federal courts, see annotation in 147 A. L. R. 857 (1943). While these federal decisions are unquestionably persuasive, as a practical matter their effect is weakened if they are decided by an intermediate federal court outside of the state, or outside of the circuit in which the state is located.


A workmen’s compensation case tried in the federal court should give the same full faith and credit and should be given the same full faith and credit as a case tried in the state court, or decided by a board, Art. IV, § 1, of the Constitution, 28 U. S. C. A. § 687 (1928); Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 84 S. Ct. 208, 88 L. Ed. 149 (1943).

The Pennsylvania state workmen’s compensation act has been held applicable to the employees of a private contractor engaged in work at the Philadelphia Navy Yard; this Yard had been ceded to the United States in 1868, Capetola v. Barclay White Co., 139 F. (2d) 556 (C. C. A. 3rd, 1943). Compare Western Union Telegraph Company v. Chiles, 214 U. S. 271, 29 S. Ct. 613, 53 L. Ed. 904 (1909).

But see Logan v. Missouri Valley Bridge & Iron Co., 157 Ark. 528, 249 S. W. 21 (1923), holding that Oklahoma’s workmen’s compensation act, be-
already had to choose between the laws of the state where the contract of employment was made, where the injury occurred and where the suit was brought.\textsuperscript{108} Depending upon whether or not they may exercise original jurisdiction, in many states the federal district courts may have to resolve conflict of workmen's compensation laws, as would the Supreme Court of the United States on a case brought up to it by certiorari from the highest state court. Naturally, preliminary awards of state boards would in most instances be involved. So, in admiralty cases and those cases involving the Federal Employers' Liability Acts, Section 401 (c) of the Restatement of the Law; Conflict of Laws provides:

\textit{\textbf{c. Effect of Federal Employers' Liability Act or admiralty jurisdiction.}} If the case is one which is within the scope of a Federal Employers' Liability Act,\textsuperscript{109} or of admiralty jurisdiction,\textsuperscript{110} the remedy under a State Workmen's Compensation Act cannot be constitutionally allowed in any State of the United States. If the case comes under the federal Act even though the act provides no remedy under the circumstances, there can be no remedy under a Workmen's Compensation Act.”

\textbf{VI. RULE-MAKING POWER OF COMMISSIONS AS AFFECTING JURISDICTION OF FEDERAL COURT}

Workmen's compensation commissions frequently have rule-making power expressly granted them by the legislature.\textsuperscript{111} In cause of its peculiar terms, is not enforceable in Arkansas. On the Oklahoma act, see also Compton v. Carter Oil Co., 283 Fed. 22 (C. C. A. 8th, 1922).


\textsuperscript{109} New York Central Railroad Co. v. Winfield, 244 U. S. 147, 37 S. Ct. 546, 61 L. Ed. 1045 (1917).


The whole field of conflict of laws in workmen's compensation cases is covered in the Restatement of the Law; Conflict of Laws §§ 398-403.

\textsuperscript{111} Arkansas [Ark. Dig. Stat. (Pope, Supp. 1944) p. 1950]; California
the absence of such a grant, the rule-making power may be implied or inherent in their functioning. While this power may not of itself enlarge the jurisdiction of the commission, nevertheless it could have a material bearing upon the effect of the board's award and consequently whether or not the matter became justiciable in the federal courts, especially if such rules, by their notoriety, by their involving material questions, by legislative long acquiescence in them without questioning them in any manner, acquired what is tantamount to legislative sanction.

As yet no case has been found in which administrative rules affected the jurisdiction of courts or judicial review; but as these boards and commissions become rule-conscious the opinion is expressed that sooner or later administrative interpretation as evidenced by rule-making may be determinative of even a federal jurisdictional question.

VII. DOCTRINE OF ABSTENTION

This topic has received some attention under Section II, supra; nevertheless it is of such current importance as to necessitate separate treatment. The federal courts have "refrained from an unnecessary decision"; "declined to exercise their jur-


In Hawaii [Hawaii Rev. Laws (1935) § 7518], the courts may make rules to prescribe appellate procedure.

114. Meredith v. City of Winter Haven, 320 U. S. 228, 64 S. Ct. 7, 88 L. Ed. 9 (1943).
isdiction";\textsuperscript{115} and "exercised a sound discretion"\textsuperscript{116} in laying down their so-called "doctrine of abstention,"\textsuperscript{117} especially in cases dealing with conflicting decisions and being equity cases involving state law.\textsuperscript{118} This doctrine of abstention means merely that usually in exceptional cases relating to the discretionary powers of courts of equity involving state constitutional questions, interpreting state statutes, deciding state policies, or resolving conflicts in cases on state law questions, the federal courts will withhold the exercise of their jurisdiction either by abating the suit in the federal court until the question has been decided in the state courts or by dismissing the suit in the federal court with instructions to the parties to proceed in state tribunals. Workmen's compensation cases in the federal courts do not always involve merely the fact of the injury, the extent of the injury, the duration of the injury, the employee's wage rate or lump sum payments. Frequently federal and state constitutional questions or statutory interpretations must be decided and made by the federal court, whether sitting as a reviewing body or in the original instance. Ordinarily, in the absence of discrimination, a violation of a right created by a state does not raise a substantial federal question.\textsuperscript{119} The case of Thompson, Trustee v. Magnolia Petroleum Company,\textsuperscript{120} must be now regarded as having been limited, if not wholly emasculated, by Meredith v. City of Winter Haven.\textsuperscript{121} In the Thompson case the federal court refused to resolve conflicts between federal circuit courts of appeals and involving only questions of state law, whereas in the City of Winter Haven case the Supreme Court remanded for resolving conflicts in the decisions of the highest state court and involving

\textsuperscript{115} Ibid.


\textsuperscript{119} Snowden v. Hughes, 321 U. S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1943).

\textsuperscript{120} 309 U. S. 478, 60 S. Ct. 628, 84 L. Ed. 876 (1940).

\textsuperscript{121} 320 U. S. 228, 64 S. Ct. 7, 88 L. Ed. 9 (1943).
only questions of state law. It is to be presumed that whatever remains of this doctrine will extend to the acts of state boards in their determination of workmen's compensation questions. Res judicata and stare decisis, as applicable to the decision of administrative agencies, have already received attention of eminent authors.

The doctrine of abstention developed in these equity suits for injunction is likely to have little application to actions for enforcement of state compensation laws, where, as in Texas, the state remedy is judicial, not discretionary in character.

A growing tendency on the part of federal courts to decline to review similar administrative determinations is noted. Such courts are holding that they are intellectually unqualified, or they are holding that federal courts are inexperienced in questions presented, or they are holding that they will not decide the questions presented on the grounds of imperfections in the judicial machinery. The Supreme Court recently has abstained from considering a law case involving a first impression determination of the common law of the District of Columbia by dismissing a certified question of the Court of Appeals. In agreeing that this was a local procedural problem to be decided by local law, Mr. Justice Frankfurter, in a concurring opinion, also called attention to the increase in volume and the complexity of business coming to the court, and the bearing of the increase upon the proper discharge of its work. This abstention by the Supreme Court from itself deciding local law and leaving the matter to an inferior federal court is wholly different, however, from the problem confronting a Federal District Court in deciding whether it will assume jurisdiction or abstain from assuming jurisdiction; the first instance involves a choice between federal

125. Ibid.
126. Ibid.
courts while the second instance involves a decision whether or not Federal District Courts will first act at all.

State and federal constitutional questions are often presented in workmen's compensation matters regardless of whether or not review is provided and regardless of whether or not review is restricted to state courts. Orderly and uniform procedure should require that both state and federal constitutional questions be litigated first in state courts.\textsuperscript{128}

VIII. CONCLUSION

In Texas the validity of an order of the Railroad Commission of the type involved in the \textit{Burford} case is triable by a "suit in a court of competent jurisdiction in Travis County."\textsuperscript{129}

Of this statute, the majority said in the \textit{Burford} case: "A statute similar to that involved in the instant case, which permits suit in any competent court of Travis County, Texas, has been construed to be an expression by the State of willingness to allow these proceedings to be brought in a federal court (citing the Reagan case). Since federal \textit{equity} jurisdiction depends on federal statutes, the Texas statutory provision has little meaning as applied to such cases."\textsuperscript{130}

Prior to the \textit{Burford} case,\textsuperscript{131} the Supreme Court had before it the case of \textit{Railroad Commission of Texas v. Rowan & Nichols Oil Company},\textsuperscript{132} also a second case of \textit{Railroad Commission of Texas v. Rowan & Nichols Oil Company}.\textsuperscript{133} In these two cases, involving different orders of the Railroad Commission which in Texas has the administration of oil proration and the granting of drilling permits, plaintiff sought to enjoin certain proration orders of this administrative body on the grounds that as to it they were unreasonable, unfair and as such confiscatory of its property under the Fourteenth Amendment. No diversity of citizenship was involved, which the Supreme Court in the first case thought of significance in its original opinion, but took the trouble to

\textsuperscript{128} Railroad Commission of Texas v. Rowan and Nichols Oil Co., 310 U. S. 573, 60 S. Ct. 1021, 84 L. Ed. 1368 (1940), as amended by 311 U. S. 614, 61 S. Ct. 343 (1940).
\textsuperscript{130} Burford v. Sun Oil Co., 319 U. S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424 (1943).
\textsuperscript{131} Ibid.
\textsuperscript{132} 310 U. S. 573, 60 S. Ct. 1021, 84 L. Ed. 1368 (1940), opinion amended 311 U. S. 614, 61 S. Ct. 343 (1940).
\textsuperscript{133} 31 U. S. 570, 6 S. Ct. 343, 85 L. Ed. 358 (1941).
modify by a subsequent amendment. These injunctions were
denied and plaintiff relegated to any remedies it had (which
perforce must originate, at least) in state courts.

This was the situation when the Burford case\(^\text{134}\) presented
itself. In this case an order of the commission granting permits
for the drilling of wells was sought to be enjoined on the ground
that it denied Sun Oil Company and others due process of law.
Diversity of citizenship and a federal question were involved.
The Supreme Court split five to four in denying the injunction
and again told plaintiffs to look first to their remedies in the
state courts.

With diversity and a federal question, Mr. Justice Frank-
furter would have granted the injunction, as would have the
Circuit Court of Appeals.\(^\text{135}\) It is this dissent, joined in by the
Chief Justice, Mr. Justice Roberts and Mr. Justice Reed, in which
the attention of the courts and practitioners is called to the query,
as voiced by Mr. Justice Frankfurter, of whether or not rights
under workmen's compensation laws must be first pursued and
exhausted in state boards and in state courts prior to seeking
relief at the hands of the Federal Courts—even though sufficient
amount, proper diversity and a federal question are involved,
regardless of whether or not legal or equitable principles are at
issue. The Reagan case was an equity case, as was the Burford
case. Certainly insofar as equity cases are concerned, state stat-
utes pertaining to review of administrative orders must now be
regarded as of no force in allowing or disallowing federal review
of such orders. But in strictly law cases, Mr. Justice Frankfurter
was too apprehensive; in the absence of a federal constitutional
question, the state statute is all-important and largely determines
federal review. In these cases the discretion of the chancellor
sitting in a federal court to stay his hand in the public interest
is peculiar to suits for injunction or other equitable interposition.
Suits to enforce ordinary rights arising under state workmen's
compensation laws have not been looked upon as interferences
with state administrative action at all.

The Ware case,\(^\text{136}\) alluded to by Mr. Justice Frankfurter, is
still the law. The Louisiana workmen's compensation laws in-

\(^{134}\) Burford v. Sun Oil Co., 319 U. S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424
(1943).

\(^{135}\) 130 F. (2d) 10 (C. C. A. 5th, 1942).

\(^{136}\) Texas Pipe Line Co. v. Ware, 15 F. (2d) 171 (C. C. A. 8th, 1926),
cert. denied 273 U. S. 742, 47 S. Ct. 335, 71 L. Ed. 869 (1926).
volved in the Ware case have set up no administrative board or commission. The rights and remedies thereunder are legal rights and remedies. Recovery of compensation is not confined to Louisiana state courts, but this compensation act gives a transitory cause of action which may be enforced in the federal courts of another state. Since the Ware case involved no peculiar state venue statute, involved no administrative question and involved no equitable suit, the rule of decision announced by the majority of the court in the Burford case was not applicable to the Ware case. The Supreme Court did not owe it to the lower federal courts to comment on the Ware case, therefore, because it would not be error, under the state law there involved, for a federal court to entertain such a suit today.

The conclusion is inescapable, as drawn from these cases, that doubtless we are well in the beginning of the golden age of administrative law. As contrasted with the long fight for supremacy between the courts of law and the courts of equity, instead of curbing the ascendancy of administrative agencies, our courts of law and equity, especially federal courts, have carefully fostered and nurtured it. Based on present administrative trends and tendencies, we may be the last generation of courthouse lawyers. We may now expect federal courts to evidence a recessive rather than a dominant attitude in reviewing awards of workmen's compensation boards. Finally, the rule will be—since there is no federal constitutional right to a judicial review of the awards of any and all administrative boards or commissions—that federal judicial review of decrees of administrative agencies such as workmen's compensation boards is only that as prescribed and as restricted by the state constitution and by the legislative branch of the state government.


138. Review at all is one question. Review de novo or partial review is another. As to the latter, such current state court cases as The California Co. v. State Oil & Gas Board, 27 So. (2d) 542 (Miss. 1946); 28 So. (2d) 120 (1946); 28 So. (2d) 121 (1946); and Trapp v. Shell Oil Co., Inc., 198 S. W. (2d) 424 (Tex. S. Ct. 1946); all involving the orders of oil and gas commissions, will receive the attention of future law journals.