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FULL FAITH AND CREDIT TO WORKMEN'S COMPENSATION
IN THE SUPREME COURT

When does the full faith and credit clause of the Constitution require a state where an action is commenced to apply the workmen's compensation law of a sister state? This question has vexed the courts for almost as long as those laws have been enacted.¹ Much has been written about the problem,² but the case of *Carroll v. Lanza*,³ decided by the Supreme Court last year, gives currency to the question and prompts a reappraisal of the law in this area. This review will take into consideration the relevant Supreme Court decisions in light of the purpose of workmen's compensation legislation and the full faith and credit clause.

Workmen's Compensation

As the industrial revolution progressed, and a great number of workers became subjected to the hazards of factory employment, the fellow servant rule,⁴ assumption of risk,⁵ and contributory negligence⁶ arose as defenses in personal injury actions. These defenses, a late development of the common law,⁷ limited the situations in which an employee was able to recover damages from his employer for injuries incurred while at work. Accordingly, disabled workers and their dependents were thrust upon the charity of the community. At the start of the twentieth century, this unsatisfactory situation led many

¹ See, e.g., *North Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 162 Pac. 93 (1916); *In re American Mut. Liability Ins. Co.*, 215 Mass. 480, 102 N.E. 693 (1913).

² See Angell, *Recovery Under Workmen's Compensation Acts For Injury Abroad*, 31 HARV. L. REV. 619 (1918); Dwan, *Workmen's Compensation And The Conflict Of Laws—The Restatement And Other Recent Developments*, 20 MINN. L. REV. 19 (1935); Dwan, *Workmen's Compensation And The Conflict Of Laws*, 11 MINN. L. REV. 329 (1927); Wellen, *Workmen's Compensation, Conflict Of Laws And The Constitution*, 55 W. VA. L. REV. 233 (1953); Note, *The Workmen's Compensation Act and the Conflict of Laws*, 10 N.Y.U.L.Q. REV. 518 (1933).

³ 349 U.S. 408 (1955).

⁴ This doctrine generally may be stated to be that an employer is not liable to a worker for personal injuries inflicted as a result of the negligence of another worker. See *Farwell v. Boston and Worcester R.R.*, 45 Mass. (4 Met.) 49 (1842); *Priestley v. Fowler*, 3 M. & W. 1, 150 Eng. Rep. 1030 (Ex. 1837).

⁵ "The servant is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself. . . ." *Priestley v. Fowler*, *supra* note 4 at 6, 150 Eng. Rep. at 1032-33. Consequently, if he does risk his safety, he cannot complain. See also *Farwell v. Boston and Worcester R.R.*, *supra* note 4.

⁶ If the plaintiff's negligence contributed to the accident he cannot recover. See *Butterfield v. Forrester*, 11 East. 60, 103 Eng. Rep. 926 (K.B. 1809).

⁷ The cases in notes 4, 5 and 6 *supra*, have been considered to be the beginning of the doctrines for which they are cited. See 1 LARSON, WORKMEN'S COMPENSATION § 4.30 (1952).

states to form legislative commissions which were delegated with the responsibility of devising a method whereby workers or their survivors would not be left destitute when earning power was lost or diminished because of a work-connected injury. As a model for the legislation which they desired, the commissions naturally turned toward the comprehensive system of social insurance which had been developed in Germany⁸ and England⁹ during the last half of the nineteenth century.

Although similar in purpose, the American statutes which were enacted differ from some foreign legislation in that they are not socialistic;¹⁰ that is, the states do not contribute to the fund out of which workers are compensated. Also, unlike the requirements of social insurance, American workers do not pay anything. Rather, employers have the sole responsibility for compensating an injured employee.¹¹ To ensure the fulfillment of this duty, employers are required to purchase insurance from either a state insurance fund¹² or from a private company,¹³ or to deposit a sufficient amount of security with the state to provide for possible injuries.¹⁴

Moreover, contrary to early thinking, the American statutes have no basis in tort law.¹⁵ It is not the purpose of these statutes to settle a controversy between two parties.¹⁶ Fault is irrelevant, whether injury is the result of the carelessness of the employer, or that of the worker.¹⁷ In no way are the statutes concerned with respective rights

⁸ *Id.* at § 5.20; see PROSSER, *TORTS* § 69, at 382 (2d ed. 1955).

⁹ See Riesenfeld, *Forty Years Of American Workmen's Compensation*, 35 MINN. L. REV. 525, 527 (1951).

¹⁰ See 1 LARSON, *WORKMEN'S COMPENSATION* § 3.10 (1952).

¹¹ *E.g.*, N.Y. *WORKMEN'S COMP. LAW* §§ 10, 31; CAL. *LAB. CODE ANN.* § 3700 (Deering 1953); IDAHO *CODE ANN.* § 72-801 (1949); MASS. *ANN. LAWS* c. 152, § 25A (Supp. 1955); MICH. *STAT. ANN.* § 17.195 (Supp. 1953); N.J. *STAT. ANN.* § 34:15-71 (1940).

¹² *E.g.*, N.Y. *WORKMEN'S COMP. LAW* § 50; IDAHO *CODE ANN.* § 72-801 (1949); MICH. *STAT. ANN.* § 17.195 (Supp. 1953); N.D. *REV. CODE* § 65-0404 (1943); WASH. *REV. CODE* § 51.16.010 (1951).

¹³ *E.g.*, N.Y. *WORKMEN'S COMP. LAW* § 50; CAL. *LAB. CODE ANN.* § 3700 (Deering 1953); IDAHO *CODE ANN.* § 72-801 (1949); MASS. *ANN. LAWS* c. 152, § 25A (Supp. 1955); MICH. *STAT. ANN.* § 17.195 (Supp. 1953); N.J. *STAT. ANN.* § 34:15-78 (1940).

¹⁴ *E.g.*, N.Y. *WORKMEN'S COMP. LAW* § 50; CAL. *LAB. CODE ANN.* § 3701 (Deering 1953); DEL. *CODE ANN.* tit. 19, § 2372 (1953); IDAHO *CODE ANN.* § 72-801 (1949); MASS. *ANN. LAWS* c. 152, § 25A (Supp. 1955); MICH. *STAT. ANN.* § 17.195 (Supp. 1953). Depending upon the state, either of the methods indicated in the text are exclusive, or some combination of the three are available. Examples of exclusive statutes are: N.D. *REV. CODE* § 65-0404 (1943); ORE. *REV. STAT.* § 656.452 (1953); WASH. *REV. CODE* § 51.04.010 (1951); WYO. *COMP. STAT. ANN.* § 72-102 (1945). For states where some combination of procedure is allowed, see N.Y. *WORKMEN'S COMP. LAW* § 50; CAL. *LAB. CODE ANN.* § 3700 (Deering 1953); IDAHO *CODE ANN.* § 72-801 (1949).

¹⁵ See 1 LARSON, *WORKMEN'S COMPENSATION* § 1.20 (1952).

¹⁶ *Ibid.*

¹⁷ *E.g.*, N.Y. *WORKMEN'S COMP. LAW* § 10; CAL. *LAB. CODE ANN.* § 3600 (Deering 1953); IDAHO *CODE ANN.* §§ 72-201, 72-202 (1949); MICH. *STAT.*

and breaches of duty.¹⁸ Because it is applicable to employment which cannot be classified as ultra-hazardous, workmen's compensation is not analogous to strict liability tort.¹⁹ The only question with which there is concern is whether there was a work-connected injury.²⁰

The theory which does underlie workmen's compensation is based upon the simple social reality that if an employee's earning power has been lost or diminished because of a work-connected injury, both he and those dependent upon him for support are liable to become charges upon the community.²¹ It is felt that a pragmatic system, whereby destitution is alleviated without a worker losing his self respect, is better than sanctioning an increased number of beggars or establishing poor houses.²² Through insurance, the "blood of the worker" is assimilated into the price of the product.²³ Since the cost of the insurance varies in each field of endeavor according to the amount of hazard involved, it is readily apparent that an employer who has to pay a larger premium will commensurately increase the cost of his product. Thus, it is not the community at large which bears the cost of compensation, as is the case under socialistic systems, but rather, only those who purchase a particular product.

In harmony with this theory is the amount of compensation which is paid and the machinery by which the law is administered. At the outset, it should be emphasized that tort principles of damages are not in accord with the social philosophy of compensation.²⁴ Therefore, loss of consortium as well as pain and suffering are generally not considered. The only injuries for which compensation is awarded are those which produce actual disability and thus, presumably, loss of earning power. In computing an award according to the loss of earning power, the statutes usually provide a set amount of recovery for

ANN. §§ 17.141, 17.152 (1951); N.J. STAT. ANN. §§ 34:15-1, 34:15-2 (1940); TEX. REV. CIV. STAT. ANN. art. 8306 (1941). It is to be noted that these representative statutes also provide for exceptions to the proposition stated in the text. If, for example, a workman is injured because he was intoxicated or if he wilfully injures himself, he will not be entitled to compensation.

¹⁸ See 1 LARSON, WORKMEN'S COMPENSATION § 2.10 (1952).

¹⁹ Of course, it is also applicable to ultra-hazardous employment. *E.g.*, N.Y. WORKMEN'S COMP. LAW § 3; CAL. LAB. CODE ANN. § 3352 (Deering Supp. 1953), § 3357 (Deering 1953); IDAHO CODE ANN. § 72-105a (Supp. 1955); MICH. STAT. ANN. § 17.142 (1951), § 17.142(1) (Supp. 1953).

²⁰ See Riesenfeld, *Forty Years Of American Workmen's Compensation*, 35 MINN. L. REV. 525, 530 (1951). See also N.Y. WORKMEN'S COMP. LAW § 10; CAL. LAB. CODE ANN. § 3600 (Deering 1953); IDAHO CODE ANN. § 72-201 (1949); MICH. STAT. ANN. § 17-141 (1951); N.J. STAT. ANN. § 34:15-1 (1940); TEX. REV. CIV. STAT. ANN. art. 8306 (1941).

²¹ See 1 LARSON, WORKMEN'S COMPENSATION § 2.20 (1952).

²² *Ibid.*

²³ See PROSSER, TORTS § 69, at 383 (2d ed. 1955); 1 SCHNEIDER, WORKMEN'S COMPENSATION § 3, at 3-5 (3d ed. 1941); Riesenfeld, *supra* note 20, at 529.

²⁴ See 1 LARSON, WORKMEN'S COMPENSATION § 2.40 (1952); 1 SCHNEIDER, WORKMEN'S COMPENSATION § 6 (3d ed. 1941)

a particular injury based upon a percentage of the worker's salary.²⁵ Arbitrary maximum and minimum benefits are set up, however, so that the amount of an award is not unlimited.²⁶ In addition, death benefits are provided for the survivors of an employee who is killed while working.²⁷ In return for these benefits, workmen are denied the right to sue their employers in tort.²⁸ However, a workman may still sue a third person who is responsible for his injury.²⁹ In such an instance the employer and his insurer are entitled to the amount which has been expended in satisfying the compensation award granted to the workman.³⁰ Moreover, to further "the beneficent purposes of the legislation," the statutes are generally enforced by administrative agencies³¹ wherein the strict rules of evidence are not adhered to and formality of procedure is kept to a minimum. It is obvious that all of the discussed provisions are designed to prevent the employee and his dependents from becoming destitute while he is unemployed because of his disability.

Due to the misconception that workmen's compensation was bot-tomed on tort, early cases incorrectly applied the traditional theory of *lex loci delicti* to conflict of laws situations.³² After workmen's compensation had been in force for a short time, however, the social

²⁵ *E.g.*, N.Y. WORKMEN'S COMP. LAW § 15; CAL. LAB. CODE ANN. §§ 4653, 4654, 4658 (Deering 1953); DEL. CODE ANN. tit. 19, § 2324 (1953); ILL. STAT. ANN. § 143.23 (Jones Supp. 1949); MICH. STAT. ANN. §§ 17.159, 17.160 (1940); N.J. STAT. ANN. § 34:15-12 (1940).

²⁶ *E.g.*, N.Y. WORKMEN'S COMP. LAW § 15; DEL. CODE ANN. tit. 19, § 2324 (1953); ILL. STAT. ANN. § 143.23 (Jones Supp. 1949); MICH. STAT. ANN. §§ 17.159, 17.160 (1940); MINN. STAT. ANN. § 176.101 (Supp. 1954); N.J. STAT. ANN. § 34:15-12 (1940).

²⁷ *E.g.*, N.Y. WORKMEN'S COMP. LAW § 16; CAL. LAB. CODE ANN. §§ 4701, 4702 (Deering 1953); DEL. CODE ANN. tit. 19, § 2330 (1953); ILL. STAT. ANN. § 143.22 (Jones Supp. 1949); MICH. STAT. ANN. § 17.155 (1940); N.J. STAT. ANN. § 34:15-13 (1940).

²⁸ *E.g.*, N.Y. WORKMEN'S COMP. LAW § 11 (except where employer has not conformed to rules of workmen's compensation); CAL. LAB. CODE ANN. §§ 3601, 3706 (Deering 1953) (except if any employer fails to secure the payment of compensation); DEL. CODE ANN. tit. 19, § 2304 (1953); ILL. STAT. ANN. § 143.21 (Jones 1936) (except if an illegally employed minor is involved); MICH. STAT. ANN. § 17.144 (1940); MINN. STAT. ANN. § 176.04 (1946) (except where employer has not conformed to rules of workmen's compensation).

²⁹ *E.g.*, N.Y. WORKMEN'S COMP. LAW § 29; CAL. LAB. CODE ANN. § 3852 (Deering 1953); DEL. CODE ANN. tit. 19, § 2363(a) (1953); ILL. STAT. ANN. § 143.44 (Jones 1936); MICH. STAT. ANN. § 17.189 (Supp. 1953).

³⁰ *E.g.*, N.Y. WORKMEN'S COMP. LAW § 29; CAL. LAB. CODE ANN. § 3856 (Deering 1953); ILL. STAT. ANN. § 143.44 (Jones 1936); MICH. STAT. ANN. § 17.189 (Supp. 1953); PA. STAT. ANN. tit. 77, § 671 (Purdon 1952).

³¹ *E.g.*, N.Y. WORKMEN'S COMP. LAW § 142; CAL. LAB. CODE ANN. § 60 (Deering 1953); DEL. CODE ANN. tit. 19, § 2121 (1953); ILL. STAT. ANN. § 143.34 (Jones 1936); MICH. STAT. ANN. § 17.174 (1951); PA. STAT. ANN. art. 1, Rule 1-6 (Purdon 1952). Some states give jurisdiction over workmen's compensation actions to the judiciary. See, *e.g.*, LA. REV. STAT. ANN. § 23:1311 (1950).

³² See, *e.g.*, North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1, 162 Pac. 93

basis of the legislation was appreciated; consequently, tort concepts were rejected.³³ Two contract theories were then developed which demanded application of the statute of the state wherein the employment contract was made. In deciding which of these concepts to employ, it was important to determine whether the particular statute was elective or compulsory. If the act was elective, it was held that it became part of the contract and might be enforced no matter where the injury occurred.³⁴ The artificiality of this concept is apparent. The act could not be a part of the contract because, though nominatively elective, there is actually no consent, but rather, compulsion because of the penalties involved. Incorporation of the statute into the contract is a fiction because the parties are subject to subsequent changes in the act. Further, no part of the statute which they do not wish to incorporate may be dispensed with. More realistic is the theory which has been applied to contracts made in states where the act is deemed to be compulsory; it is considered that the act is a statutory regulation of a status which is within the control of the state. In support of this concept, it has been said that, "workmen's compensation legislation rests upon the idea of status, not upon that of implied contract. . . . The liability is based, not upon any act or omission of the employer, but upon the existence of the relationship which the employee bears to the employment because of and in the course of which he has been injured."³⁵ Other bases for employing the law of a particular state have been asserted. For example, the principal situs of the employee's employment³⁶ and the state of residence of the employee³⁷ have been considered to be important. In addition, there are states where some combination of criteria is required.³⁸ This was the status of conflicts theory when, in 1932, the Supreme Court entered the field by indicating that the full faith and credit clause was applicable to workmen's compensation statutes.

The Supreme Court

In *Bradford Elec. Light Co. v. Clapper*,³⁹ an action for damages was brought under the workmen's compensation laws of New Hamp-

(1916); *In re American Mut. Liability Ins. Co.*, 215 Mass. 480, 102 N.E. 693 (1913).

³³ See *Post v. Burger & Gohlke*, 216 N.Y. 544, 111 N.E. 351 (1916); *Industrial Comm'n v. Aetna Life Ins. Co.*, 64 Colo. 480, 174 Pac. 589 (1918); *Grinnell v. Wilkinson*, 39 R.I. 447, 98 Atl. 103 (1916). See also Dunlap, *The Conflict of Laws and Workmen's Compensation*, 23 CALIF. L. REV. 381, 382-83 (1935).

³⁴ *Pettiti v. T. J. Pardy Constr. Co.*, 130 Atl. 70 (Conn. 1925); *Hagenback v. Leppert*, 66 Ind. App. 261, 117 N.E. 531 (1917).

³⁵ *Cudahy Packing Co. v. Parramore*, 263 U.S. 418, 423 (1923).

³⁶ See *Stansberry v. Monitor Stove Co.*, 150 Minn. 1, 183 N.W. 977 (1921).

³⁷ See 2 LARSON, *WORKMEN'S COMPENSATION* § 87.60 (1952).

³⁸ See Dunlap, *The Conflict of Laws and Workmen's Compensation*, 23 CALIF. L. REV. 381, 384-85 (1935).

³⁹ 286 U.S. 145 (1932).

shire in a court of that state and later removed to a federal court on the ground of diversity of citizenship. Plaintiff's decedent, a resident of Vermont, had entered into a contract of employment with the defendant, which had its principal place of business in that state. The decedent had been hired to perform services in both Vermont and New Hampshire and was killed while working in the latter state. Although the New Hampshire statute permitted an employee who was injured to elect, after the injury, to proceed by either a workman's compensation action or one at common law, the employer claimed that the action was barred by the Vermont compensation statute which purported to provide the exclusive remedy for injured workers.

One basis of the plaintiff's claim was that to permit the Vermont act to be asserted as a defense would be to give it extraterritorial effect, whereas it is a well settled principle that a state only has power to legislate within its borders. Justice Brandeis, who delivered the Court's opinion, felt that recognition of the statute as a defense to the New Hampshire action would not be giving the Vermont act extraterritorial effect, because the act created a "statutory relation between the parties" which was subject to regulation by Vermont so long as that relation exists. Thus, Vermont had legislative jurisdiction to provide that its act was the exclusive remedy for injured workmen who had been employed there. The Court also agreed with the defendant that the full faith and credit clause prevented an employee from asserting rights in New Hampshire which would be denied him in the state of his residence. An injunction against the bringing of the suit in New Hampshire could have issued from a Vermont court. Since the purpose of the act was to provide not only a remedy for employees, but also a "limited and determinate" liability for employers, disallowance of the defense would have imposed an unwarranted liability upon employers. The Court was of the opinion that if a state refused to recognize a particular cause of action, the plaintiff would have an opportunity to prosecute his claim in another jurisdiction. When, however, a substantive defense is denied efficacy, the defendant is subjected to "irremediable injury."

The plaintiff also claimed that full faith and credit did not require the enforcement of a law which is obnoxious to a state's public policy. Justice Brandeis agreed that full faith and credit does not mean complete deference to the statute of a sister state and that there is room for some play of "conflicting policies." He further agreed that relief might be denied if the forum state failed to provide a particular court with jurisdiction to hear this type of claim; or failed to provide an appropriate procedure by which the claim could be presented to a court; or if the claim was actually obnoxious to the public policy of the forum state; or if the liability which might be imposed was penal in nature. Here the Vermont act was not obnoxious to the policy of New Hampshire; it was merely different.

In addition to this, the interest of New Hampshire was considered to be only casual because: (1) Vermont was the state of the em-

ployee's residence; (2) the employer's principal place of business was located there; and (3) New Hampshire was entered only temporarily upon orders received in Vermont.

After deciding that all rights should be determined according to the law of Vermont, it was significantly concluded that: "We have no occasion to consider whether if the injured employee had been a resident of New Hampshire, or had been continuously employed there, or had left dependents there, recovery might validly have been permitted under New Hampshire law."⁴⁰

Justice Stone concurred in the result reached by the majority because New Hampshire could recognize and apply the law of Vermont through comity; thus, a federal court sitting in New Hampshire could recognize and apply the Vermont law. He concluded that in the absence of any indication that New Hampshire would not recognize the Vermont law, the federal court ought to recognize it. This reasoning, he felt, precluded the necessity of deciding the constitutional question of whether the full faith and credit clause required New Hampshire to recognize and apply Vermont law. If, however, it were necessary to decide the constitutional problem, he added:

The interest, which New Hampshire has, in exercising that control, derived from the presence of employer and employe within its borders, and the commission of the tortious act there, is at least as valid as that of Vermont, derived from the fact that the status is that of its citizens, and originated when they were in Vermont, before going to New Hampshire. I can find nothing in the history of the full faith and credit clause, or the decisions under it, which lends support to the view that it compels any state to subordinate its domestic policy, with respect to persons and their acts within its borders, to the laws of any other. On the contrary, I think it should be interpreted as leaving the courts of New Hampshire free, in the circumstances now presented, either to apply or refuse to apply the law of Vermont, in accordance with their own interpretation of New Hampshire policy and law.⁴¹

The following year, this case was clarified in *Ohio v. Chattanooga Boiler & Tank Co.*⁴² There the employee was a resident of Tennessee, the contract of employment was made in that state and the employer's principal place of business was located there. A proceeding was instituted in Ohio, where the injury was incurred. It was held that the claim was not barred by the Tennessee compensation statute because, as construed by the highest court of that state, it was not exclusive, *i.e.*, it did not preclude recovery under the laws of another state. It was reasoned that the full faith and credit clause does not require the forum state to give greater effect to a statute than does the state which enacted it.

⁴⁰ Bradford Elec. Light Co. v. Clapper, 286 U.S. 145, 163 (1932).

⁴¹ *Id.* at 164.

⁴² 289 U.S. 439 (1933).

The next case to present the problem to the Supreme Court was *Alaska Packers Ass'n v. Industrial Acc. Comm'n.*⁴³ There the plaintiff, a non-resident alien, contracted in California to work for the defendant in Alaska. The defendant was to transport the plaintiff from California and, after the work was completed, bring him back to California where he was to be paid. There was a further provision that the parties were to be bound by the Alaska Workmen's Compensation Law. The employee, injured in Alaska, brought an action under the compensation law of California when he returned to that state. The California law was specifically applicable to injuries suffered outside the state, if the employee was a resident at the time of the injury and the contract of employment had been made in California.⁴⁴ It also provided that: "No contract, rule or regulation shall exempt the employer from liability for the compensation fixed by this act."⁴⁵

Justice Stone, now writing for the majority, indicated that the injured workman who was brought back to California would probably be unable to return to Alaska and thus be remediless. As a concomitant result there was danger of his becoming a public charge. In exercising its power California was not acting arbitrarily, but rather, had a legitimate interest in preventing this. As in the *Clapper* case, the main problem presented was whether the California Court failed to accord the Alaska act full faith and credit by not permitting it to be asserted as a defense to the award of the California commission. In this connection, Justice Stone wrote that:

In the case of statutes, the extra-state effect of which Congress has not prescribed, where the policy of one state statute comes into conflict with that of another, the necessity of some accommodation of the conflicting interests of the two states is still more apparent. A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own. Unless by force of that clause a greater effect is thus to be given to a state statute abroad than the clause permits it to have at home, it is unavoidable that this Court determine for itself the extent to which the statute of one state may qualify or deny rights asserted under the statute of another.⁴⁶

It was his further opinion that "the governmental interests of each jurisdiction" should be appraised and that the "scale of decision" be turned according to their respective weight.

The factual distinctions between this and the *Clapper* situation, that here the employee was not a resident of the state where the work

⁴³ 294 U.S. 532 (1935).

⁴⁴ This law was held applicable to non-residents as well as residents because of the privileges and immunities clause of the fourteenth amendment to the federal constitution. *Quong Ham Wah Co. v. Industrial Acc. Comm'n.*, 184 Cal. 26, 192 Pac. 1021 (1920), *writ of error dismissed*; 255 U.S. 445 (1921).

⁴⁵ *Alaska Packers Ass'n v. Industrial Acc. Comm'n.*, 294 U.S. 532, 538 (1935).

⁴⁶ *Id.* at 547.

commenced and that the work was to be performed wholly outside of the state, were not thought to be material differences which lessened the interest of California and increased that of Alaska, where the employee was never a resident and to which he would never return. Further, unlike the New Hampshire courts in the *Clapper* case, the Supreme Court of California had declared it to be contrary to the public policy of the State of California to apply the Alaska statute and not its own. In a manner similar to Justice Brandeis in the *Clapper* case, Justice Stone wrote that "it is unnecessary to consider what effect should be given to the California statute if the parties were domiciled in Alaska or were their relationship to California such as to give it a lesser interest in protecting the employee by securing for him an adequate and readily available remedy."⁴⁷

The Court was faced in 1939 with *Pacific Employer's Ins. Co. v. Industrial Acc. Comm'n.*⁴⁸ There, the plaintiff was a resident of Massachusetts and regularly employed there. He was temporarily sent to California to work in a branch factory belonging to his employer, and while there was injured and awarded compensation under the California Workmen's Compensation Act. The law of both California and Massachusetts purported to provide the exclusive remedy for injured workmen. In disallowing the claim that the full faith and credit clause required utilization of the Massachusetts statute Justice Stone, again writing for the majority, said:

This Court must determine for itself how far the full faith and credit clause compels the qualification or denial of rights asserted under the laws of one state, that of the forum, by the statute of another state. . . . But there would seem to be little room for the exercise of that function when the statute of the forum is the expression of domestic policy, in terms declared to be exclusive in its application to persons and events within the state. Although Massachusetts has an interest in safeguarding the compensation of Massachusetts employees while temporarily abroad in the course of their employment, and may adopt that policy for itself, that could hardly be thought to support an application of the full faith and credit clause which would override the constitutional authority of another state to legislate for the bodily safety and economic protection of employees injured within it. Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power.⁴⁹

The *Clapper* case was distinguished because the statute of Vermont had not been declared to be obnoxious to the policy of New Hampshire, whereas California had declared the Massachusetts law obnoxious to its public policy. The *Alaska Packers* rule was felt to be merely that full faith and credit did not necessarily preclude one state from enforcing in its own courts its own statutes having no extra-

⁴⁷ *Id.* at 543.

⁴⁸ 306 U.S. 493 (1939).

⁴⁹ *Pacific Employer's Ins. Co. v. Industrial Acc. Comm'n.*, 308 U.S. 493, 502-03 (1939).

territorial operation forbidden by the fourteenth amendment. Thus, those two cases were not considered to be inconsistent with the instant holding.

The subsequent case of *Cardillo v. Liberty Mut. Ins. Co.*⁵⁰ presented a situation where a District of Columbia resident was killed while working in Virginia. He was employed by a District employer and was subject to work assignments in the District of Columbia. The Supreme Court held that there was jurisdiction to entertain the widow's claim because "some substantial connection between the District and the particular employee-employer relationship" was present.⁵¹ It was explicitly pointed out that the District's interest did not depend upon either where the workman was employed or where he was injured. It was also indicated that the amount of work performed in the District was irrelevant. This attitude was necessary to circumvent the fact that the employee was working in Virginia for three years before he was fatally injured.

The latest pronouncement on this problem is *Carroll v. Lanza*⁵² where the plaintiff and his employer were both residents of Missouri. The contract of employment was entered into in that state. However, the plaintiff was working in Arkansas when he was injured by his employer's employer, the prime contractor. The plaintiff received payments for 34 weeks under the exclusive Missouri Workmen's Compensation Act.⁵³ As construed, that act did not consider prime contractors to be third persons against whom a common-law action could be brought. Plaintiff then brought a common-law action against the defendant under the Arkansas law which permitted prime contractors to be sued as third persons. The defendant, a Louisiana contractor, defended on the ground that the full faith and credit clause required the Missouri law to be applied. It was claimed that the action was not maintainable in Missouri so it should not be permitted in Arkansas.

At the outset of the opinion, the Court explained that the *Clapper* case allowed a state to fix an exclusive remedy for residents and businesses located within the state and refused to permit other states to fix an inconsistent remedy. The *Pacific* case was said to allow the forum to apply its own remedy when the other state's statute was "obnoxious" to the law of the forum. It was felt that the fact that the instant case involved a common-law remedy of the forum rather than the compensation remedy permitted in the *Pacific* case was im-

⁵⁰ 330 U.S. 469 (1947).

⁵¹ *Cardillo v. Liberty Mut. Ins. Co.*, 330 U.S. 469, 476 (1947).

⁵² 349 U.S. 408 (1955).

⁵³ That the plaintiff received payments under the Missouri act did not preclude him from suing in Arkansas. *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943), was held not to be controlling, because the payments received in Missouri were not "final." It is to be observed that this limits the *Magnolia* case to a further extent than did *Industrial Comm'n v. McCartin*, 330 U.S. 622 (1947).

material. In deciding that Arkansas need not apply the law of Missouri, the Court stated that, "her interests are large and considerable and are to be weighed not only in the light of the facts of this case but by the kind of situation presented."⁵⁴ This concept was obviously employed because the facts established that the plaintiff had not remained within Arkansas after the injury, but was almost immediately removed to Missouri. It is difficult to understand how Arkansas could have an interest since the injury imposed no burden upon her. The attitude of the Court was that, "if Arkansas could not apply her own state laws, the state of injury would be powerless to safeguard non-resident employees within its own borders. We do not think that the Full Faith and Credit Clause demands that subserviency from the State of the injury."⁵⁵

There is a similarity between Mr. Justice Frankfurter's dissent in the *Carroll* case and Justice Stone's concurring opinion in the *Clapper* case. It will be remembered that there it was felt there was no indication that New Hampshire would refuse to give the Vermont act effect through comity, so the federal court in New Hampshire should extend that comity. Here, Mr. Justice Frankfurter observed that although Missouri prohibited suits against prime contractors who were residents of Missouri, there was no indication that the same law would apply if the prime contractor were a nonresident. He therefore was of the opinion that the Court should remand the case in order to determine the true state of Missouri law on this point. It was, in his opinion, unnecessary to decide that Arkansas need not give full faith and credit to the Missouri law. If the Missouri law were the same as the Arkansas law, there would be no problem in choice of law and the full faith and credit problem would not arise.

However, since the majority decided the case upon constitutional grounds, the dissent discussed that problem. Mr. Justice Frankfurter felt that in the past the Court has adopted an interest weighing approach. The factors which have been considered relevant in prior cases are: (1) place of the employment contract; (2) residence of the parties; (3) place of injury; (4) possibility of the workman becoming a public charge in the state seeking to award compensation; (5) interest of a state in securing prompt medical payments to residents; (6) exclusiveness of the foreign statute; (7) interest in bodily safety and economic protection of workers within the state; (8) difference between a defense which if rejected results in irremediable liability, and a cause of action which if not allowed in one state can be pursued in another; (9) amount of work to be performed in a state; (10) policy of determinate liability and the necessity for a prompt remedy which underlies workmen's compensation acts. The *Clapper* case had held that the forum must permit a defense based upon the

⁵⁴ *Carroll v. Lanza*, 349 U.S. 408, 413 (1955) (emphasis added).

⁵⁵ *Id.* at 414.

exclusiveness of a sister state statute where the only contact of the forum was the injury. In the *Alaska* case it was decided that the place of the contract could award compensation although the injury occurred elsewhere. In the *Pacific* case it was held that the forum could prevail if the only point of contact was an injury within the state and the enforcement of the defense of the foreign statute was "obnoxious" to the forum's policy. Here the only point of contact with the forum was the injury, thus it duplicates the *Clapper* situation; Mr. Justice Frankfurter saw no reason for overruling that case.

He also noted that in the *Alaska* and the *Pacific* cases Justice Stone buttressed the Court's opinion by observing that Congress had not legislatively decreed that "Acts" need be given full faith and credit.⁵⁶ In light of this Mr. Justice Frankfurter felt that weight must be given to the amendment, in 1948, of Section 1738 of Title 28, whereby Congress provided that "Acts" did have to be given full faith and credit.

Full Faith and Credit

In determining whether the full faith and credit clause demands the application of another state's statute, the delicate problem of the independence of sovereign states and their relationship to each other and to the Union must be considered.⁵⁷ The impact of the constitutional provision may be appreciated from its history.

Conflict of laws problems did not arise in the early English courts because of the principle of venue which required trial by a jury of the vicinage.⁵⁸ At a later period, however, in suits on judgments sought to be enforced in England, it was held that the law of the jurisdiction which rendered the judgment was applicable.⁵⁹ In colonial America, though, the judgments of another colony, as well as those of English and foreign courts, were considered to be merely prima facie evidence of the claim.⁶⁰ Because of this attitude toward foreign judgments, each colony became a haven for judgment debtors from other colonies.⁶¹ Starting from about the middle of the seventeenth century, however, the colonial trend turned toward greater recognition.⁶² The Continental Congress in drafting the Articles of Confederation incorporated into that document a full faith and credit

⁵⁶ See note 46 *supra*.

⁵⁷ See Jackson, *Full Faith And Credit—The Lawyer's Clause Of The Constitution*, 45 COLUM. L. REV. 1, 11 (1945).

⁵⁸ See 5 HOLDSWORTH, A HISTORY OF ENGLISH LAW 117 (2d ed. 1937).

⁵⁹ See Sumner, *The Full-Faith-And-Credit Clause—Its History And Purpose*, 34 ORE. L. REV. 224, 226 (1955), citing *Cottingham's Case* (1678) [cited in *Kennedy v. Cassillis*, 2 Swans. 313, 326, 36 Eng. Rep. 635, 640 (1818)], and *Badtolph v. Bamfeild*, Rep. t. Finch 186, 23 Eng. Rep. 102 (1674).

⁶⁰ See Sumner, *supra* note 59, at 226.

⁶¹ *Id.* at 227.

⁶² *Ibid.*

clause.⁶³ This provision indicates an undoubted awareness on the part of those responsible for the Articles that inequities resulted from colonial provincialism in declining to recognize the judicial proceedings of other colonies.⁶⁴ It has been aptly observed, however, that like the rest of the document, no provisions for enforcement were provided; thus an ineffective mandate was decreed.⁶⁵ In the four cases which were decided after the adoption of the Articles and prior to the Constitution, this provision was given varied weight.⁶⁶ Realizing that national unity could not be achieved without the surrender of some part of their independence by each state, the members of the Constitutional Convention provided for legal unity in Article IV, Section 1. As adopted, it provides that:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

In addition to providing for congressional enforcement, this section was an advance over the similar provision in the Articles in that full faith and credit was extended to "public Acts." It has been observed by some researchers that surprisingly little attention was paid this section in the state ratifying conventions.⁶⁷ Indeed, *The Federalist* merely makes an innocuous passing reference to it.⁶⁸

⁶³ "Full faith and credit shall be given, in each of these States, to the records, acts, and judicial proceedings of the courts and magistrates of every other State." ART. OF CONFED. art. 4, § 3.

⁶⁴ It is to be noted though, that the provision was given little consideration. See Jackson, *Full Faith And Credit—The Lawyer's Clause Of The Constitution*, 45 COLUM. L. REV. 1, 3 (1945).

⁶⁵ See Sumner, *The Full-Faith-And-Credit Clause—Its History And Purpose*, 34 ORE. L. REV. 224, 230 (1955).

⁶⁶ See *Kibbe v. Kibbe*, Kirby 119 (Conn. 1786). "... [B]ut full credence ought to be given to judgements of the courts in any of the United States, where both parties are within the jurisdiction of such courts at the time of commencing the suit, and are duly served with the process. . . ." *Id.* at 126. See also *Phelps v. Holker*, 1 Dall. 261 (Pa. 1788). "... [T]he judgment obtained in Massachusetts cannot be considered as conclusive evidence of the debt, and therefore, the defendant ought still to be at liberty to controvert and deny it. The articles of confederation must not be construed to work such evident mischief and injustice, as are contained in the doctrine urged for the plaintiff." *Id.* at 264. See also *James v. Allen*, 1 Dall. 188 (Pa. 1786). "The articles of confederation . . . seem chiefly intended to oblige each state to receive the records of another as full evidence of such acts and judicial proceedings." *Id.* at 190. See also *Jenkins v. Putnam*, 1 Bay 8 (S.C. 1784). "We are bound by the sentence of the court of admiralty in *North-Carolina*, until reversed by some competent authority, and are obliged to give due faith and credit to all its proceedings. The act of confederation is conclusive as to this point, and the law of nations is equally strong upon it." *Id.* at 10.

⁶⁷ See Sumner, *supra* note 65, at 235.

⁶⁸ THE FEDERALIST No. 42, at 266 (Lodge ed. 1888) (Madison).

In order to effectuate the constitutional provision, Congress, in 1790, enacted an enabling act which provided for the authentication of:

. . . the acts of the legislatures of the several states [and] . . . the records and judicial proceedings of the courts of any state . . . And the said records and judicial proceedings . . . shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken.⁶⁹

In 1804 a supplemental act was passed extending such recognition to all non-judicial records of a state, and applying both the 1790 act and that of 1804 to the territories of the United States.⁷⁰ The only significant change in this early legislation occurred in 1948 when Congress substituted, in the beginning of the second sentence of the act of 1790, "Such Acts," for "And the said."⁷¹ A question which has arisen since the change in this legislation is whether Congress intended that henceforth public acts are required to have such credit given them by courts as has been accorded judicial proceedings.⁷²

Conclusion

It is apparent that the national legal unity which the Framers envisioned has not become established, at least in respect to workmen's compensation. Of course, it would be folly to assert that the men at the Constitutional Convention foresaw compensation statutes.⁷³ However, it cannot be denied that they placed the means of state statutory unity in the hands of Congress.⁷⁴ That Congress has not seen fit to exercise those powers does not lend itself to a denial of their existence; rather, an inference of the almost unsolvable nature of the problem should be drawn. It has been said that instead of legislating generally, Congress has felt that the courts should indicate the answer "on a case to case basis."⁷⁵

⁶⁹ 1 STAT. 122 (1790).

⁷⁰ 2 STAT. 298 (1804).

⁷¹ 62 STAT. 947 (1948). The legislation discussed in the text is now codified in 28 U.S.C. §§ 1738-39 (1952).

⁷² Compare *Carroll v. Lanza*, 349 U.S. 408, 422 (1955) (dissenting opinion), with *Hughes v. Fetter*, 341 U.S. 609, 613 n.16 (1951).

⁷³ This proposition has been utilized as a "straw man" in order to give force to the position that the full faith and credit clause is inapplicable to workmen's compensation statutes. See Horowitz, *Reviews of Leading Current Cases*, 16 NACCA L.J. 38, 66 (1955).

⁷⁴ See Corwin, *The "Full Faith And Credit" Clause*, 81 U. PA. L. REV. 371, 388 (1933); Costigan, *The History Of The Adoption Of Section I Of Article IV Of The United States Constitution And A Consideration Of The Effect On Judgments Of That Section And Of Federal Legislation*, 4 COLUM. L. REV. 470, 474 (1904); Jackson, *Full Faith And Credit—The Lawyer's Clause Of The Constitution*, 45 COLUM. L. REV. 1, 17 (1945).

⁷⁵ See Reese, *Full Faith And Credit To Statutes: The Defense Of Public Policy*, 19 U. OF CHI. L. REV. 339 (1952).

From the standpoint of workmen's compensation it is apparent that uniformity would advance the security which is the purpose of that legislation. As the law now stands, a worker who is sent outside the state of his residence and regular employment cannot be sure that the protective statute which has been enacted by his representatives will guard him and his dependents. Again, the employer who has fully complied with the law under which he normally operates, does not know whether that same law will prescribe the limits of his liability. Surely it cannot be said that this makes possible the foreseeability of liability for which the law strives.

From the discussed cases it is apparent that the Supreme Court has not lived up to its responsibility to enforce the full faith and credit clause. The status of conflicts of law with respect to workmen's compensation statutes is now the same as it was prior to the *Clapper* case. That the Court in *Carroll v. Lanza* gave lip service to an unreal weight of interest concept is not reassuring in view of the facts of that case. Besides, the weighing of interests can have no real practical application. Whether a state has or has not an interest can be established; however, the weight which should be ascribed each element that goes toward making an interest is almost impossible of determination.⁷⁶ It is believed that any such "test" lends itself to abuses that arise whenever the membership of the Supreme Court is changed. A better solution would be one that adopts the unifying principles of the full faith and credit clause to the recognized aims of workmen's compensation legislation.

It has been said that the *Carroll* decision is sound on the ground that employers should provide for the compensation of employees who were injured without the state wherein they normally work. This is not controverted. Objection is made to the accompanying suggestion that this be accomplished by forcing employers to purchase compensation insurance in every state to which they send workmen.⁷⁷ This of course will increase the financial burden of compensation when assured relief for employees can be provided in another manner.

There can be no doubt as to the economic unity that this nation has achieved because of the force of the interstate commerce clause. An integral part of this economic unity is the securing of workmen and their families against destitution. It would seem that Congress could demand that the statutes of one state be recognized fully in the courts of every other.⁷⁸ As a practical matter, though, no end to congressional timidity in this respect can be foreseen. The Supreme

⁷⁶ See Jackson, *supra* note 74, at 28.

⁷⁷ See *The Supreme Court, 1954 Term*, 69 HARV. L. REV. 119, 133, 137-38 (1955).

⁷⁸ See Cook, *The Powers Of Congress Under The Full Faith And Credit Clause*, 28 YALE L.J. 421, 425, 433 (1919); Langmaid, *The Full-Faith And Credit Required For Public Acts*, 24 ILL. L. REV. 383, 387 (1920). See also note 74 *supra*.

Court could also compel recognition. By requiring full faith and credit for another state's statute, the forum state would either have to conform its law or suffer the ignominy of being deprived of the sovereign power of enforcing its law in its own courts. Although this restriction would be imposed by the federal government, it should be emphasized that the powers deprived the states would not be federally assumed. Rather, relinquishment of power by one state would be compensated by its law being given effect in another. As a matter of fact, the states have done more for statutory unity through the adoption of uniform laws than has the federal government.

It is felt that the limitations on the state's sovereign power to legislate exclusively within its territorial borders were known to the people when the constitution was adopted by them. The uniformity which was envisioned then should be perfected now.