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A Limitation of the Rule Affecting Injuries Arising Out of and in the Course of Employment

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in issue,[33] and we venture to state that it has been assumed to be the law by its practitioners as well as its scholars, however palpable a legal fiction it has seemed. While it may in some cases be fairly simple to discover the law applicable to a given state of facts, no one is more aware than lawyers and judges how difficult it sometimes is to find the law applicable to others, as in the case of titles to real property, the validity of which are constantly being guaranteed by Title Companies. The Court, in making this analogy with the right to occupy a building for factory purposes in New York City, suggests that thus they may often "guarantee the application of real estate law to difficult and baffling problems, to be finally settled only by the courts of last resort." [34]

Should the Court decide that the occupation of the assured was illegal, the maxim would not preclude the plaintiff from recovering under his contract of insurance. Just as here the landlord warrants that the contemplated use of his premises is legal, and if illegal he must answer in damages, so the title company must answer to the assured if the title it has guaranteed is illegal. Neither can now be heard to say that since "every man is presumed to know the law," the indemnitee had no right to rely on the express warranty of legality. We submit that this decision of the Court of Appeals is sound in its refusal to apply an ancient and unwieldy maxim of the law to a modern commercial problem, and is in accordance with modern legal tendencies.

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A LIMITATION OF THE RULE AFFECTING INJURIES ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT.

The courts have repeatedly stated that the Workmen's Compensation Law should be construed broadly and liberally [1] because it is the expression of what was regarded by the Legislature as a wise public policy concerning injured employees.[2] The Law was adopted

[33] North Birmingham St. Ry. Co. v. Calderwood, 89 Ala. 247, 7 So. 360 (1890); Central R. & B. Co. v. Brunswick R. Co., 87 Ga. 386, 13 S. E. 520 (1891); Palmyra v. Morton, 25 Mo. 593 (1857); Buffalo v. Webster, 10 Wend. 99, N. Y. (1833); Hope v. Alton, 214 Ill. 102, 73 N. E. 406 (1905); Burger v. Koelsch, *supra* Note 1; Markowitz v. Arrow Cons. Co., 102 Misc. 532, 169 N. Y. Supp. 159 (1918); Rockwell v. Eiler's Music House, 67 Wash. 478 (1912); Anson, Contracts (6th ed., 1907), 260.

[34] *Supra* Note 13 at 317, 171 N. E. at 76.

[1] Matter of Petrie, 215 N. Y. 335, 109 N. E. 549 (1915); Costello v. Taylor, 217 N. Y. 179, 111 N. E. 755 (1916); Winfield v. N. Y. C. & H. R. R. Co., 216 N. Y. 284, 110 N. E. 614 (1915); Moore v. Lehigh Valley R. R. Co., 217 N. Y. 627, 111 N. E. 1097 (1916).

[2] Matter of Petrie, *supra* Note 1.

in deference to a widespread belief and demand that compensation should be awarded to workmen who were permanently or temporarily disabled in the course of their employment [3] or to their beneficiaries when death resulted from such injury.[4] The Act was brought into being by the sentiment, gradually developed, which almost universally favored a more just and economical system of providing compensation for accidental injuries to employees as a substitute for wasteful and protracted damage suits, frequently unjust in their results.[5] Like every piece of paternal legislation, it has developed through a series of evolutions, leaning more and more to the interests of the working man. From a study of the cases, it appears that the courts have let the spirit, rather than the letter, of the Act, control them in interpreting its provisions, on the theory that adherence to the letter will not be suffered to defeat the general purpose and manifest policy intended to be promoted.[6]

It would seem; however, from a decision in a recent New York case,[7] that the Court disregarded the spirit of the Workmen's Compensation Law and curtailed that liberality which has characterized past decisions in similar situations. In the Matter of Andrews v. L. & S. Amusement Company,[8] an employee, while walking through an alley-way, was seized with an epileptic fit and fell, striking his head on the pavement. The fall fractured his skull and caused his death. The State Industrial Board made an award upon the finding that death resulted from an accidental injury arising out of and in the course of employment. The Appellate Division affirmed the judgment by a divided court [9] and the question was presented to the Court of Appeals, who reversed the earlier decisions, also by a divided court, and dismissed the claim. The ground for the Court of Appeals' decision was that death was not due to anything arising out of the employment.

The respondent based his claim to compensation on the case of Mausert v. Albany Builders Supply Company.[10] In that case, Mausert, who was a teamster, fell from the seat of his truck to the pavement, the wheels passing over his body, causing his death.

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[3] *Ibid.*, at 338. For an interesting discussion on the phrase, "Arising out of and in the course of employment," see Note (1929) 3 St. John's L. Rev. 144.

[4] N. Y. Workmen's Compensation Law, sec. 8.

[5] Honnold. Workmen's Compensation Law (1917), vol. 1, 60.

[6] Surace v. Dana, 248 N. Y. 18, 21, 161 N. E. 315 (1928); but *cf.* Spencer v. Myers, 150 N. Y. 269, 275, 44 N. E. 942 (1896); People *ex rel.* Wood v. Lacombe, 99 N. Y. 43, 1 N. E. 599 (1885); Matter of Folsom, 56 N. Y. 60, 66 (1874); Kent's Comm. 462.

[7] Matter of Andrews v. L. & D. Amusement Co., 253 N. Y. 97, 170 N. E. 506 (1930).

[8] *Ibid.*

[9] Matter of Andrews v. L. & D. Amusement Co., 226 App. Div. 623, 236 N. Y. Supp. 625 (3rd Dept., 1929).

[10] Matter of Mausert v. Albany Builders Supply Co., *et al.*, 250 N. Y. 21. 164 N. E. 729 (1928).

The cause of his fall was never definitely established, but the Court said:

> "An apoplectic stroke or vertigo may be the proximate cause of the fall, but it is surely a remote cause of the injury. An illness sufficiently arresting to cause the patient to fall may prove entirely devoid of any result. The sick man may drop upon a bed or soft rug and suffer no injury. *It is the fall and the injury resulting from it that constitutes an accident within the purview of the statute.* The cause may be disregarded and the inquiry limited to an investigation to disclose whether the fall, having occurred, bore with it such consequences as would not have occurred except for the employment." [11] (Italics ours.)

The learned Judge in the Andrews case attempted to distinguish the two cases by stating that Mausert was in danger every day he was on the job, of falling off his truck and being injured, while in the Andrews case the injury was due solely to the epileptic fit, causing him to fall, fracturing his skull and causing his death. It seems to the writer that the stand of the Court in the principal case [12] is not well taken. From the language of the Court in the Mausert case and from the cases which have followed it,[13] the test seems to be: Did the workman receive an injury which was due to the place where his duty of employment required his presence? [14] This in spite of the fact that illness of some nature set in motion and exclusively induced the fall.

The question of an employee's being afflicted with a disease which remotely causes an accident is not a new one. In 1905 the English courts were confronted with the case of an accident caused proximately by a fall, but remotely by a fit which the deceased suffered.[15] The Court, in finding for the claimant, said:

> "An accident does not cease to be an accident because the remote cause of the injury was the physical condition of the injured man. While the cause of the fall was the fit, still the cause of the injuries was the fall itself."

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[11] *Ibid.*, at 25.

[12] *Supra* Note 7.

[13] Berkowitz v. Karp, 225 App. Div. 836, 232 N. Y. Supp. 697 (3rd Dept., 1929); Woodrich v. Methodist Book Concern, 225 App. Div. 836, 232 N. Y. Supp. 922 (3rd Dept., 1929).

[14] In Richards v. Indianapolis Abattoir Co., 92 Conn. 274, 104 Atl. 604 (1917), the Court laid down the rule (at p. 276) that "* * * An injury to an employee may be said to arise in the course of his employment when it occurs within the period of his employment, at the place where he reasonably may be, and while he is reasonably fulfilling the duties of his employment, or is engaged in doing something incidental to it."

[15] Wicks v. Davell & Co., Ltd., 74 L. J. K. B. 522, 2 K. B. 225, 92 L. T. 677, 53 W. R. 515, 21 T. L. R. 487, C. A. (1905).

In the case where a ship's fireman with diseased arteries had an apoplectic fit while working in a ship's hold, and received an injury, the English courts held that the injury was accidental and compensable under their Act.[16] In Wright and Greig v. McKendry,[17] the English Courts with facts nearly identical to those in the Andrews case permitted an award where it was shown that a workman was seized with a fit, fell on a concrete floor and fractured his skull and died as a result thereof. The Court held that death was caused by accident arising out of employment because it was due to a condition of the particular place where his employment required him to be at the time. The English view on the point of this note is admirably stated by Lord Shand in Fenton v. Thorley and Company:[18]

> "The word 'accident' in the statute is to be taken in its popular and ordinary sense. I think it denotes or includes any unexpected personal injury resulting to the workman in the course of his employment from any unlooked-for mishap or occurrence."

Decisions in other jurisdictions in the United States sustain the holding of the Mausert case and the English rule that it is not necessary that the fall result from an accident, as the fall is the accident. An injury sustained by an accidental fall is compensable in many states even though the fall resulted from some disease with which the employee was afflicted.[19] In reaching such decisions the courts have had regard to the fundamental principle that *the employer takes the employee subject to his physical condition when he enters his employment.*[20] Compensation losses are not made solely for the protection of employees in normal physical condition, but for those who are subnormal;[21] and susceptibility to risk does not prevent recovery for an injury or death proximately caused by injury arising out of employment.

It would seem, therefore, that the illness which precedes the injury and constitutes the proximate cause of the fall, but which is the remote cause of the injury, should be ignored. If the courts permit an award to a workman who sustains an injury through sheer

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[16] Brofort v. S. S. Blomfield (owners of), 6 B. W. C. C. 613 (1913).

[17] 11 B. W. C. C. 402, 417. (The principle of the McKendry case was approved by the House of Lords.) Upton v. Grand Central Rwy. Co., App. Case 302 (1924).

[18] 72 L. J. K. B., A. C. 443, 89 L. T. 314, 52 W. R. 8 (1903).

[19] McCarthy v. General Electric Co., 293 Pa. 448, 143 Atl. 110, 60 A. L. R. 1288 (1928); see also, Cusicks case, 260 Mass. 421, 157 N. E. 596 (1927); Standard Oil Co. v. Industrial Comm. of Utah No. 4429, 252 Pac. 292 (1926); Rockford Hotel Co. v. Madison, 300 Ill. 87, 132 N. E. 795 (1921).

[20] Bradbury, Workmen's Compensation Law (3rd ed., 1917), p. 454.

[21] Carroll v. What Cheer Stables Co., 38 R. I. 421, 96 Atl. 208 (1916); Smith v. McPhee Stevedoring Co., 1 Cal. I. A. C. Dec. 197 ( ); Crowley v. City of Lowell, 223 Mass. 288, 111 N. E. 786 (1916).

stupidity and clumsiness then surely one afflicted by disease should not be penalized by the statute. The question to be asked in a case of this kind has been tersely stated in a dissenting opinion by O'Brien, *J.*, in the Andrews case:[22] "Did the workman's employment require him to be in the place, whether a floor or a walk or other structure, which caused his injury." To us it seems that if this question is answered in the affirmative the award should be allowed. This would be interpreting the statute in accordance with its general purpose and the policy intended.

In view of the authorities herein reviewed, it is difficult to approve of the viewpoint taken by the majority of the New York Court of Appeals in the Andrews case. The Court seems to have entirely disregarded the spirit as well as the letter of the Workmen's Compensation Law. On principle as well as on precedent, approval of Andrews' claim would appear to have been a better holding.

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FORMATION OF A CORPORATION TO EVADE THE USURY LAWS.

Progressive courts and judges of the current day do much to overcome the ill effect of the application of ancient common law rules to modern-day conditions. They do more, and justifiably so, to overcome the legislative lethargy in the matter of removing archaic and anachronistic laws from the statute books. More than ever the rationale of the recent decisions is found in the contemporary social and economic concepts.

No better example of the incongruity of the rules of positive law and the complex economic conditions of the day is found than in the usury statutes.[1] It may well be conceded that such laws were splendid pieces of paternal legislation and needed at the time of their enactment. However, the increased complexity of commercial activities and the interdependency of all people under the money economy of the present day has rendered unnecessary, it seems, the need for continuing such paternal legislation. Certainly, today, the price of commercial money is not controllable by such a simple instrument as a rule of law. The changed relationship between supply and demand, the effect of the monetary system, modern-day use of credit, and other factors of the new economic order govern, and govern alone.

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[22] *Supra* Note 7 at 104.

[1] N. Y. Gen. Bus. Laws, sec. 370 *et seq.*: "The rate of interest upon the loan or forbearance of any money, goods or things in action, except as otherwise provided by law, shall be six dollars upon one hundred dollars, for one year, and, at that rate, for a greater or less sum, or for a longer or shorter time."