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Article 14

Workmen's Compensation--"Arising Out of and in the Course of Employment"

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possible, is hardly a sufficient reason for denouncing transactions which are not fraudulent. So, if the question were open, or a new one, unaffected by any settled law of the State, we incline to the opinion that the question is not one of law, so much as it is one of fact and good faith, and that the decision of the Supreme Court of Iowa rests on sound principles."

E. N. J.

WORKMEN'S COMPENSATION—"ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT."—The compensation acts, according to their usual phraseology, provide for the award of compensation in cases of "injury by accident arising out of and in the course of the employment." [1] Practically every court has attempted an explanation of these rather indefinite terms, but without any marked success. Lord Wrenbury in Herbert v. Fox [2] said, "No recent act has provoked a larger amount of litigation than the Workmen's Compensation Act. The few and seemingly simple words 'arising out of and in the course of the employment' have been the fruitful (or fruitless) source of a mass of decisions turning upon nice distinctions and supported by refinements so subtle as to leave the mind of the reader in a maze of confusion. From their number counsel can, in most cases, cite what seems to be an authority for resolving in his favor, on whichever side he may be, the question in dispute."

The New York Court of Appeals' latest interpretation of this phrase involved a quite unique set of facts and an award based upon grounds so fine that either side might well have prevailed.

In Corrina v. Debardieri [3] the claimant's deceased husband was employed as a driver. In the course of his duties he drove a team of horses, hitched to a coal wagon, upon a Hudson River ferry boat. He fell asleep while lying full length on the seat of the wagon. A deckhand attempted to arouse him when the ferry arrived at Jersey City, but just at that time the team of horses started to walk off the boat and the driver was jolted from the seat. The wagon passed over him and he sustained injuries which resulted in his death.

The Industrial Board found that the injuries were accidental and arose "out of and in the course of his employment."

The Appellate Division reached a contrary conclusion, holding that the deceased had temporarily abandoned his employment and that the injury suffered during such abandonment did not arise "in the course of his employment."

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[1] New York Workmen's Compensation Act, Sec. 10.

[2] Appeal Cases (Eng.) 419, (1916).

[3] 247 N. Y. 357, 160 N. E. 397 (1928).

The Court of Appeals reversed this determination and in an opinion by Lehman, J., held: The fact that deceased was not actively at work when he was injured does not contradict the finding of the commission that the injury occurred in "the course of" his employment.[4] He could not drive during the passage of the ferry boat across the river, yet his employment required him to remain on the ferry. We may assume that while on the ferry he may have been under some duty to look out for his horses and at least to be ready to drive them off when the boat reached the opposite shore. He may have been negligent in the performance of such duties, but negligence in the performance of his duties by an employee, even in disobedience of orders, is not equivalent to abandonment of employment. Though the driver chose to lie down it is evident that he still expected to be able to perform his duty of driving when the occasion for driving arose. While he may have neglected an incidental duty to remain watchful in the interval, we have no act directly contrary to the purpose of the driver's employment.[5]

A case directly in point with the preceding is Richards v. Indianapolis Abattoir Co.[6] where a driver, who had been engaged in hard work in the cold, while waiting to use an elevator to make a delivery, sat down a few feet from a boiler, fell asleep, and shortly afterward was awakened by finding himself afire. It was held that the injury sustained arose "out of and in the course of" his employment, the court saying (at p. 276):

> "'* * * 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 a 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.' The controlling question here presented is whether * * * the plaintiff, when injured, was actually doing the work he was employed to do, or whether he was doing something substantially different. He was injured while on duty, in his working hours, when waiting for an opportunity to continue his service of employment. The accident occurred when the plaintiff was at a place where he might reasonably be. There was no turning aside upon his part, no attempt to serve ends of his own. The fact

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[4] Norris v. N. Y. Central R. R., 246 N. Y. 307, 158 N. E. 879 (1927).

[5] But see Gifford v. Patterson, 222 N. Y. 4, 117 N. E. 946 (1917); where it was the duty of a night watchman in a factory to watch the premises and go around the building regularly for that purpose; but he abandoned that duty and sat in a chair, at an open doorway, from which he "dozed off" and fell down a chute and received injuries from which he died; his injuries were not received as a natural incident of his work. Hence, an award for his injuries cannot be made.

For a general discussion of watchman cases see annotation to 6 A. L. R. 576 (1917).

[6] 92 Conn. 274, 104 Atl. 604 (1917).

> that he fell asleep, under the circumstances set forth * * * was not decisive of his claim."

This at the most was negligence and negligence is not a bar to recovery for compensation under the Compensation Acts.

The term "in the course of" refers to the time, place, and circumstances under which the accident took place. The term "out of" in general refers to the origin or cause of the accident. The terms are not synonymous, for an injury may be received "in the course of employment," and still have no causal connection with it, as is necessary if the injury arises out of the employment.[7] It is, however, difficult to conceive of a case in which an injury arises "out of" the employment, that does not also arise "in the course of" the employment. The course of employment is neither limited to the period of actual labor nor is it extended to include all acts necessitated by the employment. The workman is not regarded as outside the scope of his employment if not actually at work or in the receipt of wages, nor is he regarded as within it because he is doing something which has relation only to his work.

The leading authority on the definition of the terms referred to, is the *McNicols* case[8] in which the workman, while performing his duties, suffered injuries resulting in death, at the hands of an habitually intoxicated fellow-employee. The quarrelsome habits of the latter employee were well known to his superintendent. Rugg, *C. J.*, in resolving the question, "Did the injury arise out of and in the course of the employment?" in favor of the claimant, said:

> "It is not easy nor necessary to the determination of the case at bar to give a comprehensive definition of these words, which shall accurately include all cases embraced within the act and with precision exclude those outside its terms. It is sufficient to say that an injury is received 'in the course of' the employment when it comes while the workman is doing the duty which he is employed to perform. It arises 'out of' the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the

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[7] State v. District Court of St. Louis, 129 Minn. 176, 151 N. W. 912 (1915). And in Bryant v. Fissel, 84 N. J. L. 72, 86 Atl. 458 (1913); where it was held that an accident arises "in the course of the employment," if it occurs while the employee is doing what a man so employed may reasonably do within a time during which he is employed, and at a place where he reasonably may be during that time. And it arises "out of" the employment when it is something the risk of which may have been contemplated by a reasonable person, when entering the employment as incidental thereto.

Hollenbach v. Hollenbach, 181 Ky. 262, 204 S. W. 152 (1918); Kowalek v. N. Y. Consol. Ry. Co., 229 N. Y. 489, 128 N. E. 888 (1920); see also Feda v. Cudahy Packing Co., 102 Neb. 110, 166 N. W. 190 (1918); Pierce v. Boyer Co., 99 Neb. 321, 156 N. W. 509 (1916).

[8] 215 Mass. 497, 102 N. E. 697 (1913).

injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workman would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event, it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence."

A well-known author [9] has defined the phrase as follows: "* * * it may be said that an act is 'within the course of the employment' if (1) it be something fairly and naturally incident to the business, and if (2) it be done while the servant was engaged upon the master's business, * * *" Also, if it be done, "although mistakenly or ill-advisedly, with a view to further the master's interest, or from some impulse or emotion which naturally grew out of or was incident to the attempt to perform the master's business, and did not arise wholly from some external, independent, and personal motive on the part of the servant to the act upon his own account."

The mere fact that a workman, at the time, was not actively engaged in duties but waiting to begin work will not deprive him of compensation.[10] The Courts, liberally construing the compensation acts, have in the past extended the phrase "in the course of employment" so as to include injuries sustained at times when the employee was strictly engaged in matters of his private concern. Such are cases where employees have suffered injuries while eating lunch upon the employer's premises, if permission to do so express or implied has been given.[11] It should not be inferred, however, that an em-

[9] Mechem on Agency, Sec. 1960; see also Schneider's Workmen's Compensation Law, page 496; Honnold on Workmen's Compensation, page 346; Harper's Workmen's Compensation, Sec. 30; Bradbury on Workmen's Compensation, page 461.

[10] In May v. Ison, 110 L. T. (n. s.) 525, 7 B. W. C. C. 148 (1914); where a workman who was instructed to get a barge at a wharf, but upon going there found that he would not be able to get it for some time because of the condition of the tide, did not go outside of the ambit of his employment in attempting to get into a small boat nearby, in which he could sit down and watch the tide until the time was favorable for him to perform his work.

[11] Blovelt v. Sawyer, 6 B. W. C. C. 18 (1903); Brassard v. Delaware & H. Co., 186 App. Div. 647, 175 N. Y. Supp. 359 (1919); see also Donlin v. Kips May Brewing Co., 189 App. Div. 415, 178 N. Y. Supp. 93 (1919); Lauterbach v. Jarett, 189 App. Div. 303, 178 N. Y. Supp. 480 (1919); Martin v. Metro. Ins., 197 App. 382, 189 N. Y. Supp. 467 (1921); Etherton v. Johnstown Knitting Co., 184 App. Div. 820, 172 N. Y. Supp. 724 (1918).

ployee who, for example, has climbed a ladder to pose for a photograph can receive compensation for injuries sustained in a fall.[12]

It may be stated as a general rule that compensation is not awarded for injuries occasioned by horseplay or "fooling," since such injuries cannot well be said to arise "out of" the employment.[13] If, however, the claimant be the innocent victim of the horseplay and in nowise a participant, the cases recognize that among employees, necessarily in close proximity for considerable periods of time, some "fooling" is inevitable, and wisely consider it as a risk of the employment when the claimant can show his freedom from participation.[14]

It is now well settled that the fact that an injury is the result of the wilful or criminal assault of a third person will not prevent its being accidental within the meaning of the Acts.[15]

In Hinchuck v. Swift & Co.,[16] where two employees quarreled over the manner of doing their work, and one of them picked up a piece of iron pipe and struck and killed the other, it was held that a recovery could be had under the Minnesota Compensation Act, providing for compensation in every case of personal injury or death of an employee caused by accident arising "out of and in the course of,"

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[12] Stimell v. Remington Type. Co., 210 App. Div. 311, 206 N. Y. Supp. 188 (1924); see Mannor v. Pennington, 180 9pp. Div. 130, 167 N. Y. Supp. 424 (1917).

[13] Fishering v. Pillsbury, 172 Cal. 690, 158 Pac. 215 (1916); Payne v. Ind. Comm., 295 Ill. 388, 129 N. E. 122 (1920); Matter of Loper, 64 Ind. App. 571, 116, N. E. 324 (1920); White v. Kansas City, etc., Co., 104 Kan. 90, 177 Pac. 522 (1919); Moore's case, 225 Mass., 258, 114 N. E. 204 (1916); Tarpper v. Weston-Mott Co., 200 Mich., 275, 166 N. W. 857 (1918); Pierce v. Boyer Co., *supra,* note 7; Feda v. Cudahy Packing Co., *supra,* note 7; Hulley v. Moosbruger, 88 N. J. L. 162, 95 Atl. 1007 (1915); Laurino v. Donovan, 183 App. Div. 168 (1918), aff'd 226 N. Y. 700, 123 N. E. 875 (1919); DeFilippis v. Falkenberg, 170 App. Div. 153 (1915), aff'd in 219 N. Y. 581, 114 N. E. 1064 (1916); Plouffe v. Amer. Hard Rubber Co., 211 App. Div. 298, N. Y. Supp. (1925); Fed. Rubber Mfg. Co. v. Havolic, 162 Wisc. 341, 156 N. W. 143 (1916); Fitzgerald v. Clarke & Sons, 2 Kings Bench 796 (1918).

[14] Pekin Cooperage Co. v. Industrial Bd., 277 Ill. 53, 115 N. E. 128 (1917); Hollenbach Co. v. Hollenbach, *supra,* note 7; Markell v. Daniel Green Co., 221 N. Y. 493, 116 N. E. 1060 (1917); Leonbruno v. Champlain Silk Mills, 229 N. Y. 470, 128 N. E. 711 (1920); Industrial Com. v. Weigandt, 102 Oh. St. 1, 130 N. E. 38 (1921); Willis v. State Ind. Com., 78 Okla. 216, 190 Pac. 92 (1920); Newport, etc. v. Industrial Com., 1167 Wisc. 630, 167 N. W. 749 (1918). In Hulley v. Moosbrugger, 87 N. J. L. 103, 93 Atl. 79 (1915), Kalisch, *J.,* said: "It is but natural to expect them to deport themselves as young men and boys, replete with the activities of life and health. For workmen of that age or even of maturer years to indulge in a moment's diversion from work, to joke with or play a prank upon a fellow workman, is a matter of common knowledge to everyone who employs labor."

[15] Western Indemnity Co. v. Pillsbury, 170 Calif. 686, 151 Pac. 398 (1915); San Bernardino County v. Industrial Com., 35 Cal. App. 33, 169 Pac. 255 (1917); McNicol's case, 215 Mass., 497, 102 N. E. 697 (1913); Willis v. Pilot Butte Mining Co., 58 Mont. 26, 190 Pac. 124 (1920); Heitz v. Ruppert, 218 N. Y. 148, 112 N. E. 750 (1916); Stasmas v. Rock Island Mining Co., 80 Okl. 221, 195 Pac. 762 (1921).

[16] 149 Minn. 1, 182 N. W. 622 (1921).

his employment, although it was provided that the Act did not embrace an injury caused by a third person or fellow employee for reasons peculiarly personal. The Court, holding the statute applicable if there be some causal relation between the employment and the injury said: "Not that the injury must be one which ought to have been foreseen, but it must be one which, after the event, may be seen to have had its origin in the nature of the employment."

A similar determination was reached in a case where a workman was struck on the head by a hammer thrown by a fellow-employee who had begun an argument relative to his work.[17]

The leading New York case and one that is constantly cited in assault decisions is that of Heitz v. Ruppert,[18] in which the injuries were the results of an altercation between two employees following a reproof of one by the other. The man reproved had sprinkled water upon the claimant. Then, as the latter turned around, he accidentally stuck a finger in claimant's eye, causing a serious injury. Judge Pound, sustaining an award, said: "The injury must be received (1) while the workman is doing the duty he is employed to perform; and also (2) as a natural incident of the work. It must be one of the risks connected with the employment, flowing therefrom as a natural consequence and directly connected with the work."

The rule thus laid down has since been applied in many cases.[19] For example, in Rydeen v. Monarch Furniture Co.,[20] where a foreman, going in search of an employee who had abandoned his work without permission, came upon him, and a quarrel ensued in which the foreman was injured. Compensation was awarded to the foreman.

But it has been held in New York, that no award should be granted where a driver was killed as the result of a violent quarrel,

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[17] 73 Ind. App. 136, 125 N. E. 464 (1919).

[18] *Supra,* note (15).

[19] De Fillippis v. Falkenberg, supra, note 13; Saenger v. Locke, 220 N. Y. 556, 116 N. E. 367 (1917); Gifford v. Patterson, *supra,* note 5; Kowelek v. N. Y. Consolidated R. R. Co., *supra,* note 7; Scholtzhauer v. C. & L. Lunch Co., 233 N. Y. 12, 134 N. E. 701 (1922); De Salvo v. Jenkins, 239 N. Y. 531, 147 N. E. 182 (1924). In Verschluser v. Stern & Son, 229 N. Y. 192, 197, 128 N. E. 126 (1920, the court said: "The Workmen's Compensation Law should be construed broadly. Compensation under it does not depend on any fault of the master or any negligence of the servant. The law was enacted to do away with the defences which had governed the law of master and servant. The question in each case is, "Was the injury received while engaged in the master's business?" If the servant had left his employment and was wilfully pursuing designs of his own, he would not be entitled to compensation. The man who initiates an assault is doing a wilful thing, but this cannot be said of the man who, surprised by physical assault or insult, reacts and in self-protection strikes another. His act is as involuntary as that of closing the eye to avoid dust, the same action and reaction which the law recognizes in its definition of manslaughter.

[20] 240 N. Y. 295, 148 N. E. 527 (1925).

instigated by him, with another driver (not a fellow-servant), as to prior rights in procuring their materials.[21]

All concur in the rule that the accident to be within the compensation act, must have had its origin in some risk of the employment. No fixed rule to determine what is a risk of the employment has been established. Where men are working together at the same work, disagreements may be expected to arise about the work, the manner of doing it, as to the use of tools, interference with one another, and many other details which may be trifling or important. Infirmity of temper or words may be expected, and occasionally blows and fighting. Where the disagreement arises out of the employer's work in which the two men are engaged and as a result of it one injures the other, it may be inferred that the injury arose "out of" the employment.

It is quite clear that an employee is entitled to compensation as far as injury arising "out of and in the course of his employment," when such injury was received in the performance of work for his employer outside the scope of his usual duty, but which the employee had been expressly ordered to do by someone authorized to direct him as to his work, and even in the absence of such an order, he has been allowed compensation in some cases where he acted in the belief that such an order had been given by someone authorized to do so.[22]

The fact that the injury was received while violating some rule, or instruction, or statutory prohibition will not necessarily prevent it from being considered as arising "out of and in the course of the employment." [23]

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[21] Stillwagon v. Callan Bros., 183 A. D. 141, aff'd in 224 N. Y. 714, 121 N. E. 893 (1918); see also Chicago v. Ind. Comm., 292 Ill. 406, 127 N. E. 49 (1920); Jacquemin v. Turner and S. Co., 92 Conn. 382, 103 Atl. 115 (1918); Knocks v. The Metal Packing Corp., 231 N. Y. 78, 131 N. E. 741 (1921). If the assault on an employee was committed by another solely to gratify his personal ill will, anger, or hatred, the assault did not arise "out of" the employment within the meaning of the Acts. Metropolitan Lumber Co. v. Ind. Comm., 41 Cal. App. 131, 182 Pac. 315 (1919); Romerez v. Swift & Co., 106 Kan. 844, 189 Pac. 923 (1920).

[22] Engels Copper v. Ind. Comm., 183 Cal. 714, 192 Pac. 845 (1920); Meyers v. Ind. Comm., 191 Cal. 673, 218 Pac. 11 (1923); Farris v. Louisiana Lumber Co., 148 La. 106, 86 So. 670 (1920); Pennell v. Portland, 124 Me. 14, 125 Atl. 143 (1924); Morris & Co. v. Cushing, 103 Neb. 481, 172 N. W. 691 (1919); Morrio v. Muldon, 190 A. D. 689, aff'd 229 N. Y. 611, 129 N. E. 928 (1920); Madura v. Bronx P'kway Comm., 201 N. Y. Supp., 639 aff'd 238 N. Y. 214, 144 N. E. 505 (1924); Samoskie v. Phila. Coal Co., 280 Pa. St. 203, 124 Atl. 471 (1924). But see Sabatelli v. De Robertis, 183 N. Y. Supp. 796, aff'd 230 N. Y. 592, 130 N. E. 906 (1921).

[23] Ind. Comm. v. Funk, 68 Colo., 467, 191 Pac. 125 (1920); Chicago R. Co. v. Industrial Bd., 276 Ill. 112, 114 N. E. 534 (1916); Alexander v. Ind. Bd., 281 Ill. 201, 117 N. E. 1040 (1917); Chicago W. & F. Coal Co. v. Industrial Comm., 303 Ill. 540, 135 N. E. 784 (1922); Nordyke & M. Co. v. Swift, 71 Ind. App. 176, 123 N. E. 449 (1919); Sears v. Peytral, 151 La. 971, 92 So. 561 (1922); Von Ette's case, 223 Mass. 56, 11 N. E. 696 (1916); Kolaszynski v. Klie, 91 N. J. L. 37, 102 Atl. 5 (1917); Macechko v. Bowen Mfg. Co., 179

The principal questions which arise where an employee is injured while doing a prohibited act, taken in logical order, are as follows: First, was the doing of the prohibited act the proximate cause of the injury? Second, was the injury one arising out of the employment? Third, if so, was the doing of the prohibited act serious and wilful misconduct within the meaning of the statutes making such conduct ground for refusing compensation?

Other questions are: Whether the act of disobedience is ground for reducing compensation under a statutory provision therefor; whether the injury is "purposely self-inflicted," within the meaning of the statute; or whether it constitutes a wilful failure to make use of a guard against accident, provided by the employer, within the meaning of a statute making such failure ground for refusing compensation.

Apparently, the earliest case in this state in which this point was directly involved is Macechko v. Bowen Mfg.,[24] the Court by Mr. Justice Lyon declared the test in such cases to be: "whether the order which was disobeyed limited the sphere of the workman's employment, or was merely a direction not to do certain things or to do them in a certain way, within the sphere of the employment." Applying the test it was held an employee operating a power press, who had his hand crushed in attempting to remove material which had caught in the die of the press, was entitled to compensation, although a rule of the employer, known to him, forbade employees putting their hands within the press while it was in operation. In other words, the prohibition involved merely concerned the details of the workman's conduct within the scope of his employment and did not limit the sphere.

In Erdberg v. United Textile Print Works,[25] a boy sixteen years of age who was employed to wash clothes in a dyeing establishment climbed on the rim of a vat containing hot water for the purpose of releasing clothes that had become stuck in a reel of the vat, notwithstanding that he was instructed not to climb upon the vat. The Court held for claimant saying: "The disobedience of an order may do no more than to establish a fault on the part of an injured employee. In that case the employee would not lose his right to compensation. The order, however, may go further. It may so restrict the activities of the employee that its violation would place

A. D. 573, 166 N. Y. Supp. 822 (1917); Etherton v. Johnstown Mills Co., *supra*, note 11; Greeney v. Haberle-Crystal Co., 190 A. D. 785, 180 N. Y. Supp. 648 (1920); Gurski v. Susquehanna Coal Co., 262 Pa. St. 1, 104 Atl. 80 (1918); Twin Peaks Canning Co. v. Ind. Comm., 57 Utah 589, 196 Pac. 853 (1921); Funt Motor Car Co. v. Ind. Comm., 168 Wisc. 436, 170 N. W. 285 (1918). But driving an automobile on a public highway at a speed prohibited by statute under penalty is wilful misconduct and no recovery will lie. Fidelity & D. Co. v. Ind. Comm., 171 Cal. 728, 154 Pac. 834 (1916).

[24] *Supra*, note 23. But see Northern Ill. Traction Co. v. Ind. Bd., 279 Ill. 565, 177 N. E. 95 (1917).

[25] 216 A. D. 574, 216 N. Y. Supp. 275 (1926).

him outside the sphere of his employment, in which case compensation would not be payable."

Thus a machine operator whose employment requires him to oil the machine is not outside the sphere of his employment if, against orders, he oils the machine when it is in motion.[26] On the other hand, if oiling the machine is at all times forbidden, he is beyond the sphere of his employment if he is injured in the course of doing the thing forbidden.[27] In the latter instance the employee would be doing work absolutely forbidden, whereas in the former he would be doing the work of his employment but in a forbidden manner. It is clear also that an employer's order might be effective to limit the sphere of employment, not only where it restricts the activities of the employee, but likewise where it confines the exercise of such activities to a certain time and place. Therefore, if an employee was required to work in a given room of a plant, and forbidden to use any other means of access than the one specified, his breach of the rule would take him outside of the employment.[28]

But in the following cases compensation has been denied upon the ground that the injury did not arise "out of and in the course of" the employment, where the employee was engaged in the performance of work which was outside the scope of his usual duty.

In Spooner v. Detroit, etc. Co.,[29] an injury to an engineer of a printing plant who was working the engine at night for another concern which was using the plant temporarily, in taking some of the latter's employees upstairs in an elevator, which it was not necessary to use and which it was no part of his duty to operate, did not arise "out of and in the course of" his employment for such other concern, where there was no occasion for his leaving the basement, and he went upstairs merely for a friendly visit.

And in Glatzl v. Stumpp,[30] an injury sustained while fixing a window box at a house, by the driver of a florist's truck who had taken some flowers there was held not within the statute as arising "out of and in the course of" his employment.

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[26] Fox v. Truslow & Fulle, Inc., 204 A. D. 584, 198 N. Y. Supp. 735 (1923).

[27] Yodakis v. Smith & Son, 193 A. D. 150, 183 N. Y. Supp. 768 (1920).

[28] In Harris v. Dobson & Co., 150 Md. 76, 132 Atl. 374 (1926), the court said: "not all violations of rules or orders amount to wilful misconduct which, under the statute, disentitles an uninjured workman to compensation. Few operations, perhaps none, can be carried out in strict accordance with rules and orders. Some departures in practice are inevitable. And we must assume that the Legislature had this in mind, and did not intend to deny compensation for injuries resulting from such ordinary departures. * * * There must be something more than thoughtlessness, heedlessness, or inadvertence in it. There must be at least, a wilful breach of the rule or order." See also Wendt v. Ind. Ins. Comm., 80 Wash. 111, 141 Pac. 311 (1914); Larsen v. Paine Drug Co., 218 N. Y. 252, 112 N. E. 725 (1916).

[29] 187 Mich. 125, 153 N. W. 657 (1915).

[30] 220 N. Y. 71, 114 N. E. 1053 (1917).

Also in Yodakes v. Smith Co.,[31] there was no recovery where a weaver put a gritty substance in the belt by which his loom was run, in order to increase its speed, the repair of belts being the fixer's duty.

It should be borne in mind that the purpose of the Workmen's Compensation Acts was to benefit hazardous employments by compelling employers to carry liability insurance. So in cases of doubt, it is perhaps wiser to incline in favor of one who has lost, or partially lost, the use of his body through injury. But this should not be carried too far, by allowing recovery to one who has intentionally stepped outside the scope of his employment.

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[31] 193 A. D. 150 (1920), aff'd 230 N. Y. 593, 130 N. E. 907 (1921).