The History of California Labor Legislation, 1910-1930.

Chapter VIII.

Workmen's Compensation in the Light of Judicial Decisions.

In this chapter a few representative and leading cases which have come before the Supreme Court of the state for final settlement will be reviewed. Out of the thousands of awards given by the Industrial Accident Commission as well as scores of decisions of the Appellate and Supreme Courts, it is a difficult task to select truly representative cases. No two cases have been exactly alike, every decision has involved a different set of conditions, with often entirely different principles at stake.

The chapter is divided into five parts, each devoted to a major problem of interpretation of workmen's compensation in California. No pretense is made that all important problems have been included. There are just enough of the more important ones to give the reader an idea of what has been going on in the state.

Constitutionality.

The constitutionality of the workmen's compensation act has been raised many times in test cases before the California Supreme Court. One of the leading decisions regarding the Boynton act was the Western Indemnity Company case of 1915.* In this case

*170 Cal. 686, 151 Pac. 398; also see Great Western Power Company vs. Industrial Accident Commission, 170 Cal. 180, 149 Pac. 35, (1915).

it was alleged by the petitioner that the clause of the fourteenth amendment guaranteeing "due process of law" and "equal protection of the laws" were violated by the scheme of legislation embodied in the Boynton act. It was further asserted that the enactment substituted a new system of rights and obligations for the common law rules governing the liability of the employers and that "the change made was radical, not to say revolutionary."

By the way of reply, the supreme Court cited with approval a Washington decision upholding the compulsory compensation law in that state,* and answered the petitioner's claims as follows:

*State vs. Clausen, 65 Wash. 156, 117 Pac. 1101, (1911). The Washington court concluded that "the Fourteenth Admendment was intended to prevant the arbitrary exercise of power, or undue, unjust and capricious interference with personal rights; not to prevent those reasonable regulations that all must submit to as a condition of remaining a member of society."

"A law which distrubs no vested right pf property, which is not retroactive in its operation upon the conduct of persons, but which looking to the future, merely changes the existing rules governing the liability of masters for injuries caused by accidents occurring to their servants while in the service, does not come within the scope of the fourteenth amendment. It is simply an exercise by the state of its governmental power to pass laws regulating the ordinary private rights of persons and property. The law in question is of this character. It does not affect past transactions or previously acquired rig ts or persons- or property. It provides for a notice and hearings as to liability arising under it, and it bears alike upon all affected by its provisions." By a six-to-one decision the statute was held to be a valid legislative exercise of the plice power and, therefore,

constitutional.

The next year the right of the Industrial Accident Commission to make awards of compensation benefits in death cases was called in question upon the ground that the constitutional amendment authorizing workmen's compensation legislation in California* did not specifically include death cases or the rights of depend-

*For provisions of the amendment see page ___

ents, but referred only to injuries and injured employees. Workmen's compensation in California almost came to disaster in this case. The Supreme Court finally sustained the actions of the Industrial Accident Commission, however, b a four-to-three decision.*

*Western Metal Supply Company vs. Industrial Accident Commission, 172 Cal. 407, 156 Pac. 491, (1916).

Since 1916 the constitutionality of the compensation act has been questioned many times, but its main provisions have been uniformly upheld.

Extra-Territorial Jurisdiction of the Law.

One of the important questions coming before the Supreme Court has been the extra-territorial application of the law. A famous case pertaining to injuries sustained outside the state was finally settled in 1920 after having been reviewed twice by the California Supreme Court.*

*Quong Ham Wah Vs. Industrial Accident Commission, 59 Cal. December 18, 1919; 184 Cal. 26,192 Pac. 1021, (1920).

A California resident was employed by a contractor to work in the Alaska fisheries and while in Alaska he was injured in one of the canneries. Compensation was awarded on the basis of section 58 of the workmen's compensation act.* The employer of the

*Section 58 reads as follows; "The commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of injury and the contract of hire was made in this state, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by law." (Cal. Stats. 1917, p. 870).

injured man appealed the case and attacked the validity of the statute on the ground that it violated Article Iv of the constitution of the United States which provides that "The citizens of each state shall be entitled to all the privileges and immunites of citizens in the several states". In its first decision the California Supreme Court held that the employer was privileged to raise the question of discrimination between resident and non-resident employees;* and then went on to hold section 58 in

*This reversed its decision in two earlier cases; i.e., Estabrook S. S. Co. vs. Industrial Accident Commission, 177 Cal 767, 177 Pac. 848, (1918); Klamath S. S. Co. vs. Industrial Accident Commission, 177 Cal. 767, 177 Pac. 848, (1918)

violation of Article IV and the "equal protection of the laws" clause of the fourteenth amendment of the Federal Constitution because of such discrimination. On rehearing, these positions were reaffirmed, but the constitutionality of the section was upheld upon futher ground that the effect of the Fedral Constitution read into the section was to strike down the limitation

and not the entire section. It therefore conferred ex proprio vigore upon non-resident employees the same privileges given by section 58 to resident employees. The case was appealed to the United States Supreme Court but was dismissed for want of a substantial Federal question.*

*255 U. S. 445, 41 Sup. Ct. 373, (1920).

In view of this decision California has the right to protect residents against injuries sustained outside the state.* There are of course certain limitations but they lead us to a discussion of

*See Alaska Packers Ass. vs. Industrial Accident Commission, 73 Cal. Dec. 330, 253 Pac. 926, (1927).

injuries sustained in interstate commerce as well as maritime injuries.

Inter-State Commerce Cases.

It was early decided that employees engaged in interstate trade were not covered by state compensation insurance, but were under the Federal Employers' Liability act.* The courts have had

*Smith vs. Industrial Accident Commission, 26 Cal. App. 269, 147 Pac. 600, (1915); Southern Pacific Co. vs. Industrial Accident Commision, 170 Cal. 782, 151 Pac. 277, (1916); Southern Pacific Co. vs. Industrial Accident Commission, 174 Cal. 16, 161 Pac. 1142, (1916)

considerable difficulty, however, deciding when an employee is engaged in inter-state trade and whn he is engaged in intra-state trade. A leading case involved the electrocution of a repairman cleaning an insulater at one of the Southern Pacific's powerhouses,

such powerhouse being used to generate electricity to operate the employer's electric suburban lines. The commission and the state Supreme Court held that the state compensation act was applicable since "the main power line on which the deceased was working was not part and parcel of the railroad or its equipment". An appeal to the Supreme Court of the United States, however, brought a reversal of the decision and compensation was denied.*

*Southern Pacific Co. vs. Industrial Accident Commission, 178 Cal. 20, 171 Pac. 1071, (1918; 251 U. S. 259, 40 Sup. Ct. 130, (1919).

Since the United States Suprme Court ruling in the above cases the state Supreme Court has been very conservative regarding awards involving inter-state jurisdictional questions. Thus a car repairer, at the Bay Shore Yard of the Southern Pacific, while crossing from one track to another in search of another car to repair was killed by a passingtrain; as it was unknown whether such car, when found, would have been engaged in inter-state or intra-state commerce, the commission assumed jurisdiction under the law, but the award was reversed by the Supreme Court.*

*Southern Pacific Co. vs. Industrial Accident Commission, 179 Cal. 59, 175 Pac. 453, (1918); also, see Southern Pacific Co. vs. Industrial Accident Commission, 179 Cal. 665, 178 Pac. 706, (1919).

Maritime Cases.

A Northern Pacific Steamship Company case* was first of a

*174 Cal. 347, 163 Pac. 199, (1917).

series to come before the California courts involving a constitutional conflict between the legislative power of the states and the general maritime law as enforced under Federal authroity. It was decided in this case that the state compensation act could be applied to an injury sustained by a seaman in a California vessel while on the high seas. The decision was subsequently overruled, however, by a five-to-four decision of the United States Supreme Court in the Jensen case.* A similiar decision rendered by the

*Southern Pacific Co. vs. Jensen, 244 U. ", 205, 37 Sup. Ct. 524, (1916).

California court the sameyear was promptly reversed by the Federal court.*

*S.S. Bowdoin Steamship Co. vs. Industrial Accident Commission, 174 Cal. 390, 163 Pac. 204, 246 U. S. 648.

These decisions left longshoremen and other harbor workers in a very anomalous position. A longshoreman if injured on the dock received the benefits of the state compensation law, but if injured on the boat or in connection therewith, his only redress was to due under the admirality law with consequent dealy and uncertainty. An attempt to remedy the situation was made by Congress in 1917 by amending the Judicial Code so as to confer the benefits of the local state compensation act in any given case to a harbor worker injured on a vessel,* but the status was

*40 U. S. Stats. 395, (1917).

nullified by the Supreme Court in the famous Knickerbocker case.*

*Knickerbocker Ice Co. vs. Stewart, 253 U.S. 149, 40 Sup. Ct. 438, (1920).

Organized labor was at last successful, however, in obtaining protection for this class of workers in 1927. In that year a federal "Longshoremen's and Harbor Workers' Compensation" was passed by Congress.

Interpretation of the Phrases "in the course of" and "arising out of" Employment.

According to the workmen's compensation law and employee can recover compensation for an injury only if two requisites are met; first, the injury mjst have been sustained "in the course of" his employment; second, it must have arisen out of" his employment.*

*Cal. Stats. 1913, Ch. 176; Cal. Stats. 1917, Ch. 586.

These two phrases in the statute have been the cause of numerous litigations in the courts. The writer will attempt to indicate in a few cases what the Supreme Court's attitude has been regarding their interpretation.

"In the course of" Employment.* It has been held by the

*This subject is treated by Louis Helbron, "Workmen's Compensation Act; Accidents 'In Course of Employment'", California Law Review, July 1930, pp. 551-563.

courts that an accident occurs "in the course of" employment only when it happens while the workman iw engaged in the dutires which he has been hired to perform. One of the first decisions pertaining

to this subject was handed down by the Supreme Court in 1918.* It was decided that the heirs of a hotel chambermaid who was killed

*Williamson vs. Industrial Accident Commission, 177 Cal. 715, 171 Pac. 797, (1918).

while attempting to clean out a light-well, were not entitled to compensation as the maid had been voluntarily acting outside the scope of her employment. A similiar verdict was given by the same court nine years later. The captain of a ferry boat, using in the transporting electric trains over a river, stepped from his boat and attempted to repair an electric contact point on the wharf so that a train might pass to the land. He failed to turn off the current and received a shock which threw him to the wharf and he was killed. The court decided that the acts of the deceased had been outside the scope of his employment as especially trained linesmen were provided by the employer to do such repair work. Thus compensation was denied.*

*San Francisco and Sacramento R. R. Co. vs. Industrial Accident Commission, 201 Cal. 597, 258 Pac. 86, (1937).

It is quite possible, however, for an employee to be considered as being engaged in his employment for twenty-four hours a day. "When the employer places the employee in such circumstances that his time is not his own, where he has no discretion as to where he shall sleep and where he shall eat, under such circumstances the workman must be considered in the employ of the employer all the time, or at least performing a service which is incidental to the employment he is engaged in."* "The right to compensation

*E. Larson et al. vs. Industrial Accident Commission, 193 Cal. 406, 224 Pac. 744, (1924).

under the workmen's compensation act is by no means restricted to those cases where the injury occurs while the employee is actually presently manipulating the tools of his calling."*

*Associated Oil Co. vs. Industrial Accident Commission, 191 Cal. 557, 217 Pac. 744, (1923).

The court has been careful, however, to define conditions when an employee is not "in the course of" employment. When a workman lives away from his place of labor and is injured while coming or going to or from work, it has generally been held that he is not entitled to compensation.* There must be some connection

*Eby et al. vs. Industrial Accident Commission, 75 Cal. App. 280, 242 Pac. 900, (1925).

Between the injury and the employment other than the mere fact that the employment brought the workman to the place of injury. An interesting case in the point was decided in 1923. The driver of a truck for the delivery of ice, who had more or less latitude as to the time and manner of dovering his route and the privilege of obtaining his lunch wherever he desired, was run down and killed while crossing a street, after have had lunch at a cafeteria to which he had delivered ice earlier in the day. The court decided that inasmuch as the deceased had no business in the vicinity for his employer, his heairs were not entitled to anybenefit under

the workmen's compensation act.*

*California Casualty Indemnity Exchange vs. Industrial Accident Commission, 190 Cal. 433, 213 Pac. 257, (1923).

On the other hand, in apparent contrast to the above decision, if an employee on the work premises is waiting between tasks and resting or talking to his fellow workers, or even smoking, he is still within the scope of employment, in other words, "such acts as are necessary to life, comfort, and convenience of the servant while at work, though strictly personal to himself, and not acts of service, are incidental to the service"and are held to be compensable.* Thus a miner proceeding from one working place in

*Whiting-Mead Commercial Co. vs. Industrial Accident Commission, 178 Cal. 505, 173 Pac. 1105, (1918).

a mine to another, pausing in the shade of an ore bin to rest, as the day was very hot, was killed by the collapse of the bin. Compensation was awarded on the ground that the accident happened in the course of employment.*

*Brooklyn Mining Co. vs. Industrial Accident Commission, 172 Cal. 774, 159 Pac. 162, (1916).

"Arising out of"Employment. An injury occurring "in the course of" employment is usually held to "arise out of" employment and therefore to be compensable.* Cases of this kind may be placed

*There are two general exceptions to this rule which will be discussed later.

into three groups as follows: those involving street injuries, those involving iinjuries due to diseases, and those resulting from assault. Many decisions have been rendered, but the writer will describe only one representative case pertaining to each group.

Street-risk injuries have usually been awarded compensation whenever it has been proven that at the time of injury the employee was on the street because his employment sent him there.* Perhaps the most significant case of this nature was decided in 1929* by

*For acase where compensation was denied, see California Casualty Indemnity Case, Supra.

the first district Court of Appeal of California, a rehearing by the Supreme Court being denied in February 1930.* A zone manager

*Frigidaire Corporation vs. Industrial Accident Commission, 61 Cal. App. Dec. 98, 283 Pac. 974, (1929).

in charge of the installation of refrigerator plants, after finishing his labors in Reno, Nevada, proceeded to a railroad intending to board a train for his headquarters at ¾San Francisco. While standing on the open platform of the station he was struck and killed by a wild bullet from a policeman's pistol. The court affirmed the award of the Industrial Accident Commission on the ground that the injury "arose out of" the deceased's regular employment. A similiar case was cired in which the compensation had been awarded because "the causative danger was peculiar to the work, in that, hade he (the employee) not been upon the street in the course of his duty, he would not have been injured."*

*Globe Indemnity Co. vs. Industrial Accident Commission, 36 Cal App. 280, 171 Pac. 1088, (1918).

The leading case involving injury due to disease is perhaps the city and County of San Francisco case decided in 1920.* During the influenza epidemic of 1918 a hospital steward, after having

*183 Cal. 273, 199 Pac. 26, (1920)

been exposed to influenza in the regular course of his employment, caught the disease and died. The commission decided that the disease had been sustained as a result of "special exposure" and awarded compensation. The case was appealed to the Supreme Court. It was urged by the defendent that theaward was invalid upon two grounds; first, the awarding of compensation for death by disease, the origin of which was not a bodily injury suffered through violence, was beyond the ppwers of the commission; and second. there was no evidence to support the finding of the commission that the disease was contracted in the course of his employment, and "arose out of it". By an unanimous decision the award of the commission was sustained. Thus the definition of "injury" was held by the court to include industrial diseases and also it decided that even such diseases as influenza might "arise out of" employment.*

*This liberal view has not always been held but the San Francisco case has been the precedent for a great many decisions.

The first and perhaps the leading "assault" case was that of a section forman of a railroad gange who was injured by an

employee who resented an order of discharge. Compensation was warded on the ground that the assault and consequent injury had arisen out of" employment.* In General, the court had decided that

*Western Indemnity Co. vs. Pillsbury, 170 Cal. 686, 151 Pac. 398, (1915).

an assault injury is compensable if the injured worker was not the aggressor and if not playfullness was involved. Otherwise, compensation has usually been denied on the basis that risk of assault from fellow workers is not incidental to employment.*

*See Metropolitan Redwood Lumber Co. vs. Industrial Accident Commission, 41 Cal. App. 131, 182 Pac. 315, (1919).

There are two general exceptions to the rule that an injury occurring "in the course of" employment "arises out of" it. The fist exception is a group of cases known "as Act of God" cases. An injury due to lightning, storms, sunstroke, earthquake or floods is not compensable. Even though sustained while the employee is at work.* "These (injuries) are considered as '<u>force majeure</u>', which human vigilance and industry can neither forsee nor prevent the victim must bear alone, such burden inasmuch as human industry

*Exceptions is sometimes made where the employment has specially exposed the worker to the peril of the elements. See Collin s vs. Industrial Accident Commission, 205 Cal. 727, 273 Pac. 33 (1928).

has nothing to do with it and inasmuch as the employee is no more subject thereto than any other person."*

*London Guarantee and Accident Co. vs. Industrial Accident Commission, 203 Cal. 12, 263 Pac. 196, (1927)

The second group of cases is know as "skylarking" or "horse play" cases. When an injury happens to a worker as a result of some playful act or "skylark" on the part of fellow employees, the injured person is not subject to compensation. Thus an employee of the Coronado Beach Company known by his associates to be peculiarly susceptible to being ticled, was playfully punched in the back with a newspaper as he was going down a flight of stairs. The punch caused the employee to make a sudden movement and as a result he fell and was injured. Compensation was awarded by the commission but the case was appealed and the suprme Court reverse the decision, denying compensation on the ground that "the risk of being injured by playful acts of fellow neighbor employees, with whom there is daily contact, is not one of the risks which the employer needs to assume."*

*Coronado Beach Company vs. Pillsbury, 172 Cal 682, 158 Pac. 213 (1916).
For similiar cases denying compensation, see Great Western Power Co. vs. Industrial Accident Commission, 187 Cal. 295, 201 Pac. 931, (1921); Federal Mutual Liability Insurance Co. vs. Industrial Accident Commission, 187 Cal. 284, 201 Pac. 920, (1921).

By the way of summary we may state that the constitutionality of the main provisions of the workmen's compensation act have been firmly established by the courts. Numerous constitutional questinns still arise, however, pertaining to the interpretations of the statute in the light of certain particular injuries. Thus extra-territorial injuries (accidents sustained by California residents hired

in the state but occurring elsewhere) have usually been held compensable. On the other hand maritime injuries as well as injuries sustained in inter-state trade have been held to be under the jurisdiction of the federal government and therefore not compensable under the state law.

The phrases "in the course of" and "arising out of" employment have also been subjects of numerous court decisions. In general the courts have decided that an injury occurs "in the course of" and "arises out of" employment only when it happens while the workman is engaged in the duties which he has been hired to perform; provided also that it is not the result of playfulness of fellow workers nor of an "act of God".