

## WHEN DOES AN INJURY ARISE "OUT OF" OR "IN THE COURSE OF" THE EMPLOYMENT UNDER WORKMEN'S COMPENSATION ACTS?

The Washington Industrial Insurance Commission has held that an employee engaged in construction work was entitled to compensation where he was disabled by the bite of a rattle snake.<sup>1</sup> Compensation has been allowed to two government employees who were bitten by mad dogs.<sup>2</sup> A driver of a delivery wagon reached through a hole in a back yard gate, to unhook the fastening, and was bitten by a bull dog, which he was unable to see, and it was held that he was entitled to receive compensation.<sup>3</sup> A workman while taking his mid-day meal in his employer's stable, was bitten by a stable cat, which resulted in blood poisoning and made it necessary to amputate some of the employee's fingers, and it was held that he was entitled to compensation.<sup>4</sup> A bricklayer working on a scaffold twenty-three feet from the ground was struck by lightning, and it was held that this was an accidental injury which entitled his dependents to compensation.<sup>5</sup>

The above cases are cited at the beginning of this article to indicate at the outset what a great revolution has been wrought by the adoption of the compensation principle, in the relation

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<sup>1</sup>Second Annual Report Industrial Insurance Commission of Washington (1913), p. 65.

<sup>2</sup>*Re* A. E. Bailey, Op. Sol. Dep. C. & L., p. 232; *Re* Alexander Green, *Id.*, p. 223.

<sup>3</sup>*Re* William Miller, Claim No. 3483, Ohio State Lia. Bd. Awd., April 18, 1913.

<sup>4</sup>*Rowland v. Wright* (Eng. 1908), 1 B. W. C. C. 192.

<sup>5</sup>*Andrew v. Failsworth Industrial Soc.* (Eng. 1904), 90 L. T. 611, 6 W. C. C. 11. In another case, however, a workman whose duty it was to clean out gulleys at the side of the road, during a storm, to prevent the water flooding the road was struck by lightning and killed. It was held that his death was not occasioned by accident arising out of the employment. *Kelly v. Kerry County Council* (1908), 42 Ir. L. T. 23, 1 B. W. C. C. 194. The two cases are distinguished by the courts which decided them on the ground that the workman who was on a scaffold was put in a place of peculiar danger under the circumstances and the right to compensation was placed on that ground.

heretofore existing between master and servant. In the article appearing last month the writer pointed out the meaning of the word "injury" and the term "accidental injury" as used in various compensation statutes.<sup>6</sup> The present discussion relates to the interpretation of the phrase "arising out of and in the course of" the employment, which is found in most of the compensation acts. While these statutes abolished the defenses of contributory negligence, assumption of risk and negligence of fellow servant, all of them, in some form, require that the injury or the accidental injury, as the case may be, shall have occurred in the course of the employment. Others require that it shall not only have occurred in the course of the employment but that it must also have arisen out of the employment. The statutes are far from uniform on this subject. But a majority of them follow the British act in requiring that the injury must not only arise "in the course of" the employment, but also "out of" the employment. The distinction is an important one. For example, if two men should get into a quarrel during the course of the employment and one of them should be injured he might be entitled to compensation if he was working under a statute which merely required that the injury should occur during the course of the employment. Whereas if he was working under a statute which required that the accident should arise "out of" the employment as well as occur during the course of the employment compensation would be refused. Most of the litigation which has arisen under the compensation acts has grown out of the interpretation of these two phrases. This must necessarily be the case, from the very nature of things, and no phraseology can be used which will avoid it. The Supreme Judicial Court of Massachusetts has recently discussed the question in a case where one workman was assaulted by a drunken co-employee.<sup>7</sup> The Massachusetts act contains the conventional phrase of "arising out of and in the course of the employment." The court held that under the peculiar circumstances of that particular case the

<sup>6</sup> 62 UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 329 (March, 1914).

<sup>7</sup> *McNichol v. Patterson Wilde & Co. and Employers' Liability Assur. Cor.*, 102 N. E. Rep. 697 (Mass. 1913).

workman was entitled to compensation. It appeared that the foreman in charge of the men knew of the vicious character and intemperate habits of the workman who committed the assault and nevertheless kept him employed with other workmen while he was in an intoxicated condition. The court remarked that while ordinarily a workman was not entitled to compensation under the Massachusetts act by reason of an assault by a fellow-employee, that nevertheless under the peculiar circumstances of that particular instance compensation should be awarded.

Cases of assault have not been decided uniformly, but the better rule seems to be that where an assault has no connection with the work in which the employee is engaged that he is not entitled to compensation from disability resulting therefrom. On the other hand, if the assault is committed for the purpose of preventing the workman from performing his duty and has a close connection with his employment then compensation is awarded. Thus, it has been held that compensation should be granted, where a cashier while carrying money from a bank to the place where the workmen were to receive their wages, was attacked and killed by a robber;<sup>8</sup> to the dependents of a night watchman who was shot by a burglar and died from the effect of the wound;<sup>9</sup> to a street car conductor injured by the assault of a disorderly passenger while the conductor was attempting to compel the passenger to obey the company's rules;<sup>10</sup> to a game keeper who while in the discharge of his duties was assaulted by poachers;<sup>11</sup> to a barkeeper who was stabbed by an irate customer because of the bartender's refusal to serve him with any more drinks;<sup>12</sup> to an engine driver who was hit by a stone thrown by boys from an overhead bridge;<sup>13</sup> to a carpenter who was killed by the fall of a bar of metal from an upper story caused

<sup>8</sup> *Nisbet v. Rayne and Burn* (Eng. 1910), 2 K. B. 689, 3 B. W. C. C. 507.

<sup>9</sup> *Re Margaret Evans*, Claim No. 4204, Ohio St. Lia. Bd. Awd., May 29, 1913.

<sup>10</sup> Washington Industrial Insurance Commission, First Annual Report, p. 476.

<sup>11</sup> *Anderson v. Balfour* (Eng. 1910), 44 Ir. L. T. 168, 3 B. W. C. C. 588.

<sup>12</sup> Informal decision by the Massachusetts Industrial Accident Board (not reported).

<sup>13</sup> *Challis v. London & Southwestern Ry. Co.* (Eng. 1905), 7 W. C. C. 23.

by a workman of an independent contractor;<sup>14</sup> to a workman who was cleaning the wheel of a wagon standing on the street and was struck by a passing truck owned by a third party;<sup>15</sup> to an employee who, without negligence or misconduct on his part, was struck by his foreman in a fit of anger and had his arm broken;<sup>16</sup> to a foreman who to enforce discipline attempted to stop a fight between two of his men and was injured.<sup>17</sup>

On the other hand, compensation has been denied where a workman was injured by reason of an encounter with another workman following a quarrel;<sup>18</sup> to a workman who was not a foreman but who interfered and tried to stop a fight between two other workmen and was injured;<sup>19</sup> to an employee who, without apparent reason, shoved another against a rope and the latter involuntarily swung up one hand in which he held a hammer to prevent falling and injured the man who did the shoving so badly that he lost the sight of one eye;<sup>20</sup> to a workman who was struck in the eye by a piece of iron maliciously thrown by another workman;<sup>21</sup> to a boy who was injured in attempting to avoid a handfull of rubbish which was thrown at him by another boy;<sup>22</sup> to a strike breaker who was assaulted by a striking workman and injured;<sup>23</sup> to a boy who was attacked with a hatchet by his employer who was subject to fits of melancholy and had been in an asylum.<sup>24</sup>

A large number of cases have arisen where the employee

<sup>14</sup> *Bryant v. Fissell*, 86 Atl. Rep. 458 (N. J. 1913).

<sup>15</sup> *Perlsburg v. Muller*, 35 N. J. Law J. 202 (1912).

<sup>16</sup> *Re Cornelius Flemings*, Op. Sol. Dep. C. & L., p. 187.

<sup>17</sup> *Re William Wharton*, Op. Sol. Dep. C. & L., p. 250.

<sup>18</sup> *Gorman v. Fidelity & Casualty Co.*, Mass. Indus. Acc. Bd., Report of Cases, 1913, p. 1.

<sup>19</sup> *Re C. M. Armstead*, Op. Sol. Dep. C. & L., p. 240.

<sup>20</sup> *Shaw v. Wigan Coal and Iron Co.* (Eng. 1909), 3 B. W. C. C. 81.

<sup>21</sup> *Armitage v. Lancashire & Yorkshire Ry. Co.* (Eng. 1902), 86 L. T. 883, 4 W. C. C. 5.

<sup>22</sup> *William Baird Co. v. Burley* (1908), 45 Scotch L. R. 416, 1 B. W. C. C. 7.

<sup>23</sup> *Murray v. Denholm & Co.* (1911), 48 Scotch L. R. 896, 5 B. W. C. C. 496; *Poulton v. Kelsall* (Eng. 1912), 5 B. W. C. C. 318.

<sup>24</sup> *Blake v. Head* (Eng. 1912), 5 B. W. C. C. 303. Buckley, L. J., remarked: "A felonious act done by the employer cannot by any possible straining of language be called an accident arising out of and in the course of the employment."

was injured in going to or from the place of employment. The decisions on this subject are very much the same as those under the common law and the employers' liability acts. As a general rule it is held that a man's employment does not begin until he has reached the place where he is to work or the scene of his duty, and does not continue after he has left that place.<sup>25</sup> Thus, a workman was engaged to load a van and was promised employment in unloading it at another place if he would be there when the van arrived. He started on his bicycle to reach the place, but on the way met with an accident. It was held that there were two separate and distinct employments; that one had ended and the other had not begun and therefore the accident did not arise out of and in the course of the employment.<sup>26</sup> A shepherd was on his way to the place where he was to be employed in a wagon furnished by his employer and when at a distance of forty yards from the cottage which he was to occupy, the wagon was suddenly jerked and the shepherd was thrown off, receiving injuries which proved fatal. It was held that the injury did not arise out of and in the course of the employment as the employment had not yet commenced and compensation was refused.<sup>27</sup> The last-mentioned case, however, was clearly on the border line, and it is difficult to harmonize it with other decisions, establishing the general rule, that where a servant is employed to go to a certain place and do particular work and is transferred to and from such place by his employer, his pay being continued all the time, he is, as far as the employers' liability for injuries is concerned, employed in and about the work from the time he leaves until he returns.<sup>28</sup> Thus a laborer was loading and unloading

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<sup>25</sup> *Re J. O. Cassidy*, Op. Sol. Dep. C. & L., p. 224; *Re Joseph Gilkey, Id.*, p. 223; *Re Patrick Flaherty, Id.*, p. 225; *Benson v. Lancashire & Yorkshire Ry. Co.* (Eng. 1904), 1 K. B. 242, 6 W. C. C. 20; *Walters v. Stavely Coal & Iron Co.* (Eng. 1911), 105 L. T. 119, 4 B. W. C. C. 302; *Kelly v. Owners of "Foam Queen"* (Eng. 1910), 3 B. W. C. C. 113.

<sup>26</sup> *Perry v. Anglow American Decorating Co.* (Eng. 1910), 3 B. W. C. C. 310.

<sup>27</sup> *Whitbread v. Arnold* (Eng. 1908), 99 L. T. 103, 1 B. W. C. C. 317.

<sup>28</sup> *Alabama Great Southern Ry. Co. v. Brock*, 49 So. Rep. 453 (Ala. 1909); *Self v. Adel Lumber Co.*, 64 S. E. Rep. 112, 5 Ga. App. 846 (1909); *Gilbert v. Employers' Liability Assur. Corp.*, Mass. Indus. Acc. Bd., Report of Cases, 1913, p. 133; *Holmes v. Great Northern Ry. Co.* (Eng. 1900), 2 Q. B. 409,

wagons and his duty required him to accompany them while being hauled by a traction engine from one place to another. While sitting on a wagon he dropped his pipe and in attempting to get down to recover it he fell and was fatally injured. It was held that the accident arose out of and in the course of his employment and compensation was awarded.<sup>29</sup> Where a railroad provides hand cars for transporting employees from the place of work to a point convenient to their homes, although the journey is commenced after the usual workday has ceased, it is held that the relation of master and servant continues until the employees have reached their destination.<sup>30</sup> A plumber's assistant having completed his work at the home of a customer four miles away from his employer's shop, started homeward, driving a horse along the state highway. Soon after he passed a friend on the road his body was found lying opposite the road and he was unconscious. It was held that the injury arose out of the employment and compensation was awarded.<sup>31</sup> The cases cited are only a few representative ones of the many which have been decided on this branch of the question.

Practically the same decisions have been made in relation to seamen getting on and off vessels. These decisions in relation to vessels, however, have practically all been made by the British courts as the question does not seem to have arisen under any of the American compensation acts. At least no case is reported.

An employee who is properly on his employer's premises before work begins, after work ceases or during cessation of work, is still an employee and is entitled to compensation if he is injured.<sup>32</sup> Thus where an employee started on a run for a time

2 W. C. C. 19; *Re William Gerrow*, Op. Sol. Dep. C. & L., p. 217; *Stone-Webster Engineering Corp. v. Collins*, 199 Fed. Rep. 581 (1912); *Pomfret v. Lancashire & Yorkshire Ry. Co.* (Eng. 1903), 5 W. C. C. 22; *Cremmins v. Guest, Keen & Nettlefold* (Eng. 1908), 1 K. B. 469, 1 B. W. C. C. 160.

<sup>29</sup> *M'Lauchlan v. Anderson* (1911), 48 Sc. L. R. 349, 4 B. W. C. C. 376.

<sup>30</sup> *Cicalese v. Lehigh Valley Ry. Co.*, 69 Atl. Rep. 166 (N. J. 1908); *Arkadelphia Lumber Co. v. Smith*, 95 S. W. Rep. 800, 78 Ark. 505 (1906); *Wilson v. Banner Lumber Co.*, 32 So. Rep. 460, 108 La. 590 (1902).

<sup>31</sup> *Sanderson v. Globe Indemnity Co.*, Mass. Ind. Acc. Bd., Report of Cases, 1913, p. 224.

<sup>32</sup> *Olsen v. Andrews*, 47 N. E. Rep. 90, 168 Mass. 261 (1897); *Sharpe*

clock to "ring out" when the whistle blew, and colliding with a fellow-employee, he was injured so badly that he subsequently died, it was held that the injury arose out of and in the course of the employment and his dependents were entitled to compensation.<sup>33</sup> Where an employee was injured while leaving her place of employment by means of a common stairway, it was held that the injury arose out of and in the course of the employment.<sup>34</sup> A policeman employed by the Isthmian Canal Commission in the Canal zone, at about midnight was walking along the Panama Railroad track on his way to report for duty. It was raining and the night was very dark. When he had almost reached his destination he slipped on a cross-tie and fell, severely injuring himself. It was held under the peculiar conditions existing in Panama where the employees were compelled to travel on the government property in going to and from their work, that the injury occurred in the course of employment.<sup>35</sup> A watchman on a steam shovel, in going to and from his work, was compelled to climb over freight cars operated by the Isthmian Canal Commission, and in jumping to the ground he was injured. It was held that he was entitled to compensation.<sup>36</sup> A workman employed by a farmer was returning home temporarily during a shower and was injured while crossing a plank over a dyke, and it was held that the accident arose out of and in the course of the employment.<sup>37</sup> A fruit picker on piece work was told to stop what she was doing and go to work at another part of the farm. While proceeding as instructed she met with an

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v. Johnson & Co. (Eng. 1905), 92 L. T. 675, 7 W. C. C. 28; *Cordler v. Keffel*, 119 Pac. Rep. 658 (Cal. 1911); *Re Pinna Giovanni*, Op. Sol. Dep. C. & L., p. 222; *Helmke v. Thilmann*, 83 N. W. Rep. 360, 107 Wis. 216 (1900); *Muller v. Oakes Mfg. Co.*, 113 N. Y. App. Div. 689, 99 N. Y. S. 923 (1906); *McKee v. Great Northern Ry.* (1908), 42 Ir. L. T. 132, 1 B. W. C. C. 165; *Cokolon v. Ship "Kentra"* (Eng. 1912), 5 B. W. C. C. 658; *Re William P. Fahey*, Op. Sol. Dep. C. & L., p. 218; *Byrant v. Fissell*, 86 Atl. Rep. 458 (N. J. 1913); *Terlecki v. Strauss & Co.*, 36 N. J. Law J. 185 (1913); *Re E. A. Rugan*, Op. Sol. Dep. C. & L., p. 220

<sup>33</sup> *Rayner v. Sligh Furniture Co.*, Mich. Ind. Acc. Bd., June, 1913.

<sup>34</sup> *Sundine v. London Guarantee and Acc. Co.*, Mass. Ind. Acc. Bd., Report of Cases, 1913, p. 491.

<sup>35</sup> *Re O. D. Koontz*, Op. Sol. Dep. C. & L., p. 229.

<sup>36</sup> *Re Joseph Chambers*, Op. Sol. Dep. C. & L., p. 226.

<sup>37</sup> *Taylor v. Jones* (Eng. 1907), 1 B. W. C. C. 3.

accident and it was held that the injury arose out of the employment.<sup>38</sup> A government employee was working as a laborer in the Reclamation Service. Incidental to his employment there was furnished to him, with other employees, a bunk house for lodging purposes, which was located at the site of the employment. These bunk houses were occupied by several men, each taking his turn at supplying the wash water for all. The claimant was in the act of taking his turn at supplying the water and while doing so slipped on the ice and was injured. The accident happened during the interval between working hours. It was held that the accident happened while the workman was performing an act in connection with and incidental to his employment, and that he was entitled to compensation.<sup>39</sup>

An employee who is suffocated by fire on his employer's premises is entitled to compensation.<sup>40</sup>

It is held generally that where an employee returns to his employer's premises to secure his pay, and is injured while on the premises, he is entitled to compensation.<sup>41</sup> Even though on the ceasing of actual work the relation of master and servant is terminated.<sup>42</sup> Thus a workman engaged as a laborer on the public roads was required to go for his pay to the tramway depot situated some distance away. He was paid for the time occupied in going to and from the pay place. When returning to his work after receiving his wages he boarded a tramcar, but finding that it did not travel to the place where his work was situated he got off and was struck by a passing cart and injured. It was held that the injury arose out of and in the course of his employment.<sup>43</sup> A mill hand whose employment had ended went to her employer's mill a few days later to receive her wages and met with an acci-

<sup>38</sup> *Jesson v. Bath* (Eng. 1902), 4 W. C. C. 9.

<sup>39</sup> *Re Gottlob Joos*, Op. Sol. Dep. C. & L., p. 238.

<sup>40</sup> *Chitty v. Nelson* (Eng. 1908), 2 B. W. C. C. 496; *Re Harriet H. Horn*, Claim No. 1013, Ohio St. Lia. Bd. of Awd., Dec. 23, 1912.

<sup>41</sup> *Riley v. W. B. Holland & Sons* (Eng. 1911), 1 K. B. 1029, 4 B. W. C. C. 155.

<sup>42</sup> *Molloy v. South Wales Anthracite Colliery Co.* (Eng. 1910), 4 B. W. C. C. 65.

<sup>43</sup> *Nelson v. Belfast Corporation* (1908), 42 Irish L. T. 223, 1 B. W. C. C. 158.

dent while departing from the mill. It was held that she was entitled to compensation.<sup>44</sup> So, also, it has been held that an employee was entitled to compensation where, after completing his day's work, he went to the office of the paymaster and in traveling over a portion of the master's premises he was injured.<sup>45</sup>

But a workman who received his pay note on Saturday, being dissatisfied therewith, returned to the place of work on Monday, intending not to return to work unless the dispute was settled in his favor. The manager refused to concede to his demand. While the workman was departing he was knocked down by a coal wagon and killed. It was held that the accident did not arise out of or in the course of the employment and compensation was refused.<sup>46</sup> A farm laborer at the end of his day's work was required to go about two miles to his employer's farm to receive his pay and instructions for the next day's work. A fellow workman, driving a cart, happened to be going in the same direction, and invited him to ride therein. The workman did so and was thrown out and injured by the horse suddenly starting. It was held that the accident did not arise out of the employment and compensation was refused.<sup>47</sup>

A great many cases have arisen, both under the employers' liability acts and the workmen's compensation statutes, where an employee was injured during mealtime while remaining on the master's premises with the master's consent. Usually it is held that the relation of master and servant still continues in such cases and that the workman is entitled to compensation.<sup>48</sup> The case of *Pigeon v. Employers' Liability Assurance Corporation*,<sup>49</sup> arose under peculiar circumstances. An employer sent

<sup>44</sup> *Riley v. W. B. Holland & Sons* (Eng. 1911), 1 K. B. 1029, 4 B. W. C. C. 155.

<sup>45</sup> *R. B. Phillips*, Claim No. 3514; Ohio St. Lia. Bd. Awd., May 5, 1913.

<sup>46</sup> *Phillips v. Williams* (Eng. 1911), 4 B. W. C. C. 143.

<sup>47</sup> *Parker v. Pont* (Eng. 1911), 5 B. W. C. C. 45.

<sup>48</sup> *Re R. Hawes*, Op. Sol. Dep. C. & L., p. 220; *Re John Joseph*, *Id.* 229; *Crouch v. Massachusetts Employes Assur. Ass'n*, Mass. Indus. Acc. Bd., Report of Cases, 1913, p. 401; *Pigeon v. Employers' Lia. Assur. Corp.*, 102 N. E. Rep. 932 (Mass. 1913); *Blovelt v. Sawyer*, (Eng. 1904), 1 K. B. 271, 6 W. C. C. 16.

<sup>49</sup> 102 N. E. Rep. 932 (Mass. 1913).

two horses and carts with one driver to work at street cleaning for the City of Springfield. The plaintiff's intestate was sent along as driver. He drove one horse and a cart to a dump while the other was being loaded. It was his duty to water the horses and to take them back to the stable at night. At noon he started to take the horses to water and announced that after he had watered the horses he would drive on to his own home to dinner. Before he reached the watering trough an accident happened in which he was killed. It was held that the injury arose out of and in the course of the employment and his dependents were entitled to compensation.

The compensation acts have introduced another entirely new element in the relation of master and servant. That is, when employees, such as collectors and salesmen, go entirely away from their master's premises and are injured while in the course of their employment, even through the negligence of a third person, they are still entitled to compensation.<sup>50</sup>

A number of other cases, each with facts peculiar to itself, have been decided in favor of the workman, where the injury occurred away from the master's premises. Thus a government employee in going from one field office to another was required to cross some railroad tracks lying between him and the field office to which he was proceeding. While on the tracks cinders blew into his eyes from a train which was passing, momentarily blinding him. At the same moment a train going in the opposite direction came along. The engineer blew the whistle which the claimant heard, but before he could recover his composure to get out of the way he was struck by the engine and the injury resulted in the loss of a foot. It was held that the injury occurred in the course of the employment and that the man was entitled to compensation.<sup>51</sup> A government surveyor along the Missis-

<sup>50</sup> *Gaffney v. Travelers Ins. Co.*, Mass. Ind. Acc. Bd., Report of Cases, 1913, p. 339; *Re James L. Chase, Jr.*, Claim No. 3493 Ohio. St. Lia. Bd. Awd., May 19, 1913; *Hopkins v. Michigan Sugar Co.*, Mich. Ind. Acc. Bd., June, 1913; *Pierce v. Provident Clothing & Supply Co.* (Eng. 1911), 104 L. T. 473, 4 B. W. C. C. 242; *M'Neice v. Singer Sewing Mach. Co.* (1911), 48 Sc. L. R. 15, 4 B. W. C. C. 351; *Grant v. Glasgow & Southwestern Ry. Co.* (1907), 45 Sc. L. R. 128, 1 B. W. C. C. 17.

<sup>51</sup> *Re Popanx Papius*, Op. Sol. Dep. C. & L., p. 249.

issippi River occupied, with others, boats furnished by the government for living quarters, taking their meals and sleeping thereon. After supper one evening the decedent proceeded to a nearby town for the purpose of getting his pay cheque cashed and making some purchases. Upon returning to the boat he was met at the gangplank by the watchman with a lantern. In attempting to pass around a person who had stopped at the gangplank, he lost his balance, fell overboard and was drowned. It was held that the accident arose out of and in the course of the employment and that the employee's dependents were entitled to compensation.<sup>52</sup> An employee after departing for a warehouse owned by the defendant proceeded in an automobile to the office, some distance away, to ascertain whether overtime work would be required. The automobile was owned by the defendant and it appeared that the employee was following the usual practice. While on the trip the employee was injured and it was held that he was entitled to compensation.<sup>53</sup> But compensation was denied where a messenger was sent to a branch station to get a postal order and failing to get it there he went to the general post office, half a mile further on, where he slipped on a banana skin and was injured; it being held that the man had exceeded his duty in going to the general post office and that therefore the injury did not arise out of or in the course of his employment.<sup>54</sup> The foregoing appears to be a very hard case and scarcely in consonance with most of the decisions where somewhat similar circumstances were present.

It is held generally that if a workman is injured while doing something for his own pleasure, foreign to his duty and his employer's interest, that the injury cannot be said to arise out of and in the course of his employment.<sup>55</sup> Thus a railroad conductor on an excursion train, when the train was run, with permission, by the employees for their own pleasure, was held not to be acting in the course of his employment when injured on

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<sup>52</sup> *Re C. E. Hott*, Op. Sol. Dep. C. & L., p. 237.

<sup>53</sup> *Seywald v. Ford Motor Co.*, California Ind. Acc. Bd., June 26, 1913.

<sup>54</sup> *Smith v. Morrison* (Eng. 1911), 5 B. W. C. C. 161.

<sup>55</sup> *Smith v. Lancashire & Yorkshire Ry. Co.* (Eng. 1899), 79 L. T. 633, 1 W. C. C. 1.

such a trip.<sup>56</sup> A boy employed in a spinning mill was injured while cleaning machinery in motion. It was found as a fact that he was not employed to clean the machinery and compensation was denied.<sup>57</sup> An engine driver left his engine, when it was standing at rest, and crossed some tracks, in order to communicate with the fireman of another engine, on business of his own, and not in any way concerning the work of his employers. On his way back to the engine he was knocked down and killed by another train. It was held that the accident did not arise out of or in the course of the employment.<sup>58</sup> A workman going home to dinner, through his employer's premises, attempted to climb on a car of a railway over a portion of the premises, and in doing so he fell and received permanent injuries. It was held that the man was acting for his own pleasure and not in the course of his employment and compensation was refused.<sup>59</sup> A domestic servant who was outside the door of her employer's house drying her hair, returned to the house, in response to an order, to take charge of a baby in a cradle, which was within a couple of feet of the fire. She continued the operation of drying her hair. Her hair was loose and caught fire and from the injuries she died. It was held that the accident did not arise out of the employment.<sup>60</sup> A boy who had been ordered not to remove the cover over the wheels of a machine, disregarded the order, uncovered the wheels and the end of his fingers were torn off. It was held that the accident did not arise out of the employment.<sup>61</sup> A stoker on a locomotive engine received, by mistake, the wages of another man. The man to whom the wages belonged was on another engine which was traveling about four or five miles an hour. The workman attempted to board the engine to give the man the wages, but he missed the step and the engine passed over his foot. It was held that the attempt to board the engine

<sup>56</sup> *Re C. C. Fitzpatrick*, Op. Sol. Dep. C. & L., p. 241.

<sup>57</sup> *Naylor v. Musgrave Spinning Co.* (Eng. 1911), 4 B. W. C. C. 286.

<sup>58</sup> *Reed v. Great Western Ry. Co.* (House of Lords) (1908), 99 L. T. 781, 2 B. W. C. C. 109.

<sup>59</sup> *Morrison v. Clyde Navigation Trustees* (1908), 46 Sc. L. R. 38, 2 B. W. C. C. 99.

<sup>60</sup> *Clifford v. Joy* (1909), 43 Ir. L. T. 193, 2 B. W. C. C. 32.

<sup>61</sup> *Furniss v. Gartside & Co.* (Eng. 1910), 3 B. W. C. C. 411.

while in motion was obviously dangerous and wholly unnecessary and that the accident did not arise out of the employment.<sup>62</sup> A workman sent on an errand loitered on the way back and wasted time with friends, so that he took two hours to go about half a mile, at the end of which time he suffered an accident, and it was held that it did not arise out of the employment.<sup>63</sup> A girl eighteen years of age, acting as she thought in her master's interest, left her work to start an engine, which was in charge of a person who was not present. Several of her companions warned her that she ought not to touch the engine. She disregarded the warning and was injured in starting the engine. It was held that the injury did not arise out of the employment.<sup>64</sup>

Where a workman is injured in doing something which he was specifically ordered not to do and it appears clearly that he understood the order, it is held, usually, that such injuries cannot be said to arise out of or in the course of the employment, because the workman was not doing anything which he was employed to do when the accident happened.<sup>65</sup> But where a workman acts in an emergency to save life or property, especially the former, the same strict rules do not apply, and, usually, compensation will be awarded, although the workman is engaged in some occupation which has no connection whatsoever with the work which he was employed to do.<sup>66</sup>

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<sup>62</sup> *Williams v. Wigan Coal & Iron Co.* (Eng. 1909), 3 B. W. C. C. 65.

<sup>63</sup> *Bates v. Davie's Executors* (Eng. 1909), 2 B. W. C. C. 459.

<sup>64</sup> *Losh v. Evans & Co.* (Eng. 1902), 5 W. C. C. 17.

<sup>65</sup> *Whitehead v. Reader* (Eng. 1901), 3 W. C. C. 40; *Re Victorino Morales*, Op. Sol. Del. C. & L., p. 230; *Neuman v. Milwaukee Ry. & Light Co.*, Wis. Indus. Acc. Bd., May 2, 1912; *Parker v. Hambrook* (Eng. 1912), 5 B. W. C. C. 608; *Powell v. Brynder Colliery Co.* (Eng. 1911), 5 B. W. C. C. 124; *Marriott v. Brett & Beney* (Eng. 1911), 5 B. W. C. C. 145; *Revie v. Vumming* (Eng. 1911), 5 B. W. C. C. 483; *Barnes v. Nunnery Colliery Co.* (Eng. 1911), 5 B. W. C. C. 195; affirmed in the House of Lords, 4 B. W. C. C. 443; *Kane v. Merry & Cuninghame* (1911), 48 Sc. L. R. 430, 4 B. W. C. C. 379.

<sup>66</sup> *Houghton v. W. G. Root Construction Co.*, 35 N. J. Law J. 332 (1912); *Re James Nellis*, Op. Sol. Dep. C. & L., p. 221; *Harrison v. Whitaker Bros.*, 2 W. C. C. 12; *Hapelman v. Poole* (Eng. 1908), 2 B. W. C. C. 48; *Rees v. Thomas* (Eng. 1899), 1 W. C. C. 9; *Matthews v. Bedworth* (Eng. 1899), 1 W. C. C. 124.