Workmen’s Compensation: Injury from Assault Held to Be out of and in the Course of the Employment

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A laundry route man while engaged in his regular duties was shot and killed by a customer. The trial examiner allowed recovery under the Mississippi Workmen’s Compensation Act (Miss. Laws, 1948, Chap. 354) finding that the customer’s suspicions that the decedent was having illicit relations with the customer’s wife to be groundless. The Supreme Court affirmed, holding: the “position and locality” of the employee, not the motives of the assailant, determines whether the injury arose “out of and in the course of employment.” Brookhaven Steam Laundry v. Watts, — Miss. —, 55 So. 2d 381 (1951).

Workmen’s Compensation statutes were enacted to allow recovery without regard to the fault of the employer provided that the injury arose “out of and in the course of the employment.” Matter of Heitz v. Ruppert, 218 N. Y. 148, 154, 112 N. E. 750, 752 (1916). See New York Workmen’s Compensation Law §10. But the statutes did not institute an insurance against every accident happening to a workman while engaged in his employment for the words of the statute are conjunctive, and relief can be had only when the accident (1) arose out of and (2) in the course of the employment. Matter of Heitz v. Ruppert, supra, at 151, 112 N. E. at 751. In the principal case the question is not whether the injury occurred while the laundryman was doing the duty employed to perform but was the injury because of this employment.

For an injury to arise out of the employment it does not have to be out of the nature of the work; thus compensation was allowed where the injury arose during the course of the employment but was caused by the sting of a mosquito, Matter of Lepow v. Lepow Knitting Mills, 288 N. Y. 377, 43 N. E. 450 (1943); stray bullets, Matter of Greenberg v. Voit, 250 N. Y. 543, 166 N. E. 318 (1929); an act of God, Matter of Madura v. City of New York, 238 N. Y. 214, 144 N. E. 505 (1924); an insane assailant, Katz v. Kadans, 232 N. Y. 420, 134 N. E. 330 (1922); a co-employee’s horseplay, Leonbruno v. Champlain Silk Mills, 229 N. Y. 470, 128 N. E. 711 (1920); a drunken attacker, Mitchinson v. Day Bros., 1 K. B. 603 (1913).

An injury inflicted during the course of the employment from an assault by a co-employee or a stranger is compensable as arising out of the employment if:

1. It cannot be determined what motivated the assault and it occurred during the regular work of the employee - - - there is a presumption that the injury
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If the assault on the employee is unwarranted, if the assailant mistakes his victim, and the claimant in no way initiated the attack, the injury arose out of the employment only if the employment created some special exposure to danger.
In the instant case the trial examiner found that the employee had not been seeing the assailant's wife. The employee, therefore, being an innocent party would be entitled to workmen's compensation if his type of work exposed him to a special danger. A laundryman who must regularly visit the homes of customers is likely to be subjected to suspicious and jealous husbands, and an assault on him by such an assailant during the course of his employment should be compensable as arising out of the employment.

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CRIMINAL LAW—LARCENY—CRIMINAL INTENT

The defendant carried away three tons of bomb casings from a Government bombing range and was convicted for violation of 18 U. S. C. Sec. 641 which provides that "whoever embezzles, steals or knowingly converts government property is punishable by fine or imprisonment." Defendant alleged that he believed the casings to be abandoned property. The trial court refused to allow the question of defendant's wrongful or criminal intent to be presented to the jury. The Court of Appeals affirmed, construing the statute as not requiring a showing of criminal intent. 

Ordinarily a criminal intent is an intent to do knowingly and wilfully that which is condemned as wrong by the law and common morality of the country. People v. Corrigan, 195 N. Y. 1, 87 N. E. 792 (1909). At common law actus non reum facit, sed mens was a valid maxim. To constitute crime, there must not only have been the act itself but also the criminal intention. It was necessary that they concur for both were equally essential. Stokes v. People, 53 N. Y. 164, 13 Am. Rep. 492 (1873).

When an act denounced by the law is proved to have been committed, in the absence of contrary evidence, the criminal intent is inferred from the commission of the act. Nassan v. United States, 126 F. 2d 613 (4 Cir. 1942). The inference