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

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WORKMEN'S COMPENSATION: INJURY FROM ASSAULT HELD TO BE OUT OF AND IN THE COURSE OF THE EMPLOYMENT

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

arose out of the employment. *Matter of Salmon v. Continental Black Corp.*, 248 App. Div. 928, 290 N. Y. Supp. 242 (3rd Dept. 1936); *Matter of Weinberg v. Eagle Clothes*, 243 App. Div. 826, 278 N. Y. Supp. 1 (3rd Dept. 1935).

2. The assault resulted from a quarrel between employees over the manner of doing the work. *Matter of Haverhals v. Badman*, 268 N. Y. 660, 198 N. E. 544 (1935); *Rydeen v. Monarck Furniture Co.*, 240 N. Y. 295, 148 N. E. 527 (1925); *Matter of Heitz v. Ruppert*, 218 N. Y. 148, 112 N. E. 750 (1916).

3. The altercation between employees was the natural and probable result of placing men together under working conditions. *Hartford Accident Co. v. Cardillo*, 112 F. 2d 11 (D. C. Cir. 1940), *cert. denied*, 310 U. S. 649 (1940); *Matter of Humphrey v. Tietjen & Steffin Milk Co.*, 235 App. Div. 470, 257 N. Y. S. 768 (3rd Dept. 1932), *aff'd.* 261 N. Y. 549, 185 N. E. 733 (1933); *Matter of Verschleiser v. Stern and Son*, 229 N. Y. 192 128 N. E. 126 (1920); *Katz v. Reissman Rothman Corp.*, 261 App. Div. 862, 24 N. Y. S. 2d 807 (3rd Dept. 1941).

4. The type of employment exposed the employee to some special danger, as where the claimant was a cashier, *Simonetti v. Capitol Coal Co.*, 244 App. Div. 854, 279 N. Y. Supp. 797 (3rd Dept. 1935), *aff'd.*, 270 N. Y. 633, 1 N. E. 2d 365 (1936); sent by employer to a customer knowing customer's personal enmity for claimant, *Matter of Berresi v. Ryan*, 242 App. Div. 279, 275 N. Y. Supp. 370 (3rd Dept. 1934); a chauffeur, *Katz v. Kadans, supra;* an outdoor night worker, *Rosmuth v. American Radiator Co.*, 201 App. Div. 207, 193 N. Y. Supp. 769 (3rd Dept. 1922); a collector, *Spang v. Broadway Brewing & Malting Co.*, 182 App. Div. 443, 169 N. Y. Supp. 574 (3rd Dept. 1918); a watchman, *Hellman v. Manning Sand Paper Co.*, 176 App. Div. 127, 162 N. Y. Supp. 335 (3rd Dept. 1916), *aff'd.* 221 N. Y. 492, 116 N. E. 1051 (1917).

A workman assaulted while in the course of his employment by another employee or a third person for personal reasons between the assailant and the victim unrelated to the employment, does not receive an injury that arises out of the employment. Recovery was denied, therefore, where the assault was due to personal revenge, *Ramos v. Taxi Transit Co.*, 276 App. Div. 101, 92 N. Y. S. 2d 744 (3rd Dept. 1949), *aff'd.*, 301 N. Y. 749, 95 N. E. 2d 625 (1950); refusing a loan, *Matter of Schlener v. American News Co.*, 240 N. Y. 622, 148 N. E. 732 (1925), *reversing*, 210 App. Div. 511, 206 N. Y. S. 561 (3rd Dept. 1924); a declining of a date, *Matter of Scholtzhauer v. Lunch Co.*, 233 N. Y. 12, 134 N. E. 701 (1922). See 47 Ill. L. Rev. 311, 318; 72 A. L. R. 110.

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.*

Coope v. Loew's Gates Theater, 215 App. Div. 259, 261, 213 N. Y. Supp. 254, 256 (3rd Dept. 1926). *Cf. Katz v. Kadans, supra.* In the Loew's case a ticket seller was assaulted by a jealous woman who imagined the claimant was seeing her husband. An award was reversed because the assault was not out of the employment due to the fact that the claimant was safer in the ticket booth, and consequently was not exposed to any special peril.

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. *Morissette v. United States,* 187 F. 2d 427 (6 Cir. 1951). The Supreme Court reversed on the ground that intent is a prerequisite under any of the alternatives stated within the statute. *Morissette v. United States,* 342 U. S. 246 (1952).

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