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NOTES

STATE COMPENSATION ACTS AND INTERSTATE COMMERCE.

The question whether state Workmen's Compensation Acts can under any circumstances affect railroad employes who are injured while they are engaged in interstate commerce is answered differently in the recent decisions of four state courts. In Staley v. The Illinois Central Railroad Co., 109 N. E. 342, and Smith v. Industrial Accident Commission of California, 147 Pac. 600, the Supreme Court of Illinois and the California Court of Appeals respectively hold that the federal Employers' Liability Act supersedes all state legislation which might previously have been held to apply to injuries to interstate railroad employes, while a narrower view of the scope of the federal statute is taken in Rounsaville v. Central Railroad of New Jersey, 94 Atl. 392 (New Jersey), and Winfield v. New York Central & Hudson River Railroad Co., 153 N. Y. Supp. 499 (New York App. Div.). All of the foregoing cases were actions to recover

compensation under state statutes for injuries received while the plaintiffs were concededly engaged in interstate commerce under the rulings of the United States Supreme Court.[1] In none of them was there any evidence of negligence on the part of the carrier's servants or agents.

Each of the cases recognizes the well-settled doctrine that, although Congress by the Constitution is given exclusive power to regulate commerce between the states, until Congress acts in certain particulars the individual states under their general police power may pass laws which may incidentally affect interstate commerce, so long as no direct burden upon it is imposed. The New York and the New Jersey courts emphasize the fact that the federal Liability Act permits a recovery only in cases where there is negligence by the railroad company's agents or employes and that the statute is entitled "An act relating to the liability of common carriers by railroad to their employes in certain cases." This, they hold, shows an intention on the part of Congress to leave cases of injuries incurred by interstate railroad employes under other circumstances where no negligence can be shown to local regulations. In support of this view they also state that whereas the federal statute contemplates a remedy *ex delicto,* abolishing certain common-law defenses to actions for negligence, the real purpose of the state statutes is to take care of workmen under a state system of insurance or pension scheme to secure the benefits of which the law implies certain provisions in every contract of employment governed by the acts, a new right of action and new methods of procedure being established for its enforcement.

This particular question has never been directly passed upon by the federal Supreme Court, but the California and the Illinois courts refer to many statements casting doubt upon the rule announced in the New Jersey and New York opinions which are found in numerous decisions of the highest federal tribunal construing the Federal Employers' Liability Act.[2] Many of

[1]Pederson v. Railroad Co., 229 U. S. 146, 33 Sup. Ct. 648, 58 L. Ed. 1125, Ann. Cas. 1914C 153; Railway Co. v. Seale, 229 U. S. 156, 33 Sup. Ct. 651, 57 L. Ed. 1129, Ann. Cas. 1914C 156; Railroad Co. v. United States, 231 U. S. 112, 34 Sup. Ct. 26, 58 L. Ed. 144.

[2]Mondou v. Railroad Co., 223 U. S. 1, 51, 54, 32 Sup. Ct. 135, 137, 38 L. R. A. (N. S.) 44; Railroad Co. v. Wulf, 226 U. S. 570, 576, 33 Sup. Ct. 135, 137, 57 L. Ed. 355, Ann. Cas. 1914B 134; Railroad Co. v. Vreeland, 227 U. S. 59, 65, 33 Sup. Ct. 192, 193, 57 L. Ed. 417, Ann. Cas. 1914C 176; Railroad Co. v. Zachary, 232 U. S. 248, 256, 34 Sup. Ct. 305, 307, 58 L. Ed. 591, Ann. Cas. 1914C 159; Railway Co. v. Horton, 233 U. S. 492, 501, 34 Sup. Ct. 635, 638, 58 L. Ed. 1062; Railroad Co. v. Hayes, 234 U. S. 86, 89, 34 Sup. Ct. 729, 58 L. Ed. 1226.

these are quoted by the Illinois court in the Staley case, where the question is treated at considerable length. The conclusion in the latter case is "that the 'particular subject,' 'subject-matter,' 'field,' or 'chosen field' taken possession of by the federal Employers' Liability Act was the employers' liability for injuries to employes in interstate transportation by rail, and the real question * * * is whether the injury for which the suit was brought was sustained while the company and the injured employe were engaged in interstate commerce. * * * The field of liability as to employes injured while engaged in interstate commerce on railroads is occupied exclusively by the federal Employers' Liability Act—and that, too, regardless of the negligence or lack of negligence of either party to the litigation." The Illinois court think that the words "certain cases" in the title of the federal act are meant to confine its application to cases arising in interstate commerce, since the first Employers' Liability Act was declared unconstitutional by the United States Supreme Court because it attempted to regulate the relation of master and servant in intrastate commerce. While conceding that its construction will leave injured interstate employes without a remedy where no negligence on the part of the carrier can be proved—a state of affairs "contrary to the spirit of the times, which demands humane legislation covering this subject"—the court says that this is an argument which should be more properly addressed to the federal Congress.

A practical argument in favor of the construction adopted in the Staley case is found in a dissenting opinion in the case of Winfield v. N. Y. C. & H. R. R. Co., supra. The learned presiding justice therein states that under the rule laid down by the majority of the court the defendant railroad company in order to escape liability under the state statute would be forced to admit its negligence and "it would be unreasonable to compel the employer to prove his own negligence to show that the case was one within which the rule of liability was established by the federal law. The result would be in most cases to give to the injured party an option to claim under the compensation act or under the federal liability law."

H. H.