tractual liability, and that the act does not apply to injuries received outside of the state. Under the optional type, however, the general holding is that the liability is contractual, and hence that the law of the place of making the contract governs irrespective of where the injury occurs. (This is the type of the Missouri Act.) The provisions of the compensation act are construed as written into the contract of employment. The Michigan case cited above sums up the point in these words: "The contract was to be performed within and without the state. . . . The rights, being contractual, accompanied the employee wherever he went within the ambit of his employment."

The annotation mentioned in 18 A. L. R. is quite comprehensive, and further expansion here is useless. Quotations from three cases, however, are valuable in enunciating the reasons for liability under optional statutes such as Missouri's, resulting in such decisions as the principal case. In *Deeney v. Wright, etc Co.*, 36 N. J. L. 121, it is said:

"The statute can have no extraterritorial effect, but it can require a contract to be made by two parties to a hiring that the contract shall have extraterritorial effect. . . . It would seem that the reasonable construction of the statute is that it writes into the contract of employment certain additional terms. The cause of action of petitioner is *ex contractu*. The *lex loci contractus* governs the construction of the contract and determines the legal obligations arising from it."

Pierce v. Bekins Van & Storage Co. (1919), 185 Iowa 1346, 172 N. W. 191, says:

"But that the statute is elective has controlling bearing on one thing that is most highly important. Where the statute is elective as to both employer and employee, payment of compensation is not the performance of a statutory duty, but the performance of conditions in the contract of hiring, which conditions are in the contract by means of reading the Compensation statute into the contract."

Rounsaville v. Central R. Co. (1915), 87 N. J. L. 371, 94 A. 392, adds this:

"The place where the accident occurs is of no more relevance than is the place of accident to the assured in an action on a contract of accident insurance, or the place of death of the assured in an action on a contract of life insurance." D. A. M., '29.

PUBLIC UTILITIES—ELECTRICITY.—A tenant of a realty company claimed the latter was charging excessive rates for electricity and prayed interference of the court. The realty company confined its service to tenants and employees. *Held*, the realty company was not a "public utility," and the court could fix the rate at which electricity is to be furnished. *Jonas v. Swetland Co.* (1928), 119 Ohio St. 12, 162 N. E. 45.

This case brings up the problem of when a company supplying electricity becomes a public utility. In the absence of statutory provision, the test at common law must be applied: whether the company has held itself out as ready to serve the public generally. It is the voluntary use of one's property in such a manner as to make it of public consequence that gives the

public the right to control its use. *Producers' Transportation Co. v. The Railroad Commission* (1917), 176 Cal. 499, 169 P. 59, 61. The doctrine upon which the principal case probably proceeds is laid down in another Ohio case, *Southern Ohio Power Co. v. Public Utilities Commission* (1924), 110 Ohio St. 246, 143 N. E. 700. To constitute a "public utility" the devotion to public use must be of such character that the product and service are available to the public generally and indiscriminately, or there must be the acceptance by the utility of public franchises or a calling to its aid of the police power of the state. It is still easier to concur with the result reached in the principal case when the logic of *Pinney and Boyle Co. v. Los Angeles Gas & Elec. Corp.* (1914), 168 Cal. 12, 141 P. 620, is applied. "Of course it is true that if A has erected a power plant and has agreed to sell a portion of his electricity to his neighbor B, he is not devoting his property to a public service. But if A shall have erected his power plant and shall have offered to sell his power to the whole or a defined portion of the community, he is, to that extent, devoting his property to public use." Each case must depend for determination on its own particular facts. It is hard to lay down any steadfast rules. *Brock v. Miller* (1927), 240 Mich. 667, 216 N. W. 385, is a border line case. There it was held that the proprietor of a summer resort who sells cottage lots and undertakes to supply lot owners with water and light, engages in a public service, which makes it his duty to serve all patrons alike. But in *Story v. Richardson* (1921), 186 Cal. 162, 198 P. 1057, the owner of an office building maintaining within it a plant to furnish electricity to its occupants, and selling a small surplus to occupants of neighboring property, was held not to be operating a public utility. That decision accords with the principal case. The most important Missouri case dealing with the subject is *State ex rel. Danciger & Co. v. Public Service Com.* (1918), 275 Mo. 483, 205 S. W. 36. A corporation which undertook to furnish surplus electric current generated by it for use in its plant, to the owners of neighboring property, who strung their own wires, and to the city for a few lights, was held not to be a public utility. It is doubtful whether such a case as the principal one would arise in Missouri, since the Public Service Commission Act defines an electrical corporation, and expressly excepts a situation "where electricity is generated or distributed by the producer solely on or through private property for railroad or street railroad purposes or for its own use or for the use of its tenants and not for sale to others." But in view of the cases cited it will be observed that even this exception could not always help to a determination of such a problem.

J. J. C., '30.

TREATIES—CONSTRUCTION AND OPERATION OF PARTICULAR PROVISIONS—TRADE AND COMMERCE WITHIN THE SCOPE OF THE TREATY WITH JAPAN OF FEB. 21, 1911.—Citizens of Japan instituted mandamus proceedings to compel the Secretary of the State of California to file articles of incorporation for a hospital, based on respondent's rights under the treaty between the United States and Japan (1911), 37 Stat. 1504, which authorizes citizens of Japan to carry on trade within the United States and "to lease land for residential and commercial purposes, and generally to do anything incident