

prospective journey and the dangers incident thereto; in short, anything tending to furnish a basis for inferring a death before the seven-year period established by law. A full discussion of these matters can be found in an annotation to *Goodier v. Mutual Life Insurance Co.* (1924), 158 Minn. 1, 196 N. W. 662, 34 A. L. R. 1383. Also see 8 R. C. L. 711 *et seq.*

The circumstances in *Kansas City Life Insurance Co. v. Marshall* justifying the jury in finding that the deceased died before the expiration of his policy, five years after his disappearance, were that the habits, character, domestic relations, etc., of the deceased were such as to make the abandonment of his home and family improbable. The evidence showed that although he was financially involved, the extent was inconsiderable; that he was a happy man, loving his family, and taking an interest in the future. Just previous to his disappearance, he had phoned his sister's residence stating he was coming over, but was never heard from again. Any motive for disappearing was altogether lacking. It is submitted that the case is correctly decided, not only on the particular facts, but also in adopting the English rule. For a very similar case, see *Springmeyer v. Sovereign Camp, W. W.* (1912), 163 Mo. A. 338, 143 S. W. 872, treated briefly in 34 A. L. R. 1389, 1394.

D. A. M., '29.

MASTER AND SERVANT—MISSOURI WORKMEN'S COMPENSATION LAW—CLAIM FOR INJURIES RECEIVED OUTSIDE OF STATE.—In contract of employment entered into in Missouri contemplating travel in other states, both employer and employee accepted the provisions of the Missouri Workmen's Compensation Act which by Section 12 (Laws 1927, p. 498) extends to injuries received outside of Missouri. The employee was injured in Oklahoma and brought an action to recover the stipulated compensation. The employer contended that Section 12 was void in that it purported to create an extraterritorial cause of action, and hence that the Missouri Workmen's Compensation Commission had no jurisdiction of the cause. *Held*, that Section 12 is valid, that the Missouri act governs the case, and that the commission has jurisdiction. *State v. Missouri Workmen's Compensation Commission* (Mo. A. 1928), 8 S. W. (2d) 897.

The cause of action in this case, the court points out, accrued not from the commission of a tort in Oklahoma, but through the breach of a contractual obligation which was entered into in Missouri and which was to be performed in Missouri. The breach consisted of relator's refusal to pay the stipulated compensation. The court cites *Crane v. Leonard et al.* (1921), 214 Mich. 218, 183 N. W. 204, 18 A. L. R. 285. The decision of this case and the annotation in 18 A. L. R. review many authorities, the essential points developed being as follows: Workmen's compensation acts are in general of two types: (1) compulsory, imposing on the employer a statutory liability; (2) optional, imposing liability under the act only where both the employer and employee expressly or impliedly agree to be bound by its terms. This distinction is of cardinal importance, particularly as affecting their "extraterritorial operation."

Under the compulsory type of statute, the rule is that there is no con-

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."
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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. Sweetland 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