been precluded from the use of this money himself. Thus, the rule is extremely hard on the taxpayer. Moreover, as a matter of statutory interpretation, it seems that the language of the act favors the taxpayer's claim. Since the payment is in excess of the amount actually due, there is an "overpayment" within any fair definition of the word, and the statute should apply. The fact that the estimation is made by the taxpayer himself should be considered only when the overestimation is not in good faith. But the principal case has a firm practical basis. The fear of intentional overpayments by shrewd taxpayers is not purely imaginary. Due to economic changes the interest rate of six per cent prescribed by the statute, while not excessive at the time the statute was enacted,[11] is now well above normal interest rates. Such a rate, offered by the government, presents a particularly attractive investment. The real solution would thus seem to lie in an alteration of the statute so that it would allow interest either at a rate consonant with present conditions or at a "reasonable" rate which could vary with economic conditions. If this were done, the desire of the courts to avoid paying an excessive interest rate would not force them to the rather strained conclusion that such sums are not "overpayments"; then the statute's real purpose, to protect the taxpayer who pays his obligation (though the amount may be uncertain) from loss, could be served, without fear of abuse. R. E. H.

WORKMEN'S COMPENSATION—ARISING "OUT OF" THE EMPLOYMENT—"SPECIAL HAZARD"—[Illinois].—Employees of defendant were working on hospital grounds on which there was a single water tap which was supplied from a public water system. Water was brought from this tap by bucket to the workmen by water boys employed by defendant. The employees and several other persons who drank water from this same tap contracted typhoid fever. The arbitrator and commission found that the employees, by drinking the contaminated water, furnished them by their employer, suffered accidental injuries arising "out of" their employment. *Held*, affirmed on appeal. *Permanent Construction Co. v. Industrial Commission.*[1]

An accidental injury arises "out of" the employment when there is apparent to the rational mind upon consideration of all circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury.[2] Under the majority view "the causative danger must be peculiar to the work and not common to the neighborhood."[3] The mere fact that the employee is in the neighborhood

11. May 29, 1928. 45 Stat. 876, c. 852, §614(a); 26 U. S. C. A. §3771(a).

1. (Ill. 1942) 43 N. E. (2d) 557.

2. Mazursky v. Industrial Commission (1936) 364 Ill. 445, 449, 4 N. E. (2d) 823, 825; Burroughs Adding Machine Co. v. Dehn (Ind. 1942) 39 N. E. (2d) 499; In re McNicol (1913) 215 Mass. 497, 102 N. E. 697; Adams v. Industrial Commission (1939) 65 Ohio App. 74, 29 N. E. (2d) 228; Ashbrook v. Industrial Commission (1939) 136 Ohio St. 115, 24 N. E. (2d) 33.

3. Central Illinois Public Service Co. v. Industrial Commission (1920) 291 Ill. 256, 126 N. E. 144; Permanent Construction Co. v. Industrial

solely because of his employment is not, in itself, enough to supply the necessary causal connection for the injury to have arisen "out of" the employment.[4] When the risk is common to the neighborhood, if the injury is held to have arisen "out of" the employment, the risk must have been increased by reason of the employment.[5] That is, there must be a "special hazard" peculiar to the employment.

Street hazard and lightning cases constitute a special category.[6] In these cases, many courts hold that compensation should be awarded where the employee is injured in the course of his employment, regardless of the fact that the general public was exposed to the same risk or that any other person in the same locality might have met with the accident irrespective of the employment.[7] That is, when one in the course of his employment is reasonably required to be at a particular place at a particular time and there meets with an accident, of the type above referred to, such accident "arises out of and in the course of his employment" although any other person at such place would have met with such accident irrespective of employment.

The principal case purports to follow the majority view as expounded in cases other than the street hazard and lightning cases. The court finds the evidence of the necessary "special hazard" in time saved by the employer in carrying the water to the employees in buckets and adds that when the employer elected to furnish water to its employees in this way, it was incumbent on him to furnish water free from contamination. Just how carrying the water constituted a "special hazard" is certainly not clear. If the employees had gone after the water themselves, they would have drawn the same water since there was only the one tap on the entire grounds.

It is submitted that what the court has actually done was to put this factual situation in the category of the street hazard and lightning cases. It is also submitted that this view is sound and more in accord with the ob-

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Commission (Ill. 1942) 43 N. E. (2d) 577; Mincey v. Dultmeier Mfg. Co. (1937) 223 Iowa 252, 272 N. W. 430; In re McNicol (1913) 215 Mass. 497, 102 N. E. 697; Kaselnak v. Fruit Dispatch (1939) 205 Minn. 198, 285 N. W. 482; Outland v. Industrial Commission of Ohio (1937) 59 Ohio App. 427, 18 N. E. (2d) 499.

4. Sure Pure Ice Co. v. Industrial Commission (1926) 320 Ill. 332, 150 N. E. 909; Great American Indemnity Co. v. Industrial Commission (1937) 367 Ill. 241, 11 N. E. (2d) 9; Borgeson v. Industrial Commission (1938) 368 Ill. 188, 13 N. E. (2d) 164; Lepow v. Lepow Knitting Mills (1942) 263 App. Div. 211, 32 N. Y. S. (2d) 498.

5. Sure Pure Ice Co. v. Industrial Commission (1926) 320 Ill. 332, 150 N. E. 909; Great American Indemnity Co. v. Industrial Commission (1937) 367 Ill. 241, 11 N. E. (2d) 9; Borgeson v. Industrial Commission (1938) 368 Ill. 188, 13 N. E. (2d) 164; Lepow v. Lepow Knitting Mills (1942) 263 App. Div. 211, 32 N. Y. S. (2d) 498.

6. Brown, Arising Out Of and In The Course Of Employment in Workmen's Compensation Acts (1938) 8 Wis. L. Rev. 216, 260.

7. Aetna Life Ins. Co. v. Industrial Commission of Colorado (1927) 81 Colo. 233, 254 Pac. 995; Hartford Accident and Indemnity Co. v. Cardillo (1940) 72 App. D. C. 52, 112 F. (2d) 11; Stilwell v. Aberdeen-Springfield Canal Co. (1940) 61 Idaho 357, 102 P. (2d) 296; Burroughs Adding Machine Co. v .Dehn (Ind. App. 1942) 39 N. E. (2d) 499; Milliman's Case (1936) 295 Mass. 451, 4 N. E. (2d) 331.

jects of Workmen's Compensation law—to shift to the community at large the economic loss caused by injuries to employees while working.[8] The general adoption of the "street hazard and lightning" view would result in greater uniformity, and would tend to lessen the large amount of litigation requiring construction of the vague phrase, "out of" the employment.[9] The modern trend is in favor of the view,[10] but legislative action, involving removal of the words "out of" the employment from the compensation statutes may be necessary before this view is widely adopted.[11]

M. W. G.

8. See Comment (1940) 54 Harv. L. Rev. 153.
9. Bohlen, The Drafting of Workmen's Compensation Acts (1912) 25 Harv. L. Rev. 517, 536, 546.
10. Brown, Arising Out Of and In The Course Of Employment in Workmen's Compensation Acts (1933) 8 Wis. L. Rev. 216.
11. Bohlen, The Drafting of Workmen's Compensation Acts (1912) 25 Harv. L. Rev. 517, 536, 546.