Workmen's Compensation Act: Miscellaneous provisions

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the future, had no surrender taken place, are terminated, but liabilities
which have already accrued remain unaffected.17
In only a few jurisdictions, not strictly in accord with the above rule,
the courts have held that the landlord has also the right to treat the lease
as terminated, re-enter and sue for damages for the breach, the dam-
ages to be measured by the difference between the amount reserved in
the lease and the rental value of the premises to the end of the term.18
According to the weight of authority, then, we may conclude that the
landlord has the right to stand aside from the premises entirely, pro-
viding there is no provision in the lease to the contrary, and recover
rent for the whole term; or with the tenant’s consent express or im-
plied, relet the premises as the tenant’s agent and apply the proceeds
to the tenant's account without accepting the surrender of the lease.19

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Workmen’s Compensation Act: Miscellaneous provisions.—The
courts place a liberal construction on the Workmen’s Compensation Act
with the intention of carrying out its manifest purpose, e.g., to relieve
workmen from the distress of work accidents by placing a portion of
the burden upon the employers, and through such employers, in the
cost of production, upon the public as a whole.1 Payment is not con-
sidered in the light of a gift made to the injured employe, but is treated
as a moral and equitable obligation.2 The exclusive remedy provided by
the act3 includes all injuries for which the employer might be liable at
common law by reason of his failure to exercise ordinary care or
comply with the statutory requirements as well as those resulting from
pure accident or negligence of the employe or of a fellow servant.4

In Wisconsin, an employer is not compelled to place himself under
the act, but, in order to escape its provisions, he “must file with the
industrial commission a notice in writing to the effect that he elects not
to accept the provisions thereof.”5 Under this section, it was held that
a principal contractor who was subject to the act, was liable to an em-
ployee of a subcontractor who had elected not to come under the act;
and that such principal contractor had his remedy over against the one
actually liable.6 And a claimant for compensation for the death of an
employe of a subcontractor who employed less than three persons and
was not subject to the act, but whose principal contractor was subject
to the act, was given the option either to hold the primary employer,
its insurance carrier, and the principal contractor, or to hold the sub-

17 Boyd v. Gore, 143 Wis. 531; 128 N.W. 68.
18 Brown v. Hayes, supra.
19 See 23 Mich. Law Rev. 211; 35 C. J. 1086 to 1096.

1 Town of Germantown v. Ind. Comm., 178 Wis. 642, 190 N.W. 448; Ronning
v. Ind. Comm., 185 Wis. 384, 200 N.W. 652.
3 Sec. 102.03 to 102.34, Wis. Stats.
4 Knoll v. Schaler, 180 Wis. 66, 192 N.W. 392.
5 Sec. 102.05, Wis. Stats.
6 Miller v. Ind. Comm. 179 Wis. 192, 190 N.W. 81.
contractor liable for damages at common law as modified by the provisions of the act. However, the subcontractor could not be held liable for compensation.\(^7\)

To entitle an injured employe to recover compensation under the Workmen’s Compensation Act, it is only necessary to show (1) that the employer and the employe were subject to the act, (2) that the employe was performing service growing out of and incidental to his employment, and (3) that the injury was proximately caused by accident.\(^8\)

Some interesting cases have been decided under the provision: “where, at the time of the accident, the employe is performing service growing out of and incidental to his employment.”\(^9\) A city salesman, employed to go from customer to customer to solicit orders for his employer, and who was not required to report to his employer before starting out for his day’s work, and who was injured while on his way to the first customer, was within the act as “performing service growing out of and incidental to his employment.”\(^10\) The following are some cases within this provision: An injury to a teacher going to an institute;\(^11\) death by electric shock, though by way of a joke by a fellow employe;\(^12\) an infection in the throat of an employe in a lumber camp caused by a straw falling from the bunk above while sleeping;\(^13\) employe of a lumber company required by the terms of employment to sleep in a company bunk house with other employes, and who was attacked and injured, while asleep, by another employe;\(^14\) a public school principal selecting a basketball team and injured by a ball on the school grounds;\(^15\) injury while eating lunch during noon recess by fall of a pile of crude rubber;\(^16\) typhoid fever contracted from polluted drinking water furnished by employer while at work;\(^17\) employe required to dump tram cars with heated iron ore, struck by another car while warming himself from the ore on a cold night;\(^18\) employe riding on logging train to get his pay check cashed at the office;\(^19\) loss of hand while grinding meat for hamburger steak in a restaurant;\(^20\) loss of life in entering a burning building to save employer’s property;\(^21\) straining of muscles even though there was no external evidence of injury;\(^22\) hernia even though em-

\(^7\) Kloman \textit{v.} Ind. Comm., 181 Wis. 505, 195 N.W. 405.
\(^9\) Sec. 102.03 (2), Wis. Stats.
\(^12\) Newport Co. \textit{v.} Ind. Comm., 167 Wis. 634, 167 N.W. 749.
\(^15\) Milwaukee \textit{v.} Ind. Comm., 160 Wis. 244, 151 N.W. 238.
\(^17\) I’Eunen \textit{v.} New Dells Lbr. Co., 161 Wis. 370, 154 N.W. 640.
\(^19\) Casper Cone Co. \textit{v.} Ind. Comm., 165 Wis. 255, 161 N.W. 784.
\(^20\) Brenner \textit{v.} Herribin, 170 Wis. 567, 176 N.W. 228.
\(^21\) Bell City M. I. Co. \textit{v.} Roland, 170 Wis. 297, 174 N.W. 899.
\(^22\) Bystrom Bros. \textit{v.} Jacobson, 162 Wis. 180, 155 N.W. 919.
ploye was predisposed to that infirmity; pulmonary tuberculosis from the filling of the lungs with granite dust; typhoid fever where conditions surrounding a lumber camp were such as ordinarily attend a focus of typhoid fever infection. Hence, it is evident that compensation will not be denied merely because at the moment the injury was received, the employe was not actually doing the specific work assigned him.

On the other hand, an employe engaged in road work and killed by the collapse of a barn in which he had taken refuge during a violent and unprecedented storm, was held to have met his death through exposure to a hazard common to the public, which was in no way accentuated by reason of his employment. Some other cases holding that injuries or death sustained did not arise out of "performing service growing out of and incidental to his employment" are: Injury for lighting unless employment involved exceptional exposure; riding home on freight train from place of employment; boy cutting paper tablet for himself contrary to orders; city firemen on a street, returning to work after dinner, in automobile collision (but a county employe while returning to his work on a highway by a short-cut across a vacant village block and who was injured by tripping over a wire, was held entitled to compensation).

Prior to the decision by the United States Supreme Court in *Southern Pac. Co. v. Jensen*, it was generally held by the state courts that the Workmen's Compensation Acts were applicable to cases involving maritime contracts or torts; and that the admiralty courts did not have exclusive jurisdiction over such cases. Since this decision, it seems to be settled that a state compensation act, even though elective, is inapplicable if the person injured was employed under a maritime contract, and was injured on water within admiralty jurisdiction. An exception was found to this rule in a later case wherein a workman was injured while employed as a carpenter on an incompletely constructed vessel lying in navigable water. Here, the contract for constructing the vessel was brought before the court and held to be a nonmaritime contract and, hence, the Oregon State Compensation Act was applicable.

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23 *Casper Cone Co. v. Ind. Comm., supra.*
26 *Widell Co. v. Indust. Comm.,* 180 Wis. 179, 192 N.W. 449.
28 *Hoenig v. Indust. Comm.,* 159 Wis. 646, 150 N.W. 996.
30 *Radke Bros. v. Rutinski,* 174 Wis. 216, 183 N.W. 168.
31 *Horburg v. Morris,* 163 Wis. 31, 157 N.W. 556.
33 *444 U. S. 205, 37 S. Ct. 524.*