[HIGH COURT OF AUSTRALIA.]

MYNOTT AND OTHERS . . . . . APPELLANTS;
APPLICANTS,

AND

BARNARD . . . . . RESPONDENT.
RESPONDENT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1939.

MELBOURNE, *Mar.* 17, 21; *May* 11.

Latham C.J., Rich, Starke, Dixon and McTiernan JJ.

Workers' Compensation—Contract of employment entered into in Victoria—Parties resident and domiciled in Victoria—Victorian law governing contract—Work performed in New South Wales—Accident in New South Wales—Death in Victoria—Workers' Compensation Act 1928 (*Vict.*) (*No.* 3806), *sec.* 5 (1).

A contract of employment was entered into in Victoria between a worker and a building contractor, who were both domiciled and at all material times resident in Victoria, whereby the worker was engaged to work at a building in course of erection at a neighbouring border town in New South Wales. It was found to be the intention of the parties that Victorian law should govern the contract of service.

Held that, notwithstanding these facts, the dependants of the worker were not entitled to recover compensation under the *Workers' Compensation Act* 1928 (Vict.) in respect of his death in Victoria as a result of personal injuries by accident sustained by him while working at the building in New South Wales.

Tomalin v. *S. Pearson & Son Ltd.*, (1909) 2 K.B. 61, applied.

Decision of the Supreme Court of Victoria (Full Court) affirmed.

APPEAL from the Supreme Court of Victoria.

The respondent, James Laurence Barnard, was a building contractor who entered into a contract in Victoria to erect a mill at

Tocumwal in New South Wales. He employed Andrew Abner Mynott to do work as a carpenter in the erection of the mill. The contract of employment was made in Victoria. Both the employer and the worker were domiciled and resident in Victoria. It was found as a fact that they intended their contract to be governed by the law of Victoria. The worker lived at Cobram in Victoria at all material times, and he crossed the River Murray daily to work under the contract in New South Wales. He was injured by an accident which arose out of and in the course of his employment at his work in New South Wales. He died, as a result of the accident, in Victoria, and his dependants claimed compensation under the Victorian *Workers' Compensation Act* 1928. The learned judge of the County Court decided that, as the accident happened in New South Wales, the claimants could not recover. The Supreme Court of Victoria upheld this decision, and the claimants appealed from that decision to the High Court.

Ashkanasy (with him *Rapke*), for the appellants. The issue is: Can the dependants of an industrial worker working for a Victorian employer under a Victorian contract of employment hold such employer liable under the Victorian *Workers' Compensation Act* 1928 in respect of an accident happening in New South Wales to the worker whilst performing his duties under the contract of employment, which accident causes his death in Victoria? The question is one of statutory construction. Sec. 5 (i) of the *Workers' Compensation Act* 1928 uses general words unlimited in scope and these words "if in any employment" should be given their full meaning without the courts redrafting and inserting words of limitation. Such construction as does not infringe the comity of nations or the rules of private international law is the only limitation (*Barcelo* v. *Electrolytic Zinc Co. of Australasia Ltd.* (1)). There are a number of competing views as to the limitation to be placed on the section: (*a*) the proper law of the contract of employment; (*b*) the place of death; (*c*) the residence or, alternatively, the domicile of the parties or of the employer; (*d*) the place of the accident; (*e*) the happening of the accident in Victoria to a person living

(1) (1932) 48 C.L.R. 391.

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in Victoria who has the status of a worker to some employer " who in some way or other is made liable to the jurisdiction of this Act " —an extreme view of *Fletcher Moulton* L.J. in *Tomalin* v. *S. Pearson & Son Ltd.* (1); or (*f*) that the status of employment was Victorian —an American view adopted in New York and in Massachusetts. The first view is correct, but under *a*, *b*, *c* or *f* the appellants are entitled to an award. The appellants adopt the views expressed by Mr. *R. L. Gilbert* in the *Australian Law Journal*, vol. 11, p. 242. [He referred to *Tomalin* v. *S. Pearson & Son Ltd.* (1); *Schwartz* v. *India Rubber Gutta Percha and Telegraph Works Co. Ltd.* (2); *Krzus* v. *Crow's Nest Pass Coal Co. Ltd.* (3); *Beazley* v. *Ryan* (4); *Keegan* v. *Dawson* (5); *Workers' Compensation Act* 1928 (Vict.), sec. 3 (1), " Employer," " Government Department," " Worker," secs. 4, 5 (1), (2) (*b*), (*d*), 11, proviso (*b*), 15, 17 (1), 18, 31, 37 and Second Schedule (1); *Workers' Compensation Board* v. *Canadian Pacific Railway Co.* (6); *Davison* v. *Vickery's Motors Ltd.* (7), per *Isaacs* J.; *United Collieries Ltd.* v. *Simpson* (8); *Fenton* v. *Thorley & Co. Ltd.* (9); *Maxwell* on *Interpretation of Statutes*, 4th ed. (1905), at p. 135 and 8th ed. (1937), at pp. 127 et seq.; *Alaska Packers' Association* v. *Industrial Accident Commission of California* (10); *Pearson* v. *Fremantle Harbour Trust* (11).]

Phillips, for the respondent. The *Workers' Compensation Act* cannot limit rights which arise under another system of law and no rights created by this Act can expect recognition under any foreign law. Rights are limited by the means by which they are enforced (*Canadian Pacific Railway Co.* v. *Parent* (12); *Walpole* v. *Canadian Northern Railway Co.* (13); *McColl* v. *Canadian Northern Railway Co.* (14)). The general words of the Act may be construed in either of two methods—either by examining the provisions in detail or by examining the juridical nature, purpose and scope of the Act. Some

(1) (1909) 2 K.B. 61.
(2) (1912) 2 K.B. 299.
(3) (1912) A.C. 590, at p. 597.
(4) (1935) V.L.R. 135.
(5) (1934) I.R. 232.
(6) (1920) A.C. 184, at pp. 191, 192.
(7) (1925) 37 C.L.R. 1, at p. 14.
(8) (1909) A.C. 383.
(9) (1903) A.C. 443.
(10) (1935) 294 U.S. 532; 79 Law. Ed. 1044.
(11) (1929) 42 C.L.R. 320, at p. 328.
(12) (1917) A.C. 195.
(13) (1923) A.C. 113.
(14) (1923) A.C. 120, at p. 131.

limitation must be put on the general words (*Barcelo* v. *Electrolytic Zinc Co. of Australasia Ltd.* (1); *Badische Anilin und Soda Fabrik* v. *Hickson*, per Lord *Atkinson* (2)). It is not sufficient for the court to say that the Act is within the legislative competence. To the words "in any employment" must be added "in Victoria" to make them rational. This does not necessarily exclude all accidents outside Victoria, but requires the court to search for the local character of the employment, viz., the domicile and residence of the parties, the place where the contract was made, or was to be carried out, and then say whether this was a Victorian employment.

[DIXON J. referred to *South African Breweries Ltd.* v. *King* (3).]

Another test is: What would the Victorian Parliament want to legislate about? "Employment" in the Act means not doing physical work but the existence of any relationship which is Victorian. The problem has frequently arisen in America: See *Harvard Law Review*, vol. 31, p. 619; *Beale, Conflict of Laws*, (1935), vol. 2, par. 398, pp. 1317-1320—See per Lord *Dunedin*, *United Collieries Ltd.* v. *Simpson* (4). The United-States new doctrine is to ascertain the locality of the business (*Cameron* v. *Ellis Construction Co.* (5); *Wright's Case* (6); *Smith* v. *Heine Boiler Co.* (7); *Zeltoski* v. *Osborne Drilling Corporation* (8); *Tallman* v. *Colonial Air Transport* (9); *Hunter* v. *Städtische Hochseefisherei Gesellschafet* (10), per *Atkin* L.J.).

[MCTIERNAN J. referred to sec. 36 of the English Act of 1925.]

See *Pound, Interpretations of Legal History* (1923), pp. 53 et seq., especially at p. 62; *Darlington* v. *Roscoe & Sons* (11), per *Farwell* L.J. Apart from the American view, the tests are:—(1) *Situs* of accident; (2) *Lex loci contractus*; (3) Proper law of contract. (1) and (2) are certain. As for the proper law of a contract, despite the intention of the parties that Victorian law should govern, by reason of the provisions of the New South Wales *Industrial Arbitration Act* 1912 the court should not impute such an intention to contract to do something forbidden by the law of New South Wales.

(1) (1932) 48 C.L.R., at p. 409.
(2) (1906) A.C. 419, at p. 427.
(3) (1899) 2 Ch. 173.
(4) (1909) A.C., at p. 402.
(5) (1930) 252 N.Y. 394.
(6) (1935) 291 Mass. 334.
(7) (1918) 224 N.Y. 9.
(8) (1934) 264 N.Y. 496.
(9) (1932) 259 N.Y. 512.
(10) (1925) 2 K.B. 493, at p. 507.
(11) (1907) 1 K.B. 219, at p. 230.

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Rapke, in reply. It is sufficient for the court to say that the facts bring this case within the provisions of sec. 5 of the Act (*Keegan* v. *Dawson* (1)). The suggested American test has been adopted only in two States, viz., New York and Massachusetts: See *Harvard Law Review*, vol. 50, pp. 1171 et seq. In *Wright's Case* (2) the court attached weight to the fact that the employer was insured in the State where the contract was made. All the other American authorities emphasize the contract of hiring (*Hunter's Case* (3)). If the test be the locality of the business, that must mean the business of the employer, and not the particular business on which the employee was engaged when the accident occurred. The Court of Appeal in *In re Insole's Settled Estate* (4) began a new era in the construction of statutes: See *Law Quarterly Review*, vol. 55, p. 2. On the proper law of the contract, see *Mount Albert Borough Council* v. *Australasian Temperance and General Mutual Life Assurance Society* (5). The New South Wales *Industrial Arbitration Act* cannot affect the making of the contract of employment. It merely affects the rate of payment.

Cur. adv. vult.

May 11.

The following written judgments were delivered :—

LATHAM C.J. The respondent, James Laurence Barnard, is a building contractor. He entered into a contract in Victoria to erect a mill at Tocumwal in New South Wales. He employed Andrew Abner Mynott to do work as a carpenter in the erection of the mill. The contract of employment was made in Victoria. Both the employer and the worker were domiciled and resident in Victoria. It is found as a fact that they intended their contract to be governed by the law of Victoria. The worker lived at Cobram in Victoria at all material times, and he crossed the River Murray daily to work under the contract in New South Wales. He was injured by an accident at his work in New South Wales. The accident arose out of and in the course of his employment. He died, as a result of the

(1) (1934) I.R. 232.
(2) (1935) 291 Mass. 334.
(3) (1925) 2 K.B., at pp. 499, 500, 503, 504.
(4) (1938) Ch. 812, at p. 818.
(5) (1938) A.C. 224.

accident, in Victoria. His dependants claimed compensation under the Victorian *Workers' Compensation Act* 1928.

The learned judge of the County Court decided that, as the accident happened in New South Wales, the claimants could not recover. The Supreme Court upheld this decision, applying what was regarded as the principle involved in the case of *Beazley* v. *Ryan* (1), where it was held that a worker employed by a New South Wales resident under a contract of employment made in New South Wales was entitled to receive compensation under the Victorian Act in respect of an injury resulting from an accident which happened in Victoria.

The locality of the accident was taken as the test of the applicability of the Act. The question which arises upon the present appeal is whether the application of the Victorian Act is limited to injuries resulting from accidents in Victoria, or whether some other and what territorial limitation should be applied in the construction of the statute. The principal provision of the Act is sec. 5 (1), which is as follows : " If in any employment personal injury by accident arising out of and in the course of the employment is caused to a worker his employer shall subject as hereinafter mentioned be liable to pay compensation in accordance with the Second Schedule." The second schedule provides for payment of compensation to an injured worker and, where death results from the injury, for payment of compensation to his dependants.

As *Fletcher Moulton* L.J. said in *Tomalin* v. *S. Pearson & Son Ltd.* (2), speaking of the corresponding provision in the English Act, " it clearly cannot apply universally all over the world." It would be unreasonable to read the section as applying to all employers, all workers, and all accidents everywhere. Some territorial limitation must be introduced in the construction of the section. The court has been offered an embarrassing choice of possible limitations. Each of the following elements (or some combination of them) has been suggested as possibly relevant—the Victorian domicile or residence of one or both parties : the fact that the contract of employment was made in Victoria : the fact that the work under the contract was to be done in Victoria, in whole or in part : the

(1) (1935) V.L.R. 135.

(2) (1909) 2 K.B. 61, at p. 65.

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fact that the accident happened in Victoria: the fact that the governing law of the contract of employment was the law of Victoria: and, on the basis of a number of American decisions, the fact that the "status" of the parties as employer and worker arose under Victorian law, or that the relationship of employment in a particular case has a real and substantial connection with Victoria, or a more real and substantial connection with Victoria than with any other country, or the fact of the localization in Victoria of the employer's enterprise. English cases on the subject are quoted and examined in an interesting article by Mr. *R. L. Gilbert* in the *Australian Law Journal*, vol. 11, p. 242.

In *Tomalin's Case* (1) it was held that the English Act did not apply when the accident took place in Malta, though the contract of employment was made in England between a resident and domiciled Englishman and a company incorporated in England. *Tomalin's Case* (1) has been followed in *Schwartz* v. *India Rubber Gutta Percha & Telegraph Works Co. Ltd.* (2). In the Privy Council in *Krzus* v. *Crow's Nest Pass Coal Co. Ltd.* (3) Lord *Atkinson* approved *Tomalin's Case* (1), saying that the Act did not apply "to an accident happening in Malta arising out of an employment carried on in Malta. So to apply the statute would indeed amount to making it operate beyond the territorial limits of the United Kingdom. And the Court of Appeal held, quite rightly in their Lordships' view, that this statute did not apply to such an employment."

In *Tomalin's Case* (1) the contract of employment was made and the relationship of employer and employee was established in England. Accordingly, Lord *Atkinson's* reference to "employment carried on in Malta" must describe the work actually done under the contract, and not the contract of employment under which the work was to be carried out. Thus Lord *Atkinson's* statement is to be regarded as approving the decision in *Tomalin's Case* (1) that the Act was limited to accidents happening within the United Kingdom.

In *Keegan* v. *Dawson* (4) the Irish Supreme Court by a majority refused to follow *Tomalin's Case* (1), taking the view that the observations of Lord *Atkinson* in *Krzus' Case* (5) could be construed

(1) (1909) 2 K.B. 61.
(2) (1912) 2 K.B. 299.
(3) (1912) A.C. 590, at p. 597.
(4) (1934) I.R. 232.
(5) (1912) A.C. 590.

as approving only the judgment of *Farwell* L.J. in *Tomalin's Case* (1), which judgment was said to be based upon different grounds from those taken by other members of the Court of Appeal in that case.

In the first place it may be observed that the question which arises is a question of the construction of a statute. It is not a question whether a statutory provision, the construction of which is clear, is or is not within the territorial competence of the legislature. Parliament might have used language clearly introducing a particular territorial limitation. For example, it might have provided that any person who by a contract made in Victoria employs another person shall be liable to pay compensation in specified cases of accident, wherever the accident may take place. Such legislation would have been valid because it is within the power of the Victorian Parliament to attach legal consequences to the doing of an act (such as the making of a contract) in Victoria. Similarly, the statute might have been applied by its terms to all persons domiciled and resident in Victoria, or to all accidents in Victoria, or to all persons working in Victoria wherever the contract of employment was made, or to all contracts wherever made under which any work was to be done in Victoria where the accident also happened in Victoria, or more generally to any contracts which were in some defined sense Victorian contracts. Any such statute would, I think, have been a law " in and for Victoria " within the meaning of clause 1 of schedule 1 of 18 & 19 Vict. c. 55 (*The Constitution Act*) and would have been within the territorial competence of the legislature. But the fact that a provision in a particular form would have been within the competence of the legislature does not provide any positive assistance towards the true construction of a provision expressed in perfectly general terms without any territorial restriction. If it could be laid down as a rule that parliament must always be presumed to exercise its powers to the maximum possible extent, then the principles which govern territorial legislative competence would in some cases determine construction. But no such rule can be laid down. Such a rule would not be identical with or equivalent to the rule that a Dominion statute will be construed, if possible, so as not to exceed the proper

(1) (1909) 2 K.B. 61.

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limits of legislative territorial competence. This rule, as in *Macleod* v. *Attorney-General for New South Wales* (1), assists the interpretation of the statute by limiting it (where the words permit limitation) to matters within the territorial competence of the legislature. But the principle does not help towards the discovery of the appropriate territorial limitation to be applied where some limitation, as in the present case, obviously must be implied, but where various competing limitations are offered as all possibly applicable.

The question which arises is full of difficulty. No clear general rule has yet been established for the solution of such a question. In *Macleod's Case* (1) a territorial limitation was applied to an Act dealing with crime. It was based upon the principle that crime is local. The words construed were: "whosoever being married marries another person during the life of the former husband or wife, wheresoever such second marriage takes place, shall be liable" to a penalty. This provision was construed as being limited in its application to persons who, being married, married again in New South Wales. In *Russell's Case* (2) corresponding words in an English statute were not so read down, but were given their full significance. They were applied to all British subjects everywhere. In the case of taxation statutes the application of the Acts has been limited to persons things or circumstances within the territory of the taxing State (*Commissioners of Stamps* (*Q.*) v. *Wienholt* (3)). This canon of construction has been applied because it is to be assumed that it was the intention of the legislature to make its enactment effectual and not to transgress the limits of its power: See also *Broken Hill South Ltd.* v. *Commissioner of Taxation* (*N.S.W.*) (4) and the cases cited (5), and *Commissioner of Stamps* (*Q.*) *v. Counsell* (6). But all these authorities only go to show the degree of connection with a territory which is required in order to establish the validity of a statute passed by the legislature of that territory. They do not assist towards determining the actual local applicability of legislation. In other words, the rule that a statute should be construed, if possible, so as not to exceed the territorial competence of the legislature,

(1) (1891) A.C. 455.
(2) (1901) A.C. 446.
(3) (1915) 20 C.L.R. 531.
(4) (1937) 56 C.L.R. 337.
(5) (1937) 56 C.L.R., at pp. 356-358, 377-379.
(6) (1937) 57 C.L.R. 248.

may be applied so as to limit the application of a statute, but not so as to determine its application within any limit ascertained as a result of applying the rule (*Barcelo* v. *Electrolytic Zinc Co. of Australasia Ltd.* (1)). The cases to which I have referred do show, however, that in considering the territorial competence of a legislature as an aid to construction in the manner stated, the particular subject matter of the legislation is an important element. Thus, in the case of a criminal statute, general words will be limited to persons within the jurisdiction. In the case of a taxing statute the court will ascertain whether residence or domicile or the possession of property within the jurisdiction or some other element has been adopted by the legislature to measure the scope of the application of the statute.

In the present case it is, I think, possible to discard at the outset some suggested limitations. No reason has been adduced to support the contention that the domicile or the residence of the persons concerned or any of them (employers, workers or dependants), or the mere fact that death took place in Victoria, can constitute a criterion of the applicability of the statute. It would be plainly inappropriate to hold that the Act is intended to apply to domiciled or resident Victorians who happen to make a contract in London for work to be performed in London. Workers' compensation is not one of the class of cases in which some kind of personal law (as, for example, in questions of marriage or succession) may be assumed to follow the person wherever he may be. There is nothing in the statute to support the argument that the statute should be read as applying to deaths in Victoria of any persons who were employed under any contracts, wherever made, to do work in any place wheresoever.

The mere fact that the contract of employment was made in Victoria is not satisfactory as a criterion of the applicability of the statute. The legislature might have adopted that criterion, but there is nothing to show that it has actually done so. Here again it is difficult to say very much more than that the subject matter is not such that the test suggested appears reasonable. It is true

(1) (1932) 48 C.L.R., per *Starke* J. at p. 410, and per *Dixon* J. at p. 428.

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that the courts have referred to obligations under a workers' compensation statute as being statutory conditions of a contract of employment: See, for example, *Workers' Compensation Board* v. *Canadian Pacific Railway Co.* (1); *Hunter* v. *Städtische Hochseefischerei Gesellschaft* (2). Such an Act may be so described for the purpose of emphasizing the fact that liability under the Act arises only in cases where there is a contract of employment. But the obligations created by the statute cannot be said to be contractual in any sense. They have none of the characteristics of contractual obligations. They attach independently of the will of the parties. The parties cannot by agreement exclude or modify their own rights and obligations which arise under the Act. Dependants, who have rights under such a statute, have no contract with the employer and have no contractual rights whatever against the employer. If an employer and a worker were to agree that dependants should have no rights under the Act, it is clear that the agreement would be quite ineffectual. If they were to agree that rights of compensation should exist other than those created by the statute, the procedure of the statute would not be available for the enforcement of such rights. Thus the statute cannot be regarded as a statute prescribing terms and conditions of employment so as to be prima facie applicable to contracts made in Victoria. Indeed, it would be surprising if the fact that two Frenchmen, who happened to be in Victoria, made in Victoria a contract of employment in relation to work to be performed in France, should bring the Act into operation in relation to accidents which took place in France.

Next it is suggested that the Act applies in all cases where the governing law of the contract of employment is the law of Victoria, and in no other case. It is not easy to see why such a test should be selected for the purpose of construing in relation to its local operation a remedial statute of this character. Where there is what may be called a foreign element in a contract it may be necessary to refer to the law of more than one country for the purpose of determining all the questions which may arise in relation to the contract. It may be the law of one country which determines the capacity of the parties to contract, the law of another country which regulates

(1) (1920) A.C. 184. (2) (1925) 2 K.B. 493.

the formalities of the contract, while a third country may supply the governing law of a contract, by which questions of material (as distinct from formal) validity, interpretation and the nature and extent of the obligations under the contract are determined. But this Act, for the reasons stated, cannot be regarded as an Act regulating contractual relations. In special cases, in the absence of any other clear indication of the intention of parliament, the governing law of a contract may be selected as the best practicable means of determining the territorial application of a statute which is essentially a statute dealing with contracts (*Barcelo* v. *Electrolytic Zinc Co. of Australasia Ltd.* (1); *Wanganui-Rangitikei Electric Power Board* v. *Australian Mutual Provident Society* (2)). In those cases the court had to consider the applicability of a statute which altered the obligations of mortgages. The question was determined by adopting the principle that a legislature, in intervening for the purpose of varying existing contractual relations, might reasonably be supposed to be intending to deal with such obligations only where they were obligations created by contracts the governing law of which was that of the country of the legislature in question. Such a criterion, however, appears to be inapplicable to a statute which is not directed towards the alteration of obligations under existing contracts, but which is intended to prescribe a general rule of conduct for the future, within the sphere to which it is applicable, whatever may be the terms of any contracts which the parties may choose to make. As a general rule, the parties can fix their own governing law for their contracts. In *Spurrier* v. *La Cloche* (3), Lord *Lindley* said for the Privy Council: " That the intention of the parties to a contract is the true criterion by which to determine by what law it is to be governed is too clear for controversy." But, although this proposition is stated to be too clear for controversy, there is room for much controversy not only as to what the intention of the parties is in a particular case, but also as to the intention which the parties are allowed to have: See, for example, *Cheshire, Private International Law* (1935), pp. 183 et seq.; *Dicey, Conflict of Laws*, 5th ed. (1932), pp. 667 et seq., and a discussion in note 22, p. 958, especially

(1 (1932) 48 C.L.R. 391.
(2) (1934) 50 C.L.R. 581.
(3) (1902) A.C. 446, at p. 450.

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at pp. 964, 965; per *Evatt* J. in *Barcelo's Case* (1); *Vita Food Products Inc.* v. *Unus Shipping Co. Ltd.* (2).

Parties cannot by agreeing that their contract should be governed by the law of a foreign country exclude the operation of a "peremptory rule" otherwise applicable to their transaction. Thus in the present case it could not be contended that parties in Victoria could, merely by agreeing that the law of another country than Victoria should apply to their contract, exclude the application of the *Workers' Compensation Act*, if otherwise it were applicable, even though the law of that other country might for other purposes be accepted as the governing law of the contract. Thus there is no reason to be found in the nature of the Act for adopting the governing law of the contract as the criterion of applicability. On the contrary, the Act is of such a nature that the governing law of the contract of employment (in the ordinary sense of "governing law") is necessarily irrelevant when the applicability of the Act is being considered.

As therefore the governing law of a contract strictly so called cannot be accepted as an appropriate test, it has been suggested, on the basis of certain American decisions, that the Act should be construed so that it will be applicable in all cases where it can be said that the contract of employment is "a Victorian contract," that is, where the contract is one which has either a real and substantial connection, or the most real and substantial connection, with Victoria. A similar idea is expressed in the proposition that the "status" consisting in the relationship of employer and worker must depend upon or arise under Victorian law in order that the Act should be applicable. In applying this test, it is said, consideration should be given not only to the place where the contract was made but also to the place where the parties reside, the place where the work was to be done, and to any other circumstance which might tend to show that the contract had a particular connection with Victoria rather than with any other country.

One form of this doctrine originated in Minnesota. "When a business is localized in a State there is nothing inconsistent with the principle of the compensation act in requiring the employer to

(1) (1932) 48 C.L.R., at p. 435.
(2) (1939) 44 Com. Cas. 123, at pp. 129 et seq.

compensate for injuries in a service incident to its conduct sustained beyond the borders of the State. . . . What the employee did, if done in Minnesota, was a contribution to the business involving an expense and presumably resulting in a profit. It was not different because done across the border in North Dakota. It was referable to the business centralized in Minnesota" (*State of Minnesota, ex. rel. Chambers* v. *District Court of Hennepin County* (1), as quoted in *Beale, Conflict of Laws* (1935), vol. 2, p. 1320). The economic or social basis of this doctrine may be attractive, but I cannot discover in the Victorian statute any legal basis for adopting it. Further, this rule is rejected or not yet applied in many of the American States and it is vague and ill-defined in its terms. The argumentative basis for the judicial introduction of such a new test of territorial applicability of statutes cannot be said to have been satisfactorily established.

Some of the American decisions depend upon particular statutes, while others depend upon general considerations which commend themselves to the courts of some States but not to others. The extent of variation (or, it might almost be called, of confusion) of doctrine may be seen by reference to the cases cited in *Beale*, (1935), vol. 2, pp. 1317 et seq.

Finally there remains the view that the Act applies in the case of accidents happening in Victoria and not in the case of accidents happening beyond Victoria. For this view there is the definite authority of the decisions of the Court of Appeal which have already been cited. It is said that those decisions are plainly wrong, and reliance is placed upon the criticism of them to be found in *Keegan* v. *Dawson* (2). In that case two justices of the High Court and one of the Supreme Court followed *Tomalin's Case* (3). Two justices of the Supreme Court, constituting a majority of that court, refused to follow *Tomalin's Case* (3).

The criticism of *Tomalin's Case* (3) was principally directed to two points. In the first place it was said that the Court of Appeal in *Tomalin's Case* (3) misquoted and misapplied the following statement taken from *Maxwell* on *Interpretation of Statutes*: "In the

(1) (1918) 139 Minn. 205. (2) (1934) I.R. 232.
(3) (1909) 2 K.B. 61.

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absence of an intention clearly expressed or to be inferred either from its language or from the object, subject matter or history of the enactment, the presumption is that parliament does not design its statutes to operate on its subjects beyond the territorial limits of the United Kingdom": See 7th ed. (1929), p. 124. *Cozens-Hardy* M.R., in quoting this well-established rule in *Tomalin's Case* (1), omitted the words "on its subjects." This omission was regarded in the Supreme Court of the Irish Free State as very important. But the point of the rule as stated in *Maxwell* is that, even in relation to its own subjects, the legislature is not to be presumed to be legislating extra-territorially. In the case of foreigners it is so obvious that this is the case that it is unnecessary to lay down any rule. Accordingly, the omission of the words "on its subjects" in the quotation of the rule by the Master of the Rolls cannot be regarded as an error the absence of which could possibly have brought about a different result in the application of the rule to the case then under consideration.

Further, the rule is expressed in negative terms. It is not a statement in positive terms that a parliament must be presumed to be legislating for all its subjects wherever they are. In the Supreme Court in *Keegan* v. *Dawson* (2) the view was taken that as a State was *able* to impose on its own subjects who were within its own jurisdiction obligations in relation to their employees, wherever they might be, the statute should prima facie be read as in fact imposing such an obligation. No particular reason is given for the acceptance of this view except that there is nothing in the comity of nations to prevent its acceptance. *Fitzgibbon* J. says that the statute should be interpreted upon the basis that "the limitation, and the only limitation is to *the subjects* of the legislature concerned—*all over the world*" (3). If this principle were adopted in the case of the Victorian Act, it would mean that the Victorian *Workers' Compensation Act* is to be construed as applying to all people who may be described as "Victorians" wherever they may go in the world if they employ anyone in any country of the world. I can see no reason whatever for adopting such a proposition. It may be added that the definition of "Victorian" would create many problems.

(1) (1909) 2 K.B. 61. (2) (1934) I.R. 232. (3) (1934) I.R., at p. 249.

In *Keegan* v. *Dawson* (1) the learned Chief Justice reserves for further consideration the case of a contract for service to be rendered altogether in foreign countries. But if the truth is that parliament has legislated with respect to the subjects of the State wherever they are, there appears to be no reason why any such question should be reserved. It is completely covered by the principle of the decision. The learned Chief Justice towards the end of his judgment calls particular attention to the facts that not only were the employer and employee in the particular case before the court subjects of the Irish Free State, but also that there was a contract of service made within the State, substantially to be performed within the State, by a worker who was a resident subject of the State, the employer being also a resident subject of the State, and both employer and employee being justiciable in the State and according to its laws. Either these considerations are relevant for the purpose of determining the territorial application of the statute or they are not. If they are, then it is impossible to say that, independently of the residence of the parties, the place where the contract was made, and the locality of the work to be done under the contract, the Act is applicable to " subjects " of a State wherever they are employed simply because they are the subjects of the State. If the circumstances mentioned are not relevant, then I have difficulty in understanding why there was any occasion to mention them. Thus it appears to me that no very clear rule is laid down in *Keegan* v. *Dawson* (1).

The acceptance of the existence of the status of a " subject " as the criterion of the applicability of a statute would involve the conclusion that in the case of Victoria all Victorian statutes should prima facie be read as applying and that they may properly apply to all persons who may be described as Victorian subjects all over the world. I would wish to hear much more argument on the matter before accepting so novel and so far reaching a principle.

The adoption of the suggested principle would, in my opinion, involve the overruling of *Macleod's Case* (2) and the application to Dominion legislatures as well as to the Parliament sitting at Westminster of the principle of *Russell's Case* (3). Perhaps it may be

(1) (1934) I. R. 232.
(2) (1891) A.C. 455.
(3) (1901) A.C. 446.

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argued that *Croft* v. *Dunphy* (1) involves this revolution in legal principle, but no such proposition has been argued in the present case. The Irish Free State has established a separate nationality and the position may well be different from that which exists in the case of a State of the Commonwealth. *Fitzgibbon* J., however, interprets the words " British subjects," when used in this connection, as equivalent to " the inhabitants of the United Kingdom " : See *Keegan* v. *Dawson* (2). Such words do not very clearly describe any identifiable category of persons. They are certainly not equivalent to " subjects " in the usual sense of that word. Accordingly, it appears to me that in this respect also it is difficult to extract a definite principle from *Keegan* v. *Dawson* (3).

The decision in *Tomalin's Case* (4) was further criticized in *Keegan* v. *Dawson* (3) on account of the references made in the judgment of the Master of the Rolls to the provisions relating to seamen then contained in sec. 7 of the 1906 Act. By this section the Act was applied to masters, seamen and certain apprentices, provided that such persons were workmen within the meaning of the Act and were members of the crew of any ship registered in the United Kingdom or of any other British ship or vessel of which the owner resided or had a principal place of business in the United Kingdom. These provisions do not appear to provide any particular support either for the view taken by the Master of the Rolls or for the view taken by the Supreme Court of the Irish Free State. They are special provisions dealing with seamen. They admit a defined class of seamen to the benefits of the Act. They are consistent with any view of the territorial application of the other provisions of the Act. They certainly cannot be said to imply that the rest of the Act applies to all British subjects wherever they may be. The provisions do not depend upon the nationality of the masters, seamen or apprentices mentioned or upon the nationality of the owner of the ship. Their operation is equally independent of the place where the contract of employment was made and of the place where the work under the contract was to be performed. Thus, in my opinion, these provisions throw no light upon the question.

(1) (1933) A.C. 156.
(2) (1934) I. R., at p. 249.
(3) (1934) I. R. 232.
(4) (1909) 2 K.B. 61.

In *Keegan* v. *Dawson* (1) it was said that *Farwell* L.J. placed his decision in *Tomalin's Case* (2) upon a different ground from the grounds relied upon by the other members of the court and that the approval of *Tomalin's Case* (2) expressed by Lord *Atkinson* in *Krzus's Case* (3) applied only to the judgment of *Farwell* L.J. With all respect I find myself unable to appreciate the suggested difference. *Farwell* L.J. reached the same conclusion as the other members of the court, and he expressed the ground of his decision in the following sentence: "To my mind the words 'any employment' there" (that is, in sec. 1 of the English Act, which is in the same terms as sec. 5 of the Victorian Act) "must be restricted to employment within the ambit of the United Kingdom or on the high seas as provided by sec. 7" (4). As I have already said, it appears to me to be clear that his Lordship was not referring to employment in the sense of a contractual relationship. In *Tomalin's Case* (2) the contractual relationship was in fact established in England. If *Farwell* L.J. had regarded this fact as the essential feature of the case he would have held that the workman was entitled to recover. But his decision was that the workman was not entitled to recover. The ground of his decision was that the "employment" of the workman was not employment within the ambit of the United Kingdom, that is, within the United Kingdom. It was not such "employment" because and only because the work was in fact done in Malta. The accident happened in the course of such work and for that reason, namely, the place of the happening of the accident, the workman was unable to recover. Thus *Farwell* L.J. agrees with the other members of the court in holding that, in order that the workman should recover, the accident must have arisen out of and in the course of work which is being done in the United Kingdom.

In my opinion it is unnecessary to seek authority beyond *Tomalin's Case* (2). That case lays down a rule which is clear. It was decided in the year 1909. The importance of the decision was obvious. The Victorian Parliament enacted the *Workers' Compensation Act* in 1914. The Act has been re-enacted in 1915 and 1928. In my

(1) (1934) I. R. 232.
(2) (1909) 2 K.B. 61.
(3) (1912) A.C. 590.
(4) (1909) 2 K.B., at p. 65.

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opinion it should be assumed that the legislature was content to adopt the limitation of the legislation set forth in *Tomalin's Case* (1).

Further, the decision in *Tomalin's Case* (1) may be supported by general reasoning other than that which is stated in the judgments in that case. The territorial application of an Act must, in the absence of any express relevant provision, be determined by reference to the general subject matter and the character of the Act. The statute in question is a workers' compensation Act. It is dealing with the subject of compensation to workmen who suffer as the result of certain accidents. As was said in the Privy Council in *Metropolitan Coal Co.* v. *Pye* (2), a case upon appeal from this court: "In the language of *Rich* J. we have in the *Workers' Compensation Act*" (of New South Wales), "a general law for compensating" (certain) "injuries." The Act does not concern itself with the terms of any contract of employment. The Act applies, if at all, notwithstanding any contract that the parties may have sought to make. I refer again to the fact that the Act confers rights upon dependants of a deceased worker. These dependants are *ex hypothesi* not parties to any contract of employment, and they include infants who are incapable of contracting. The Act is directed towards providing compensation for injury or death resulting from accidents to employed persons. If those accidents take place in Victoria there is every reason why the Act should be held to be applicable. If the object and character of the Act has been correctly described in what I have said, there is no apparent reason for regarding its general provisions as applicable to accidents which take place beyond Victoria.

I am pressed by the difficulty of selecting one from the many criteria of applicability which are suggested. But, after considering all the suggestions made, I am of opinion that the court will act properly in following the decisions of the Court of Appeal. I summarize my reasons by saying that the other suggested views appear to me to be less acceptable for reasons which I have stated, that the decisions of the Court of Appeal lay down a simple and readily applicable rule, that the criticism to which they have been subjected is not, in substantial matters, well founded, and that the Victorian legislature

(1) (1909) 2 K.B. 61.
(2) (1936) A.C. 343, at p. 351; 55 C.L.R. 138, at p. 142.

should be regarded as having enacted the *Workers' Compensation Act* with knowledge of those decisions.

Therefore, in my opinion, the appeal should be dismissed.

RICH J. The question in this case is what territorial restriction should be placed upon the construction of the general words to be found in the Victorian *Workers' Compensation Act* 1928, sec. 5, which is as follows: "If in any employment personal injury by accident arising out of and in the course of the employment is caused to a worker his employer shall . . . . be liable to pay compensation in accordance with the Second Schedule." The words, it is true, do not express any limitation of liability. But they are not intended to have a universal application. The law in question is one of local policy confined to the State of its origin and not intended to apply to any country so far as accidents are concerned. I think that the facts take the case out of the scope of the operation of the statute. The employment of the deceased was carried out in New South Wales and the accident which caused his death did not arise out of and in the course of a local employment.

The appeal should be dismissed.

STARKE J. The *Workers' Compensation Act* 1928 of Victoria provides that if in any employment personal injury by accident arising out of and in the course of the employment is caused to a worker his employer shall be liable to pay compensation in accordance with the Act (sec. 5). The question on this appeal is whether the compensation provided by the Act is limited to personal injuries by accident sustained within Victoria.

The facts are:—1. That the employer and the worker were domiciled residents of Victoria. 2. That the employer was a contractor whose principal place of business was in Victoria. 3. That the employer entered into a contract in Victoria to build a mill in New South Wales. 4. That the employer verbally engaged the worker at Cobram in Victoria to work as a carpenter in connection with the erection of the mill. It was the intention of the employer and worker that Victorian law should govern this contract of service. 5. That the worker sustained personal injuries by accident while

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working at the mill at Tocumwal in New South Wales. 6. That the injuries resulted in the death of the worker. 7. The worker after the accident was taken to his home at Cobram in Victoria where he died. 8. Cobram and Tocumwal are small towns about ten miles apart, the former being in Victoria and the latter in New South Wales. 9. The dependants of the deceased worker initiated proceedings for compensation under the Act.

The constitutional authority of the Parliament of Victoria to pass the *Workers' Compensation Act* was not challenged, and, indeed, it is beyond doubt (*Croft* v. *Dunphy* (1)). The question already mentioned depends upon the proper construction of the Act and upon nothing else.

Various constructions were suggested during the argument:—

1. That the Act is limited to personal injuries by accident sustained in Victoria: the situs of the accident is the criterion of liability. It is the construction adopted by the Supreme Court of Victoria in this case and in *Beazley* v. *Ryan* (2), and it is supported by English authority: *Tomalin* v. *S. Pearson & Son Ltd.* (3); *Schwartz* v. *India Rubber &c. Co. Ltd.* (4); *Krzus* v. *Crow's Nest Pass Coal Co. Ltd.* (5): Cf. *Hunter* v. *Städtische Hochseefischerei Gesellschaft* (6).

2. That the place where the agreement or contract of employment or service was made determined the right to compensation under the Act; in other words the *lex loci contractus*. This view has the support of American decisions. But this principle has developed, as Mr. *P. D. Phillips* made clear in his informative argument, into the doctrine in some States, especially New York, that the right to compensation depends upon the localization of the employment. Employment is not necessarily located at the place of the accident, nor at the place where the contract is made, but at the place which has the most real connection with the employment. It involves a consideration of all the facts of the case. (See cases collected: *Beale, Conflict of Laws* (1935), vol. 2, p. 1320; *Harvard Law Review*, vol. 31, p. 619.) The Irish case, *Keegan* v. *Dawson* (7), is also based mainly, I think, upon the *lex loci contractus*.

(1) (1933) A.C., at p. 162.
(2) (1935) V.L.R. 135.
(3) (1909) 2 K.B. 61.
(4) (1912) 2 K.B. 299.
(5) (1912) A.C., at p. 596.
(6) (1925) 2 K.B., at pp. 502, 507.
(7) (1934) I.R. 232.

3. That the " proper law of the contract " that is, the law which governs the obligations of the contract of employment or service, determines the right to compensation under the Act (*Barcelo* v. *Electrolytic Zinc Co. of Australasia Ltd.* (1)).

None of these constructions presents any constitutional difficulty. Each invokes a circumstance that would attract the constitutional authority of the State of Victoria. The *Workers' Compensation Act* provides for compensation in respect of personal injuries by accident. It is not a contractual right, but a right which is imposed by the Act upon the relationship or status arising from a contract of employment. Either the accident or the contract would attract the constitutional authority of the legislature, but the accident, in my opinion, is the circumstance that has attracted the exercise of the legislative power in the *Workers' Compensation Act.*

Unless the Act otherwise provides the implication is that the accident contemplated is an accident occurring within the territorial limits of the State of Victoria and not one occurring outside those limits. This is so because of the general principle that a State can legislate effectively only for its own territory. On the other hand, an Act might provide that every worker under a contract made within the State or of which the proper law of the contract was that of the State or in connection with a business localized in the State should be entitled to receive compensation wheresoever the injury by accident occurred. The constitutional validity of such an Act would not, I think, be open to doubt, but the real meaning and construction of any Act depends upon the language used by the legislative body.

In the case of the *Workers' Compensation Act* of Victoria the conclusion reached under the English Act by the Court of Appeal in England and under the Victorian Act by the Supreme Court of Victoria is, in my judgment, well founded. It was suggested that limiting the Act to personal injuries by accident sustained in Victoria may involve difficulties in connection with industrial diseases (sec. 18). These difficulties may be met by the provision in the Act that " the disablement shall be treated as the happening of the accident."

(1) (1932) 48 C.L.R. 391.

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But they cannot all be resolved in this case and must be dealt with as they arise.

The appeal should be dismissed.

DIXON J. The question raised by this appeal is what limitation ought, as a matter of construction, to be placed upon the territorial operation of the general words in which the conditions of liability for workers' compensation are stated by the legislation on that subject as it has been transcribed by the State of Victoria. The words are chosen without regard to any considerations of locality. "If in any employment personal injury by accident arising out of and in the course of the employment is caused to a worker his employer shall . . . be liable to pay compensation" (sec. 5 (1)).

In the present case, the worker, who was killed, lived at a border town in Victoria, where he was engaged by a Victorian contractor to work at a building in course of erection by the contractor at a neighbouring border town of New South Wales.

The work was confined to New South Wales and the worker was called upon to journey daily from his place of residence in Victoria to his work in New South Wales. The proper or governing law of his contract of employment, as ascertained from the intention of the parties, has been found to be Victorian. The accident happened at the building in New South Wales where he was at work. According to the decisions of the Court of Appeal in *Tomalin* v. *S. Pearson & Son Ltd.* (1) and *Schwartz* v. *India Rubber &c. Works Co.* (2), if an English employer engages in England a workman to go out of the United Kingdom and work for him, and the workman suffers injury by accident abroad, the British *Workmen's Compensation Act* does not operate to impose liability upon the employer to pay compensation. Of the first of these cases Lord *Atkinson*, for the Privy Council, has said:—"There it was sought to apply a statute of the United Kingdom to an accident happening in Malta, arising out of an employment carried on in Malta. So to apply the statute would, indeed, amount to making it operate beyond the territorial limits of the United Kingdom. And the Court of Appeal held, quite rightly in their Lordships' view, that this statute did not apply to such an

(1) (1909) 2 K.B. 61; 100 L.T. 685. (2) (1912) 2 K.B. 299; 106 L.T. 706.

employment" (*Krzus* v. *Crow's Nest Pass Coal Co. Ltd.* (1)). The reasons given by the majority of the Court of Appeal seem to place the conclusion on the ground that upon the proper interpretation of the general words by which the legislation imposes liability, their operation is confined to accidents which occur within the jurisdiction. *Farwell* L.J., however, places the territorial restriction on the word "employment." He says: "To my mind the words 'any employment' there must be restricted to employment within the ambit of the United Kingdom or on the high seas as provided by sec. 7" (*Tomalin's Case* (2)). Lord *Atkinson's* language appears to be framed to accord with this view.

The general words of the statute must obviously receive an application restricted territorially: they are not meant, for instance, to confer upon a workman suffering injury by accident in New Zealand arising out of and in the course of an employment in New Zealand a right under Victorian law to compensation from his New Zealand employer. But it is not easy to discover the basis, or the nature, of the particular restriction to be applied. Workers' compensation is a liability neither in tort nor in contract. It is a responsibility *postivi juris* and is annexed by law to a relationship, that of master and servant. The parties may choose whether they will enter into the relationship; but if they do the employer's liability for, and the worker's and his dependants' corresponding right to, compensation are legal consequences which are independent of and cannot be controlled by their agreement. It appears to be natural to say that the statute is confined to "employments" within the territory. The "employment" is the continual relationship, not the engagement or contracting to employ and to serve. It is the service; that to which Lord *Atkinson* applied the expression "carried on."

Of the many cases in the United States upon this subject which I have read, *Cameron* v. *Ellis Construction Co.* (3) contains, I think, the most satisfactory reasoning. It is reasoning which is in conformity with the statement by *Farwell* L.J. in *Tomalin's Case* (4), and would produce the same conclusions as those of the English Court of Appeal.

(1) (1912) A.C., at p. 597.
(2) (1909) 2 K.B., at p. 65.
(3) (1930) 252 N.Y. 394.
(4) (1909) 2 K.B. 61.

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The facts of the case were stated in the judgment of the court delivered by *Lehman* J. as follows :—" The claimant, a resident of Canada, was injured while operating a gasoline engine at a sand pit situated at Dundee in the Dominion of Canada, near the boundary of the State of New York. Immediately across the boundary and within the State of New York, the employer, a Massachusetts corporation, was constructing a road. It operated the sand pit in Canada solely for the purpose of obtaining sand and gravel used in the road construction of New York. The claimant's injuries arose out of and in the course of his employment. Though employed only for work at the sand pit in Canada, his work was incidental to a hazardous industrial enterprise conducted by the employer in the State of New York " (1).

The court decided that the workman was not entitled to compensation. The statute was expressed in perfectly general terms. " Nowhere in the Workmen's Compensation Law is there an explicit definition of its territorial scope " (2).

The principle upon which the court went was that the obligations of the *Workmen's Compensation Law* were made an integral part of the relations of employer and employee which the State legislature undertook to regulate and that it did not assume to regulate employment outside the State. " The problem presented here is whether the State has undertaken to regulate the claimant's employment at a fixed place in Canada. Nothing in the statute suggests that the State of New York has attempted to stretch forth its arm to draw within the scope of its own regulations the relations of the employer and employee in work conducted beyond its borders. Hazardous employment here is regulated by the *Workmen's Compensation Law*; hazardous employment elsewhere, though connected with a business conducted here, does not come within its scope. . . . The test in all cases is the place where the employment is located. When the course of employment requires the workman to perform work beyond the borders of the State, a close question may at times be presented as to whether the employment itself is located here. Determination of that question may at times depend upon the relative weight to be given under all the circumstances to opposing

(1) (1930) 252 N.Y., at pp. 395, 396. (2) (1930) 252 N.Y., at p. 396.

considerations. The facts in each case, rather than juristic concepts, will govern such determination. Occasional transitory work beyond the State may reasonably be said to be work performed in the course of employment here ; employment confined to work at a fixed place in another State is not employment within the State, for this State is concerned only remotely, if at all, with the conditions of such employment. Such illustrations may indicate the manner in which the test should be applied ; we do not now attempt a more definite classification intended to cover all the varying circumstances that may enter into the question in other cases. Here it seems to us quite evident that the claimant was not employed in New York. His employment required him to work only in a fixed place in Canada " (1).

In the application of the principles thus stated the courts of the State of New York have decided that a liability for workmen's compensation to the dependants of an air pilot killed in a crash outside the State was imposed upon his employers by the legislation of the State of New York because his employment was identified with New York as the place from which the air service was conducted, at which he was engaged and in which he lived (*Tallman* v. *Colonial Air Transport, Inc.* (2)). Any other result would seem unreal. It would be, indeed, artificial to require the dependants, in New York, of the deceased pilot to resort to the law of the State over which the flight of the aeroplane happened to have taken him at the moment when it crashed.

But the principle applied was that formulated in *Cameron* v. *Ellis Construction Co.* (3), namely, "that the *Workmen's Compensation Law* applies only to employment within the State, and that award of compensation may be made for injuries sustained outside the State only where those injuries arise out of and in the course of employment which is located here."

This principle excludes the present case from the Victorian statute. The deceased's employment was not carried out or localized in Victoria but in New South Wales.

I think that for these reasons the appeal should be dismissed.

(1) (1930) 252 N.Y., at pp. 397, 398. (2) (1932) 259 N.Y. 512.
(3) (1930) 252 N.Y., at p. 399.

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McTIERNAN J. I agree that the appeal should be dismissed. There is nothing in the present case which would justify any material distinction being made between it and the case of *Tomalin* v. *S. Pearson & Son Ltd.* (1). This case has been followed in *Schwartz* v. *India Rubber, Gutta Percha & Telegraph Works Co. Ltd.* (2), and approved in *Krzus* v. *Crow's Nest Pass Coal Co. Ltd.* (3). In my opinion, the present case is governed by the decision in *Tomalin* v. *S. Pearson & Son Ltd.* (1).

Appeal dismissed with costs.

Solicitor for the appellant, *J. Okno.*

Solicitors for the respondent, *Phillips, Fox & Masel.*

H. D. W.

(1) (1909) 2 K.B. 61.

(2) (1912) 2 K.B. 299.

(3) (1912) A.C. 590.