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Jurors as Nonvoluntary Employees Under Workmen's Compensation Law

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JURORS AS NONVOLUNTARY EMPLOYEES UNDER WORKMEN'S COMPENSATION LAW

Jury service can be both beneficial and burdensome: beneficial to our legal system, but burdensome to the individual citizen required to serve. It can be particularly burdensome if the juror loses his regular employment benefits while he is serving.

The Superior Court of New Jersey in *Silagy v. State*[1] may have increased the burden of the juror. The plaintiff in that case had been ordered by the county to serve on a jury. While serving, she tripped on a rubber mat, injuring her foot and ankle. To defray the resulting medical expenses, plaintiff sought workmen's compensation benefits. She sought them from the county, on the theory that a juror is an employee of the county. Alternatively, she sought benefits from her regular employer, on the theory that her jury service was an extension of her regular employment. She was not allowed compensation from either source. The court noted that plaintiff had served the county under compulsion of law rather than under contract.[2] The compulsory nature of her service was held to preclude her from being deemed an employee of the county, the term "employee" being statutorily defined as one "who perform(s) service for an employer for financial consideration. . . ."[3] Likewise she did not qualify as an employee of her regular employer. The court reached this conclusion by ruling that the jury service was beyond the scope of her regular employment.[4]

The *Silagy* case is one of several dozen cases which have dealt with the issue of whether a person who renders services under compulsion of law should be deemed an "employee" and so brought within the coverage of the workmen's compensation acts. This Note will examine the several classes of cases concerning claimants who have been injured while serving under compulsion of law. Attention will be focused on the juror, and particularly on whether his situation is distinguishable from similar cases. In the light of these examinations, and after a consideration of the underlying philosophy of workmen's compensation, a determination will be made of the soundness of the *Silagy* decision.

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1. 105 N.J. Super. 507, 253 A.2d 478 (1969).
2. *Id.* at 509, 253 A.2d at 479.
3. N.J. STAT. ANN. § 34:15-36 (1959).
4. 105 N.J. Super. at 510, 253 A.2d at 479.

THE NATURE OF WORKMEN'S COMPENSATION

Before the *Silagy* issues are examined, a few general remarks should be made concerning the nature of workmen's compensation.

Workmen's compensation is a system designed to allocate the cost of work-connected injuries in an efficient, certain, and fair manner.[5] The system is entirely statutory; the right of the individual worker to receive workmen's compensation benefits depends on the provisions of the applicable statute and on the circumstances of the particular case.[6] Some states require all eligible employers and employees to participate in their workmen's compensation programs,[7] while others only require designated classes of employers or employees to participate, and allow the other eligible classes to participate at their option.[8] Some states make participation optional for all eligible employers or employees.[9] In most states the employers who participate in the program are permitted to make private insurance arrangements; generally, they can either carry liability insurance or act as "self-insurers."[10]

The liability of the employer is a "liability without fault." The employer is liable so long as his employee's injury was work-connected.[11] Negligence is immaterial. Employers are willing to accept this "liability without fault" because they are granted immunity from common law suits.[12] This means that the relatively high jury verdicts under common law are replaced by relatively low assessments under compensation law.[13] The assessments against the employer are relatively low under compensation law because they are only designed to partially compensate the workman for his reduced earning capacity[14] and for the medical expenses he has incurred.[15] The assessments are not designed to compensate him for all actual losses or for any pain and suffering.[16]

Employees are willing to accept the workmen's compensation provisions because they are assured conveniently obtainable bene-

5. 1 A. LARSON, WORKMEN'S COMPENSATION LAW § 2.20 (1968).
6. Flynn v. Union City, 32 N.J. Super. 518, 108 A.2d 629 (1954).
7. 3 A. LARSON, WORKMEN'S COMPENSATION LAW, Appendix A, Table 7 (1968).
8. *Id.*
9. *Id.*
10. *Id.*; 1 A. LARSON, WORKMEN'S COMPENSATION LAW § 3.10 (1968).
11. 1 A. LARSON, WORKMEN'S COMPENSATION LAW § 2.10 (1968).
12. *E.g.*, N.J. STAT. ANN. § 34:15-8 (1969).
13. 1 A. LARSON, WORKMEN'S COMPENSATION LAW §§ 2.40-2.50 (1968).
14. *Id.*
15. 2 A. LARSON, WORKMEN'S COMPENSATION LAW § 61.11 (1968).
16. 1 A. LARSON, WORKMEN'S COMPENSATION LAW § 2.40 (1968).

fits without regard to fault.

The goal of compensation law is to have the consumer of a product ultimately bear the cost of producing the product.[17] This goal is effected by a two step process. First, the employer is required to absorb the cost of work-connected injuries, as he absorbs the expense of machinery depreciation. The employer then passes the cost of the injuries to the consumer in the form of higher prices. Thus, the burden of supporting incapacitated workmen is ultimately shifted from the general public to the specific consumers who benefit from the workmen's labors.[18]

The History of Claims by Jurors

Five cases comprise the history of the issues litigated in the *Silagy* case.[19] In all of these cases, the claimants sought workmen's compensation benefits. The benefits were alleged to be due because the claimants sustained injuries or contracted a disease in the course of rendering jury services. In all five cases the claimants sought benefits from the county only. The juror's additional claim in *Silagy* against her regular employer presents an issue which has not been previously decided by the courts, and which is beyond the scope of the discussion in this Note.[20]

In *Industrial Commission v. Rogers*[21] the plaintiff was injured on the courthouse stairs while serving as a juror. She contended that at the time of her injury she was an employee of the county

17. Morris v. Hermann Forwarding Co., 18 N.J. 195, 113 A.2d 513 (1955).

18. 1 A. Larson, Workmen's Compensation Law § 2.20 (1968).

19. Board of Comm'rs. v. Evans, 99 Colo. 83, 60 P.2d 255 (1936); Jochen v. County of Saginaw, 363 Mich. 648, 110 N.W.2d 780 (1961); Seward v. County of Bernalillo, 61 N.M. 52, 294 P.2d 625 (1956); Hicks v. Guilford County, 267 N.C. 364, 148 S.E.2d 240 (1966); Industrial Comm'n. v. Rogers, 122 Ohio St. 134, 171 N.E. 35 (1930).

20. In order for a juror to recover workmen's compensation benefits from his regular employer he would have to show that jury duty is within the scope of his regular employment. This is difficult to show. The juror would have to contend either that jury service is of indirect benefit to his employer, or that his employer had, for patriotic reasons, voluntarily extended the scope of employment to cover jury duty. Even if the juror can establish these claims, he is still confronted with the argument that the regular employer has no right of control over him while he is serving as a juror.

The special facts of the *Silagy* case lend some support to plaintiff's claim therein against her regular employer. The regular employer in *Silagy* was the state and it continued to pay plaintiff her regular wages while she served as a juror. Apparently the state did this for the purpose of aiding its judicial department in obtaining qualified jurors. The court in *Silagy* recognized that there is plausible merit in granting compensation benefits to state employees who serve as jurors, but felt that the decision to grant these benefits must come from either the legislature or the court of last resort. 105 N.J. Super. at 510, 253 A.2d at 479. For a more complete discussion of this issue see Silagy v. State, 101 N.J. Super. 455, 244 A.2d 542 (Mercer County Ct. 1968).

21. 122 Ohio St. 134, 171 N.E. 35 (1930).

according to the statutory definition of "employee" which includes one who serves "under any appointment or contract of hire, express or implied, oral or written. . . ."[22]

The county argued that the meager compensation given jurors is not an adequate consideration for serving.[23] Therefore, it could not be said that plaintiff served for the purpose of receiving consideration. Rather, argued the county, the plaintiff served because she had no option to decline. These circumstances did not comport with the county's understanding of "hiring." That term was understood by the county to mean the giving of adequate consideration in return for the receiving of services voluntarily rendered. Since in the juror's case there was neither a giving of adequate consideration nor a receiving of voluntarily rendered services, the county argued that there was no "hiring" and hence no "appointment or contract *of hire*". Thus, plaintiff did not qualify as an employee of the county under the statutory definition and should be denied compensation coverage.

The Ohio Supreme Court was of a different opinion. The compensation for jury service was fixed by statute, and the court felt that it could not declare such compensation inadequate.[24] Hence in the court's view, the plaintiff was appointed by the jury commission and was provided with valuable consideration in return for her services. There was thus an "appointment of hire." Plaintiff's motivation in serving was deemed immaterial. Whether she served for civic reasons, or to earn money, or to avoid being held in contempt of court, the result would be the same; she would be an employee serving under an appointment of hire. As such, she was eligible for workmen's compensation benefits.

The opposite conclusion was reached in Colorado in *Board of Commissioners v. Evans*.[25] The same situation confronted the court, with the exception that the juror was an elderly man who contracted pneumonia when lodged overnight without a blanket. The Colorado statutory definition of "employee", like the Ohio definition,[26] includes "[e]very person in the service of the state, or of any county . . . under any appointment or contract of hire, express or implied . . . ."[27] The court hinged its decision on whether or not there was a contract between the plaintiff and the county.

22. OHIO REV. CODE ANN. § 4123.01(A) (Baldwin Supp. 1968).
23. 122 Ohio St. at 138, 171 N.E. at 36.
24. *Id.* at 139, 171 N.E. at 37.
25. 99 Colo. 83, 60 P.2d 225 (1936).
26. OHIO REV. CODE ANN. § 4123.01(A) (Baldwin Supp. 1968).
27. COLO. REV. STAT. ANN. § 81-2-7 (1963).

It was first noted that the county had not negotiated for the plaintiff's services, nor had the plaintiff applied to the county for employment.[28] Further, there was no consultation between the parties regarding the terms of plaintiff's service. Finally, the plaintiff's decisions, while serving as juror, were not subject to the control of the county. Thus, missing were the elements of a contract: application, negotiation, consultation, voluntary service, and the right of control over the employee. For these reasons the court concluded that the plaintiff was not under contract as an employee of the county. Rather, he occupied a more elevated position.[29] Consequently, he was not covered by the compensation act.

The remainder of the juror cases have been in accord with the *Evans* decision. New Mexico followed *Evans* without comment in *Seward v. County of Bernalillo*.[30] Michigan then decided the question in *Jochen v. County of Saginaw*.[31] The *Jochen* decision contains a thorough discussion on the juror's right to workmen's compensation benefits. The court, in reaching a result adverse to the plaintiff juror, split three ways. Three justices disposed of the case on the ground that the plaintiff's injury occurred before she actually assumed the duties of a juror.[32] Three concurring justices were of the opinion that the plaintiff was serving as a juror at the time of the accident, but that she still did not qualify for compensation coverage.[33] Two justices dissented.[34]

The three concurring justices introduced new arguments against granting compensation coverage. They contended that the fees given jurors are not meant as wages in payment for their services. Rather, the fees are meant as gratuities to cover expenses.[35] The concurring justices also raised the question of who did the "appointing" if it be deemed that there was an "appointment".[36] The concurring justices reasoned that for there to be an "appointment" there must be an officer who exercises discretion in selecting the juror. However, the plaintiff's name had been drawn wholly by chance from the lists of citizens compiled by city officials. No officer had exercised any discretion except for the officials who compiled the original lists. This situation was viewed as distinguishable from the *Rogers* case.[37] In that case, the selection of the plaintiff as juror had been made by a jury commission. The concurring justices felt that the commission's role in the plain-

28. 99 Colo. at 86, 60 P.2d at 226.
29. *Id.* at 86, 60 P.2d at 227.
30. 61 N.M. 52, 294 P.2d 625 (1956).
31. 363 Mich. 648, 110 N.W.2d 780 (1961).
32. *Id.* at 648, 110 N.W.2d at 780.
33. *Id.* at 662, 110 N.W.2d at 781 (concurring opinion).
34. *Id.* at 651, 110 N.W.2d at 786 (dissenting opinion).
35. *Id.* at 668, 110 N.W.2d at 784 (concurring opinion).
36. *Id.* at 666, 110 N.W.2d at 783 (concurring opinion).
37. Industrial Comm'n. v. Rogers, 122 Ohio St. 134, 171 N.E. 35 (1930), discussed at notes 21-24 and accompanying text *supra*.

tiff's selection in *Rogers* might account for that court's decision that there had been an "appointment of hire".

A final argument was voiced by the concurring justices. It was based on the contention that workmen's compensation benefits form an exclusive remedy.[38] Any employee deemed eligible for this remedy is excluded from the common law remedies. The concurring justices contended that this exclusive nature of workmen's compensation makes it restrictive, and, since it is restrictive, its coverage should not be extended to include questionable cases. Thus the juror, being a questionable case, should be excluded from workmen's compensation coverage.

In dissent[39] two justices declared that the compensation acts are remedial, not restrictive. The purpose of the acts, according to the dissenters, is to remedy the deficiencies in the common law rights of employees.[40] The dissenting justices noted that the acts should therefore be liberally construed. The general rule was said to be that a compensation act should be extended "to include all employments and services which can reasonably be said to come under its provisions and so construed that in a doubtful case an injured employee may not be deprived of the benefits of the act."[41]

Regarding the issue of whether or not there was an "appointment", the dissenting justices argued that the plaintiff had been personally chosen and summoned. This was thought to be sufficient to constitute receipt of an "appointment" to jury duty.[42]

Hicks v. Guilford County[43] is the last of the five juror cases decided prior to *Silagy*. The facts were the same as in the other cases; the decision was adverse to the plaintiff juror. The North Carolina Supreme Court stressed the test of control. An "appointment or contract of hire . . . express or implied, oral or written. . . ."[44] was held not to exist when the employer has no right to control the manner in which the employee is to render his services.[45] The court found that the county had no such control over jurors; the county had only the right to require jurors to conform with their legal duties.

The court also considered the argument that workmen's compensation acts should be liberally construed. It held that the lib-

38. 363 Mich. at 665, 110 N.W.2d at 782 (concurring opinion).
39. *Id.* at 651, 110 N.W.2d at 786 (dissenting opinion).
40. *Id.* at 656, 110 N.W.2d at 788 (dissenting opinion).
41. *Id.* at 656, 110 N.W.2d at 789 (dissenting opinion).
42. *Id.* at 661, 110 N.W.2d at 791 (dissenting opinion).
43. 267 N.C. 364, 148 S.E.2d 240 (1966).
44. N.C. GEN. STAT. § 97-2(2) (1965).
45. 267 N.C. at 367, 148 S.E.2d at 243.

eral construction rule does not apply to provisions specifying the types of employees covered.[46] Thus, in the court's opinion, the statutory definition of "employee" should not be so liberally construed as to bring a juror under the coverage of the act.

The Requirement of a Contract of Hire

Most compensation acts require the existence of a contract of hire.[47] The requirement of a contract limits the liability of the employer by making him liable only for injuries arising out of definite and mutually agreed upon employment arrangements. This limitation on the employer's liability is reasonable since it protects him from being held strictly liable to unsolicited and unwanted workers.

The requirement of a contract of hire is thus intended for the protection of the employer. The question arises as to whether the contract requirement has any other purposes. It can be argued that the contract requirement is also intended to prevent nonvoluntary workers from being covered by compensation law. To accomplish the purpose of excluding nonvoluntary workers, the contract of hire requirement must be interpreted as requiring not only that the employer and employee *agree* to the employment contract, but also that they agree *voluntarily*.

Whether the contract requirement should be interpreted so as to exclude nonvoluntary workers is not settled. Several classes of cases, in addition to the ones involving jurors, have considered the issue. In each of these cases there is a definite agreement between the person serving and the recipient of the services; the terms of the agreement are usually governed by statute, are agreed to by the recipient of the services, and are complied with by the person serving. The person serving is usually compensated for his services. The only difficulty lies in the fact that the person does not serve voluntarily.

The primary issue in these cases is the eligibility of the claimant for workmen's compensation benefits. Resolution of the eligibility issue depends on whether the claimant is deemed to be an employee. His employee status in turn hinges on whether he is held to be serving under a contract of hire. And satisfaction of the contract requirement depends on whether the court interprets the phrase "contract of hire" as requiring voluntary participation in the contract by the employee.

Cases Involving Compulsory Service

In the class of cases dealing with the impressment of citizens into public service, the courts have found the citizen's nonvolun-

46. *Id.* at 366, 148 S.E.2d at 242.
47. 1A A. Larson, Workmen's Compensation Law § 43.00 (1968).

tary participation to be no obstacle. In these impressment cases, an officer having statutory authority typically orders a citizen to render temporary assistance. The officer may be a sheriff,[48] deputy sheriff,[49] inspector having the powers of a deputy sheriff,[50] constable,[51] village marshal,[52] town marshal,[53] forest warden,[54] policeman,[55] or fireman.[56] These impressment cases have uniformly held that a sufficient appointment or contract of hire exists to bring the impressed citizens within the coverage of compensation law. Yet in all cases the citizen's participation is not voluntary. Like the juror, he serves under compulsion of law.

There are two distinctions between the impressed citizen and the juror. First, the terms of the "contract" between the officer and the impressed citizen are usually not as definite as is the case with the juror. Typically such elements as wages and duration are not even mentioned in the case of the impressed citizen. This lack of specificity is a consequence of the emergency conditions under which the citizen is usually impressed. The effect of this distinction regarding the specificity of the employment contract is that the requisites of a contract of hire appear more easily discernible in the case of a juror than in the case of an impressed citizen.

The second distinction concerns the degree of supervision retained by the employer. It has been argued that an officer has tight control over the impressed citizen, while the county has no such control over its jurors.[57] This distinction in supervision suggests that the impressed citizen, being more rigidly controlled, is an employee, whereas a juror is not.

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48. Monterey County v. Rader, 199 Cal. 221, 248 P. 912 (1926); Sexton v. County of Waseca, 211 Minn. 422, 1 N.W.2d 394 (1941); Anderson v. Bituminous Cas. Co., 155 Neb. 590, 52 N.W.2d 814 (1952); Millard County v. Industrial Comm'n., 62 Utah 46, 217 P. 974 (1923).

49. Eaton v. Bernalillo County, 46 N.M. 318, 128 P.2d 738 (1942); Mitchell v. Industrial Comm'n., 57 Ohio App. 319, 13 N.E.2d 736 (1936); Gulbrandson v. Town of Midland, 72 S.D. 461, 36 N.W.2d 655 (1949).

50. Shawano County v. Industrial Comm'n., 219 Wis. 513, 263 N.W. 590 (1935).

51. Leon County v. Sauls, 151 Fla. 171, 9 So. 2d 461 (1942).

52. Village of West Salem v. Industrial Comm'n., 162 Wis. 57, 155 N.W. 929 (1916).

53. Gulbrandson v. Town of Midland, 72 S.D. 461, 36 N.W.2d 655 (1949).

54. Moore v. State, 200 N.C. 300, 156 S.E. 806 (1931).

55. Tomlinson v. Town of Norwood, 208 N.C. 716, 182 S.E. 659 (1935).

56. Tennis v. City of Sturgis, 75 S.D. 17, 58 N.W.2d 301 (1953).

57. Hicks v. Guilford County, 267 N.C. 364, 367, 148 S.E.2d 240, 243 (1966).

In another line of cases, the nonvoluntary nature of the claimant's work has uniformly been held to bar recovery. These cases involve prisoners. *Watson v. Industrial Commission*[58] is typical. The claimant therein was a prisoner. As such he was required to work, but he "volunteered" for special work in return for which his sentence was reduced. Thus, like the juror case, there is present in the *Watson* case the elements of a contract (mutual agreement and an incentive for working) as well as the element of nonvoluntary service (the claimant was required by law to work). These elements are also present in the other prisoner cases. In some, the prisoner's incentive for working is financial.[59] In others, the incentive is an expectation of receiving privileges,[60] a reduced sentence,[61] or rehabilitation.[62] In some cases, there is no provision for any incentives.[63] In all cases the prisoner is either required to work or else his work is deemed nonvoluntary regardless of his attitude on the ground that if he hadn't "volunteered" to work he could have been required to work.[64] The rationale of these prisoner cases is uniform. A prisoner does not work voluntarily for wages; he works nonvoluntarily. In return for his work, he may receive gratuities or privileges, but the gratuities or privileges are given to encourage good conduct and are not meant as wages. The holdings of these prisoner cases are also uniform. A prisoner working nonvoluntarily is ineligible for compensation benefits.[65] Treatise writers, on the other hand, have persuasively argued in favor of granting such benefits to prisoners.[66]

A third class of cases is divided in its treatment of nonvoluntary services. The services in this third class of cases are rendered by militiamen while on duty. Some courts have held that militiamen qualify for workmen's compensation benefits as employees of the state under a contract of hire.[67] Other courts have held that

58. 100 Ariz. 327, 414 P.2d 144 (1966).

59. Jones v. Houston Fire & Cas. Ins. Co., 134 So. 2d 377 (La. App. 1961); Kroth v. Oklahoma State Penitentiary, 408 P.2d 335 (Okla. 1965).

60. Shain v. State Penitentiary, 77 Idaho 292, 291 P.2d 870 (1955).

61. Watson v. Industrial Comm'n., 100 Ariz. 327, 414 P.2d 144 (1966); Goff v. Union County, 26 N.J. Misc. 135, 57 A.2d 480 (N.J. Dep't. L. 1948).

62. Moats v. State, 215 Md. 49, 136 A.2d 757 (1957); Brown v. Jamesburg State Home for Boys, 60 N.J. Super. 123, 158 A.2d 445 (1960).

63. Lawson v. Travelers' Ins. Co., 37 Ga. App. 85, 139 S.E. 96 (1927); Miller v. City of Boise, 70 Idaho 137, 212 P.2d 654 (1949).

64. Scott v. City of Hobbs, 69 N.M. 330, 366 P.2d 854 (1961).

65. Cases cited notes 58-64 *supra*; Schraner v. State Dep't. of Correction, 135 Ind. App. 504, 189 N.E.2d 119 (1963); Greene's Case, 280 Mass. 506, 182 N.E. 857 (1932); Murray County v. Hood, 163 Okla. 167, 21 P.2d 754 (1933).

66. *See, e.g.*, S. HOROVITZ, INJURY AND DEATH UNDER WORKMEN'S COMPENSATION LAWS 178 (1948); 1A A. LARSON, WORKMEN'S COMPENSATION LAW § 47.31 (1968).

67. Andrews v. State, 53 Ariz. 475, 90 P.2d 995 (1939); Griffith v. Nat'l. Guard, 70 Idaho 88, 212 P.2d 403 (1949); Baker v. State, 200 N.C. 232, 156 S.E. 917 (1931); Globe Indem. Co. v. Forrest, 165 Va. 267, 182 S.E. 215 (1935); State v. Johnson, 186 Wis. 1, 202 N.W. 191 (1925).

they do not.[68] The typical reason for denying workmen's compensation coverage is that the militiaman's work is not voluntary. His enlistment, though voluntary, is construed as resulting from the duty he owes the sovereign and not from an attempt to make a contract of employment. Once in the sovereign's service, a militiaman, like a juror, must take orders and cannot terminate his service at will. These factors are deemed sufficient, by the one group of cases,[69] to make the militiaman's service nonvoluntary, and being nonvoluntary, to render him ineligible for workmen's compensation benefits.

The other group of cases[70] allows workmen's compensation benefits. It should be noted, however, that the decisions permitting compensation are based on a fact situation which might be distinguished from the juror cases; the militiaman is initially under less constraint to serve than is a juror.

A fact situation more in point with the juror case was presented in *Rector v. Cherry Valley Timber Co.*[71] In that case a soldier was ordered to work for a civilian employer. He received regular wages from the employer. The soldier was held to be eligible for workmen's compensation benefits for injuries suffered while working for the civilian employer. The fact that the soldier did not voluntarily agree to work for the civilian employer was held to be no bar. The court ruled that regardless of how the soldier came to be in the Army, and regardless of how he came to be in the employ of the civilian employer, the result was the same. The soldier's actions, being in response to the duty he owes the government, are voluntary in the contemplation of the law.[72] This proposition, if extended to the case of a juror, would obviate the need for deciding whether his nonvoluntary service should bar his recovery of compensation benefits; the juror's service would simply be deemed "voluntary" in the contemplation of the law.

In a somewhat similar case, *Peterson v. Twentieth Century Fox Films*,[73] a member of the Navy was ordered to assist a motion picture company. The court decided that such a situation did not give rise to a contract of hire between the seaman and the motion

68. Hays v. Illinois Terminal Transp. Co., 363 Ill. 397, 2 N.E.2d 309 (1936); Lind v. Nebraska Nat'l. Guard, 144 Neb. 122, 12 N.W.2d 652 (1944); Goldstein v. State, 281 N.Y. 396, 24 N.E.2d 97 (1939); Thompson v. Dep't. of Labor & Indus., 194 Wash. 396, 78 P.2d 170 (1938).
69. Cases cited note 67 *supra*.
70. Cases cited note 68 *supra*.
71. 115 Wash. 31, 196 P. 653 (1921).
72. *Id.* at 33, 196 P. at 653.
73. 76 Cal. App. 2d 587, 173 P.2d 851 (1946).

picture company, and consequently the seaman was not eligible for workmen's compensation benefits from the company.

Two additional cases have involved nonvoluntary services. In one, *Board of Trustees v. State Industrial Commission*,[74] the claimant furnished four days of road work pursuant to a statute. Failure to comply with the statute was a misdemeanor. The court decided that such nonvoluntary work was outside the purview of compensation law.

In the other, *Hollowell v. North Carolina Department of Conservation and Development*,[75] a witness under subpoena was assaulted as a result of his testimony. He sought workmen's compensation benefits on the theory that he was an employee of the party who had him subpoenaed. Again, the court decided that the claimant's services, being nonvoluntary, were outside the coverage of the act.

Compensation Coverage of the Juror

In the case of a juror seeking workmen's compensation benefits, two questions should be answered. First, *can* the benefits be granted? Second, *should* the benefits be granted? The first question requires an interpretation of the applicable workmen's compensation act; the second question involves considerations of public policy.

In answering the first question consideration should be given to three requirements which are expressed or implied in most compensation acts. These are the requirements of an employment contract, of the payment of wages, and of the existence of control over the employee.

The first requirement is the most difficult. At first blush the requirement of a contract between the juror and the county appears to be met. The terms are definite and both parties agree to them. The difficulty arises if a court insists that the juror not only must *agree* to the terms, but must agree *voluntarily*. There appears to be no adequate reason for so insisting; it seems sufficient that the juror willingly complies with the terms of the agreement. The fact that his willingness to comply may stem from a desire not to be held in contempt of court appears immaterial. Alternatively, if a court does choose to insist that the juror's agreement be voluntary, such a difficulty can be surmounted by declaring that the juror's agreement *is* voluntary in the contemplation of the law.[76]

The second requirement of the compensation acts is that the employee must receive financial consideration for his services.

74. 149 Okla. 23, 299 P. 155 (1931).
75. 206 N.C. 206, 173 S.E. 603 (1934).
76. *See* Rector v. Cherry Valley Timber Co., 115 Wash. 31, 33, 196 P. 653, 653 (1921).

This requirement presents little difficulty unless it be deemed that the fees given jurors are meant not as consideration, but as gratuities to cover expenses.[77]

The third requirement is that of control. This requirement is generally present only by implication from the common law definition of an employee. The control requirement has caused confusion among the courts. The confusion has arisen from their failure to distinguish between physical and mental control. Courts which hold that a county has no control over its jurors apparently mean that the county cannot control its jurors' mental processes.[78] It is clear, however, that a county has considerable *physical* control over its jurors. Evidence of this physical control is furnished by the *Evans* case[79] in which the juror contracted pneumonia because he was forced to remain overnight in a jail without a blanket. If a court insists that control over the employee is a requirement for workmen's compensation coverage, the term "control" should be interpreted in the common law sense of physical control unless modified by statute. And clearly there is sufficient physical control over jurors for the common law requirement of physical control to be met.

A consideration of these three requirements of the compensation acts suggests that benefits *can* be granted without violating the typical compensation statute. The second question yet remains. *Should* the benefits be granted? The answer is suggested by the general rule that a compensation act should be liberally construed so as to extend its benefits to as many types of employments and services as possible.[80]

The argument has been made that the juror may be in a better position if he is denied compensation coverage. This argument assumes that the juror could bring a civil suit against the county. The bringing of a suit may not be possible because of governmental immunity.[81] Even if it is possible, however, there appears to be no sufficient reason for singling out the juror and holding that it would be more advantageous for *him* to sue than to seek compensation benefits. If workmen's compensation is beneficial to others,

77. Jochen v. County of Saginaw, 363 Mich. 648, 668, 110 N.W.2d 780, 784 (1961).

78. *See, e.g.*, Hicks v. Guilford County, 267 N.C. 364, 148 S.E.2d 240 (1966).

79. Board of Comm'rs. v. Evans, 99 Colo. 83, 60 P.2d 225 (1936).

80. Jochen v. County of Saginaw, 363 Mich. 648, 656, 110 N.W.2d 780, 789 (1961) (dissenting opinion).

81. *See* Cox v. City of Cushing, 309 P.2d 1079 (Okla. 1957). *See generally* W. PROSSER, THE LAW OF TORTS § 125 (3rd ed. 1964).

there is adequate reason to assume that it is also beneficial to jurors. If it *is* beneficial to jurors, it appears that jurors should be deemed to be covered by compensation law.

Conclusion

Courts are divided in their treatment of workmen's compensation claims by nonvoluntary workers. In some cases the nonvoluntary worker has been accorded compensation benefits. In other cases, the requirement of a contract of hire has been held to bar recovery.

The issue of whether or not the contract requirement should bar the nonvoluntary worker's recovery is a close one. Both sides of the issue are supportable. It is submitted that the determinative factor in considering the issue should be public policy. Workmen's compensation is an instrument of public policy and it should be wielded so as to best suit the public interest.

Considerations of public policy are implicit in the decisions discussed in this Note. Thus a laboring prisoner has uniformly been excluded from compensation coverage, while an impressed citizen has uniformly been deemed covered. Since these two situations are otherwise similar, it appears that the difference in the decisions is attributable to a belief that the services rendered by an impressed citizen are in the public interest whereas the services of a prisoner are not.

If considerations of public policy require coverage of impressed citizens and non-coverage of prisoners, then clearly these policy considerations should also require coverage of jurors. This conclusion follows from the fact that the services of a juror are as much in the public interest as are the services of an impressed citizen.

Coverage of jurors is thus supportable in terms of statutory interpretation and preferable in terms of public policy. For both of these reasons, it is submitted that jurors should be deemed covered by compensation law.

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