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suretyship that no affirmative duty should be imposed upon the creditor for the benefit of the surety by law where the surety has power to protect himself. In West Virginia and Virginia the surety is given additional power of self-protection by the statutes previously referred to.[18] Thus, mere laches or delay in suing the principal, where there is no binding agreement extending time or releasing the principal, will not discharge the surety[19] because it is unnecessary for the law to impose such obligation for the surety's protection. For the same reason the law should not impose a duty on a creditor to sue the principal first in the absence of an express agreement.

—H. C. J.

HAS THE WEST VIRGINIA WORKMEN'S COMPENSATION ACT ANY EXTRATERRITORIAL OPERATION?—A recent West Virginia decision[1] raises the question whether the West Virginia Act extends to injuries sustained beyond the state's territorial jurisdiction. The claimant's husband was fatally injured while "shooting" an oil well in the state of Kentucky. His employer had complied with the West Virginia Workmen's Compensation Act; but as there is nothing in the Act expressly extending its operation to injuries sustained in other jurisdictions, whereas § 25 provides[2] that the Compensation Commissioner shall disburse the compensation fund to certain employes *"which employes shall have received injuries in this state,"* the Commissioner therefore decided that the West Virginia Act has "no extraterritorial effect to cover injuries occurring without the state." The Supreme Court of Appeals, reversing the Commissioner's order, held that the Act, notwithstanding the apparently contrary meaning of § 25, is not confined to "injuries received in this state."

The Supreme Judicial Court of Massachusetts, construing the Massachusetts Act, which in this respect is almost identical with the West Virginia Act, has recently reached a conclusion contrary

[18] See note 9, *supra.*

[19] Renick *v.* Ludington, 14 W. Va. 367, 383; Knight *v.* Charter, 22 W. Va. 422, 427; First Nat. Bank *v.* Parsons, 45 W. Va. 688, 698, 32 S. E. 271; Norris *v.* Crummey, 2 Rand. 323, 334 (Va. 1824); Updike's Adm'r. *v.* Lane, 78 Va. 132 (28 years delay).

[1] Foughty *v.* Ott, 92 S. E. 143 (W. Va. 1917).

[2] W. Va. Code, c. 15P, § 25.

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to that reached in the principal case.[3] The question then arises, whether the Massachusetts case or the West Virginia case represents the better rule.

It is well settled that the legislature of a state has the power to extend the benefits of its Compensation Act to injuries occurring beyond its territorial confines.[4] The question, therefore, in every case is simply this: Does the language of the particular legislative enactment, when properly construed, cover injuries occurring in other jurisdictions? In order to settle this question—a question of construction—it is of course necessary to consult the exact language of the Act.

What then are the provisions of the West Virginia Act which have any legitimate bearing upon this question? First, § 25 provides that "the Commissioner shall disburse the workmen's compensation fund to the employes of such employers as have" complied with the Act "*and which employes shall have received injuries in this state* in the course of and resulting from their employment." It would seem difficult to use language more unequivocally indicative of an intention to confine the Act to "*injuries received in this state.*" If, therefore, there is nothing in the Act clearly indicating an intention to extend the Act to injuries *not* "received in this state," then it would seem clear that the ruling of the Commissioner was correct, viz. that the Act has no extra-territorial effect.

Let us see then what language of the Act the court relies upon as not only contradicting but overruling the apparently unambiguous meaning of § 25. The opinion in the principal case is simply a brief reaffirmance of exactly the same point decided by the same court in *Gooding* v. *Ott*,[5] in which case the principal statutory provision relied upon as destroying the *prima facie* meaning of § 25 is § 9. The last-named section[6] provides that the "Act shall not apply to . . . . . employes of any employer who are employed wholly without the state." This provision the court interprets as "admitting employes to the benefits of the fund un-

[3] In re American Mut. Liability Ins. Co., 215 Mass. 480, 102 N. E. 693, Ann. Cas. 1914D 372. For a citation of authorities dealing with similar statutes, see 1 BRADBURY, WORKMEN'S COMPENSATION, 2 ed. 34 *et seq;* 1 HONNOLD, WORKMEN'S COMPENSATION, § 8.

[4] Mulhall *v.* Fallon, 176 Mass. 266, 57 N. E. 386, 54 L. R. A. 934; Gooding *v.* Ott, 87 S. E. 862 (W. Va. 1916); see 1 BRADBURY, WORKMEN'S COMPENSATION, 2 ed. 34 *et seq;* 1 HONNOLD, WORKMEN'S COMPENSATION, § 8.

[5] 87 S. E. 862 (W. Va. 1916).

[6] W. Va. Code, c. 15P, § 9.

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less employed wholly without the state."[7] That is undoubtedly so as to cases coming within the Act, but § 25 seems to say that no case comes within the Act unless the injuries are "received in this state." Section 9 then, it would seem, can only mean that if employes are employed wholly without the state the Act can never apply to them, whereas if they are not employed wholly without the state but only partly without the state, then the Act shall apply to them, provided, of course, that the other provisions of the Act are complied with and do not prevent recovery, for certainly the other sections of the Act must also be complied with in all cases and § 25 does not mean what it says unless it confines awards to employes who "shall have received injuries in this state." Moreover, that the Commissioner's construction of the Act carries out the intended meaning of the Act seems to appear even more fully from the language of several other sections. Thus § 52 (which is not mentioned by the court) reads as follows:

"In case any employer within the meaning of this Act is also engaged in interstate or foreign commerce *this Act shall apply to him only to the extent that his mutual connection with work in this state is clearly separable and distinguishable from his interstate work,* and in such case such employer, and any of his employes thus engaged in both intrastate and interstate work may with the approval of the Commissioner elect to pay into the fund the premiums provided by this Act *on account of work done in this state only . . . . . Payments of premiums shall be* on the basis of the payroll of the employes who accept as aforesaid, *for work done in this state only.*" From this language nothing would seem to be clearer than that in case an employer is engaged in interstate commerce the Act does not apply except as to *"work done in this state only,"* and therefore almost necessarily as to *"injuries received in this state" only,* for injuries not received in this state could seldom be received in respect of "work done in this state only" and therefore would not be "injuries received in the course of the employment" as required by § 25, for the employment covered by § 52 of the Act is "work done in this state only." At any rate in the principal case the injury did not "result from" "work done in this state only." Now, so far as any federal objections are concerned, any objection to extending a state compensation act to "interstate commerce" work done in another state applies with equal force to "interstate commerce" "work done

[7] Gooding *v.* Ott, *supra,* at 863.

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in this state only."[8] Then, too, there has been some difference of opinion as to whether and how far a state workmen's compensation act may govern employers and employes engaged in interstate commerce.[9] The purpose of the section, therefore, seems to be to remove any doubts as to whether and how far the West Virginia Act is intended to apply to interstate commerce transactions; and as there is just the same federal objection both as to interstate commerce "work done in this state" and such work done elsewhere, the section, therefore, seems to be simply indicative of a general scheme of the Act to confine its operation to the state's territorial limits. Otherwise, why confine its operation in interstate commerce transactions to intrastate activities? Unfortunately, however, this section of the Act does not seem to have been brought to the attention of the court.

The second argument of the court is as follows: "By the amendment [in 1915] of § 18 there was omitted that provision of the original act, authorizing the employer, where an employe was employed partly within and partly without the state, to apportion the pay of such employe earned within and without the state in ascertaining the percentage of wages to be paid into the compensation fund . . . . . By the amendment omitting this provision an employer cannot now, on penalty of losing the entire benefit of the Act deduct any proportion of the wages of an employe earned without the state." The court, however, has evidently overlooked the above quoted § 52 which expressly provides for such apportionment in interstate commerce transactions. Besides, how can this amendment mean that the legislature intended thereby to *extend* the Act so as to cover injuries sustained in other states? The legislature does not say so, and it would seem that it expressly says the opposite in § 25. Did the legislature, then, in passing the amendment intend such a result? The legislature may have had other reasons, and it is submitted that there is another more plausible reason—a reason stated by the court itself, viz. "employers and commissioner may have found it difficult under the original act to apportion the wages so as to determine the proper amount of premiums to be paid." That difficulty is very great in some cases, and, it would seem, is in itself sufficient to account for the legislative amendment. If that is true, it would seem then that, if a provision in a statute has an ambiguous mean-

[8] See 1 HONNOLD, WORKMEN'S COMPENSATION, § 10.
[9] See 1 HONNOLD, WORKMEN'S COMPENSATION, 45 *et seq.*

ing, sound principles of construction would require an adoption of that meaning which would prevent overriding other unambiguous provisions. Moreover, that the above mentioned meaning of the amendment is the intended meaning seems to be borne out by the above quoted § 52, for by that section where in interstate commerce transactions the intrastate work is not "clearly separable and distinguishable from the interstate work" of the same employer, the Act does not apply even as to intrastate work for the obvious reason of the great difficulty of apportioning wages and premiums.

With the exception of § 52, which is not mentioned by the court, the above considered sections of the Act are the only sections relied upon by the court as overruling the *prima facie* meaning of § 25. There are other provisions, however, which, it would seem, have a legitimate bearing upon the question. Thus, the Act contemplates and provides for "hearings," "investigations," "physical examinations and inspections"[10] *at other places than at the* Commissioner's office. These of course would involve "investigations" as to the circumstances surrounding the employe at the time and place of injury, etc. and also "physical examinations" of the injured employe which for practical reasons must as a rule be near the place of injury. The fact that in the principal case the accident causing the death of the employe happened only a few miles beyond the state's territorial jurisdiction is immaterial. The principle would be the same if the accident had happened in China, and the legislature could scarcely have contemplated sending its officials into another jurisdiction to make "investigations" and "examinations." Besides § 6 expressly provides that the "hearings" may be *"anywhere within the state."* Again § 12 empowers the commissioner and "every inspector and examiner" to "take depositions, issue subpeonas and compel the attendance of witnesses and the production of pertinent books, accounts and testimony." But this section could not well contemplate such action as to injuries sustained beyond the state's territorial jurisdiction, for the witnesses, etc. would generally be from near the place of accident, and the "subpoenas" issued by state authority could not of course run beyond the limits of the state's territorial jurisdiction.

The net result, then, seems to be that there are no expressions in the Act which unequivocally indicate an intention to extend

[10] W. Va. Code, c. 15P, §§ 6, 8.

its operation to injuries sustained in other jurisdictions, whereas § 25 does expressly say that the fund shall be distributed to certain employes "which employes shall have received injuries in this state;" and not only are there no other expressions in the Act which are by necessary implication inconsistent with the view that the Act has no extraterritorial effect but there are, as seen, several other sections that do not readily lend themselves to the view that the Act contemplates any extraterritorial operation. What then should be the conclusion? It is a fundamental principle of statutory construction that each part of an act should be construed, if possible, so as not to conflict with, but give effect to, each other part.[11] But the court's construction of §§ 9 and 18 seems to render nugatory a vital part of § 25. It would seem, also, from the foregoing observations that the provisions of the act relied upon as overriding the apparently unambiguous meaning of § 25 are, at most, only "ambiguous," being susceptible of a meaning other than that accorded by the court and that too a plausible meaning which is in accord with the express language of § 25. It would seem, therefore, that settled principles of construction would lead to an adoption of that plausible meaning of the ambiguous provisions which would prevent doing violence to the language of an unambiguous provision, especially since that construction is by the language of another section the only possible construction as to one sort of interstate transactions, viz. interstate commerce, and more especially since that construction would not only obviate the many practical difficulties resulting from giving the Act an extraterritorial operation but would at the same time carry out a general scheme of the Act as a harmonious whole.[12]

—T. P. H.

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[11] Jackson *v.* Kittle, 34 W. Va. 207, 12 S. E. 484; Argand Refining Co. *v.* Quinn, 39 W. Va. 535, 20 S. E. 576; see 2 LEWIS' SUTHERLAND, STATUTORY CONSTRUCTION, 2 ed. § 380.

[12] By way of an appendix to the above comment it may perhaps be appropriately added that under the peculiar facts of the principal case there is another, though collateral argument in favor of limiting the operation of the Act to injuries sustained in this state. Thus, § 52, above considered, provides that in case an employer is engaged in interstate commerce the Act shall not apply except as to "work done in this state only." The interesting question then arises—a question not mentioned in the case: Was the employer of the injured workman engaged in interstate commerce? The facts seem to be these: The employer was a corporation engaged in the business of "manufacturing nitroglycerin and shooting oil and gas wells." Its factory was in West Virginia but it was engaged in "shooting" wells both in West Virginia and in Kentucky. Query, then, wasn't the transaction, under which nitroglycerin was by one company manufactured in West Virginia and *transported* into another state to be there used by it in "shooting" an oil well for