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and within the scope of his employment. The statute, in imposing liability, did not divorce the master-servant relationship from the negligence liability. The act says liability "according to the law of the place" and the courts ought to so enforce it. If the courts deem it an incursion into the federal sphere, the remedy lies with Congress and not in judicial legislation.

TORTS—WORKMEN’S COMPENSATION STATUTE—STATUS OF UNLAWFULLY EMPLOYED MINOR

Parents of deceased nine-year-old unlawfully employed child brought an action under the wrongful death statute. Defendant pleaded that the exclusive remedy is under the Workmen’s Compensation Statute. Held, a child who could not be lawfully employed is not an employee under the Workmen’s Compensation Statute, and therefore, the action under the wrongful death statute is not barred. Smith v. Arnold, 60 So.2d 281 (Fla. 1952).

There are essentially three different types of statutory provisions relating to minors in the existing workmen’s compensation laws. In the first category, only minors who are legally permitted to work are included. The courts generally hold that the child’s employment must not violate any child labor law provision in order to come under the act. The second type of statute does not mention minors specifically but includes all employees under a contract of hire. Though some courts at first were reluctant to include minors illegally employed, the tendency has been to include them because there exists a voidable contract of employment which a minor, who has committed no wrong, may assert for his own benefit. Other courts add that minors should be entitled to the beneficial effects


1. FLA. STAT. § 450.03 (1951).
2. FLA. STAT. §§ 768.01, 768.02, 768.03 (1951).
4. FLA. STAT. § 440.02 (2) (1951) (which defines employee as "including minors whether lawfully or unlawfully employed").
5. See Comment, Recovery Under Workmen’s Comp. Act for Death of a Minor, 7 Mont. L. Rev. 82 (1946).
7. See note 5 supra.
of workmen's compensation. In some jurisdictions, when the courts persisted in not including unlawfully employed minors, the legislatures have amended the statutes to explicitly include them.11

The third type of act and the one obtaining in Florida,12 includes minors "whether lawfully or unlawfully employed."13 Where the occupation is permissible, a child without the required working paper, and therefore unlawfully employed, was held to be under the act.14 A Montana Court has held that even where a child was employed in a prohibited occupation, the child still came under this provision.15 The court said the statute makes "wholly immaterial the age or competency of the minors and the capacity of the minor to contract, as well as the lawfulness of the object of employment."16 A vigorous dissent stated that the decision would encourage the employment of minors, and relieve the employer of liability, rather than furnishing protection for minors.

Where a person is included under the Workmen's Compensation Act, that act ordinarily offers the exclusive remedy and any other form of recovery is barred.17 Thus the injured employee is freed from the common law action which is subject to the employer's defenses of assumption of risk, contributory negligence, the fellow-servant doctrine and to those delays which the Workmen's Compensation Statute was designed to prevent.18

The court in the instant case has not followed the present trend of including the unlawfully employed minor under the statute wherever possible.19 The court seemed to reason that the legislature intended to include only those minors who were of an age to be lawfully employed. To include any others would be to render ineffective the provisions of the child labor law. Every employer has a duty to society to obey the child labor law and if he hires children he assumes full responsibility and "cannot

12. See note 4 supra.
13. See note 5 supra.
18. See note 10 supra.
19. See note 11 supra.
hide behind the protective provisions of the Workmen's Compensation Act.\textsuperscript{20}

While the present decision was equitable in that a holding to the contrary would have limited recovery to funeral expenses,\textsuperscript{21} the far-reaching effects of the decision might bring future inequities. That a child may be forced to pursue his common law remedy is evident, and it appears that the court in deciding the instant case in a just manner has assumed the prerogative of legislation.

\textbf{WORKMEN'S COMPENSATION — INJURY BY ACCIDENT — STRAIN AND EXERTION}

Claimant, a waitress, while in the course of her employment, received an arm injury by lifting a heavy container. She seeks recovery under the Florida Workmen's Compensation Act.\textsuperscript{1} 

\textit{Held}, that claimant is entitled to compensation. An unexpected injury received in the usual performance of an ordinary duty falls within the meaning of "injury by accident."\textsuperscript{2} Bonnie Gray v. Employers Mutual Liability Insurance Co., \textit{---} So.2d \textit{---} (Fla. 1952).\textsuperscript{*}

The term "accident" has been a part of Workmen's Compensation law since its adoption in England in 1897,\textsuperscript{2} and is to be found in most compensation statutes today.\textsuperscript{8} The states which have not adopted the term by statute have done so by judicial interpretation.\textsuperscript{4} "Accident" has been defined as an unexpected incident which occurs unintentionally.\textsuperscript{5} The Florida act, in particular, provides that an "accident" is "an unexpected or unusual event, happening suddenly."\textsuperscript{6} No stated period can be termed "sudden" as it depends upon the circumstances of each case.\textsuperscript{7} Two elements have been held to be necessary for an accident: (1) an unexpected cause,\textsuperscript{8} such as a slip, fall or misstep\textsuperscript{9} and (2) an unexpected

\textsuperscript{20} Smith v. Arnold, 60 So.2d 281, 283 (Fla. 1952).

\textsuperscript{21} The parents were certainly not dependent on the child.

\textsuperscript{*}Editor's note: This case is scheduled for rehearing and has not been reported by publication deadline.


2. Burton, \textit{The Dilemma of Accident In Workmen's Compensation Laws} (Address at the Tenth Annual Meeting of the American Association of State Compensation Insurance Funds, Miami Beach, Florida, November 1952).

3. 1 Larson, \textit{Workmen's Compensation Law} 511 § 37.10 (found that "accident" appears as a noun or modifier in forty-two Workmen's Compensation Act statutes).

4. See note 2 supra.

5. 1 Larson, op. cit. supra note 3, § 37.00; Black, \textit{Law Dictionary} 30 (4th ed 1951).


