the reason for the rule itself must be analyzed. Ordinarily, a person is answerable only for his own wrongdoing. Why is it that, when a certain relationship exists, a person is liable in damages for the tort of another? Various reasons have been assigned for that rule which holds the master liable for the torts of his servant, the most important being that the master ought to answer for those acts which he commands and directs and from which he reaps the benefits.[29] Also, when a master has been guilty of lack of due care in the selection of servants, there is reason for him to be held for the wrongful acts of the servants. As the rule is a hard one at best, and has been criticized by innumerable authorities, there is all the more reason to be careful in considering whether or not it fits the facts before applying it.[30] Assuming the rule and the reasons for it to be sound, it is difficult to see a justifiable application of it to cases in which a charitable institution which has used due care in the selection of its agents is sought to be held. Where the so-called "master" is a home for indigent boys[31] or a public hospital,[32] organized for dispensing relief to unfortunate persons, there is lacking that private pecuniary benefit from the servant's activities that seems to be the basis of the doctrine of *respondeat superior*. In the same category fall all true charitable institutions whose primary object is to alleviate physical and mental suffering, rather than to derive monetary or other material profit.

WORKMEN'S COMPENSATION AND THE CONFLICT OF LAWS—In general our law is territorial and not personal.[1] This does not mean that rights and duties can be enforced only in the territory of the jurisdiction which created them, it does mean that such law does not ordi-

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[29] See POLLOCK, TORTS, 5th Ed., p. 72. For an outline of the theories and rationale of *respondeat superior* see MECHEM, AGENCY, 2d Ed., Vol. II, Sec. 1856. Beside the historical reasons from Roman Law, i.e., the *pater familias* doctrine and *qui facit per alium, facit per se,* it has been said that the master should be held when he has been guilty of negligence in the selection of servants; if he has used due care in the selection of servants he still should be liable because he is the one who puts the force in motion, or because he is the one who gets the benefits, or because a master is more pecuniarily responsible than a servant. In analyzing these theories, all of which have been criticized, two stand out as being the most sound legally, viz., that where the master has been guilty of negligence in the selection of servants and where he has not been guilty of such negligence but has reaped the benefits from the servant's undertaking he should be held. Also see STORY, AGENCY, 9th Ed., Sec. 321, 322, 452.

[30] *Respondeat superior* doctrine is criticized in (1916) 26 YALE L. JOUR. 105-107; (1923) 23 COL. L. REV. 444, 452; BATY, VICARIOUS LIABILITY, Chap. VIII, p. 148 (1916). For other discussions of history and rationale of the doctrine of *respondeat superior* see HOLMES, AGENCY, (1891) 4 HARV. L. REV. 345; (1891) 5 HARV. L. REV. 1; WIGMORE, (1894) 7 HARV. L. REV. 315, 383, 441.

[31] Farrigan v. Pevear, *supra* note 8.

[32] Powers v. Mass. Hom. Hosp., *supra* note 4.

[1] Davis v. N. Y. & N. F. R. Co., 143 Mass. 570, 56 N.E. 888 (1900); Whitford v. Panama R. Co., 23 N.Y. 465 (1861).

narily purport to create rights and impose duties by reason of acts, to which legal consequences may be annexed, occurring beyond the geographical confines of its territory.[2] From this arises the presumption that in the absence of clear indications to the contrary, a statute has no extraterritorial effect.[3]

It is perhaps misleading to say that a compensation statute has or has not an extraterritorial effect. A more plausible explanation is that the contract of employment, made in a state where the compensation statute is in force, impliedly stipulates, *inter alia,* that in case of accident the employer shall pay and the employee shall accept compensation as provided in the statute, and that this shall be in lieu of any other claim.[4]

Most of the Workmen's Compensation Acts contain no express statutory provision with respect to the problem of the conflict of laws. A few acts expressly provide that their provisions shall be applicable to certain injuries abroad;[5] at least one act provides that it shall apply to all injuries within the state and to none outside the state.[6] Such statutory provisions, of course, supersede any application of the general principles of the conflict of laws.[7]

Workmen's Compensation Acts may be regarded in two ways: first, as the substitution of a statutory tort for a common law tort; second, as the creation of a new statutory relation between master and servant, one of the incidents of which is the obligation of the master to take upon himself all risks of the service, including the risks of physical

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[2] *Cf.* Angell, *Recovery Under Workmen's Compensation Law,* 31 HARV. L. REV. 619.

[3] *In re* Gould, 215 Mass. 480, 102 N.E. 693 (1913): "In the absence of unequivocal language to the contrary, it is not to be presumed that statutes respecting the matter [workmen's compensation] are designed to control, conduct or to fix rights of parties beyond the territorial limits of the states."

[4] GOODRICH, CONFLICT OF LAWS (1927) p. 203; Denny v. Wright & Cobb Lighterage Co., 36 N. J. Law J. 121 (Com. Pleas 1913); Pierce v. Bekins V. & S. Co., 185 Iowa 1346, 172 N.W. 19 (1919); Crane v. Leonard, C. & R., 214 Mich. 218, 183 N.W. 204 (1921); State *ex rel.* Chambers v. Dist. Ct. of Hennepin Cty., 139 Minn. 205, 166 N.W. 185 (1918); Grinnell v. Wilkinson, 39 R.I. 447, 98 Atl. 103 (1916); Gooding v. Ott, 77 W.Va. 487, 87 S.E. 862 (1916). In Denny v. Wright & Cobb Lighterage Co., *supra,* the court said: "The statute can have no extraterritorial effect, but it can require a contract to be made by two parties to a hiring that the contract shall have an extraterritorial effect. * * * It would seem that the reasonable construction of the statute is that it writes into the contract of employment certain additional terms."

[5] Qwong Ham Wah Co. v. Industrial Comm., 184 Cal. 26, 192 Pac. 1021 (1920); Hagenback v. Teppert, 66 Ind. App. 261, 117 N.E. 531 (1917); Empire C. & D. Co. v. Bussy (La. App.) 126 S.E. 912 (1925); Smith v. Van Noy I. Co., 150 Tenn. 25, 262 S.W. 1048 (1924); Pickering v. Industrial Comm., 59 Utah 35, 201 Pac. 1029 (1921); England: 6 Edw. V, c. 58, sec. 7, 13; and 14 Geo. V, 42, sec. 27.

[6] Pennsylvania, Laws, 1915, no. 338, art. I, sec. 1.

[7] *Cf.* Dwan, *Workmen's Compensation and the Conflict of Law,* 11 MINN. L. REV. 329.

injury to the servant.[8] In the earliest cases involving the conflict of laws, the first of these views was taken, and it was generally held that the compensation law of the place of injury, and that alone, applied to an injury growing out of the employment.[9] Now, however, compensation statutes are almost universally recognized as primarily creating a statutory relationship between the parties which the courts have held to be permissive, contractual, or quasi-contractual.[10] There are three theories prevalent regarding the law which controls contracts in general. One is that the rights of the parties depend on the law of the place where the contract was made;[11] another theory is that the law of the place of performance governs;[12] the third is that the law intended by the parties govern, which is generally assumed to be the *lex loci contractus*.[13] Not one of these rules can be said to be the overwhelming weight of authority. The one first mentioned seems the most satisfactory as more nearly conforming to the territorial character of our law.[14]

The explanation of Workmen's Compensation Acts on the contract theory has difficulties of its own to meet. For example, compulsory compensation acts have been held to cover injuries sustained elsewhere,[15] but if the act is compulsory, an essential element of contract—mutual assent—is entirely lacking.[16] It may perhaps best be stated,

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[8] AMERICAN LAW INSTITUTE, CONFLICT OF LAWS, RESTATEMENT No. 4, (Tentative Draft) p. 72.

[9] Union Bridge & Constr. Co. v. Industrial Comm., 287 Ill. 396, 122 N.E. 609 (1919); *In re* Gould, *supra*, note 3;Hicks v. Maxton, 1 B. W. C. C. 150 (1907); Tomalin v. Pearson, 2 K.B. 61 (1909); Schwartz v. India Rubber, etc. Works, 2 K.B. 299 (1912).

[10] Sexton v. Newark Distr. Tel. Co., 84 N.J.L. 85, 86 Atl. 451 (Sup. Ct. 1913); Denny v. Wright & Cobb Ligheterage Co., *supra*, note 4; American Radiator Co. v. Rogge, 86 N.J.L. 436, 92 Atl. 85 (Sup. Ct. 1914), *aff.* 87 N.J.L. 314, 93 Atl. 1083 (E. & A. 1915); Rounsaville v. Central R. Co., 87 N.J.L. 371, 94 Atl. 392 (Sup. Ct. 1915), reversed on another ground, 90 N.J.L. 176, 101 Atl. 182 (E. & A. 1917); Hennerson v. Thames T. B. Co., 89 Conn. 367, 94 Atl. 372 (1915); Post v. Burgher & Gohlke, 216 N.Y. 544, 111 N.E. 351 (1916); Grinnell v. Wilkinson, *supra*, note 4; see also 9 COL. L. REV. 234; 31 HARV. L. REV. 619; 37 HARV. L. REV. 375; 11 MINN. L. REV. 329; cases cited in 3 A.L.R. 1351.

[11] Carnegie v. Morrison, 2 Metc. 381 (Mass. 1841).

[12] Pritchard v. Norton, 106 U.S. 124 (1882); Brown v. C. & A. R. Co., 83 Pa. 316 (1877).

[13] Mayer v. Roche, 77 N.J.L. 681, 75 Atl. 235 (E. & A. 1909).

[14] BRADBURY, WORKMEN'S COMP. (3d ed.) p. 92; GOODRICH, CONFLICT OF LAWS, p. 228; 31 HARV. L. REV. 619; 30 YALE L. JOUR. 565; 31 YALE L. JOUR. 53. At page 92, *supra*, Mr. Bradbury writes: " * * * it is believed that the doctrine which must be established finally will be, in effect, that the law of the place where a contract of employment is made will govern the rights and liabilities of employers and employees to claim and pay compensation."

[15] Post v. Burgher & Gohlke, *supra*, note 10; but compare Smith v. Heine S. B. Co., 224 N.Y. 9, 119 N.E. 878 (1918).

[16] *Cf.* Angell, *Recovery Under Workmen's Compensation Law*, 31 HARV. L. REV. 619: "A 'contract' imposed by law is no contract at all. An optional act becomes truly a term of the contract; but the consensual act of the parties in making the contract of hire cannot be held a consent to the compulsory act

that the obligation to pay compensation is neither a substitute for older tort liability nor does it involve contract, but it is a statutory regulation of the relation of employer and employee based on the theory that the industry should bear the burden of accidents incident to its operation. and that the fulfillment of this policy requires that the statute should control whether the injury occurs within or without the state where the contract of employment was made.[17]

A spirited controversy exists as to whether a Workmen's Compensation Act is to be interpreted to cover only injuries arising within the state, or whether the statute embraces also an accident occurring beyond the state lines.[18] A distinction based on statutes which are elective and those which are compulsory does not afford any guide in determining whether or not the statutes are to be considered as applying extraterritorially, since statutes of both classes have been construed to apply and not to apply extraterritorially.[19] Some courts, while conceding to the legislature power to include within the operation of the law such injuries as may result in the course of employment outside the state,[20] have taken the position that express words or a plainly expressed intent are essential in order that the act should have such force and effect.[21]

A majority of courts however have been much more liberal in their interpretation of the law, and unless the statute expressly limits its application to injuries occurring within the state and to none outside,[22] holds that a workman, employed in a state which has a workmen's com-

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itself. On this point there has been no *aggregatio mentium.* The notion of a compulsory statute as a contract cannot satisfy us. If the statute is in form and substance a genuine regulation of contracts subject to its sovereignity, the statute may then constitutionally be found to intend a recovery for injury abroad."

[17] GOODRICH, CONFLICT OF LAWS, p. 204.

[18] *Cf.* notes in L.R.A. 1916 A 444; 3 A.L.R. 1351.

[19] *Cf.* annotation, 3 A.L.R. 1351.

[20] North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1, 162 Pac. 93 (1916); *In re* Gould, *supra,* note 3.

[21] North Alaska S. Co. v. Pillsbury, *supra,* note 20; Union B. & C. Co. v. Industrial Comm., *supra,* note 9; Hagenbeck v. Ball, 75 Ind. App. 417, 126 N.E. 504 (1920); *In re* Gould, *supra,* note 3; Smith v. Heine S. B. Co., 119 Me. 552, 112 Atl. 516 (1921); Keyes-Davis Co. v. Alderdyce, Detroit Legal News, 3 N.C.C.A. 639, note (Mich. 1913); Mitchell v. St. Louis S. & R. Co., 202 Mo. App. 251, 215 S.W. 506 (1919); Altman v. N. Dakota W. C. Bureau, 50 N.D. 215, 195 N.W. 287 (1923); Schwartz v. India Rubber Works, *supra,* note 9. In *In re* Gould, *supra,* note 3, the court felt that since a number of acts in foreign countries had made specific provision for accidents occurring without their territory, the omission of such a provision in the Massachusetts act was strong presumption that it was not intended to apply extraterritorially. In Keyes-Davis Co. v. Alderdyce, *supra,* the court based its holding that the Michigan act did not apply to injuries occurring outside the state on (1) a general rule of statutory construction that every statute is confined in its operation to persons, property and rights which are within the jurisdiction of the legislature which enacted it, and (2) the act itself, which requires the hearing to be held at the locality where the injury occurred.

[22] Pennsylvania, Laws 1915, no. 338, art. I, sec. 1.

pensation act in force, may sue in the state of employment for an injury growing out of the employment, although the injury was suffered in another state.[23] According to this view, the provisions of the act are to be read into every contract of employment, and are to be held applicable to every case of injury regardless of the place where the employee may happen to be at that particular moment.[24] When the contract of employment was made within the state, and the injury occurred while the employee was temporarily in another state, it is hard to see what difference it can make whether the *locus* of the injury is on the near or the far side of the state line,[25] because the danger of injured workmen and their dependents becoming objects of charity, and the interest of the state in its citizens is just as great in one case as in the other.[26] Viewing the right to compensation as being based on a contract, it does not appear to be important whether the accident happened in the state under the laws of which compensation is claimed, or in another state, any more than it is important in an action for services that the services should have been performed in the state where the contract was made rather than in an adjoining state, when the contract itself provides that an employer will pay the employee for services rendered in the adjoining state.[27]

In cases where the contract of employment was made in a foreign state and the injury to the employee occurred in the state of the forum, the question whether the law of the foreign state (where the contract was made) or the law of the forum (where the injury occurred) is to govern has been the subject of much difficulty. Where the contract

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[23] Denny v. Wright, *supra,* note 4; Rounsaville v. Central R. Co., *supra,* note 10; Foley v. Home Rubber Co., 89 N.J.L. 474, 99 Atl. 624 (Sup. Ct. 1917); Hi-Heat Gas Co. v. Dickerson, 12 N.J. Misc. 151 (Sup. Ct. 1934); Sweet v. Austin, 12 N.J. Misc. 381 (Sup. Ct. 1934); Ind. Comm. v. Aetna Life Ins. Co., 64 Colo. 480, 174 Pac. 589 (1918); Hennerson v. Thames T. B. Co., *supra,* note 10; Pettiti v. Pardy C. Co., 103 Conn. 101, 130 Atl. 70 (1925); Friedman Mfg. Co. v. Ind. Comm., 120 N.E. 460 (Ill. 1918); Pierce v. Bekins, *supra,* note 4; Crane v. Leonard, 214 Mich. 218, 183 N.W. 204 (1921); State v. District Ct., 140 Minn. 427, 168 N.W. 177 (1918); McGuire v. Phelan-Shirley Co., 111 Neb. 609, 197 N.W. 615 (1924); Post v. Burgher & Gohlke, *supra,* note 10; Grinnell v. Wilkinson, *supra,* note 4; Anderson v. Miller, 169 Wis. 106, 170 N.W. 275, 171 N.W. 934 (1919).

[24] Rounsaville v. Central R. Co., *supra,* note 10. A brakeman on a train running between New Jersey and Pennsylvania was injured while the train was in Pennsylvania. The court determined that the contract of service was a New Jersey contract and held the brakeman was entitled to compensation under the New Jersey Act. In its opinion the court said: "We are now dealing with the simpler question, whether a New Jersey court will enforce a New Jersey contract according to the terms of a New Jersey statute. The question hardly calls for an answer. The place where the accident occurs is of no more relevance than is the place of accident to the assured in an action on the contract of accident insurance, or the place of death of the assured in an accident on the contract of life insurance."

[25] Ind. Comm. v. Aetna, *supra,* note 23; Grinnell v. Wilkinson, *supra,* note 4.

[26] Post v. Burgher & Gohlke, *supra,* note 10.

[27] BRADBURY, WORKMEN'S COMP. LAWS (3d ed.) 93.

was made in state A for work to be done solely and exclusively in state B, and the workman was injured in state B and sought to recover there, it has been held that the compensation act of state A, the place of the contract of employment, was not applicable, and the law of state B, the place of performance and injury, governed.[28] That the contract contemplates work exclusively in another state has been attacked as an unsound basis for differentiation.[29] The fact that the statute of the state of employment has been held by the courts in that state to have no extraterritorial effect or that there was no workmen's compensation act in force in the state of employment has been a large factor in a number of decisions, particularly under elective statutes.[30] In *Hopkins v. Matchless Polish Co.*[31] the court said: "If the (foreign) act be not contractual, or under the law of its jurisdiction the act has no extraterritorial effect, or if there be no compensaton act in the foreign jurisdiction, the employee of the foreign employer in beginning work in Connecticut will, automatically, have incorporated in his contract of employment the provision for compensation under our act, unless one or the other party to the contract have indicated his refusal in accordance with the requirement of the act." Regardng the statute as a substitute for older tort liability, or as a regulation of the incidents of the relation of employer and employee the result is clearly sound; but attempted explanations on the contract-theory seem inconsistent and arti-

[28] American Mut. L. Ins. Co. v. McCaffrey, 37 Fed. (2d) 870, 281 U.S. 751, 74 L. ed. 1162 (1930); Banks v. Hawlett, 92 Conn. 368, 102 Atl. 822 (1918); Johns-Mansville v. Thrane, 80 Ind. App. 432, 141 N.E. 192 (1923); Leader Spec. Co. v. Chapman, 85 Ind. App. 296, 152 N.E. 872 (1926); Gardner v. Horseheads Constr. Co., 171 App. Div. 66, 156 N.Y.S. 899 (1916); Smith v. Heine S. B. Co., *supra,* note 15; Perliss v. Lederer, 189 App. Div. 425, 178 N.Y.S. 449 (1919); Altman v. N. Dak. W. C. Bureau, *supra,* note 21.

[29] Pettiti v. Pardy, *supra,* note 23; Hubirt v. Escanaba Mfg. Co., 218 Mich. 331, 188 N.W. 411 (1922).

[30] American Rad. Co. v. Rogge, *supra,* note 10; Davidheiser v. Hay Foundry & Iron Works, 87 N.J.L. 688, 94 Atl. 309 (E. & A. 1915); West Jersey Trust Co. v. Phila. R. Ry. Co., 88 N.J.L. 102, 95 Atl. 753 (Sup. Ct. 1915), reversed on another ground, 90 N.J.L. 730, 101 Atl. 1055 (E. & A. 1917); Doughtwright v. Champlain, 91 Conn. 524, 100 Atl. 97 (1917); Hopkins v. Matchless Metal Pol. Co., 99 Conn. 457, 121 Atl. 828 (1923). In American Rad. Co. v. Rogge, *supra,* note 10, where a workman was employed to work partly in New York and partly in New Jersey (New York having no Workmen's Compensation Act) in holding that compensation could be awarded under the New Jersey Act, Swayze, J. said: " * * * the parties could not by their agreement prevent New Jersey from regulating the conduct of its own industries and from prescribing, as one of the terms upon which the performance of a foreign contract of hiring shall be permitted in this state, the implication by law of a contract for compensation to the workman." The same court in Rounsaville v. Central R. Co., *supra,* note 10, comments on its holding in American Radiator Co. v. Rogge: "We said there that the real object of the statute was to create an irrebutable presumption, that such a presumption was in effect a rule of substantive law, and as such we dealt with it. The whole opinion shows that the case was rested upon the public policy of New Jersey as declared in the statute."

[31] *Supra,* note 30.

ficial.[32] Courts have awarded compensation, where to deny the relief sought would have deprived the workingman of compensation, in order to effect the public policy of the state as expressed in the statute,[33] as far as consistent with any possible rational theory.[34]

Whether the courts of one state will enforce a cause of action on a claim created by a workmen's compensation statute of another state is a question which has given rise to much judicial perplexity. Such enforcement is a matter of comity and not of strict right.[35] In exercising comity in that regard the courts primarily consider the public policy of the forum, the similarity or dissimilarity of the laws of the two states, and especially the adaptability and adequacy of the procedure and processes of the forum to the enforcement of the substantive rights in accordance with the law of their creation.[36] Foreign statutes have been enforced negatively at least, by denying recovery in common law actions or claims for which compensation may be had under the act of another state, the existence of the cause of action for tort or its abolition by a compensation act being determined by the law of the place of injury.[37] Where the statute creating the right provides an exclusive remedy, to be enforced in a particular way, before a special board or tribunal, the aggrieved party will be left to the remedy given by the statute which created the right, and no cause of action will be in another state until the statutory tribunal has acted and rendered judgment.[38] On the other hand, it has been judicially suggested that matters of venue and compensation may well be distinguished, and if the state has laws

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[32] GOODRICH, CONFLICT OF LAWS, p. 205; BRADBURY, WORKMEN'S COMP. LAW (3d ed.) p. 92 *et seq.*

[33] In Denny v. Wright, *supra,* note 4, speaking of the New Jersey Compensation Act (P.L. 1911, p. 134), the court said: "It is based upon the proposition that the inherent risks of an employment should in justice be placed on the shoulders of the employer."

[34] But *cf.* Hamm v. Rockwood Sprinkler Co., 88 N.J.L. 564, 97 Atl. 731 (Sup.Ct. 1916) where a contract was made in New York, the work was performed and the employee injured there, and although the employer was a corporation licensed to do business in New Jersey, and the employee was a resident of New Jersey, it was held that the employee's claim must be for common law damages, it appearing there was no Workmen's Compensation Act in force in New York; the court evidently failing to find a tenable theory on which to award compensation.

[35] 5 R.C.L. 1039.

[36] *Cf.* annotation, 45 A.L.R. 1351; 82 A.L.R. 709.

[37] Hamm v. Rockwood, *supra,* note 34; Johnson v. Nelson, 128 Minn. 158, 150 N.W. 620 (1915); Albanese v. Stewart, 78 Misc. 581, 138 N.Y.S. 932 (1912); Schweitzer v. Hamburg Amer. Line, 78 Misc. 448, 138 N.Y.S. 944 (1912); Wasilewski v. Warren, 87 Misc. 156, 149 N.Y.S. 1035 (1914); Pendar v. H. & B. A. M. Co., 35 R.I. 321, 87 Atl. 1 (1913).

[38] Martin v. Kennecott Corp., 252 Fed. 207 (1918); Logan v. Missouri U. B. & T. Co., 157 Ark. 528, 249 S.W. 21 (1923); Loomis v. Lehigh V. R. Co., 208 N.Y. 312 (1913); Lehman v. Ramo Films, 92 Misc. 418, 155 N.Y.S. 1032 (1915); McCarthy v. McAllister, 94 Misc. 692, 158 N.Y.S. 563 (1916); Verdicchio v. McNab & H. M. Co., 178 App. Div. 48, 164 N.Y.S. 290 (1917); Prdich v. N. Y. Central R. Co., 111 Misc. 430, 183 N.Y.S. 77 (1920).

which are similar, but not necessarily identical, with those of another state, and especially where compensation claims under the foreign statute may be enforced in any of the ordinary courts to the same extent that other claims could be enforced, then there appears to be no legal reason why they cannot be enforced in the ordinary courts of other states.[39]

IGNORING THE CORPORATE FICTION IN THE CASE OF ONE-MAN COMPANIES—Usually a corporation is looked upon by the law as an artificial person having the rights and duties of an ordinary individual.[1] Yet, courts do not hesitate to brush aside the fiction where the corporate

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[39] BRADBURY, WORKMEN'S COMP. LAWS (3d ed.), p. 98; GOODRICH, CONFLICT OF LAWS, p. 204, 205; Bradford Elec. L. Co. v. Clapper, 286 U.S. 145, 76 L. ed. 1026, 52 Sup. Ct. 571, anno. 82 A.L.R. 709 (1932); Doughtwright v. Champlain, *supra*, note 30; Pensabene v. S. & J. Auditore Co., 155 App. Div. 368, 140 N.Y.S. 206 (1913).

[1] In Jackson v. Hooper, 76 N.J.Eq. 592 (E. & A. 1910) reversing *Ibid.* 185 (Ch. 1909), two individuals owned all the stock of a business corporation under an agreement that they should be partners having equal voice and equal control in the management and business of the corporation, that it should be treated as a mere agency in carrying out the copartnership agreement, that the directors other than the two parties should be mere nominal directors, and that corporate forms should be ignored and the business transacted and treated as a partnership. After operating for a time thereunder, the parties disagreed, and, in what amounted to an action for specific performance of the partnership agreement, the court refused its aid on the ground that the rights of the parties must be administered as shareholders in the corporation, not as members of a partnership. The court speaking through Dill, J. said (at p. 599): "It is fundamental that, no matter how the shares of stock are held, the corporation itself is an entity wholly separate and distinct from the individuals who compose and control it. The complainant and defendant, though owning the entire capital stock of the two corporations, are not, * * * 'the corporation, in the sense of that term as applied to the management of the corporate business or the control of the corporate property.'"

In Loomis v. Public Service Transportation Co., 102 N.J.Eq. 259 (E. & A. 1928), complainants, several of the members of a voluntary unincorporated association, were instrumental in forming two New Jersey corporations to which property belonging to the association was conveyed in exchange for the capital stock thereof, which was issued to the members individually; thereafter defendant purchased the shares of some members. Complainants sought to have a trust declared alleging that the corporations were mere dummies holding common property for the convenience of the association. The court held that, as they had elected to deal through these corporations for their own benefit, the complainants could not be heard to object to the disadvantages resulting therefrom.

In Leviton v. North Jersey Holding Co., 106 N.J.Eq. 517 (Ch. 1930), a bill was filed whose object was the winding up of the affairs of defendant corporation (a closed corporation of which complainant owned two shares less than fifty per cent of the outstanding stock) and the distribution of its assets among stockholders, upon the theory that the stockholders were partners conducting a joint venture under corporate guise. Relief was denied, the court saying (at p. 520): "A joint venture, with its personal responsibilities, cannot assume corporate garb, with its privileges and immunities, and again emerge as a joint