estoppel. But since, in the principal case, as the court points out, the plaintiff was not a passenger in the defendant's cab, he could not be said to have in any way relied upon an apparent agency. Even where reliance has been established it must be further shown to find an estoppel that reliance 'induced the parties to have the collision.' *Keeling* v. *Nall*, *supra*. *Contra*, *Middleton* v. *Frances*, 257 Ky. 42, 77 S.W. (2d) 425 (1934).

Since no estoppel is to be found in the principal case, the plaintiff must recover, if at all, upon the basis of the employment relationship existing between the driver and the owner of the cab. In view of the above authorities it would appear that as a matter of law no master-servant relationship existed and the court was correct in dismissing the petition.

JUSTIN J. GRIBBELL

WORKMEN'S COMPENSATION — GOING AND COMING RULE — ATTENDING CONVENTION

The general phrase "in the course of the employment," found in the Ohio Constitution, Art. II, sec. 35 and the Ohio Gen. Code, sec. 1465-68 in connection with compensable injuries, has been construed in two recent Ohio decisions, which present extremes in their respective fact situations.

The Goodyear Tire and Rubber Co. owns a property in the city of Akron on the south side of East Market St. extending adjacently to the sidewalk for approximately 2500 feet. On this street the company maintains an entrance gate for employees and 300 to 400 feet east of it on the same side of the street an "East Gate" used only by tractors for loading and unloading purposes. The plaintiff, an employee of the company, had the option of taking several routes to work. While crossing on the sidewalk in front of the "East Gate," he was struck by a tractor of the company, coming out of the gate, driven by a company employee. The plaintiff recovered in a common law action for damages. This was affirmed on appeal by the company, the court refusing to hold that the injury occurred in the course of the employment on the following grounds: (1) it was not a necessary incident of plaintiff's employment that he use said sidewalk; (2) the sidewalk, a part of a public street, was not in the zone of control of the company; (3) he suffered hazards common to the public; and (4) plaintiff had not reached the place where he could enter the defendant's premises to perform his duties. *Fike* v. *Goodyear Tire and Rubber Co.*, 56 Ohio App. 197, 23 Ohio Abs. 480, 9 Ohio Op. 312 (1937).

In the second case it appears that one, Sawyer, was the president and sales manager of a chick hatchery company in Ohio, which was a member of the International Baby Chick Association. The hatchery company was represented in the association by Sawyer, who became the president and a member of the board of the association. While attending a meeting of the board at the association's convention at Milwaukee, Wisconsin, Sawyer was shot and killed by another member of the board whose employer had been punished for violating the association's code of ethics. The court of appeals held the death to be compensable for the reasons: (1) that such injury and death occurred in the course of his employment by such hatchery company; and (2) that such death arose out of his employment. *Bersche* v. *Industrial Comm.*, 56 Ohio App. 236, 24 Ohio Abs. 549, 9 Ohio Op. 325 (1937).

The Ohio Gen. Code, sec. 1465-68, provides as follows: "Every employee . . . who is injured, and the dependents of such as are killed *in the course of employment, wheresoever* such injury has occurred . . . shall be paid such compensation out of the general insurance fund." The courts have construed this section liberally. *Industrial Comm.* v. *Lewis*, 125 Ohio St. 296, 181 N.E. 136 (1932); *Industrial Comm.* v. *Weigandt*, 102 Ohio St. 1, 130 N.E. 38 (1921). The test of the right to compensation award is whether the employment had some causal connection with the injury, either through its activities, its conditions, or its environments. *Industrial Comm.* v. *Weigandt, supra; Grabler Mfg. Co.* v. *Wrobel*, 125 Ohio St. 265, 181 N.E. 97 (1932).

The first principal case referred to, *Fike* v. *Goodyear Tire and Rubber Co., supra*, involves the so-called "Going and Coming Rule" which applies particularly to that contract of hire which contemplates that the workman render service at a designated place. Campbell, Workmen's Compensation, sec. 163. Thus, as a general rule, employees injured while going to and coming from work have not been regarded as being injured in the course of their employment. *Industrial Comm.* v. *Baker*, 127 Ohio St. 345, 188 N.E. 560 (1933); *Conrad* v. *Coal Co.*, 107 Ohio St. 387, 140 N.E. 482 (1923); *Industrial Comm.* v. *Heil*, 123 Ohio St. 604, 176 N.E. 458 (1931); *Industrial Comm.* v. *Gintert*, 128 Ohio St. 129, 190 N.E. 400, 92 A.L.R. 1032 (1934); *Bowers* v. *Industrial Comm.* 24 N.P. (N.S.) 56 (1921); *McKenzie* v. *Industrial Comm.*, 24 Ohio App. 455, 155 N.E. 704 (1926). But, it cannot be laid down as a universal and invariable rule that the hazards of the employment begin in all instances at the point where the employee crosses the line of the employer's premises. 42 Ohio Jur., sec. 54. Injuries received by workmen while crossing railroad tracks on the public

street or highway while going to or from work have been held compensable as injuries sustained in the course of the employment. *Industrial Comm.* v. *Henry*, 124 Ohio St. 616, 180 N.E. 194 (1932); *Cudahy Packing Co.* v. *Parramore*, 263 U.S. 418, 44 Sup. Ct. 153 (1923); *Bountiful Brick Co.* v. *Industrial Comm. of Utah*, 68 Utah 600, 251 Pac. 555 (1926). The "Going and Coming Rule" has no application where the employee is injured while passing, with the express or implied consent of the employer, over the premises of another in such proximity to the employer's place as to be in practical effect a part of the employer's premises. Campbell, Workmen's Compensation, sec. 170; *Bountiful Brick Co.* v. *Giles*, 276 U.S. 154, 48 Sup. Ct. 221 (1928); *Simonson* v. *Knight*, 174 Minn. 491, 219 N.W. 869 (1928); *Stacy's Case*, 225 Mass. 174, 114 N.E. 206 (1916).

The Ohio Supreme Court has held an injury received on a dead end street 20 or 40 feet from the entrance gate of the company to be compensable on the grounds: (1) although a public street, it was actually under the control of the employer; (2) it was the only unobstructed access to the premises; (3) the pursuance of such course was an implied obligation of the employee in his contract with such employer, and (4) the hazards of such zone growing out of conditions and environments of his employment are hazards of his employment. *Industrial Comm.* v. *Barber*, 117 Ohio St. 373, 159 N.E. 363 (1927).

An injury to an employee who slipped on the sidewalk of a public street a few feet from the entrance of the employer's business place has been held compensable as sustained within the scope of the employment on the theory that the sidewalk is not only a necessary adjunct and used in connection with the business but it is, also, to a limited degree and purpose a part of the defendant's premises. *Barnett* v. *Britling Cafeteria Co.*, 225 Ala. 462, 143 So. 813 (1932).

Thus, "employment" may begin in point of time before the work is entered upon and in point of space before the place is reached where the work is to be done and continue for a like time and space. Campbell, Workmen's Compensation, sec. 170.

The fact that the plaintiff in *Fike* v. *Goodyear Tire and Rubber Co.*, *supra*, was injured on that part of the sidewalk used by the company tractors as a drive way for loading and unloading materials indicates that the court might readily have regarded the place of injury as coming within the zone of employment on the theory of the *Barnett* case, *supra*, that such part of the sidewalk is a necessary adjunct to the employer's business and to a limited degree and purpose a part of the company's premises under the control of the company. But to have done so, the

court would have denied the plaintiff, employee, his common-law recovery. It is a question, whether the court would have reached the same decision had this been a case in which the plaintiff had sued for compensation. In other words, would the court apply different tests for common law actions and actions for compensation?

Turning to the case of *Bersche* v. *Industrial Comm.*, *supra*, it should be noted that injuries received by an employee while voluntarily engaged in some activity having no essential relation to or connection with the employment, and undertaken solely for the pleasure, convenience, or benefit of himself or third persons, are not compensable as arising out of or in the course of the employment. *Industrial Comm.* v. *Ahern*, 119 Ohio St. 41, 162 N.E. 272, 59 A.L.R. 367 (1928); *Industrial Comm.* v. *Lewis*, *supra*. But, if the employee is sent on a special errand either as a part of his regular duties or at the request of the employer, an injury received while on that errand is compensable. Campbell, Workmen's Compensation, sec. 182; *Fronce* v. *Prosperity Co.*, 255 N.Y. 613, 175 N.E. 336 (1931). The fact that the employee is making the journey on his employer's business is sufficient to bring him within the protection of the act. *Industrial Comm.* v. *Dense*, 14 Ohio App. 224, 32 Ohio C. A. 552 (1920); *Industrial Comm.* v. *Wilson*, 34 Ohio App. 36, 170 N.E. 37 (1929); *Western & S. F. Ins. Co.* v. *Kennett*, 15 Ohio L. Abs. 357 (1933).

This is illustrated by *Industrial Comm.* v. *Davison*, 118 Ohio St. 185, 6 Ohio L. Abs. 188 (1928). There it appeared that one Davison, dean of the department of education, at Ohio Northern University, with the consent of the University lectured to the graduating classes of the various high schools. During the lecture tours, he was paid by both the university and the high schools at which he would lecture. While lecturing to a high school graduating group, he received an injury which resulted in his death. The Supreme Court of Ohio held his injury and death to be compensable on the ground that it was sustained in the course of and arose out of the scope of his employment. The court stressed the fact that the additional employment made him no less the employee of the university and that he, with the consent of the university, was lecturing fo rthe benefit of the university. The relationship of Dr. Davison to the university on the occasion of those trips was not different from that relationship which exists between a manufacturer or jobber and his traveling salesman. *Industrial Comm.* v. *Davison*, *supra*. The court in the *Bersche* case cites the *Davison* case and says that it is in principle, exactly in point.

It's an established rule that the provisions of the Ohio Gen. Code,

sec. 1465-68, do not cover an injury which has its cause entirely outside of and disconnected from the business in which the injured workman is employed. *Fassig* v. *State*, 95 Ohio St. 232, 116 N.E. 104 (1917); *Slanina* v. *Industrial Comm.*, 117 Ohio St. 329, 158 N.E. 829 (1927). But, if the injuries are sustained neither on the premises nor within its immediate environs, the employee acting within the scope of his employment, must, at the time of his injury, have been engaged in the promotion of his employer's business and in furtherance of his affairs. *Industrial Comm.* v. *Bateman*, 126 Ohio St. 279, 185 N.E. 50 (1933). The injury need not be an anticipated one, nor peculiar to the employment, but after the event it must appear to have had its origin in a risk connected with the employment and to have followed from that cause as a rational consequence. *Industrial Comm.* v. *Pora*, 100 Ohio St. 218, 125 N.E. 662 (1919); *Delassandro* v. *Industrial Comm.*, 110 Ohio St. 506, 144 N.E. 138 (1924).

The courts generally hold that if an assault upon an employee be committed by another solely to gratify personal ill-will, anger, or hatred, injury does not arise out of the employment within the meaning of the statute. *Harris* v. *Sloss-Sheffield S. & I. Co.*, 222 Ala. 470, 132 So. 727 (1931); *January-Wood Co.* v. *Schumaker*, 231 Ky. 705, 22 S.W. (2nd) 117 (1929). The rule under these circumstances is the same whether the assailant be a fellow employee or a stranger. *January-Wood Co.* v. *Schumaker, supra; Harden* v. *Furniture Co.*, 199 N.C. 733, 155 S.E. 728 (1930); *Spring Canyon Cr. Co.* v. *Industrial Comm.*, 58 Utah 608, 201 Pac. 173 (1921). However, where the assaulted employee is not the aggressor and no prior or personal quarrel exists between the parties and the quarrel does not arise out of any circumstances extraneous to the employment in which they are engaged at the time, although both may be of equal rank, the injury is compensable. *Atolia Min. Co.* v. *Industrial Acc. Comm.*, 175 Cal. 691, 167 Pac. 148 (1917). It is immaterial whether the employees work for the same or different employers. The same tests apply for compensability. Campbell, Workmen's Compensation, sec. 157; *Whittington* v. *Aetna etc. Co.*, 12 Cal. I.A.C. 388 (1925).

In the light of the preceding discussion, it appears that the court in the *Bersche* case rendered the proper conclusion. However, it is submitted that the court in the *Fike* case, on the theory stated, should have denied the plaintiff his common law remedy and required him to apply for compensation.

WILLIAM T. CREME