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COMMENT

WORKMEN'S COMPENSATION IN WASHINGTON—TRULY LIABILITY WITHOUT FAULT

The turn of the century witnessed the commencement of a great movement, in the United States, of social and economic legislative reform. In their obedience to the people's will, state legislatures bent to the task of eliminating what were then, and still are, viewed as evils too long existent. It was in the field of labor-capital relations that our legislatures early found matter for profound consideration. European nations, following enactment of the first compensation law in Germany in 1884, had emphasized one social and economic evil—the unfortunate plight of the workingman, injured in the course of his employment, who had lost his capacity to earn. Following the lead of these European countries, Massachusetts first considered workmen's compensation legislation; but the abortive New York law of 1910 was the first American state enactment of a workmen's compensation law. Then, in 1911, ten states, including Washington, enacted workmen's compensation laws.[1]

The workmen's compensation law enacted by the 1911 Washington legislature sought to relieve workingmen, employed in industries classi-

[1] 1SCHNEIDER, WORKMEN'S COMPENSATION TEXT (perm. ed. 1941) § 9.

fied as extra-hazardous, injured in the course of their employment.[2] In framing the act, the legislature had a choice of one of two approaches in the solution of its problem. It could make industry liable, regardless of fault, for all injuries the result of a hazard inherent in the industry.[3] Or, it could make industry liable, regardless of fault, for *all* injuries of workingmen.

The legislature did not clearly announce the choice made. Consequently, it was left to the state supreme court to say if the Washington act is of the indicated narrow type, or the broad kind of workmen's compensation law. The determination of this problem, especially since 1931, is a problem of moment. The scope of the act, besides its importance in determining what injuries are compensable, since 1931, is important in determining the size of insurance premiums to be charged to an employer within the terms of the act. Compensation is paid an injured workman, or his dependents if he dies, out of a fund established by the compensation law.[4] Employers covered by the act are required to pay premiums into the fund. Since 1931, the size of a premium charged an employer is lesser or greater according to the number of injuries and deaths suffered in the industry class of which the employer is a member, and the number of injuries and deaths suffered in the plant of the particular employer.[5] Therefore, it is a matter of concern to an employer if his cost experience is chargeable for the injury or death of one of his employees caused by the unforeseeable act of a third person employer.[6] If the Washington act is narrow in scope, that is, if it renders compensable only those injuries which are the result of a hazard inherent in the industry, the cost experience of the employer should not be charged inasmuch as a hazard not inherent in the industry of the employer caused the injury. If, however, the act is based on the broad concept of workmen's compensation, then the cost experience of the injured man's employer should be charged because under such a concept of workmen's compensation the employer is an involuntary insurer of his workmen against all injuries no matter by whom or how caused.

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[2] Laws of 1911, p. 146. The act, granting compensation for injuries and deaths sustained in the course of employment regardless of fault, is specifically confined in its application to extrahazardous industries only.

[3] The other nine states to enact workmen's compensation laws in 1911 apparently took this approach by limiting application of the act to only those injuries which arose out of the employment. *See in* SCHNEIDER, WORKMEN'S COMPENSATION STATUTES the following state acts: California Labor Code (perm. ed. 1939) Vol. 1, § 3208, p. 212; Illinois (perm. ed. 1939) Vol. 2, c. 48, § 138, p. 839; Kansas (perm. ed. 1939) Vol. 2, c. 44-501, p. 1170; Massachusetts (perm. ed. 1939) Vol. 2, c. 152, § 26, p. 1489; Nevada (perm. ed. 1940) Vol. 3, c. 2, § 2706, p. 2236; New Hampshire (perm. ed. 1940) Vol. 3, c. 216, § 1, p. 2276; New Jersey (perm. ed. 1940) Vol. 3, c. 34, § 15-1, p. 2285; Ohio (perm. ed.) Vol. 4, § 1465-68, p. 3010; Wisconsin (perm. ed.) Vol. 4, c. 102-03, p. 4230.

[4] REM. REV. STAT. § 7679.

[5] REM. REV. STAT. (supp. 1940) § 7676. By this section, those industries declared by the act to be extrahazardous, are classified according to their general nature. Thus, the meat packing industry, the airplane manufacturing industry, etc.

[6] "Cost experience" of an employer is the sum of compensatory benefits paid from the industrial insurance fund because of accidents charged to that employer; "cost experience" of a class is the sum total of the cost experience of all employers of that class.

A recent pronouncement of the Washington Supreme Court absolutely determined that the state compensation act is of the broad type.[7] It is the purpose of this comment to consider the act and the cases interpreting the act with a view to determining if that decision is consistent with reason and precedent. That is, does the act announce the broad, or the narrow idea of workmen's compensation; and, how have the cases answered this question.

To have the problem clearly in mind, it is proper at this time to state the case of *Boeing Aircraft Company v. Department of Labor and Industries.*[8] An airplane constructed by and in the sole control of the employees of Boeing Aircraft Company, while on a trial flight, crashed into the meat-packing plant of Frye & Company in Seattle. As a result of the crash, and the fire which followed, the airplane crew, and some of the workmen of Frye & Company were killed; and a number of Frye's employees were injured. Claims by dependents of those employees who were killed, and claims by injured workmen, were filed with the Department of Labor and Industries of the state and were allowed in varying amounts.

Boeing and Frye are employers engaged in extrahazardous industry under the terms of the state workmen's compensation act, and, at the time of the accident, the employees of both companies were engaged in extrahazardous employment. Boeing is a contributor to the industrial insurance fund under class 34-3 as an airplane manufacturer; and Frye, along with the other interveners, is a contributor under class 43-1.[9] All employers interested in the suit had, at the time of the accident, complied with all requirements of the state act.

The director of the Department of Labor and Industries directed the supervisor of industrial insurance to transfer all charges for death and injuries suffered by Frye's employees to the airplane manufacturing class. This order was later sustained, upon objection by Boeing, by the joint board of the department. Boeing appealed to the superior court, and, upon confirmation by the superior court of the order of the joint board, the matter came to the supreme court on appeal.

That court held that the director's ruling as affirmed by the joint board and the trial court was erroneous. It decided that charges for deaths and injuries suffered by employees of Frye & Company must be met by employers of class 43-1, the meat packers, regardless of the fact that the injuries and deaths resulted from a hazard not inherent in the meat packing industry. The majority of the court, speaking through Millard, J., concluded that unlike most state workmen's compensation acts, Washington's is not the usual compensation act, but, rather, is an industrial insurance act. Consequently, it is the policy of the state to hold an employer liable for contribution to the accident fund for any injury to an employee of that employer no matter what the cause of the accident so long as it occurred in the course of employment. The de-

[7] Boeing Aircraft Co. v. Dept. of Labor and Industries, 122 Wash. Dec. 393, 156 P.(2d) 640 (1945); rehearing denied, 122 Wash. Dec. 651. While the Boeing case indicates that *all injuries* suffered in the course of employment are compensable, and carried to its logical extreme such a doctrine would require compensation for intentionally self-inflicted injuries, it is submitted that probably public policy would bar the compensation of such injuries.

[8] 122 Wash. Dec. 393, 156 P.(2d) 640 (1945).

[9] REM. REV. STAT (supp.) § 7676.

cision of the majority appeared to be based on the consideration that the act imposed liability "regardless of fault" in any degree. That, thus, to have relief, an employer in an extra-hazardous industry need not be injured as the result of a hazard inherent in the employment.

The dissent, in the following language, recognized the broad application of the Washington act:[10]

> "Of course, workmen engaged in a business which is most carefully operated may be injured by accidents such as lightning or earthquake which cannot be guarded against, and under such circumstances a most careful employer or a class in which accidents are rare, may be called upon to make large contributions to the accident fund."

However, it was considered that language in the act requires that where an accident is caused by a third party employer, the accident should be charged to the cost experience of that person, and not to the cost experience of the injured or deceased person's employer. This conclusion was reached on two grounds. First, originally, if injured by the wrong or neglect of a third party employer entitled to the benefits of the act, a workman within the provisions of the act, at his option, could recover from the fund established by the act, or sue out a common law remedy against the third party tortfeasor. However, a 1929 amendment of the act immunized such an employer from a common law suit.[11] The dissent argued that the legislature did not intend that such an employer be entirely free of liability, but that his cost experience should be charged with the accident. Second, establishment of the merit rating system in 1931, argued the dissent, indicates that the cost experience of a third party employer should be charged in such a case as this.[12] This system, which causes the size of an employer's premiums to be partially based on his cost experience, was intended as an inducement to industry to work for greater safety in its operations. The dissent argued that this inducement satisfies the purpose of the legislature only if each employer is charged for the accidents, only, the result of a hazard inherent in his industry.

Granted, the problems of what injuries an employee may bring within the act; and, once it is decided that the injury is compensable, the problem of what employer's cost experience is chargeable, are, in themselves, unrelated problems. However, the solution of either is indicative of the general nature of the act. Thus, as here, since Frye's cost experience was charged with the injuries and deaths suffered by employees of Frye, the Washington act is indicated as being of that broad application which renders an injury compensable regardless of the fact the injury did not result from a hazard inherent in the employment.

With the Boeing case in mind, and its obvious determination that Washington follows the broad concept of workmen's compensation, consistency of the court's decision in light of the act, first, and then in the light of prior decisions, will now be considered.

As stated previously, the act does not expressly adhere to the broad or narrow concept of workmen's compensation. However, elements of the act do indicate it was intended by the legislature to compensate

[10] 122 Wash. Dec. 393, 410, 156 P.(2d) 640, 649 (1945).

[11] Laws of 1929, c. 132, § 1, p. 327; and now found in REM. REV. STAT. § 7675.

[12] Laws of 1931, c. 104, p. 297.

even for those injuries not the result of a hazard inherent in the industry in which the workman was employed. Thus, the policy section of the act, after reviewing the plight of injured workmen, states:[13]

> ". . . sure and certain relief for workmen, injured in extra-hazardous work, and their families and dependents, is hereby provided regardless of questions of fault."

This statement, and the policy section of a statute must be closely considered in any interpretation of the act,[14] is the first indication of the legislative intent to establish a broad workmen's compensation law. However, even the narrow workmen's compensation laws impose on an employer liability without fault. Consequently, the policy section of the Washington act is not determinative of the question. Nevertheless, liability "regardless of fault" is the foundation of the Washington act. Unless that concept is qualified, therefore, logically carried to its extreme application that doctrine requires that not just those injuries the result of a hazard inherent in the employment are compensable.

The act further provides:[15]

> "For the purpose of such payments into the accident fund, accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund for accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class."

In the *Boeing* case, each side argued this section of the law as favoring its view. Admittedly, the language of this section is susceptible of an interpretation that an accident occurs in the class to which the injured employee belongs; or, that the accident occurred in the class of industry a member of which caused the accident. However, when considered in conjunction with the section previously referred to, and the section next considered, REM. REV. STAT. (1941 Supp.) § 7676 appears to have the former meaning.

Unlike many state compensation laws which permit recovery under the act only when the injury is sustained as the result of an accident which occurs "in the course of employment and arises out of the employment,"[16] the Washington act provides only that the law applies when the workman is injured "in the course of his employment."[17] A rule which requires that an injury, to be compensable, must "arise out of the employment," analytically, is nothing more than a requirement that the injury be the result of a hazard inherent in the employment. Since the Washington act does not contain the phrase, "arises out of the employment," which phrase, theoretically, is the basis of the narrow concept of workmen's compensation, it seems fair to argue that the Washington act does not include in its composition the requirement that the accident be the result of an inherent hazard.

Of course, no remedial act should be interpreted one way or another solely on the basis of specific language contained in the act. Rather, the act should be considered as a whole. Thus, when considered together, the three previous examined sections of the act indicate the

[13] REM. REV. STAT. § 7673.
[14] Block v. Hirsch, 256 U. S. 135, 65 L. ed. 865, 41 Sup. Ct. 458 (1921).
[15] REM. REV. STAT. (supp.) § 7676.
[16] *Supra*, n. 2.
[17] REM. REV. STAT. § 7679.

Washington legislature had in mind the broad concept, and not the narrow concept of workmen's compensation.

It is proper at this point to consider if two elements of the act which seem to give the act a narrow character may be reconciled with the above conclusion. In 1931, the state legislature amended the act to include therein a so-called merit rating system as a basis of employer contribution to the accident fund.[18] As previously seen, this part of the act is one of the bases on which the dissent in the *Boeing* case grounded its conclusion.[19] It is submitted that the merit rating system is not inconsistent with the broad view of the Washington act. The two may be reconciled on the ground that, since the very great majority of industrial accidents "arise out of the employment" of the injured man, the merit rating system was considered as operating only within the sphere of that majority. It was not intended that the amendment change the fundamental nature of the act which is to make compensable *all* injuries.

From 1911 until 1929, a workman injured because of the neglect or wrong of a third party could recover from the accident fund; or sue out a common law remedy against the third person wrongdoer.[20] In 1929, the act was amended to eliminate the common law liability of a third party entitled to the benefits of the compensation act.[21] From this the respondents in the *Boeing* case argued that the legislature intended to replace the common law liability of such a third party with an indirect liability by way of a charge against that person's cost experience.[22] Such a conclusion gives the compensation act, to a degree, the considered narrow application. However, it is reasonable to argue, especially since the act as a whole announces the broad view of workmen's compensation, that, by its amendment, the 1929 legislature intended to eliminate altogether the right of one employer against another employer.

To epitomize the foregoing consideration of the statute, it appears that the intention of the legislature was to enact a workmen's compensation law having no relation to fault or cause except, perhaps, where the injury was intentionally self-inflicted.[23] Under the Washington statute, an employer in an extrahazardous industry insures all of his employees against injury no matter by whom caused, or how incurred. Those sections of the law which appear to color the act as covering accidents only which "arise out of the employment" when considered in their context, within reason, have no such effect.

Statutes are eventually interpreted and applied by the courts. Ultimately, court interpretation by case decision, and not the words of the legislature is the basis for the determination of legal rights. Therefore, consideration is now given to decisions of the Washington court. Have those decisions viewed the Washington's Workmen's Compensation Act as announcing a broad or a narrow concept of workmen's compensation?

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[18] REM. REV. STAT. (supp.) § 7676.

[19] *Supra*, n. 5.

[20] Laws of 1911, p. 346; Laws of 1927, c. 310, § 2, p. 816.

[21] Laws of 1929, c. 132, § 1, p. 327; O'Brien v. Northern Pacific R.R., 192 Wash. 55, 72 P.(2d) 602 (1937).

[22] The 1927 amendment permitted, also, a common law recovery from wrongdoing third persons other than third party employers subject to the act. Proponents of the above argument offer no suggestion of where their liability is transferred.

[23] *Supra*, N. 7, ¶ 2.

The first case to consider the nature of the act was *State ex rel. Davis-Smith Co. v. Clausen* decided the same year the compensation law was enacted.[24] The case came to the supreme court as an original proceeding in mandamus, brought by the relator to compel the state auditor to issue a warrant on the state treasurer in payment of an obligation incurred by the industrial insurance department. The question before the court was the constitutionality of the compensation act. The court held the act constitutional as a reasonable regulation of industry within the scope of the state police power.[25]

In the course of its opinion, the majority, speaking through Fullerton, J., said:[26]

> "It (the act) is founded on the basic principle that certain defined industries, called in the act extrahazardous, should be made to bear the financial losses sustained by the workmen engaged therein through personal injuries, and its purpose is to furnish a remedy that will reach *every* injury sustained by a workman engaged in any of such industries, and make a sure and certain award therefor, bearing a just proportion to the loss sustained, regardless of the manner in which the injury was received." (italics supplied.)

The foregoing language indicates that in its early decision on the act, the Washington court determined to consider the legislature as intending to charge all employers within the act for injuries to their own employees no matter how or where those injuries were sustained as long as they occurred in the course of the workman's employment.

However, later in its opinion, the court effectively eliminated this language as a guide to future decisions construing the act. Said the court:[27]

> "It is claimed that the act allows workmen employed in such industries the benefit of the act when injured outside of the line of their duties, or when engaged in the business of the concern in a capacity not affected by the peculiar hazards of the business. We have quoted enough of the statute to show that it is somewhat obscure in these respects, but we are inclined to think the point not fatal to the act, even though we concede counsel's interpretation of it to be the correct one."

The first quoted language of the court is broad enough to be the basis of a conclusion that the Washington court intended to construe the act as establishing a broad application of workmen's compensation in this state. However, since the court latterly refuses to decide if an employer can be charged for an accident unrelated by cause and effect to the peculiar hazards of the injured person's employment, the formerly cited language cannot be given that construction. Thus, the *Clausen* case cannot be considered as indicating if the Washington act follows the broad or the narrow concept of workmen's compensation.

However, the Washington court soon indicated its view of the state compensation act. *Stertz v. Industrial Insurance Commissioner* was a

[24] 65 Wash. 156, 117 Pac. 1101 (1911).

[25] The United States Supreme Court, also, later upheld the constitutionality of the act in Mountain Timber Co. v. State, 243 U. S. 219, 61 L. ed. 685, 37 Sup. Ct. 260 (1916).

[26] 65 Wash. 156, 175, 117 Pac. 1101, 1105 (1911).

[27] *Id.* at 196, 117 Pac. at 1114.

proceeding by the widow and minor children of Stertz, foreman of a logging camp, to recover through the industrial insurance commissioner statutory compensation for death.[28] Deceased had suspended for misconduct a workman named Steel, but had reinstated him a short time later. Then, after being discharged a few days later by the president of the company, Steel waylaid a logging train, and, wounding one, killed others of the workmen of the company, including Stertz. Deceased, at the time, was in charge of the logging train as foreman. Steel assailed only those with whom, as a workman of the company, he had had quarrels concerning his duties. Stertz' dependents were allowed their claims under the compensation act. The court concluded that the Washington act does not relate to injuries and deaths "arising" only "out of the employment" of the workman. Rather, that "ours (the act) is not an employer's liability act. It is not even an ordinary compensation act. It is an industrial insurance statute"; and, consequently, no matter the cause of an accident a workman can recover for an injury sustained in the course of his employment. The court felt that a rule of unqualified right of recovery under the act most satisfies the object of the act, that is, to give a workman a clear and ready remedy for any wrong done him; to eliminate the waste, and unsocial consequences of common law remedies; and to render industry liable for industrial injuries regardless of fault.

Admittedly, the court could have found that Stertz' employment was such that it created a hazard of the very tragedy that occurred. The incident resulted from performance by Stertz of his duties as foreman, and while the direct cause of his death was the intervening intentional wrong of a third person, Steel's revengeful act was within the realm of foreseeability.[29] Ordinarily, men will quarrel over terms and conditions of work, and often, consequently, assault one another. However, the decision must stand for the proposition that Washington's act is of the broad kind because the court did not base recovery on the ground that the death of Stertz was the result of a hazard inherent in his employment. Rather, the court expressly held Stertz' death compensable because the act permits recovery for an injury *regardless of fault.*[30]

The above cases were decided before the 1929 amendment, which eliminated common law liability of a third party entitled to the benefits of the act;[31] and the 1931 amendment which established the merit rating system.[32] Therefore, any determination that those cases view the Washington act as being of the broad kind of compensation law is

[28] 91 Wash. 588, 158 Pac. 256 (1916).

[29] HARPER, LAW OF TORTS (1931) p. 418; PROSSER ON TORTS (1941) p. 538; Comment (1930) 18 CALIF. L. REV. 551.

[30] The Washington court had previously indicated its sympathies to be consistent with this decision. While the remarks of the court are *dicta*, it was said in Peet v. Mills, 76 Wash. 437, 440, 136 Pac. 685, 686 (1913): ". . . it was the . . . policy of the state to do away with the recognized evils attaching to the remedies under existing forms of law and to substitute a new remedy that should be ample, full, and complete, reaching every injury sustained by any workman while employed in any such industry regardless of the cause of the injury or the negligence to which it might be attributed." Later, in Zappala v. Industrial Insurance Commissioner, 82 Wash. 314, 316, 144 Pac. 54, 55 (1914), the langage of the Peet case, *supra*, was favorably cited by the court.

[31] REM. REV. STAT. § 7675.

[32] REM. REV. STAT. (supp.) § 7676.

without weight against the argument that the 1929 and 1931 amendments, unless the approach of the court has not thereafter changed, lend the compensation law a narrow character. Consequently, consideration is now given to cases decided after those amendments were enacted.

In *Everett v. Department of Labor and Industries*,[33] the widow of a former resident manager of a water company doing business in a small Washington town, appealed a departmental ruling which denied her compensation for her husband's death. In addition to his many duties as overseer of the company's facilities in his locale, deceased was accustomed to collect on outstanding accounts of his employer. As was his custom, deceased entered a cardroom where some of his employer's customers frequently gathered. While there, an altercation arose between him and a person who had owed deceased's employer $1.50 for some sixteen years past. In the course of his attempt to collect the debt, deceased mentioned that the debtor had been observed pilfering water. The debtor thereupon shot the deceased. The supreme court reversed the departmental ruling, and held that the death of appellant's husband was compensable. The only question before the court was the status of deceased as an employee in an extrahazardous industry at the time of his death. The fact that the wrong was done while deceased was in the course of his employment was conceded. In the determination of the issue, the court cited cases from jurisdictions the workmen's compensation law of which requires that the injury, to be compensable, "arise out of the employment." These cases had decided that deaths suffered in a manner similar to the one in the principal case are compensable. Thus, on immature consideration, it might appear that the court in the *Everett* case considered that the Washington act makes compensable only those injuries which result from a hazard inherent in the industry in which the injured workman is employed. Second thought, however, discloses such a conclusion is inaccurate. The cited cases were used by the court only as determinant of the point in issue, that is, that death occurred while the deceased was acting in the course of employment *in an extrahazardous industry*. Nothing was said by the court with reference to the injury "arising out of the employment." Seemingly, therefore, the 1929 and 1931 amendments did not change the court's view of the Washington act as being of an unusual kind.

Next was decided *O'Brien v. Northern Pacific R.R.*[34] Plaintiff, a workman under the definition of the act, and in the course of his employment at the time of the injury, sought to recover damages for that injury in a common law action. Defendant, at the time of the accident, was not a contributor to the state insurance fund. Because defendant was not a contributor under the act, the court decided that the act had no application in this case. In the course of its opinion, the court used language to the effect that every employer under the act is taxed in proportion to the hazards inherent in his industry. While this language indicates a narrow concept of workmen's compensation, the statements of the court are *dicta*.

While the above language of the court might have been a springboard from which a later court could decide that the Washington act has the

[33] 167 Wash. 619, 9 P.(2d) 1107 (1932).
[34] 192 Wash. 55, 59, 72 P.(2d) 602, 603 (1937).

nature that language announces, a later case indicates that the *dicta* in the *O'Brien* case will be given no such effect. *Weiffenbach v. Seattle* was a suit by an employee of the Seattle Cornice Works to recover damages from the city on account of severe injuries suffered by plaintiff by reason of the city's negligence.[35] Within the scope of his employment, at the time of the injury, plaintiff, while measuring the roof of a building, was injured by a current of electricity conveyed over a defectively strung high voltage wire. The court decided that defendant was immune from a common law suit within the provisions of the 1929 amendment; and that the plaintiff's only recovery is from the insurance fund established by the compensation act. As in the *Everett* case, the court's conclusion that the injury is compensable is not based on any consideration that it is compensable because the result of a hazard inherent in the plaintiff's employment.

Consideration of decisions reviewing the fundamental nature of the Washington Workmen's Compensation Act has revealed that, as the act itself indicates, the court has viewed the law as an industrial insurance statute imposing liability regardless of fault; and without regard to a requirement that the injury "arise" from the employment. This seems to be the decision of the court in the *Stertz* case. That rule, despite amendments of the act, has not been changed. No decision has determined that the Washington act does not make compensable all injuries suffered in the course of the employment without more.

Therefore, the recent pronouncement of the Washington court in *Boeing Aircraft Co. v. Department of Labor and Industries*, which charged the cost experience of the employer for injuries and deaths suffered by his employees, regardless of the fact that they were not the result of a hazard inherent in the meat-packing industry, is consistent with reason and decision. In so deciding, that court determined that the Washington act is operative no matter what the cause of the injury, or the hazard from which it resulted; but is, simply, where an employee of an extrahazardous industry is injured in the course of his employment. Consequently, it is plain that the *Boeing* case, which eliminated all element of fault from the operation of the Washington act, announces a concept of workmen's compensation which imposes on employers, as far as industrial injuries in extrahazardous industries are concerned, a liability wholly without consideration of fault.

E. B. McGovern.

A RECONCILIATION OF PRIORITIES UNDER EXECUTORY CONTRACTS FOR THE SALE OF LAND

Among the many complexities of modern business and financial life none is fraught with more intricacies than the utilization of credit. Economic exigencies have dictated that many must purchase without the immediate ability to pay. The seller, likewise, has evidenced an eagerness to sell and transfer the possession of his property upon the receipt of a promise that payment will be subsequently made at a specified date. Thus commerce thrives and the needs of the community are satisfied. It is, however, necessary that the seller receive some further assurance, some more reliable protection than the mere promise of the

[35] 193 Wash. 528, 76 P.(2d) 589 (1938).