wholly from the principle that guilt is personal and ought not be lightly imputed.[21] In the public interest of insuring prudence in the conduct of the business of the Buffalo Pharmacal Co., a majority of the Justices deemed it wise to place a criminal stigma on the defendant; a stigma that is predicated wholly upon chance, for it necessarily follows that in the absence of fraud, participation, acquiescense, or even negligence, the act of adulteration and misbranding was not within Dotterweich's power of human control.[22] It is submitted that the public interest could be as adequately protected, without a serious departure from established criminal law doctrines, by placing a presumption of guilt and a burden of proof upon the corporate officer.

CONFLICT OF LAWS

WORKMEN'S COMPENSATION AWARD HELD RES JUDICATA AS TO SECOND RECOVERY IN ANOTHER STATE.

Respondent resided, and was hired, in Louisiana as a laborer on a Texas oil well owned by the petitioner. In the course of this employment, Hunt was injured; he received a compensation award under the Texas Workmen's Compensation Act.[1] By the terms of the Texas Act this award became final.[2] Respondent later[3] brought an action under the Louisiana Workmen's Compensation Act[4] to recover for his injury; petitioner's exception was overruled and judgment was rendered for Hunt less the amount of the Texas payments. The Louisiana Appellate Court affirmed this decision,[5] with the Louisiana Supreme Court refusing to review. On writ of certiorari, held, reversed. A compensation award of one state which has become final is

21. See instant case at 139.
22. See Hall, "Prolegomena to a Science of Criminal Law" (1941) 89 U. of Pa. L. Rev. 549, 568, and Hall, "Interrelations of Criminal Law and Torts: II" (1943) 43 Col. L. Rev. 986-996.

1. Texas Statutes (Vernon, 1936) art. 8306 through 8309.
2. Texas Statutes (Vernon, 1936) art. 8307, § 5, which states in substance that a party, dissatisfied with the award of the Industrial Accident Board, may review the award by giving notice within twenty days that he will not conform to it and within twenty days after giving such notice, he must bring suit in the proper court. If no notice is given or no suit is brought within the limited time, the award of the Board shall be final and binding.
3. Hunt brought the Louisiana suit on December 18, 1940. His accident occurred on May 25, 1939, payments for which began on June 9, 1939 by petitioner's insurer; the payments continued until Octoher 26, 1940 or thereabouts when Hunt's attorneys informed respondent that they were going to bring the Louisiana suit. Disregarding adequate notice of the Texas board's hearing, Hunt did not attend, and on December 3, 1940 a decision was made from which Hunt did not appeal.
4. La. Gen. Stat. Ann. (Dart, 1939) §§ 4391 through 4434.
5. Hunt v. Maguolia Petroleum Co., —— La. App. ——, 10 So. (2d) 109 (1942).

entitled, under the full faith and credit clause,[6] to the same recognition in a sister state; since Texas held such an award comparable to a judgment of a court,[7] Louisiana must render it like treatment. Magnolia Petroleum Co. v. Hunt, 64 Sup. Ct. 208 (1943). (Justices Black, Douglas, Murphy, and Rutledge dissenting.)[8]

By reason of the interstate character of modern business and employment thereunder, it frequently occurs that an employee contracts for work in one state and is subsequently injured or killed in the course of his employment in a second state. The problem then arises as to which state's compensation act[9] should apply,[10] since most of the acts cover not only injuries within the state but also injuries beyond the state when the contract was made within the state; this latter type of coverage is often spoken of as the "extra-territorial" application of the acts. The bases adopted by the courts for the application of one act or the other are threefold: (1) a contract theory, (2) a tort theory, and (3) a theory of statutory regulation of the status of employment.[11] The idea of status is now dominant in most jurisdictions;[12] by the very token of this, the action brought by the em-

6. U. S. Const. Art. IV, § 1: "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State; and the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof." See also the supplemental acts of Congress: 1 Stat. 122 (1790), as amended, 2 Stat. 298 (1804), 28 U.S.C.A. § 687 (1928).

7. Middlebrook v. Texas Indemnity Ins. Co., —— Tex. Civ. App. ——, 112 S.W. (2d) 311 (1937), wherein the court said at 315, " . . . our courts have uniformily held that the award of the [workmen's compensation] board has all of the force and effect of a judgment, and is binding on all parties, unless and until legally set aside." Accord, Traders & General Ins. Co. v. Baker, —— Tex. Civ. App. ——, 111 S.W. (2d) 837, 839-840 (1937); Ocean Accident & Guarantee Corp., Ltd. v. Pruitt et al., —— Tex. Comm. App. ——, 58 S.W. (2d) 41, 45 (1933).

8. The majority included Mr. Justice Jackson only by a concurring opinion. Instant case at 217. He founded his opinion on the basis of the result of Williams et al. v. State of North Carolina, 317 U.S. 287 (1942), which held that North Carolina must give full faith and credit to a Nevada judgment of divorce; in deference to that decision, Justice Jackson preferred not to dissent in the Magnolia case as he did in the Williams suit, id. at 311.

9. Forty-six states had workmen's compensation acts in 1936. Dodd, "Administration of Workmen's Compensation" (1936) 28. In 1939 Arkansas adopted such an act. Ark. Acts 1939, No. 319, p. 777 et seq. Mississippi remains the lone state without an act.

10. It should be noted that no choice of act is indicated by the Restatement, "Conflict of Laws" (1934), as between the state of contract (§ 398) and the state of injury (§ 399); see also § 402.

11. Goodrich, "Handbook of the Conflict of Laws" (1938) 241; Restatement, "Conflict of Laws" (1934) "introductory note" to Workmen's Compensation at 485; Dunlap, "The Conflict of Laws and Workmen's Compensation" (1935) 23 Calif. L. Rev. 381, 382-383.

12. Alaska Packers Ass'n v. Industrial Accident Comm. of California et al., 294 U.S. 532, 541 (1935), in which Justice Stone stated that " . . . the liability under workmen's compensation acts . . . is

ployee is neither tort nor contract but a "statutory hybrid" to which orthodox conflict theories are inapplicable.[13]

That the Louisiana Workmen's Compensation Act covered Hunt's Texas injury is explicit in the terms of its act;[14] but that the Texas Act applied to Hunt is equally manifest.[15] Therefore he had the possibility of a recovery in either state. Perchance because he was then hospitalized in Texas, Hunt voluntarily proceeded and obtained an award under the act of that state.

It should be observed that the Louisiana court, in Hunt's second action, expressly conceded " . . . that all proceedings before that [Texas] Board and the awards made by it have the same force and effect as proceedings before and judgments rendered by courts of competent jurisdiction in that state."[16] But the Louisiana court rebutted this result by saying, in substance, that it would pay no attention to what Texas held, and that since Hunt's contract and domicile were established in Louisiana, Louisiana's "interest" in Hunt was "great" enough to allow him to recover under its act.[17] For such reasoning the Louisiana court resorted to the Alaska Packers Association case,[18] in which it was asserted that the Supreme Court has often recognized " . . . that there are some limitations upon the extent to which a state will be required by the full faith and credit clause to enforce even the judgment of another state, in contravention of its own statutes or policy."[19] However, had the Louisiana court perused further into the Alaska case, it would have found that the Supreme Court said it would resolve for itself the limits one state may impose as to rights obtained in another state.[20] Thus, up to the date of the instant case, the United States Supreme Court has ex-

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imposed as an incident of the employment relationship, as a cost to be borne by the business enterprise, rather than as an attempt to extend redress for the wrongful act of the employer."

13. Note (1939) 34 Ill. L. Rev. 226.
14. La. Gen. Stat. Ann. (Dart, 1939) § 4393(3) which states: "Every contract of hiring . . . between an employer and an employee engaged in any trade . . . specified . . . shall be presumed to have been made subject to the provisions of this act, unless there be . . . an express statement . . . that the provisions of this act . . . are not intended to apply . . . . "
15. Texas Statutes (Vernon, 1936) art. 8306, § 3 (b), which provides: "If an employee . . . sustains an injury in the course of his employment, he shall be compensated by the association . . . if his employer is a subscriber at the time of the injury."
16. Hunt v. Magnolia Petroleum Co., —— La. App. ——, 10 So. (2d) 109, 113 (1942).
17. Id. at 114.
18. Alaska Packers Ass'n v. Industrial Accident Comm. of California et al., 294 U.S. 532 (1935).
19. Id. at 546.
20. Id. at 547, where in effect it is stated that the limits by which the statute of one state may modify or deny rights asserted under another's statute presents a question under the full faith and credit clause which the United States Supreme Court, upon review of a state court's judgment, must determine for itself.

clusively determined the extent of the application of the full faith and credit clause.[21]

To the extent that the Supreme Court, in the case at bar, releases itself from answering the questions of (1) whether or not a state has "sufficient interest" in an employee to award him compensation, and (2) whether or not that state must give full faith and credit to a prior award of another state, a step is taken to make law out of chaos. Heretofore, to determine these answers in a final sense, a review of the "circumstances" of the injured employee and of the "governmental interest" of the states concerned was required in each case to be taken to the Supreme Court.[22]

In addition, the Supreme Court did not here limit the loci where an award may be obtained, but it did say that if an award was granted under an act whereby such award became final, then that award was entitled to full faith and credit and was, therefore, res judicata in an action under a second state's act. Moreover, full faith and credit requires that "not some, but full" faith and credit be given.[23]

The prevailing view of rejecting pleas of res judicata and estoppel as to the first state's award[24] was followed by the Louisiana court. Under this view an action could be brought in the second state, notwithstanding the fact that an award was made in the first state, but the amount already received under the latter's act would be allowed as a credit.[25]

The minority view denies a second recovery usually on the grounds of election, estoppel, or res judicata.[26]

It is significant that most common among the workmen's compensation cases is one in which the acts of the states of contract and

21. Williams et al. v. State of North Carolina, 317 U.S. 287, 302 (1942); Pink v. A.A.A. Highway Express, Inc. et al., 314 U.S. 201, 210 (1941); Pacific Employers Ins. Co. v. Industrial Accident Comm. et al., 306 U.S. 493, 502 (1939); Titus v. Wallick, 306 U.S. 282, 291 (1939); Milwaukee County v. M. E. White Co., 296 U.S. 268, 274 (1935).

22. Alaska Packers Ass'n v. Industrial Accident Comm. of California et al., 294 U.S. 532, 547 (1935); Bradford Electric Light Co., Inc. v. Clapper, Adm'x, 286 U.S. 145, 164 (1932). It might be pointed out that the dissenting opinions rely on the "governmental interest" Louisiana had in the instant case; Justice Douglas at 217, and Justice Black at 219, 221.

23. Davis v. Davis, 305 U.S. 32, 40 (1938); Haddock v. Haddock, 201 U.S. 562, 567 (1906).

24. Migue's Case, 281 Mass. 373, 183 N.E. 847 (1933); Miller v. National Chair Co. et al., 129 N.J.L. 98, 28 A. (2d) 125 (1942); Anderson v. Jarrett Chambers Co., Inc. et al., 210 App. Div. 543, 206 N.Y. Supp. 458 (3rd Dept. 1924); Price v. Horton Motor Lines, Inc. et al., 201 S.C. 484, 23 S.E. (2d) 744 (1942); Salvation Army et al. v. Industrial Comm. et al., 219 Wis. 343, 263 N.W. 349 (1935).

25. Restatement, "Conflict of Laws" (1934) § 403.

26. Ritenour v. Creamery Service, 19 N.J.Misc. 82, 17 A. (2d) 283 (Dept. of Labor 1941); Hughey v. Ware et al., 34 N.M. 29, 276 Pac. 27 (1929); Minto v. Hitchings & Co. et al., 204 App. Div. 661, 198 N.Y. Supp. 610 (3rd Dept. 1923); De Gray v. Miller Bros. Construction Co., Inc. et al., 106 Vt. 259, 173 Atl. 556 (1934).

injury are variously asserted by the plaintiff and defendant depending on the circumstances. As to this situation the Supreme Court made no decision; its holding affects only the circumstance in which there has been a "prior" determination, as existed in the instant case.[27] But that other of the states, by statute or by judicial decision, have regarded an unappealed compensation award as final is evident.[28]

The majority opinion relied heavily upon the decision of the Schendel-Elder cases[29] to reach the holding in the instant case.[30] In the former suits, actions were brought in Minnesota by two employees under the Federal Employers Liability Act, which act, to be applicable, required the employer and employees to be engaged in interstate commerce at the time of injury or death. The railway pleaded in bar to these suits previous determinations made under the

27. See note 7 supra. The legal writing has in the past been contrary to the decision in the instant case. 2 Beale, "A Treatise on the Conflict of Laws" (1935) § 403.1; Dodd, "Administration of Workmen's Compensation" (1936) 819-820; Goodrich, "Handbook of the Conflict of Laws" (1938) 243, 244; Restatement, "Conflict of Laws" (1934) § 403; Dunlap, "The Conflict of Laws and Workmen's Compensation" (1935) 23 Calif. L. Rev. 381, 396-397; Dwan, "Workmen's Compensation and the Conflict of Laws" (1927) 11 Minn. L. Rev. 329, 345; id. (1935) 20 id. 19, 41-43; Note (1937) 50 Harv. L. Rev. 1119; cf. Stumberg, "Principles of Conflict of Laws" (1937) 195-196; Angell, "Recovery Under Workmen's Compensation Acts for Injuries Abroad" (1918) 31 Harv. L. Rev. 619, 627; Note (1935) 44 Yale L. J. 867, 873.

28. Magma Copper Co. v. Naglich et al., ——Ariz.——, 131 P.(2d) 357, 360 (1942); McIntyre et al. v. Standard Oil Co. of N.Y., Inc., 126 Conn. 491, 12 A. (2d) 544, 545-546 (1940); Conn. Gen. Stat. (1930) § 5251; Hartford Accident & Indemnity Co. et al. v. Camp, ——Ga. App.——, 26 S.E. (2d) 679, 681 (1943); Ga. Code (1933) § 114-710; Swift & Co. v. Industrial Comm. et al., 381 Ill. 77, 44 N.E. (2d) 842, 844 (1942); Ill. Rev. Stat. (Bar Ass'n Ed., 1943) c. 48, § 156 (f); Thompson et al. v. A. J. Thompson Stone Co., 81 Ind. App. 442, 449-450, 144 N.E. 150, 152-153 (1924); Galvin v. Brown, 71 Ind. App. 30, 34, 121 N.E. 447, 448 (1919); Ind. Stat. Ann. (Burns, 1933) § 40-1512; Iowa Code (Reichman, 1939) §§ 1452, 1465; Dolner v. Peter Kiewit & Sons Co., ——Neb. ——, 9 N.W.(2d) 483, 484 (1943); Laws of Neb. (1935) c.57, § 13 (4); Hull v. Hercules Powder Co. et al., 20 N.J. Misc. 168, 26 A. (2d) 164, 166 (Sup. Ct. 1942); N. J. Rev. Stat. (1937) § 34:15-58; Laws of N.Y. (1938) c. 585, § 17; State ex rel. Waller v. Industrial Comm., ——Ohio App.——, 50 N.E. (2d) 680, 683 (1943); Ohio Gen. Code Ann. (Page, 1937) § 1465-90; Farmers Nat. Grain co. et al. v. Gardner et al., 189 Okla. 375, 116 P. (2d) 971, 972 (1941); Okla. Stat. Ann. (1941) tit. 85 § 29; Flowers v. Liggett & Myers Tobacco Co. et al., 145 Pa. Super. 230, 20 A. (2d) 856, 863. (1941); Pa. Stat. (Purdon, 1936) tit. 77, § 833; Le Bire v. Dep't of Labor & Industries et al., 14 Wash. (2d) 407, 128 P. (2d) 308, 312 (1942); Wash. Rev. Stat. Ann. (Remington, 1932) § 7697; Harris v. State Compensation Comm'r et al., ——W. Va.——, 25 S.E.(2d) 190, 191 (1943); W. Va. Code Ann. (Michie, Sublett, and Stedman, 1943) § 2545.

29. Chicago, R. I. & Pacific Ry. v. Schendel, Adm'r; The Same v. Elder, 270 U.S. 611 (1926).

30. Instant case at 215.

compensation act of Iowa which held that the employees were engaged in intrastate commerce, and by that reason could recover under the Iowa Act. For one employee the Iowa Compensation Commission made an award which was sustained on appeal to the Iowa District Court. For the other employee the Commission made an award which was not yet final since the appeal to the Commission was pending. The Supreme Court held that the final determination on appeal to the Iowa court which decided that the first employee was engaged in intrastate commerce was a judgment entitled to full faith and credit, and therefore res judicata; also, that the appeal was still pending for the second employee, so his award was not final and not entitled to full faith and credit. From this decision it is clear that final judicial action was taken by an Iowa Court; the Supreme Court left unanswered the problem present there, and here, of whether or not the final award of a compensation commission is per se entitled to full faith and credit.[31]

As an ultimate solvent for the conflict problems present under forty-seven different workmen's compensation acts,[32] several writers have suggested that a uniform act should be adopted.[33] In view of the usual obstacles to the passage of a comprehensive uniform act, it might be well to urge the passage of a single uniform provision which would answer the conflict existent in the instant case; such a provision is as follows:

"Extraterritorial effect.—Where the injury occurs outside of this State, the provisions of this act shall apply if the contract of hire was made in this State: Provided, however, That if the injury occurs in a State that has provided workmen's compensation for such employee and his dependents, an election of benefits under the law of such other State shall be held to waive the claimant's rights under the provisions of this act. Such an election to waive the benefits of this act shall be evidenced by an instrument in writing, to be signed by the injured employee, indicating his acceptance of the provisions of the law of such other State, which election shall be binding after approval by the industrial commission of this State. Credit shall be given an employer or insurer under this act for all benefits paid or furnished to an employee or his dependents under whatever assumption made."[34]

31. Stumberg, "Principles of Conflict of Laws" (1937) 196; Dwan, "Workmen's Compensation and the Conflict of Laws" (1927) 11 Minn. L. Rev. 329, 330.

32. See note 8 supra.

33. Dodd, "Administration of Workmen's Compensation" (1936) 821, 824; Dwan, "Workmen's Compensation and the Conflict of Laws" (1927) 11 Minn. L. Rev. 329, 352; Tolle, "Some Comparisons Between State Compensation Acts" (1940) 12 Rocky Mt. L. Rev. 77, 111.

34. Proceedings of the International Ass'n of Industrial Accident Boards & Commissions, "Report of Committee on Workmen's Compensation Legislation" (1933) U.S. Bureau of Labor Statistics Bulletin No. 577, pp. 15-16.