

It was contended further in the principal case that, since the plaintiff acquired his patent from the government, the clause in the Federal Desert Land Act of 1877 (19 Stat. 377, 43 U.S.C.A. § 321 (1928)), "all surplus water . . . upon the public lands . . . shall remain and be held free for the appropriation and use of the public," limited the plaintiff's riparian rights. *Hough v. Porter*, 51 Ore. 318, 95 Pac. 732 (1908); *contra: Still v. Palouse Irr. & Power Co.*, 64 Wash. 606, 117 Pac. 466 (1911); *Cal., San Joaquin & Kings River Canal & Irr. Co. v. Worswick*, 187 Cal. 674, 203 Pac. 999 (1922). The broad interpretation of the Desert Land Act in *Hough v. Porter* was criticized in the principal case, the court preferring to deny the plaintiff relief on the ground that the statute is a reasonable exercise of police power.

Workmen's Compensation—Application of Workmen's Compensation Act to Relief Workers—[Ohio].—Claimant, upon application for relief to the division of charities of the city of Columbus, was given a work card entitling him to do work for the city, for which he was to be paid partly in cash and partly in groceries. While working as a street-cleaner, he was injured. *Held*, the language of the state insurance act (*Ohio Throckmorton's Ann. Code* (1929) §§ 1465-61), which affords protection to every person in the service of any municipality "under any appointment or contract for hire, express or implied" is broad enough to include one whose labor is a condition precedent to relief. *Industrial Comm'n of Ohio v. McWhorter*, 193 N.E. 620 (Ohio 1934).

Relief workers have to a large extent been denied any rights under workmen's compensation acts. Of more than forty states compensating public employees for injuries received in the course of employment, the compensation acts of only eighteen have been interpreted to cover employees on work relief. 49 *American City* 77 (1934). In general relief has been denied on two grounds: first, lack of legislative intent to provide protection for workers such as the claimant; second, absence of a contract of employment. *Hartford Accident & Indemnity Co. v. Department of Industrial Relations*, 139 Cal. App. 632, 34 P. (2d) 826 (1934); *Vaivida v. City of Grand Rapids*, 264 Mich. 204, 249 N.W. 826 (1933); *Village of West Milwaukee v. Indust. Comm'n of Wis.*, 255 N.W. 728 (Wis. 1934.) Thus it has been held that since the underlying theory of workmen's compensation is to charge industry with costs arising out of injuries to laborers, as part of the cost of production, the acts are inapplicable where the purpose in creating the employment is to relieve the hardships of the unemployed. *Hartford Accident & Indemnity Co. v. Department of Industrial Relations*, 139 Cal. App. 632, 34 P. (2d) 826 (1934); see 19 *Ia. L. Rev.* 450, 452 (1934). And it has been held there is no contract for hire because voluntary participation by the municipality is lacking where the municipality is under a statutory duty to extend relief even though the claimant does no work and because the work and relief are not the bargained equivalents for each other, the municipality extending food or money as charity rather than as consideration for work done. *McBurney v. Indust. Acc. Comm'n of Cal.*, 220 Cal. 124, 30 P. (2d) 414 (1934); *In re Moore*, 97 *Ind. App.* 429, 187 N.E. 219 (1933); 19 *Ia. L. Rev.* 450 (1934).

Cases on this problem may be divided into three categories: (1) Cases where work is a condition precedent to relief and where the relief dispensing agency is under no obligation to extend relief. Here the essential elements for a contract of hire are present; there is an exchange of bargained equivalents and voluntary participation on both sides. *McLaughlin v. Antrim County Road Comm'n*, 266 Mich. 73, 253 N.W. 221 (1934);

Porton v. Central (Unemployed) Body for London, [1909] 1 K.B. 173; (2) Cases where work is not a condition precedent to relief but where extra compensation is offered for services rendered. The additional compensation for which the work is performed establishes consideration and voluntary relation. But see *In re Moore*, 187 N.E. 219 (Ind. App. 1933); (3) Cases where the municipality is under an obligation to render relief and where no extra compensation is offered for work. Here there is no contract for hire, and the relief worker cannot be brought within the purview of those compensation acts which require proof of such contracts. *Village of West Milwaukee v. Ind. Comm'n of Wis.*, 255 N.W. 728 (Wis. 1934); cf. 8 So. Cal. L. Rev. 38 (1934). But in those states where the workmen's compensation act is not confined to employees working under contract for hire but includes all public employees or employees under any appointment, failure to prove a contract for services should not be fatal to relief. See *Monterey County v. Rader*, 199 Cal. 221, 248 Pac. 912 (1926) (where recovery was allowed under the workmen's compensation act for the death of an appointed deputy-sheriff). Where the services are voluntary, where useful work is performed and compensation given according to the work done, and where the relief-worker is subject to control, direction and discharge, the elements of a normal employment relation exist, and it would seem recovery should be allowed. *Forest Preserve Dist. of Cook County v. Industrial Comm'n*, 357 Ill. 389, 192 N.E. 342 (1934); *MacLaughlin v. Antrim County Road Comm'n*, 266 Mich. 730, 253 N.W. 221 (1934); *Mayze v. Town of Forest City*, 207 N.C. 168, 176 S.E. 270 (1934); Harper, *The Law of Workmen's Compensation* (2d ed. 1920), §§ 108, 109. Nor does the legislative intent argument present an insurmountable obstacle. The compensation acts were enacted to afford a socially expedient method of caring for the victims of modern industrial hazards by putting the cost of work accidents on industry. Callen, *Some Problems of Workmen's Compensation*, 8 Soc. Sci. Rev. 211 (1934). To apply workmen's compensation here places this element of the cost of work relief on the municipality, which is furnishing relief, rather than on the worker, the recipient of the relief.