
Ammyy Router

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Category:Business software for an
employee's recovery against the employer or
against third persons. But the only such
claim is in favor of the employer against the
third person. Section 40 of the Workmen's
Compensation Law, relating to the rights of
the employer to subrogation, does not make
a new election between the employer and
employee or between the employer and
third person, but simply gives the employer
the right to proceed against the third person
and recover the amount paid or to be paid to

the employee or his dependents. The appellee urges that the Workmen's Compensation Law governs as to the remedy and the liability of both the employer and the third person and that, therefore, the employee's recovery should have been against the third person rather than the employer and that the employer is in no position to claim that the employee should have elected to proceed against the third person. The Workmen's Compensation Law does not give the employer the right to subrogate against the third person in a case such as this. The law that applies is the law of negligence as stated in [in] the Wigenstein case [Wigenstein v. Metropolitan Life Insurance Co., supra], "* * * the law must be taken as it is; and the cause of action, as well as the remedy,

cannot be altered by the law of another state." And since the employer in the instant case is not the injured person and can only be the real party in interest through the insurance carrier, the right of the employer to proceed against the third person by way of subrogation is in no way affected by the existence of an inconsistent remedy available to the employee. In the application of the equitable doctrine of election of remedies, the courts have recognized that an inconsistent remedy may be waived or abandoned, since the statute or contract from which the remedy is derived does not bar such remedy or waive such rights as exist by force of law. The courts, in determining whether such an election is applicable, have *524 held that if the intent of the party is to give up his rights under the

inconsistent remedy it must be apparent in
the pleadings or in 2d92ce491b