CURRENT DECISIONS

AGENCY—WORKMEN'S COMPENSATION—COURSE OF EMPLOYMENT—FREE TRANSPORTATION OF RAILROAD EMPLOYEE.—The decedent, a flagman in the employ of the defendant railroad, at the termination of his actual work for the day, and while waiting on the station platform in order to take a train to his home, fell upon the tracks and was killed. He had been furnished a pass entitling him to ride free of charge upon the defendant's trains whenever he so desired. His dependents brought this action for compensation for his death. *Held,* that the compensation act did not apply, since the death did not arise out of and in the course of his employment. *Kowalek v. N. Y. Cons. Ry.* (1920) 229 N. Y. 489, 128 N. E. 888.

The prevailing rule is that an employee injured while going to or from work in a conveyance furnished by his employer for the purpose, as a part of the contract of employment, is entitled to compensation under the workmen's compensation acts. *Donovan's Case* (1914) 217 Mass. 76, 104 N. E. 431; *Sala v. Tobacco Co.* (1918) 93 Conn. 82, 105 Atl. 346; *contra, Nesbitt v. Foundry Co.* (1920, Minn.) 177 N. W. 131. But a distinction should be recognized between a conveyance provided as a part of the contract, and the mere privilege of free transportation on a public conveyance. *Dominguez v. Pendoia* (1920, Calif.) 188 Pac. 1025. This distinction was recognized in the principal case, which reversed the rule adopted by the appellate division in previous decisions. *Tallon v. Rapid Transit Co.* (1920, App. Div.) 184 N. Y. Supp. 588.

AGENCY—WORKMEN'S COMPENSATION—ILLEGAL EMPLOYMENT OF MINORS—APPLICABILITY OF THE ACT.—The New York Labor Law forbids the employment of a child under sixteen years of age in the operation of certain machines, and also the employment of children between the ages of fourteen and sixteen in any factory without their first obtaining employment certificates. The plaintiff, while employed by the defendant in violation of both of these provisions, received injuries for which he brought this common law action for damages. *Held,* that he could not recover, since his proper remedy was that provided by the workmen's compensation act. *Boyle v. Piano Co.* (1920) 193 App. Div. 408, 184 N. Y. Supp. 374.

The generally accepted rule seems to be that a minor illegally employed does not come within the provisions of the compensation acts. See (1919) 28 YALE LAW JOURNAL, 509; (1918) 31 HARV. L. REV. 803; L. R. A. 1918 F, 209, note. But it has been held in New York that a minor illegally employed may recover under the compensation act. *Ide. v. Faul & Timmins* (1917) 179 App. Div. 567, 166 N. Y. Supp. 858. The Labor Law, however, was designed to protect children incapable of protecting themselves, and it would seem just that an injured child should have the option of relying upon his contract of employment and seeking compensation, or of abrogating it entirely and suing for damages.

CONTRACTS—MUTUAL ASSENT AS AFFECIED BY UNILATERAL MISTAKE.—The plaintiff brought an action for a breach of a contract to sell certain chemicals. The chemical that the plaintiff ordered was worth $30 a pound, while the defendant quoted it at $10 a pound, thinking that what the plaintiff wanted was a powdered form, then worth about the latter price. The defendant offered to furnish the calcine form of the article, which the plaintiff refused to accept; and the defendant refused to supply the higher priced article. *Held,* (two judges *dissenting*) that the plaintiff should recover, since there was no evidence that there was any mutual mistake of the parties. *Independent Trading Co. v. Fougera & Co.* (1920) 192 App. Div. 686, 183 N. Y. Supp. 431.

See COMMENTS, *supra,* p. 506.

CONTRACTS—SUIT AGAINST THE CROWN ON A CONTRACT OF SERVICE.—This action was brought on a written agreement whereby the plaintiff was employed by the Crown as superintendent of industries in Bengal for a period of five years. He was discharged, solely on the ground of medical unfitness, after three years of service under the contract. *Held,* that the plaintiff could not recover. *Denning v. The Sec. of State for India* (1920, K. B.) 37 T. L. R. 138.

In England the rule is well settled that a contract of service with the Crown carries with it an implied condition that the crown has the privilege to dismiss at pleasure. It is even said that if this privilege is expressly waived, still public policy would require that such a waiver be held void. *Dunn v. Reg.* [1896] 1 Q. B. 116. The instant case is in harmony with these views. But the rule in the United States has allowed recovery even where enlisted soldiers are suing for pay. See (1920) 30 YALE LAW JOURNAL, 193. *A fortiori,* this would be true of a contract for services.

CRIMINAL LAW—PROCEDURE—CHANGE OF JUDGES DURING THE TRIAL WITH THE CONSENT OF THE DEFENDANT.—The defendant was indicted on a charge of burglary. After the evidence for the state was in and the defendant had testified the presiding judge became ill and it was necessary to substitute another judge of the same county. No motion for a continuance was made nor was there any request for a repetition of the testimony. By the express consent of the defendant's counsel the trial continued. Although the consent appeared on the record, the change of judges was made a ground for a new trial. *Held,* that there was no prejudicial error. *State v. McCray* (1920, Iowa) 179 N. W. 627.

The instant case is in line with the previous Iowa decisions on the substitution of judges. *State v. Hogan* (1910) 145 Iowa 352, 124 N. W. 178; see (1921) 6 IOWA L. BUL. 118. But the Iowa rule is not universally followed. Some courts hold that in the absence of affirmative proof to the contrary it is presumed not to be prejudicial. *People v. Casselman* (1909) 10 Calif. App. 234, 101 Pac. 693. Others hold it reversible error if the defendant does not consent. *Durden v. People* (1901) 192 Ill. 493, 61 N. E. 317. The federal courts have adopted the most rigid rule and hold it prejudicial, irrespective of the consent of the defendant. *United States v. Freeman* (1915, C. C. A. 2d) 227 Fed. 732.

LEGAL ETHICS—ATTORNEY AND CLIENT—DUTY OF CLIENT TO PAY CONTRACT PRICE WHERE ATTORNEY IS DISCHARGED WITHOUT CAUSE UNDER A CONTRACT FOR A DEFINITE PERIOD.—The defendant entered into an agreement with the plaintiff to employ him as its attorney and legal adviser for one year at a compensation of $5,200 a year, payable $100 weekly. The defendant without cause discharged the plaintiff five months later, and this suit was brought to recover the unpaid balance of the contract for the rest of the year. *Held,* that the plaintiff should recover. *Greenberg v. Remick & Co.* (1920, N. Y.) 129 N. E. 211.

See COMMENTS, *supra,* p. 514.

PROPERTY—DEEDS—DELIVERY IN ESCROW TO GRANTEE.—The plaintiff made a deed and delivered it, but on condition that if he married the grantee she would return it to him. The plaintiff married her, and now upon her death brought this suit against her heirs to set aside the deed as a cloud on his title. *Held,* (three judges *dissenting*) that the deed was invalid, because there had been no legal delivery. *Mitchell v. Clem* (1920, Ill.) 128 N. E. 815.

It may be that equitable considerations influenced the court to try to avoid the general rule that conditions on the delivery of a deed to the grantee can not be shown. But in most jurisdictions it would seem that there was a delivery under the facts of the principal case. See Ballantine, *Delivery in Escrow and the Parol Evidence Rule* (1920) 29 YALE LAW JOURNAL, 826, 833. A better theory for the court's conclusion would have been that this deed, absolute

in form, was in reality a mortgage, and intended only as security for the performance of the marriage promise, and that that fact could be shown by parol evidence.

PROPERTY—RIPARIAN RIGHTS—RIGHT OF ACCESS TO NAVIGABLE WATER.—The defendant railroad acquired title from the state to certain filled-in tide lands abutting upon the East Waterway within the limits of the Port of Seattle. The deed of conveyance did not grant any rights in the waterway. The plaintiff brought this suit to quiet the title of the state and to prevent the defendant from building wharves and other structures in order thereby to secure access to the navigable channel. *Held,* that, under the law of Washington, no proprietary rights vested in the defendant by virtue of its title to the abutting lands. *Port of Seattle v. Oregon & Washington Ry.* (Jan. 31, 1921) U. S. Sup. Ct. Oct. Term, 1920, No. 107.

The court here has reiterated the principle expressed in *Shively v. Bowlby* (1894) 152 U. S. 1, 14 Sup. Ct. 548, that a riparian proprietor's rights in abutting navigable waters or in land under them are entirely a matter of local law. The instant case is a striking example of the survival of the English common-law rule as it existed in the seventeenth century. This is not the view adopted by most of our states. See COMMENTS (1920) 30 YALE LAW JOURNAL, 58.

TAXATION—DOWER EXEMPT FROM FEDERAL ESTATE TAX.—The plaintiff executors sought to recover that portion of the tax assessed by the defendant Collector of Internal Revenue under the Federal Estate Tax Law, sec. 200 (Comp. St. sec. 6336½a ff.), upon the value of the gross estate of the decedent without deduction for the widow's interest in lands in Tennessee and Arkansas. *Held,* that the estate tax is not a tax upon the decedent's property, but upon its transfer by will or descent; and as dower is a legal consequence of the marriage relationship, the widow takes it adversely to the inheritance from her husband. *Randolph v. Craig* (1920, M. D. Tenn.) 267 Fed. 993.

The decision accords with Tennessee and Arkansas decisions as to the right of dower. *Crenshaw v. Moore* (1911) 124 Tenn. 528, 137 S. W. 924; *McDaniel v. Byrkett* (1915) 120 Ark. 295, 179 S. W. 491. And the court's construction of the Federal Estate Tax Law is in harmony with the better view. See (1920) 30 YALE LAW JOURNAL, 199.

TAXATION—STATE MAY TAX "NET INCOME" OF FOREIGN CORPORATION.—Connecticut levied a tax of two per cent upon that proportion of the "net income" of a foreign corporation which the fair cash value of the real and tangible property in the state bore to the fair cash value of all the real and tangible property of the corporation. A Delaware corporation, with its principal manufacturing plant in Connecticut, contested the tax as unconstitutional and showed that by this method of apportionment a tax of two per cent was levied upon forty-seven per cent of the net income of the company, a much larger amount than the income actually derived from business in Connecticut. *Held,* that the tax was valid. *Underwood Typewriter Co. v. Chamberlain* (1920) 41 Sup. Ct. 45.

See COMMENTS, *supra,* p. 512.