CURRENT DECISIONS

CONSTITUTIONAL LAW—SEARCHES AND SEIZURES—INADMISSIBILITY OF DOCUMENTS TAKEN IN VIOLATION OF THE FOURTH AND FIFTH AMENDMENTS.—The defendant was suspected of conspiring to defraud the government through contracts for clothing and equipment. A private in the army, attached to the Intelligence Department, under guise of making a friendly call upon the defendant, gained admission to his office, and, during his absence, without any warrant, seized and carried away documents. These documents were offered in evidence and received over the objections of the defendant. *Held,* upon appeal to the Supreme Court, that the papers were not admissible in evidence, as their use would be in violation of the Fourth and Fifth Amendments to the Constitution. *Gouled v. United States* (1921) 41 Sup. Ct. 261.

The instant case follows the rules laid down previously regarding the construction of the Fourth and Fifth Amendments. *Boyd v. United States* (1886) 116 U. S. 616, 6 Sup. Ct. 524; *Weeks v. United States* (1914) 232 U. S. 383, 34 Sup. Ct. 341. Papers unlawfully seized cannot be used in framing an indictment, and even though the government has returned the papers, it cannot use the information obtained from them. *Silverthorne Lumber Co. v. United States* (1920) 251 U. S. 385, 40 Sup. Ct. 182. For a complete discussion of this subject see Fraenkel, *Concerning Searches and Seizures* (1921) 34 HARV. L. REV. 361.

PERSONS—MARRIAGE—ANNULMENT FOR FRAUD.—The plaintiff sued to annul a marriage for misrepresentation by the defendant husband regarding his honesty. The parties had never cohabited. *Held,* that the marriage should be annulled. *Sheridan v. Sheridan* (1921, Sup. Ct.) 186 N. Y. Supp. 470.

As a general rule, misrepresentation as to character does not go sufficiently to the essentials of the marital relation to constitute a ground for an annulment of the marriage contract. In New York, however, every misrepresentation of a material fact without which the marriage would not have been entered into, authorizes an annulment, providing there are no children. See (1920) 30 YALE LAW JOURNAL, 88; (1920) 34 HARV. L. REV. 218.

PROPERTY—SURFACE WATERS—LOTS MAY BE SO GRADED AS TO SHED WATER ON ADJOINING LAND.—The defendants constructed a sidewalk which conducted the water falling from their building to the rear of their premises, where, uniting with the other surface water, it flowed onto the plaintiffs' land and undermined a retaining wall. *Held,* that the defendant was privileged to improve his land even though the effect was to change the course of the surface water so that it flowed on other land. *Liston v. Scott* (1921, Kan.) 194 Pac. 642.

There is a sharp conflict on the question whether a land owner is privileged to drain surface water from his land on to that of an adjacent owner. According to one theory, an owner need only receive that volume of surface water which would flow from the adjacent land in its natural course. *Johnson v. White* (1904) 26 R. I. 207, 58 Atl. 658; *Steinke v. North Vernon Lbr. Co.* (1921, Ky.) 227 S. W. 274. The modern tendency appears to favor the view that an owner may grade or improve his premises as he will, regardless of its effect upon his neighbor, unless his acts are malicious or unnecessarily injurious. *Aldritt v. Fleischauer* (1905) 74 Neb. 66, 103 N. W. 1084; *Hartle v. Neighbauer* (1919) 142 Minn. 430, 172 N. W. 498. For a collection of the cases see 1 Tiffany, *Real Property* (1920 ed.) sec. 341 (c); see also (1920) 29 YALE LAW JOURNAL, 686.

TAXATION—FEDERAL INCOME TAX—FEDERAL ESTATE TAX DEDUCTIBLE.—The plaintiff, having paid the federal estate tax under the provisions of the War Revenue Act of October 3, 1917 (40 Stat. at L. 300, 324) amending the Act of September 8, 1916 (39 Stat. at L. 756, 777) as amended by the act of March 3, 1917 (39 Stat. at L. 1000, 1002), upon an estate of which they are the executors, paid the federal income tax on that estate, as required by sec. 225 of the Revenue Act of 1918 (40 Stat. at L. 1074), claiming as a deduction the amount paid under the federal estate tax. Upon a refusal to allow the deduction, suit was instituted to recover the amount. *Held,* that the amount paid under the estate tax was deductible from the income tax. *Woodward v. United States* (March 14, 1921) U. S. Ct. of Claims, No. 34734.

The decision may be sustained only by the court's interpretation of sec. 214 of the Revenue Act of 1918, which provides that "there shall be allowed as deductions . . . taxes paid or accrued . . . imposed by the authority of the United States, except income, war profits and excess profits taxes." It is opposed to the theory of the leading case on the subject, that an inheritance tax is not a tax upon the legatee or the corpus of the estate but upon the power of transmitting property by will or descent. *United States v. Perkins* (1895) 163 U. S. 625, 16 Sup. Ct. 1073; *Prentiss v. Eisner* (1920, C. C. A. 2d) 267 Fed. 16. An appeal to the Supreme Court will compel an exact definition of that theory or its practical rejection. See (1920) 30 YALE LAW JOURNAL, 199; Holmes, *Federal Taxes* (1920) 368; (1921) 7 A. B. A. JOUR. 131.

TORTS—NEGLIGENCE—LIABILITY FOR USE OF DANGEROUS AGENCY.—The defendant railroad kindled a fire on its own land for the purpose of burning up dry leaves. The property was near a playground and was crossed by a path which the public were permitted to use at will. Some time after the fire was started, a child, five years old, was discovered in flames on or near the property. The child having died, his administrator brought this action. *Held,* that he should recover, regardless of any implied invitation to the child, because of the defendant's liability for the use of a dangerous agency. *Piraccini v. Director Gen. of Railroads* (1920, N. J.) 112 Atl. 311.

This case is extreme in view of the fact that New Jersey has repudiated the attractive nuisance doctrine and held that a landowner owes no duty to a licensee or trespasser, even though a child, except to refrain from wilfully injuring him. *D. L. & W. Ry. v. Reich* (1898) 61 N. J. L. 635, 40 Atl. 682; *Fleckenstein v. Tea Co.* (1917) 91 N. J. L. 145, 102 Atl. 700. The rule in *Rylands v. Fletcher* (1868) L. R. 3 H. L. 330, has not been generally followed in this country and the dangerous agency doctrine is usually not carried so far. See (1920) 30 YALE LAW JOURNAL, 200; (1916) 25 *id.* 679. For a discussion of the real problem involved in cases like the instant one see COMMENTS (1919) 29 *id.* 223.

TORTS—PRENATAL INJURIES—INFANT ALLOWED TO RECOVER.—While the plaintiff was *en ventre sa mère,* his mother was injured due to the defendant's negligence in leaving a coal hole uncovered; and the plaintiff, born eleven days later, was thereby permanently injured. The lower court overruled the defendant's demurrer to the complaint. *Held,* that the judgment should be affirmed. Clarke, P. J. and Page, J., *dissenting. Drobner v. Peters* (1921) 194 App. Div. 696, 186 N. Y. Supp. 278.

The instant case is notable in that it seems to be the first one to allow recovery under these circumstances. See 14 R. C. L. 218; 45 L. R. A. (N. S.) 625, note. For a discussion recommending recovery if, at the time of the injury, the child could have been viable see COMMENTS (1917) 26 YALE LAW JOURNAL, 315. For a discussion of the decision of the lower court see NOTES (1921) 34 HARV. L. REV. 549.