CURRENT DECISIONS

ADMIRALTY—ACTION FOR MARITIME TORT MAY BE BROUGHT AT COMMON LAW.—While the plaintiff, a longshoreman, was working on board the defendant's vessel in the North River, he was seriously injured by falling through a hatchway which had been negligently left open by his foreman. The defendant had complied with the provisions of the New York Workmen's Compensation Law (Laws, 1914, ch. 41). The trial court granted the defendant's motion to dismiss the case on the ground that the plaintiff had failed to prove facts sufficient to constitute a cause of action. *Held,* that there should be a new trial. *Kennedy v. Cunard Co.* (1921) 197 App. Div. 459, 189 N. Y. Supp. 402.

There can be no recovery for a maritime tort under a state workmen's compensation statute. *Southern Pacific Co. v. Jensen* (1917) 244 U. S. 205, 37 Sup. Ct. 524; *Knickerbocker Ice Co. v. Stewart* (1920) 253 U. S. 149, 40 Sup. Ct. 438. The plaintiff was remitted to the remedies he would have had if no compensation act had existed, and one of those remedies was an action at common law in a state court. For a comprehensive discussion of the problems of jurisdiction here involved, see COMMENTS (1917-18) 27 YALE LAW JOURNAL, 255, 924; (1919) 28 YALE LAW JOURNAL, 835; (1920) 29 YALE LAW JOURNAL, 925.

CONFLICT OF LAWS—ENFORCEMENT OF FOREIGN JUDGMENTS.—The claimant obtained a judgment in Malta against the estate of a testator, declaring that the testator was the father of the claimant's illegitimate child, and ordering the indefinite payment of an annuity to her out of his estate. In the English administration of the testator's estate the claimant sought to enforce payment of the arrears. *Held,* that the claim should be denied (1) because it was based upon facts which would give rise to no cause of action in England, being contrary to public policy, and (2) because the judgment was not final, being subject to modification according to the necessities of the child. *Macfarlane v. Macartney* [1921] 1 Ch. 522.

The decision is in accord with the requisites of the English courts in the enforcement of foreign judgments. See Lorenzen, *The Enforcement of American Judgments Abroad* (1920) 29 YALE LAW JOURNAL, 268, 289. The American courts do not look upon the rights of illegitimate children with such disfavor. See (1919) 28 YALE LAW JOURNAL, 518. In this country, too, a judgment for alimony in another state is final as to past installments *actually* due, and as such is entitled to full faith and credit under the Federal Constitution. *Sistare v. Sistare* (1910) 218 U. S. 1, 30 Sup. Ct. 682.

EVIDENCE—ADMISSIBILITY OF SKULL OF DECEASED IN MURDER TRIAL.—The defendant was convicted of murder in the second degree. At the trial, the skull of the deceased, substantially in the same condition as when it was amputated from the body, was admitted in evidence to furnish an ocular inspection to the jury of the places of exit and entry of the bullet that produced death. The defendant assigned its admission as error on the ground that it tended to improperly influence the jury. *Held,* that there was no error in the admission of the skull as evidence. *Larmon v. State* (1921, Fla.) 88 So. 471.

The decision follows the rule applied in the great majority of American courts. It is generally held that the skull of a deceased is admissible in evidence when it furnishes an ocular demonstration to the jury, helpful to them in arriving at their verdict. *Thrawley v. State* (1899) 153 Ind. 375, 55 N. E. 95; *State v. Mariano* (1914) 37 R. I. 168, 91 Atl. 21; *State v. Rodriguez* (1917) 23 N. M. 156, 167 Pac. 426; Wharton, *Criminal Evidence* (10th ed. 1912) sec. 518 C; 12 L. R. A.

(N. S.) 238; see *contra, Self v. State* (1907) 90 Miss. 58, 43 So. 945 (almost the only exception). In most instances objection is made, but there is no real ground for apprehension. See 2 Wigmore, *Evidence* (1904) sec. 1157.

JURY—WOMEN ELIGIBLE FOR JURY SERVICE—EFFECT OF NINETEENTH AMENDMENT.—The State appealed from a judgment of the court below quashing an indictment for murder because one of the grand jury was a woman. A Pennsylvania Statute (Pa. Sts. 1920, sec. 12861) required the selection of a jury from all the qualified electors. *Held,* that the adoption of the Nineteenth Amendment to the Federal Constitution making women electors qualified them to act as jurors. *Commonwealth v. Maxwell* (1921, Pa.) 114 Atl. 825.

At common law women were not eligible as jurors. 3 Blackstone, *Commentaries* *362. Their present status as such is entirely statutory. The instant decision seems to assume that jury service is a *privilege* which accompanies that of voting. See also *People v. Barltz* (1920) 212 Mich. 580, 180 N. W. 423. The better view seems to be that jury service is a *duty* not attendant upon the privilege of voting but imposed by specific legislative enactment. It has been so held in Massachusetts, New Jersey, and New York. *In re Opinion of the Justices* (1921, Mass.) 130 N. E. 685; *State v. James* (1921, N. J.) 114 Atl. 553; *In re Gilli* (1920, Sup. Ct.) 110 Misc. 45, 179 N. Y. Supp. 795; see (1919) 28 YALE LAW JOURNAL, 515.

STATUTES—VOID BECAUSE OF VAGUENESS—EFFECT ON LEVER ACT OF PRE-EXISTING CONTRACT.—In September 1917 the defendant agreed to buy from the plaintiff a quantity of oleum at $45.00 per ton, deliveries to be made over a period extending somewhat beyond June, 1918. In June, the President of the United States, acting under the authority apparently given him by certain sections of the Lever Act of August 10, 1917 (40 Stat. at L. 276, 277), fixed the maximum price of oleum at $32.00 per ton. This act declared it to be unlawful "to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries," and authorized the President "to make such regulations . . . . as are essential effectively to carry out the provisions of this act." *Held,* that the plaintiff could recover, because (1) the act was too vague to impose any duty, and (2) it could, in no event, apply to then existing contracts. *Standard Chemical & Metals Corp. v. Waugh Chemical Co.* (1921) 231 N. Y. 51, 131 N. E. 566.

In dealing with criminal prosecutions under the Lever Act the Supreme Court of the United States held that the prohibition quoted above was too vague to be intelligible. *Weeds v. United States* (1921) 41 Sup. Ct. 306. In the instant case, the court, in holding this opinion applicable to a civil suit as well, said (speaking through Cardozo, J.): "A prohibition so indefinite as to be unintelligible is not a prohibition by which conduct can be governed. It is not a rule at all; it is merely exhortation and entreaty." And since the act was unintelligible in its inception, the promulgation by the President of an order fixing prices was unavailing, for there was nothing for him to put into effect. This holding seems clearly sound and in accord with what little case law there is on the subject. 25 R. C. L. 810.

TAXATION—INHERITANCE TAX—DEDUCTIBILITY OF FEDERAL ESTATE TAX.—The Federal Estate Tax, Act of Sept. 8, 1916 (39 Stat. at L. 777), was assessed against the estate of plaintiff's testator. The executors paid the tax, but claimed that the amount should be deducted from the value of the estate in assessing the tax under the provisions of the Rhode Island Inheritance Tax (Pub. Laws, 1916, ch. 1339). The Board of Tax Commissioners disregarded this claim, and suit was brought. *Held,* that the payment of the Federal Estate Tax could not be deducted from the value of the estate in assessing the Rhode Island State Tax. Sweeney, J., *dissenting. Hazard v. Bliss* (1921, R. I.) 113 Atl. 469.

The case does not seem to be in accord with the general trend of authority in other states. *Corbin v. Baldwin* (1917) 92 Conn. 99, 101 Atl. 834; *In re Roebling's Estate* (1918) 89 N. J. Eq. 163, 104 Atl. 295; *People v. Pasfield* (1918) 284 Ill. 450, 120 N. E. 286. In New York, however, the decisions are in accord with the principal case. *Matter of Sherman* (1917) 179 App. Div. 497, 166 N. Y. Supp. 19. Pennsylvania has declared by statute that the Federal Estate Tax is not a deduction. Laws, 1919, 521. The more general view that the tax is deductible seems to be fairer; otherwise the legatee is forced to pay to the state a tax on something which he never received. The varied results reached in determining this question are to a large extent due to the different theories of inheritance taxes which are involved. Gleason and Otis, *Inheritance Taxation* (2d. ed. 1919) 383, 556; COMMENTS (1918) 27 YALE LAW JOURNAL, 1055. In regard to the deductibility of the Federal Estate Tax and state inheritance taxes in the assessment of the Federal Income Tax, see (1920) 30 YALE LAW JOURNAL, 199; (1921) 30 YALE LAW JOURNAL, 770.

TORTS—BAILMENTS—LIABILITY OF BAILOR OF DEFECTIVE MACHINE TO THIRD PARTY.—The defendant, an owner of a public garage, rented to a third party an automobile, the steering apparatus of which was in a defective state of repair. As a consequence the machine became unmanageable while being driven along the public highway and ran into the plaintiff's automobile. The plaintiff brought suit alleging that the defendant negligently rented the automobile knowing, or by the exercise of reasonable care and diligence should have known, that it was in an unsafe condition. The defendant demurred on the ground that the facts stated gave rise to no duty owing from the defendant to the plaintiff. *Held,* that, as automobiles are in constant use on public highways, a garage-keeper, who lets them for hire, owes a duty to the public to use ordinary care to see that the automobile has its steering-gear in a reasonably safe condition. *Collette v. Page* (1921, R. I.) 114 Atl. 136.

The instant case seems to be in line with the recently developed tendency to depart from the older view that liability in such cases extends only so far as privity of contract can be found. *MacPherson v. Buick Motor Co.* (1916) 217 N. Y. 382, 111 N. E. 1050. However, it assumes an aspect of originality in the application of this development to the person of a bailor instead of a manufacturer. It also follows a novel view that although an automobile is not *prima facie* an instrumentality dangerous *per se,* an automobile may be so out of repair as to fall within that classification. *Texas Co. v. Veloz* (1913, Tex. Civ. App.) 162 S. W. 377. But see *Johnson v. Bullard Co.* (1920) 95 Conn. 251, 111 Atl. 70 (holding that actual knowledge of the defect is necessary to a recovery). For a discussion and collection of the cases, see COMMENTS (1921) 30 YALE LAW JOURNAL, 607.

WILLS—FUTURE INTEREST—POSTPONEMENT OF POSSESSION OF ABSOLUTE GIFTS.—A legatee filed a bill asking that a provision in a will, postponing the distribution of vested gifts until after "the liquidation of the indebtedness" of a certain corporation of which the testator was a principal stockholder, be declared void, and that possession of the legacies be given immediately. *Held,* that the provision postponing the possession of the gifts be disregarded. *Canda v. Canda* (1920, N. J. Eq.) 113 Atl. 503.

The decision rests on the ground that the contingency upon which possession of the legacies was to be given was so uncertain as to be unreasonable. The court seems to indicate that it favors the English rule, which holds that any direction to withhold the possession and enjoyment of an absolute gift is void because against public policy. *Saunders v. Vantier* (1841, Ch.) 4 Beav. 115. In the United States the authorities are in conflict. For a discussion supporting the view that such provisions are valid, see COMMENTS (1920) 29 YALE LAW JOURNAL, 557.