

CURRENT DECISIONS

ADMIRALTY—STATE JURISDICTION IN TORT.—The claimant was employed as a pipe fitter on a ship. While going down a ladder from the deck to the wharf below he fell into the water, breaking his leg by striking against a "bumper log" extending from and fastened to the wharf. The claimant proceeded under the Workmen's Compensation Act and received an award. The defendant appealed. *Held*, that the state court had jurisdiction. *Lermond's Case* (1923, Me.) 119 Atl. 864.

The case is well within the authorities and illustrates that the controversy under the decision in *Southern Pacific Co. v. Jensen* (1917) 244 U. S. 205, 37 Sup. Ct. 524, arises only when the injury is sustained on navigable waters. See *The Plymouth* (1865, U. S.) 3 Wall. 20; *Berry v. Donovan* (1921) 120 Me. 457, 115 Atl. 250; (1923) 8 CORN. L. QUART. 360. For discussion of *Southern Pacific Co. v. Jensen*, *supra*, see COMMENTS (1917) 27 YALE LAW JOURNAL, 255; COMMENTS (1918) 27 *ibid.* 924.

BANKRUPTCY—DEFECT OF ORIGINAL PETITIONING PARTIES—SUBSEQUENT JOINDER OF INTERVENING CREDITORS.—Three creditors filed a petition against a debtor under secs. 3 (b) and 59 (b) of the Bankruptcy Act, requiring three petitioners having provable claims. Nine months later two other petitioning creditors were joined under sec. 59 (f). One of the original petitioning creditors did not in fact have a provable claim. The plaintiffs, opposing creditors, contested the petition, claiming also a lien on the debtor's funds by attachment within four months. The debtor was adjudged a bankrupt and the opposing creditors appealed. *Held*, that the judgment be affirmed. *Canute Steamship Co. v. Pittsburgh* (Nov. 12, 1923) U. S. Sup. Ct., Oct. Term, 1923, No. 72.

The Supreme Court expressly adopts the rule of the lower courts that where the petition is sufficient on its face, an amendment will be allowed adding to the number of petitioning creditors even after the four month period and that such amendment relates back to the date of the petition. *In re Plymouth Cordage Co.* (1905, C. C. A. 8th) 135 Fed. 1000; *In re Charles Town Light & Power Co.* (1910, N. D. W. Va.) 183 Fed. 160; 1 Collier, *Bankruptcy* (13th ed. 1923) 663; *cf. In re Stein* (1904, E. D. Pa.) 130 Fed. 377 (petition insufficient on face).

CONSTITUTIONAL LAW—EMINENT DOMAIN—CONDEMNATION OF LAND FOR A TOWN SITE.—The United States proposed to erect a reservoir necessitating the flooding of three-fourths of a town in Idaho. An act of Congress authorized the condemnation of suitable land for a new town site, to be plotted and exchanged for the property to be flooded. Act of Mar. 4, 1921 (41 Stat. at L. 1367, 1403). The defendant's land was part of a tract selected for the new town site. From a judgment condemning his land on payment of its value by the United States, the defendant appealed, contending that the taking was for a private use. *Held*, that the judgment of the lower court be affirmed. *Brown v. United States* (Nov. 12, 1923) U. S. Sup. Ct., Oct. Term, 1923, Nos. 97 and 98.

The decision is an illustration of the majority view that public use in relation to the power of eminent domain means a use which will promote public interest and not of necessity a use by the public at large. (1917) 26 YALE LAW JOURNAL, 418; 9 A. L. R. 583, note; see NOTES AND COMMENT (1919) 4 CORN. L. QUART. 64. For a strong *dictum*, but with an equally strong dissent, that under the power of eminent domain land may be taken for a town site, see *Tuttle v. Moore* (1901, Ind. T. C. A.) 64 S. W. 585; NOTES (1902) 15 HARV. L. REV. 399.

CONTRACTS—ASSIGNMENT—EFFECT OF SPECIFIC PROVISION AGAINST ASSIGNMENT.—The defendant issued to its customers profit sharing stamps containing a provision that they were not transferable and were redeemable only by the person to whom originally issued. The plaintiff sued as assignee of the original holders. The lower court gave judgment for the defendant and the plaintiff appealed. *Held*, that the judgment be affirmed. *Sperry & Hutchinson Co. v. Siegel, Cooper & Co.* (1923, Ill.) 140 N. E. 864.

The instant case is in accord with the general rule that the assignment of an instrument containing on its face a provision against transferability creates no rights in the assignee against the maker of the instrument. *Bonds Foster Lumber Company v. Northern Pacific Ry.* (1909) 53 Wash. 302, 101 Pac. 877; *cf. Bitterman v. Railroad Co.* (1907) 207 U. S. 205, 28 Sup. Ct. 91; NOTES (1908) 22 HARV. L. REV. 50. But the assignment may be operative as against third parties. *Portuguese Bank v. Willes* (1916) 242 U. S. 7, 37 Sup. Ct. 3; *Fortunato v. Patton* (1895) 147 N. Y. 277, 41 N. E. 572. By statute in several jurisdictions provisions restricting assignment are made inoperative. *Thomassen v. DeGoey* (1907) 133 Iowa, 278, 110 N. W. 581; *Pond Creek Coal Co. v. Lester* (1916) 171 Ky. 811, 188 S. W. 907. See COMMENTS (1917) 26 YALE LAW JOURNAL, 308.

MANDAMUS—STUDENT'S WRONGFUL EXPULSION FROM PRIVATE EDUCATIONAL INSTITUTION.—The faculty of a private college, without a hearing, expelled a student on the ground of conduct which it deemed undesirable. The lower court denied an application for a peremptory writ of mandamus to compel reinstatement. *Held*, that the denial was correct. *Barker v. Trustees of Bryn Mawr College* (1923, Pa.) 122 Atl. 220.

Mandamus is the proper remedy against a public school from which a student has been wrongfully expelled or denied a degree. *Gleason v. University of Minnesota* (1908) 104 Minn. 359, 116 N. W. 650. In some states it also lies against a private institution. *Baltimore University v. Colton* (1904) 98 Md. 623, 57 Atl. 14; *Harker, Use of Mandamus to Compel Educational Institutions to Confer Degrees* (1911) 20 YALE LAW JOURNAL, 341. But other courts have, as in the instant case, refused the writ because the relation between a student and a private institution is considered purely contractual. *Booker v. G. R. Medical College* (1909) 156 Mich. 95, 120 N. W. 589; *Castleberry v. Tyler Commercial College* (1919, Tex. Civ. App.) 217 S. W. 1112; Ann. Cas. 1912 C, 890, note.

MARRIAGE AND DIVORCE—SUPERVENING LUNACY—ANNULMENT AT SUIT OF SANE PARTY.—The defendant, an incurably insane man, married the plaintiff, who was unaware of his condition. He was not guilty of fraudulent misrepresentation or concealment. There was issue. Upon discovering his condition, the plaintiff ceased cohabitation; and later sued for annulment. *Held*, that the marriage should be annulled. *Whitney v. Whitney* (1923, Spec. T.) 201 N. Y. Supp. 227.

The result in the rare cases in which it is reached, seems to distinguish marriage from contracts generally. *Daniele v. Margulies* (1923, N. J. Ch.) 121 Atl. 772; *Chapline v. Stone* (1898) 77 Mo. App. 523. Public health is a sufficient justification for the rule. *Liske v. Liske* (1912, Spec. T.) 135 N. Y. Supp. 176. The legitimacy of any children is sometimes expressly preserved by statute. N. Y. C. P. A. 1921, art. 67, sec. 1135; *cf.* 2 N. J. Comp. Sts. 1911, p. 2022.

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT—POLICEMAN.—A city policeman was killed in the exercise of his duties. His administrator sued the city for damages under the provisions of the Workmen's Compensation Act. *Held*, that the policeman was an employee within the Act and that the city was

liable in damages for his death. *Fahler v. City of Minot* (1923, N. D.) 194 N. W. 695.

Public officers, since they partake of the sovereignty of the municipality in its governmental capacity, are generally denied recovery under Workmen's Compensation Acts. *Ryan v. New York* (1920) 228 N. Y. 16, 126 N. E. 350; *Chicago v. Industrial Commission* (1920) 293 Ill. 188, 127 N. E. 351; (1920) 20 COL. L. REV. 230; (1920) 34 HARV. L. REV. 91; (1914) 12 MICH. L. REV. 702; 10 A. L. R. 201, note. The instant case is in accord with a small minority representing what seems the better view. *Segale v. St. Paul Ry.* (1921) 148 Minn. 40, 180 N. W. 777; *McCarl v. Houston* (1919) 263 Pa. 1, 106 Atl. 104; cf. *Kiel v. Industrial Commission* (1916) 163 Wis. 441, 158 N. W. 68.

TRUSTS—CHARITABLE PURPOSE—CY-PRÈS DOCTRINE.—The testator devised real property in trust for the plaintiff to be used as a site for a church, providing that it should revert to his heirs if not so used. The property became inadequate in size, and the plaintiff petitioned that the defendants as trustees be compelled to sell the property and to purchase another site for the use of the plaintiff. The lower court refused the relief and the plaintiff appealed. *Held*, that the judgment be affirmed as the *cy-près* doctrine could not be applied. *First Congregational Soc. of Bridgeport v. City of Bridgeport* (1923) 99 Conn. 22, 121 Atl. 77.

When it is shown that the donor had a general charitable intent, *cy-près* will apply. *Richards v. Wilson* (1916) 185 Ind. 335, 112 N. E. 780; *Bristol Baptist Church v. Conn. Baptist Convention* (1923) 98 Conn. 677, 120 Atl. 497; 3 Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 1027. See NOTES (1917) 4 VA. L. REV. 224. Otherwise if it appears that the gift was for a particular purpose only. *McAuley v. Wilson* (1828, N. C.) 1 Dev. Eq. 276; *Bowden v. Brown* (1908) 200 Mass. 269, 86 N. E. 351; Perry, *Trusts and Trustees* (6th ed. 1911) sec. 727; (1921) 19 MICH. L. REV. 335; (1923) 9 VA. L. REV. 230. On the facts in the present case some courts might have found a general charitable intent. See NOTES (1920) 33 HARV. L. REV. 598.

WILLS—UNATTESTED DOCUMENTS—INCORPORATION BY REFERENCE.—The testator left a will in which he bequeathed \$5,000 to his executrix and executors to be distributed according to his wishes as expressed in a sealed letter to be found with the will. The sealed letter, apparently written later on the same day, was found with the will. The complainant, the beneficiary under the letter, filed this bill to compel payment by the executors. *Held*, that an unattested document making a disposition of property cannot be incorporated in the will by reference. *Murray v. Lewis* (1923, N. J. Eq.) 121 Atl. 525.

It is doubtful whether the will in the instant case satisfied the usual requirement that an unattested document to be incorporated must be an existing document, and that the will must clearly refer to it as such. But the court adopts the minority view represented by Connecticut and New York and wholly rejects the doctrine of incorporation by reference. *Hatheway v. Smith* (1907) 79 Conn. 506, 65 Atl. 1058; *In re Emmon's Will* (1906, 1st Dept.) 110 App. Div. 701, 96 N. Y. Supp. 506; *contra*: *Shulsky v. Shulsky* (1916) 98 Kan. 69, 157 Pac. 407; see COMMENTS (1905) 14 YALE LAW JOURNAL, 226; Chaplin, *Incorporation by Reference* (1902) 2 COL. L. REV. 148; NOTES (1911) 11 COL. L. REV. 456; COMMENTS (1918) 27 YALE LAW JOURNAL, 673; (1918) 31 HARV. L. REV. 1170; (1920) 33 *ibid.* 872; 68 L. R. A. 353, note.