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AGENCY—MASTER AND SERVANT—EMERGENCY—LIABILITY OF MASTER ESTABLISHED BY EMPLOYEE'S REQUEST FOR HELP.—The plaintiff, a boy of fourteen, brought an action for personal injuries received while assisting other persons to hold a very heavy box on the end of the defendant's truck. There was conflicting testimony as to whether the driver requested the plaintiff's assistance. *Held,* that if the jury found, on the question properly submitted to them, that the plaintiff in fact was acting in compliance with a request of the driver, then the existing emergency justified the latter in so employing him, but that in such circumstances the defendant was under a duty to instruct the plaintiff. *Lipari v. Bush Terminal Co.* (1920, N. Y.) 193 App. Div. 309.

The existence of an emergency in the defendant's affairs operated to establish the relation of master and servant between himself and the plaintiff irrespective of his consent. The master owes a duty to warn and instruct an infant servant, which is usually capable of being delegated. As no attempt was made to show such a delegation, it would seem that the defendant was correctly held liable for his own negligence. See (1920) 30 YALE LAW JOURNAL, 85.

AGENCY—WORKMEN'S COMPENSATION—ACCIDENT ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT—INJURY RECEIVED ON STEPS OF CANTEEN PROVIDED BY EMPLOYER.—The plaintiff, a girl munitions worker, was employed by the week in a factory where it was required that all employees leave the grounds for an hour at noontime. While returning to work after the noon recess, the plaintiff slipped and fell on the steps of a canteen conducted by the defendants for the exclusive use of their employees. The canteen was situated within the factory enclosure, but it was necessary to go upon the public street in order to gain access to it. For the injury thus received the plaintiff sought to recover compensation from her employer. *Held,* that compensation must be allowed on the ground that the plaintiff was using the means of access provided by her employer from the canteen to her work. Lords Finlay and Dunedin, *dissenting. Armstrong, Whitworth, & Co. v. Redford* [1920] A. C. 757.

This case seems to extend the modern American doctrine. See L. R. A. 1918 F, 907.

CONSTITUTIONAL LAW—CONSTITUTIONALITY OF DECLARATORY JUDGMENT.—A statute of Michigan forbade street railway companies to require motormen and conductors to work more than six days per week, except in certain emergencies. The plaintiff, a non-union conductor, brought an action against the company for a declaration that he was privileged to work more than six days a week. A labor union intervened as defendant, and a declaration was given in favor of the plaintiff in the lower court. *Held,* that the statute was unconstitutional, because it imposed on the court non-judicial duties. Sharpe, J., *dissenting. Anway v. Grand Rapids Ry.* (1920, Mich.) 179 N. W. 350.

See COMMENTS, *supra,* p. 161.

CONSTITUTIONAL LAW—POLICE POWER—VALIDITY OF RESTRICTIVE BUILDING ORDINANCE.—The plaintiff brought a bill in equity to compel the specific performance of a contract to purchase land. The defense was set up that the property was encumbered by a so-called zoning resolution passed pursuant to Laws of New York 1916, ch. 497, which amended the charter of the city of New York and gave to the board of estimate the power to pass resolutions regulating and limiting the height and bulk of buildings to be erected, determining the areas of courts, yards, and other spaces, and regulating and restricting the location of trades and

industries and establishing the boundaries of districts for such purposes. *Held*, that the resolution was valid and did not constitute an encumbrance on the land. *Lincoln Trust Co. v. Williams Bldg. Corp.* (1920) 229 N. Y. 313, 128 N. E. 209.

See COMMENTS, *supra*, p. 171.

CONSTITUTIONAL LAW—POLICE POWER—VALIDITY OF RESTRICTIVE BUILDING ORDINANCE.—Acting under the authority of its charter the borough of Fenwick passed an ordinance requiring of every one to secure a permit from the warden and burgesses before erecting any building in the borough limits. The plaintiff held fishing rights in certain property bordering on Long Island Sound and erected a fish-house upon it without first securing a permit. The borough officials gave him reasonable warning to remove the house, and upon his failure to do so had it removed at a moderate cost. The plaintiff sought injunctive relief and damages. *Held*, that the ordinance was invalid as an unreasonable exercise of the police power. *Ingham v. Brooks* (1920, Conn.) 111 Atl. 209.

See COMMENTS, *supra*, p. 171

CONTRACTS—INDEFINITE PERIOD OF EMPLOYMENT.—The plaintiff agreed to carry the defendant from her home to school at a certain fixed sum per month, specifying no length of time for which the contract should run. The defendant, without notice, discharged the plaintiff during the month and the plaintiff sought to recover a whole month's salary. *Held*, that the plaintiff could not recover, since a hiring which neither expressly or impliedly specified the time which it was to run was a hiring for an indefinite time and could be terminated at will by either party. DeBolt J., *dissenting*. *Crawford v. Stewart* (1919, C. C. 1st) 25 Haw. 226.

The instant case is in accord with the great weight of authority in the United States. *Martin v. N. Y. Life Ins. Co.* (1895) 148 N. Y. 117, 42 N. E. 416; *Christensen v. Pacific Coast Borax Co.* (1894) 26 Ore. 302, 38 Pac. 127. Williston disapproves of the American view and holds with the English courts that such a contract is a contract for the period specified for payment. 1 Williston, *Contracts* (1920) sec. 39; *Moult v. Holliday* [1898] 1 Q. B. 125; *Levy v. Goldhill* [1917] 2 Ch. 297.

CRIMINAL LAW—SPECIFIC INTENT IN STATUTORY ASSAULTS—MISTAKEN IDENTITY AND MISTAKEN AIM.—One Costa quarreled with a fellow-employee named Williams, and threatened to fight it out with him, even if one of them should be killed. On the evening of the next day Costa attacked one Clark, a man of about the same height as Williams, under circumstances that suggested that he had mistaken Clark for Williams. Clark was severely slashed, and an information was brought against Costa, charging him with an intent to assault Clark, under a maiming statute requiring an intent to maim the person injured. *Held*, that the information was properly drawn. *State v. Costa* (1920, Conn.) 110 Atl. 875.

See COMMENTS, *supra*, p. 184.

EQUITY—NUISANCE—UNDERTAKING ESTABLISHMENT IN RESIDENTIAL DISTRICT ENJOINED.—A "Funeral Home" was established in an exclusive residential district of Omaha in spite of the objections of the residents. Sermons, and dirges in the adjoining chapel, blocking up the street, and the depressing atmosphere created, together with a corresponding depreciation in real estate values, were the grounds for the petition. The defendant appealed. *Held*, that the injunction was properly granted. *Beisel v. Crosby* (1920, Neb.) 178 N. W. 272.

An undertaker's establishment is not a nuisance *per se*, but the case seems sound because of the depreciation in value of neighboring property. L. R. A. 1918 A, 829. For decision of a morgue case, see (1919) 29 YALE LAW JOURNAL, 366.

GARNISHMENT—CONTENTS OF SAFETY DEPOSIT BOX ARE SUBJECT TO WRIT.—The plaintiff obtained a court order, pursuant to the service of a writ of garnishment, directing a trust company, as garnishee, to open the safety deposit box of the defendant and deliver its contents to the sheriff, who should take such of the defendant's property as was liable to garnishment. The trust company refused to comply with the order. To open the box the company would have had to use force, no key being available but that of the defendant, who could not be reached. *Held,* that the court had the power to require the garnishee to open the box. *West Cache Sugar Co. v. Hendrickson et al. (Zion's Saving's Bank & Trust Co., garnishee)* (1920, Utah) 190 Pac. 946.

This appears to be well within the limits of the Utah Statute. 1917 Comp. Laws sec. 6730, amended 1919 Laws of Utah, 344. The weight of authority would seem to be in accord with the principal case. *Tillinghast v. Johnson* (1912) 34 R. I. 136, 82 Atl. 788, 41 L. R. A. (N. S.) 764. Authorities *contra* are cited in 20 Cyc. 1022.

PERSONS—ILLEGITIMATE CHILDREN—BENEFICIARIES UNDER WRONGFUL DEATH ACTS.—An action was brought by the state for the death of a woman, one of the beneficiaries being her illegitimate child. It was necessary to decide whether an illegitimate child could recover under the Maryland statute, in order to ascertain the relevancy of certain evidence. *Held,* that an illegitimate child could not recover, as the word "child" when used in a statute prima facie means legitimate child. *Washington, B. & A. Ry. v. State* (1920, Md.) 111 Atl. 164.

See COMMENTS, *supra,* p. 167.

PERSONS—VALIDITY OF A COMMON-LAW MARRIAGE UNDER A STATUTE.—The plaintiff brought suit for the annulment of a marriage, because the defendant's first husband was living at the time it was consummated. Several years later the defendant obtained a divorce from her first husband and the plaintiff, knowing this, lived with her for sixteen years afterwards. A statute required a license for the validity of a marriage. The defendant obtained an interlocutory decree in the lower court, awarding her alimony *pendente lite,* because a common-law marriage is prima facie valid. *Held,* (three judges *dissenting*) that the decree should be affirmed. *Sims v. Sims* (1920, Miss.) 85 So. 73.

Two questions are presented in the instant case, in view of the statute: (1) whether the cohabitation for sixteen years has resulted in a common-law marriage; (2) whether the statute admits the possibility of such a marriage. It has frequently been held in these circumstances that cohabitation after the impediment is removed results in a common-law marriage. See COMMENTS (1916) 26 YALE LAW JOURNAL, 145; (1917) 27 *id.* 702. Unless the words of the statute expressly declares a common-law marriage void, it is valid prima facie. (1916) 15 MICH. L. REV. 347.

PLEADING—ELECTION OF REMEDIES—CHOICE OF ONE OF TWO INCONSISTENT REMEDIES BARS THE OTHER.—The intervener had brought an action against the defendant for the conversion of her automobile. Subsequently she dismissed her action, and now she undertakes to recover possession of her car in specie. The plaintiff's answer was that by her former action she had elected to treat the automobile as the property of the defendant and was therefore precluded from prosecuting an action for the recovery of the specific property. *Held,* that the intervener could not recover. *Ireland v. Waymire et al. (Hill, Intervener)* (1920, Kan.) 191 Pac. 304.

Although the weight of authority is probably in accord with the principal case in holding that, when, with knowledge of the facts, the former owner sues for the value of the property converted, his election is complete and the other remedy

is no longer available, yet this doctrine has been severely criticized and appears to be unsound in theory. For a searching criticism see Keener, *Quasi-Contracts* (1893) 203-213. See also, Corbin, *Waiver of Tort and Suit in Assumpsit* (1910) 19 YALE LAW JOURNAL, 221, 239; (1919) 28 YALE LAW JOURNAL, 409.

TAXATION—INHERITANCE TAX—PROPERTY BEQUEATHED UNDER POWER OF APPOINTMENT NOT TAXABLE AS PART OF DONEE'S ESTATE.—The plaintiff executor was forced to pay a sum of money to the tax collector on the transfer of the estate of the testator under the Federal Estate Tax Act, Sept. 8, 1916, sec. 202. The tax was levied upon the whole estate, including certain property over which the testator held a power of appointment from another, who had died before the passage of the act. The plaintiff claims, that, construed by the laws of Pennsylvania, the tax was assessed on the property which passed under the power of appointment as the estate of the donor, and that this property should not be taxed as the estate of the donee. *Held,* that the plaintiff should recover the amount paid on the property transferred under the power of appointment. *Lederer v. Pearce* (1920, C. C. A. 3d) 266 Fed. 497.

This appears to represent the line of decisions which hold that the creation of the power of appointment rather than its exercise is considered as the act effecting a taxable transfer. The case illustrates how the federal tax operates differently in each state, according to the state laws. For a discussion of the principle, see (1918) 28 YALE LAW JOURNAL, 92 and authorities there cited. See also Gleason & Otis, *Inheritance Taxation* (1917) 109, 484.

TORTS—HARBORING AND EMPLOYING A RUNAWAY SERVANT—INVOLUNTARY SERVITUDE.—A share cropper in the employ of the plaintiff definitely repudiated his contract. Later he was employed by the defendant, who had knowledge of the facts. *Held,* that the defendant was not guilty of a tort, because a contrary rule would create an involuntary servitude forbidden by the Thirteenth Amendment. *Shaw v. Fisher* (1920, S. C.) 102 S. E. 325.

See COMMENTS, *supra,* p. 174.