CURRENT DECISIONS

ADMINISTRATIVE LAW—FEDERAL IMMUNITY FROM SUIT—STATUTORY WAIVER.—The detective force of a railroad under federal administration procured the arrest of a party suspected of stealing from a wreck. Its suspicions were unfounded and the accused was discharged. He then brought suit against the Director General of railroads for false imprisonment under the Federal Control Act, Act of March 21, 1918 (40 Stat. at L. 456) which subjected the federal government to the liabilities of a common carrier. The lower court gave judgment for the plaintiff. *Held,* that the judgment be affirmed. *Director General v. Kastenbaum* (1923) 44 Sup. Ct. 52.

The federal government, in its sovereign capacity, cannot be sued in tort without consent. *Belknap v. Schild* (1896) 161 U. S. 10, 16 Sup. Ct. 443; *Moon v. Hines* (1921) 205 Ala. 355, 87 So. 603. Such consent, given by a government when undertaking a private enterprise as in the instant case, is generally commended. Maguire, *State Liability for Tort* (1916) 30 HARV. L. REV. 20; *Actions Against Railroads under Federal Control* (1919) 23 LAW NOTES, 5; see COMMENTS (1922) 31 YALE LAW JOURNAL, 879; (1924) 33 *ibid.* 432.

DAMAGES—CONTRACTS—FLUCTUATING EXCHANGE.—In a suit by a citizen to recover a debt owed by a German on an account stated payable in marks, the sole question was whether the decree should be for the value in dollars of the marks at the time of the breach, or for their value at the date of the decree. *Held,* that the proper exchange was at the time of the breach. *Guinness v. Miller* (1923, S. D. N. Y.) 291 Fed. 769.

Although the courts in this country are in conflict, the better view seems in accord with the instant case. See COMMENTS (1921) 31 YALE LAW JOURNAL, 198; (1921) 34 HARV. L. REV. 422; Gluck, *Rate of Exchange in Law of Damages* (1922) 22 COL. L. REV. 217. England has definitely adopted the "breach day" rule. *Di Ferdinando v. Simon* [1920, C. A.] 3 K. B. 409.

EQUITY—EXECUTORY CONTRACT FOR SALE OF LAND—EFFECT OF TENANT HOLDING OVER UNDER EMERGENCY RENT LAWS.—The defendant contracted in writing to sell to the plaintiff a dwelling house in New York City, the contract containing a clause that "rents if any are to be apportioned." The house was then in possession of tenants, and due to the Emergency Rent Law the defendant was unable to eject them. The law was in force at the time the contract was made. The plaintiff refused to accept a conveyance while the tenants were in possession and sued to recover the initial payment. *Held,* that she could recover. *Haiss v. Schnukler* (1923, N. Y. Spec. T.) 121 Misc. 574,

The vendee had the equitable title under the contract and must bear any loss not due to the negligence or default of the vendor. *Sewell v. Underhill* (1910) 197 N. Y. 168, 90 N. E. 430; *Marion v. Wolcott* (1904, Ch.) 68 N. J. Eq. 20, 59 Atl. 242; 1 Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 368; *contra: Good v. Jarrard* (1912) 93 S. C. 229, 76 S. E. 698. As the Emergency Rent Law was already in force and as a clause in the contract contemplated a possible tenancy, it seems that the vendee in the instant case fairly assumed the risk that the tenant would avail himself of the statute. See NOTES (1923) 23 COL. L. REV. 660.

EVIDENCE—HEARSAY—ADMISSIBILITY OF BAPTISMAL RECORD TO EVIDENCE DATE OF BIRTH.—In a personal injury suit it was necessary to prove the plaintiff to be less than sixteen years old to take the case out of the provisions of the Workman's Compensation Act. The plaintiff introduced a church baptismal record setting

forth the date of plaintiff's birth. Defendant objected on the ground that the record was competent to prove only the fact and date of the baptism and not the date of birth three years earlier. *Held,* that the baptismal record was admissible to prove the age. *Dillon v. Heller & Bros.* (1923, N. J. Sup. Ct.) 122 Atl. 595.

The orthodox rule is that a record is competent to prove only the fact and date of the event recorded. *Lambrecht v. Holsaple* (1916) 164 Wis. 465, 160 N. W. 168. The reasoning is that if the recorder was testifying in person, his declarations as to the age would be merely hearsay. But the record may prove age indirectly by showing that the party was alive at the date of baptism. *Collins v. Insurance Co.* (1905) 112 Mo. App. 209, 86 S. W. 891. And there is a growing tendency to allow the record as proof of all facts customarily set out in it. *Drosdowski v. Chosen Friends* (1897) 114 Mich. 178, 72 N. W. 169. This is so by statute in some jurisdictions. *In re Eva's Estate* (1918) 93 Conn. 38, 104 Atl. 238.

INTERNATIONAL LAW—ALIEN ENEMIES—WORKMEN'S COMPENSATION—STATUTE OF LIMITATIONS.—In an action under a Workmen's Compensation Act for the death of the plaintiff's husband in 1918, the defendant pleaded the statute of limitations. The deceased, at the time of his death was an Austrian subject, and the plaintiff was a resident of that part of Austria-Hungary which in 1918 became Jugoslavia, which country was recognized by the United States in 1919. *Held,* that while war suspends the statute of limitations as to alien enemies, after the recognition of Jugoslavia plaintiff was an alien friend, and the statute ran therefore against her claim. *Kolundjija v. Hanna Ore Mining Co.* (1923, Minn.) 193 N. W. 163.

Collective changes of citizenship by cession, annexation or conquest are well recognized in international law. For a collection of cases and precedents, see 3 Moore, *Digest of International Law* (1906) sec. 379; see also *Gout v. Cimitian* [1922, P. C.] 1 A. C. 105. The change of citizenship in the case of Jugoslavia was recognized in the Act of June 5, 1920 (41 Stat. at L. 977, 979) providing for the return to such persons of property held by the Alien Property Custodian. In those courts which hold that the statute of limitations under Workmen's Compensation Acts is part of the right and not of the remedy, the result reached would be the same, though on the theory that war does not suspend the statute. *Rogulj v. Alaska Gastineau Mining Co.* (1923, C. C. A. 9th) 288 Fed. 549; *cf.* (1920) 29 YALE LAW JOURNAL, 572.

PUBLIC SERVICE LAW—PRIVILEGE TO DISCONTINUE SERVICE.—The defendant discontinued operation of its street railway because of a strike by its employees. The public utilities commission ordered the defendant to resume operation, but was disobeyed, due to the greatly increased cost of operation. The attorney general made application for a writ of mandamus and also filed an information for a *quo warranto.* He then applied for a mandatory injunction to compel the defendant to resume operation pending the determination of the actions at law. *Held,* that a decree for the plaintiff be affirmed. *McCran, Attorney General, v. Public Service Ry. Co.* (1923, N. J. Ch.) 122 Atl. 205.

A public service corporation may abandon its entire service when operations are carried on at a loss, but cannot discontinue service without forfeiting its franchise. *Brooks-Scanlon Co. v. Railroad Commission* (1919) 251 U. S. 396, 40 Sup. Ct. 183; *North Carolina Public Service Co. v. Southern Power Co.* (1920) 180 N. C. 335, 104 S. E. 872. See COMMENTS (1922) 32 YALE LAW JOURNAL, 75; (1921) 6 MINN. L. REV. 81; (1921) 9 CALIF. L. REV. 435; see (1922) 35 HARV. L. REV. 623; NOTES (1924) 37 *ibid.* 368.