CURRENT DECISIONS

ADMIRALTY—PRACTICE—REQUIREMENT OF SECURITY FROM LIBELLANT WHERE CROSS LIBEL IS FILED.—The libellant filed a libel *in personam* against the owner of certain vessels for breach of a charter party. The latter then filed a cross libel *in personam* against the original libellant and moved that the libellant be required to give security to respond in damages on the cross libel. Admiralty Rule 50 (1920) 254 U. S. App'x 24 provides that whenever a cross libel is filed and the cross libellant has given security, the respondent in the cross libel shall also give security "unless the court for cause shown shall otherwise direct." The trial court allowed the motion, provided the cross libellant should first give security to pay the libellant's claim. He did so, but the libellant refused to obey the order of the court, which then entered a decree staying all proceedings until its order should be obeyed. *Held,* that the trial court's action was erroneous. *Washington-Southern Navigation Co. v. Baltimore & Philadelphia Steamboat Co.* (1924, U. S.) 44 Sup. Ct. 420.

The Supreme Court interprets Rule 50 in the light of its history as applying only when the original libel is *in rem* and the respondent has given security to obtain dissolution of the attachment on his property. Any other interpretation would put it in the power of the libellee to place an unjust burden on the libellant. This decision settles a much confused question. See *Morse Iron Works v. Luckenbach* (1903, S. D. N. Y.) 123 Fed. 332; *Interstate Lighterage Co. v. Newton Creek Towage Co.* (1919, E. D. N. Y.) 259 Fed. 318; *cf. The Rougemont* [1893] P. 275; Williams and Bruce, *Admiralty Practise* (3d ed. 1902) 108.

BILLS AND NOTES—UNSTAMPED PAPER NOT IRREGULAR.—In an action on an unstamped promissory note the defense was that the note was irregular and that the plaintiff was therefore not a holder in due course as defined in the Negotiable Instruments Law, sec. 52. A Federal statute provides a penalty of $100 for failure to affix a revenue stamp on a certificate of indebtedness. Act of Oct. 3, 1917 (40 Stat. at L. 1133). *Held,* that the plaintiff was a holder in due course. (1923, Me.) 122 Atl. 859.

It has been held that the purchaser of an unstamped instrument is not a holder in due course. *Lutton v. Baker* (1919) 187 Iowa, 753, 174 N. W. 599. But this decision has been expressly overruled. *Farmers' Savings Bank v. Neel* (1922) 193 Iowa, 685, 187 N. W. 555. It is now well settled that the statutory penalty does not preclude a purchaser from becoming a holder in due course. *Metropolitan State Bank v. McNutt* (1923) 73 Colo. 291, 215 Pac. 151; *Security State Bank v. Brown* (1923, Neb.) 193 N. W. 336; see 6 A. L. R. 1701; 21 A. L. R. 1125, note; (1923) 8 IOWA L. BULL. 92; NOTES (1923) 36 HARV. L. REV. 321.

CONSTITUTIONAL LAW—TRANSPORTATION ACT OF 1920—RECAPTURE OF EARNINGS PROVISION CONSTITUTIONAL.—The so-called "recapture" paragraphs of the Transportation Act of 1920 (41 Stat. at L. 456, 486) provided that any carrier receiving a net income in excess of a fair return (6% is now held to be a fair return) should hold such excess as trustee for the United States, one-half to be retained by the carrier as a reserve fund and the other half to go to a general railroad revolving fund to be administered by the Interstate Commerce Commission. The commission was to use this fund in making loans to carriers to enable them to refund maturing securities, to buy equipment and in general to use for the benefit of all the railroads. The plaintiff, a railway engaged in both interstate and intrastate commerce, contested the validity of this statute. *Held,* that the statute was constitutional. *Dayton-Goose Creek Ry. Co. v. United States* (1924, U. S.) 44 Sup. Ct. 169.

By 1914 it was established that if intrastate rates between points within a state

discriminated against interstate commerce between points within the state or in adjoining states the federal government could regulate the intrastate rates to the extent of the discrimination. *Minnesota Rate Cases* (1912) 230 U. S. 352, 33 Sup. Ct. 729; *Houston, E. & W. Tex. Ry. v. United States* (1914) 234 U. S. 342, 34 Sup. Ct. 833. Later, the Interstate Commerce Commission was recognized as having the power to issue a state wide order requiring intrastate carriers to bring their rates to a level with interstate carriers when the proceeds derived from the intrastate rates were an unreasonable burden on interstate commerce. *Railroad Commission of Wisconsin v. C. B. & Q. R. R.* (1922) 257 U. S. 563, 42 Sup. Ct. 232; *New York v. United States* (1922) 257 U. S. 591, 42 Sup. Ct. 239; see *New England Division Case* (1923) 261 U. S. 184, 43 Sup. Ct. 270. To divide the excess enuring from a business engaged in both interstate and intrastate commerce and attempt to distribute it proportionally seems impractical; any excess due to the purely intrastate business would be a part of an indistinguishable whole. This renders indispensable the incidental power of Congress to control that part of the excess possibly due to intrastate business, and justifies holding the statute constitutional. For the importance of the decision, see Bunn, *The Recapture of Earnings Provision of the Transportation Act* (1923) 32 YALE LAW JOURNAL, 213.

CONTRACTS—BREACH OF CONTRACT OF EMPLOYMENT—DISCHARGE BY SUBSEQUENT EMPLOYER IN MITIGATION OF DAMAGES.—In an action for wrongful discharge, the trial court rejected evidence offered by the defendant, that the plaintiff employee, after the discharge but during the term of the original employment, had been discharged for dishonesty by a later employer. *Held,* that the judgment be reversed as it may be shown in mitigation of damages. *Burnside v. Bloxham* (1923, App. T.) 121 Misc. 672, 201 N. Y. Supp. 672.

In actions for wrongful discharge, the employer may show, in mitigation of damages, the death of the employee after the discharge and before the expiration of the term of employment. *Rubin v. Siegel* (1919, 1st Dept.) 188 App. Div. 636, 177 N. Y. Supp. 342; *cf. Ga Nun v. Palmer* (1911) 202 N. Y. 483, 489, 96 N. E. 99, 101. And wages lost due to illness during engagement by a subsequent employer before the expiration of the term may be deducted. See *Bassett v. French* (1895, N. Y. C. P.) 10 Misc. 672, 31 N. Y. Supp. 667; 3 Williston, *Contracts* (1920) sec. 1339. Wages actually earned by the employee before the expiration of the term, or which he would have earned had he used reasonable diligence in seeking employment of the same general character, may be deducted. *American National Insurance Co. v. Van Dusen* (1916, Tex. Civ. App.) 185 S. W. 634; *Bertholf v. Fisk* (1918) 182 Iowa, 1308, 166 N. W. 713; (1922) 31 YALE LAW JOURNAL, 441. Though the instant case seems to be one of first impression, it seems that any deliberate act of the employee incapacitating him can be shown in mitigation. And though, as suggested by the court, an act of dishonesty is rather an act of weakness than deliberation, there seems to be no reason for applying a different rule. The same weakness in his original employ would certainly have justified his discharge at that time by the defendant.

HUSBAND AND WIFE.—PRESUMPTION OF COERCION BY HUSBAND.—The defendant and her husband were jointly indicted for unlawful possession of a still for the manufacture of liquor. At the time the still was seized the husband was not at home. The defendant and her husband were convicted, and the defendant appealed. *Held,* that in absence of rebutting evidence, the common law presumption of coercion still prevailed, and that the defendant was entitled to a new trial. *Dressler v. State* (1923, Ind.) 141 N. E. 801.

In view of the general modern emancipation of the wife, the instant case goes far in adherence to the old common law presumption. The present tendency is to treat the presumption as easily rebuttable. *State v. Seahorn* (1914) 166 N. C. 373, 81 S. E. 687; *King v. Owensboro* (1920) 187 Ky. 21, 218 S. W. 297; see (1920)

29 YALE LAW JOURNAL, 802; (1922) 31 *ibid.* 337. See (1922) 20 MICH. L. REV. 547.

MASTER AND SERVANT—INJURY TO INFANT ILLEGALLY EMPLOYED—WORKMEN'S COMPENSATION LAW.—The plaintiff, a minor illegally employed by the defendant, brought an action at law to recover for injuries received in the course of his employment. From a judgment for the plaintiff, the defendant appealed. *Held*, (two judges *dissenting*) that the judgment be reversed as he should have sued under the Workmen's Compensation Law. *Decker v. Powvailsmith Corporation* (1923, App. Div. 2d Dept.) 201 N. Y. Supp. 874.

In New York a minor illegally employed is restricted to the remedy provided by the statute. *Boyle v. Cheney Piano Action Co.* (1920, 3d Dept.) 193 App. Div. 408, 184 N. Y. Supp. 374; *Noreen v. Vogel* (1921) 231 N. Y. 317, 132 N. E. 102. But in most jurisdictions the Workmen's Compensation Act is restricted in its scope to lawful employments. See (1919) 28 YALE LAW JOURNAL, 509; (1921) 30 *ibid.* 532; (1918) 31 HARV. L. REV. 803.

TORTS—NEGLIGENCE—INJURY TO A PERSON ASSISTING ANOTHER IN DANGER.—The plaintiffs, husband and wife, went to a wholesale firm to transact business. Due to the negligence of the defendants who were repairing the premises, a piece of glass fell and injured the husband. His wife tried to pull him out of danger, and in so doing strained her leg, causing a recurrence of thrombosis. Both husband and wife sued to recover damages. *Held*, that both plaintiffs should recover. *Brandon v. Osborn, Garrett & Co.* [1924, K. B.] 40 T. L. R. 235.

Although the point seems to be a new one in England, in this country a volunteer who acts instinctively in an attempt to save a human life endangered by the negligence of another may recover for injuries. *Dixon v. N. Y. N. H. & H. R. R.* (1910) 207 Mass. 126, 92 N. E. 1030; *Ridley v. Mobile & Ohio R. R.* (1905) 114 Tenn. 727, 86 S. W. 606; *Corbin v. Philadelphia* (1900) 195 Pa. 461, 45 Atl. 1070. Some American courts have extended this doctrine to cases of volitional and even deliberative conduct that is not rash or reckless. *Wagner v. International Ry.* (1921) 232 N. Y. 176, 133 N. E. 437; but see NOTES (1922) 9 VA. L. REV. 376.

WILLS—INHERITANCE TAXATION—INCOME ACCRUING DURING ADMINISTRATION OF ESTATE.—During the period of administration, an estate earned an income of $5,006.09. A statute provided that all estates passing to collaterals be subject to a tax of five per cent of their clear value, and that when any species of property other than money or real estate shall be subject to said tax, the tax shall be on the appraised value thereof. Md. Gen. Code. 1909, art. 81, secs. 120, 122. A tax was levied upon a basis including the accrued income. The lower court allowed the entire tax and the administrator of the estate appealed. *Held*, that the tax was properly levied. *Safe Deposit & Trust Co. v. State* (1923, Md.) 123 Atl. 50.

Under the statutes of most states the valuation of property for the purpose of assessing inheritance taxes is made as of the date of the decedent's death. 2 Woerner, *American Law of Administration* (3d ed. 1923) 1075; 24 Ann. Cas. 1017, note; 39 *ibid.* 786, note; Oakley, *Gross and Net Inheritance Tax Values* (1918) 2 MINN. L. REV. 274. The tax is considered to be upon the privilege of succession. *Matter of Penfold* (1915) 216 N. Y. 163, 110 N. E. 497; (1923) 33 YALE LAW JOURNAL, 103. Some hardship may result where the property greatly depreciates before it reaches the legatee, but the proper remedy is by express provision for the exemption of losses. See R. I. Pub. Laws, 1916, ch. 1339, sec. 2; Gleason & Otis, *Inheritance Taxation* (3d ed. 1922) 36. The construction placed upon the statute in the instant case tends to introduce uncertainty as to the date and standard of appraising estates. The different standards for the appraisal of realty and personalty may also lead to practical difficulties.