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Workmen's Compensation Decisions

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in its entirety. HELD: Plaintiff holder of third mortgage is entitled to be subrogated to rights under the first mortgage to the extent of his payments as against intervening second mortgagor, even though he has foreclosed his second mortgage and received sheriff's deed, in absence of proof showing an intention to merge the estates. It was not necessary to Plaintiff holder of the second mortgage to pay installments due in the future. Each installment is a separate debt and it is sufficient if he pays installments due on the debts for which he claims the right of subrogation.

WORKMEN'S COMPENSATION DECISIONS

An injury is received in the course of employment when it comes while the period of the employment at a place where the employee reasonably may be in the performance of his duties and while he is fulfilling those duties or engaged in doing something incidental thereto; and where a day coal loader is killed while working in a mine at night solely for his own purpose and convenience he did not sustain the injury in the course of employment.—*Consolidation Coal Co. vs. Ratliff,* 288 *S. W.* 1057 (*Ky. Dec.* 1926).

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The Commission adopted the following rules of proof in hernia cases: (1) That the immediate cause is sudden effort, strain or blow; (2) That descent of hernia occurred immediately following; (3) that it was accompanied or immediately followed by severe pain in hernial region; (4) that same was noticed and fact communicated to one or more persons at once; but court held that while the Commission was not to be bound by ordinary rules of evidence or technical rules of procedure, it had no authority to make the foregoing rules in absence of specific delegation by the legislature. *Livingston vs Industrial Commission,* 251 *Pac.* 368 (*Utah, Nov.* 1926).

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Conflicting parts of statute: (1) "The percentage of permanent disability caused by any injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any injury previously suffered or any permanent disability caused thereby; (2) "Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court with the purpose of extending the benefits of the act for the protection of persons injured in the course of their employment;" were construed in case where employee lost his remaining eye through industrial accident. The Commission allowed for loss of one eye, but court held he was entitled to compensation for total permanent disability.—*Liptak vs Industrial Commission,* 251 *Pac.* 635 (*Cal. Dec.* 1926).

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A town board paid various farmers who presented themselves with team and wagon for hauling gravel to gravel a town road. The board provided the gravel pit and supervised the loading, designated the place of unloading, but later required the farmers to select their own checker and pit boss and to pay for dynamite. Pay was by the load so that it was immaterial how fast or how slowly the men worked. After the ground froze the men were told they must assume the risks incident to the work, as it appeared dangerous to the town officers to undermine the frozen ground. One of the men was

thereafter killed, and the Industrial Commission decided he was an independent contractor. The court reversed this holding on the theory that the men were engaged in "piece work" and were employees, and if employees the risk could not be transferred by declaration of the employer.—*Rouse vs. Town of Bird Island, 211 N. W. 327 (Minn. Dec. 1926).*

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A workman, whose history disclosed dormant syphilis, was struck on the head on three different occasions (Nov,. 1923, Jan., 1924, Feb., 1924). On the first two of these occasions there was a laceration of the scalp. Soon after November, 1923, he became mentally depressed, and the result of the mental decline was general paralysis. Upon the question of fact whether the general paralysis, which was primarily caused by syphilis, was lighted up or accelerated by the injuries to the head, the Industrial Commission found that the injuries were not serious enough to produce the result claimed, and compensation was denied. It was held, that the evidence would support a finding either way, and the Commission having spoken, its word was final. *Walker vs Minnesota Steel Co., 209 N. W. 635 (Minn.).* (The opinion carries this: "An actual aggravation of an existing infirmity, caused by an accident in the course of employment, is compensable, even though the accident would not have caused injury to a normal person;" which brings up for consideration Commissioner Wenzel's suggestion—now followed by the North Dakota Bureau and sustained by the Courts of Kentucky and Illinois—that the relative responsibility of the disease and the injury be determined by proper medical testimony, and award made in accordance therewith.)

U. S. SUPREME COURT DECISIONS

Section 3450 of the U. S. Revised Statutes permits the forfeiture of a vehicle containing intoxicating liquor on which taxes are unpaid, even though the owner of the vehicle was innocent of any intent to defraud the government of the taxes on the liquor.—*U. S. vs One Ford, 47 Sup. Ct. Rep. 154.*

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Although a zoning ordinance excludes industries of a harmless nature as well as those of a harmful character from residential districts, the enforcement of the entire zoning ordinance will not be restrained on the ground of unconstitutionality.—*Village of Euclid vs Ambler Realty Co., 47 Sup. Ct. Rep. 114.*

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The eighteenth amendment does not deprive the states of their police power to regulate traffic in intoxicating liquors, and it is not a violation of the double jeopardy clause where an act is made to constitute an offense against both the laws of the U. S. and a State.—*Herbert vs Louisiana, 47 Sup. Ct. Rep. 103.*

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A state may prescribe the terms and conditions on which a foreign corporation shall be admitted to do business within the state, but once admitted, it must be treated on an equality with domestic corporations engaged in the same business—(the decision related to taxation.)—*Hanover Fire insurance Co., vs Carr, 47 Sup. Ct. Rep. 179*

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In a case where there is no trade dispute; where there has been no controversy over wages, hours or conditions of labor; no dispute