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Review of Workmen's Compensation Decisions

R E. W

foreclosure of a mortgage taken as security for a loan, does not operate to cancel outstanding liens based upon tax sales. Dissenting opinion: The legislative intent of Section 9, Chapter 292, Laws of 1923, "all taxes then remaining unpaid shall be cancelled," was to clear the record of all unpaid taxes regardless of dates when they were levied or might have come due.—Alice Angus.

REVIEW OF WORKMEN'S COMPENSATION DECISIONS

R. E. W.

Refusal of claimant to submit to operation for hernia, found to be necessary by Industrial Commission, justifies discontinuance of compensation.—*Whittika vs Industrial Commission, (Ill., Oct* 1926.)

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The defense that an employee was violating a city ordinance when injured must be set up affirmatively by the employer; otherwise it is waived.—*Grace Constr. Co. vs Fowler,* 153 *N. E.* 819 (*Ind.*)

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One who is employed as a carpenter to patch a roof, is a "casual" employee of one engaged as a Florist, and does not come within the terms of the compensation law.—*Zeidler vs Prueher,* 154 *N. E.* 35 (*Ind.*)

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Dependency of mother upon son is not established by showing that parent received money from the son and expended it, the necessity for the contributions must also be shown.—*Sigalove vs Penzel* 218 *N. Y. Supp.* 85 (*N. Y.*)

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Note—The case of *De Caprio vs General Electric Co.,* 218 *N. Y.* Supp. 213, is an important one covering application of Snellen test to determine percentage loss of vision. The facts are too long and complicated to report here.

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An employee killed by a train when voluntairily taking a short cut across tracks on way to or from work was not in the course of his employment. He chose to take a route more dangerous than that afforded the public, and cannot hold the employer responsible.—*Dambold vs Industrial Commission,* 154 *N. E.* 128 (*Ill.*)

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Deceased, who owned team and wagon and hauled coal for defendant when needed, at a certain amount per ton, and was allowed to select own method and means of performing the work, and worked for others when not so employed, was not an employee but an independent contractor.—*Bolon vs Amond,* 210 *N. W.* 923 (*Iowa.*)

—o—

Employee contracting typhoid fever while on a trip for employer, there being at the time an epidemic of such disease, is not entitled to compensation unless it is shown that he, by reason of the employment, was subjected to a special exposure in excess of that of commonalty.—*Pattiano vs Industrial Commission,* 250 *Pac.* 864 (*Cal.*)

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Employee of firm engaged in business at Elmira, N. Y., was sent to Lancaster, Penn., to attend a convention. Transportation expenses paid, but not room and board. Injury was sustained while at a hotel or rooming house. Held, that the hotel was claimant's "home," and injury was not in course of employment.—*Jakeway vs Bauer Co.,* 218 *N. Y. Supp.* 193 (*N. Y.*)

Strangulation of a pre-existing hernia is an accident within the terms of the compensation law.—*Krenz vs Ferguson Coal Co.*, 154 *N. E.* 35 (*Ind.*) (This is contra to the great majority of decisions, though most states now handle the matter by special clauses in the law.)—(*Krueger vs King Midas Co.*, 210 *N. W.* 871, *should be read in connection with this one.*)

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Disability which is the direct result of mental disorder that was brought on by a physical injury is compensable. (This agrees with the N. D. Bureau's decision last year in a case where the injured person, as a result of severe physical injuries, became mentally unbalanced and committed suicide."—*Armour Grain Co. vs Industrial Commission*, 153 *N. E.* 699 (*Ill.*)

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The term "complete and permanent loss of use of right arm," within the terms of the Compensation Act, means that the claimant is not able to use it in any character of employment to earn wages, and it is not sufficient to show that the use is so impaired that he cannot use it to perform his former work or similar work.—*Bell & Zoller Co. vs Industrial Commission*, 153 *N. E.* 580 (*Ill.*)

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Widow, whose husband was killed in course of employment, brought suit against a third party liable, later settling for $1,000. She then applied for compensation, the $1,000 being deducted from amount of the regular award. It was held that this was proper and that it did not deprive the employer of his rights under the provision of the law subrogating him to rights of the injured against third parties.—*Benoit Mining Co. vs Moore*, 109 *Southern* 878 (*Ala.*)

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An award of compensation can not be based on possibilities or probabilities but must be based on evidence, the preponderance of which shows that claimant incurred a disability in the course of employment. Claimant failed in proving that endocarditis was caused or aggravated by blows received in altercation with customer.—*Standard Oil Co. vs Industrial Commission*, 153 *N. E.* 660 (*Ill.*)

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On April 19 an employee sustained a fracture of the fourth metacarpal bone of left hand. This was treated from time to time. In May it was discovered, through X-rays, that there was a foreign substance in the finger. This was found to be a piece of steel imbedded in finger several years before, while working for another employer. June 2nd following the necessary minor operation for removal of the steel was performed. The operation lasted about five minutes, and returned to work a few minutes thereafter the employee began coughing. He walked up six flights of stairs to doctor's office and there died, the cause being assigned as acute dilation of the heart. The widow sought compensation, but it was held that she failed to prove that there was any connection between the fracture and the employee's death.—*Armour & Co. vs Industrial Commission*, 153 *N. E.* 716 (*Ill.*)

CASE NOTES

WITNESSES - IMPEACHMENT - INCONSISTENT STATEMENTS. Witness on cross-examination was asked whether he had not, on a specified occasion, made a statement which was inconsistent with his testimony. An objection to this question was sustained. *Held,*