CASES

DECIDED IN

THE COURT OF CLAIMS

OF THE

STATE OF ILLINOIS

Compiled and Reported by Authority of the
State of Illinois

84654

LOUIS L. EMMERSON
Secretary of State and Ex Officio Secretary of the Court

SPRINGFIELD, ILLINOIS
1923

STATE HISTORICAL
LIBRARY

ILLINOIS STATE JOURNAL CO.
SPRINGFIELD, ILLINOIS
1928

PREFACE

The opinions of the Court herein reported, are published by authority of the provisions of section 9 of an Act entitled, "An Act to create the Court of Claims and to prescribe its power and duties," approved June 25, 1917, in force July 1, 1917.

LOUIS L. EMMERSON,
Secretary of State
and ex-officio Secretary Court of Claims.

OFFICERS OF THE COURT

JUDGES:

A. J. CLARITY, *Chief Justice*, Freeport, Illinois.

WINFIELD S. PHILLIPS, *Judge*, Ridgeway, Illinois.

WILLIAM L. LEECH, *Judge*, Amboy, Illinois.

EDWARD J. BRUNDAGE, *Attorney General.*

LOUIS L. EMMERSON, *Secretary of State and Ex Officio Secretary of Court.*

RULES OF THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

TIME OF ANNUAL SESSION.

RULE 1. The Court of Claims shall hold a session of the court at the Capitol of the State on the *Second Monday of September* of each year and may continue its sessions or may adjourn from time to time as it deems proper until the business before it is disposed of.

PLEADINGS.

RULE 2. Causes shall be commenced by a verified declaration or statement filed in duplicate with the clerk of the Court on or before the first day of July next preceding a session of the Court. The clerk will note thereon the day of filing and will transmit the duplicate to the Attorney General.

RULE 3. Such declaration shall be printed or typewritten and shall be captioned substantially as follows:

IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS.

A. B.

v.

STATE OF ILLINOIS.

RULE 4. Such declaration shall state concisely the facts upon which the claim is based, setting forth time, place, amount claimed, and all other facts necessary to a full understanding of the same. If the claimant bases his claim upon a contract or other instrument in writing, a copy of such contract or instrument shall be filed with the declaration, together with the name and present address of the officer or agent with whom such contract or instrument was made.

RULE 5. The claimant shall state whether or not his claim has been presented to any State department or State officer, or to any person, corporation or tribunal, and if it had been presented he shall further state when, to whom, and what action was taken thereon; and he shall further state whether or not he has received any payment on account of such claim. The claimant shall also state whether or not any other person has any interest in his claim, and if any other person has such interest the claimant shall state the name of the person, his interest and how and when acquired. A bill of particulars, stating in detail each item and the amount claimed on account thereof, shall be attached to the declaration.

RULE 6. No declaration shall be filed by the clerk unless verified under oath by the claimant, or some other person having knowledge of the facts.

RULE 7. If claimant be an executor, administrator, guardian or other representative appointed by a judicial tribunal, a duly authenticated copy of the record of appointment must be filed with the declaration.

RULE 8. Pleadings and practice at common law shall be followed where the same are practicable.

RULE 9. All motions shall be in duplicate in writing and shall specifically state the grounds thereof.

RULE 10. The State shall plead within thirty days after the filing of the declaration unless time for pleading be extended: *Provided,* that if the State shall fail to so plead a general traverse of the declaration shall be considered as filed.

RULE 11. Counter-claims or set-offs on the part of the State shall be filed with the clerk within the time fixed for pleading by the State. The claimant shall reply to the same within fifteen days thereafter, unless time for pleading be extended.

STATUTE OF LIMITATIONS.

RULE 12. If it appear on the face of a declaration that the claim is barred by statute of limitations the same may be dismissed.

EVIDENCE.

RULE 13. After a cause is at issue the parties may take evidence before a notary public or commissioner appointed by the Court or by any judge thereof, who shall designate the time and place and the officer before whom the testimony shall be taken, and shall transmit the order to the clerk, who shall thereupon enter the same of record as an order of the Court and shall issue a dedimus to such officer.

RULE 14. All evidence shall be taken in writing in the manner in which depositions in chancery are usually taken, and upon like notice. All evidence for the claimant shall be filed with the clerk on or before the first day of August prior to the session of the Court in September, and all evidence for the defendant shall be filed on or before such session of the Court.

RULE 15. All costs and expenses of taking evidence on behalf of the claimant shall be paid by the claimant, and the costs and expenses of taking evidence on behalf of the State shall be paid by the State.

RULE 16. If the claimant fails to file the evidence in his behalf as herein required the Court may, in its discretion, fix a further time within which the same shall be filed and if not filed within such further time the cause may be dismissed. Upon motion of the Attorney General the Court may, in its discretion, extend the time within which evidence on behalf of the State shall be filed.

RULE 17. In case a demurrer to a declaration is overruled, the State shall plead within five days and the claimant shall have twenty days thereafter within which to file his evidence, and the State shall have ten days thereafter within which to file its evidence. Thereupon the claimant shall have fifteen days within which to file his abstracts and briefs and the State shall have fifteen days thereafter within which to file its abstracts and briefs.

RULE 18. If the claimant has filed his evidence in apt time and has otherwise complied with the rules of the Court, he shall not be prejudiced by the failure of the State to file evidence in its behalf in apt time, but a hearing shall be had upon the evidence filed by the claimant, unless for good cause shown, additional time to file evidence be granted to the State.

ABSTRACTS AND BRIEFS.

RULE 19. Prior to the hearing upon a claim each party shall file with the clerk five printed or typewritten abstracts of the evidence taken on behalf of such party, together with proofs of service of a copy on the opposite party.

RULE 20. Each party shall file with the clerk five printed or typewritten briefs setting forth the points of law upon which reliance is had, and reference to the authorities sustaining the same, together with proof of service of a copy on the opposite party. Accompanying such briefs there may be a statement of the facts and an argument in support of such briefs.

RULE 21. Abstracts and briefs shall be filed by the claimant on or before the first Monday of September and by the State fifteen days thereafter. Thereupon the claimant shall have ten days within which to file a reply brief.

RULE 22. If a claimant shall fail to file either abstracts or briefs within the time prescribed by the rules the Court may enter a rule upon him to show cause by a day certain why his cause should not be dismissed. Upon the claimant's failure to comply with such rule, the cause may be dismissed, or the Court may, in its discretion, either extend the time for filing abstracts or briefs, or pass or continue the cause for the term, or determine the same upon the evidence before it: *Provided, however,* that the State may within ten days after the filing and service of briefs by the claimant file its abstracts and briefs.

RULE 23. If the claimant has filed abstracts and briefs, as herein provided, in apt time, and has otherwise complied with the rules he shall not be prejudiced by the failure of the State to file abstracts or briefs and the cause shall be heard upon the evidence, abstracts and briefs on file, unless the time be extended for the filing of abstracts or briefs by the State.

RULE 24. Where by these rules it is provided that the time may be extended for the filing of pleadings, abstracts or briefs, either party upon notice to the other, may make an application to any judge of this Court, who may make an order thereon, transmitting such order to the clerk, and the clerk shall thereupon enter the same of record as an order of the Court.

RECORDS AND CALENDAR.

RULE 25. The clerk shall record all orders of the Court, including the final disposition of causes. He shall keep a docket in which he shall enter all claims filed, together with their numbers and dates of filing, the names of claimants, of attorneys of record and their addresses, and he shall, as papers are filed, enter the same upon such

docket. At least ten days prior to each session of the Court he shall prepare a calendar of the causes to be disposed of at such session.

ORAL ARGUMENTS.

RULE 26. On the hearing of any claim, oral arguments will be heard upon such order, limiting the time thereof in each case, as shall be deemed just.

REFERENCE BY GENERAL ASSEMBLY.

RULE 27. Where any claim has been referred to the Court by either house of the General Assembly any person interested therein may file a verified declaration at any time prior to the next annual session of the Court. If no such person files a declaration as aforesaid the Court may determine the cause upon whatever evidence it may have before it, and if there is no evidence the cause may be stricken from the docket with or without leave to reinstate, in the discretion of the Court.

It is hereby ordered that the above and foregoing rules be and the same are hereby adopted as the rules of the Court of Claims of the State of Illinois.

Entered this 28th day of November, A. D. 1922.

A. J. CLARITY, *Chief Justice.*
WINFIELD S. PHILLIPS, *Judge.*
WILLIAM L. LEECH, *Judge.*

COURT OF CLAIMS LAW

(Senate Bill No. 551. Approved June 25, 1917)

AN ACT to create the Court of Claims and to prescribe its power and duties.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* The Court of Claims is hereby created. It shall consist of a chief justice and two judges, appointed by the Governor by and with the advice and consent of the Senate. In any case of vacancy in such office during the recess of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall nominate some person to fill such office; and any person so nominated, who is confirmed by the Senate, shall hold his office during the remainder of the term and until his successor is appointed and qualified. If the Senate is not in session at the time this Act takes effect, the Governor shall make a temporary appointment as in case of a vacancy.

§ 2. The term of office of the chief justice and of each judge shall be four years from the second Monday in January next after the election of a governor, and until his successor is appointed and qualified.

§ 3. Before entering upon the duties of the office the chief justice and each judge shall take and subscribe the constitutional oath of office, which shall be filed in the office of the Secretary of State.

§ 4. The chief justice and each judge shall each receive a salary of fifteen hundred dollars per annum, payable in equal monthly installments.

§ 5. The Secretary of State shall be *ex officio* secretary of the Court of Claims. He shall provide the Court with a suitable place in the Capitol building in which to transact its business.

§ 6. The Court of Claims shall have power:

(1) To make rules and orders, not inconsistent with law, for carrying out the duties imposed upon it by law;

(2) To make rules governing the practice and procedure before the Court, which shall be as simple, expeditious and inexpensive as reasonably may be;

(3) To compel the attendance of witnesses before it, or before any notary public or any commissioner appointed by it, and the production of any books, records, papers or documents that may be material or relevant as evidence in any matter pending before it;

(4) To hear and determine all claims and demands, legal and equitable, liquidated and unliquidated, *ex contractu* and *ex delicto*, which the State, as a sovereign commonwealth, should, in equity and good conscience discharge and pay;

(5) To hear and give its opinion on any controverted questions of claims or demand referred to it by any, officer, department, institution, board, arm or agency of the State Government and to report its findings and conclusions to the authority by which it was transmitted for its guidance and action;

(6) To hear and determine the liability of the State for accidental injuries or death suffered in the course of employment by any employee of the State, such determination to be made in accordance with the rules prescribed in the Act commonly called the "Workmen's Compensation Act," the Industrial Commission being hereby relieved of any duty relative thereto.

§ 7. In case any person refuses to comply with any subpoena issued in the name of the chief justice, attested by the Secretary of State, with the seal of the State attached, and served upon the person named therein as a summons at common law is served, the Circuit Court of the proper county, on application of the secretary of the Court, shall compel obedience by attachment proceedings, as for contempt, as in a case of a disobedience of the requirements of a subpoena from such Court on a refusal to testify therein.

§ 8. The concurrence of two members of the Court shall be necessary to the decision of any case.

§ 9. The Court shall file a brief written statement of the reasons for its determination in each case. In case the Court shall allow a claim, or any part thereof, which it has the power to hear and determine, it shall make and file an award in favor of the claimant finding the amount due from the State of Illinois. Annually the secretary of the Court shall compile and publish the opinions of the Court.

§ 10. Every claim against the State, cognizable by the Court of Claims, shall be forever barred unless the claim is filed with the secretary of the Court within five years after the claim first accrues, saving to infants, idiots, lunatics, insane persons and persons under disability at the time the claim accrued two years from the time the disability is removed.

§ 11. The Attorney General shall appear for and represent the interests of the State in all matters before the Court.

§ 12. All claims now pending in the Court of Claims created under "An Act to create the Court of Claims and prescribe its powers and duties," approved May 16, 1903, in force July 1, 1903, shall be heard and determined by the Court of Claims created by this Act in accordance with the provisions hereof.

§ 13. The jurisdiction conferred upon the Court of Claims by this Act shall be exclusive. No appropriation shall hereafter be made by the General Assembly to pay any claim or demand, over which the Court of Claims is herein given jurisdiction, unless an award therefor shall have been made by the Court of Claims.

§ 14. The following Act is hereby repealed: "An Act to limit the time for persons to bring claims against the State of Illinois," approved and in force March 1, 1847.

APPROVED June 25, 1917.

TABLE OF CASES

A

	PAGE
Allen, Henry W.	83
American National Bank, Ex.	170
Austin Mfg. Co.	106
Abney, Hugh	158
Allen, F. J.	337
American Eagle Fire Ins. Co.	231

B

Bailey, Ruth, et al.	21
Branstitter, Omer W.	72
Brown, L. F.	99
Biasi, Tony	100
Bolton, Harlan K., et al., Ex.	104
Browning Co., The,	160
Booth Fisheris Co.	150
Burley, Clarence A., Ex.	146
Baden, Louis J., et al., Trustees, etc.	242
Baker, Logan	227
Birk, Edward J., et al.	260
Bowker, Louis D.	327
Big Four Wilmington Coal Co.	279
Boston Safe Deposit & Trust Co., Ex.	40
Bissell, Charles H., Ex.	42

C

Cochran, Fowler I.	202
Chicago Serum Co.	64
Chicago Telephone Co.	89
Cramer, Clifton F.	94
Cantrell, Esley	149
Coughenour, Emma	168
Cordes, John H.	193
Clapp, Eben P.	230
Carlson, Gust, Admr.	254
Castle, Elsie M.	283
Chicago, The City of	345
Chicago, Burlington & Quincy R. R. Co.	342
Consolidated Coal Co.	311
Cleaver, Davis	340
Carlson, C. J.	301
Christenson, Alfred C.	306
Chicago, Milwaukee & St. Paul Ry. Co.	350–351
Commonwealth Trust Co., Ex.	38
Campbell, John M., et al., Ex.	39
Central Trust Co.	324
Carver, Henry Felix	87
Chidester, Fred E.	323
Central Coal Co.	312

D

	PAGE
Davis, Ella H., et al., Ex.	95
Devlin & Roberts	97
Durante, Hector	100
Dixon, Geo. W., Ex.	192
Deaton, A. L.	261
Doyel, J. L., Admr.	265
Davis, James C., Director-Gen. R. R.	225
Dibelka, James B.	362
Davis, James C., Director-Gen. R. R.	273
Dyer, Lyman Tiffany	343

E

Elgin, Joliet & Eastern Ry. Co.	135
Elgin, Joliet & Eastern Ry. Co.	206
Edwards, Inanda M., Ex.	52
Edgar, Jeanna	17
Edwards, Minnie, Ex.	63
England, J. J., et al., Ex.	157
Ewerts, Charles J.	320
Egan, John E.	307

F

Forgan, David B., Receiver	84
Flynn, Clara D.	122
Fields, E. P., Con.	117
Foster, Jerusha	155
Friedlander, Esther, Ex.	226
Foreman Bros. Banking Co.	141
Fitzsimmons Construction Co.	211
First Trust & Savings Bank	322

G

Goodyear Lumber Co., C. A.	176
Gibson, Hiram E.	177
Good, H. M.	90
Gunther Hardware Co.	339
Green, Ralph A.	9
Gropp, Ola M., Ex.	119
Griffith, G. Charles	214
Gale, E. Vincent	139

H

Heater, Mary	207
Hollenbeak, Ralph D., Ex.	184
Haywood, William	200
Harbough Lumber Co.	29
Henke, Henry	79
Harkness, Edward S., Ex.	50
Hunkle & Co., O. W.	15
Hanley, J. T.	19
Home Trust & Savings Bank, Ex.	86
Hancock, John	166
Hancock, Carl	166
Hartley, Joseph H.	268
Harrington, William D.	349

PAGE
Humphrey & Co., J. F. 310
Holland, Elmer G., Ex. 280
Hunsaker, J. Will, Ex. 316

I

Illinois Central Railroad Co. 147–355
Isko Co., The 171
Interstate Iron & Steel Co. 218

J

Johnson, Minnie D. 270
Jones, Sophia 283
Jackson, Owen P. 333
Johnson, James E. 127
Jenkins, William, Trustee 185

K

Kubler, Jacob 203
Kenyon, J. P. 189
Kruger, Morna, Admx. 162
Knees, Frank L. 256
Kettinger, Raymond M., Admr. 257
Kepler, Faye M. 295
Kelley, Michael J. 294
Knowles, Howard, Ex. 195
Kapella, John, Ex. 187
Krueger, Mary Bell 120
Klebosky, Frank 129

L

Lindsay, Lillie 182
Leet, Martha Ruddy, Ex. 56
Lindgren, Phillip, Admr. 62
Lovellette, J. S. 247
Lamb, H. S. 331
Lyon, John K., et al. 292
Leonard, Michael J. 304
Loftus, Patrick F. 335
LaSalle, County of 133
Little, Bruce L. 188

M

Musham, John W. 30
Motter, Thomas J., et al. 159
Milliken Trust Co., Admr. 191
Missouri Pacific R. R. Co. 165
Moore, Minnie B., Ex. 288
Moore, Lora J., Ex. 1
Moore, Mathilda 228
Merchants Loan & Trust Co., Admr. 237
Myers, David S., et al. 278
Metzger, Fred W. 314
Manufacturing Ice & Cold Storage Co. 309
Medcalf, Fred B., Ex. 303

PAGE
Marsden, Ross S. 358
Manierre, Jr., Benjamin, by next friend..... 359
Merrifield, Roy W..... 352
Mooney, William E..... 47
Maibauer, Herman, by conserv..... 115
Monroe Binder Board Co..... 219
Mares, Arthur 274
Muffler, Herbert 348
Merchants Loan and Trust Co., Tr..... 241
McCollough, James S., Ex..... 183
McMurry, Bertha 199
McGhee, Minnie 144
McColm, Eugene H..... 271
McGee, W. P. 336
McChesney & Becker..... 5
McDaniels, Samuel B..... 265

N

North, Walter, Admr..... 70
Northern Trust Co., Trustee..... 240

O

Osborne, Charles B., Ex..... 69
Oakman, Walter, et al., Ex..... 59
Ohmsgerds, John 234
Ogan, Viola 346
O'Malley, John B., et al., Trustees..... 290

P

Petty, William L..... 201
Phillips, Charlotte, et al., Ex..... 48
Popham, Frank, Conservator..... 13
Perkins, Herbert F., et al., Ex..... 54
Peoria & Pekin Union Ry. Co..... 113
Pietsch, William 109
Pearson, Margaret, Admx..... 251
Peters, Anna, Ex..... 264
Prince, A. F., Admr..... 334
Power Planing Mill Co., C. A..... 338
Purcell, Henry, Ex..... 44
Perkins, Fellows & Hamilton..... 197
Paden, Robert M..... 136
Plackett, William 212
Public Service Co. of Northern Illinois..... 223
People's Life Ins. Co..... 112
Pearson, Margaret, Admx..... 267

Q

Quinn, J. J..... 151

R

Ryan, Joseph 57
Randall, J. J..... 92
Ralston, Myrtle 108
Rogers, Buell S..... 341

PAGE

Rathbun, S. A. 118
Rohl, Robert, Sr. 67
Ryan, Lawrence 124

S

Shannon, Robert 204
Smith, Frank J. 74
Spaulding & Bros., A. G. 103
Spink, Alfred E., Admr. 107
Schuette, Augusta, Ex. 153
Swift & Co. 232
Smith, J. Whitfield 253
Shiddy, John D. 249
Shotwell, Edith 259
Sallade, George 329
Social Service Reg. Bureau 313
Sickenberger, Karl S. 361
Sheldon, Carl E. 353
Snyder, Louis J., Ex. 36
Schwab, Joseph F., Admr. 77
Southern Surety Co. 111
Shaw & Bjorkman 179
State Saving Loan & Trust Co. 297

T

Times Record Co. 180
Tosi, Domini, Admr. 190
Thompson, Joseph E. 26
Tibbett, James H., Trustee, etc. 102
Tiller, Joseph 243
Teater, Ralph A. 284
Tolman, Bessie 299
Turner, Claude Harve 275
Taylor, Arthur 332

U

Ullman, Charlotte, Legatee, etc. 181
United States Trust Co., Ex. 46
Uhlman & Co. 131

V

VanMeter, Gregory T., Ex. 325

W

Williams, Charles K. 209
Will, County of 178
Wiehe, Christian, for use of 11
Wier, John, Ex. 356
Watkins, Oscar 81
Weber, Joseph A. 33
Wapello Saving Bank, et al., Ex. 164
Wunderlich Granite Co., E. 143
Wilson & Co. 140
Williamson, Albert 250

PAGE
Western Electric Co..... 220
Wilson, Eva, Ex..... 266
Wilson, Wesley 315
Walsh, Julia, et al., legatees..... 344
Western Gas & Electric Co..... 305
Wentworth, L. Rodgers, et al., Ex..... 45
Woodruff, Ella, Admx..... 138
Ward, Eugenia Phillis, et al..... 287
Welling, Charles 308
Western Electric Co..... 263

Y

Yoder, Carl H., Ex..... 16

OPINIONS OF THE COURT

LORA J. MOORE, EXECUTRIX OF THE ESTATE OF JAMES HOBART MOORE, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed September, 1918.

INHERITANCE TAX—*when inheritance tax cannot be assessed.* An inheritance tax cannot be assessed upon the succession or transfer of shares of capital stock of foreign corporation to non-resident beneficiaries by the death of non-resident decedent.

JURISDICTION—*Court must have jurisdiction of the person of the beneficiary or of the property.* To determine whether an inheritance tax is due the Court must have jurisdiction either of the person of the beneficiary or of the property, otherwise its judgment or order is void.

APPEAL—*when claimant entitled to refund although appeal is not taken.* Where the order of the Court is void for want of jurisdiction the necessity for an appeal, as provided by statute, does not exist, and a failure to take an appeal is no bar to the recovery of the tax paid.

DEMAND—*when demand for refund not necessary.* Where the entire estate is in the bank and the consent of the Attorney General and State Treasurer is necessary for a release or transfer of the funds to the executor, and such consent cannot be obtained, a demand on the County Treasurer for a refund is not necessary.

SAME—*Section 10 of Inheritance Tax law applies only to State Treasurer.* Section Ten (10) Inheritance Tax law only limits the time for application for refund on the State Treasurer.

INHERITANCE TAX—*when erroneously assessed.* An inheritance tax assessed by a court without jurisdiction is erroneously assessed.

LIMITATION—*when right of recovery is not affected.* Where the tax has been assessed and paid under a void order of the Court, the two year limitation does not affect the right of recovery.

Edward J. Brundage, Attorney General, for State.

The facts in this case show that James Hobart Moore died testate on the 18th day of July, 1916, a resident of the State of Wisconsin and that letters testamentary were issued in that State to Lora Moore, as executrix, no administration was had in Illinois.

On the 18th day of October, 1916, the County Judge of Cook County entered an order to assess the inheritance tax in said estate at $19,773.00 which amount, less 5 per cent discount was on the day of November, 1916, paid by Claimant to the County Treasurer of Cook County.

Thereafter, on the 5th day of September, 1918, on hearing a petition properly presented, the Acting County Judge of Cook County found, "that, included in said valuation upon which said purported assessment was made were certain shares of stock of corporations organized

under the laws of other states than Illinois (describing the same) amounting to $654,672.91, and that the succession to said foreign shares was taxed at the rate of two per cent; and that the beneficiaries whose successions and transfers were specifically taxed were both at the time of the death of said deceased, and at the time of said purported assessment, residents of states and counties other than Illinois.

Upon such finding the Judge entered a decree finding that the order so made by the County Judge of Cook County on the 18th day of October, A. D. 1916, purporting to assess an inheritance tax in the estate of said decedent, insofar as it purports to assess an inheritance tax in said estate upon the transfer of said shares of stock of foreign corporations passing to said non-resident beneficiaries, was at the time it was entered, and now, wholly void for want of jurisdiction, and that the same be vacated and set aside. But that to the extent that the said order of the County Judge assessing a tax of $6,307.56 said order is not affected by this decrease, the said $6,30756 being the total tax assessable in said estate."

That the payment of the sum of $12,438.79 included in said payment as aforesaid was void for want of jurisdiction."

On the 26th day of November, A. D. 1918, the claimant filed in this Court, claim for refund of the $12,438.79. Claimant claims that the same was inheritance taxes erroneously paid, and bases her right of recovery on section 10, chapter 120, of the Inheritance Tax Laws of Illinois, which reads as follows: "When any amount of said tax shall have been paid erroneously to the State Treasurer it shall be lawful for him, on satisfactory proof rendered to him by said County Treasurer of said erroneous payment, to refund and pay to the executor, etc., who paid any such tax in error the amount of such tax so erroneously paid, provided that all applications for repayment of said tax shall be made within two years from the date of such payment."

It is admitted by Counsel for the State that only $6,307.56 tax was properly assessed. The State further contends that the payment of the $12,438.79 under a void order was not a payment of an inheritance tax within the meaning of the Inheritance Tax Law, and that claimants have not challenged the correctness of the order by the method prescribed by the statute, and that they are not therefor entitled to a refund.

It is true the claimants did not pursue the remedy by appeal within sixty days after the entry of the County Judge's order, approving the Appraiser's report as they might have done under the statute; but inasmuch as the order of the Judge purporting to assess a tax upon the transfer of decedent's shares of stock in foreign corporations to non-resident beneficiaries and void, it appears to the Court that the necessity for such appeal did not exist, and that it was properly attacked by petition to the County Court, as above referred to; and that the County Court had jurisdiction and the power to decree such assessment void, we entertain no doubt. *Oakman v. Small*, 282 Ill. P. 360.

In the above case the Supreme Court said: "It is clear, however, that to enable the County Court to hear and determine whether an inheritance tax is due on the succession to property it must have juris-

diction over the beneficiary or property, and in this case, according to the averments of the petition, it had neither. The order made so far as it related to the shares of stock of foreign corporations passing to non-residents of the State by the will of Andrew Freedman and not by virtue of any law of this State, was void for want of jurisdiction, and if the averments of the petition are proved it will be the duty of the Court to vacate and set aside the order, and the prayer of the petition allowed."

It was upon this opinion that the County Court acted vacating and modifying the order assessing the tax as aforesaid.

Upon the rendition of the aforesaid decree of the County Court, it is clear that the State was shown to be entitled to only $6,307.56 inheritance, and that $12,438.79 was illegally assessed and void.

But the entire amount had been paid to the State Treasurer.

The entire estate above mentioned was in the bank or banks in Cook County, and it could not lawfully be released or transferred to the Executrix without the consent of the Attorney General and State Treasurer of Illinois. This consent was not obtained and could not be procured from such officers of the State until the inheritance taxes claimed by them to be due was paid. Under such existing circumstances such taxes were thus paid—not voluntarily; but at the most expeditious way to get such securities transferred. It occurs to us that it it as useless to ask the State Treasury to refund as it is to demand a refund of the County Treasurer in such cases.

No appropriation is ever made in contemplation of payment of such inheritance tax erroneously paid. Hence the only remedy if any for such refund is in this Court.

The two year's limitation mentioned in section 10 aforesaid does not affect the right of recovery in this case in this Court. It only limits the time of applying for refund from State Treasurer. Section 10. Supra.

The contention of the Attorney General that the amount claimed had been paid under a void order, as to the extent of the amount claimed herein and that therefore it was not an inheritance tax erroneously paid; and that therefore a refund could not be had is quite technical and possessed some legal logic; but construing section 10 from a reasonable and equitable standpoint, we are of the opinion that the amount claimed was erroneously assessed as an inheritance tax, and was void for want of jurisdiction, and constitutes a valid claim against the State. See Report of Attorney General 1910, page 196-198, rendered May 20, 1910.

Griffiths v. *The State*, 2 C. C. Report, page 128.
Weller et al v. *The State*, decided at last term this Court.
See also case of *Metzger* v. *The State*. Decided at last term this Court. Matter of *Coogan*, 27 Misc. Rep. (N. Y.) 563 aff'd 45 App. Div. (N. Y.) 628; 162 N. Y. 613.
Oakman v. *Small*, 282 Ill. 360.

Oakman v. *The State*, No. 52. Decided at this term of this Court.

In view of the foregoing facts, as we have them, and the law governing the same we are of the opinion that there should be a refund by the State of the amount claimed.

We therefor accordingly award the claimant the sum of twelve thousand four hundred thirty-eight and 79/100 ($12,438.79) dollars.

Approved.

McChesney and Becker
v.
State of Illinois.

Opinion filed November 20, 1918.

Practice—*where no plea filed.* Where no plea is filed to the declaration by the State, the case will stand on hearing the same as if the plea of general issue had been filed. Rule II, Court of Claims.

Statute of Limitations—*no waiver by State officer.* A State officer is without power to waive or arrest the running of the statute of limitations on a claim against the State.

Same—*when need not be pleaded.* The statute of limitations need not be specially pleaded to claims against the State.

State Auditor—*authority to employ private counsel.* The State Auditor has no power or authority to employ private counsel to resist or interfere with the Attorney General in the performance of his duty, or efforts to have a receiver appointed for an insolvent bank.

Non-Liability of State—*officers exceeding their authority.* The State is not liable if its officers exceed their authority.

Agency—*statements and declarations not proof of agency.* Agency cannot be proved by showing statements and declarations made by the agent.

Edward J. Brundage, Attorney General, for State.

Judge Eaton delivered the opinion of the Court.

This suit was brought by McChesney & Becker, a firm of Attorneys, practicing in Chicago, Illinois, for seven hundred and fifty dollars ($750.00) claimed to be due them for professional services rendered the Auditor of Public Accounts of the State. Their alleged services commenced on the 30th of July and ended on or about the 8th day of September, 1914. It is alleged in plaintiff's Declaration that they were employed by the State Auditor under an agreement that they were to have one hundred dollars per day for all the time spent in the performance of their duties under such employment. It seems that about that time the Ashland Twelfth Street, State Bank, of Chicago, and the Calumet State Bank, also of Chicago, were in deep water financially; that the Attorney General of the State of Illinois had started suit in the Courts of Cook County, asking that receivers be appointed for each of these Banks. The services alleged to have been rendered by the Plaintiffs consisted of an attempt to reorganize these Banks and to resist the application of the Attorney General to have receivers appointed.

The Declaration alleges that under the provisions of Chapter 83, Section 31 of Hurd's Statute, 1913, where nothing interferes with the running of the Statute, that the Statute of Limitations becomes a bar to any action against the State of Illinois on such a claim, after the expiration of the two year period, but that, where a new promise to pay,

according to the tenor of the claim, and an acknowledgment made by the party subject to be charged with the debt, where the same was within a period of two years of the performance of the services, that the Statute begins to run from such new promise or asknowledgment, and the Declaration alleges that on November 1st, 1916, James J. Brady, Auditor of Public Accounts, acknowledged the claim sued on and asked the complainants that the claim be forwarded to him in the form of a declaration to be filed in the State Court of Claims and that he, as ex-officio clerk of said Court, would present the same to the Court, and see that an award was made in favor of the complainants.

The Declaration alleges that this letter, alleged to have been sent to them by Brady, constitutes such an acknowledgment of the debt or new promise, as would arrest the running of the Statute of Limitations. The Attorney General has filed no pleadings in the case, and, under the rules of this Court, the case stands on hearing, the same as if the general issue had been filed.

The Attorney General claims in his brief and argument, *First*—that the claim is barred by the Statute of Limitations; *Second*—that the State Auditor had no legal power or authority whatever, to contract or employ the plaintiffs to do the things mentioned and set forth in the claimant's Declaration.

The plaintiffs in their Declaration, acknowledge and admit that, under the statute in force at the time they rendered the services sued for, their action would be barred unless a new promise or acknowledgment had been made within two years prior to the starting of their suit in this Court, and place their whole case on a letter alleged to have been written by James J. Brady, on November 2nd, 1916, which is set forth in the depositions in the case.

We do not believe that the State Auditor, James J. Brady, if he wrote this letter, had any authority to make any acknowledgment or promise which would waive or retard the running of the Statute of Limitations, and an examination of the letter shows that he did not promise to pay the claim, but that, if the plaintiffs brought suit in the Court of Claims, he would use his influence, as clerk of such Court, and undertake to induce the Court to allow the claim of plaintiffs'.

We hold that this letter does not constitute an acknowledgment of the debt or a promise on the part of the State of Illinois, to pay this claim, and that James J. Brady, Public Auditor, had no authority whatever, to make a new promise for the State, or to, in any way arrest the running of the Statute of Limitations. If he did make such promise, that the contents of the letter would be insufficient to constitute a new promise or acknowledgment, if said Brady had authority to make a new promise on behalf of the State.

Claimants, in their Brief and Argument, argue at considerable length that the Attorney General, not having specially plead the Statute of Limitations, that such defense was waived by the State and could not be set up as a bar to the action.

We hold that in a Court of Claims it is not necessary that the Statute of Limitations should be specially pleaded; that the Attorney

General has no authority under the law, in any manner to waive or arrest the running of the Statute of Limitations in favor of the State.

In the case of *Finn* v. *U. S.* 123, 227, Mr. Justice Harlan, who delivered the opinion of the Court in said case, stated as follows:

> "The general rule that the limitation does not operate by its own force as a bar, but is a defense, and that the party making such a defense must plead the Statute, if he wishes the benefit of its provisions, has no application to suits in Courts of Claims against the United States. An individual may waive such a defense, either expressly or by failing to plead the Statute, but the Government has not expressly or by implication, conferred authority upon any of its officers to waive the limitation imposed by the Statute upon suits against the United States in a Court of Claims. Since the Government is not liable to be sued as of right, by any claimant, and since it has consented to a judgment being rendered against it only in certain classes of cases brought within the prescribed period after the cause of action accrued, a judgment in a Court of Claims for the amount of the claim, which the record or evidence shows to be barred by Statute, would be erroneous."

We think that the rule, as laid down by Justice Harlan, is based on sound reasoning and should be applied in this case, especially so where the declaration itself shows the claim is outlawed and attempts to avoid the Statute by alleging a new promise or acknowledgment of the debt by the State, and where they failed, as they did in this case, to show that the State, by any authorized power, made any promise or acknowledgment which arrested the running of the Statute.

We do not believe that in this case there is any section in the Illinois Statute, empowering the State Auditor to employ private counsel to resist the efforts of the Attorney General to have receivers appointed for these particular Banks. After the Attorney General had assumed to take charge of the questions arising under the failure to these two Banks, and had brought proceedings in Court to have receivers appointed, the State Auditor had no authority to employ counsel to resist in Court, the proceedings instituted by the State of Illinois, through is Attorney General, or to employ private counsel to interfere or termeddle with the subject matter of the suit instituted by the Attorney General in any way, and it appears from the evidence of one of the claimants, that the State Auditor was interested largely in employing them to "save his own face." It would be an absurdity to hold that, after the chief law officer of the State had started a suit on behalf of the public, that any other State officer had authority to employ private counsel at the expense of the State, to contest the proceedings brought by the State, through its Attorney General, especially where the evidence shows that he employed such counsel largely "to save his own face."

We must hold that under the evidence in this particular case, the Auditor, James J. Brady, had no authority to incur a liability for Attorney fees, and that, if he did so employ private attorneys, that said attorneys have no claim against the State of Illinois for their fees. There is a total failure in the evidence of competent proof to show that

the complainants were ever employed by the State Auditor. The evidence shows that one of the complaints had a talk with a man by the name of Coleman, and that they were really employed by the said Coleman. The declaration alleges that Coleman was an Assistant State Auditor, but there is no evidence in the record showing that he held such position. He is referred to, in the testimony to Mr. McChesney, as a "representative" of the State Auditor, but what power or authority he has as such representative is not shown by the evidence. It is true that Mr. McChesney testified that Coleman represented to him that he had authority from the State Auditor to employ counsel, but it is elementary that proof of agency cannot be made by the showing or declaration of an agent, (*Phillips* v. *Poulter*, Ill. App. 330). The burden of proof of showing that Coleman was an agent of the State Auditor, with power to employ counsel, was upon the complainants. The mere fact that Coleman assumed to act as the agent of the State Auditor is not proof of his authority, (*Schmidt* v. *Shaver*, 196 Ill. 108).

We hold that the plaintiffs have no legal claim against the State of Illinois and their claim is wholly disallowed.

RALPH A. GREEN, ADMINISTRATOR, OF THE ESTATE OF FRIEDA REIDEL, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed November 26, 1918.

RESPONDEAT SUPERIOR—*not applicable to the State.* The doctrine of *respondeat superior* is not applicable to the State. (Henke v. State, 2 C. C. 11, followed.)

GOVERNMENTAL FUNCTION—*Starved Rock Park.* The State in operating the Starved Rock Park exercises a governmental function and is not liable for the acts of its agents, servants or employees.

LESSOR AND LESSEE—*lessor not liable.* The State as a lessor of its property is not liable for the negligence of the lessee where the injury complained of was not caused by any of the employees of the State, or by a defect in the leased premises.

SAME—*acts committed by strangers.* Acts committed by strangers who were admitted to the leased premises does not create any liability against the State.

WORKMAN'S COMPENSATION ACT—*no liability under.* The State is only liable in cases which fall clearly within the provisions of Section Three (3) of said Act.

JURISDICTION—The Court is without jurisdiction to allow a claim unless the facts show a legal or equitable liability against the State.

Edward J. Brundage, Attorney General, for State.

The administrator of the estate of Freida Reidel files this claim for $10,000, alleging that through the carelessness of the State, said Frieda Reidel was drowned at Starved Rock State Park at LaSalle County, Illinois, on July 6, 1916. The deceased was 21 years of age and was employed by the Western Clock Company at Peru, Illinois, and while on her vacation, in company with four of her friends, spent the day at Starved Rock State Park, and while there, went in bathing with her friends in a lagoon or bathing pool which it appears was leased by the State to one W. E. Crosiar at a yearly rental. The deceased and her friends applied to the person in charge at the bath house and paid the admission fee for a permit to bathe and swim in said pool. While in said pool, five men, strangers to the deceased and her friends, came into the said pool and while the said deceased and her friends were on a raft in said pool, pushed said raft out into deep water and then upset said raft, throwing said deceased and her friends into the water. The deceased was drowned, but her friends were rescued. The strangers immediately left the pool and have not been heard from since.

Claimant in his argument, takes the position that the State is liable because it leased the said bathing-pool privileges for a certain rental and that it was the duty of the State to have someone in charge of the

pool at all times, to protect persons bathing therein. It is admitted that there was a rope and a sign indicating the places of shallow water and of deep water in said pool or lagoon, and that the death of the deceased was not caused by any of the employees of the State or by any defect in the said bathing pool, but that her death came from the acts of strangers who were admitted to said pool on the same terms as the deceased and her friends.

The State, through its Attorney General, has filed a general and special demurrer to the declaration in this case on the grounds that the doctrine of *respondeat superior* is not applicable to the State, and also that in the absence of Statute, the State is not liable for the torts of its officers, agents or employees. The Supreme Court of this State, in the case of *Elmore* v. *Drainage Commissioners*,, 135 Ill. 269, has held that the doctrine of *respondeat superior* does not apply to the State, and the Court of Claims in the following cases has held that the doctrine of *respondeat superior* is not applicable to injuries sustained because of negligence of servants of the State:

Jasper v. *State*, 2nd Court of Claims, 323.
Allen v. *State*, Opinion filed October session, 1906.
Henke v. *State*, 2nd Court of Claims reports, page 11.

We are of the opinion that under the Act of 1917, creating a Court of Claims, this Court has no jurisdiction of this case. In operating the Starved Rock State Park, the State was exercising a governmental function and this Court has held in the case of *Morrissey v. State*, Vol. 2 Court of Claims, 267, that there can be no recovery arising in tort in State institutions. In the *North case*, 201 Ill. App. 449, cited in the State's brief, the Court held that the State could only be liable under the Workmans Compensation Act in cases that came within the provisions of section 3 of said Act. The case at Bar does not come within the provisions of section 3 of said Act and we are of the opinion that the Court of Claims Act does not repeal or abolish the rule, that the doctrine of *respondeat superior* is not applicable to the State. In our opinion there is no liability on the part of the State in this case. The demurrer to the declaration will be sustained, the case dismissed and this claim rejected.

CHRISTIAN F. WIEHE, ASSIGNEE OF ROBERT W. THOMPSON,

v.

STATE OF ILLINOIS.

Opinion filed November 26, 1918.

SERVICES RENDERED—*what must be shown in claim for services.* Before a claimant is entitled to an award for services rendered he must prove the nature of the services performed, and that the amount claimed therefor are reasonable and proper.

ESTOPPEL—*the Court has right to go behind an approval of claim by a State officer.* This Court is not estopped from going behind an approval of a claim by a State officer and inquiring into its reasonableness, its validity, or whether the services performed were necessary and proper to be paid by the State.

Edward J. Brundage, Attorney General for State.

On the 18th day of December, 1915, Hon. E. F. Dunne, Governor of Illinois, telegraphed one Robert W. Thompson, at La Salle, Illinois, informing him that the Waterways Commission wanted him in Washington, December 22nd, and stating that the Commission would pay his expenses and reasonable charges.

It appears that in response to said telegram Robert W. Thompson went to Washington, D. C. He afterwards rendered a bill for his expenses and charges to the Illinois Waterways Commission, the expenses consisting of railroad fare, hotel bills, fees to porters, waiters, etc., amounting to eighty-two dollars and thirty-five cents ($82.35) and he claims fifty dollars ($50.00) per day for his services for four days, making the total amount of his bill two hundred and eighty-two dollars and thirty-five cents ($282.35).

On March 6th, 1916, one Joseph O. Kostner, Secretary of the Illinois Waterways Commission wrote Mr. Thompson that his bill for two hundred and eighty-two dollars and thirty-five cents ($28.35) had been approved by said Commission and forwarded to the State Auditor for payment. Subsequently there was an injunction issuing out of some court which apparently prevented the payment of this bill. In what Court this injunction was pending or what the final determination of it was does not appear from the evidence before us.

On March 6th, 1916, Robert W. Thompson executed an assignment of his claim against the State of Illinois, above referred to, to the claimant, Christian F. Wiehe. Mr. Wiehe immediately notified the Waterways Commission and the Auditor of Public Accounts that he had purchased the claim of Mr. Thompson against the State, and Mr. Wiehe claims that afterwards he filed the original assignment of said claim with the Auditor of Public Accounts of the State of Illinois, but it appears from the evidence that the same has been lost or mislaid, if it

was ever filed in the office of the State Auditor. There is no evidence in the record showing or tending to show what Mr. Thompson did on his trip to Washington, D. C. or what the nature of his alleged services were, or, that his bill for services are reasonable and proper for the work done. Under the condition of the proof this Court is unable to say that the State of Illinois owes him anything. It would certainly be improper for this Court to allow his claim without information as to the nature of the services he claims to have rendered. For all that appears in the record he may have gone down there as a lobbyist or rendered other services which would be an improper charge against the State.

Counsel for claimant argues that because his claim was approved by the Illinois Waterways Commission, that this Court cannot go behind such approval and inquire whether the services were proper for the State to pay for or not; that in effect, this Court is estopped to question the validity of his claim or the reasonableness of the amount of his charges, or whether the services he claims to have rendered were necessary and proper to be rendered and paid for by the State. We disagree with counsel for claimant, and inasmuch as he has not shown to this Court what services Mr. Thompson rendered, or that said services were necessary and a proper charge against the State of Illinois, we cannot see that we would be justified in allowing this claim. Claim is disallowed.

FRANK POPHAM, CONSERVATOR AND ADMINISTERING UPON THE ESTATE OF LAURA HOPE BAIN

v.

STATE OF ILLINOIS.

Opinion filed November 26, 1918.

MISTAKE OF LAW—*no recovery can be had for moneys paid.* Where payment is voluntarily paid under a mistake as to the law it cannot be recovered back.

PAYMENT UNDER AN UNCONSTITUTIONAL LAW—*when no recovery can be had.* Where payment is voluntarily made under a statute which is afterwards declared unconstitutional no recovery of the amount paid can be had. (Home Life Ins Co. v. State, 2 C. C. 50, followed.)

DURESS—*when payment is not compulsory.* Payment is not compulsory unless it is made to relieve from actual or existing duress imposed upon the party paying by the party to whom payment is made.

SAME. ORDER OF COURT—*what does not constitute duress.* Order of court directing conservator (of decedent's estate) to pay claim against the estate does not constitute duress.

Edward J. Brundage, Attorney General, for State.

The claimant, representing the estate of Laura Hope Bain, now deceased, seeks to recover moneys paid by the conservator of said deceased from February 14, 1912, to April 1, 1917, amounting to $1,044.16 for the support of Laura Hope Bain while she was an inmate of the Kankakee State Hospital. These payments were made pursuant to the provisions of an Act of the Legislature of the State of Illinois approved June 11, 1912, providing that the total cost of the support of patients confined in asylums or State hospitals of the State of Illinois, was a charge against the estates of such inmates. This law was declared unconstitutional by the Supreme Court of the State in the case of Board of Administration, Miles, 278 Ill. page 174, and on that ground claimant now seeks to recover the moneys paid under the provisions of said unconstitutional act.

The State filed a motion to dismiss this cause on the ground that the declaration does not comply with Rule 5 of the Rules of this Court, whereupon claimant filed a motion to amend the declaration and also the amendment to same, to which the State filed a general demurrer. The motion to amend the declaration will be allowed and the amendment directed to be filed as of the date of the motion and the demurrer filed by the State will be considered as a demurrer to the declaration as amended. The case, therefore, comes up on a question of law presented by the demurrer to the declaration as amended, as to claimant's right to recover.

It seems clear to us from the facts shown in the declaration as amended that the payments made by intestate's conservator were voluntarily made and were not payments made under duress or compulsion and that these payments were made upon a mistake of law. The Supreme Court in the case of the *People* v. *Foster,* 133 Ill. page 509, has held that where money is voluntarily paid under a mistake, as to the law and under a claim of right, it cannot be recovered back, and in the case of *Yates* v. *The Royal Insurance Company,* 200 Ill. page 202, the Supreme Court of this State decided that the mere fact that the statute imposing a tax is unconstitutional and the tax for that reason illegal, does not authorize recovery of the amount paid if it was paid voluntarily. This is similar to the case at bar, where the Act was declared unconstitutional and claimant seeks to recover, and this Court, in the Home Life Insurance Company case, in which an opinion was filed December 19, 1908, held that there can be no recovery of payments made under a mistake of law.

It seems to us that the money herein sought to be recovered was paid voluntarily and not under duress. The duress must come from the party to whom the money is paid. Claimant in his brief contends that these payments were made under duress because the Court having jurisdiction of this estate directed the conservator of deceased to make these payments. The law seems to be that a payment is not compulsory unless made to relieve from actual or existing duress imposed by the party to whom the money is paid. There is nothing in this case to show that the State through its Board of Administration, did anything except to demand these payments, and exercised no duress of any kind upon the deceased or her legal representative.

We are of the opinion that the claimant has no right to recover in this case. The demurrer to the declaration as amended is sustained and the cause dismissed.

O. W. HUNKLE & COMPANY, A CORPORATION

v.

STATE OF ILLINOIS.

Opinion filed November 20, 1918.

CANCELLATION OF INDEMNITY BONDS—*entitled to allowance for earned premiums.* Where bonds furnished by claimant for State employees are cancelled the State is liable for the amount of earned premiums on indemnity bonds.

Edward J. Brundage, Attorney General, for State

The claimant, at the request of the State of Illinois, requested claimant to furnish Fidelity Bonds to cover certain employees in the State Grain Inspection Department, named in the declaration, which it did.

The proper charges for services are particularly itemized with the numbers of the policies and premiums due for each, showing a total amount of earned premiums by cancellation to be forty-three dollars and eighty-nine cents ($43.89), due from defendant to claimant.

The declaration is properly verified and in due form, and supported by the evidence, all of which the State admits to be true.

The claim is allowed and claimant awarded the sum of forty-three dollars and eighty-nine cents ($43.89).

CARL H. YODER

v.

STATE OF ILLINOIS.

Opinion filed November 26, 1918.

SERVICES RENDERED—*when claim for services will be allowed.* Where claimant performs services for the State by the direction of the proper officer of the Department of Agriculture he is entitled to a reasonable allowance for the services performed and expenses incurred in the performance of his duty.

Edward J. Brundage, Attorney General, for State.

The claimant, Carl H. Yoder, performed certain services in Iroquois County during the years 1915 and 1916 under the direction of the State Veterinarian in ascertaining whether there was present in certain herds of cattle in said county, Tuberculosis or the Foot and Mouth Disease, which was prevalent at that time.

The State, through the Attorney General, admits that claimant performed the services mentioned in the declaration and that the amount claimed is reasonable and has been approved by the Department of Agriculture. The amount claimed is for five days at eight dollars per day, and $1.94 for expenses.

From the facts set forth in the declaration, we are of the opinion that claimant has the right to recover and that the charges claimed for his services and expenses are reasonable.

It is therefore the judgment of this Court that claimant be awarded the sum of $41.94.

JEANNE EDGAR

v.

STATE OF ILLINOIS.

Opinion filed November 26, 1918.

RESPONDEAT SUPERIOR—*not applicable to the State.* The State, in the absence of a statute, is not liable for the torts of its officers, agents or employees.

Edward J. Brundage, Attorney General, for State.

This claim is filed by Jeanne Edgar, the surviving widow of Maxwell Edgar, deceased, against the State, for $20,000 damages for the death of her husband, Maxwell Edgar. Said Edgar was a lawyer by profession and a resident of Chicago. On April 6, 1917, he was committed to the State Hospital for the Insane at Elgin, Illinois, suffering from Paresis. On April 29, 1917, while an inmate of said hospital, it is alleged that he came to his death by wounds upon his body and abdomen inflicted by one or more employees employed by the authorities of said State Hospital for the Insane, at Elgin, Illinois.

The State, through the Attorney General, has filed a general and special demurrer to the declaration or statement filed in this cause, setting up as grounds or demurrer (1) that the doctrine of *respondeat superior* is not applicable to the State in this cause, and (2) that in the absence of Statute, the State is not liable for the torts of its officers, agents or employees, and in support of said demurrer, has filed a statement and brief. It does not appear that the claimant has filed any argument or brief in support of the declaration.

On consideration of the statement of facts set forth in the declaration and the demurrer and the brief of the Attorney General, it seems clear to us that there is no liability on the part of the State in this cause. In the case of *Elmore* v. *Drainage Commissioners,* 135 Ill., 269, the Supreme Court of the State has held that the doctrine of *respondeat superior* does not apply to the State, and the Court of Claims in previous opinions, has in the following cases held that the doctrine of *respondeat superior* is not applicable to injuries sustained because of negligence of the servants of the State:

Jasper v. *The State,* 2nd Court of Claims, 323.

Allen v. *The State,* Opinion filed October session, 1906.

The State, in the conduct of the Elgin State Hospital for the Insane at Elgin, Illinois, exercises a governmental function and this Court has held that there can be no recovery arising in tort in such institutions.

This rule has been followed in the case of *Morrisey* v. *The State,*

Vol. 2, Court of Claims, 267, in the case of *Taylor* v. *The State*. Vol. 2, Court of Claims, 243, and in the case of *Henke* v. *The State*, Vol. 2, Court of Claims, 11.

We are therefore of the opinion that there is no liability on the part of the State in this case. The demurrer to the declaration is therefore sustained, the cause dismissed and this claim rejected.

J. T. HANLEY

v.

STATE OF ILLINOIS.

Opinion filed November 26, 1918.

CREATION OF BOARD—*failure of Legislature to make appropriation for its operation. Liability of State.* Where the General Assembly creates an agency of the State Government and fails to make an appropriation for the necessary expenses of its operation, a member of such agency or Board created who advances money necessary to defray such expenses is entitled to recover the amount expended, and a claim against the State for the necessary expenses advanced is a valid obligation against the State.

Edward J. Brundage, Attorney General, for State.

The claimant, J. T. Hanley, as manifested by the evidence, was appointed member of the Board of Examiners of Structural Engineers, by the Governor of Illinois in 1915. The law creating this board was passed in 1915, and became effective July 1, 1915. The General Assembly in its enactment of the law, failed to appropriate any money for the conduct, and operation of said board in discharging the duties of said office. If, therefore, it became necessary for someone to pay the necessary expenses of the operation of said board, which was done by the claimant.

He expended, from time to time, money amounting to nine hundred eighty-seven dollars and fifteen cents ($987.15) which is itemized. Claimant was secretary of the board, and performed services as such, at a salary of one hundred twenty-five dollars ($125.00) per month. He received none of this salary for eleven (11) days in August, nor for the months of September, October and November, 1915, which amounted to four hundred twenty-one dollars and thirty-five cents ($421.35).

This claimant seeks to recover these two items, which are clearly established by the evidence in the case.

The Attorney General admits in writing that there is no controversy as to claimant's right to recover in this case.

In view of the foregoing, it is the opinion of the Court that the entire claim should be allowed and claimant is accordingly awarded the sum of fourteen hundred eight dollars and ninety-four cents ($1,408.94).

JOHN W. MUSHAM

v.

STATE OF ILLINOIS.

Opinion filed November 26, 1918.

CREATION OF OFFICE—*failure of General Assembly to make appropriation therefor.* Where the State creates a Board and directs the members thereof to perform certain duties and provides compensation for services and expenses of its members, and the Legislature neglects to make an appropriation therefor, the members of the Board may perform the duties prescribed by law and recover for their services and expenses advanced.

Edward J. Brundage, Attorney General, for State.

Claimant was on July 15, 1915, appointed by the Governor of the State of Illinois to be a member of the Board of Examiners of Structural Engineers, under an act approved July 5th, 1915. He took the oath of office and entered upon the performance of his duties. The Act provided for a per diem of ten dollars ($10.00) for each board member for each day's attendance upon the duties of said board, and also provided for traveling expenses in connection therewith. The Legislature, however, failed to make an appropriation for a per diem of the members of said board and their expenses until the special session of the Legislature in December, 1915, when an appropriation was made for the per diem salary of the board, but no appropriation was made for their traveling expenses. The amount claimed in this case is for 21 meetings attended by claimant at ten dollars ($10.00) per day, from August 20, 1915, to November 23, 1915, and for traveling expenses from August 19, 1915 to April 25th, 1917 amounting to $55.00, making a total of $265.00.

The State, through the Attorney General, has filed its written admission that there is no question as to claimant's right to recover in this case. It is a well settled rule of law that where a State creating a board directs the members of the board to perform certain duties and provides for compensation for the services and expenses of said board members, but the Legislature neglects to make an appropriation for the said salary and expenses, the members of said board may carry out the provisions of the Act, and recover for their services and expenses.

We are of the opinion that claimant is entitled to recover in this case. The Court therefore awards the claimant the sum of $265.00.

RUTH BAILEY, ET AL
v.
STATE OF ILLINOIS.

Opinion filed November 26, 1918.

CONTRACT—*when teacher entitled to salary for full term.* A teacher who is employed to teach school for a definite term is entitled to recover the stated salary for the full term, although the school is closed by the proper school authorities before the end of the term, provided she is willing, able and ready to complete the term.

SAME—*when not entitled to salary.* Where there is no contract for a definite term, or where the teacher enters upon her duty with notice that the term had been shortened by the proper authorities, no recovery can be had for a full term where it is only shown that formerly the school operated for a longer period of time. In such case no presumption will amount to a contract.

IMPLIED CONTRACT—*what does not amount to.* A written inquiry by the teacher to the proper school authorities as to the probable length of time the school will be operated, to which no reply was made, will not raise an implied contract as to the length of the term.

Edward J. Brundage, Attorney General, for State.

This suit was brought by a large number of persons who have been teachers in the Illinois School for the Deaf at Jacksonville, Illinois. The parties do not have a joint claim, but each one has a separate claim and have all joined in one suit, asking a separate allowance in different amounts, to each of the claimants.

It appears from the evidence that prior to the year 1916, for upwards of thirty years, the institution above referred to, carried on the school for a period of nine months each year. It also appears that the Board of Administration of the State of Illinois, entered an order known as "General Order No. 133" fixing the term of said school at nine months. This general order went into effect September 1st, 1915, and was published in a book issued by said Board, giving a list of salaries and wages per month, of Illinois charitable institutions, including the School for the Deaf at Jacksonville, Illinois.

In the spring of 1915, Mr. Charles P. Gillett was managing officer in the institution, and when making arrangements for the school year commencing on or about September 1st, 1915, he mailed to each of the persons he desired to be employed in said school for the ensuing year, a letter as follows:

"Illinois School for the Deaf,
Superintendent's Office.

Please inform me whether you wish to retain your position in this school during the term beginning next September. If your

answer should be in the affirmative I shall take it that you make it in good faith and, with your consent, that said reply be considered in the nature of a contract. Please reply within seven days, using the enclosed form.

Yours truly,
Superintendent."

This note was sent to all persons who claim under the first count of the declaration herein and each of them answered in the affirmative. We hold that their acceptance of the position tendered them by Mr. Gillett amounts to a contract with said institution for one school year of nine months, and that each of said persons are entitled to full nine months' pay according to the schedule of wages and salaries established by the Board of Administration, and published by said board in the book introduced in evidence, marked Exhibit "D". The school year of 1915-1916 was afterwards shortened by the authorities and made to end June 1st instead of June 15th, 1916, and the teachers employed for that year were paid for only eight months and a half. It is shown in the evidence that the institution was closed for purposes of economy by the Board of Administration, who had authority in the matter. The teachers during the school year, were only paid for eight months and a half, although employed, as we hold, for nine months. Under the evidence in this case, we must hold that the teachers claiming for wages for the two weeks from June 1st, to June 15th, 1916, are entitled to pay during that time, notwithstanding there was no school in operation and that they did no work for the institution.

There are two other counts in the declaration. In the second count a large number of persons are claiming pay for the two weeks from September 15th, 1916, to September 30th, 1916, and the persons claiming under the second count are suing for wages because the school did not commence two weeks earlier. Under the third count a large number of teachers are claiming pay from June 1st, 1917, to June 15th, 1917, during which period the school was closed by the lawful authorities empowered so to do.

It appears that the school year of 1916-1917 only covered a period of eight months and for that time the teachers were paid, and they insist that they should be paid for the full nine months. There is no evidence in the record tending to show that these teachers had made any contract with the school, establishing the length of time for which the school year of 1916-1917 should run. They all knew that the school year of 1915-1916 was shortened by the lawful authorities, and again took up their duties in the fall of 1916, without any understanding or agreement. All these teachers were Civil Service employees and could not be discharged without proper cause, but there was no reason why they should not have found out, before entering upon their occupation as teachers in the fall of 1916, how many months they were expected to teach that school year. They had notice of the fact that the term of school had been cut down to eight months and a half the previous year, and that it commenced two weeks later in the season than it had ever commenced before. We do not think that they had a right to presume

that the school would run for nine months, and now urge, as they do in this case, that their presumption should amount to a contract. They were not given a notice similar to the teachers who are claiming in the first count, so far as the evidence shows, but simply continued in their employment as employees under the Civil Service of the State. The evidence falls far short of showing that the teachers who taught in this institution during the school year of 1916-1917, had a contract, either express or implied, that the school year was to be nine months and they were to have nine months' pay.

On the 29th day of April, 1916, after the Board of Administration had shortened the term of school in the School for the Deaf, to eight and one-half months it appears from the evidence that the teachers were very much dissatisfied and exercised over the question as to whether they were to be paid for the two weeks cut off from the school year, and a committee consisting of seven persons, all of whom are named as claimants in the first count of the declaration, forwarded a written communication to the Superintendent of the school, Mr. C. P. Gillett, which is as follows:

"Jacksonville, Ill., April 29, 1916,

Mr. C. P. Gillett, Superintendent,
School for the Deaf,
Jacksonville, Ill.

Dear Sir:

In view of the fact that an order from the Board of Administration directs that our school be closed two weeks earlier than usual, we desire to know if it is the intention of the board to withhold the salaries of the teachers for said time. As you know, our understanding last year with you, acting for the board, was made in good faith and with the clear statement that it was for the school year and not by the month.

Because of this fact, we feel that we are entitled to the full salaries established by the board last fall for the year, as per General Order No. 133.

We desire also to know if the full salaries, as established by this board in the aforesaid General Order, will be paid during the coming school year.

As men who have business obligations and responsibilities we ask in all courtesy to know the exact compensations to be received.

Respectfully submitted,

E. P. CLEARY,
G. H. PUTNAM,
D. W. GEORGE,
C. SPRUIT,
H. D. SNYDER,
C. W. TAYLOR."

This communication plainly shows that as early as April, 1916, the action of the Administration Board in cutting down the school year of 1915-1916 warned all the teachers that the same might be done for the next school year. These teachers seem to have been alert and wide-

awake and then made demand on the Superintendent to ascertain the number of months the school would be continued in the coming year. There is no evidence to show that the Superintendent, or any other authority of the school answered this communication. It leaves the situation thus: The school year for 1916 had been cut down to eight and one-half months, regardless of all previous custom and regardless of General Order No. 133 of the Administration Board, and these teachers immediately made inquiry as to what number of months would constitute the succeeding school year, showing that as early as April, 1916, they were not relying upon General Order No. 133, or upon any previous "understanding" which they emphasize so much in their testimony. They had a right, before they started in to teach for the year 1916-1917, to demand a contract or quit, but after having made this inquiry and receiving no reply from it, they seem to have elected to remain in the employ of the institution as teachers and take their chances as to the length of time the school would be operated during that year. After having addressed this communication to the Superintendent and having received no reply from it, they are in no position now to urge or claim, before the Court, that they had a contract that the school was to be operated for nine months and that they were to receive nine months' pay.

The claims of all persons set forth in counts numbers two and three and hereby disallowed. We hereby make allowance to the persons claiming under the first count in the declaration as follows, to-wit:

To Bailey, Ruth, teacher	$52.50
To Berkeley, Anne, teacher	52.50
To Brown, Margaret, teacher	66.67
To Bryns, Margaret, teacher	66.67
To Carter, Laura, teacher	50.00
To Carter, Mary D., teacher	55.00
To Cleary, E. P., teacher	66.67
To Davis, Amanda, teacher	55.00
To Devitt, Jennie F., teacher	60.00
To George, D. W., teacher	66.67
To Gillett, Alma, teacher	60.67
To Hayden, Josephine, teacher	50.00
To Howard, Belle, teacher	66.67
To Jackson, Anne W., librarian	36.11
To Jordan, Edith, teacher	62.50
To Jordan, Helen, teacher	66.67
To Kingsley, Anna, teacher	52.50
To Krueger, Minnie B., teacher	60.00
To Lee, Louisa, teacher	50.00
To Macomber, Phyllis, teacher	52.50
To Martin, Mary L., teacher	66.67
To Noyes, Sarah, teacher	66.67
To Orr, Della M., teacher	52.50
To Putnam, G. H., teacher	66.67
To Race, Effie J., teacher	66.67
To Russell, Catherine, teacher	50.00
To Russell, Margaret, teacher	66.67
To Sandberg, Irene, teacher	52.50
To Sheridan, Laura, teacher	66.67
To Sheridan, Mary J., teacher	66.67

	60.67
To Snyder, Harry, teacher	75.00
To Spruit, C., teacher	52.50
To Spruit, Florence, teacher	60.00
To Taft, Carolyn, teacher	66.67
To Tanner, Annie, teacher	75.00
To Taylor, C. W., teacher	66.67
To Taylor, Jean, teacher	66.67
To Upham, Mary C., teacher	66.67
To Walton, Idella, teacher	66.67
To Wood, C., teacher	88.89
To Wood, Frances S., teacher	66.67
To Young, Annie, teacher	

JOSEPH E. THOMPSON

v.

STATE OF ILLINOIS.

Opinion filed November 26, 1918.

RESPONDEAT SUPERIOR—*doctrine of not applicable to State.* The doctrine of *respondeat superior* is not applicable to the State, and in the absence of an express statute the State is not liable for the torts of its officers, agents or employees.

QUARANTINE—*State officer has right to quarantine against infection disease.* The State officer acting under the police power of the State has the right to place a quarantine against infectious disease for the public good, and in so doing no liability attaches to the State in favor of a person aggrieved.

PUBLIC NUISANCE—*diseased cattle.* Cattle affected with foot and mouth disease are a public nuisance.

PRACTICE—*Par. 4 of Sec. 6, Court of Claims Act.* Par. 4 of Section 6, does not create any new or additional liability against the State, but simply provides a remedy by which certain claims may be heard and determined, and gives this Court no power to make an award in any case unless the facts show a legal or equitable claim against the State.

Edward J. Brundage, Attorney General, for State.

This case is brought by claimant for damages alleged to be due him for loss by depreciation in weight of 618 head of sheep, which claimant in October, 1915, purchased in the West and caused to be shipped to Earlville, LaSalle County, from whence they were to be taken to his farm nearby, to feed; and later to be put into market, as they were. After the sheep were shipped from the West and before their arrival at their destination the County of LaSalle was quarantined against hoof and mouth disease. Consequently claimant was not permitted to unload his sheep at Earlville; but unloaded and took them to Somenauk in DeKalb County, the adjoining county, where he kept them several weeks, after which the quarantine was lifted and he took them home, pastured, fed and sold them in market. He claims that pasturage at Somonauk being inferior to that in his own, at his farm, the sheep rapidly depreciated in weight and health by reason of such inferior pasturage and that in consequence of which depreciation, and the death of 18 or 20 head, he claims damages in the sum of thirteen hundred ten and 93/100 ($1,310.93) dollars. The evidence, in substance, is that in October, 1915, claimant and others bought several car loads of sheep in some of the far Western states and shipped them to their homes in Illinois to put on pastures that were then green, and after a while, when the pastures were cleaned up the sheep, which were expected to

make substantial gains in weight, were to be sold on the market with the expectation of making a profit on the gain in weight.

That after they were shipped and were in transit from the West, and before their arrival at their destination, Earlville, in LaSalle County, Illinois, which is a few miles from the home of claimant, a quarantine was placed upon certain territory embracing LaSalle County, on account of alleged prevalence of hoof and mouth disease, and claimant was forbidden by the State authorities to ship or unload his sheep in LaSalle County; but unloaded them in the adjoining county and there kept them on the fairground at Somonauk for several weeks.

Claimant alleges and testified that the Chairman of the State Board of Live Stock Commission told him during first week after the sheep were unloaded that he would soon be permitted to take his sheep home to his farm. That said sheep were not permitted to be taken into LaSalle County to claimant's home till October 27th, 1915.

By that time the frosts had killed claimant's pasture and the sheep had fallen off in weight, and lost in consequence of inferior pasture at the fairgrounds at Somonauk. The sheep were subsequently sold in market, at three different times.

The shipment he made in January, 1917, were sold on same day, in same market in which one Ole Benson sold his sheep, which were a part of the same sheep that were shipped from the West with claimant's sheep, and they brought some $2.00 a head more than claimant's sheep.

And by comparison of prices of his and Benson's sheep he reaches the conclusion that he lost $3.00 per head all told on his sheep.

The State demurs and claims it is not liable, first, because the doctrine of *respondeat superior* is not applicable to the State; second, that in the absence of statute, the State is not liable for the torts of its officers, agents or employees; third, the claim is barred by the statute of limitations.

The evidence discloses the fact that something like a year before this the hoof and mouth disease had been prevalent in LaSalle County and that the county had been quarantined. Also a case or two had been reported in said county a few days before the sheep arrived from the West and the county was again quarantined by legal authorities, and under the rules claimant could not for some three (3) weeks ship his sheep into LaSalle County. Claimant endeavors to show that there was no necessity for the quarantine. There is no doubt of the presence of the disease in LaSalle County at time of quarantine and the State not only had a right, but it was the duty of the proper officers to place a quarantine when they had reasonable grounds to suspicion the presence of infectious diseases, as the hoof and mouth disease, in any county or territory.

The foot and mouth disease is regarded as very dangerous and cattle affected with it become a public nuisance. *Durand* v. *Dyson*, 271 Ill. 382.

Under the police power the State had a right to place the quarantine as it did in the present instance and no individual has a right to complain, when the act was for the public good.

Hurd's Revised Statute, Chapter 8, Paragraph 48.

The damage, if any, that may have resulted to claimant by reason of the establishment of the quarantine was unavoidable and only incidental, and perhaps the same complaint might be made by others, but private interests are subordinate to public rights, and under such circumstances, as in the case at bar the individual cannot complain, unless there is an express provision in the Statute giving him a remedy. And in this class of cases there is no statutory provision for compensation claimed.

The State Board of Live Stock Commissioners, in placing the quarantine, honestly acted in the interest of the public and are presumed to have acted intelligently in the premises.

But in the event they had acted carelessly or without cause, in laying the quarantine the State under the doctrine that *respondeat superior* does not apply, and that the State in the absence of statute is not liable for the torts of its officers, agents or employees.

Henke v. *State of Illinois*, No. 2 Court of Claims, page 11 and cases therein cited, attorney for claimant insists that this Court under the Act of 1917 is vested with a more comprehensive jurisdiction than the same Court had prior thereto and cites section 6, paragraph 4, which provides:

"To hear and determine all claims and demands, legal and equitable, liquidated, ex contracto ad ex delicto, which the States as a sovereign commonwealth, should in equity and good conscience discharge and pay."

Paragraph 4, of section 6 does not in our opinion create any new or additional liabilities against the State; but simply provides a remedy by which claims may be heard and this Court has no power to make an award in any case unless the facts show a legal or equitable claim against the State. *Schmitt* v. *State*. 1, Court Claims 76.

In view of the foregoing it is unnecessary for the court to pass upon other questions raised by the State, and the demurer is sustained and claim disallowed and cause dismissed.

CHARLES HARBOUGH LUMBER COMPANY, INC.

v.

STATE OF ILLINOIS.

Opinion filed November 26, 1918.

CONTRACT—*material man must follow provisions of statute.* **Where material is furnished to contractor to complete work for the State, the person furnishing such material must follow the provisions of Section 23, of Chapter 82, Hurd's Revised Statutes, to be protected, or to recover the purchase price of the material furnished.**

PRESUMPTION—*not indulged against the State.* **No presumptions are indulged against the State to aid a claimant in his demand.**

IGNORANCE OF LAW—not ground for recovery. **That the claimant is ignorant of the law or is guilty of *laches* is not ground for allowance of his claim.**

Edward J. Brundage, Attorney General, for State.

This is a claim filed to recover for the value of building material alleged to have been furnished by claimant to Wm. M. Deffenbaugh, and Son, who contracted with the State of Illinos to erect a State building, to-wit: The St. Charles School for Boys building, in which building said material was by the said contractors used, amounting to a balance of eight hundred twenty-four dollars, eighty-eight cents ($824.88).

The evidence shows that on the first day of August, 1916, bids were received by the Board of Administration of Illinois, for the erection of buildings for the accommodation of said School for Boys, and that the contract was awarded to said Wm. M. Deffenbaugh, of Springfield, Illinois, for the sum of nineteen thousand, one hundred eighty-nine dollars ($19,189.00). Thereafter, said Board entered into a contract with Wm. M. Deffenbaugh and Son, co-partners, for the erection of said building for said sum, wherein and whereby the said contractors were to furnish all material, labor, tools, and equipments necessary to the completion of said building according to contract.

The said Wm. M. Deffenbaugh and Son, contractors, entered into a bond to the State Board of Administration for the faithful performance of said contract in the sum of nineteen thousand one hundred eighty-nine dollars ($19,189.00), with the American Surety Company, of New York, as surety thereon.

Wm. M. Deffenbaugh and Son, hereinafter called the contractors, from time to time, verbally ordered and procured of claimant a bill of building material to be used in said building, amounting to two thousand two hundred seventy-five dollars and sixty-five cents ($2,275.65). Such orders covered a period of time from September 7, 1916, to March 28, 1917, both dates inclusive. By payments and return of material,

the total sum last mentioned was reduced to eight hundred twenty-four dollars and eighty-eight cents ($824.88), for which he files claim. A bill of particulars is attached, and amply supported by evidence, and to which there is no controversy.

It is claimed that "under a mistake of fact, the material, labor, etc., were figured on too low a basis, and that the State, if it should pay claimant his demand, would still be obtaining the work and material, etc., at a less figure than the fair market value thereof, and less than the other fair and reasonable bids made thereon by responsible contractors."

This argument does not appeal to the Court as having much force or legal logic, especially when it is shown by the evidence that this contract was made before war was declared, and that subsequently thereto, material and labor advanced very rapidly. There is no evidence showing or tending to show, that the contract was awarded at an unreasonably low price.

Claimant and the Board of Administration had some correspondence in the spring and summer of 1917, relative to the failure of the contractors to pay the claimant the balance he now claims, and if any further payments were made by the State to the contractor after that it is not disclosed by the evidence.

It is shown, however, that in April, 1917, the contractor abandoned, and refused to complete his contract for the erection of said buildings. Thereupon, the Board of Administration employed another firm, Lehman & Jenson Construction Company, to complete the building on same plans and specifications contained in the Deffenbaugh & Son contract, for which, said Lehman and Janson Construction Company was paid the sum of nine thousand seven hundred fifty-four dollars ($9,754.00). It appears, the State Treasurer had paid Mr. Deffenbaugh on the job, the sum of eleven thousand five hundred dollars ($11,500.00), which was eighty-five (85%) per cent of the amount of labor, material, furnished, as shown by statement of the architect.

It is claimed by claimant that fifteen (15%) per cent of the value of work and material furnished by Deffenbaugh and Son, was forfeited to the State, and that the State should pay the amount to claimant. The contract between the Board of Administration and Deffenbaugh & Son, provided that the building should be constructed for nineteen thousand one hundred eighty-nine dollars ($19,180.00), as stated, and that in the event the contractors should fail, or refuse to complete said buildings according to the terms of the contract, the Board of Administration should have the work completed and charge the expense thereof to said Deffenbaugh & Son. This, the Board of Administration seemed to have done. The record of evidence fails to disclose just how much, and just when was paid by the State Treasurer to the original contractors, Deffenbaugh & Son. It is not shown, as a whole, that the State of Illinois came out ahead in any sum by reason of any forfeiture in the two contracts. The evidence falls short in this and several other particulars, and we cannot aid the claimant in any presumption against the State in order to make out his claim.

But in the event the State had been properly notified with a "Stop Order" as alleged; or that the State had profited by a forfeiture under the first contract, it could not avail the claimant in this case anything.

Where a remedy and procedure is provided by the plain provision of the statute, it must be followed. Chapter 82 of the Revised Statute of Illinois, entitled "Liens" furnishes full, complete and ample protection for all mechanics material men, labors, sub-contractors, etc.

Section 23 of Chapter 82, above referred to, provides as follows: "Any person who shall furnish material, apparatus, fixtures, machinery, or labor to any contractor for a public improvement in this State, shall have a lien on the money, bonds or warrants, due or to become due, such contractor for such improvement: *Provided*, such person shall, before such payment, or delivery thereof, is made to such contractor, notify the officials of the State, County, City or municipality whose duty it is to pay such contractor, of his claim by a written notice. It shall be the duty of such official so notified to withhold a sufficient amount to pay such claim until it is admitted, or by law established, and thereupon, to pay the amount thereof, to such person, and such payment shall be a credit on the contract price to be paid such contractor. Any officer violating the duty hereby imposed upon him, shall be liable on his official bond to the person serving such notice for the damages resulting from such violation, which may be recovered in an action at law in any Court of competent jurisdiction. There shall be no preference between the persons serving such notice, but all shall be paid pro rata in proportion to the amount due under their respective contracts."

This statute was in force, July 1, 1903, the date of its enactment, till July 1, 1917. The Legislature in 1917, passed another Lien Law; but Section 23 was not materially changed from that of 1903. Hurd's Revised Statute of 1917, Chapter 82, Section 37. From the plain provision of the foregoing law, it shows that claimant had a clear, positive and expeditious remedy under the statute to protect himself and enforce his claim as a materialman, by giving proper notice to the State official, whose duty it was to pay. He furnished a larger part of the material in fall of 1916, and might, at any time, thereafter, have given notice as above provided. Upon giving such notice the officer was legally required to stop further payment to contractors until a proper settlement could be had with him, as provided in foregoing provision of law.

A failure of the officer so served to pay claimant as provided, makes him liable on his official bond. But it seems that from the evidence on page 28 of claimant's evidence, by the manager of the claimant, that no notice was served, or given to any one of a lien claimed. But whether notice was, or was not served by claimant, it is immaterial in passing upon his right to a claim against the State. He evidently was guilty of laches, and in ignorance of his statutory rights, for which the defendant cannot be held accountable. Had he followed the plain provisions of the statute in this case cited, he undoubtedly could have en-

forced payment of his claim. Proper notice in due time on the State official liable to pay, would have held the money under the State's control till claim was properly adjusted and paid. A failure by such officer to so hold funds after notice due to contractor, would make him liable on his official bond by suit in any court having jurisdiction of same.

The claimant surely has no right of action in this Court for the enforcement of his claim, either in law, or equity. This claim is accordingly rejected.

JOSEPH A. WEBER

v.

STATE OF ILLINOIS.

Opinion filed November 29, 1918.

MEMBERS OF LEGISLATURE. CONTEST. *Legislature acts in judicial capacity.* Under the Constitution the Legislature acts in a judicial capacity when exercising its power in an election contest of its members, and determines the result of the election of its members without interference or intervention of the Courts.

EXPENSES OF CONTEST—*expenses of election contest determined by the Legislature.* Incidental to the power of the Legislature to determine the result of an election of its members, the expenses incurred in such contest should be fixed and determined by the Legislature itself.

SAME—*the right to fix, allow or disallow expenses an exclusive one.* The right to fix, allow or dis-allow expenses incurred in election contest of its members is as exclusive as the power to hear and determine such contest.

JURISDICTION—*Court is without jurisdiction in such cases.* The Court is without jurisdiction to allow a claim for solicitor's fees and expenses incurred in contest of election of members of the General Assembly.

Edward J. Brundage, Attorney General, for State.

Joseph A. Weber, the claimant, presents to the Court his claim in the sum of $1,250.00, alleged to have been paid out and expended by him in about his defense in a contested election case.

Wherein one Wilson contested Weber election as a member of the house of representatives in the 50th General Assmbly of Illinois.

It appears from the uncontroverted evidence that the claimant was elected as a member of the fiftieth General Assembly from the sixth Senatorial District on the 7th day of November, 1916, and received a certificate of his election December 9, 1916.

Robert E. Wilson gave due notice of the contest for his seat, and after the convening of the Legislature, the said contest was referred to the election committee in the house, which voted to recount the ballots cast in said election.

A committee of five members was appointed to conduct the proceedings.

The committee went to Chicago of which the sixth district forms a part.

The committee proceeded to count the ballots.

The claimant employed legal counsel to aid in the contest; and engaged six watchers and six talliers at $10.00 a day each, making a

sum of	$ 480.00
His attorney fee was fixed at	500.00
Incidental expenses at	270.00
Making a sum total of	$1,250.00

The recount and result of the contest showed that claimant was elected by over 1,000 votes majority.

The report of the committee showed Wilson, the contestant was badly defeated, and that claimant herein was duly elected.

The report was approved by the house, claimant prepared his expense account and all charges which are set forth herein heretofore and same were approved by the proper committee.

A resolution had been introduced and passed by the house in the 50th General Assembly limiting the attorneys fees to be paid in such cases not to exceed $500.00 to any sitting member against whom a contest should be filed and in which a recount was required, and not to exceed $250.00 where contest should be dismissed without recount of ballots.

Also that actual expenses for railroad fare, etc., if itemized and verified might be allowed to such sitting member, contestee, provided he is successful in retaining his seat.

The expenses were itemized and verified by claimant to amount of $745.15.

It appears in evidence that an appropriation was made.

By reference to the session laws of 1917, page 86, we find that two items there contained in H. B. 1037 and presented to the Governor for his approval.

The first item was for "Joseph A. Weber for expenses for himself and his attorney in contest case 745.15."

"The second item, Andrus & Trutter attorneys fees for Joseph A. Weber, $500.00 both of which items were vetoed by the Governor."

On the same page of said session laws and continuing on pages 87, 88 and 89 we find about 33 items for similar claims in other election contests of same character, and all "vetoed."

The claimant says the Governor vetoed his claim because it had not been referred to the Court of Claims for allowance.

There is no record evidence to this effect in this case.

On page 90 session laws—session laws 1917, the Governor is recorded as saying "I veto each of said items (after having vetoed items above mentioned) for the reason set forth in the opinion of the Attorney General, a copy of which is hereto attached."

We have not been apprised nor made acquainted with the contents of such opinion, even if it were material herein.

It is submitted by claimant, in his brief and argument that election contest expenses have for many years been paid by Congress and the various states, and that a terrible abuse of such powers had heretofore prevailed in Congress and in the Illinois General Assembly; and that such expense for election contests in the 48th General Assembly of Illinois amounted to about $68,000.00.

LOUIS J. SNYDER, EXECUTOR OF THE ESTATE OF CAROLINE E. DESHON, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*Lora J. Moore, executrix, etc.* v. *State, Supra, followed.* **This case is controlled by the decision of the Court in the case of *Lora J. Moore, ex. etc.* v. *State, Supra.***

Edward J. Brundage, Attorney General, for State.

The facts in this case as disclosed by the evidence are as follows: Caroline E. Deshon died on the eighteenth day of September, A. D. 1915, a resident of the City of New York. Administration was taken out in New York and claimant, Louis J. Snyder was appointed Executor of the Will of said decedent. On the fifth day of October, A. D. 1916, the County Judge of Cook County, Illinois, entered an order purporting to assess an inheritance tax in said estate of one hundred seventy-nine and 98/100 dollars ($179.98), which amount, together with interest, was on the same day paid by the claimant to the County Treasurer of Cook County, the total payment being one hundred ninety-one and 23/100 dollays ($191.23).

Thereafter, on the fifth day of September, A. D. 1918, the acting County Judge of said county entered an order vacating and setting aside for want of jurisdiction, so much of said prior order as attempted to assess a tax upon the transfers by said decedent of shares of stock in foreign corporations to non-resident beneficiaries, and it was found that with the elimination of the foreign stock there would be no tax on the estate.

The State by the Attorney General admits that if a refund is granted in the case of *Lora J. Moore, etc.*, v. *The State*, Number 33, filed at this term, claimant is entitled to a refund of one hundred ninety-one and 23/100 dollars ($191.23).

In said case it was stipulated by and between the Attorney General for the State, and Walter K. Lincoln, attorney for claimant, herein and for said Lora J. Moore, Executrix as follows:

First—That the Decree of the County Court of Cook County reforming the order of tax therein (a certified copy of which was therein filed with this Court) shall constitute all the evidence in said cause and that this stipulation shall stand and apply to the cases hereinafter enumerated, now pending in this Court.

Second—That the statement, brief and abstract filed by the parties hereto in said estate shall stand as a statement, brief and abstract in

the cases hereinafter enumerated, except as to dates and amounts in said cases, and that the decision of this Court in the said Lora J. Moore cases shall determine the merits and disposition of said cases hereinafter named."

List of cases above referred to:

John M. Campbell v. *State.*
United States Trust Company of N. Y. v. *State.*
Henry Purcell v. *State.*
John T. Morse v. *State.*
Charles M. Bissell v. *State.*
Boston Safe Deposit and Trust Company of Boston, Massachusetts v. *State.*
Andrew Fisk v. *State.*
Arthur D. Hill v. *State.*
F. J. Moore v. *State.*
John E. Garden v. *State.*
Commonwealth Trust Company of Harrisburg, Pennsylvania, v. *State.*
Louis J. Snyder, Executor, v. *State.*
Geo. F. Perkins v. *State.*

Said stipulation in the Lora J. Moore, Executrix, case number thirty-three, will, therefore, govern in this case, and the Court having awarded the claimant a refund in the said Lora J. Moore, Executrix, Etc., case and from the evidence and stipulation we award claimant the sum of one hundred seventy-nine and 98/100 dollars ($179.98).

COMMONWEALTH TRUST COMPANY, EXECUTOR OF ESTATE OF MARGARET C. HOLDERMAN, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*Lora J. Moore, et al* v. *State, Supra, followed.* This case is controlled by the decision of the Court in the case of *Lora J. Moore, ex. etc.* v. *State, Supra.*

Edward J. Brundage, Attorney General, for State.

The evidence shows, and same is admitted by the State, that Margaret C. Holderman died testate, December 17, A. D. 1915, a resident of Harrisburg, Pennsylvania. No administration in this State; but letters were issued to petitioners in Dauphin County, Pennsylvania.

On the fourteenth day of June, A. D. 1916, the County Judge of Cook County, Illinois, entered an order assessing an inheritance tax of said estate of two hundred eighty-eight and 04/100 dollars ($288.04), and same was paid to County Treasurer of Cook County, less a discount of five per cent.

Thereafter, on the fifth day of September, A. D. 1918, the acting County Judge of Cook County entered an order vacating and setting aside for want of jurisdiction, so much of said order as attempted to assess a tax upon transfer by said decedent of shares of stock in foreign corporations, and which were included in said order of assessment. On hearing the County Court, granted prayer of petition and found that the said prior order validly assessed a tax less discount of two hundred three and 05/100 dollars ($203.05); and that claimants (petitioners) were entitled to a refund of seventy and 59/100 dollars ($70.59).

The evidence in the case is sufficient. In case number thirty-three, of *Lora J. Moore, Executrix, etc.*, v. *State* filed at this term, it was stipulated and agreed by the Attorney General for the State and Walter K. Lincoln, attorney for claimant, and that the finding and opinion in said cause should govern the case at bar, and quite a number of other cases mentioned in the stipulation, except as to the amounts to be allowed.

The Attorney General admits that if a refund is granted in said case of *Lora J. Moore, Executrix,* v. *State,* that claimant herein is entitled to a refund of seventy and 59/100 dollars ($70.59).

For reasons for this allowance see opinion in said Lora J. Moore case above referred to.

The Court awarded a refund in said Lora J. Moore case, and agreeably to the stipulation mentioned and from evidence submitted in this case, the Court awards the claimant the sum of seventy and 59/100 dollars ($70.59) refund.

JOHN M. CAMPBELL, ET AL, EXECUTOR OF THE ESTATE OF BRENT GOOD, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*Lora J. Moore, et al* v. *State, Supra, followed.* This case is controlled by the decision of the Court in the case of *Lora J. Moore, et al* v. *State, Supra.*

Edward J. Brundage, Attorney General, for State.

The facts in this case as disclosed by the evidence and amitted to be true, are as follows: Brent Good died testate, on the tenth day of September, A. D. 1915, a resident of Long Branch, New Jersey, and letters testamentary were issued in that State to John M. Campbell on said estate. No administration was had in Illinois. On the twentieth day of November, A. D. 1916, the County Judge of Cook County entered an order purporting to assess an inheritance tax in said estate of seven hundred ten and 73/100 dollars ($710.73), which amount plus the interest, was paid to County Treasurer of Cook County, November 28, 1916, in the sum of seven hundred fifty-five and 61/100 dollars ($755.61).

Thereafter, on the fifth day of September, A. D. 1918, the acting County Judge, on petition duly presented, entered an order vacating and setting aside for want of jurisdiction, so much of said prior orders attempted to assess a tax on the transfer by said decedent of shares of stock in foreign corporations to non-resident beneficiaries. The Court found that a valid tax of two hundred fifty-one and 58/100 dollars ($251.58) was assessed, which the State admits to be correct. That five hundred four and 23/100 dollars ($504.23) was illegally assessed and should be refunded to the petitioners.

The Attorney General admits in this case that if a refund is granted in the case of *Lora J. Moore, Executrix,* v. *The State,* number 33 (and decided at present term of this Court) then claimant herein is entitled to a refund of five hundred four and 23/100 dollars ($504.23).

Said case above mentioned was decided on, an opinion filed at present term of this Court awarding a refund to the claimant. In said case, it was stipulated by counsel for the respective parties that finding of the Court in that case should govern the finding in the case at bar, and many other cases where the facts were substantially the same as in the Moore case.

Taking the evidence herein, and the stipulation into consideration, the Court awards a refund for claimant in the sum of five hundred four and 23/100 dollars ($504.23).

BOSTON SAFE DEPOSIT AND TRUST COMPANY, TRUSTEE OF THE ESTATE OF BENJAMIN W. PARKER, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*Lora J. Moore, et al* v. *State, Supra, followed.* This case is controlled by the decision of the Court in the case of *Lora J. Moore, et al* v. *State, Supra.*

Edward J. Brundage, Attorney General, for State.

The facts in this case shown by the evidence on file herein are as follows:

Benjamin W. Parker died on 11th day of December, 1910, a resident of Winthrop, Massachusetts.

No administration was had in this State, but by order of Probate Court of Suffolk County, Massachusetts, the claimant herein the Boston Safe Deposit and Trust Company was appointed trustee of said estate under the will of said decedent.

On the 17th day of August, 1916, the County Judge of Cook County, Illinois, entered an order purporting to assess an inheritance tax of $1,324.08 in said estate, and on the 17th day of August, 1916, the claimant herein paid to the county treasurer of said county of Cook the sum of $1,775.27, being amount of taxes plus 6% interest purported to be assessed by said order.

Therefore on the 5th day of September, 1916, the Acting County Judge of said Cook County, upon petition filed and presented by claimant herein entered an order vacating and setting aside for want of jurisdiction said order in so far as it purported to assess a tax upon the transfer by will of the decedent to now resident beneficiaries of shares in foreign corporations.

Such order did find that the said prior order validly assessed in said estate the sum of $1,025.31 and that the interest due thereon up to date of payment equaled $1,373.93 and that $401.32 was illegally assessed, and that said original order was void as to that extent for lack of jurisdiction.

The facts in this case are identical, except as to amounts as those in case No. 33, *Lora J. Moore, executrix* v. *State* (opinion filed at present term of this Court) and counsel in said case stipulated and agreed in, therein that the finding in said case should govern in this (and quite a number of other cases) and that in the event that a refund should also be allowed in the case at bar.

An opinion allowing a refund in said Lora J. Moore case was filed at present term of this Court.

For reasons for allowance of the claim in said cause see opinion in said No. 33, *Moore* v. *State*, and also *Oakman* v. *State*.

For the reasons stated in said cases and from the evidence herein the court awards claimant herein a refund of four hundred and one and 32/100 dollars.

CHARLES H. BISSELL ET AL, EXECUTORS OF THE ESTATE OF JANE C. GILLETTE, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*Lora J. Moore, et al. v. State, supra, followed.* This case is controlled by the decision of the Court in the case of *Lora J. Moore, et al. v. State, supra.*

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of $48.60 inheritance tax erroneously paid. The facts disclosed by evidence herein are as follows:

Jane C. Gillette died testate October 31st A. D. 1915, a resident of Salisburg, Connecticut.

No administration was had in this State, and Charles H. Bissell, Frank A. Hotchkiss and Bankers Trust Company of New York were appointed executors of the will of decedent by order of the Probate Court of Salisburg, Connecticut.

On the 25th day of April, 1916 the County Judge of Cook County, Illinois entered an order purporting to assess an inheritance tax in said estate of $674.66 which amount less discount for payment within six months, on the 28th day of April, 1916, the claimant paid to the county treasurer of said Cook County, the sum so paid being $640.93 net.

Thereafter the petitioners (claimants) filed a petition in the said County Court praying that said order be decreed to be null and void for want of jurisdiction in so far as it attempted to tax the transfer of decedent of stock of foreign corporations to non resident beneficiaries, and on the 5th day of September, 1918, the said county found that said prior order validly assessed a tax less 5% discount of $592.27 which amount it admitted should have been paid under said prior order.

$48.66 the Court found to have been erroneously assessed and erroneously paid.

In the case of *Lora J. Moore* v. *State*, No. 33, in which an opinion was filed at the present term of this Court the facts in the case were identical with this case except as amounts, and it was stipulated and agreed in said cause by counsel representing the parties that if an award for refund should be made for claimant therein that then the claimant in this case is also entitled to a refund.

In this case at bar it is admitted by the Attorney General that if a refund is granted in the case of *Lora J. Moore, etc. v. The State*, claimant herein is entitled to a refund of $48.66.

For reasons allowing such claim in the said case of *Lora J. Moore, etc.* v. *State*, we refer to the opinion filed therein at the present term of this Court.

For the reasons therein expressed, which are applicable also to this case, and from the evidence herein we are of the opinion that claimant is entitled to a refund of the taxes so erroneously paid and we accordingly award to claimanta herein the sum of forty-eight and 66/100 dollars.

HENRY PURCELL, EXECUTOR OF THE ESTATE OF THEODORE B. BASSELIN, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*Lora J. Moore, et al v. State, supra, followed.* This case is controlled by the decision of the Court in the case of *Lora J. Moore, et al. v. State, supra.*

Edward J. Brundage, Attorney General, for State.

The facts in this case stated below are proven by the evidence herein to-wit:

Theodore B. Basseline died testate on the 19th day of April, A. D. 1914, a resident of the state of New York and letters of administration were issued to Henry Purcell, claimant, in said State no administration was granted in this State.

On the 25th day of April, 1916, the County Judge of Cook County, Illinois, entered an order purporting to assess an inheritance tax in said estate of $107.53, which amount plus interest was by claimant paid next day to County Treasurer of Cook County, total being $120.07.

Thereupon on September 5th, 1918, the acting County Judge of said county entered an order vacating and setting aside for want of jurisdiction so much of said original order as attempted to assess a tax upon the transfer by decedent of shares of stock in foreign corporations to non-resident beneficiaries.

And it was found that with the elimination of the foreign stock from such assessment there was no tax property due or assessable or validly assessed by said order, the Court having no jurisdiction.

This case is governed by the finding by this Court in case No. 33, *Lora J. Moore, Executrix, v. State,* filed at this term in which the Court made an award of refund of taxes erroneously paid, etc.

It was stipulated by the parties in said case that the finding and decision of the Court therein should govern in this case (and several others) except as to the amount.

For the reasons stated in said case and also in *Oakman v. State,* filed at this term and from evidence on file herein the Court awards claimant the sum of one hundred twenty and 70/100 dollars, the same being admitted to be correct and payable herein the event of a refund in said No. 33 above referred to.

L. RODGERS WENTWORTH ET AL, EXECUTORS ESTATE OF CLARE E. SEABURY, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*Lora J. Moore, et al. v. State, supra, followed.* This case is controlled by the decision of the Court in the case of *Lora J. Moore, et al. v. State, supra.*

Edward J. Brundage, Attorney General, for State.

The facts in this case, as disclosed by the evidence on file are as follows:

Clara E. Seabury, died testate on the 5th day of January, A. D. 1916, a resident of New York City, New York.

L. Rodgers Wentworth and Albert H. Seabury were duly appointed in that State executors of the will of said decedent, on the 22nd day of June, 1916, the County Judge of Cook County, Illinois, entered an order assessing an inheritance tax in said estate of $1,142.28, which amount less 5% discount for payment within six months was by claimant paid to the County Treasurer of said county on 26th day of June, 1916, the net payment being $1,085.17.

Thereafter on 5th day of September, A. D. 1918, the acting County Judge of Cook County entered an order vacating and setting aside for want of jurisdiction, so much of said prior order as attempted to assess a tax upon the transfer by said decedent of shares of stock in foreign corporations to non-resident beneficiaries, and it was found in such order that the said prior order of the County Judge assessed a valid tax, less discount of $925.21, which amount the State admits should have been the true amount in the original order $159.96 of said prior order was declared illegally assessed for want of jurisdiction. The State admits that in the event a refund is allowed in case No. 33 *Lora J. Moore, Executor,* v. *State* (opinion filed at the present term of this Court) that $159.96 should be allowed in this case agreeably to a stipulation and agreement entered into in said case.

The opinion given in that case and the law governs in this case. Accordingly the Court awards claimant herein the sum of one hundred fifty-nine and 96/100 dollars.

UNITED STATES TRUST COMPANY OF NEW YORK, EXECUTOR OF ESTATE OF CATHERINE WOLFE LONEY, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*Lora J. Moore, et al. v. State, supra, followed.* This case is controlled by the decision of the Court in the case of *Lora J. Moore, et al. v. State, supra.*

Edward J. Brundage, Attorney General, for State.

The facts in this case as disclosed by the evidence are as follows: Catherine Wolfe Loney died [illegible] on the 7th day of May, 1915, a resident of the state of New Y[illegible] letters testamentory were issued to United States Trust Co[illegible] of New York, no administration was had in Illinois.

On the 25th day of April, [illegible]6, the County Judge of Cook County, Illinois, entered an order purporting to assess an inheritance tax in said estate of $762.65, which amount, together with interest, was on the 25th day of April, 1916, paid by claimant to county treasurer of said county.

Thereafter on the 5th day of September, 1918, the Acting County Judge of said Cook County entered an order vacating and setting aside for want of jurisdiction, so much of said prior order as purported to assess a tax upon the transfer by said decedent of shares of stock of foreign corporations to non resident beneficiaries.

And it was found that the said prior order assessed a valid tax, to the extent of $603.07, which amount the State admits is the true amount that should have been taxed and paid.

The State admits in this case that if a refund be granted in No. 33, *Moore, executrix* v. *State of Illinois* (opinion filed at present term of this court) that claimant in this case is entitled to a refund of $205.34, the amount erroneously paid.

This consent of the Attorney General is based upon a stipulation filed in said case that the facts and law governing in the Moore case is to govern in this (and others) case except as to amount.

Upon the evidence and stipulation the Court awards claimant herein a refund of two hundred and five and 34/100 dollars.

WILLIAM E. MOONEY

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

EXPENSES LEGISLATIVE COMMITTEE—*when State not liable.* A Legislative Committee after the final adjournment of the General Assembly is without authority to incur expenses or create a liability against the State.

Edward J. Brundage, Attorney General, for State.

The claimant claims compensation for services rendered and moneys expended in behalf of a committee appointed by the Legislature under House Joint Resolution No. 21, adopted by the 49th General Assembly. The Legislature at the 1915 session appropriated the sum of $10,000.00 for the expenses of said committee. The evidence shows that this committee met and that claimant performed his services after the 1915 session of the Legislature had adjourned. The evidence further shows that the committee met and organized in July, 1915, and that on July 7, 1915, the claimant was appointed as attorney, assistant secretary and investigator for said committee.

Under the decision of the Supreme Court in the case of *Fergus* v. *Russell*, 270 Ill., 304, and under the provisions of the State Constitution, we are of the opinion that the committee acted without authority after the adjournment of the Legislature and that the State is not liable for any services or expenses incurred by the committee or by anyone employed by the committee after the sine die adjournment of the Legislature.

The claim is therefore rejected.

CHARLOTTE PHILLIPS, ET AL

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*exemption. When estate not liable to tax. Refund.* Where the widow, who is a life tenant of the testator, dies before any of the children of testator who are devisees under the will, the children are each entitled to an exemption of $20,000.00, upon the valuation of their respective shares.

REFUND—*when refund will be made.* Where inheritance tax has been assessed, and paid, under Section 25, and afterward the beneficiaries become vested with entire estate, and after allowing the exemption, it is found no tax is due the State, claimant is entitled to a refund of the tax paid.

Edward J. Brundage, Attorney General, for State.

The petitioners, Charlotte Mary Phillips, Kate Edith Royal, Bryon Calm Player, Anna Louise Player, Newton John Player and Milton Player, the latter as sole surviving executor and the other as only heirs at law of John Player, deceased, claim a refund of $926.38 inheritance tax paid, and statement of facts as follows:

John Player died testate August 14, 1914, and Milton Player and Charlotte Player, widow, were appointed executors of the last will and testament of decedent.

The above named six petitioners were the only children and heirs at law left by him surviving, who took as legatees in the will the property of decedent in equal parts, except a very few small bequests.

The inheritance tax was assessed, levied and collected against said estate or estates in remainder so devised to said children to the amount of $926.38 on the estate appraised at $117,513.14, allowing but one exemption of $20,000.00, which was allowed to Bryon Calm Player.

The said widow was a life tenant also died April 7th, 1917, leaving her surviving the said same six children of herself and her said husband.

By reason of the death of the said Charlotte Player, widow before the death of any of the children, legatees and devisees of said John Player deceased, each of said children was and is entitled to $20,000.00 upon the value of their respective shares and devisees and for such reason the said tax of $926.38 so paid in as aforesaid should be refunded to all of said petitioners except Bryon Calm player, with 3% interest per annum from February 13, 1915.

The State by its counsel, Edward J. Brundage, Attorney General, says the evidence shows that claimants are entitled to a refund of said sum under section 25 of the inheritance laws with interest as

stated, but in order to make the facts clearer states that the will directed that some of the remainder should be given certain real estate at certain valuation as per their respective shares.

The claimants evidently stated their case on the assumption that the shares will all be equal and hence below the exemption, as to each. That in view of the provisions of the will while their shares will be considered equal, the actual value of their shares will not be equal."

The State admits that the actual value of the pr[illegible] to be delivered in kind differs so slightly from the valuations pl[illegible] hereon by the testator that there will be no inheritance tax in this estate as to these remainders, and it so held by the Court and an awa[illegible] of $926.38 with 3% interest per annum from February 13, 1915, is h[illegible] by made in favor of the claimants for the use of the claimants, excep[illegible]ryon Calm Player.

—4 C C

EDWARD S. HARKNESS, EXECUTOR OF THE ESTATE OF CHARLES W. HARKNESS, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*when entitled to a refund.* Where upon appeal from the order of the county judge assessing an inheritance tax the amount of the assessment is reduced claimant is entitled to a refund of difference between the amount of tax paid under the original order and the amount of tax fixed by the County Court upon the appeal.

INTEREST—*Section 10, Inheritance Tax Law.* No interest can be allowed on refund under Section 10, of Inheritance Tax Law.

SECTION 10, AND SECTION 25, INHERITANCE TAX LAW—*construed.* Section 10, and Section 25 of Inheritance Tax Law are not *Pari Materia* and the refund of tax mentioned in Section 25 cannot be construed so as to justify an allowance of interest on refund under Section 10.

Edward J. Brundage, Attorney General, for State.

The facts in this case as disclosed by the evidence are as follows: On the first day of May, A. D. 1916, Charles W. Harkness died testate, a resident of New York, and letters testamentary were issued to Edward S. Harkness, the Complainant, in New York, October 15, A. D. 1916, an appraisement was made of the property of decedent and filed in County Court in Cook County, and the County Judge entered an order thereon assessing an inheritance tax in said estate, due to the State of Illinois, the sum of fifty-four thousand two hundred thirty-two and 66/100 dollars ($54,232.66), the property upon which sum was assessed was valued at two million seven hundred eleven thousand six hundred thirty-three and 07/100 dollars ($2,711,633.07).

An appeal in due time was presented to the County Court of said county, and by order of County Court on hearing on such appeal, the amount was reduced to five hundred seventeen thousand six hundred twenty-four and 50/100 dollars ($517,624.50), and the entire tax to be paid therein was found to be ten thousand three hundred fifty-two and 50/100 dollars ($10,352.50). No appeal was ever presented from such decision.

The original amount of fifty-one thousand five hundred twenty-one and 03/100 dollars ($51,521.03) was paid by claimant before the appeal was taken under this modification, claimant was liable for the payment of only nine thousand eight hundred thirty-four and 87/100 dollars ($9,834.87), which, taken from fifty-one thousand five hundred twenty-one and 03/100 dollars ($51,521.03), leaves forty-one thousand six hundred eighty-six and 16/100 dollars ($41,686.16), due on refund to

claimant. Claimant made demand upon the county treasurer and State Treasurer for a refund of same and was refused. He, therefore, files claim herein for said over-payment, and for interest paid on the taxes so erroneously paid.

The claim is made for refund for taxes erroneously made under Section Ten. The provision in Section Twenty-five of the Inheritance Tax Law for three per cent interest does not apply to refund under Section Ten, of the same law. *Hess* v. *State,* 2 Ct. 1 Rep. 321-322. *William* v. *State,* 2 Ct. 1 Rep. 346-347.

The two sections mentioned relate to different kinds of refunds and the two sections are not *pari materia* to the extent that the provision for interest in Section Twenty-five can be applied to Section Ten in our opinion. Interest will be disallowed.

The State admits its liability herein as expressed by the Attorney General in writing herein, and it is, therefore, ordered that claimant have refund of forty-one thousand six hundred eighty-six and 16/100 dollars ($41,686.16).

INANDA M. EDWARDS, AS TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF KNUTT E. EDWARDS, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*when claimant entitled to a refund.* Where under the provisions of a will an interest is bequeathed to a daughter of the testator to be held in trust by the executor of the estate until she arrives at the age of twenty-five years, and upon proper inheritance tax proceedings a tax is assessed at the highest rate possible under Section 25 of the Inheritance Tax Law, and is paid, and afterwards the daughter arrives at the age of twenty-five years and becomes vested with the full beneficial interest in the property devised she is entitled to a refund under the provisions of said Section 25.

Edward J. Brundage, Attorney General, for State.

The evidence as in this case discloses that claimant is the Executor of the estate of Knutt E. Edwards, who departed this life in Cook County, Illinois, testate, on or about the eleventh day of January, A. D. 1913, leaving petitioner, his widow, and Esther I. Edwards, (now Kencken) his daughter, and only heir at law him surviving. A copy of the will is attached to the petition, which bequeathed one-third (1/3) of the estate to the widow, and the remaining two-thirds (2/3) to the daughter, to be held by claimant in trust for said daughter, till she reaches the age of twenty-five years, and that in the event, said daughter should die before reaching the age of twenty-five years, the said two-thirds (2/3) so bequeathed to her should go to deceased's surviving brothers and children of his deceased brothers.

At the time the inheritance tax was assessed and paid into the State Treasury, said daughter had not reached the age of twenty-five years, and her interest was accordingly subject to be defeated in favor of the said brothers, nephews and nieces of deceased, in the event she should die before attaining the age of twenty-five years; and that thereafter it became necessary to impose an inheritance tax on that part of said estate upon the basis of a nephew or niece or testator being the beneficiary at the higher tax rate of four per cent in such case made and provided.

Proceedings were had in the County Court to appraise the property and the estate was appraised at sixty thousand seven hundred sixty and 32/100 dollars ($60,760.32) and a tax levied as follows: Inanda M. Edwards, widow, one-third (1/3) entire estate clause two of will, twenty thousand two hundred fifty-three and 44/100 dollars ($20,-

253.44) less exemptions, twenty thousand dollars ($20,000.00)—$253.44, rate one per cent (1%)—$2.53, Inanda M. Edwards.

Trustee for use and benefit of a child of a deceased brother of decedent two-thirds (2/3) of estate distributed for taxation under section twenty-five, inheritance tax laws—forty thousand seven hundred sixty and 32/100 dollars $40,760.32) less exemption—twenty thousand dollars ($20,000.00) equal thirty-eight thousand five hundred sixty and 88/100 dollars ($38,560.88) at four per cent, equal one thousand five hundred forty and 20/100 dollars $1,540.20) tax, making a total of one thousand five hundred forty-two and 81/100 dollars ($1,542.81). On the thirteenth day of June, A. D. 1913, the executor paid the County Treasurer said sum last mentioned less five per cent for paying in the taxes inside of six months, making a net amount so paid in of one thousand four hundred sixty-three and 27/100 dollars ($1,463.27).

The said Esther I. Edwards (now Esther I. Kencken) arrived at the age of twenty-five years on the fourteenth day of December, A. D. 1917, and upon the happening of such contingency she became and is now vested with the full beneficial interest in said property and estate on which the inheritance tax was imposed at the rate of four per cent as aforesaid. The evidence supports the facts above set forth and by calculation it is shown that claimant is entitled to a refund of twelve hundred sixty-eight and 45/100 dollars ($1,268.45) with interest thereon at three per cent from June 13, A. D. 1913, and claimant is therefore, awarded the sum of twelve hundred sixty-eight and 45/100 dollars ($1,268.45) with interest at three per cent premium thereon from June 13, A. D. 1913.

HERBERT F. PERKINS, EXECUTOR OF THE ESTATE OF FRANKLIN H. HEAD, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX. *Refund. Deed as an equitable mortgage.* Where it is shown that a deed is an equitable mortgage, and that an excessive valuation was placed upon the lands by the appraisers, and the County Court upon appeal orders a refund of the over-payment of the tax erroneously made, this Court will enter an award for the amount of the tax over-paid according to the findings of the County Court.

Edward J. Brundage, Attorney General, for State.

Franklin H. Head died testate June 28, 1914, a resident of Illinois, and Herbert F. Perkins, Elizabeth Head Gates, and Henry D. Southwell were only appointed executors of the last will and testament of the decedent.

An appraiser was appointed by the judge of the County Court, Cook County, who filed his appraisement on the first day of October, A. D. 1914, which contained amongst other articles, Item Number 78, which described certain lands belonging to decedent, and a valuation placed thereon of eighty-five thousand dollars ($85,000.00). On the twenty-eighth day of December, A. D. 1914, the County Judge entered an order fixing the inheritance tax at eight thousand three hundred sixty and 69/100 dollars ($8,360.69), which amount, less five per cent discount—seven thousand nine hundred forty-two and 66/100 dollars ($7,942.66) was paid on same day by claimant to the treasurer of said county.

At time order was so made litigation was pending in the Circuit Court of Kane County, Illinois, wherein it was shown in said Court that the decedent's claim or title to said lands described in item Number 78 was only an equitable mortgage upon said lands. Said premises were shown to be worth twenty thousand dollars ($20,000.00), and not worth eighty-five thousand dollars ($85,000.00) as fixed by appraiser and approved by County Court.

An appeal was in due time prayed and perfected to the County Court, and on consideration of the same and subsequent proceedings properly had the County Court on the twenty-first day of March, A. D. 1918, decreed and ordered a refund to the executors of the said estate of twelve hundred thirty-five and 01/100 dollars ($1,235.01) as overpayment erroneously made. No appeal has been prosecuted from such judgment.

From the evidence herein, it is clear that the claimant is entitled to the refund claimed.

The Attorney General in written statement, admits that the claimants are entitled to a refund herein of twelve hundred thirty-five and 01/100 dollars ($1,235.01). The claimants are accordingly awarded a refund of twelve hundred thirty-five and 01/100 dollars $1,235.01).

MARTHA RUDDY LEET

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*refund under Section 25.* There being no dispute as to the facts and law governing this case, the Court enters an award for the amount of the claim.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of inheritance tax under section twenty-five of the inheritance tax laws of Illinois, in the sum of forty-six hundred ninety-nine and 97/100 dollars ($4,699.67), with interest thereon at three per cent per annum from February 17, A. D. 1911.

The evidence on file fully supports the facts alleged in declaration, and it is admitted by the Attorney General in writing, that under said section the claimant is entitled to a refund of four thousand six hundred ninety-nine and 67/100 dollars ($4,699.67).

The Court, therefore, awards claimant the sum of four thousand six hundred and ninety-nine and 67/100 dollars ($4,699.67), with interest at three per cent from February 17, 1911.

JOSEPH RYAN

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

GOVERNMENTAL FUNCTION—*Joliet Penitentiary. Not liable to inmates for injuries received by them.* The State in conducting and operating the Penitentiary at Joliet exercises a governmental function and is not liable to an inmate thereof who is injured while performing the duty assigned to him by the officers, agents or employees of that institution.

SAME—*employment of inmates.* The employment of the inmates of the institution at labor is merely incidental to and a part of the governmental function of the State, and is not a separate and distinct enterprise conducted by the State for profit.

SAME—*purpose of employment of inmates.* It is only a method by which the inmates carry out the sentence imposed upon them by the Court.

RESPONDEAT SUPERIOR—*not repealed by Act creating Court of Claims.* The doctrine of Respondeat Superior was not repealed by the Act of 1917 creating the Court of Claims.

Edward J. Brundage, Attorney General, for State.

The claimant, Joseph Ryan, seeks to recover damages for injuries which he claims were received by him on Sept. 15, 1916, on the quarry train at the Joliet penitentiary where he was serving his term as a prisoner on conviction for the crime of larceny. He was assigned by one Kelly, superintendent of the stone quarry operations, to the duties of brakeman on the quarry train which conveyed stone from the quarry to the main line of the railroad. It was a narrow gauge railroad and on it were operated a small engine and small cars. Claimant claims that while making the coupling of two loaded stone cars, his foot became wedged between a guard rail and the main rail and before the train could be stopped, several loaded cars of stone passed over his foot and it was severed above the ankle. In attempting to dislodge the wedged foot with his right hand, the hand was also severed. Plaintiff was treated at the prison hospital and the foot and hand were amputated there.

The evidence as to how the injury occurred is practically undisputed. The evidence, however, tends to show that said Kelly had given said Ryan and other brakemen directions that they should not step over the outside rail of the narrow gauge track when making a coupling, and when Mr. Ryan was injured, it seems that he was violating orders given him by his superior. It appears also from the evidence that the track was quite narrow and that Ryan could have worked on the outside of the rail of the track and reached over about two feet with his hand and coupled the cars without stepping over the rail between the cars.

The State has filed a demurrer to the declaration, setting up that the doctrine of *respondeat superior* is not applicable to the State; that in the absence of Statute, the State is not liable for the torts of its officers, agents and employees and that in conducting the State penitentiary at Joliet, the State is exercising a governmental function and is not liable for injuries to the inmates thereof or those it employs.

In our view of this case, it is not necessary to discuss the evidence in detail. This Court, as well as the Superior Court of the State, has repeatedly held 'that the rule of *respondeat superior* is not applicable to the State',—*Jasper* v. *State*, 2nd Court of Claims, 323; *Taylor* v. *State*, 2nd Court of Claims, 243, and *Elmore* v. *Drainage Commissioners*, 135 Ill., 269., and this Court has also held 'that the State is conducting its penitentiary, is exercising a governmental function and is not liable for damages',—*Taylor* v. *State*, 2nd Court of Claims, 243. The quarrying of the stone in the Joliet penitentiary is merely incidental to and a part of the governmental function of conducting the penitentiary and it cannot be said that it is a separate and distinct enterprise conducted by the State for profit, but is part of the plan for providing employment for the inmates of the institution and of carrying out the sentences of hard labor imposed on them. The general doctrine held by the Courts of the different states seem to be that 'public officers having the custody of prisoners are not liable to a prisoner for injuries caused by defective machinery with which he was put to work, nor is a municipality liable.' *O'Hare* v. *Jones*, 161 Mass. 391; *Alamago* v. *Albany Company*, 25 Hun. (N. Y.), 551; *Lewis* v. *State*, 96 N. Y. 71.

We quote from part of the decision in the latter case, as follows:

"The claimant was not a voluntary servant for hire and reward nor was the State his master in any ordinary sense. He was compelled to labor as a means of reformation and to endure imprisonment as a punishment and for the protection of the community. While employed he was subject to such regulations as the keeper charged with his custody might from time to time prescribe, and if, in the course of service, he sustained injury, it must be attributed to the cause which placed him in confinement." We think that this doctrine is applicable to the case at bar, aside from the rule that the doctrine of *respondeat superior* is not applicable to the State.

Counsel for claimant contends that the Act of 1917, creating the Court of Claims, has practically repealed the rule that the doctrine of *respondeat superior* does not apply to the State, and that this Court should hear and allow claims of this kind on the ground that they should appeal to the good conscience and equity of the Court. This Court has held in other cases presented at this term of Court, that said Act does not authorize this Court to allow any claims which are not based on principles of law and equity, however much such cases might appeal to the sympathies of the Court.

We are therefore of the opinion that the state is not liable in this case and that the demurrer to the declaration should be sustained. The claim is therefore rejected.

WALTER G. OAKMAN, ET AL, EXECUTORS OF THE WILL OF ANDREW FREEDMAN, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*transfer of stock of foreign corporation to non-residents. Jurisdiction.* The County Court to hear and determine whether an inheritance tax is due on the succession to property it must have jurisdiction over the beneficiary of the property or its judgment will be void. (*Oakman* v. *Small*, 282 Ill. 360.)

TITLE—*to excess of the legal tax does not vest in State.* The title to the excess of the legal tax does not vest in the State but belongs to the beneficiaries under the will.

VALID CLAIM—*what is for refund.* Where the County Court finds the amount of tax paid to be in excess of the tax legally due the State it is proper to order a refund of the amount of the excess found to be erroneously paid, and a claim for such excess tax is a valid one against the State.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of inheritance tax alleged to have been erroneously paid by the claimants.

Briefly, the facts are as follows: Andrew Freedman died on December 24, A. D. 1915, a resident of the State of New York, leaving a last will and testament, in which, petitioners were named as executors in the State of New York.

On the twenty-fourth day of May, 1916, the County Judge of Cook County, Illinois, entered an order assessing a tax in the aggregate of two thousand one hundred twenty-three and 95/100 dollars ($2,123.95) as being due the State of Illinois as inheritance tax. On the twenty-fourth day of May, A. D. 1916, the co-executors, after deducting 5% paid into the treasury, two thousand seventeen and 75/100 dollars ($2,017.75).

All of said tax of two thousand one hundred twenty-three and 95/100 dollars ($2,123.95), except two hundred thirty-four and 60/100 dollars ($234.60) was fixed and assessed the succession to, or transfer of stock of corporations organized and existing under and by virtue of the laws of States other than the State of Illinois; and that neither the said Andrew Freedman, nor the beneficiaries under his will were residents of Illinois.

On petition duly presented to the County Court of Cook County on the twenty-fourth day of May, A. D. 1916, was asked to set aside and vacate said order of assessment, and that it be declared null and void, in so far as it fixed or assessed a tax upon the succession or transfer of

stocks of said foreign corporations. On motion the petition was stricken from the files by the County Court, whereupon, petitioners prayed an appeal to the Supreme Court of Illinois, and upon a hearing the Supreme Court reversed the order, striking the petition from the files (*Oakman* v. *Small*, 282 Illinois, 360). Pursuant to the mandate of the Supreme Court, the lower Court set aside and vacated its order so entered on the twenty-fourth day of May, A. D. 1916, and fixed and assessed a tax of two hundred thirty-four and 60/100 dollars ($234.60), as due the State of Illinois as inheritance tax, and found that said County Court had no jurisdiction to assess the remainder of the tax fixed and assessed as aforesaid; and entered a decree declaring "the order fixing the remainder of the amount so assessed, null and void, and that the said balance, one thousand seven hundred ninety-four and 88/100 dollars ($1,794.88) was erroneously paid, and that it should be refunded to petitioners by the State of Illinois, and that they make application accordingly," etc.

Claimants also ask that the State pay the costs advanced by appelants in said case and filing fee, amounting in all to forty-five dollars ($45.00). Later, on the twenty-fifth day of April, A. D. 1918, the said County Court vacated its last order above referred to, and entered a decree, declaring that the sum of one thousand eight hundred sixteen and 93/100 dollars ($1,816.93) was erroneously paid, and ordered a refund of said amount, as erroneously paid; and that the actual amount due the State is two hundred and 82/100 dollars ($200.82) after deducting 5%. The claimants present their amended claim showing that one thousand eight hundred sixteen and 93/100 dollars ($1,816.93) (instead of one thousand seven hundred ninety-four and 88/100 dollars ($1,794.88) be refunded, and asking that the forty-five and 20/100 dollars ($45.20) paid out and expended as costs as aforesaid be also allowed to claimants, making a total of one thousand eight hundred sixty-two and 13/100 dollars ($1,862.13).

The record evidence supports all the allegations, and is virtually admitted as true. In defendant's brief, it states that "Amounts paid under a void order of court, purporting to assess an inheritance tax are not erroneous inheritance taxes," and that, therefore, the claimants are not entitled to refund.

In entering the original order of assessment, the County Judge erroneously included the sum of one thousand eight hundred sixteen and 93/100 dollars ($1,816.93), (after the 5% deduction) which, to that extent was declared by the decree of County Court to be void, as above mentioned. The assessment was in a sum total and purported to be a tax legally assessed.

The County Court found such excess to be a tax illegally assessed, and (by way of suggestion) ordered a refund of the amount so found erroneously paid.

In New York it was held that "Where there was *no jurisdiction* to assess United States bonds in an appraisement under the laws of 1892 (N. Y.) the surrogate has power to modify order without appeal and *direct a refund*, although the time of appeal has expired.

Matter of Coogan, 27 Miscellaneous Report (N. Y.) 563; affirmed 45 App. Div. (N. Y.) 628; 162 N. Y. 613.

Also see opinion in the case of *Lora J. Moore, et al, executors of the estate of James Hobart Moore, deceased* v. *The State of Illinois*, filed at the present term of this Court and numbered thirty-three (33). For a fuller discussion of the facts in this case at bar, see *Oakman* v. *Small*, 282 Illinois, 360.

Application was made in due time to the County Treasurer and to the State Treasurer for a *refund* of amount so *erroneously* paid, and no compliance with the request made.

From investigation we are unable to find where the State Treasurer has ever complied with a similar request, as no appropriation is made in anticipation of such claims. The title to this excess of the legal tax never became legally vested in the State. It belongs to the beneficiaries in the will. The beneficiaries were *not* entitled to a *transfer* of the property until the *consent* of the Attorney General and State Treasurer was obtained; and that cannot be obtained till the tax entered is paid. We take it that these taxes were paid under this state of affairs, and since the County Court has, under the mandate of the Supreme Court, found that the State is not entitled to the amount claimed by the claimants, we are, of the opinion that such amount was illegally assessed, erroneously paid, and that it constitutes, in this case, a valid claim against the State of Illinois. We believe that equity and good conscience require the same to be refunded by the State.

As to the amount of forty-five and 50/100 dollars ($45.50) claimed as costs against the State, we disallow same for the reason that the State is not liable for costs. We, accordingly award to the claimant a refund in the sum of eighteen hundred sixteen and 93/100 dollars ($1,816.93).

PHILIP C. LINDGREN, ADMINISTRATOR C. T. A. OF ESTATE OF JOHN K. STEWART, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*when refund will be made.* **Where it is shown that an inheritance tax has been erroneously paid claimant is entitled to a refund under Section 10 of Inheritance Tax Law.**

Edward J. Brundage, Attorney General, for State.

The evidence discloses that John K. Stewart died intestate the first day of June, A. D. 1916, a resident of the town of Huntington, County of Suffolk, State of New York, and Philip C. Lindgren was duly appointed Administrator C. T. A. of the estate of said decedent, by Probate Court, Cook County, Illinois.

On the first day of December, A. D. 1916, the County Judge of Cook County entered an order fixing the inheritance tax in the said estate at sixty-five thousand eight hundred seventy and 67/100 dollars ($65,870.67), and that sixty-two thousand, five hundred seventy-seven and 14/100 dollars ($62,577.14) was paid, being the net amount due the State, after deducting the five per cent, etc.

Afterwards the claimant in due time appealed from such order to the County Court of Cook County, and the Court after hearing the evidence on the sixth day of June, A. D. 1917, entered a final order fixing the tax due the State at fifty-six thousand five hundred twelve and 41/100 dollars ($56,612.41), from which no appeal was prevented.

In said final order the Court found that claimant had paid into the County Treasury the sum of sixty-two thousand five hundred seventy-seven and 14/100 dollars ($62,577.14); that the claimant should have only paid fifty-three thousand six hundred eighty-six and 79/100 dollars ($53,686.79); that the sum of money, therefore, erroneously paid was eight thousand eight hundred ninety and 35/100 dollars ($8,890.86), which claimant insists should be refunded.

The Attorney General and Floyd E. Britton, Assistant Attorney General, admit that the State should refund said sum claimed to have been erroneously paid.

The Court accordingly hereby awards claimant the sum of eight thousand eight hundred ninety and 35/100 dollars ($8,890.35).

MINNIE P. EDWARDS, EXECUTRIX

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*when claimant entitled to a refund.* In this claim, there being no dispute as to the facts and law governing the same, upon proofs submitted, the Court finds that claimant is entitled to a refund under Section Ten (10) Inheritance Tax Law.

Edward J. Brundage, Attorney General, for State.

This is a proceeding brought by the claimant as executrix of the last will and testament of James A. Edwards, deceased, for the recovery of a part of an inheritance tax claimed to have been erroneously paid to the County Treasurer of Cook County, Illinois. The evidence shows that in computing the amount of the tax, the appraiser appointed by the County Court of Cook County, Illinois, refused to allow as a deduction the sum of $70,000.00 claimed to be involved in a suit pending against said James A. Edwards in the Superior Court of Cook County, Illinois, by one Luella Woods, and that the tax was fixed at the sum of $7,002.79. The evidence further shows that afterwards said suit was compromised for the sum of $30,000.00, which sum the executrix has paid.

A stipulation has been signed by the Attorney General agreeing that the modified order fixing the tax by the County Judge of Cook County, a certified copy of which appears in the evidence, may stand and be accepted by this Court as the basis upon which this case may be deterined. Said modified order finds the facts as above stated and further finds that the total tax which should have been assessed against said estate was $6,052.65 and that the total amount which should have been paid after deducting the discount was $6,003.99, and that the difference between the amount paid by the executrix to the County Treasurer and the amount which should have been paid, after allowing the discount of 5% is $648.66.

Section 10 of the Inheritance Tax Act provides for the refunding of any tax which has been erroneously paid to the State Treasurer. The claimant is therefore awarded the sum of $648.66.

CHICAGO SERUM COMPANY

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

NON-LIABILITY OF STATE—*unauthorized act of officers or agents.* The State is not liable for the unauthorized acts of its officers or agents.

PUBLIC POLICY—*what acts of State officers or agents are against.* It is against public policy to permit individual members of a Board to act without authority from such Board, itself acting at a regular or special meeting. To permit such a practice opens the door for the perpetuation of fraud.

U. S. GOVERNMENT—*action of, does not make the State liable.* That the United States Government recognized the arrangement and paid its one-half of the appraised value of the serum does not make the State liable for the other half.

AWARD OF APPRAISERS—*when null and void.* An award fixed by appraisers who were appointed without authority of law is null and void.

Edward J. Brundage, Attorney General, for State.

In the year 1915, and for some time prior thereto, the plaintiff was engaged in the manufacture of a substance called Anti-hog Cholera Serum, which was claimed by said Company to prevent hog cholera when swine were innoculated with said substance.

The plaintiff has its principal place of business in the City of Chicago, and State of Illinois. In the fall of 1915 the foot and mouth disease was prevalent in Illinois and other States of the Union, among cattle and hogs. The plaintiff was distributing and selling its product among the hog raisers and the breaking out of the foot and mouth disease among hogs where the serum manufactured by the plaintiff was used, raised a grave suspicion in the minds of the public authorities, both State and National, that its serum was infected with the germ of the foot and mouth disease.

In October, 1915, the members of the State Board of Live Stock Commissioners, representing the State of Illinois, and an agent of the United States Department of Agriculture, met the business manager of the plaintiff and talked over with him the situation. It does not appear that the members of the Board of Live Stock Commissioners met as a board at this meeting, as there is no record of their meeting in the evidence in this case, but after discussing fully the situation with the agent of the plaintiff, the members of the Board of Live Stock Commissioners of Illinois and the agent of the United States Agricultural Department on one part, and the Chicago Serum Company on the other, entered into a verbal agreement whereby it was agreed that the plaintiff should turn over to the Department of Agriculture of the United States

Government and to the Board of Live Stock Commissioners of the State of Illinois, all serum in its possession; that said serum would be appraised by two persons, one to be appointed by agents of the United States Agricultural Department and one by the members of the State Board of Live Stock Commissioners of Illinois, and that the plaintiff should be paid for said serum, whatever sum was fixed by the said appraiser one appraiser was appointed by the members of the Live Stock Commission of Illinois, and one by the Department of Agriculture of the United States Government. Said alleged appraisers met and adjudged that the serum of the plaintiff, to be turned over to the United States authorities and the Board of Live Stock Commission of Illinois, was valued at $10,106.58.

In all the dealings between the plaintiff and the Board of Live Stock Commissioners of Illinois, it does not appear that the board acted at any regular or special meeting. The business was talked over in a loose way by individual members of the board and no record was ever kept of any meeting or action had or taken by the Board of Live Stock Commissioners in reference to any of its dealings with the plaintiff. There was no adjudication or determination by any board, Court or tribunal as to whether the plaintiff's serum was infected with foot and mouth disease, or whether it was not. The plaintiff voluntarily surrendered and turned over the substance to the members of the Board of Live Stock Commissioners and to the agent of the United States Agricultural Department, upon the understanding that it was to be paid such price as was fixed by the persons alleged to be appraisers.

We do not believe that there is a legal claim against the State of Illinois by reason of this arrangement entered into by the plaintiff and the aforementioned parties. The members of the Board of Live Stock Commissioners of the State of Illinois had no authority whatever to enter into any such arrangement. There is no statute or law in this State by which the taxpayers of this State could be subjected to paying and compelled to pay for an alleged debt in this manner. The alleged appraisers had no standing before the law. They were not public officers nor appointed by any authority of law. They took no oath of office and there is no authority for appraisers to be appointed for such purpose and in such manner. So far as the liability of the State is concerned, the estimate of the appraisers is a nullity and absolutely void. There can be no foundation of a legal liability upon an award made by those men. It would be against public policy to allow officials of the State to enter into such loose transactions and unbusiness like dealings and to compel the taxpayers to be responsible for their unauthorized acts. The Board of Live Stock Commissioners never met and determined or adjudged whether this serum was infected or whether it was not, nor was it found out whether their suspicion was well founded or not. The plaintiff could have stood on its rights and before the property was confiscated or destroyed, compelled the State to establish the fact that it was infected, but the plaintiff seemed very glad of an opportunity to sell its

product without such a determination, and the Board of Live Stock Commissioners seemed perfectly willing to avoid the personal or official responsibility of attempting to establish their allegation that the serum was infected. If this serum was poisoned and infected then the people of the State of Illinois ought not to pay a single cent to the manufacturer and distributor of such a dangerous nostrum. If it was not infected, then the State authorities had no right or authority under the law, to purchase and destroy this substance at the expense of the taxpayers of the State.

There is no evidence in this case tending to show whether the substance was infected or whether it was not, but the alacrity of the plaintiff to sell the same to the State and Government authorities leads us to believe that it had a suspicion of the substance as well as did the public officers involved. The fact that the United States Government afterwards recognized this arrangement and paid one-half of the appraised value of the product, does not establish the liability of the State of Illinois to pay for the other half sued for in this case. Altogether, we believe it would be against public policy to make an award in this case and put on approval the loose conduct of all the parties concerned in the transaction here involved. If public officers can do business in the manner it is alleged they did in this case, the doors for the perpetration of fraud would swing wide open and the taxpayers would have no protection whatever. The demand of the plaintiff is disallowed.

ROBERT ROHL, SR.

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

MISTAKE OF LAW—*not entitled to moneys paid under.* Moneys voluntarily paid under a mistake of law cannot be recovered.

SAME—*under unconstitutional statute, no recovery.* Moneys voluntarily paid under a mistake of law cannot be recovered even though the law under which it is paid is afterwards declared unconstitutional. *Yates* v. *Royal Ins. Co.*, 200 Ill. 202.

PAYMENT—*when not made under protest.* Payment made after threat to bring suit for non-payment is not a payment made under protest.

Edward J. Brundage, Attorney General, for State.

In this case, claimant seeks to recover $400.00 for money he claims to have paid for his wife Anna Rohl while she was confined in the Southern Illinois Hospital for the Insane at Anna, Illinois, under the Act to revise the law for charities, approved June 11, 1912.

The State, through the Attorney General, has filed a general demurer to the declaration and sets up in the brief that the statute under which this money was claimed to have been paid, was declared unconstitutional and that as a matter of law, the payments claimed to have been made were voluntary, made under mistake of law, and cannot be recovered back. From the declaration and evidence in this case, it appears to us that these payments were voluntary and that they were not made under protest. The claimant sets forth that the managing board of the Anna State Hospital threatened him with suit, and that under such threat, he paid the sums of money. Payment of money under threat of commencing suit, is not a payment under protest, and it does not appear from the evidence or the declaration that any legal duress was exercised. Claimant should have resisted the payment, as was done in the Miles case, 278 Ill., 174, wherein this law was declared unconstitutional.

The Supreme Court in the case of the *People* v. *Foster*, 133 Ill., page 509, has held that where money is voluntarily paid under a mistake as to the law and under a claim of right, it cannot be recovered back, and in the case of *Yates* v. *The Royal Insurance Company*, 200 Ill., page 202, the Supreme Court of this State decided that the mere fact that the statute imposing a tax is unconstitutional and the tax for that reason illegal, does not authorize recovery of the amount paid if it was paid voluntarily. This Court, in the Home Life Insurance Company case, in which an opinion was filed December 19, 1908, held

that there can be no recovery of payments made under a mistake of law.

This Court, at this term, in the case of Popham, conservator, against the State, which was a case brought to recover money paid under this unconstitutional statute, held there was no right of recovery.

The demurrer to the declaration is therefore sustained and the claim rejected.

CHARLES B. *OSBORNE*, EXECUTOR OF THE ESTATE OF LUCIUS G. FISHER, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 30, 1919.

INHERITANCE TAX—*entitled to refund.* A reduction by the County Court, upon appeal, of the original assessment of an inheritance tax against an estate, will entitle claimant to a refund of the difference between the amount of tax paid under the original order of the County Judge and the amount found due by the County Court.

Edward J. Brundage, Attorney General, for State.

The facts in this case as disclosed by the evidence are as follows: Lucius G. Fisher, died testate March 20th, 1916, at Chicago, Illinois, and Charles B. Osborne, claimant, was duly appointed executor of the will of deceased.

An inventory was filed and an appraisement was submitted and approved by County Judge of said county and an inheritance tax assessed in said estate.

In due time an appeal was prayed to the County Court and on trial of said cause it was found that the total amount after deduction of 5%, etc., was $49,433.77.

Under the original order claimant had paid in $50,602.77.

The difference between the two amounts is $1,168.49, which claim claimant claims was erroneously paid and for which he asks a refund.

The Attorney General admits in writing filed in this cause that the State is liable to claimant for said sum.

Accordingly the claimant is awarded the sum of eleven hundred sixty-eight and 49/100 dollars ($1,168.49).

WALTER J. NORTH, ADMINISTRATOR OF THE ESTATE OF JAMES W. NORTH, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed March 3, 1919.

GOVERNMENTAL FUNCTION—*University of Illinois.* **The State in conducting the University of Illinois exercises a governmental function, and is not liable for injuries sustained by its employees.**

EMPLOYERS LIABILITY ACT—*University of Illinois not within its provisions.* **The University of Illinois, and its employees do not come within the provisions of the Employers Liability Act. (*North* v. *University of Illinois*, 201 App. 449.)**

Edward J. Brundage, Attorney General, for State.

Findings of the law and fact made by the Court of Claims at the special request of Governor Frank O. Lowden:

The evidence shows in this case that from February 1st, 1913, until December 5th, 1913, James W. North, deceased, was employed by the Board of Trustees of the University of Illinois, in its medical department, at 508 Honore street, Chicago, Illinois, as curator, at $70.00 per month. Among his duties was that of moving cadavers from floor to floor of the medical school. These cadavers were delivered to him in the basement of the building by the Demonstrators' Association, and were placed by him on a freight elevator and taken to either the fourth, fifth or sixth floor for preparation for dissecting.

North was last seen on the evening of December 4th, 1913. On December 5th, 1913, his body was discovered at the bottom of the elevator shaft with a dissecting table and a cadaver lying upon him. The elevator was on the sixth floor. The exact manner of his death, or the cause of the accident, is unknown, and does not appear from the evidence. The evidence shows that he fell through the elevator shaft with a cadaver and table. The fall was the cause of his death. A number of witnesses testified that the elevator was defective in minor matters, but there is no evidence showing or tending to show that these defects were the cause of the accident.

At the time of his death James W. North was an employe, aforesaid, of the State University, and we find that his death grew out of his employment while working in the line of his duty. He left him surviving a wife and four minor children. He was the sole support of his family, and left them without means of support.

The administrator in this case filed a claim before the Industrial Board of Chicago. The Industrial Board entered an order against the

University of Illinois, allowing the administrator the sum of $3,500, payable in installments of $8.75 per week. The Circuit Court approved this finding of the Industrial Board and University appealed to the Appellate Court. The Appellate Court found that the employes of the University of Illinois did not come under the Employers' Liability Act, and the claim of the administrator was defeated. (See *North* v. *University of Illinois*, 201 App. 449).

From the foregoing facts we find as follows:

First—That at the time of his death James W. North was working for the University of Illinois; that the University of Illinois is a branch of the State Government and is performing governmental functions, and that the State of Illinois is not legally liable for any negligence of the authorities or employees of the State University, and that there is no legal liability in this case.

Second—We find that if James W. North at the time of his death came under the Employers' Liability Act, and if the employees of the University of Illinois were protected thereby, that the State would be liable, under said Act in this case, for the death of James W. North and that $3,500 would be a proper sum to award the administrator in this case if the State elected to treat this matter the same as though the Employers' Liability Act applied.

Third—We find that it would be just and proper in this case for the State to pay a sum not exceeding $3,500 to the administrator and claimant in this case.

Fourth—We find that this claim was technically barred by the Statute of Limitations. However, the administrator, ever since the death of James W. North, has been constantly and continually undertaking to recover from the State on account of the death aforesaid, first, through the Industrial Board and from that through the courts of the State, and afterwards, when the Appellate Court had decided he could not recover, the administrator took the matter up with the Legislature and has, at a number of sessions, sought relief by getting an appropriation through the Legislature.

We do not think that the claimant in this case has slept on his rights, but has done everything he could in the nature of the case to bring his claim to the attention of the authorities of the State, and that it would be a hardship in this case to set up the Statute of Limitations as a defense and we think it would be unjust for the State to do so in this case.

OMAR W. BRANSTITTER, ADMINISTRATOR OF THE ESTATE OF HELEN BRANSTITTER, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed March 3, 1919.

GOVERNMENTAL FUNCTION—*Hospital for Insane at Jacksonville.* The State in conducting the Hospital for the Insane at Jacksonville, exercises a governmental function and is not liable for injuries received by its employees while in the discharge of their duty.

SAME—*negligence of employees of institution.* The Insane Hospital at Jacksonville is a branch of the State Government exercising a governmental function, and even though the authorities of the institution were negligent, and such negligence caused the death of claimant's intestate, still there would be no legal liability against the State.

Edward J. Brundage, Attorney General, for State.

Findings of Law and Fact made by the Court of Claims at the special request of Governor Frank O. Lowden:

The evidence in this case shows that on the 8th day of January, in the year 1918, in the City of Jacksonville, Illinois, Helen Branstitter, now deceased, was an attendant and night watch at the hospital for the insane in the City of Jacksonville, Illinois; that she had charge of two wards in said asylum; that she went on duty at ten o'clock at night and quit at six o'clock in the morning. She had been acting in such capacity for a period of more than one year at the time of her death. She had under her charge sixty insane patients, and was the sole person looking after them from ten o'clock p. m. until six o'clock a. m. It was her duty to look after the patients under her, to see what they were locked up at night and to attend to any of their wants during the time she was on duty.

On the 8th day of January, 1918, about 11:00 o'clock p. m. Helen Branstitter was called into the room of one of the inmates on some pretext, where two of the female patients immediately seized her, strangled her to death and took the keys from her and escaped from the asylum. It appears from the evidence that these two insane female patients had for a number of days been conspiring to assault Miss Branstitter for the purpose of getting the keys and escaping from the asylum, and in doing so they caused her death by strangulation.

Miss Branstitter left her surviving her father, mother and four brothers and sisters, two of whom were living at home, John, age thirteen, and Elizabeth, aged nineteen. During the time that the deceased worked at the asylum she lived at home. She was past twenty years of age and was earning $31.00. Her earnings went into the

support of herself and her father and other members of the family. Her father is a man past fifty-six years of age, in fair health, a brick layer by trade, and when unable to procure employment at his trade works at common labor. He has a small home in Jacksonville, Illinois, but is dependent upon his earnings for the support of himself and his family. The exact amount that Helen Branstitter contributed to the support of her father and mother and minor brother does not appear from the evidence. The father, in his testimony, estimated the amount to be about $20.00 per month.

There was an inquest on the body of Helen Branstitter and the verdict of the Coroner's jury advised that in the future there should be one night watch in each ward, apparently feeling that the deceased was compelled to look after too many patients, and probably this was the cause of her death.

Unless it was negligence for the insane asylum authorities to put her in charge of two wards containing about sixty patients, we find no negligence on the part of the authorities of the institution.

From the foregoing evidence we find as follows:

First—That during the time Helen Branstitter worked for the insane asylum aforesaid, she was an employe of the State, and if the employees of the State enjoyed the benefit of the Workmen's Compensation Act, the State would be liable under said Act in probably the sum of $1,660.

Second—We find that the insane hospital at Jacksonville is a branch of the State Government exercising a governmental function, and that even though the authorities of the institution were negligent and such negligence caused the death of Helen Branstitter, still there would be no legal liability on the State.

We have no hesitation in saying that in our judgment it would be proper for the State in this case to make an appropriation of $2,500.

FRANK J. SMITH

v.

STATE OF ILLINOIS.

Opinion filed March 3, 1919.

RESPONDEAT SUPERIOR—*not applicable to the State.* **The State is not liable for injuries sustained by its employees while in the discharge of their duty.**

WORKMAN'S COMPENSATION ACT—*liability of State.* **The liability of the State under the Workman's Compensation Act is limited to enterprises enumerated in Section Three (3) of the Act, in force at time of the accident.**

STATUTE OF LIMITATIONS—*when claim is barred.* **Where the declaration on its face shows that the cause of action arose more than two years prior to the filing of the declaration the claim will be barred by the statute of limitations.**

Edward J. Brundage, Attorney General, for State.

The claimant, Frank J. Smith, brings this suit against the State for damages for injuries claimed to have been sustained by him on August 1, 1914, while performing his duties as a day turnkey in the Pontiac Reformatory. On that day, while he was on duty, one of the inmates of said institution escaped, and said claimant was directed by the assistant superintendent who was his superior officer, to go and search for said escaped inmate. Claimant started in a buggy for the Reformatory with someone else who was driving the horse, and in order to pass from the grounds of said Reformatory out upon the public highway, it was necessary to open a gate at the entrance to said grounds. While claimant and his companion were riding in said buggy and approaching said gate and before said horse and buggy had stopped, claimant jumped from the buggy to the ground in order to run ahead and open said gate and injured his left ankle and foot. He was treated at the hospital and had an operation performed on his foot, but he did not recover from his injuries and on December 21, 1917, the foot was amputated above the ankle, and he claims that he incurred a large indebtedness for medical services and also claims damages for the injuries.

In the opinion of the Court, there is no liability on the part of the State in this case. The Workman's Compensation Act does not apply to this case, as the liability of the State under that Act is limited to the enterprises enumerated under section 3 of said Act, and it is not claimed that this case comes under the provisions of said section. The State is not liable in this kind of a case for the reason that 'the doctrine of *respondeat superior* does not apply to the State', *Elmore* v. *Drainage Commissioners*, 135 Ill., 269. Under the holdings of this Court in

previous decisions, 'the State is not liable for the torts of its officers, agents and employees', *Henke* v. *State of Illinois*, 2nd Court of Claims Reports, page 11.

The State, through the Attorney General, pleaded the Statute of Limitations. The declaration in this case shows that the injury complained of occurred on August 1, 1914, and under the Statutes in force at that time, this claim would be barred within two years from the time it accrued. The declaration was filed in this Court on April 29, 1918. The defense of the Statute of Limitations having been raised, it is the duty of this Court to enforce same.

For the reasons above stated, this claim is rejected.

At the request of the Governor, we make the following findings of law and fact in this case:

(1) That claimant was an employee of the State of Illinois, serving as turnkey in the Pontiac Reformatory and that while in the performance of his duties under the direction of the assistant superintendent who was his superior officer, he injured his left ankle and foot, and as a direct and approximate result of said injury, it was necessary to amputate the foot above the ankle. Said Frank J. Smith is 37 years of age; is married, and has one child, 8 years old. Both his wife and child are dependent upon him for their support. He has no property of any kind. His salary at the Reformatory at the time he was injured was sixty dollars ($60.00) per month and he has continued in the employment of said Reformatory since said time except for the time he was in the hospital when his foot was amputated, and he is still in the employ of said Reformatory. The injuring of said ankle caused a diseased condition of the bone. Necrosis set in and the bone became tubercular and it was necessary to amputate the foot in order to save his life. The claimant now receives a salary of seventy dollars ($70.00) per month in said institution. We further find that claimant expended two hundred and fifty ($250.00) for physicians' services in endeavoring to be cured of his injuries and that he suffered considerable pain since said injury occurred in 1914.

(2) We find that the authorities of the Pontiac State Reformatory are acting in a governmental capacity as a branch of the State Government and that the State is not liable for injuries received by its employees as the Workman's Compensation Act does not apply to this class of cases.

(3) We find that if the State of Illinois waived its souvereignty and submitted to the same liability in this case that a private individual or corporation would bear, then and in that case the State would be liable to the claimant for his injury, if the Workmen's Compensation Act applied.

(4) We find that if at the time the claimant was injured, employees of the State enjoyed the protection of the Workman's Compensation Act the same as employees of private persons or corporations, and that the State of Illinois had elected to come under the provisions of said Act, then and in that case, the claimant herein would have been entitled to compensation under such Act.

(5) We believe that it would be only an Act of justice and right under the circumstances of this case for the State Legislature to appropriate not to exceed three thousand dollars ($3,000.00) as relief and compensation for all injuries sustained by the claimant while working in the Pontiac Reformatory in the service of the State of Illinois.

JOSEPH F. SCHWAB, ADMINISTRATOR OF MINNIE SCHWAB, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed March 3, 1919.

GOVERNMENTAL FUNCTION—*non-liability of State.* The State in conducting and managing its Charitable Institutions is exercising a governmental function and is not liable for the negligence of its agents, servants or employees.

INMATE—*cannot recover for injuries received.* An inmate of a Charitable Institution of the State cannot recover for personal injury sustained through the negligence or tort of the officers, servants, agents or employees of the institution. (*Henke* v. *State*, 2 C. C. II, followed.)

Edward J. Brundage, Attorney General, for State.

This suit is brought against the State for *five thousand* dollars ($5,000.00) damages for the death of Minnie Schwab.

It appears that said Minnie Schwab was committed to the Illinois State Hospital for the Insane at Kankakee, Illinois, in April, 1915, for treatment for temporary insanity, and that while in said hospital under the care of the State of Illinois, on July 28th, 1915, said Minnie Schwab was being given a hot water bath by one of the attendants of said institution, said bath being prescribed by one of the *physicians of* said hospital, and that the attendant in charge of said Minnie Schwab carelessly and negligently placed the said Minnie Schwab in a bath of hot water and left her unattended for the space of about twenty minutes without any attention to the temperature of the water, and allowed the hot water to run into the tub without any attention to its temperature, and that during said time the water became so hot, and the temperature of the water was so increased that the said Minnie Schwab was scalded and burned so severely that she died on July 29th, 1915.

Plaintiff was appointed administrator of said deceased by the Probate Court of Cook County, Illinois. The State, through the Attorney General, has filed a demurrer to said declaration. No testimony was taken in said cause, but the Attorney General through his representative, appeared before this Court in person and admitted the facts as stated in the declaration to be true, for the purpose of making a finding of fact herein. There has also been filed in said cause the affidavit of plaintiff as administrator of said Minnie Schwab, deceased, with the consent of the State through the Attorney General, in which it appears that said plaintiff's intestate was forty-two (42) years of age and unmarried, at the time of the injury, and for two years preceding her commitment to the hospital, had been in poor health; that the administrator is a brother of said decedent and the only heir at law.

It also appears from said affidavit that said Joseph F. Schwab, the brother, expended about fifteen hundred ($1,500.00) dollars for doctor bills, nursing, and expenses in connection with the illness of said deceased, and that said deceased earned approximately seventy dollars ($70.00) per month when she was employed.

In the opinion of the Court, there is no liability on the part of the State in this case, as under the decisions of this Court, "the State is not responsible or liable for the torts or negligence of its officers, agents or servants, and the doctrine of *respondeat superior* does not apply to the State," *Henke* v. *State of Illinois*, 2nd Court of Claims Reports, page 11. The claim is therefore rejected.

At the request of the Governor, we make the following finding of law and facts in this case:

First—That the State of Illinois, in conducting the Illinois State Hospital for the Insane at Kankakee, Illinois, is exercising a governmental function and is therefore not liable for injuries to any of the inmates, as the doctrine of *respondeat superior* does not apply to the State.

Second—We find that if the State waived its sovereignty and submitted to the same rule of law which apply to a private hospital, in caring for and treating patients for pay, that under the facts in this case, the State would be liable for damages for the death of said deceased.

Third—From the statements in the declaration and affidavit accepted in this case in lieu of evidence, we believe that said deceased, being of the age of 42 years, would have recovered from her temporary condition of insanity and would have had considerable earning capacity; that she was unmarried and had no one directly dependent upon her. We believe that the negligence of the attendants in said hospital was so gross and this patient was so carelessly mistreated that it would be only proper for the Legislature, if it saw fit, to allow the estate of said deceased, not to exceed the sum of twenty-five hundred dollars ($2,500.00) in this case.

HENRY HENKE

v.

STATE OF ILLINOIS.

Opinion filed March 3, 1919.

GOVERNMENTAL FUNCTION—*Henke* v. *State. 2 C. C. R. followed.* This case is identical with that of *Henke* v. *State.* 2 Court of Claims at page 11, and the decision of the Court in that case is followed in this case.

Edward J. Brundage, Attorney General, for State.

Made at the request of Governor Lowden.

This claim is for personal injuries received by Henry Henke, as a result of the breaking of a scaffold while claimant was employed as a painter at Lincoln Park, Chicago, Illinois. The claimant was employed by the Lincoln Park Board as a painter and had been working as a painter for said Park Board for sometime previous to the accident complained of, which occurred on the 29th day of September, A. D. 1902.

The evidence shows that on the day of the injury the claimant was working on a scaffold, painting the ribs of a large palm house in Lincoln Park, Chicago; that the scaffold upon which he worked had been erected by carpenters who were likewise employed by the Park Board; that the plaintiff had nothing whatever to do with erection of the scaffold; that about noon, while the claimant was performing his duties he stepped upon a plank placed in the scaffold, which suddenly broke about the middle, and precipitated him to the ground; that the plank which broke under him was found after the accident, to have had a knot or cross-grain running through it at the place where the break occurred; that it was defective and unfit to be used in the scaffold; that the plank was painted a grey color so that the defect could not be seen by the claimant by the use of ordinary care and diligence.

As a result of the accident the claimant was severally injured in both legs. He was taken to the German American Hospital, put in a plasterparis cast which remained on him for a period of six months. After the removal of the cast he was able to get about a little on crutches for a period of about three months, but was unable to do any work for at least a period of three years after the injury. The arches of the claimant's feet were permanently destroyed, in addition to temporary injuries of a very painful character. We find, that as a result of such injury the claimant, at the present time, is afflicted with a condition known as "flat-foot" in both feet, and *probably* is unfit to work at his trade as a painter. At the time he testified in this case he seems to have been working for the Lincoln Park authorities as a gard-

ener, receiving the sum of two dollars and twenty-five cents a day as wages. During the time he worked for the Lincoln Park authorities, prior to his injury, as a painter, he was getting three dollars and twnety cents per day for his services. We find that he expended for hospital expenses, physicians' services and medicines, endeavoring to be cured of his injury, at least two hundred dollars. We also find that the nature of his injuries was very painful and that he suffered a great deal for a period of one year after the injury.

He filed suit in the Court of Claims in 1906. An opinion was rendered by the Court on September 28th, 1906, holding that the State was not liable for such injury. The case is reported in Volume 2, page 11, Court of Claims Report of Illinois. At the last session of the Legislature, the General Assembly passed an Act appropriating the sum of fifteen hundred dollars for the relief of the claimant in this case, which appropriation was vetoed by Governor Lowden.

From the foregoing facts we make the following findings:

First—That the Lincoln Park authorities are acting in a governmental capacity, as a branch of the State, and that the State is not liable for the negligent acts of the Park Commissioners, or any of the employees under them.

Second—We find that if the State of Illinois waived its sovereignty and submitted to the same liability in this case that a private individual or corporation would bear, then and in that case the State would be liable to the claimant for his injury. In other words, if at the time he was injured, he had been working for a private individual or corporation and was injured in like manner as shown in this case, his employer would be liable to him for damages, for failure to furnish him a safe and secure place in which to work.

Third—We find that if, at the time the claimant was injured, employees of the State enjoyed the protection of the Employers' Liability Act, the same as employees of private persons or corporations, and that the State of Illinois had elected to come under said Employers' Liability Act, then and in that event the claimant in this case would have been entitled to compensation under such Employers' Liability Act.

Fourth—We believe it would be only an act of justice and right for the State Legislature to appropriate in this case, not to exceed two thousand dollars as relief and compensation for all injuries sustained by the claimant while working at Lincoln Park, in the service of the State of Illinois.

OSCAR WATKINS

v.

STATE OF ILLINOIS.

Opinion filed March 3, 1919.

RESPONDEAT SUPERIOR—*doctrine not applicable to the State.* The doctrine of *respondeat superior* is not applicable to the State, and the State is not liable for injuries sustained by its employees while in the discharge of their duty.

GOVERNMENTAL FUNCTION—*University of Illinois.* The University of Illinois is a branch of the State Government, exercising governmental functions and no liability attaches to the State on account of the negligence of the authorities of the University, its agents or employees.

Edward J. Brundage, Attorney General, for State.

Made at the request of Governor Lowden.

We find from the evidence in this case, that Oscar Watkins, the plaintiff was employed as a member of the faculty of the University of Illinois, continuously, from 1906 until 1916. He was a chemist by profession and was employed by the Department of Horticulture. His work consisted of teaching and also conducting experiments in orchards and other field work, of examining, reporting on and advising concerning the methods of spraying used in private orchards throughout the State. In this occupation it became necessary for him to use mixtures containing various poisonous substances, including arsenic, lead, parisgreen, bordeaux mixtures, etc. In his line of duty and experimental work Mr. Watkins applied these sprays personally, sometimes with a hand sprayer and sometimes with a power sprayer. He handled the rod from which the sprays were delivered to the trees and vegetables, this, sometimes in the form of dry powders and sometimes in liquid form, and in his work, altogether carefully done, he frequently became covered with these sprays, liquid or dry, and from these he absorbed poisons which destroyed his health and compelled him to give up his position, since which time he has been in such a condition of health that his earning power is destroyed and he is unable to work at his profession or in any other way. He has employed and consulted many eminent physicians in his attempt to be cured of his ailment, and from the evidence in the case we are satisfied that he is suffering from lead poisoning and that his ailment is incurable. He is not only incapacitated from work but requires constant care from others.

During the time he was employed by the University he drew a salary of twenty-four hundred dollars per year. He has a wife and two children, a boy six years of age and a girl four years of age. Mr.

Watkins and his family were entirely dependent upon his earnings and now have no means of support whatever. He has expended practically all of his savings for physicians' services and living expenses of his family since he was stricken with illness.

It appears from the evidence that he was a highly trained expert in his line of work and that while performing his duty and while employed by the State University of Illinois, he became the victim of lead poisoning as a direct result of the use of such poisons in his occupation, which has totally destroyed his earning capacity.

From these facts we find as follows:

First—That the University of Illinois is a branch of the State Government, exercising governmental functions and no liability could attach to the State on account of any negligence of the authorities of the University, its agents or employees.

Second—We find that Mr. Watkins, the claimant, lost his health and his earning capacity through injuries received during and by virtue of his occupation as an employee of the University aforesaid; and that if employees of the University were protected by the Employers' Liability Act, he would be entitled to compensation thereunder for total disability.

Third—We find that the authorities of the University committed no act of negligence which resulted in the illness or injury of the plaintiff.

Fourth—We believe that an appropriation of seven thousand five hundred dollars in this case for the relief of Mr. Watkins would be just and proper, notwithstanding the fact that we feel the State is under no legal obligation to make a payment for damages.

HARRY W. ALLEN AND EMMA M. ALLEN, AS EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF JOHN W. ALLEN, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed May 29, 1919.

INHERITANCE TAX—*when entitled to a refund.* Where an inheritance tax is assessed against an estate by the County Judge, and paid, without deducting from the gross estate the Federal Estate Tax therefrom, and upon appeal the County Court enters an order deducting the Federal Tax from the assessment and re-assesses the tax against the estate; *Held*, the claimant is entitled to a refund of the difference between the tax paid under the original order and the amount found to be due by the County Court.

MISTAKE OF FACT—*recovery of moneys paid under mistake.* Moneys voluntarily paid under a mistake of fact can be recovered.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of inheritance taxes claim to have been paid erroneously into the State Treasury by Harry A. Allen and Emma M. Allen, as executors under the last will and testament of John W. Allen, deceased.

The facts are briefly as follows:

John W. Allen died testate, a resident of Cook County, Illinois, on or about the 13th day of January, A. D. 1918. Thereafter his will was duly admitted to probate in the Probate Court of Cook County, and the claimants duly appointed executors.

Thereafter the County Judge of said county entereed an order assessing an inheritance tax in said estate of $9,235.97, from which order the executors appealed to the County Court of said county on the ground that the amount of the so-called Federal Estate Tax to which this estate was liable had not been deducated from the gross estate in order to determine the net estate for the purpose of the said State inheritance tax. On the trial in the County Court an order was entered which assessed a total tax in this estate of $8,648.47.

The taxes assessed by the County Judge, less (5) five per cent discount for payment within six months from decedent's death, were, on the 18th day of July, 1918, paid by the said executors to the County Treasurer of Cook County, a net payment of $8,774.17. The proper amount payable under the final order of the County Court was $8,648.47, less five per cent discount, or $8,216.05. The executors therefore paid $558.12 in excess of the amount finally determined to be due in this estate, and the Attorney General has filed herein his consent that an award for that amount be made.

We, therefore, award the claimants herein the sum of five hundred fifty-eight dollars and twelve cents ($558.12).

DAVID R. FORGAN ET AL, RECEIVERS OF CENTRAL UNION TELEPHONE CO., A CORPORATION

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

CONTRACT—*telephone service.* **Where claimant furnishes telephone services to the State under a contract with the State for such service he is entitled to recover for the service rendered.**

Edward J. Brundage, Attorney General, for State.

This suit is brought by claimants to recover for services rendered by Central Union Company, a Corporation, as disclosed in the statement of facts following: The declaration alleges the appointment of claimants, receivers, etc., and that as receivers they were engaged in transmitting local and long distance telephone messages in and about Springfield, Illinois, and charges were made therefore according to fixed and established schedule of rates.

That on January 8th, 1915, said receivers entered into a contract with the State of Illinois through its Secretary of State to furnish long distance telephone messages for the 49th General Assembly of the State of Illinois, to and including the 15th day of April, 1915.

Pursuant to such agreement, said receivers rendered services in accordance with the time of the contract, which aggregated $1,952.40. To pay this, an appropriation was made by the 49th General Assembly, but inadverently, this appropriation was certified to pay tolls of members of the 49th General Assembly and State refused to pay it. Later $401.00 of this was by individual members of that Assembly, thus reducing the amount to $1,551.40, which remains unpaid. A bill of particulars is presented in evidence showing each and all the items of charges and likewise similar services were rendered as follows:

For Public Utilities	$ 122.40
Secretary of State	236.80
Illinois and Michigan Canal	18.15

Later, the Secretary of State paid $77.03, reducing the last item to $158.77. It appears that there remains due and unpaid upon these various items of charges the following:

General Assembly	$1,551.40
Public Utilities	122.90
Illinois and Michigan Canal	18.15
Balance from Secretary of State	158.77
Total	$1,851.22

When the Secretary of State made partial payment of claims charged to his department, he stated that was all the available funds he now had on hand. A demurrer was filed to this declaration, which was not sustained; and after all proof was fully submitted, the Attorney General consents to the payment of the balance of the claim or claims.

The claim being sustained by the evidence, we are of the opinion that the claim is meritorious, and should be paid.

Since the institution of these proceedings, Charles E. Clark has been substituted attorney for Central Union Telephone Co., Inc., which likewise has been substituted as claimant herein. In view of the foregoing, we awarded the substituted claimant the sum of $1,851.22.

HOME TRUST AND SAVINGS BANK, A CORPORATION EXECUTOR OF THE LAST WILL AND TESTAMENT OF CELESTE C. HARDING, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

INHERITANCE TAX—*order of County Judge binding.* The order of the County Judge assessing an inheritance tax is valid and binding, unless reversed or modified by the County Court upon appeal.

ORDER OF COUNTY JUDGE—*how reviewed.* Section 11, of Inheritance Tax Law provides the method by which an order of the County Judge may be reviewed.

COURT OF CLAIMS—*cannot review order of County Judge.* The Court of Claims cannot review the order of the County Judge.

Edward J. Brundage, Attorney General, for State.

The County Judge of Kane County, Illinois, heretofore in the year 1917 entered an order assessing an inheritance in the estate of Celeste C. Harding, deceased, and the claimant presents a claim of refund $240.21 inheritance tax erroneously paid. And prays this Court to examine and review the proceedings of the appraiser and order of the County Judge approving same and fixing the tax. The attorney for claimant contends that the error is a mistake of the Judge in construing the will and that it is not *res adjudicata,* and that it is a mistake that can be restified by the State Treasurer under the power given in the Statute of Illinois.

The County Judge had jurisdiction of the parties and the subject matter, and as such Judge entered an order assessing the said inheritance.

Although the time has long since expired in which an appeal might have been prosecuted from such order to the County Court, none was ever prayed or taken to the County Court as required by statute in such case made and provided.

Section 11 of the inheritance tax law provides that: "Any person, including the Attorney General dissatisfied with the appraisement or assessment may appeal therefrom to the County Court of the proper county within sixty days after the making and finding of such assessment order", etc.

So far as this Court is concerned the tax was legally assessed and continues to be of binding and legal force till such time as an appeal is prosecuted according to said statute and the order of the County Judge reversed or modified by County Court. This Court cannot review the order of the County Judge.

The statute referred to provides for the manner of reviewing the order of the County Judge, 2 C. C. p. 210, 213, also 2 C. C. 208. The case is therefore dismissed.

HENRY FELIX CARVER

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

WORKMAN'S COMPENSATION ACT—*when does not apply to the State.* Workman's Compensation Act of 1917 does not apply to the State in any case not falling within Section Three (3) of that Act.

GOVERNMENTAL FUNCTION—*Joliet Penitentiary.* The State in conducting the State Penitentiary at Joliet exercises a governmental function and is not liable for injuries received by its employees in the discharge of their duty.

Edward J. Brundage, Attorney General, for State.

The claimant, Henry Felix Carver, files this claim for damages for injuries claimed to have been sustained by him on January 14, 1918, while in the performance of his duties as a guard at the State penitentiary at Joliet. While in the performance of such duties, he was attacked by one of the prisoners and severely cut and slashed with a knife. The State, through the Attorney General, has filed its demurrer to the declaration filed in this case, and in the opinion of the Court, the demurrer should be sustained.

There is no liability on the part of the State in this case. The "Workmens' Compensation Act" does not apply, as the evidence shows that the enterprise in which claimant was engaged is not included in the extra hazardous employment mentioned in section 3 of the "Workmens' Compensation Act", in force July 1st, 1917. Moreover, the State in conducting its institutions such as the Joliet penitentiary, is exercising governmental function and is not liable for injuries to those it employs. This has been repeatedly held in pervious decisions of this Court, such as "*Morissey* v. *State*", Vo. 2, Court of Claims, 267. In another case, this Court rejected the claim of the administrator of the estate of Harry Davy against the State of Illinois, holding that there was no liability on the part of the State. That was a case similar to this one. Harry Davy, a guard in the Joliet penitentiary, was killed while in the performance of his duty. The Court rejected the claim although it made a recommendation of a proper amount to allow to his widow in case the Legislature saw fit to do so.

For the above reasons, this claim is rejected.

We make the following findings of fact in the case:

That the claimant was an employee of the State of Illinois, serving as a guard in the State penitentiary at Joliet, and that on January 14, 1918, while in the performance of his duties as such guard, about the hour of 4:30 p. m., of said day, and while in the exercise of due

care and diligence for his own safety, he was attacked by a colored prisoner who was returning to his cell from his evening meal. The line of prisoners was apparently returning in an orderly manner when August Eskridge, one of the prisoners, broke out of line while on gallery 10 of one of the cell houses of said institution, and approached claimant and without provocation on the part of claimant, attacked and assaulted him by attempting to throw him over the railing of said gallery, and with a blunt knife, slashed him from the back of the neck forward across the throat and left cheek, making a gash 6 or 7 inches in length, and also cutting him across the face, leaving a gash about 4 inches in length, and also stabbed him in the back below the shoulder blade; that there was a severe struggle between claimant and his prisoner, and finally claimant broke away and rushed down the stairway of the gallery, bleeding and injured. He was there met by one of the other guards and taken to the hospital and placed under the care of the penitentiary physician. It required about 42 stitches to close the wound and claimant was in bed for about a week and did not resume his employment for a period of about 5 weeks after the injury.

It appears from the evidence that there is a scar caused by the long gash across the face and neck of claimant, which still draws and becomes sore, and that there will be a permanent scar which will disfigure claimant. Claimant suffered considerable pain for about three months after the injury and the evidence shows that his face is drawn and becomes sore during the different changes of weather. After receiving this injury, claimant enlisted in the Marine Corps and was honorably discharged on July 26, 1919. Claimant was not required to expend any money for medical services or hospital bills, as the State furnished this service and attendance.

Under the foregoing finding of facts, we have rejected this claim the State not being liable for the reasons hereinbefore set forth. We find that if at the time the claimant was injured, employees of the State were under the protection of the "Workmens' Compensation Act", the same as employees of private persons or corporations, claimant would be entitled to compensation under that Act.

Under the circumstances of this case, if the Legislature sees fit to waive the legal defenses of the State, it would be an act of justice to appropriate not to exceed one thousand dollars ($1,000) as relief and compensation for all injuries sustained by claimant as claimed in his declaration.

CHICAGO TELEPHONE COMPANY

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

CONTRACTS—*when law will imply promise on part of State to pay.* **This claim is similar to that of *Greely Carson* v. *State*, 1 Ill., Court of Claims, 135, and the decision of the Court in that case, and other similar cases cited herein, governs this case.**

Edward J. Brundage, Attorney General, for State.

This is a claim of the Chicago Telephone Company for telephone service furnished to the State of Illinois to the office of the Attorney General in the amount of eight hundred ninety-nine dollars and seventy-two cents ($899.72) for a period from December 22nd, 1913, to September 1st, 1915. No objection or defense of the claim is interposed by or on behalf of the State and the honorable Attorney General consents to an award herein in the sum of eight hundred and ninety-nine dollars and seventy-two cents ($899.72). This Court has made awards in a number of similar cases. See *Greeley Carson Co.* v. *The State*, 1 Illinois Court of Claims, 135; *Sherman v. The State*, 1 Ill. Court of Claims, 168; *Barrow, Wade, Guthrie & Co.* v. *The State*, 2 Ill. Court of Claims, 304. We therefore award the claimant the sum of eight hundred ninety-nine dollars and seventy-two cents ($899.72).

H. M. GOOD

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

WORKMAN'S COMPENSATION ACT—*when State liable thereunder.* Claimant was injured while operating a trench machine, near Lockport, Ill., while in the employe of the Penitentiary Commission, and filed his claim for hospital and medical services, and compensation. *Held*, that the claim might well be considered as falling within Section Three (3) Par. Two (2) Workman's Compensation Act.

RESPONDEAT SUPERIOR—*claim may be allowed on ground of equity and social justice.* While the doctrine of *Respondeat Superior* is not applicable to the State in the exercise of its governmental functions, yet under the circumstances of the case the court, having in mind the purpose for which it was created, and no objection being made by the State, upon principles of equity and justice, may award to the claimant a fair and just compensation.

Edward J. Brundage, Attorney General, for State.

This is a claim of R. M. Good for compensation on account of injuries received in operating a trench machine while in the employ of the Penitentiary Commission and engaged in the work of building the new Illinois State penitentiary located near Lockport, Illinois. The claim submited by the claimant is for hospital and medical charges and compensation for thirty weeks at the rate of 50 per cent of $31.25 per week, the total claim being two hundred sixty-four dollars and thirty-seven cents ($264.37). The measure of compensation sought is the provision of the Workmen's Compensation Act, section 8, paragraph 3, Illinois Statute. The facts in this case are not disputed. The State has filed a demurrer and takes the position that it is not legally liable for compensation or in damages in cases of this kind. In the opinion of the Court the only proposition under which the claimant shows a basis of liability is under section 3 of the Workmens' Compensation Act referred to in that the undertaking in which the State and the employee who is the claimant here were engaged at the time of the injury complained of, might well be considered to fall within the classification of section 3, paragraph 2 of the Workmens' Compensation Act. While it is well settled that the State and the conduct of State institutions exercises a governmental function and that there can be no recovery arising in tort at such institutions. It is not necessary however that the Court determine in this case the question of legal liability of the State as the circumstances of this case are such that the Court with a view to the exercise of the function for which it was

created and to do equity and social justice may justly and fairly award compensation to the claimant and no objections is made by the State to the entry and award of a fair and just compensation to the claimant herein. It is the opinion of the Court that the sum of two hundred sixty-four dollars and thirty-seven cents ($264.37) is a fair and just compensation and we accordingly award the sum of two hundred and sixty-four dollars and thirty-seven cents ($264.37).

J. J. RANDALL

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1929.

GOVERNMENTAL FUNCTION—*Lincoln State School and Colony.* **The State in conducting the Lincoln State School and Colony exercises a governmental function and is not liable for injuries received by its employes in the discharge of their duty.**

KNOWLEDGE OF DANGER—*claimant assumed risk of injury.* **Where the claimant had knowledge of the dangerous propensities of the animal he impliedly accepted the possible danger attending his employment.**

SOCIAL JUSTICE AND EQUITY—*compensation may be awarded.* **In the absence of legal liability of the State the Court upon grounds of equity and social justice may allow to a claimant compensation for injuries received.**

Edward J. Brundage, Attorney General, for State.

This is a claim presented by J. J. Randall by reason of injuries sustained by him in the course of his employment at the Lincoln State School and Colony, an institution maintained and under the control of the State of Illinois. This claimant described his employment as being "Head Farmer" and by virtue of such employment it became and was his duty to direct the labor necessary to operate the farming enterprise connected with said institution; that on the 25th day of April, A. D. 1914, while engaged in driving a certain draft team, an animal hitched on the left side of said team was a mule, the claimant maintained that the mule was vicious and dangerous to handle, drive, work or be about; that the said mule kicked the claimant, thereby breaking and fracturing the left forearm and chipped the upper bone on said forearm thereby causing the injury and damages complained of herein. The defendant, The State of Illinois, takes the position that the State of Illinois is not liable for the reason that the doctrine of *respondeat superior* does not apply to the State. In the first place the State is not liable for the torts of its officers, agents and employees; also that the State in conducting its institutions, is exercising a governmental function and is not liable for injuries to those it employs; also that the State of Illinois is not responsible for the misfeasance, wrongs or omissions of duty of its officers, agents or servants for it does not guarantee to any person the fidelity of the officers or agents whom it employs.

The claimant contends that he suffered great pain and inconvenience and loss of time in consequence of this injury that he was a diligent and faithful employee. It, however, appears to this Court that while the matter of equity and social justice should be considered, yet

the Court should not be unmindful of the well established rules of law of the State together with all the facts and circumstances surrounding the particular case at issue, it must be admitted that whatever hazard that attended the employment of the claimant was well known to him and with that knowledge he continued in such employment thereby impliedly accepting the possible danger; also that a considerable length of time elapsed before the filing of this claim in this Court, however, it is a rule of this Court even in the absence of legal liability to consider the equity and justice of a proposition. Therefore in view of the former ruling of this Court, the position taken by the honorable Attorney General, and taken into consideration all the evidences in this case, it is ordered that an award for the sum of eight hundred dollars ($800.00) be allowed to the claimant in this case.

CLIFTON F. CRAMER

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

FEES AND SALARIES—*when discharged employee entitled to salary.* Where charges are filed against a State employee, whose salary is fixed by law, and upon a hearing thereon he is discharged, he is entitled to his salary until he receives official notice of his discharge.

Edward J. Brundage, Attorney General, for State.

The claimant, Clifton F. Cramer, alleges in his declaration that on August 2, 1915, he was appointed deputy game and fish warden for the State of Illinois, and immediately entered on the duties of his office, and that he continued in his said employment during the month of June, 1917; that the salary fixed by law for said employment was one hundred dollars ($100.00) per month, and that claimant incurred expenses in said employment amounting to thirty-three dollars and ten cents ($33.10).

That on June 29, 1917, he was discharged from said employment and that his salary and expenses for the month of June, 1917, have not been paid.

It appears that on May 29, 1917, charges were filed against claimant before the Civil Service Commission, but that the charges were not heard until June 14, 1917, and that claimant was not finally discharged until he received notice of the action of the Civil Service Commission on June 29, 1917. Until such time, he was in the employ of the State and entitled to receive the compensation and expenses provided for by law. The Attorney General admits that under the law and the evidence, the State is liable to the claimant in the sum of one hundred thirty-three and 10/100 dollars ($133.10) for compensation and expenses and has not taken any testimony in contradiction of that filed by claimant, in this case.

The Court is therefore of the opinion that this claim should be allowed. The Court therefore awards the claimant the sum of $133.10.

ELLA H. DAVIS ET AL, EXECUTOR OF WILL OF GEORGE PERRIN DAVIS, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

INHERITANCE TAX—*Federal Tax should be first deducted.* The Federal Tax should be first deducted before the State Tax is assessed.

SAME—*when claimant entitled to a refund.* Where an inheritance tax has been assessed, and paid under protest, without first deducting the Federal Tax, and afterwards upon proceedings before the County Judge, the assessment was modified, and it was found that the tax was erroneously paid, the claimant is entitled to a refund of the excess.

COURT OF REVIEW—*Court of Claims not a Court of Review.* The Court of Claims is not a Court of Review, and the findings of the County Court are conclusive and binding upon this Court, unless reversed or modified.

Edward J. Brundage, Attorney General, for State.

The claimants in their declaration show that George Perrin Davis of McLean County died January 10, 1917, owning property at the time of his death subject to the payment of inheritance tax to the State of Illinois.

The will was duly probated and executors duly qualified. The appraisement was made and reported to the Court and approved and an order entered fixing the amount of the inheritance tax without first deducting the federal tax which was $47,163.71.

The executors having paid to the State the inheritance tax on the total amount including amount of federal taxes resulted in them paying $879.86 more than required by law.

The facts are stipulated and no other evidence introduced. It is shown that the Court approved the order of assessment upon the above basis over the protest of claimant.

That in order to save same interest claimant paid the entire tax under protest.

At that time the Pasfield case was pending in the Supreme Court, and awaiting the opinion in that case some correspondence took place between the claimants counsel and the Attorney General, about this tax.

This excess evidently was erroneously paid, but paid under protest.

Later the claimants filed petition with the County Judge to modify its order on the assessment, and a hearing was had thereon in which the State appeared by its attorneys and the issues were tried without questioning the Court's right or jurisdiction to adjudicate the matter

and the Court made an order modifying its former order, to make it conform to the law.

The Court further found that the claimant had actually erroneously paid $879.85, and that same should be refunded to claimants.

Claimants also claimed interest of 5% making $925.86 but the interest was not allowed.

No appeal was taken from the order approving the appraisers report, but the same judge later modified its order in which proceedings, the State appeared and represented the interest of the State. Demand seems to have been made on the County Treasurer and State Treasurer with a view of proceeding to collect the amount so erroneously paid.

Without discussing the technicalities in the precedence it is evident that the claimants erroneously under protest paid $879.88 more than they were legally required to do, and just before the opinion was announced in the case of *People* v. *Pasfield*, 288 Ill. Sup. Comp. page 450.

Whether the procedure in the County Court by judge was exactly proper or not, the State was represented at the various steps taken to determine the proper amount assessable, and the County Courts finding same to be right and equitable. This Court not being a Court of review it will hold that proceedings in the County Court are conclusive and accordingly find that claimant is entitled to a refund of eight hundred seventy-nine and 86/100 dollars and recommends the payment of same by the State.

DANIEL E. DEVLIN, AND LOUIS C. ROBERTS, CO-PARTNERS, DOING BUSINESS AS DEVLIN AND ROBERTS

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

LEGISLATIVE COMMITTEE—*employees when not entitled to recover for services.* An employee of a Legislative Committee cannot recover for services rendered after the *sine die* adjournment of the Legislature.

SAME—The Senate should have provided for the payment for the services and expenses of the employees of its Committee.

NON-LIABILITY OF STATE—*when the State is not liable.* The State cannot be held liable for the payment of the expenses of a committee unless such committee was authorized by an Act, or Joint Resolution of the Legislature.

BURDEN OF PROOF—*burden of proof is upon claimant.* The burden of proof is upon the claimant to show that the services were rendered before the final adjournment of the Legislature.

Edward J. Brundage, Attorney General, for State.

The Attorney General admits that there is no dispute about the facts in this case. It appears from the declaration and evidence that in the year 1915, the State Senate of the 49th General Assembly appointed a committee to investigate the Board of Education of the City of Chicago; that the claimants were appointed by the committee as official reporters, to report the proceedings of said committee, at the rate of two dollars ($2.00) per hour for attendance, and fifty cents (50c) per page for the first copy, fifteen cents (15c) per page for the second copy, and ten cents (10c) per page for each succeeding copy of the transcript; that the committee commenced hearings on July 9, 1915, and ended on September 30, 1915, during which time claimants attended said hearings and performed their duties as official reporters. Claimants have attached an itemized bill for services, as agreed, amounting to $1,555.25.

There is no dispute as to the correctness of the amount of the claim. The evidence shows that these services were performed, and that claimants have not been paid therefor.

The Attorney General, for the State demurrs to the declaration, and says that as a matter of law, claimants are not entitled to recover, and cites the case of *Fergus v. Russell*, 270 Ill., 304, and especially refers to page 344 of said decision. It appears from the evidence that this was a committee appointed by resolution of the Senate; that it was not authorized or appointed by a joint resolution of the Legislature

and it would appear that the Senate in appointing such committee, should have provided for the payment of its expenses. The State cannot be held liable for the reason that the appointment of said committee was not authorized by Act or resolution of the Legislature. Claimant contends that the decision in the Fergus case is not in point because it is not shown that the services were performed after the sine die adjournment of the Legislature. The services were performed after July 1, 1915, when the Legislature is presumed to have adjourned, and when all acts of the Legislature approved by the Governor, came into force.

It seems to us that claimants, being bound to establish their case, must show that the services were rendered before the committee, prior to the sine die adjournment of the Legislature.

For these reasons, we do not think the State is liable under the law, and the claim is therefore rejected.

We find that the matters set forth in the declaration, are true, and that these services were performed by the claimants according to an agreement made with said Senate Committee, and that according to said agreement, the total amount of same is $1,555.25. While, under the law, the State is not liable for the payment of this claim, the Senate Committee should have made provision for the payment thereof before incurring same, and it would be no more than an act of justice for the Legislature to make an appropriation for the payment of this claim.

L. F. BROWN

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

FEES AND SALARIES—*resignation. When employee entitled to salary.* Where an employee of the State resigns his position he is entitled to compensation for services rendered at the time his resignation becomes effective.

RES ADJUDICATA—*when a bar.* A former decision to be a bar must decide the case upon its merits and not upon a technicality.

Edward J. Brundage, Attorney General, for State.

This is a claim filed for Dr. L. F. Brown of Galesburg, Illinois, for services rendered as a member of the Board of Livestock Commissioners. The testimony stands on the record undisputed, it appearing by the same that Dr. Brown was appointed in due course and entered upon the performance of his duties under a compensation prescribed by the Statute of ten dollars ($10 00) per day for every day necessarily employed in the service of the State. The evidence shows further that Dr. Brown resigned when his resignation was requested; that his resignation took place the latter part of May, 1917; that his salary for the months of February, March, April and May, 1917, were not paid; that he worked twenty-four days in the month of February, 1917; twenty-seven days in the month of March, 1917; twenty-five days in the month of April, 1917, and twenty-seven days in the month of May, 1917, making a total of one hundred and three (103) days. The only defense offered by the State was to call the Court's attention to the case of the *People* v. *ex rel, L. F. Brown* v. *Frank Lowden, et al,* 285 Ill. 618. It is the opinion of this Court that a a rule of the doctrine *res adjudicata* that any former decision to be a bar must be upon the merits of the case. In the case of the *People* v. *Lowden,* cited the Supreme Court considered a mandamus suit directed against the Governor, the Auditor of Public Accounts, and the State Treasurer. The decision in that case was based entirely upon a technicality which of course was properly invoked in the action and in the Courts where it was determined. However, it is the opinion of this Court that the Court of Claims was established largely for the purpose of doing substantial justice and equity in all cases coming within its jurisdiction, and as there is no dispute as to the services rendered, the Court must conclude that the duties were properly performed by Dr. Brown and that he was competent and faithful, consequently as a laborer he was worthy of his hire. Therefore it is ordered that an award be entered in favor of the claimant herein for the sum of one thousand thirty ($1,030.00) dollars.

HECTOR DURANTE AND TONY BLASI
v.
STATE OF ILLINOIS.

Opinion filed September 20, 1920.

FEES AND SALARIES—*when State employee not entitled to salary.* An employee of the State who has been suspended cannot recover from the State the salary of the office he held where such salary has been paid to an occupant of the office during the period of suspension.

DE JURE AND DE FACTO OFFICER—*who entitled to salary.* A *De Jure* officer, or employee, who has been for a time wrongfully prevented from discharging the duties of his office cannot recover from the State the salary for such time when it has been paid to the *De Facto* officer, or employee, who has discharged the duties of the position during the period of time the *De Jure* officer was prevented from discharging them. (*The People* v. *Burdett*, 283 Ill. 124.)

Edward J. Brundage, Attorney General, for State.

As the facts in these two cases are the same, and the briefs and abstracts filed cover both cases, they are both disposed of in one opinion.

The claimants, Hector Durante and Tony Blasi, were employed in the office of private employment agencies of the State of Illinois as inspectors of private employment agencies, and were under the Civil Service Act. They were suspended by the chief inspector of private employment agencies October 27, 1913, and charges filed against them October 28, 1913. The salary of each of the claimants was $125.00 per month. There was a considerable delay in hearing the charges by the Civil Service Commission, but a hearing was finally had, and on January 16, 1917, Durante and Blasi were ordered re-instated but without pay from the time of their suspension to the time they were re-instated. The reason given in the order of the Civil Service Commission why they should receive no pay for the time they were suspended was that the delay in hearing the charges was due to technical objections of claimants and their unwarranted action in securing a writ of prohibition to prevent the president of the commission from hearing the charges, which required an appeal to the Appellate Court to set aside the action of the Court granting the writ. The order recites that under the circumstances it would be unjust to allow claimants pay for the time they rendered no service to the State. Since January 16, 1917, claimants have been in the discharge of the duties of their respective positions and receiving the salary therefor. During the time claimants were suspended, the duties of their positions were performed by other persons under temporary writs issued by the Civil Service Commission, who were paid the salaries allowed employees in said po-

sitions. The claimants filed separate petitions for writs of mandamus in the Superior Court of Cook County to compel the Civil Service Commission, and the chief inspector of private employment agencies of the State of Illinois to certify and approve pay-rolls for their salaries during the time they were suspended, and also commanding the State Auditor to issue warrants therefor and the State Treasurer to pay said warrants. The Superior Court held that Durante was entitled to the full salary during the time of his suspension ($4,708.33) and that Blasi was entitled to pay for the full time he was suspented, less $1,602.76 earned and received by him during that period while employed as watchman in the office of the State Treasurer, and writs of mandamus were awarded as prayed. From this judgment, the Civil Service Commission appealed to the Supreme Court of Illinois. On deciding this appeal, in the case of the *People* v. *Burdett*, 283 Ill., page 124, the Supreme Court held that the claimants could not recover from the State the salary for such time as it had been paid to an occupant of the office who discharged the duties of the position during the period of time claimants were prevented from discharging them. We quote from the Supreme Court decision as follows: "A de jure officer or employee who has been for a time wrongfully prevented from discharging the duties of his office, cannot recover from the State the salary for such time when it has been paid to a de facto officer who has discharged the duties of the position during the period of time the de jure officer was prevented from discharging them."

This question was also passed upon by the Supreme Court in case of the *People* v. *Schmidt*, 281 Ill., page 211. This rule of law is founded in public policy, and protects the State or other governmental agency from liability for the payment of a double salary for the same office or employment.

The decision of the Supreme Court, had upon the merits of the case, where claimants were seeking to recover their salaries the same as they are in this proceeding, is binding upon this Court.

Both of these claims are therefore rejected.

JAMES H. TIBBETTS, ET AL

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

INHERITANCE TAX—*when refund will be made.* Where it appears that claimant is entitled to a refund, and he has complied with the provisions of the statute relating thereto the Court will enter an award in his favor.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by James H. Tibbetts, trustee of estate of Nathaniel Tibbetts, deceased, and James H. Tibbetts, Annie Tibbetts, Henry A. Tibbetts, Mary R. Tibbetts, Edgar Thorndike, Bert E. Thorndike, Alice Morrow, Nellie Davis, M. Forrest A. Davis, Mary Davis Eli, Erma Davis Zeiglis, Jennie Staples, claimants.

The claim is presented on stipulation of facts. Sept. 15, 1917, the County Judge of Henry County, approved report and made order assessing the estate of said deceased $1,597.42, which was duly appealed from the County Court in which an order was made assessing a total tax of $1,194.90 and interest of $79.05—$1,273.95, and ordered a refund to claimants of $323.47, that $65.94 of said sum was due Henry A. Tibbetts and the remaining $257.53 was due to the other claimants in equal parts, as refund.

The correctness and justice of this claim is admitted by the State.

An order is therefore herein made that said sum of $323.47 be paid to said trustee for use of the claimants as above indicated.

A. G. SPAULDING & BROS.

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

CONTRACT—*supplies furnished.* **Where claimant furnishes supplies for a State Institution the State is liable for the same.**

Edward J. Brundage, Attorney General, for State.

Claimant filed its claim for $19.99 for balance due on invoice for athletic goods furnished by it to the Southern Illinois State Normal School, at Carbondale, Illinois, as per invoice attached to claimant's declaration.

The Attorney General, on behalf of the State, has admitted in writing that under the law and evidence in this case, the State is liable to the claimant for the sum of $19.99.

The Court therefore awards claimant the sum of $19.99.

HARLAN K. BOLTON, THEODORE W. SMITH AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF JAMES BOLTON, DECEASED, AND MARY LOUISE SMITH

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

INHERITANCE TAX—*when refund will not be made.* Where an inheritance tax is assessed by the County Judge and paid by the executors, but no appeal is taken from the order of the County Judge fixing the tax, the claimant is not entitled to an award.

COURT OF CLAIMS—*not a Court of review.* The Court of Claims has no power or authority to review an order of the County Judge, and in order to obtain a review of such order it is essential that claimant should follow the plain provisions of the statute provided therefor.

Edward J. Brundage, Attorney General, for State.

Claimants, Harlan K. Bolton and Theodore W. Smith as Trustees under the last will and testament of James Bolton, deceased, and Mary Louise Smith, ask for a refund of inheritance tax, etc.

The facts submitted are by stipulation and no other evidence introduced.

It is stipulated that James Bolton died a resident of Naperville, Du Page County, Illinois, January 25th, 1917, that his will was duly probated and a copy attached to the stipulation.

That thereafter pursuant to proper proceedings the County Judge of said county entered an order fixing the inheritance tax in the estate of James Bolton, deceased.

That said James Bolton died leaving him surviving Harlan K. Bolton and Mary Louise Smith, his children and only heirs at law, and Bolton Kent Smith, Wilber C. Smith and Theodosia Smith, his grandchildren, all of whom are minors.

That said Bolton Kent Smith was born Oct. 29th, 1904, Wilber C. Smith born June 16th, 1907, and Theodosia Smith born Feb. 25th, 1909.

That on the 23rd day of February, A. D. 1917, the executor paid to the County Treasurer $6,839.10 inheritance tax, same being amount entered by the County Judge, less 5% discount for payment within the six months after death of deceased, but paid under protest.

$30,000.00 was bequeathed to the said three grandchildren named in will.

Petitioners seek in this proceeding to recover back $570.00 paid as inheritance tax on the said $30,000.00 so bequeathed to the said grand children under the 6th and 7th clauses of the will.

During the course of the administration of said estate the claimants, desirable the will construed as to that part disposing of the said $30,000 to the grandchildren, filed their bill in the Circuit Court of said county for such purpose and procured a decree of the Circuit Court construing parts 6 and 7. That the decree was to the effect, as contended by counsel for claimants that the $30,000.00 mentioned aforesaid was upon the death of the testator, James Bolton, deceased. Vested in said grandchildren. The State of Illinois was not made party to the last named proceedings.

Paragraph 7 of the will provides:

"It is my will and I hereby direct that the estate hertofore given in this will to my grandchildren shall not be distributed to them or turned over to them until they arrive at the age of twenty-one years, respectively, and that when any one of said grandchildren shall reach the age of 21 years, then his or her share shall be turned over to him or her by my said trustees."

The County Judge entered an order assessing the inheritance tax on all the assessable property of said deceased, including the $30,000 so bequeathed to said three grandchildren under section 25, of statute, as admitted.

Section 11 of the inheritance tax law provides in part that: Any persons, including the Attorney General dissatisfied with the appraisement, or assessment may appeal therefrom to the County Court of the proper county within sixty days after the making and filing of such assessment order and paying or giving the County Judge security satisfactory to pay all costs, together with whatever taxes shall be fixed by the Court."

No appeal was ever taken from the order fixing the assessment.

The decree of the Circuit Court did not in any way reverse or modify the County Judges order of assessment; nor did it pretend to do so. Nor did complainants after nor before such decree ever take an appeal from such order of County Judge or seek to have same modified.

The Court cannot review the order of the County Judge. The Statute in question provides for the manner of reviewing such orders of the County Judge, and it is essential and necessary that any one desiring a refund of inheritance taxes claimed to have been erroneously paid, must first have the tax declared erroneous by some Court of this State, in accordance with the inheritance tax law; and inasmuch as claimants in this case have wholly neglected to take the steps provided by law we are compelled to dismiss this claim; but without prejudice to any legal rights which may accrue to these grandchildren, upon them reaching the age of twenty-one years respectively, should such age be attained by them respectively. See *Susan Webster Dodge and Ralph Ensign, Executors, etc.*, v. *The State of Illinois*, 2 C. of C. P. 175, and 12 cases immediately and successively following the above cited case.

It is unnecessary for us to go further into the discussion of the case.

For reasons above stated claim is dismissed without prejudice.

AUSTIN MANUFACTURING CO.

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

CONTRACT—*when implied promise to pay arises.* **Where materials are furnished or services rendered to the State, and are accepted by the State, an implied promise to pay for the material furnished or the services rendered will be implied.**

Edward J. Brundage, Attorney General, for State.

This claim for price of additional equipment, parts and accessories for the Illinois State penitentiary crusher plant, located at Joliet, Will County, Illinois, and for the services of the superintendent to oversee and superintendend the erection of said equipment, furnished by the claimant to the State under a contract entered into by the Board of Prison Industries of Illinois with the claimant on April 23rd, 1914, and subsequent written orders and telephone order to the claimant by T. R. O'Brien, chief engineer of the Joliet penitentiary located at Joliet, Will County, Illinois.

It appears that the equipment, parts, accessories and services of the superintendent of erection upon which the claimant bases its claim were received and accepted and retained by the State and were used and operated at the Joliet penitentiary at Joliet, Illinois, and that on October 12th, 1917, there was a balance due the claimant of two thousand eight hundred sixteen dollars and sixty-seven cents ($2,816.67) for material furnished and services rendered as aforesaid and that claimants have not received any payment on this balance for which this claim is made, and the reason this claim has never been paid is that there was no appropriation available out of which it could be paid. This case is analogous to the case of *Barrow, Wade, Guthrie & Co. v. State*, 2 Ill. Court of Claims, 304 and it appears that the claimant is justly and reasonably entitled to the payment of this claim. No objection or defense to the claim being interposed on behalf of the State, and the honorable Attorney General having admitted liability of the State on its behalf, we accordingly award the claimant the sum of two thousand eight hundred sixteen dollars and sixty-seven cents ($2,816.67).

ALFRED E. SPINK, ADMINISTRATOR, ETC.

v.

STATE OF ILLINOIS.

Opinion filed September 29, 1920.

INHERITANCE TAX—*when claimant entitled to a refund.* Where an inheritance tax has been erroneously paid and claimant complies with the provisions of the statute, he is entitled to a refund of the tax erroneously paid.

Edward J. Brundage, Attorney General, for State.

Alfred E. Spink, administrator of the estate of John Bordeu, deceased, erroneously paid $3,328.05, inheritance tax in excess of what was lawfully required to do.

The proper order was later made by County Court to enable him to collect of the State the amount so erroneously paid.

Proper demand was made by claimant for such refund and not being paid he asks this Court for re-imbursement for above amount.

The facts are stipulated by parties to the suit, and the State admits its liability to claimant in said claim for amount in declaration named.

The claim is just and should be paid.

The Court accordingly finds for claimant and against defendant in the sum of $3,328.05, and recommends payment of same.

MYRTLE RALSTON

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

SERVICES OF NURSE—*military and naval code. When entitled to recover.* **Where claimant upon recommendation of the Board of Medical Officers appointed by the Commander-in-Chief under Sec. II, Art. 16, of Military and Naval Code, performs services as a nurse to an enlisted soldier of National Guard during his last illness she is entitled to recover a reasonable amount for the services performed.**

Edward J. Brundage, Attorney General, for State.

This is a claim of Myrtle Ralston for services as nurse to Robert B. Ralston, a private soldier of Company A, 4th Inf. Regiment, National Guard of Illinois, during his last illness in the months of August, September, October, November and December, 1918.

It appears that the Board of Medical officers appointed by the Commander-in-Chief under section 11, article 16 of the Military Naval Code of the Statutes of Illinois, has investigated the circumstances in this case and recommended payment to the claimant the sum of four hundred and twenty-five dollars ($425.00), which claim has been referred to this Court by the Adjutant General in accordance with the Statute above cited. Upon careful consideration of the evidence in this case the Court is of the opinion that the claimant is entitled to compensation and that the sum of four hundred and twenty-five dollars ($425.00) is a reasonable amount to be awarded to the claimant. No objection or defense being interposed on behalf of the State, the honorable Attorney General having admitted liability of the State to the claimant herein, we accordingly award to the claimant the sum of four hundred and twenty-five dollars ($425.00).

WILLIAM PIETSCH, ET AL

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1920.

CONVEYANCE—*when null and void.* The grantor against his will was induced, by fraudulent representations of a representative of the State Board of Administration, to execute and deliver a deed conveying his property to the State, or Board of Administration, under the belief that he was legally liable to the State for the support of an insane brother, an inmate of a State institution. *Held*, that the conveyance to the State is a nullity, void and incapable of enforcement.

STATE OFFICER—*no power to purchase or acquire real estate for the State by private contract.* An officer, agent or representative of the State, or any of its institutions have no power or authority to purchase or acquire, by private contract, real estate for the State for any purpose.

Edward J. Brundage, Attorney General, for State.

This is a suit brought by claimants to set aside a deed made by one Charls Pietsch, now deceased, in his lifetime purporting to convey certain lands therein described to the State of Illinois, on the expressed consideration that the State would maintain and care for a brother of grantor, who was an inmate of the State Insane Asylum, and remove the same as a cloud upon the title of the lands therein described, etc.

The evidence in the case discloses that on the 16th day of May, A. D. 1914, Charles Pietsch made, executed and delivered his quit claim deed to "Board of Administration for Support of Insane Department, or its managing officers" of Illinois, meaning and intending thereby to convey to the State of Illinois endeavoring and intending therein to convey the real estate and said deed contained. The deed so purporting to convey title is as follows, to-wit: "This indenture witnesseth that the grantor, Charles (Carl) Pietsch, unmarried, of the town of Bloomington, County of McLean, State of Illinois, for the consideration of human care of William Pietsch, inmate of insane asylum, and one dollar, convey and quit claim to Board of Administration, support of Insane Department, or its managing officers in the City of Springfield, County of Sangamon and State of Illinois. All interest in the following described real estate, to-wit: The undivided one-half (1-2) of the entire five acres, beginning six chains and 53 links west and one rod north of the 8th sec. cor. on the south side of the S. E. ¼ of Sec. 9, Town 23, both of Range 2 E. of 3d P. M. thence northerly 12 chains and 24 links to a stake; thence westerly 4 chains and 7 links, thence southerly 12 chains and 3 links; thence easterly 4 chains and 7 links to place of beginning. Also five acres (the undivided 1-2 thereof) off

of east end of the following described lot of land, to-wit: The south end of the west half of the S. E. ¼ of Sec. 9, Township 23 N. Range 2 East, containing 25 acres, beginning 12 chains and 45 links west and one rod north of the 1-8 sec. corner in the south side of the said south-east ¼ of said Sec. 9; thence northerly 12 chains and 21 links to a stake; thence westerly 4 chains and 8 links to a stake; thence southerly 12 chains and 27 links to a stake, one rod north of said south line of S. E. ¼; thence easterly 4 chains and 8 links to the place of beginning, situated in the County of McLean in the State of Illinois, hereby releasing and waiving all rights under, and by virtue of the homestead exemption laws of this State. The grantor, Charles (Carl) Pietsch, to hold possession unmolested until his demise, and enjoy all income and profits of the premises and pay taxes and keep up repairs. In consideration whereof the State of Illinois will take care of the insane brother, William Pietsch, until his death, and then give him a Christian burial in the Bloomington, Illinois, cemetery.

Dated 16th day of May, A. D. 1914.

CHARLES PIETSCH. (SEAL)

Witnesses—James McLeary, L. G. Freeman.

The same was duly acknowledged before a Notary Public. Said deed was filed for record with the recorder of deeds, and duly recorded in the office of Recorder of Deeds of McLean County, Illinois, in book 305 of Deeds on page 216. It does not appear in evidence to whom the deed was delivered. The record of the County Court of McLean County shows the commitment of William Pietsch as an insane person.

The right of possession of the property attempted to be conveyed was retained by the grantor, who was under the terms of the supposed conveyance to enjoy the rents, issues and profits, so long as he survived, and at his death, the State was to give to the said insane patient a Christian burial, and to take over the property.

Said Charles (Carl) Pietsch died testate about September 24, 1919, in Bloomington, Illinois, leaving William Pietsch, Fred Pietsch, Rudolph Pietsch, Frank Pietsch, Edward Pietsch, Herman Pietsch, John Pietsch, William Wollenzein, Frederick Wollenzein, Minnie Schwartz, Mary Schneider, Clarence Wollenzein, Martha Wollenzein and Ella Heims, his only heirs at law him surviving.

It appears also in evidence that the said Charles (Carl) Pietsch was poor and really not liable for the support of his insane brother, William, but the State's Representative who represented himself to be a lawyer looking after the interest of the State, induced him against his will to execute the deed in question, he believing, at the time, that he was legally bound to support his brother.

At the death of Charles (Carl) Pietsch, the aforesaid heirs at law, the claimants became tenants in common, as the only heirs at law, of said deceased, and took possession of said property, and continued in possession of same up to date of filing this claim, and the State has never had possession thereof.

It is very clear from the evidence before the Court that at the time of the execution of the deed in question, the grantor was not finan-

cially able nor legally required to support his insane brother, the facts stated as inducement to the grantor to execute the deed, were untrue and misleading and amounting to fraud in law.

The State of Illinois, under the Constitution and Statute can acquire real estate for public purposes only in manner and from expressly provided therein. There is no provision in the law where by an officer or agent or representative of the State or any of its institutions may go out over the country, and by private contract buy lands for the State for all purposes whatever.

A deed made to the State or to any of its institutions so procured would be a nullity, void and not capable of enforcement.

In view of the foregoing, the Court order adjudge and decree that the above said deed be, and the same is hereby declared null and void, and of no binding force or effect.

THE PEOPLES LIFE INSURANCE CO.

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

LESSOR AND LESSEE—*lessor should have notice of vacation of premises.* Where there is a tenancy from year to year the lessor should have some notice of the vacation of the premises by the lessee.

SAME—*when lessor entitled to rent for remainder of term.* Where the lessee vacates the premises without notice to lessor before the end of the term the lessor is entitled to recover the rent for the remainder of the term, less any rents received for the premises after vacation by the lessee.

Edward J. Brundage, Attorney General, for State.

This is a claim for rent alleged to be due the claimant who is the owner of an office building in the City of Chicago. It appears that the following departments of the State, namely, the Illinois Game and Fish Commissioners; State Board of Barber Examiners; State Fire Marshal: Illinois Waterway Commissioners and the State Board of Livestock Commissioners occupied space under certain leases in said building belonging to claimant.

The contention of the claimant is that by reason of holding over after May 1st, 1917, that the defendant would be liable under the year to year rule, together with the fact of a certain conversation had with Mr. Sutton the Governor's private secretary. There is no dispute about the fact of these various departments occupying the spaces alleged. There is no dispute as to the amount of rent that the various departments were to pay for such spaces during the time they occupied same. Consequently the only proposition for this Court to consider is as to whether or not the claimant is entitled to rent from the various departments until May 1st, 1918. This Court is of the opinion that the claimant should have some notice of the termination of the tenancy otherwise than anything we can find of record here, as a matter of justice, according to the contention of the Attorney General, the lessees took possession of the floor space leased on or about May 1, 1915, and continued to remain in possession in part until July 1st, 1917, a period of more than two years and we believe from all the facts herein that a lease for at least another year was entered into and it appearing from the evidence that the claimant used their best efforts to rent the space vacated by the said State Departments and that the total rent received for space vacated amounted to six hundred eighty dollars ($680.00) which deducted from the total of the rentals would leave a balance due the claimant of two thousand seven hundred eighty-one dollars and eighteen cents ($2,781.18). We believe that legally and equitably the claimant should recover for the loss they sustained. Therefore it is ordered that an award be entered in behalf of the claimant for the sum of two thousand seven hundred eighty-one dollars and eighteen cents ($2,781.18).

PEORIA AND PEKIN UNION RAILROAD CO.

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

DEMURRAGE—*when the State is liable for demurrage.* Where it is shown that the proper authorities of the State Institution had notice of the arrival of the cars of coal, or were notified thereof, under the contract, a failure to unload the cars of coal because of no track room, or the bins were full, it being the duty of the consignee under the contract to unload the cars, the State is not relieved of its liability for the demurrage charges.

Edward J. Brundage, Attorney General, for State.

There is not much dispute about the facts of this case. This is a claim for demurrage, charges on certain cars of coal consigned via the Peoria & Pekin Union Railroad to the Peoria State Hospital at South Bartonville, Illinois, and unloaded on the private unloading track of the hospital, during the months of July, August and September, 1918, and January, 1919. This coal was shipped to the hospital under contract by the B. & B. Coal Company of Peoria. On arrival at the Acme station of the railroad, the point at which the cars were set out for delivery to the private unloading track of the hospital, notice of arrival of each car was given verbally to an agent of the hospital, and on three occasions during the month of January, 1919, this agent signed constructive placement notices acknowledging arrival of cars and inability of the hospital to receive same on its private unloading track. The unloading track would not accommodate more than four cars, and at times the bins of the hospital were full and could not accommodate any more coal. For that reason the cars in question could not be placed at the time of arrival and were held for varying periods on the tracks of the claimant and for this detention beyond the free time allowed in the demurrage tariffs of the railroad, demurrage charges of $1,455.00 have accrued, for which the claimant asks the award of that sum and a further sum of $43.65 representing federal tax on the demurrage charge. The notice given verbally to the agent of the hospital was given in accordance with a custom of some years standing. It appears from the evidence submitted both on behalf of the claimant and on behalf of the State, that the only reason these cars were not set on the private unloading track of the hospital as soon as they arrived was because the track was full, or because the bins there were full, so that the cars could not be unloaded, and that the hospital authorities knew of this condition, and knew that this was the only reason the cars were not delivered to

their private unloading track, by the claimant. The State takes the position that under their contrack they were to receive the coal delivered to the institution at a certain time and in quantities as designated, and that though they did so designate repeatedly the coal company persisted in sending the coal faster and in greater quantities than they could accommodate it, thereby causing the accummulation of cars, and that under this state of facts the coal company, and not the State, should be held for these charges. They also contend that since, as the evidence shows, all cars were unloaded within 48 hours after delivery to their tracks, no blame should attach to them. They cite the circumstance that, as the evidence shows, the hospital authorities notified the coal company several times as to the time and quantity in which shipment should be made, and further that it was to be delivered to the institution at a certain price. These contentions do not in our opinion relieve the State from liability. It is not shown that the claimant was in anyway responsible for the shipment of coal in greater quantities or more rapidly than the institution could receive it. It appears that the hospital authorities attended to the unloading and the providing of facilities for unloading, so that any proper charge arising from a delay in unloading should rest upon them. We therefore find for the claimant and make an award in its favor of $1,498.65.

HERMAN MAIBAUER

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

MISTAKE OF LAW—*when money paid cannot be recovered back.* Moneys voluntarily paid under an unconstitutional statute cannot be recovered back. (*Robert Rohl, Sr. v. State, Supra* followed.)

SERVICES RENDERED—*inmate cannot recover for services.* An inmate of a State Charitable Institution cannot recover for services rendered during the period of confinement in such institution.

Edward J. Brundage, Attorney General, for State.

The claimant, Herman Maibauer, was adjudged to be insane in 1901 in Cook County, Illinois, and was committed to the asylum at Dunning, and afterwards transferred to Bartonville. Shortly after he was adjudged insane, he inherited about $1,000.00, and John H. Mackay was appointed conservator of his estate in November, 1902. During the time he was committed as a ward of the State, his said conservator paid out for him to the State the sum of $459.70 under the Act to revise the law for Charities approved June 11, 1912. Claimant was discharged from the hospital on July 28, 1919, and brings this proceeding in his own name.

He seeks to recover the amount of $459.70 on the ground that the Statute which provided for its payment has been declared unconstitutional, and sets up in his brief and argument as a further reason, that during the time he was committed to the asylum for the State, he performed services for which he should be paid. In the recent cases of Frank Popham, conservator of the estate of Laura Hope Bain; and Robert Rohl, Sr., this Court held that money paid for the care of an inmate of a State hospital or State institution, under the Act to revise the law for Charities, approved June 11, 1912, could not be recovered back, citing the cases of *People* v. *Foster*, 133 Ill., 509, and *Yates* v. *The Royal Insurance Company*, 200 Ill., 202, where the Supreme Court held that money paid out under a mistake of law cannot be recovered back.

We do not think there is any force to the argument that complainant is entitled to recover for services he claims to have rendered while an inmate of the State hospital.

There is no authority in law for payment for such employment, and any services rendered by claimant must be considered as *incidental* to claimant's commitment as an inmate of the hospital.

The claim is therefore rejected.

SOUTHERN SURETY COMPANY

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

INSURANCE TAX—*claimant entitled to recover when erroneously paid.* **There being no dispute as to the facts and law governing this case the Court enters an award in favor of claimant for the amount of the tax erroneously paid.**

Edward J. Brundage, Attorney General, for State.

This is a claim brought by the Southern Surety Company, an Iowa Corporation for overpayment of insurance tax.

The only pleadings on file are the claimants declaration and State's consent to the allowance of the same.

The declaration alleges, amongst other things, that prior to January 30th, 1919, the claimant erroneously paid to the State of Illinois in taxes $6,751.12, and that said sum was $1,240.54 in excess of the amount actually due.

The facts set out in the declaration are few and brief, and clearly show that in keeping the accounts as indicated an error might easily be made, and such was the case.

The Attorney General admits the justice of the contention and consents that they made an order allowing the same.

The claim is sworn to and no objections to its allowance being made it is the order of the Court that complainant to have and recover the sum of twelve hundred and forty and 54/100 dollars ($1,240.54) against the State of Illinois, and an appropriation for same is recommended.

E. P. FIELD, CONSERVATOR OF THE ESTATE OF ANGIE BLISS, AN INSANE PERSON

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

MISTAKE OF LAW—*Herman Maibauer* v. *State, supra followed.* This case is similar to that of *Herman Maibauer* v. *State, supra*, and the decision of the Court in that case governs this case.

Edward J. Brundage, Attorney General, for State.

E. P. Field, conservator of the estate of Angie Bliss, an insane person, seeks to recover the sum of $202.70 for money paid to the Board of Administration of the State of Illinois, on February 5, 1916, for the support of his ward at the Jacksonville Hospital, under section 23 of the Act of 1912 revising the law in relation to Charities and states as a reason therefor that said law was declared unconstitutional and claimant should be reimbursed by the State.

The Attorney General has filed his demurrer to the petition.

This Court passed upon this question in the cases of Frank Popham conservator of the estate of Laura Hope Bain; and Robert Rohl, Sr., decided at a recent term of this Court, and in the case of Herman Maibauer, decided at the present term of this Court, in which the Court held that money paid under an unconstitutional Statute could not be recovered back, as it was a payment made under a mistake of law, and cited in support of this doctrine, the decisions of the Supreme Court of this State in the cases of *People* v. *Foster*, 133 Ill., 509, and *Yates* v. *The Royal Insurance Company*, 200 Ill., 202.

The demurrer filed by the Attorney General will be sustained and as the demurrer presents the right of claimant to recover, and as testimony has been taken showing the facts in the case, it will not be necessary for the State to file answer.

The claimant is therefore rejected.

S. A. RATHBUN

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

CONTRACT—*when State is liable.* **The State is liable for merchandise furnished to its institutions at the request of its managing officers.**

Edward J. Brundage, Attorney General, for State.

The claimant, S. A. Rathbun, presents his claim for balance of account for merchandise such as bunting, muslin, buttons, thread and sundry articles of dry goods, furnished to the Illinois State Reformatory at Pontiac, amounting to $213.94.

There is no dispute as to the correctness of this claim. Payment was not made on account of there being no appropriation remaining for said purpose.

The State, through the Attorney General, has in writing admitted that there is no defense to the claim, and has consented to the allowance of the same.

The Court therefore awards claimant the sum of $213.94.

OLA M. GROPP, FOR HERSELF AND HEIRS OF SARGENT ERNEST W. GROPP

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

MILITARY SERVICE—*when State is liable for death of soldier.* Claimant's intestate, was killed while performing his duty as a member of the Eleventh Inf. National Guard of Illinois. *Held*, claimant entitled to an award under Section II, Art. 16, Military & Naval Code of Illinois.

Edward J. Brundage, Attorney General, for State.

This claim has been presented on account of the death of Ernest W. Gropp who was killed while performing his duty as a member of the Eleventh Infantry National Guards, a part of the State Military Forces; that said soldier left surviving him, his widow, Ola M. Gropp and two minor children. The honorable Attorney General does not dispute the facts set up by the claimant, but admits that the proof sustained all the allegations contained in claimant's declaration and leaving before this Court only the question of the sum or amount that should be allowed the claimant.

This Court recognizes the fact that there is great credit due one who voluntarily assumed burdens and obligations over and above his normal duties as a citizen, such acts of unselfishness and patriotic devotion should always command the highest commendation. This Court feels that it is beyond its power to fully compensate a loss such as that sustained by the claimant and in fixing an award, this Court has not such an intention in mind, but is moved to make an allowance as nearly consistent with the law and precedent as possible. We therefore award the claimant the sum of two thousand five hundred ($2,500.00) dollars.

MARY BELL KRUEGER

v.

STATE OF ILLINOIS.

Opinion filed September 20, 1920.

RESPONDEAT SUPERIOR—*does not apply to the State.* Under the doctrine of *respondeat superior* no liability arises against the State for injuries sustained by its employees while in the discharge of their duty.

WORKMAN'S COMPENSATION ACT—*when not applicable to the State.* The State is not liable under the Workman's Compensation Act for the reason that the State was not engaged in the business or enterprise enumerated in Section 3, of that Act, to which the liability of the State as an employer is limited.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by Mary Bell Krueger (since the filing of the claim has married and her name is now Mary B. Swenker) to recover compensation for injuries received by her while in the exercise of her duties as teacher at the State School for the Deaf in Jacksonville, Illinois, in April, 1919. There is no dispute about the facts in this case. The State takes the position that it is not legally liable for compensation or in damages in cases of this kind. This contention in the opinion of the Court is correct. The State is not liable for the reason that the doctrine of *respondeat superior* does not apply to the State.

Hedges v. *County of Madison,* 1 Gilm, 567.
Town of Waltham v. *Kemper,* 55 Ill. 348.
White v. *County of Bond,* 58 Ill. 297.
Symonds v. *Clay County,* 71 Ill. 355.
Hollenbeck v. *Winnebago Co.,* 95 Ill. 148-516.
Elmore v. *Drainage Commrs.,* 135 Ill. 269.

Counsel for the claimant endeavor to determine the compensation in this case on the basis of the Workmen's Compensation Act, but it is admitted that the injury here complained of does not come within the provisions of the Act and no liability arises under this Act for the further reason that in conducting State institutions the State is not engaged in any of the enterprises or businesses numerated in section 3 of the Act to which the liability of the State as an employer is limited.

Walter J. North v. *Board of Trustees of the University of Illinois,* 201 App. 449.

Although it is conclusive that there is no legal liability here, yet in exercising the functions for which it was created this Court has in a number of cases similar to this one held and decided that as a matter of equity and social justice the claimants were entitled to compensation and awards were accordingly made. Under this view the Court is of

the opinion that in the interest of social justice this claimant is entitled to an award and that from the evidence and facts here presented the sum of twelve hundred and thirty-four and thirty-five cents ($1,234.35) would be a reasonable award to the claimant in full of her claim. We therefore award the claimant the sum of twelve hundred thirty-four dollars and thirty-five cents ($1,234.35) in full payment of said injury.

CLARA D. FLYNN, ET AL

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

MILITARY SERVICE—*Section II. of Art. 16, Military and Naval Code.* **Under Section II, of Art. 16, of Military and Naval Code in order to have a claim against the State, the party must be injured, wounded or killed while in the performance of his duty in pursuance to orders from the Commander-in-Chief, but such Act does not expressly provide for a claim for contracting a disease while a member of the National Guard, from which afterwards the soldier dies.**

Edward J. Brundage, Attorney General, for State.

Mr. Thomas H. Flynn, on or about the first day of August, 1916, was drum major of the Sixth Illinois Infantry. In response to orders issued by the Commander-in-Chief of the Illinois National Guard, he reported at Springfield, Illinois, for the annual encampment of this regiment. While attending this encampment he contracted a severe cold owing to the fact that he was compelled to sleep upon the concrete floor of the hog pavilion in the State Fair Grounds where his regiment was quartered during the encampment. It was necessary for him, being drum major, of the regiment, to sleep near the regimental headquarters for the purpose of properly attending to his duties. He did so during the period of his stay in Springfield. Regimental headquarters were situated above the main entrance of the hog pavilion. Mr. Flynn slept right near the main entrance to the building where the building was open and the rain and wind could beat in. Owing to the fact that he was not provided with a cot and a suitable number of blankets, he took cold, which after his return home, rapidly developed into what the attending physician called "galloping consumption," from which disease he died on January 31st, 1917. Mr. Flynn enlisted in Company "A", Sixth Infantry, I. G. N., June 18th, 1886, as a trumpeter; was appointed chief trumpeter June 18, 1887, which rank he held until July, 1907. At that time he was appointed drum major, which appointment he still held at the time of his death. He served under General Miles in Cuba and Porto Rico during the Spanish-American War.

The deceased left surviving him Clara D. Flynn, his widow, and Blanche Elizabeth Flynn, his daughter, who are the claimants in this case.

This action is based upon Section 11 of Article 16 of the Military and Naval Code of this State, which provides that: In every case

where an officer or enlisted man of the National Guard or Naval Reserve shall be injured, wounded or killed while performing his duty as an officer or enlisted man in pursuance of orders from the Commander-in-Chief, said officer or enlisted man, or his heirs or dependents, shall have a claim against the State for financial help or assistance, and the State Court of Claims shall act on and adjust the same as the merits of each case may demand. Pending action of the Court of Claims, the Commander-in-Chief is authorized to relieve emergency needs upon recommendation of a Board of three officers, one of whom shall be an officer of the Medical department.

This Act provides that in order to have a claim against the State, the party must be injured, wounded or killed while performing his duty. Said Act does not expressly provide for a claim for contracting disease while a member of the National Guard, and the evidence is not entirely satisfactory in this case that the disease of which Flynn died was contracted in the performance of his duty.

The Court is of the opinion that there is no legal liability on the part of the State in this case, and cannot allow this claim as a matter of legal right.

The claim will therefore be rejected.

However, the Court is of the opinion that there is real merit in this claim outside of the strict rules of law, and as a matter of social justice, this Court recommends to the Legislature an appropriation to claimants of the sum of thirty-five hundred dollars ($3,500.00).

LAWRENCE RYAN

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

DEPUTY WARDEN—*State not liable for family expense.* **While the statute fixes the salary of a deputy warden at the State Penitentiary it does not provide for the payment of the supplies, necessaries and expenses of his family.**

POWER TO PURCHASE—*when State officer is unauthorized to purchase.* **A State officer cannot voluntarily make himself a purchasing agent of the State, unless expressly authorized by statute to do so.**

Edward J. Brundage, Attorney General, for State.

Lawrence Ryan, claimant, was appointed Deputy Warden of Joliet State Penitentiary June 16th, 1915, and filled the position until October 20th, 1915, when he was transferred to Southern Illinois Penitentiary at Chester. He goes into minute detail of all the incidents connected with the said transfer, which deem unimportant, and not helpful in reach a conclusion as to his right of recovery herein.

He was appointed Deputy Warden at Southern Illinois Penitentiary and assumed the duties of that office at once. After his transfer, as aforesaid, it seems that it was, and is the custom of the Commissioners of the Joliet Penitentiary to furnish the Deputy Warden his provisions, and that it never had been the custom of the Commissioners of the Southern Illinois Penitentiary to do so.

We assume (with what little knowledge we have outside of the evidence) that each of these institutions were furnished a residence for the Warden, built at, or within the prison walls by the State. When claimant went down to Chester to assume his duties as Deputy Warden of the Southern Illinois Penitentiary, he found that he needed new articles of furniture, stove, curtains, etc., for his comfort in keeping house. He accordingly purchased and paid for same. He bought his provisions for sustenance of life, some from various stores up in the city of Chester, some from the country, and some from the Commissary Department of the Penitentiary.

He later makes demand upon the Commissioners to re-imburse him for amount he thus paid out. He does not endeavor to make an itemized statement or file a bill of particulars of the various items constituting claim, but files this "Statement of Claim."

Paid by petitioner to Southern Illinois Penitentiary for groceries and other provisions from March 22, 1916 to June 30th, 1917	$454.68
Expended for groceries and other provisions purchased of stores in Chester	188.47
Paid for furniture for Warden House, etc.	79.55
Expended for bed linens, towels, etc., for Deputy House	25.00
To furniture for same purchased in Chicago	47.50
To Curtains for same	4.50
To electric stove, etc.	18.75
To repairs for same	3.75
Paid out for household help	120.00
Expense trip to Chicago, to interview President Civil Service Commission relative to transfer of petitioner, etc.	25.00
Trip to Springfield to see the Governor, relative to this matter	10.00
Total	$978.85
CREDITS:	
By furniture removed by petitioner when leaving Chester	$87.25
By cash received for stove sold	10.00
Reward received of Government for return of deserter	50.00
	$147.25
Balance due petitioner	831.70
	$978.85

Many letters of correspondence are introduced which are not competent evidence in the case. The statute clearly fixes the salary and compensation to be paid to the Deputy Warden; but nowhere do we find any provision in the statute at the time covered for which claimant claims compensation, authorizing the Commissioners to furnish provisions to the Deputy Warden and his family. It had never been done for any of his predecessors and the Commissioners, we think properly refused the claimant.

Claimant does not attempt to show by his books, if he kept any, or by receipts, if he took them, all these amounts he paid out, to whom paid, when paid, and what items constituted those various charges, except he does itemize as to the furnishings of the Warden House. The claimant regrets that he can furnish no precedent upon which to base his claim. We are also lost in our search for a precedent on all fours with this case. It is clear then that we must establish a precedent in by our opinion in this case.

An officer of the State cannot voluntarily and arbitrarily make himself a Purchasing Agent of the State, nor purchase of the State unless expresaly authorized by statute to do so. To permit a person holding a minor office, as Deputy Warden, arbitrarily to buy and furnish articles of furniture or other house or office furnishings for any State institution, pay the price for same, and then demand that the State re-pay him the price he paid, would be to establish a very bad

precedent. There is no law authorizing this, no difference how much he was in need of the same. Such matters were within the powers of the Commissioners. They only could delegate him such power to purchase. The Commissioners of the Penitentiary had no express statutory power to furnish the Deputy Warden and his family provisions for the table. If they had an implied power or authority to do so, it would seem to be discretionary with them in the premises. They declined to furnish such supplies and in doing so, we do not think they abused such discretionary powers.

The Attorney General states that the evidence is meager and unsatisfactory, and in that, we concur with him.

October 8th, 1917, "The Department of Public Welfare" of Illinois, by Special Order No. 899, the Deputy Warden of Southern Illinois Penitentiary and his family were to be allowed the use of the residence of Deputy Warden, and allowed to draw supplies from the Penitentiary store room not exceeding $35.00 for each calendar month. There was no provision or regulation up to that date, making any allowance for supplies for Deputy Warden of The Southern Illinois Penitentiary. In view of the foregoing, the demurrer will be sustained, and the case dismissed.

JAMES E. JOHNSON

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

RESPONDEAT SUPERIOR—*doctrine not applicable to the State.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

EQUITY AND GOOD CONSCIENCE—*when award may be made.* Where claimant is injured while in the discharge of his duty, although no legal liability exist against the State, the Court in equity and good conscience, may recommend an allowance.

Edward J. Brundage, Attorney General, for State.

James E. Johnson, claimant, brings this suit against the State of Illinois, asking for compensation, as provided by the Workmen's Compensation Laws, and the provisions of the laws of Illinois of 1917, creating the Court of Claims, and providing for the payment of certain characters of claims, therein mentioned.

The evidence offered by the claimant is not denied and supports generally the facts, which are as follows:

Claimant was on or about the 28th day of December, 1917, in the employ of the State of Illinois, as watchman at the State House at Springfield, Illinois, that a part, at least, of his duties as such watchman consisted in receiving and discharging of goods, wares, material and property of the State, and that under orders and directions of his superiors, he was required to be during business hours, on the first or basement floor of the State House, and that while there, so located, and while in the performance of his duties, as such watchman, a large box filled with heavy material, belonging to the State, was brought into the basement, and being inspected and looked over by him, the box was accidentally turned or rolled over by another employee on the right foot of claimant, thereby from its great weight and force, badly crushing and greatly injuring his foot, and that by reason thereof, he has been disabled from pursuing his usual vocation in life. Such injuries necessitated the use of crutches for a period of about nine months, since which time, he has walked with a cane. He says that this will incapacitate him from the performance of manual labor for the remainder of his life. He was, at the time of receiving the injury, receiving $75.00 per month. After the incurrence of the injury, he was forced, by circumstances, to surrender his position with the State, and "since then has not been able to do any manual labor of any consequence."

Dr. Fletcher was called to treat claimant, and attended him about a month, then he went to the army, and soon after died. An affidavit, which he made with a view of aiding the claimant to collect an insurance policy, was by consent of Attorney General admitted in evidence. While the claimant has continuously used a cane since discarding his crutches, we do not think the evidence is sufficiently strong or certain to bear out the fact that there is a total disability of the foot or ankle, so that he is totally incapacitated to perform manual labor; or that he is totally and permanently reprived of the use of the foot. There is proof however, that he is permanently disabled in the foot and ankle, as a result of the accident. Claimant's statement of facts are borne out by other witnesses. The claimant is a pensioner of the United States, and draws a pension from U. S. Government of $50.00 per month.

This Court, has so recently, in so many cases, similar to this discussed the liability of the State, we do not deem it important here to discuss the law in the law in this case. We are of the opinion that the injury received by the claimant, was without fault on his part, and received while in line of duty, and is one in which the Court in equity and good conscience, should adjust.

We accordingly therefore recommend an allowance to claimant in the sum of $2,000.00.

FRANK KLEBOSKY

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

MILITARY SERVICE—*when State is liable for injury sustained by soldier.* Claimant was injured while in the discharge of his duty, in pursuance to order of Commander-in-Chief, as a member of the Illinois National Guard. *Held*, claimant entitled to an award under Section II, Art. 16, Military & Naval Code of Illinois.

BASIS OF AWARD—*Workman's Compensation Act provisions applied.* Claimant is entitled to recover the difference between the amount earned prior to the injury and the amount he is able to earn subsequent to the injury sustained, under the rule applicable to lump sum settlements under the Workman's Compensation Act.

Edward J. Brundage, Attorney General, for State.

The claim in this case is for alleged disability resulting from injuries received while a member of the Illinois National Guard engaged in the performance of his duty in pursuance of orders. There is no dispute about the facts in this case. The claimant who was then a member of Co. D, 2nd Inf., Illinois National Guard entrained with his regiment on June 18th, 1916, for the point of mobilization at Springfield, Illinois. While leaving the train at Springfield and while in ranks and in uniform and in discharge of his duty as a soldier carrying a rifle and pack, in stepping from the train to the ground, claimant turned his foot a little and slipped and suffered a severe strain, resulting in a rupture. There was no platform at the point at which the troops detrained and the distance which the claimant stepped from the car to the ground was about two and one-half feet. Evidence shows that he was a large man, the largest in his company. A few days after arrival at Springfield he was mustered into the Federal Service but later on July 29, 1916, he was discharged because of this injury. After his discharge he was operated on by medical officers, the evidence showing he had a double hernia and that his operation was unsuccessful as to one side on which the more serious rupture had occurred. Claimant has previously presented a claim against the State to this Court for expenses incurred in the operation and loss of time which was allowed in the sum of $460.00. It appears that the claimant by reason of his injury has suffered a partial permanent disability. There appears to be grave doubt that a further operation to relieve him of his injury would be successful. He is a barber by trade and the evidence shows that he was able to earn $40.00 to $50.00 per week, and that since the injury he has only been able to earn the sum of $15.00

per week. The Court is of the opinion that claimant is clearly entitled to an award for the injury sustained and this view is concurred in by the Attorney General in behalf of the State. The evidence further goes to show that the claimant had a long record of honorable service in the State Militia and that although he was a man of 37 at the time of his last enlistment just prior to the injury, he still desired to serve the State and that he sought an operation after his discharge because he desired to fit himself to re-enter the service.

The question then arises as to the amount of compensation in a case of this kind and in the opinion of the Court it can well be based upon the rules applicable to lump sum settlements under the Workmen's Compensation Act. The difference between the amount which the claimant can now earn and that which he earned prior to his injury is more than double the maximum weekly allowance of $12.00 provided under the Compensation Act. The claimant has already been paid $250.00 for loss of time. The amount to which he would now be entitled as a lump sum almost exactly equals the sum of $3,000.00. We accordingly award the claimant the sum of three thousand dollars ($3,000.00) in full compensation for the injury sustained.

M. UHLMAN & COMPANY

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

CORPORATIONS—*when license fee cannot be refunded.* Where application for license to open books for subscription to the capital stock of a corporation accompanied by the license fee and the license is issued, no refund of the fee, or any part thereof, can be made. The fact that the books were not opened, or that the incorporation was not completed makes no difference.

SAME—*subsequent legislation changing the fee does not authorize a refund.* That a statute is passed subsequent to the issuance of the license reducing the incorporation fee does not entitle claimant to a refund of the difference between the fee paid before the enactment of the statute and that fixed by the later law.

GENERAL INCORPORATION ACT OF 1919—*claim not within its provisions.* Claimant does not come within the provisions of Section 158 of the General Incorporation Act of 1919, and that Act did not repeal or revoke the license issued to claimant under the prior law.

Edward J. Brundage, Attorney General, for State.

The claimant is an Illinois corporation, with an authorized capital stock of three hundred thousand dollars ($300,000.00). On June 23, 1919, commissioners proposing to form said corporation made application for license, and paid an incorporation fee of three hundred forty-five dollars ($345.00), under the provisions of an act concerning corporations, in force July 1, 1872, and an act regarding fees for the incorporation and increase of capital stock of companies incorporated in this State, in force July 1, 1895, and amendments thereto.

The organization of the corporation was not completed until after July 1, 1919, at which time the General Corporation Act of 1919 went into effect. The claimant had afterwards completed its organization, and a certificate of incorporation was issued on July 31, 1919. Under the act of July 1, 1919, the fee for incorporation of a company with a capital stock of three hundred thousand dollars ($300,000.00) became one hundred fifty dollars ($150.00).

The claimant now seeks to recover the difference between this amount and the amount paid by the commissioners who commenced its incorporation, to-wit: three hundred forty-five dollars ($345.00), the difference claimed being one hundred ninety-five dollars ($195.00).

The State filed a general demurrer. The Court is of the opinion that the demurrer should be sustained. It has been decided by this court in several cases, notably, *McKinley, Hood, and Ebersole* v. *State*, 2 C. of C., 125, that where an application for a license to open books for

subscription to the capital stock of a corporation is made, accompanied by the license fee, and the license issued, no refund of the fee or any part thereof can be made, no matter whether the books were opened or not, or whether the incorporation was completed or not." If, therefore, no further steps had been taken to complete the incorporation under the license issued, the claimant could not have obtained a refund, but the 51st General Assembly made an appropriation, which provides as follows: "For refund of corporation fees where the organization of a corporation or corporations is not completed under license issued, or where the license to sell securities under any act regulating the sale of such securities has not issued and the fee paid for the issuance of such license has heretofore or hereafter been turned into the State Treasury * * * the sum of $6,500 for the first year and the sum of $5,000 for the second year." It then arises whether the claimant falls within the classification to whom refund might be made under this appropriation. The General Incorporation Act of July 1, 1919, provided in Section 158 thereof, as follows: "Whenever commissioners licensed to open books of subscription to the capital stock of a proposed corporation to be organized under any law of this State, shall desire to complete the organization of such company, they may proceed to do so in the same manner as provided by this act, provided they complete the organization of such proposed corporation within the time specified by the act under which such license was issued." The incorporators of M. Uhlmann & Company must have acted under this section in completing their incorporation. The court is of the opinion that this act did not revoke or repeal the license issued to the incorporators under the prior act, and that the incorporation was completed under this license. In this view no refund can be awarded to the claimant, the demurrer is sustained, and the case is dismissed.

COUNTY OF LASALLE
v.
STATE OF ILLINOIS.

Opinion filed January 19, 1921.

RESPONDEAT SUPERIOR—*damages for over-flow of State Canal.* This claim is for damages to crop caused by the breaking of the south bank of the Illinois & Michigan Canal, whereby water over-flowed the lands of claimant and destroyed its crops grown and growing thereon, caused by the negligence of and carelessness of the Canal Commissioners. *Held*, that the doctrine of *respondeat superior* does not apply to the State and that the State is not liable for the negligence of its officers. (*Phillips v. State*, I-C. C. 332, followed.)

Edward J. Brundage, Attorney General, for State.

This suit is brought by the county of LaSalle against the State to recover damages caused by the breaking of the South bank of the Illinois and Michigan Canal, thereby causing the water therefrom to flood the claimant's land, and destroy its crops, then growing thereon.

The claimant county maintained within its limits a county home for the care of certain classes of unfortunate citizens in said county. Said institution belonged to the county, and consisted of about 300 acres of land in Sections 16 and 17, T. 33, N. R. 3, E. 3d, P. M. in said county with a number of buildings thereon. Said lands were productive and used for farming purposes, producing corn, potatoes, oats and other crops, and was operated by the County Warden and Home Committee appointed by the Supervisors of said county. The proceeds are used for the maintenance of said institution.

The farm is located immediately south of the Illinois & Michigan Canal about three miles west of the City of Ottawa. Through the negligence and carelessness of the Canal Commissioners the banks of said canal were allowed to become and remain in a defective condition. About July 7th, 1919, the south bank of said canal gave way and broke a short distance east of said lands, and flooded portions thereof several feet deep, and remained thereon for some two weeks and upwards. About 17.17 acres of corn then growing thereon, was damaged to the extent of 70%, and that comparing the prospective yield with the yield of 1918, the damage is placed at $1,938.00.

The price fixed on corn is 600 bushels at $1.16 per bushel...	$ 698.00
Loss of 8.28 acres potatoes at $150.00 per acre.....	1,242.00
Making a total of claimed as damages.....	$1,938.00

The above facts are proven by a number of farmers, as witnesses and no proof is offered to the State in rebuttal. While the method of proving the damages is not entirely satisfactory to the Court, no objection is made by the State, and it is probable that the damages as laid and proven, are approximately correct. It probably would have cost several hundred dollars to harvest and market the crop, but this may have been taken into consideration in the estimates by witnesses. This point is not clear in our minds. The Attorney General's demurrer generally and specifically to the claim, claiming that the doctrine of *respondeat superior* is not applicable; but cites no authorities. We fail to concur in the views of the defendant.

Many claims of this character have been tried by our predecessors and damages allowed. The doctrine that the State is not liable for the negligence of its officers, does not apply to the officers in charge of the Illinois and Michigan Canal.

In support of this, we cite:

Eugene B. Phillips v. *State*, 1 C. C. 332; we also in this connection, cite:

Mathias Hosier v. *State*. 1 C. C. 57.

Heirs of Crane, deceased v. *State*. 1 C. C. 88.

Warner Coms v. *State*, 1 C. C. 89, which the evidence further shows that the canal was scarcely ever inspected and that the banks had been in bad condition for a long time.

In view of the fact there is no evidence negative of the evidence offered by claimant, we are of the opinion that claimant has fairly made out its case, and is entitled to an award of amount claimed.

We accordingly award it the sum of $1,938.00.

ELGIN, JOLIET & EASTERN RAILWAY, A CORPORATION

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

DEMURRAGE—*when State liable therefor.* This case is similar to that of *Peoria & Pekin Union R. R. Co.* v. *State, Supra*, and the decision of the Court there announced governs this case as to the liability of State for the demurrage claimed.

Edward J. Brundage, Attorney General, for State.

This is a claim for demurrage on cars of building material delivered by the claimant to the Illinois State penitentiary, a State institution located at Joliet, Illinois, during a period of time extending from February 20th, 1916, to February 28, 1917. The liability of the State for demurrage has already been settled in cases recently decided before this Court. A stipulation has been entered into between the claimant and the State fixing the amount due from the State to the claimant for this demurrage at the sum of five hundred eighty-nine dollars ($589.00), and the State consents that judgment may be entered in that amount. We accordingly award the claimant the sum of five hundred eighty-nine dollars ($589.00) in payment of this claim.

ROBERT M. PADEN

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

GOVERNMENTAL FUNCTION—*the State not liable when exercising governmental function.* The State is not liable for injuries sustained by its employees while in the discharge of their duty. (*Morrissey* v. *State*, 2 C. C. 254, followed.)

SAME—*an employee of State assumed risk.* A guard or keeper at a State Penitentiary assumes all risk and hazards of his employment.

WORKMAN'S COMPENSATION ACT—*claim not within provisions of Act.* The claim does not come within the provision of Section Three (3) of Workman's Compensation Act.

Edward J. Brundage, Attorney General, for State.

There is no dispute about the facts in this case, the Attorney General admitting that the statement of facts made by claimant's attorneys in their Brief and Argument, is substantially true.

The claimant, while employed as guard and keeper at the Illinois State penitentiary, at Joliet, on March 13th, 1919, was attacked by Lewis Young, a convict in the penitentiary and was cut about the head and neck, and across the back, and on the arm, with a razor, receiving something like eighteen or twenty gashes. The attack was without the fault of claimant, and as a result of the injuries received, he was taken to the hospital and received medical treatment, the expense of same of which was paid by the State, but claimant paid out about $200.00 for medical services. Claimant is forty-seven years old and unmarried, and had been a strong and healthy man. He lost considerable time from his employment on account of these injuries, and claims that he is now permanently disfigured, and should receive compensation therefor.

We cannot agree with the contention of claimant's counsel that this claim comes under the provisions of the Workmens' Compensation Act, and that the State is liable under section three of said Act, on account of maintaining a structure. This Court has repeatedly held that the State, in conducting the State penitentiary at Joliet, is exercising a governmental function, and is not liable for injuries received by employees therein.

"*Morrissey* v. *State*, Vol. 2 Court of Claims, 267.
"*Taylor* v. *State*, Vol. 2, Court of Claims, 243.

In the case of *North Administrator* v. *The Board of Trustees of the University of Illinois*, 201 Ill., App. 449, the Court held that the Workmens' Compensation Act did not apply to the University of Illi-

nois, because the University was not engaged in any of the kinds of enterprises named in section three of said Act.

If the State was not engaged in maintaining a structure at the University of Illinois, it cannot be said that it was so engaged in conducting the State penitentiary at Joliet.

We are of the opinion that there is no liability on the part of the State for damage for claimant's injuries, or for loss of time, or money paid out for medical services, as in accepting employment as a guard at the State penitentiary, he assumed all the risks and hazards of such employment.

The claim is therefore rejected.

As a matter of social justice and equity, and in view of the injuries sustained, even though the State is not liable for damages, after considering all the facts in the case, this Court would recommend that if the Legislature sees fit, it appropriate the sum of one thousand dollars ($1,000.00) for claimant.

ELLA WOODRUFF, ADMINISTRATRIX OF THE ESTATE OF JOSEPH E. WOODRUFF, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

MILITARY SERVICE—*contracting disease causing death.* Claimant's intestate, a member of the Illinois National Guard died while on duty, and orders of Commander-in-Chief, from menengitis directly induced by severe exposure in the discharge of his duty. *Held*, that claim does not fall within the provisions of Section 154, Chapter 129, Hurd's Rev. St. (Sec. 11, Art. 16, Military & Naval Code.)

SAME—*construction of Section 154.* The words of the statute "that if an enlisted man shall be injured, wounded or killed "does not include the death of the soldier resulting from illness which does not arise or grow out of an injury or wound sustained by him while on duty.

Edward J. Brundage, Attorney General, for State.

This is a claim by the administratrix of the estate of Joseph E. Woodruff, deceased, for an award on account of his death at Springfield, Illinois on October 7th, 1917, while he was a member of Co. B, 9th Inf. I. N. G., on duty and under orders.

It appears that his death occurred from menengitis and we are justified in a finding that his illness was directly induced by severe exposure while on duty. The claimant sets up in her brief Chapter 129, Sec. 154 Hurd's Revised Statutes, 1917, as the law which supports her demand. We are however of the opinion that the facts in this case do not disclose a right to claim under this statute. The words of the statute are "that if an enlisted man shall be injured, wounded or killed." The death of the soldier in this case resulted from an illness which did not grow out of injury or a wound. However, the evidence discloses that the mother of the soldier who is also the administratrix, claimant here, was in good part dependent upon him.

It is the oponion of the Court that while the facts do not disclose a right in the claimant to a demand upon the State under the Statute cited, yet the Court in view of the principals of equity and social justice for the furtherance of which this tribunal was established is justified in making an award in this case. It is the opinion of the Court, however that this award should go solely to the mother of the deceased, and we therefore award the claimant Ella Woodruff, administratrix, the sum of seventeen hundred fifty dollars for the exclusive use and benefit of Ella Woodruff, mother of the deceased.

E. VINCENT GALE, ET AL, EXECUTORS, ETC.

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

INHERITANCE TAX—*when refund will be made.* In this claim there being no dispute as to the facts and law governing the case the Court enters an award in favor of claimant for the amount of inheritance tax over-paid.

Edward J. Brundage, Attorney General. for State.

Walter H. Gale died March 22, 1916, leaving a last will and testament, which was duly admitted to probate in Cook County, Illinois, May 11th, 1916, and letters testamentary were issued to Vincent Gale and G. Whittier Gale, as shown by certified copy of will filed in the cause.

A tax of $4,932.17 was assessed upon the succession of Cora B. Gale, widow of deceased, and a tax of $21.25 upon the succession of E. Vincent Gale, a brother of deceased. An order was entered by the County Judge, September, 1916, fixing the tax as appraised, and fixed as mentioned, from which order, claimants appealed to the County Court in due time. All proper parties were duly notified of the appeal, and were before the County Court at hearing on appeal.

On 8th day of July, 1919, the County Court on hearing in the case found that a tax in the sum of $877.81, in excess of what was due the State had been paid, and made an order for re-fund of said sum, as provided by statute. The evidence justifies their contention; and the Attorney General consents to allowance of the claim as just.

In view of that fact, the entire facts are not set out in this opinion.

The Court therefore awards claimants the sum of eight hundred seventy-seven and 81/100 dollars refund of taxes as prayed.

WILSON & COMPANY
v.
STATE OF ILLINOIS.

Opinion filed January 19, 1921.

CONTRACT—*when the State is liable.* The State is liable for food supplies furnished to a State Institution.

SAME—*State liable for the usual and customary prices for supplies furnished.* Where the contract is a general one for the furnishing of supplies for a State Institution the prices charged therefor must be the usual and customary prices for supplies of that character.

Edward J. Brundage, Attorney General, for State.

This is a claim of Wilson and Company against the State for meat products furnished to the Chicago State Hospital at Dunning, Illinois, in June and July, 1919, amounting in all to $1,028.16.

It appears that claimant had a general contract with said hospital for the furnishing of meat products, and that the items included in this claim, which are fully set out in the declaration filed in this cause, were ordered from time to time, in the usual course of business, and that the prices charged for same were the usual and customary prices for articles of that character at the time the same were furnished.

It further appears that the bills for said articles were approved by the chief clerk of said hospital, but that the same were not paid for the reason that the appropriation previously made for supplies for said hospital, had lapsed, and no funds available for said payment.

The Attorney General, on behalf of the State, has filed his statement in this cause, admitting that there is no defense to the claim, and consenting that the same be allowed for the full amount thereof.

The Court therefore awards claimant the sum of $1,028.16.

FOREMAN BROTHERS BANKING COMPANY, ADMINISTRATOR DRISCOLL ESTATE

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

RESPONDEAT SUPERIOR—*doctrine not applicable to State.* The doctrine of *respondeat superior* does not apply to the State, unless the State through its Legislature expressly waives its application.

GOVERNMENTAL FUNCTION—*Chicago State Hospital.* The State in conducting the Chicago State Hospital at Chicago, exercises a governmental function, and is not liable for the death or injuries of its employees while in the discharge of their duty.

Edward J. Brundage, Attorney General, for State.

Timothy Driscoll, an employee of the Chicago State Hospital, a State institution located in Chicago, Cook County, Illinois, met with an accident from which it is alleged his illness and death resulted. Claimant filed a claim with the Industrial Board of Illinois, which was dismissed for lack of jurisdiction. Claimant now seeks compensation before this Court, for the alleged wrongful death and for medical surgical and hospital expenses incidental to decedent's last illness. The facts as to the manner and nature of the injury are not in dispute. The decedent was a boiler washer and had worked at the hospital for 19 or 20 years. On Nov. 6th, 1919, under orders from the chief engineer he went to an old plant located at the institution which had formerly been used as an engine plant, but had then been out of use for a year and a half, for the purpose of breaking out some grates from an old boiler located there. The room where this boiler was located was dark, damp and full of foul odors from excretions left there by patients and others in wrongfully using it as a toilet. While engaged in his work, the deceased stood on planks over a pit in front of the boiler, this pit being nearly full of foul, cold stagnant water. In striking a blow at the grates with a heavy sledge, he lost his balance, and slipped, one of his feet going into the water up over his ankle. Shortly after this the decedent and his helper went to lunch, and the former complained that he did not feel well, and did not eat as usual. He went back to the old plant after lunch but stayed only about 40 minutes, and then went home, where his wife found him later, and found him lying down, and complaining of not feeling well. He did not go back to work again after that, but developed pneumonia and died about three weeks later. The evidence contains the testimony of only one physician, the doctor who attended the deceased during his last illness, and his testimony,

in the opinion of the Court strongly supports the conclusion that the illness from which the decedent came to his death was brought on by the shock and exposure under the conditions in which Driscoll was working at the time of the accident. From an examination of the authorities in both this and other states we concluded from the evidence produced in this case that the decedent came to his death as a result of the accident complained of.

We now come to the question of the liability of the State in a case of this kind. The doctrine of *respondeat superior* does not apply to the State, as has been frequently decided by this Court, and this doctrine will apply unless the State through the Legislature has expressly waived its application in cases of this kind. It is also our opinion that the State in conducting the Chicago State Hospital at Chicago, Illinois, exercises a governmental function and is not liable for injuries to those in its employ, again unless the Legislature has by some act directly burdened the State with this responsibility. We are not prepared to conclude that the State has not been made liable to the payment of compensation in a case of this kind under the provisions of the Workmens' Compensation Act, section 3, sub-paragraphs 1 and 8, as amended by the Act of June 28, 1919. However, it does not appear to us to be necessary to reach a conclusion on this point in this case, as from the facts of the case we find that as a matter of equity and social justice the claimant is entitled to an award. The service of the State should not be less attractive than that of private individuals and corporations of the same nature has been made by legislative enactment, and in performing its functions we believe that this Court is following the course and applying the principals, which it is the providence of this Court to take and apply, when we conclude that the claimant here is entitled to a compensation. We therefore award the claimant the sum of two thousand ($2,000.00) dollars.

E. WUNDERLICK GRANITE CO.

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

NON-LIABILITY OF STATE—*when State not liable.* This claim is brought for damages to claimant's truck caused by a collision at a street intersection and crossing in the city of Joliet, due to the negligence of an employee of the State. *Held*, that the State is not liable for torts, negligence and wrongdoing of its agents, servants or employees. (*Henke* v. *State*, C. C., Vol. 2, Page 11, followed.)

Edward J. Brundage, Attorney General, for State.

This action brought for the recovery of damage done to the truck of claimant in a collision, between the trucks of the respective parties, at a public crossing on the streets in the city of Joliet.

The evidence discloses that at the time of the collision, the claimant's car was being driven at the rate of eight to ten miles per hour. As it approached the street crossing, and that in accordance with the rules and traffic regulations of the city, it had the right of way over the defendant's car, at that particular time and place.

The defendant's truck was being, at the time, driven by an employee of the State, at a rate of speed of about twenty-five or thirty miles per hour, which exceeded the speed limit, fixed by the Statute and the city ordinances.

The evidence, which is uncontradicted, shows conclusively that at the time of the collision, the claimant was using ordinary and due care and proper precaution for his safety, and for the safety of others, at the time of the collision, at the intersection and crossing of two streets, and that the servant and agent, who was running at the speed above indicated, did not attempt to stop, or even to slacken his unlawfll speed, but crashed headlong into plaintiff's car or truck with great violence, damaging it to the amount of $456.05, the amount claimed in the declaration.

No evidence is furnished in behalf of the State in refutation of any of the claimant's evidence. The State demurr specially and generally to the declaration and each count therein, and cites many authorities in support of his contention, that the State of Illinois is not liable for the torts, acts of negligence or wrongdoing of any of its agents or employees, in all of which we concur, citing: *Henry Hench* v. *State*, C. C. 2, p. 11; *Arthur G. Haines* v. *State Board of Agriculture*, 184, Ill. App. 191; and many others which we may cite to sustain his contention, but we cite no others as we have so recently cited these authorities in opinions written in similar cases, and without further comment, we deem this such a case as the State ought not to pay. Therefore claim is rejected.

MINNIE McGHEE

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

GOVERNMENTAL FUNCTION—*no liability for Ultra Vires act of militiamen.* The State in the use of the State Militia to maintain order, to quell a disturbance or race riot, exercises a governmental function and is not liable for the *Ultra Vires* act of a militiaman.

SOCIAL JUSTICE AND EQUITY—*when claim may be allowed.* While there may be no legal liability existing against the State yet where the circumstances of the case warrant it, the Court may as an act of social justice and equity enter an award in favor of the claimant.

Edward J. Brundage, Attorney General, for State.

This claim is brought by Minnie McGhee a colored girl. It appears from the evidence that in 1916 she came from Mississippi to East St. Louis, Illinois. She lived in East St. Louis continuously to the time of the riot beginning July 1st, 1917. It appears on July 3rd, 1917 and for sometime prior thereto the said Minnie McGhee, claimant, had been working as a domestic at the boarding house of Mary Gray and William Gray on the Island in East St. Louis. It appears from the evidence that there were 21 Companies of Militia sent to the City of East St. Louis during these times. It appears from the evidence that on the morning of July 3rd, that Minnie McGhee had gone into the backyard of the premises where she was employed, to empty garbage in the course of her employment and as she turned to go back from the house, one of a party of three militiamen raised his rifle and without provocation so far as the evidence discloses, shot off her right arm. It appears from the evidence that no other colored persons were near or between her and the soldiers or in such a position that the militiamen shooting at them, might have accidently shot the girl. It appears that the claimant is positive that this militiaman shot at her. It further appears from the evidence that neither Minnie McGhee or any other witness knew or could ascertain the name of the militiaman who fired the shot. He was not arrested at the time of the riot. The name of this man was not disclosed by anyone or by any investigation had relative to the riots or of this particular incident. It further appears that the facts as herein stated have been substantially agreed upon between the State and the claimant. It is the opinion of this Court in this case the State of Illinois and the City of East St. Louis in their efforts through the State Militia and the police force to maintain order to quell a disturbance or a riot, were exercising the police power of the State and city and it is the opinion of this Court that the State is not liable for ultra

vires act of a State Militiaman under the circumstances surrounding this case. It is the opinion of this Court that under our laws this claim has no place against the State of Illinois. It is a deplorable case, one which naturally attracts the sympathy of all. This Court recognizes in full the necessity of a State or city to exercise police power in maintaining law and order within its jurisdiction and apparently the only means at hand to procure peace in East St. Louis territory during the riot was through the Militia. Yet it must be conceded that the law abiding citizens in this territory during those trying times had their rights. While of course it is reasonable to assume if the riots did not take place the Militia would not have been called there and consequently the injury to the claimant would not have occurred. It is also a matter of fact that in extraordinary conditions, injuries will be done persons and property damaged and it is not the intention of this Court in this decision to making any precedent obligating the State of Illinois under such conditions as existed in the case at issue. However, in view of the fact this is a particularly unfortunate case, the claimant being thus deprived of a member of her body which enabled her to earn her living, it is the opinion of the Court that as a matter of equity and social justice, that the claimant be allowed some compensation to assist her in her life efforts. However, in making an allowance it is not the intention of the Court, nor has the Court the power of any precedent to fully compensate the claimant for the loss sustained, however, in conformity with the recent rulings of this Court wherein particular cases warranted the Court to consider equity and socity justice, it is ordered that the claimant be awarded the sum of two thousand five hundred dollars.

CLARENCE A. BURLEY, EXECUTOR, AND TRUSTEE, UNDER THE LAST WILL AND TESTAMENT OF ELIZABETH J. WHITNEY, DECEASED, LOUISA CHAPIN TELLING, ELIZABETH CHAPIN GREENE, EDWARD F. CHAPIN, JR. AND MARY W. WHITE.

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

INHERITANCE TAX—*refund.* Under the facts proven and there being no dispute as to the law governing the case the Court enters an award in favor of claimant.

Edward J. Brundage, Attorney General, for State.

The record evidence and oral proof sustain claimant's claim of amount claimed, showing claimant entitled to a refund of $31.83, which is amount hereby awarded to claimant with interest thereon from March 30th, 1911, making a total of award $44.75.

ILLINOIS CENTRAL RAILROAD COMPANY

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

CONTRACT—*when State is liable for freight charges.* Where claimant under an Order of the Public Utilities Commission for hauling crushed stone from one point to another in the State, for the State, and is authorized by such order to charge a certain rate per ton therefor, complies with the order of the Commission, it is entitled to recover from the State the contract price, or the amount per ton fixed by the Commission for hauling the stone.

STATE AID ROAD—*separation of grade. When State liable for its proportionate part of expense.* Where the Public Utilities Commission enters an order for separation of grades, and all parties interested are made parties to the proceedings, and the Commission under Par. 2, of Section 58 of Public Utilities Act, apportions the cost of the improvement between the claimant and the State, and other parties interested, and claimant completes the construction of the work necessary to the separation of the grades, and pays the amount apportioned, by the Commission, to the State, the claimant is entitled to recover from the State the amount paid by it on behalf of the State for the improvement.

Edward J. Brundage, Attorney General, for State.

This claim is for the amount of two demands, one of ninety-one dollars and five cents ($91.05) with interest thereon from April 15, 1920, and one for four thousand four hundred sixty-one dollars and fifty cents ($4,461.50) with interest thereon from June 5th, 1919. The first is for freight alleged to have been earned for transporting crushed stone for the State. The second is for the amount fixed by the Public Utilities Commission as the amount which the State ought to pay for its portion of the costs of a separation of grades at a point where State Aid Road No. 15 crosses the track of the Illinois Central Railroad Company about one mile west of Broadview in Proviso Township, Cook County, Illinois. There is no dispute as to the facts relating to either of these demands. It appears that in October, 1915, the claimant hauled some nine cars of crushed stone from Pickneyville, Illinois, to Carbondale, Illinois, for which through a subsequent order of the Public Utilities Commission claimant was authorized to charge a rate of 53 cents per ton. The State does not dispute its liability on this claim and in the opinion of the Court from the law and facts in this case the claimant is entitled to an award of that amount with interest at the rate of 5 per cent from April 15th, 1920.

As to the second demand it appears that after an order of the Utilities Commission for the separation of grades where State Aid

Road No. 15 commonly known as 12th street in Cook County, Illinois, crosses the right-of-way and tracks of the claimant, had been entered on March 22, 1917, the claimant in pursuance of that order undertook and completed the construction necessary for the separation of the grades at that point. The Commission in its order pursuant to paragraph 2, section 58 of the Public Utilities Act 1913, apportioned the costs of this improvement between the Railroad Company and the Township of Proviso, County of Cook and the State Highway department, while admitting its inability to enter an order against the State in view of the prohibition on section 26, article 4 of the Constitution of the State, yet the Commission sets forth its opinion that he State was a proper party in interest in this matter and should bear its reasonable portion of expense of improvement. It was there pointed out that this highway is one of the greatest highways running across the State west from Chicago beyond Cook County connecting with other main highways running to various cities remote from Chicago. The benefit of the improvement, it was pointed out would extend not only to the township of the County but to the people of the State as a whole and the Commission stated the amount of four thousand four hundred sixty-one dollars and fifty cents ($4,461.50) to be the just proportion which the State should pay. It is the opinion of this Court from the consideration of the law and evidence in this case that this demand is just and reasonable. It appears to us that it was the intention of the Legislature as expressed in the Public Utilities Act above cited that the State should pay its proportion of the expenses of a construction of this kind where the State was a party in interest and we believe that it was their intention that the Public Utilities Commission should determine whether and to what extent the State is a party in interest in such cases. It is our judgment therefore that the claimant is entitled to payment of this demand. We accordingly award the claimant the sum of $4,461.50 with interest at the rate of 5 per cent thereon per annum from June 5, 1919, to the date of this award, and the further sum of $91.05 with interest at the rate of 5 per cent per annum thereon from April 15th, 1920, to the date of this award.

ESLEY CANTRALL

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

MILITARY SERVICE—*when claimant entitled to an award.* There being no dispute as to the facts in this case, the Court holds that the State is liable under Section II, of Art. 16, of the Military and Naval Code of Illinois, for the injuries sustained by claimant.

Edward J. Brundage, Attorney General, for State.

The claimant was injured on September 16th, 1917, in the performance of his duty while a member of the Reserve Militia, Ninth Regiment, Company E, Illinois National Guard, by being ruptured while carrying some timbers, under orders from his superior officer.

The Attorney General, in his statement on file, admits that there is no dispute as to the facts in this case, and that such facts are properly set forth in the brief and argument of claimant.

Section eleven of article sixteen of the Military and Naval Code of the State of Illinois, in force July 1, 1917, makes the State liable for injuries received by any member of the Illinois National Guard, while in the performance of his duty, under orders from his superior officer, and provides that such claim shall be filed with the Court of Claims, and that such Court shall adjust the same as the merits of each case may demand.

Unuder the law and facts in this case, the State is liable. The claimant does not claim any particular amount for such injury, but leaves the fixing of the same to the consideration of this Court.

After carefully examining the testimony taken in this case, the Court is of the opinion that claimant should receive the sum of fifteen hundred dollars ($1,500.00) for his injuries.

The Court therefore awards claimant the sum of fifteen hundred dollars ($1,500.00).

BOOTH FISHERIES COMPANY, A CORPORATION

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

FISH AND GAME LAW—*State is not liable for value of fish confiscated under the Fish and Game Laws.* Section 18, of the Fish and Game Division is a valid legislative enactment, and the action of the State in confiscation of the fish was legal and not unconstitutional.

Edward J. Brundage, Attorney General, for State.

The claim before this Court as it appears from the evidence and facts now before the Court is on account of certain "black bass" which claim arose on the legality of the confiscation of the black bass involved. In the first place it appears that when the controversy arose as to whether or not this case came within the State or not, an agreement was entered between representatives of the petitioners and the Game and Fish division to submit to the Attorney General of this State for an opinion as to the validity of the confiscation in question. The Attorney General rendered an opinion upon such statements of facts and briefs submitted by both parties to the controversy and it appears that the Attorney General held that the confiscation so made was not unconstitutional and that the black bass in question were subject to confiscation by the Division. It is the opinion of this Court that the opinion of the Attorney General rendered as aforesaid, was in compliance with the law independent of the fact or any agreement made between the parties to abide by the opinion of the Attorney General. This Court does not believe it necessary to pass upon the proposition of whether or not the value of the property in question was properly proved within the rules of evidence. This Court considers that section 18 of the Game and Fish Code is valid and that the action of the Game and Fish Division was not unconstitutional. It is therefore the judgment of this Court that this claim be and the same is hereby rejected.

J. J. QUINN

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

GOVERNMENTAL FUNCTION—*when the State is not liable.* The State in conducting the Illinois State Reformatory at Pontiac exercises a governmental function and is not liable for injuries sustained by its employees while in the performance of their duty. (*Taylor* v. *State*, 2 C. C. 243, followed.)

SOCIAL JUSTICE AND EQUITY.—While the State is not legally liable the Court as a matter of social justice and equity recommends an appropriation to claimant for injuries sustained and disbursements made by him.

Edward J. Brundage, Attorney General, for State.

The claimant, James J. Quinn, who has been employed as guard at the Illinois State Reformatory at Pontiac from February 12, 1893, to August 28, 1918, brings this suit for damages for injuries received by him while in the performance of his duty. The testimony in this case shows that on August 28, 1918, said claimant, while in charge of the yard gang at said reformatory, was attacked and beaten, choked, knocked down and badly injured by four convicts under his charge, in an attempt by them to obtain his keys to the outer gates, and escape. The convicts did obtain the keys, and opened the railroad gate and endeavored to escape, but they were noticed by the guard in one of the towers who opened fire on them. One convict was shot by the guard from the tower, two others thereupon returned and surrendered and the fourth escaped and has not yet been recaptured. These convicts were in the third class, being the worst characters in the reformatory. This attack was made shortly after noon, while the yard gang was being given its regular three-quarters of an hour for recreation. The claimant was attacked while at his desk and had no opportunity to defend himself. He put up the best fight possible against overwhelming odds, but was unable to escape from his assailants. He called for help but no one heard him in time to give him assistance.

The testimony of the physicians attending the claimant, shows that he was semi-conscious, suffering from shock and loss of blood and that his head and face were one mass of cuts and bruises, and that there were large contusions on the shoulder, side and back, and over the region of the kidney.

Claimant was treated at the hospital by the hospital physicians, and also by the State surgeon from Peoria, and also received treatment from a specialist at Joliet, and from the Mayo Brothers at Rochester, Minnesota, and the testimony of said physicians and specialists shows

that they are of the opinion that the injuries received by claimant are permanent. The testimony further shows that the claimant was of the age of thirty-five years when he entered the employ of the State, in 1893, and that he was sixty years of age at the time of the above assault; that he received $50.00 per month at the time he began working for said institution and that at the time he was injured he was receiving $130.00 per month; that during his employment, he had saved up $1,100.00 in cash and owned a house and lot in Pontiac in which he was living with his daughter, and that he had no property excepting said house and lot and said $1,100, and no income excepting his salary; that during the time he was injured, he was unable to report for duty and lost six months of wages, and that he spent all of his $1,100 of savings in treatments, in attempting to be cured of his injuries; that while being treated, claimant returned to work several times, but was compelled to give up work.

The State, through the Attorney General, has interposed a demurrer to the declaration and evidence, setting up as a defense that the doctrine of *respondeat superior* does not apply to the State, and that the State in conducting the reformatory at Pontiac, is exercising a governmental function and is not liable for the injuries of those it employs.

The Attorney General, in his brief, states that there is no dispute about the facts in the case, but that they are substantially correct as stated in the brief and argument filed by claimant.

Under the previous decisions of this Court, the contentions of the State, through the Attorney General, must be sustained.

The State is not liable for injuries received by its employees in the performance of their duty as 'the doctrine of *respondeat superior* does not apply to the State.'

Hedges v. *County of Madison*, 1 Gilm., 567.
Elmore v. *Drainage Commissioners*, 135 Ill., 269.

'The State, in conducting the reformatory at Pontiac, is exercising a governmental function, and is not liable for the death and injury of those it employs.'

Morrisey v. *State*, Vol. 2, Court of Claims, 267.
Taylor v. *State*, Vol. 2, Court of Claims, 243, and other cases passed upon by this Court.

Under these decisions, this Court holds that the State is not liable to claimant for his injuries. Under the law, this claim is therefore rejected.

However, the Court feels that as an act of social justice and equity, under the facts in this case, an allowance should be made to claimant for his injuries, as the Court cannot legally make an award in this case. It therefore recommends to the Legislature that an appropriation to claimant be made in full of his injuries and disbursements, of the sum of four thousand dollars.

AUGUSTA SCHUTTE

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in managing and conducting the Chicago State Hospital for the Insane at Chicago exercises a governmental function and is not liable for injuries sustained by its inmates or employees. (*North* v. *State, Supra,* followed.)

COURT OF CLAIMS—*exercises equitable jurisdiction as a Court of Conscience.* Under the Act of 1917 the Court of Claims is given a broad and liberal jurisdiction as a court of conscience.

Edward J. Brundage, Attorney General, for State.

The claimant, Augusta Schutte, brings this suit for loss of the use of her right arm and right hand, caused by a vicious attack upon her by one of the male inmates of the "Chicago State Hospital," a State institution, used for the care and treatment of the insane and diseased persons, at which time, she was an employe of the State, as an attendant in said institution.

The evidence is brief, clear and not disputed, but on the contrary, is admitted by the State.

The facts in the case seem clearly set out in the declaration and in the amendment to the declaration.

About the 6th day of April, A. D. 1920, the claimant, who is shown to be a widow about 50 years of age, and lived with her mother, who was 83 years old, and contributed to her support. She was without means of support in life, and became an employee of the State at a salary of $125.00 per month, which included her living expenses of $60.00 per month.

While engaged in her duties in said institution, and without fault on her part, and while exercising ordinary care and caution for her safety, she was viciously set upon by one, Peter Noviskie, one of the inmates and crushed to the floor. In her frantic efforts to extricate herself from the attack of the madman, she became unconscious. On awakening, she discovered she was on a bed, and being cared for by certain other inmates of the institution, who were less viciously inclined than the said Peter.

Her condition was serious, and in a few days, the physician was called in, who made ex-rays of the shoulder and arm. He did not discover anything wrong with the shoulder joint; but did discover a torn or lacerated ligament of the arm. In his testimony, he says the muscles of the right hand and arm are completely atrophied, and that the effect of the injury is a complete loss of the use of the right hand and arm.

The claimant testifies to about same condition of her arm and shoulder, and in this, she is supported by the evidence of others.

The claimant claims for full compensation under the "Workmens' Compensation Act." The facts are admitted by the State, and a general demurrer filed by the Attorney General. The evidence all being before the Court, the demurrer will be disposed of in the opinion of the Court.

The State of Illinois, in conducting the Chicago State Hospital for the Insane is exercising a governmental function, and is not liable under the law for the death or injuries of its inmates or its employees. The doctrine of *respondeat superior* does not apply to the State. In support of this contention, the Attorney General cites the following cases: *Hedges v. County of Madison*, 1 Gil. 567; *Town of Waltham v. Kemper*, 55 Ill. 348; *Hollenbeck v. Winnebago County*, 95, Ill. 148 and 516, and others; and we may cite the case of *North v. The State University*, and many other similar cases holding to and announcing this doctrine.

But in view of the fact that the Act of 1917, creating the Court of Claims, and giving it very broad and liberal equitable jurisdiction as a Court of Conscience, apparently intended to give the Court the right to adjust such cases as the one at bar; and in view of the fact that the claimant is growing old, and is poor, with no means of support for herself and her aged mother, we recommend an award to claimant in gross in the sum of $2,500.00 and would recommend an appropriation for the same.

JERUSHA FOSTER

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

RESPONDEAT SUPERIOR—*doctrine not applicable to the State.* The doctrine of *Respondeat Superior* is not applicable to the State, and it is not liable for injuries sustained by its employees while in the performance of their duty.

PENSION—*no statutory authority for allowance of pension.* There is no statutory authority for the allowance to a claimant, by the Court of Claims, a pension for life.

SOCIAL JUSTICE AND EQUITY—*recommending an allowance.* Where the circumstances and facts warrant the Court will recommend to the Legislature and appropriation to claimant.

Edward J. Brundage, Attorney General, for State.

The claimant, on May 11, 1919, while employed by the State of Illinois as night attendant at the State Hospital for the Insane at Elgin, and while giving one of the patients a bath in said hospital, slipped upon the wet floor and fell heavily and sustained a fracture of the left femur, which is generally known as a broken hip. She remained in said hospital in bed until September 3, 1919, when she was taken to the Sherman hospital, a private institution in Elgin, where she was operated upon by one of the leading surgeons of the city of Elgin. After said operation, she returned to the State hospital and remained in bed for eight weeks, when she again returned to said Sherman hospital for about twenty-five days, after which she again returned to the State hospital. She was confined in her room and remained out of employment until March 22, 1920, when the State gave her minor employment marking patients' clothing, and she is so employed at the present time.

At the time she was injured, she was receiving $35.00 per month, with board, laundry, maintenance and medical attention, but she is now receiving $47.00 per month, with board, room, maintenance and medical attention. She was forty-four years old in November, 1920. She has expended for hospital and physicians' bills in said Sherman hospital, a total of $109.00. Two operations have been performed, both of which have been unsuccessful, and the opinion of the superintendent of the State hospital, as shown by the testimony in this case, and of another physician in charge of said State hospital is that the injury is permanent and that claimant will never recover the use of her limb, and that she will be compelled to go on crutches and will never be able to obtain outside employment.

Claimant is without means of livlihood, and has no relatives upon whom she can rely for support.

The Attorney General has filed a demurrer, stating that there is no dispute about the facts in this case, as above mentioned, and stated in the brief and argument filed by claimant, but claiming that the State is not liable because the doctrine of *respondeat superior* does not apply to the State, and that the State of Illinois, in conducting the Insane Asylum at Elgin is exercising a governmental function and is not liable for the injuries of inmates and those it employs.

This contention has been repeatedly sustained by this Court in previous decisions, and in opinions filed at this term, and a further citation of authorities is unnecessary.

Claimant asks for compensation and also for a pension for life, but this Court does not know of any law which would authorize it to award a pension for life, and no authority for such an award has been cited to this Court by the attorneys for claimant in their brief.

This claim is therefore rejected.

The Court, however, feels that even though the State is not liable to claimant, as an act of social justice and equity some compensation should be made to claimant for injuries, under the circumstances of this case.

The Court therefore recommends to the Legislature an appropriation to the claimant of the sum of two thousand dollars ($2,000.00).

J. J. ENGLAND FOR HIS OWN USE AND USE A. S. HERMAN

v.

STATE OF ILLINOIS.

Opinion filed January 21, 1921.

CONTRACT—*when State liable for repairs. Assignee.* There being no dispute as to the facts and law governing this case the Court enters an award in favor of claimant for the amount of his claim.

Edward J. Brundage, Attorney General, for State.

In October, 1915, Captain Holmes, then custodian of the State Armory Building at Springfield, Illinois, employed J. J. England to do certain repair work by installing new flashing, repair leaks and put on new coat of paint on the building, for an agreed sum of $425.00. It is shown in the evidence that Captain Holmes acted for the State in the employment aforesaid, that the work was done according to contract; that the building was in the immediate need of such repairs and furnishings; that claim was properly presented to the proper department of State, and demand made for payment, which was refused only for lack of funds. The claim seems to be reasonable, and repairs were approved by the State, and an award will be made to J. J. England for his own use and to use of A. S. Herman, to whom an interest seems have been assigned (to secure rents, etc.) in the sum of $425.00.

HUGH ABNEY

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

GOVERNMENTAL FUNCTION—*when State is not liable.* The State in conducting the Soldiers and Sailors Home at Quincy, Ill., exercises a governmental function and is not liable for injuries sustained by its employees while performing their duty.

SOCIAL JUSTICE AND EQUITY—*when claimant entitled to an award.* Under the facts proven the Court as an act of social justice and equity recommends to the Legislature an appropriation to claimant.

Edward J. Brundage, Attorney General, for State.

The claimant, while employed by the State at the Illinois Soldiers and Sailors Home at Quincy, Illinois, on January 12, 1919, in the performance of his duty in disinfecting the hospital ward furniture with a spray pump and liquid disinfectant supplied by the authorities of said hospital, was injured by the disinfectant from said spray lodging in his left eye. He was treated in said hospital by the hospital physicians and also taken to St. Mary's Hospital at Quincy, for treatment. On February 18, 1919, it became necessary to remove said eye, and on said date claimant submitted to an operation in said hospital and his left eye was removed in order to save the sight of his right eye, and on March 24, 1919, claimant was fitted with a glass eye, which he now wears. Claimant receives a salary of $63.00 per month; is a married man, and has one son, aged four and one-half years. Claimant expended $131.00 for hospital expenses and medical services and claims $2,000.00 for damages for the loss of said eye, making a total claim of $2,131.00.

The State, through the Attorney General, has set up the defense that the doctrine of respondeat superior does not apply to the State, and that the State in conducting the Soldiers and Sailors Home at Quincy, Illinois, is exercising a governmental function, and that therefore the State is not liable for the injuries of those it employs.

These contentions have been repeatedly upheld under former decisions of this Court, and under such rulings, this Court holds that the State is not liable to the claimant in this case.

Said claim is therefore rejected.

The Court, however, under the facts in this case, believes that as an act of social justice and equity, claimant should receive some compensation for his injury.

The Court therefore recommends to the Legislature an appropriation to claimant of the sum of two thousand one hundred and thirty-one and no/100 dollars ($2,131.00), *in full payment for disbursements and injuries* in this cause.

THOMAS I. MOTTER AND WEST SUBURBAN HOSPITAL FOR THE USE OF F. W. WINKLER

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

NON-LIABILITY OF STATE—*the State is not liable for the torts, wrongs or negligence of its employees.*

SOCIAL JUSTICE AND EQUITY—*when claimant entitled to an award.* Under the facts proven, while no legal liability exists against the State, but upon principles of equity and social justice claimant is entitled to an award for expenses incurred for hospital care and medical aid furnished.

Edward J. Brundage, Attorney General, for State.

There is no dispute about the facts in this case. They show that one F. W. Winkler, an inspector of the Division of Game and Fish, of the Department of Agriculture of the State of Illinois, while driving an automobile belonging to the State, and in the performance of his duties as such inspector, struck and injured one Sam Slutsky, a youth of approximately 14 years. The accident happened in the city of Chicago. It appears that Winkler was complying with the law in all respects as to the control of his car when he struck Slutsky, and that the latter, who jumped from a moving street car in front of him, was at fault, if fault lay anywhere. Winkler took the boy to a hospital and arranged for hospital care and medical aid and attendance for him, and it is for the amount of the charges for these services that this claim is presented. The accident happened on June 4th, 1920, and the boy was in the hospital 36 days. It appears that the charges are reasonable, the injury having consisted of a fractured leg.

The Court is of the opinion that the facts in this case do not show a ground of legal liability on the part of the State. However, the act and conduct of the State's agent in looking after the injured was commendable, and the State taking this view, interposes no objections to allowance of this claim. And the Court upon the principals of equity and social justice for the furtherance of which it was created, considers the claimants entitled to an award of the amount sought. Wherefore, we award the claimants, Thomas I. Motter and West Suburban Hospital for the use of F. W. Winkler, the sum of two hundred ninety-seven and 22/100 ($297.22) dollars, and direct that one hundred fifty ($150.00) dollars of that sum be paid to said Thomas I. Motter, and one hundred forty-seven and 22/100 ($147.22) dollars of that sum be paid to said West Suburban Hospital.

THE BROWNING COMPANY, AN OHIO CORPORATION

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

FRANCHISE TAX—*when claimant entitled to a refund.* There being no dispute as to the facts in this case, under the decision of the Supreme Court in the case of *Missouri Pacific Railroad Co.* v. *The Public Utilities Commission*, 292 Ill. 427, claimant is entitled to recover the amount of franchise tax over-paid.

FOREIGN CORPORATIONS—*when State cannot collect franchise tax.* The State cannot collect a franchise tax based upon the business and property of a foreign corporation admitted to do business in this State based on business transacted outside the State.

Edward J. Brundage, Attorney General, for State.

The claimant is an Ohio corporation, but is duly authorized to do business in the State of Illinois. Pursuant to section 102 of the General Corporation Act of this State, claimant made its annual report in writing to the Secretary of State of Illinois for the calendar year 1919, on a form furnished by the latter. Claimant negligently, but without any intent to evade the laws of the State of Illinois, failed to include in said report certain detailed information called for in paragraphs 10 to 16, inclusive, of said form, said information relating to the total value of the property of the claimant, everywhere, the total value of the property of the claimant located in Illinois, the total business of the claimant for the year 1919 transacted by it at or from places of business in Illinois, and the total business of the claimant transacted everywhere during the year 1919. The Secretary of State of Illinois received said report, but failed to call claimant's attention to the fact of claimant's failure to furnish said detailed information, or to request claimant to furnish same thereafter. The Secretary of State proceeded to assess against claimant a franchise tax of $500, based upon all the authorized capitalization ($1,000,000.00) of claimant, and also assessed against claimant an additional fee of $485 for claimant's certificate of authority to do business in the State of Illinois, based upon all the authorized capitalization of claimant. Claimant, on August 31st, 1920, paid the tax and fee thus assessed, but under protest. The total value of all tangible property of claimant everywhere is approximately $1,118,170.00, and the total value of all its tangible property located in Illinois is approximately $100. The total business of claimant everywhere in 1919 was $2,810,964.00, and its total business in Illinois for 1919 was $190,089.00. Upon these figures the claimant should have been assessed a franchise tax for the period from July 1, 1920, to June 30, 1921, of only $22.50, and

should have been required to pay an additional fee for its certificate of authority to do business in Illinois of not more than $2.50, it having previously in 1919, paid an initial fee for such certificate of $20.00. Claimant asks for a refund of $960, the excess paid by it over the amount which should have been assessed, in franchise tax and additional fee.

The State makes no defense to this claim, and consents that judgment may be entered against the State for the amount claimed. It is clear that under the principles of law announced by the Supreme Court of this State in *Missouri Pacific Railroad Company* v. *Utilities Commission*, 292 Ill. 427, the State of Illinois could not collect a tax based upon the business and property of a corporation admitted to do business in this State, which is transacted or located elsewhere than in this State. And further in the opinion of this Court it was in no sense the intention of the Legislature as expressed in the General Corporation Act that such a tax should be collected or attempt made to collect such a tax. The money paid by claimant was paid under protest and under circumstances arising from a mistake of fact, and it is the judgment of this Court that the claim should be allowed. We accordingly award the claimant the sum of nine hundred sixty dollars ($960).

MORNA KRUGER, ADMINISTRATRIX OF THE ESTATE OF CHARLES A. KRUGER, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

GOVERNMENTAL FUNCTION—*when State is not liable.* The State in conducting the Illinois State Reformatory exercises a governmental function and is not liable for the death or injuries sustained by its employees while in the performance of their duty. (*Morrisey* v. *State*, Vol. 2, C. C. 267, followed.)

SOCIAL JUSTICE AND EQUITY—*when award will be made.* Although no legal liability exist against the State as a matter of social justice and equity the Court recommends to the Legislature an appropriation to claimant.

Edward J. Brundage, Attorney General, for State.

The claimant, Morna Kruger, is the widow of Charles A. Kruger, deceased, and is administratrix of his estate under appointment by the County Court of Livingston County, Illinois. They were married August 8, 1914. The deceased did not leave any descendants surviving him.

Charles A. Kruger entered the employment of the Illinois State Reformatory as a civil service employee in 1909 and continued until the spring of 1919. He then entered the employment of the shoe factory in Pontiac where he worked until in July, 1919, when he re-entered the employ of the Illinois State Reformatory as a civil service employee.

During the afternoon of September 7, 1919, Charles A. Kruger was captain of the watch at the reformatory and as such was in complete charge of the institution. During that afternoon, two inmates, John Frederico and John Kelly, who occupied cell 32 in gallery 5 of the North cell house, were detected in sawing the cell bars. One of the bars was nearly sawed through and another one partly. The two officers who detected it, namely, Hancock and Donovan, were alone in the cell house and immediately sent a call to Mr. Krueger, who secured the keys and came to the cell house and to said cell with the intention of taking said two inmates therefrom and placing them in another cell.

As soon as the cell door was unlocked, the inmate, Kelly, produced a revolver and shot Mr. Kruger in the head, resulting in immediate death. The other inmate shot Hancock. Said two inmates then secured possession of the keys to said cell house, liberated another inmate and started a desperate and determined effort to escape from the institution. The attempt terminated in the death of one of them and the mortal wounding of the other.

These inmates, Kelly and Frederico, were supplied with two hack saws, with twelve extra blades each and with two revolvers, one an army special and the other a Colt's automatic, and with at least fifty cartridges each. Edward Wheeler, who was an employee of the State of Illinois at the said reformatory, was bribed by John Frederico to secure the saws, guns and ammunition. Said Wheeler brought said articles in at different times and placed them in control of said Frederico. Wheeler was sent money to buy said articles and was also paid $500.00, and was to receive an additional $500.00 after said inmates had escaped. This money was sent to him by a brother of Frederico from Chicago.

Wheeler's connection with the crime was traced through the serial number on the revolvers, which he had purchased at different places in Springfield, Illinois. He was indicted for murder in the Circuit Court of Livingston County, pleaded guilty, was sentenced under a charge of manslaughter and is now confined to the Joliet State prison. He caused to be delivered to the sheriff practically all of the said $500.00.

Charles A. Kruger was six feet and two inches tall, weighed one hundred and eighty pounds and was about forty-nine years of age, and appears to have been an efficient and trusted official of this institution. He came to his death in the courageous performance of his duty.

Under the law of this State and the decisions of this Court, we are of the opinion that the State is not technically liable for the death of claimant's intestate. The State is not liable for injuries received by its employees in the performance of their duty, as 'the doctrine of *respondeat superior* does not apply to the State.'

Hedges v. *County of Madison*, 1 Gilm., 567.
Elmore v. *Drainage Commissioners*, 135 Il., 269.

The State, in conducting the Reformatory at Pontiac, is exercising a governmental function, and is not liable for the death and injury of those it employs.

"*Morrisey* v. *State*, Vol. 2, Court of Claims, 267.
"*Taylor* v. *State*, Vol. 2, Court of Claims, 243, and other cases passed upon by this Court.

The claim is therefore rejected.

However, we feel that as an act of social justice and equity, a substantial allowance should be made to claimant, even though we cannot make an award in this case.

We therefore recommend to the Legislature an appropriation to the claimant of the sum of five thousand dollars ($5,000.00).

WAPPELLO SAVINGS BANK AND SUE C. HACKWORTH, EXECUTORS OF THE LAST WILL OF J. T. HACKWORTH, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

INHERITANCE TAX—*when refund will be made.* In this claim there being no dispute as to the facts and law governing the case, the Court enters an award in favor of claimant for the amount of the claim.

Edward J. Brundage, Attorney General, for State.

J. T. Hackworth died April 11, 1918, a resident of Wapello County, State of Iowa, and by his last will transferred certain property, taxable under the inheritance tax laws of Illinois.

On October 10, 1919, an order was entered, the County Judge of Cook County, Illinois assessing a total tax of $14,848.88. On the same day, said tax less 5% discount to-wit: $14,107.39, was paid to County Treasurer of Cook County, and by him to State Treasurer. This was in due time appealed from by claimant to the County Court. Upon a hearing in the County Court, in which all proper parties were represented, the County Court entered an order, assessing a total tax in said estate of $3,798.02, from which order, the State never appealed, or any person interested in the estate.

It was ordered by the County Court that claimants have a refund of $10,508.37.

It is clear from record of the proceedings, copies of which are on file herein, that claimants are entitled to the above amount as refund. The Attorney General admits the correctness and justice of the claim, and consents to its allowance. We therefore award claimants $10,508.37.

MISSOURI PACIFIC RAILROAD CO.

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

FRANCHISE TAX—*foreign corporations. When entitled to recover franchise tax paid.* Under the decision of the Supreme Court in the case of *Missouri Pacific Railroad Company* v. *The Public Utilities Commission*, 292 Ill. 427, the facts herein being stated, the claimant is entitled to recover from the State the amount of franchise tax paid with interest.

Edward J. Brundage, Attorney General, for State.

This is a claim by the Missouri Pacific Railroad Company, a foreign corporation, to recover from the State of Illinois, sixty-two hundred dollars ($6,200.00) paid as a fee or franchise tax for permission from the Public Utilities Commission to issue $6,200,000.00 of bonds of its railway company, under section 31 of the Public Utilities Act (Hurd's Statutes, 1917, page 2288).

The permission to issue said bonds was granted on condition that claimant pay to the State Treasury the sum of $6,200.00. Claimant paid said amount under protest in order to receive the authority from said Commission, and then appealed from that part of the order of the Commission requiring it to pay said fee, to the Circuit Court of Sangamon County, which sustained the Commission, and claimant then appealed to the Supreme Court of this State, which reversed the decision of the Circuit Court and the Commission, in an opinion rendered on April 21st, 1920, in which opinion it declares that said fee was unlawfully collected and declares said Section 31 void when applied to a foreign corporation.

The Attorney General has entered his appearance admitting the liability of the State, for said amount of $6,200.00, and under the decision of the Supreme Court in said case, it is clear that claimant is entitled to a refund of said sum of $6,200.00 with interest from March 19, 1919.

Claimant is therefore awarded the sum of $6,200.00 with interest thereon at five per cent per annum from March 19, 1919, to date of payment.

CARL HANCOCK AND JOHN HANCOCK

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

GOVERNMENTAL FUNCTION—*when State is not liable.* The State in conducting the Illinois State Reformatory exercises a governmental function and is not liable for injuries sustained by its employees while in the discharge of their duty. (*Morna Kruger* v. *State*, *Supra*, followed.)

Edward J. Brundage, Attorney General, for State.

The same opinion will cover both the above cases, as claimants have the same counsel, and the testimony was taken in both cases at the same time and is covered by the same record.

The facts in these cases are similar to those set out in the opinion of this Court in the case of *Morna Kruger, Administratrix*, v. *The State*, Number 56, and it is not necessary to set same out in full.

The claimant, Carl Hancock, on September 7, 1919, was stationed as an officer on duty as cell house keeper in the Illinois State Reformatory at Pontiac. At said time, two inmates of said institution, John Frederico and John Kelly, were confined in a cell, and unknown to said Carl Hancock, had in their possession certain saws, revolvers and cartridges for the purpose of attempting to make their escape from said institution. Claimant, while on guard, detected said two inmates in the attempt to saw the iron bars of their cell door, and reported to his superior officer, Charles A. Kruger. Said Kruger then came, and with the assistance of claimant, unlocked the door of said cell, for the purpose of taking said inmates out and confining them in other cells. As soon as said cell door was unlocked, said inmate John Kelly produced a revolver and shot said Kruger in the head which resulted in his immediate death. The other inmate, John Frederico shot the claimant, Carl Hancock with a revolver and severely and dangerously wounded him. Said inmates then secured possession of the keys of said cell house and liberated another inmate, and attempted to escape from the institution, but were prevented from so doing by guards and other attendants and the attempt to escape terminated in the death of one of them and the mortal wounding of the other.

After the shooting of said Kruger and said Carl Hancock by said inmates the claimant, John Hancock, armed with an automatic rifle, attempted to prevent their escape from the yard, and in an exchange of shots with said Kelly, was shot in the left foot.

The testimony shows that both said John Hancock and Carl Hancock received their injuries in the performance of their duty as guards.

and that the bones in the foot of said claimant, John Hancock, were broken and injured, and that such lameness and injuries still exist.

The testimony further shows that the bullet from the revolver fired by said John Frederico at the claimant, Carl Hancock, entered the right side of the head of said Carl Hancock and penetrated the brain and came out at the rear of the head; that claimant, Card Hancock became seriously ill and that the injury caused paralysis of his left side, and that his injury is a permanent one. The testimony further shows that the shock of said injury caused the wife of said Carl Hancock to lose her mind and that she has, since said time, been insane, and is now confined in a private sanitarium at Jacksonville, Illinois.

The Attorney General, on behalf of the State, has filed a demurrer to both of said claims, setting forth that the State is not liable for the injuries to claimants, received in the performance of their duty, as the doctrine of *respondeat superior* does not apply to the State, and also setting forth that the State, in conducting the reformatory at Pontiac is exercising a governmental function and is not liable for the death and injuries of those it employs.

These contentions have been heretofore sustained by this Court in previous decisions, and the authorities in support thereof are fully set forth in the opinion in the case of Morna Kruger, administratrix, against the State, above mentioned.

Under these authorities, the Court therefore rejects both of these claims.

The Court is of the opinion, however, that as an act of social justice and equity, an allowance should be made to both of these claimants, as the evidence shows that they were both injured in the performance of their duty.

After carefully considering the evidence in both of these cases, the Court recommends to the Legislature an appropriation to the claimant, Carl Hancock, of the sum of five thousand dollars ($5,000.00), and an appropriation to the claimant, John Hancock, of the sum of fifteen hundred dollars ($1,500.00).

EMMA COUGHENOUR, ADMINISTRATRIX OF THE ESTATE OF R. E. COUGHENOUR, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed January 19, 1921.

RESPONDEAT SUPERIOR—*not applicable to State.* **The doctrine of *Respondeat Superior* is not applicable to the State, and it is not liable for injuries sustained by its employees while in the discharge of their duty.**

SOCIAL JUSTICE AND EQUITY—*when claimant entitled to an award.* **While as a matter of law the State is not liable for the injuries sustained by claimant's intestate while he was in the performance of his duty, as a matter of social justice and equity the Court recommends to the Legislature an appropriation to claimant.**

Edward J. Brundage, Attorney General, for State.

Claimant's intestate was employed by the State as a guard at the penitentiary at Joliet, and was in the course of his employment required to work at the new prison in Lockport Township, near Joliet. He was transported each morning from the old penitentiary to the new prison, and back in the evening by means of a certain truck belonging to the State and driven by one of the convicts of the penitentiary. On one of the routes from the old penitentiary to the new prison, there was a steep hill known as Bluff hill. On February 4, 1920, this roadway was very slippery, and on said day while said truck, loaded with prisoners under charge of said guard, was being driven up said hill, the engine of said truck died. The driver applied the brakes but they were out of order and would not hold and the truck which weighed about 4,600 pounds began to run backwards down the hill. There was a man in the front of the truck with the driver, and the driver, after putting on the brake, directed this man to jump. The back part of the truck was closed in front and at the sides, and the only exit was from the rear. Of the eighteen to twenty men in the rear part of the truck, five or six jumped and then claimant's intestate jumped. He attempted to jump towards the left and off the back end of the truck, but just about the time he jumped, the truck swered to the left and ran over him, breaking one of his legs and injuring him internally. As a result of these injuries he died the day following, February 5th.

The evidence shows that the brake on this truck had been out of order for several months, and that the deputy warden of the penitentiary knew of this condition two weeks prior to the accident.

Claimant's intestate was 17 years old, earned from $90.00 to $100.00 per month and his board, lodging and laundry, and the evidence shows

that he contributed at least $50.00 per month to the support of his family.

The Attorney General has filed a demurrer on behalf of the State, in which he admits that the facts are substantially true as set forth in the brief and argument of claimant, but sets up that claimant is not entitled to recover, on the ground that the doctrine of *respondeat superior* does not apply to the State, and that the State is not liable for injuries received by those it employs, because the conducting of the Illinois State penitentiary at Joliet is a governmental function.

These contentions must be sustained.

The claim is therefore rejected.

While as a matter of law, the State is not liable to claimant, we feel that as an act of social justice and equity the Legislature should make an appropriation for the relief of claimant. In the brief and argument of claimant, counsel for claimant states that under no circumstances can this court allow damages of less than sixty four hundred and ninety-two dollars ($6,492.00). If the State were liable, this argument might be used, but as the State is not liable, any appropriation that is made will be allowed as an act of social justice instead of being computed according to the strict rules of law.

The Court therefore recommends to the Legislature that an appropriation be made to claimant of the sum of five thousand dollars ($5,000.00).

AMERICAN NATIONAL BANK OF LINCOLN, ILLINOIS

v.

STATE OF ILLINOIS.

Opinion filed February 11, 1921.

STATE WARRANT—*when Illegal State Warrant will be paid.* Where a warrant is issued by the State Auditor is cashed by a Bank, in good faith in due course, although the warrant is illegal, and no liability exist against the State on the warrant for its payment, the Court to preserve the credit of the State will recommend to the Legislature an appropriation to pay the same.

Edward J. Brundage, Attorney General, for State.

This claim is based upon a certain warrant issued by the Auditor of Public Accounts, July 2, 1915, to E. C. Perkins in the sum of $500.00, which warrant was countersigned by the State Treasurer and on the third day of July, 1915, the said warrant which was issued to E. C. Perkins was presented to the claimant and by it cashed and forwarded in due course to the State Treasurer for collection. Payment was refused by the State Treasurer.

It appears to this Court that refusal was made by the State Treasurer upon reasonings set forth in the case of *Fergus, et al* v. *Andrew Russel, et al,* 270 Ill. 304.

It is the opinion of this Court that under said decision there is no legal liability on the part of the State; however, as it appears that this warrant was cashed in good faith when presented to the claimant bank, that claimant had no reason to believe that there was anything unusual about the transaction and with the desire on the part of the Court to preserve full faith and credit so far as practical as to vouchers and the warrants of the State of Illinois, the Court recommends an appropriation by the Legislature in behalf of the claimant in the sum of $500.00, the amount of the face of the warrant in question.

ISKO COMPANY, A CORPORATION

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

FRANCHISE TAX—*when paid under duress.* Where the Secretary of State makes a demand upon the corporation for payment of its franchise tax assessed against it by him under the provisions of the General Corporation Act upon its authorized capital stock and for increase of authorized capital stock, as shown by its annual report, and the sum demanded is paid under protest by the corporation, the payment so made is a payment made under legal duress.

SAME—*what does not bar claimant's right of recovery.* That claimant made no objection to the amount of the tax assessed by the Secretary of State, and failed to have a day fixed for a hearing thereon as provided by Section 112, of General Corporation Act, does not bar claimant, if it is otherwise entitled to recover.

GENERAL CORPORATION ACT—*Sections 102, 105, 108 and 129, construed.* Section 129 of General Corporation Act does not provide for a double franchise tax, but only provides for a tax for a period of either more or less than one year on corporations organized or increasing their capital stock during the period of more or less than one year, while Sections 102, 105 and 108, provide for a franchise tax for the exact period of one year on the authorized capital stock as shown by the annual report of the corporation.

WAIVER—*when rights of State are not waived.* That the Secretary of State did not demand payment of the franchise tax, or the fee for increase of capital stock upon the filing of the certificate of increase by the corporation, did not waive the right to collect the same, nor bar the State from collecting the fee and tax.

SAME—*State officer cannot waive rights of State.* The Secretary of State cannot by any action of his waive any rights of the State.

COURT OF CLAIMS—*no power to declare statute unconstitutional.* The Court of Claims has no power or authority to declare any statute of the State unconstitutional. It is only the duty of the Court to endeavor to interpret and construe a statute so as to give full force and effect to all its provisions according to the well established rules of statutory construction, and to treat such statutory laws as valid, effective and binding unless held unconstitutional by the Supreme Court of the State.

Edward J. Brundage, Attorney General, for State.

This is a claim by a Delaware corporation authorized to transact business in Illinois, against the State of Illinois for the refund of $10,381.25 paid by claimant to the Secretary of State as an Illinois franchise tax under protest and duress as claimed by claimant.

The facts in this case are not in dispute. On or about February 19, 1920, claimant filed with the Secretary of State its annual report for the calendar year ending December 31, 1919 as required by section 102 of the General Corporation Act of Illinois, in force July 1, 1919, which

report showed that the total authorized capital stock of claimant was $7,125,000.00. On the basis of this report, a franchise tax for the year beginning July 1, 1920, at the statutory rate of 5 cents per one hundred dollars, would amount to $3,562.50.

It further appears that claimant increased its authorized capital stock under the laws of the State of Delaware from $7,125,000.00 to $26,000,000.00, which increase was effective February 4, 1920, and a certificate of such increase was filed with the Secretary of State of Illinois on February 29, 1920. At the time the certificate of increase was filed with the Secretary of State, it appears that no demand for an additional franchise tax on the increase was made upon claimant, neither was any such franchise tax paid at that time.

It further appears that the fees required by sections 96 and 97 of the Corporation Act for increase of authorized capital stock, amounting to $11,107.00 were not paid by claimant to the Secretary of State.

Prior to July 1, 1920, the Secretary of State demanded from claimant the sum of $24,107.00 total fees, made up of the following items:

5c per $100 of franchise tax on $7,125,000.00 of authorized capital stock, as shown by annual report	$ 3,562.50
Fees for increase of authorized capital stock	11,107.00
Franchise tax on increase of $18,875,000.00 in authorized capital stock at 5 cents per $100	9,437.50
Total	$24,107.00

Plus the sum of $1,300.00 penalty, making a total of $25,407.00.

Claimant paid the said amount under protest, and now claims a refund of a part of said amount, amounting to $10,381.25, being $9,437.50 excess franchise fees which it claims it paid, with ten per cent penalty on said amount. Claimant makes no claim at this time for the $11,107.00 fees paid for increase of capital stock, but only claims the franchise tax on the increase of the authorized capital stock of $18,875,000 as shown by the certificate of increase filed with the Secretary of State on February 29, 1920, together with ten per cent. penalty paid on said tax.

Claimant has filed an extensive brief on the question that the payment to the Secretary of State was involuntary and was made under protest, duress and compulsion.

Under the evidence and authorities cited, we are of the opinion that claimant made the payments in question under protest and legal duress. We are further of the opinion that the fact that claimant did not make objection to the amount of said tax as assessed by the Secretary of State and have a day for a hearing thereon set by the Secretary of State as provided by Section 112 of the General Corporation Act, does not in way bar claimant in this case if otherwise entitled to recover.

Claimant contends that section 129 of the Corporation Act is unconstitutional and that it cannot be reconciled with the other sections of said Act relating to the assessing of a franchise tax. It is not the province of this Court to declare any Statute of this State unconsti-

tutional but it is the duty of the Court to endeavor to interpret and construe a certain statute so as to give full force and effect to all of the provisions thereof according to the well established rules of statutory construction. This Court must treat the statutory laws of the State as valid, effective and binding unless held unconstitutional by the Supreme Court of the State.

This Court is of the opinion that the different sections of the Corporation Act as applied to the case at Bar can be reconciled and construed together and that there is no conflict in the different provisions of the sections relating to a franchise tax.

Section 96 of the Corporation Act provides for the payment of a fee of one twentieth of one per cent. On the authorized capital stock of the corporation and a like fee upon any subsequent increase in addition to the fees provided for by section 97.

A refund of the fee for increase of authorized capital stock, paid by claimant and amounting to $11,107.00, is not claimed in this case.

Section 102 of the Corporation Act provides for an annual report to be made between the first day of February and the first day of March of each year for the calendar year ending December the 31st preceding, which report is to be made on forms prescribed and furnished by the Secretary of State and shall contain certain matters required by Statute and such other information as may be necessary in order for the Secretary of State to assess the annual franchise tax. This report must disclose such facts as are necessary to enable the Secretary of State to ascertain the proportion of capital stock of a corporation represented by business transacted and tangible property located in this State. As claimant makes no objection to the payment of the franchise tax of $3,562.50 on the $7,125,000.00 of authorized capital stock shown by its report of December 31, 1919, filed February 19, 1920, we assume that all of the authorized capital stock shown by said report was represented by business transacted and tangible property located in this State. On the basis of this report, the Secretary of State properly assessed a franchise tax of $3,562.50 to which amount claimant makes no objection.

Section 108 of the Corporation Act provides that "the franchise tax herein provided to be paid shall be due and payable on the first day of July in each year and shall be a franchise tax for the year commencing on the first day of July in which it is due and ending on the thirtieth day of June next thereafter." In other words, the tax of $3,562.50 assessed to claimant on its annual report is the tax on its authorized capital stock as shown by said report, for the year beginning July 1, 1920, and ending June 30, 1921.

Section 129 of the Corporation Act provides that "in addition to all other fees, the Secretary of State shall collect in advance from corporations subject to a franchise tax, annual franchise taxes as follows:" and then provides under paragraphs a, b, c, d and e, for the payment of taxes for periods of less than one year and more than one year. Claimant argues that this section cannot be made operative or construed in harmony with the other sections above mentioned, as it would mean a double taxation. We cannot agree with this contention. Section 129 does not

provide for a double franchise tax, but provides for a franchise tax for a period of either more or less than one year on corporations organized, or increasing their stock, during said period of either more or less than one year, while sections 102, 105 and 108 provide for the payment of a franchise tax for the exact period of one year on the authorized capital stock as shown by the annual report. Section 129 divides corporations into classes according to the parts of the year in which they are organized or have their capital stock increased.

Paragraph d of Section 129 provides that corporations having their capital stock increased between January 1st of any year and the last day of February of the same year, shall pay a franchise tax equal to one-half of the annual franchise tax. Counsel for claimant contends that the Secretary of State assessed claimant the franchise tax for one whole year on the increased capital stock, and that if this section is to be held operative at all, the Secretary of State could only have collected one-half of the franchise tax as the certificate of increase of claimant was filed with the Secretary of State on February 29, 1920.

The Court is of the opinion that said paragraph d provided for a class of corporations organized, or filing their certificates of increase, between January first and the last day of February of any year, and that these corporations should pay a tax equal to one-half of the amount of the franchise tax, which would be a tax for one half of a year, from January first to July 1st, of any year, at which time the amount of the franchise tax for the ensuing year would be due and payable.

Counsel for claimant contends that in order to make said Paragraph d consistent with the other provisions of Section 129, it should have provided for a franchise tax equal to one and one-half times the amount of the annual franchise tax. If this be true, it can be equally said that Paragraph c of said Ssection 129 should have provided for a franchise tax equal to one and three-fourths of the annual franchise tax.

We are of the opinion that Paragraph c of Section 129 provided for a tax equal to three-fourths of the annual franchise tax, for three-quarters of a year, from October 1st to July 1st of any year, and that Paragraph d of said section provided for a tax for one-half of a year, from January first to July 1st.

It appears that the Secretary of State did not demand payment of either the franchise tax or the fee for increase of capitol stock, upon the filing of certificate of increase by claimant, but this does not in any way waive the right to collect the same or bar the State from collection of the fees and tax provided for by law. The Secretary of State could not, by any action of his, waive any rights of the State.

Section 112 of the General Corporation Act, providing for the mailing of notice by the Secretary of State to each corporation of the amount of tax assessed against it, provides that such notice shall contain the amount of the franchise tax assessed against it, for the year next ensuing (meaning the tax assessed against it based on its annual report for the year beginning July 1st following), and the amount, if any, found by the Secretary of State from the annual report to be due upon an increase of capital stock of a foreign corporation represented in this State.

While it would appear from this section that the amount of franchise tax on the increase of capital stock could only be ascertained by the Secretary of State from the annual report, yet it will be found that this section relates only to the mailing of a notice and fixing a day for hearing, and, construed with Section 105, fixing the rate of franchise tax, and with section 129 providing for the amount of the tax to be paid for different periods on increase of capital stock, it seems clear to us that it was the intention of the Legislature to have the Secretary of State collect both the franchise tax as shown by the annual report filed by the corporation, and the amount of franchise tax, if any, due upon increase of authorized capital stock of the corporation as shown by certificate of increase or other documents filed in this office.

We are of the opinion that the different sections of the Corporation Act, above mentioned, can all be construed together and harmonized, and applied to different classes of corporations, and that in the case at bar, the Secretary of State not only had the right to assess the franchise tax of $3,562.50 as based on the annual report, but had the right to assess the franchise tax on the increased capital stock as shown by the certificate of increase filed in this office, which would be a tax equal to one-half of the annual franchise tax, for the period from January 1st, 1920, to July 1st, 1920. The Secretary of State could also, at the same time or later, assess the annual franchise tax on the increased capital stock for the year beginning July 1, 1920, amounting in this case to $9,437.50. He could have demanded the payment of one-half of the amount of the annual franchise tax in advance, as provided by paragraph d of Section 129 above mentioned, upon the filing of the certificate of increase, and then could have assessed and collected the tax for a full year beginning July 1, 1920, on the increase of capital stock as well as that shown by the annual report.

Paragraphs a and e of Section 129 provide for a franchise tax of one and a third times the annual tax where capital stock is increased between March first and July first, being for one-third of a year for the period between March first and July first and for one full year from July first on. March first seems to have been adopted by the Legislature as the date when the tax for the full year could be added to the tax for the fraction of the year and collected at the same time, while for the periods provided for in paragraphs c and d of section 129, the tax for the fractional period of the year only is required to be paid at the time of the filing of certificate of increase and the full amount for the year from July first following may be assessed separately and paid on or before July first.

If claimant's contention were true, a corporation filing a certificate of increase prior to March first of any year would escape the payment of a full year's tax, while a corporation increasing its capital stock after March first would have to pay a full year's tax. This was not, in our opinion, the intention of the Legislature.

We are therefore of the opinion that claimant did not pay to the Secretary of State any excess amount of franchise taxes for increase of capital stock, and is not entitled to recover.

The claim is therefore rejected.

THE C. A. GOODYEAR LUMBER CO.

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

FRANCHISE TAX—*refund. Mistake of fact.* In this case there being no dispute as to the facts and the law governing the same, the Court enters an award in favor of claimant for franchise tax paid under a mistake of fact.

Edward J. Brundage, Attorney General, for State.

This is a claim for abatement for franchise tax paid by the complainant. It appears that the complainant is a corporation organized under the laws of the State of Delaware and licensed to do business as a foreign corporation in the State of Illinois, and on the 13th day of February, 1920, filed in the office of the Secretary of State of the State of Illinois, its annual report upon which thereafter its franchise tax for the year 1919 was to be computed. It appears that a mistake in the computation of the fee was made and that the complainant paid an excess franchise tax of thirteen hundred ninety-six dollars and eighty-three cents ($1,396.83). The defendant the State of Illinois through its Attorney General comes and admits that a mistake has been made and consents to the allowance of this claim. We accordingly award the claimant the sum of thirteen hundred ninety-six dollars and eighty-three cents ($1,396.83) in payment of this claim.

HIRAM E. GIBSON

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in conducting the Joliet Penitentiary exercises a governmental function and is not liable for injuries sustained by its employees in the discharge of their duty.

SOCIAL JUSTICE AND PUBLIC WELFARE—*recommendation.* In the interest of public welfare and social justice the Court recommends an appropriation to claimant.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by Hiram E. Gibson, claimant against the State of alleged injuries received by him while in the employ of the State, as a guard in the Joliet penitentiary.

The evidence is conceded as alleged by claimant and filed with the declaration.

It appears that one of the convicts was missing and claimant was sent out through the yards of the institution to find him. It was dark and the premises not well lighted. There were a number of construction excavations in that vicinity, and about ten feet deep. While searching for the missing prisoner, the claimant stumbled into one of these excavations, thereby, then and there, receiving great bodily injuries to-wit: The loss of his right testacle and a lacerated scrotum, and other injuries about the pelvis, etc. It is not fully established by satisfactory evidence that claimant received any other permanent injuries, other than the loss of the right testacle, although he complains, at times, of some kidney trouble. It was very evident that the State was negligent in allowing holes, like one he fell into, to exist about the premises with no protection around them; and no lights placed at night to mark their whereabouts.

While this Court has held, both before and since the passage of the law of 1917, establishing the Court of Claims, that the State is not liable in cases of this character, in which a number of opinions have been filed at the September term, 1920, of this Court, yet in the present case, we think in the interest of public welfare and social justice, this man should have some compensation for his injuries.

We therefore recommend an appropriation in favor of the claimant in the sum of one thousand dollars.

THE COUNTY OF WILL

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

FEES, COSTS AND EXPENSES OF TRIAL OF INMATES OF STATE INSTITUTION—*when State liable.* **There being no dispute as to the facts, the Court holds that the State is liable to the County of Will for the fees, costs and expenses incurred in the prosecution of an inmate of the State Penitentiary for a crime committed by him in that institution. (Chap. 110, Sec. 39, Hurd's Rev. St. of Ill.)**

Edward J. Brundage, Attorney General, for State.

This is a claim by the County of Will to be reimbursed for the sum of $272.80 paid out for the fees, costs and expenses arising from the prosecution of Edward King, alias Edward Kelly, upon the charge of murder in case No. 7684 in the Circuit Court of Will County, Illinois. This crime was committed in the State penitentiary at Joliet.

The Attorney General, on behalf of the State, consents to the allowance of the claim for the full amount.

The claim appears to be in proper form and duly sworn to and under the provision of section 39 of chapter 108 of Hurd's Revised Statutes of 1917, the State is liable to pay this claim.

The Court therefore allows the claim in favor of the County of Will in the sum of $272.80.

WILL SHAW AND JAMES BJORKMAN, CO-PARTNERS DOING BUSINESS AS SHAW & BJORKMAN

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

PUBLICATION NOTICES—*State liable therefor.* **There being no dispute as to the facts in the case the Court enters an award in favor of claimant for the amount of their claim.**

Edward J. Brundage, Attorney General, for State.

This is a claim for sixty-three dollars ($63.00) filed by claimants against the State for publishing notices of the pendency of suit by the State to dissolve certain corporations therein mentioned, on account of failure to file annual report, under Act in force July 1, 1901, as amended by Act in force July 1, 1917, said notices having been published in the "Aledo Democrat," a weekly newspaper of Mercer County.

The Attorney General consents to the allowance of this claim and the claim, with the affidavit in support thereof, seems to show on its face that it is proper and should be allowed.

The claim is therefore allowed in the sum of sixty-three dollars ($63.00).

THE TIMES RECORD COMPANY, A CORPORATION

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

PUBLICATION NOTICE—*Liability of State.* This case is similar to that of *Shaw* v. *Bjorkman*, *Supra*, and the decision of the Court here announced governs this claim.

Edward J. Brundage, Attorney General, for State

This is a claim for seventy-three and 50/100 dollars ($73.50) filed by caimant against the State for publishing notices of the pendency of suit by the State to dissolve certain corporations therein mentioned, on account of failure to file annual report, under Act in force July 1, 1901, as amended by Act in force July 1, 1917, said notices having been published in 'The Times Record', a weekly newspaper of Mercer County.

The Attorney General consents to the allowance of this claim and the claim, with the affidavit in support thereof, seems to show on its face that it is proper and should be allowed.

The claim is therefore allowed in the sum of seventy-three and 50/100 dollars ($73.50).

CHARLOTTE T. P. ULLMAN, EXECUTRIX AND SOLE DEVISEE AND LEGATEE UNDER THE LAST WILL AND TESTAMENT OF W. B. ULLMAN, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

INHERITANCE TAX—*when claimant entitled to a refund.* In this claim there being no dispute as to the facts and law governing the same, the Court enters an award in favor of claimant for the amount of inheritance tax over-paid.

Edward J. Brundage, Attorney General, for State.

All the proof by stipulation is filed herein, and is admitted by the Attorney General to be true and that it sustains the claim which he consents may be allowed in the sum demanded. The evidence discloses that W. B. Ullman died a resident of Cook County, Illinois, on the 27th day of May, A. D. 1918, leaving a last will and testament, which was thereafter duly admitted to probate in said County and the claimant, Charlotte T. P. Ullman, was duly appointed Executrix thereof by order of the Court, and acted as such until discharged in due course November 18th, 1919, and that she is the sole devisee and legatee under said last will and testament. The original order of County Judge of said County assessing a total tax of seven thousand seventy-three and 89/100 dollars in said estate, was entered August 10th, 1918, less 5% discount for payment within six months from the date of the decedent's death was by claimant herein paid to the County Treasurer, October 22, 1918, the net sum being $720.20.

On September 30, 1920, an order was entered by County Judge of Cook County modifying said original order of assessment and fixing the total inheritance tax at six thousand eight hundred seventy-one and 83/100 dollars.

By reason of payment of the assessment within six months of decedent's death, the amount actually due under the latter order of assessment is six thousand five hundred twenty-eight and 24/100 dollars, leaving the sum of one hundred ninety-one and 88/100 dollars due claimant in the cause without interest, which last sum is hereby awarded to claimant.

LILLIE LINDSAY

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

GOVERNMENTAL FUNCTION—*State not liable when exercising.* The State in conducting the Illinois State Normal School at DeKalb, exercises a governmental function and is not liable for the death, or injury, sustained by its employees while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*when claimant entitled to an award.* While the State is not legally liable for the death of claimant's intestate, the Court as a matter of social justice recommends to the Legislature an appropriation to claimant.

Edward J. Brundage, Attorney General, for State.

Bert Lindsay at the time of his death was employed as a night fireman at the building of the Northern Illinois State Normal School at DeKalb, Illinois. His duties were mostly as fireman and in the course of such employment he removed ashes from the pit underneath the boiler. On the night of January 12th, 1921, deceased was working in the boiler room alone and it appears that he was caught accidently in the machinery of the firing apparatus that he was caring for and killed. That deceased left widow and three children who were dependent upon him for support.

It is the opinion of this Court that in accordance with the decisions in similar cases heretofore made, there is no legal liability on the part of the State of Illinois; that the doctrine of *respondeat superior* does not apply to the State and that the State in conducing the Northern Illinois Sate Normal School at DeKalb is exercising a governmental function and is not liable for the death and injuries of those it employs. However, as a matter of social justice, this Court is of the opinion that an allowance should be made. It is therefore recommended by this Court that the Legislature appropriate the sum of three thousand dollars ($3,000.00) to be paid to the claimant as an award in this case.

JAMES S. McCULLOUGH, LEGATEE UNDER THE WILL OF MYRTLE REED McCULLOUGH, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

INHERITANCE TAX—*when claimant entitled to refund under Sec. 25.* There being no dispute as to the facts and law governing this claim the Court holds that claimant is entitled to a refund of inheritance tax under Section 25, Inheritance Tax Law.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of inheritance taxes paid in the estate of Myrtle Reed McCullough, deceased, based upon section 25, of the inheritance tax law.

The evidence shows that decedent died August 17th, 1911, a resident of Cook County, Illinois, leaving a will, which was admitted to probate, and claimant was appointed executor.

Thereafter June 11, 1912, a tax of twenty-two hundred and thirty-four and 10/100 dollars, ($2,234.10) was assessed against certain contingent interests in said estate at the "highest rate" under section 25, of the Inheritance Tax Law, which tax plus interest at 6% per annum, was on September 14, 1912, paid to the County Treasurer of Cook County, the interest being $155.27, and the total sum being $2,389.37.

On December 26th, 1920, the said interests having vested indefeasibly in claimants, the County Court of said county entered an order re-assessing the tax of $418.74. This amount, plus $27.08 interest, substracted from the amount of original payment $2,389.37, leaves $1,943.55, due claimant with 3% interest per annum, thereon from September 14th, 1912, the date of said payment.

There is no dispute as to the evidence, and the Attorney General consents to allow of same. It is therefore ordered by the Court that payment be made to claimant in the sum of $1,943.55, together with 3% interest per annum, thereon from September 14th, 1912, until paid.

RALPH D. HOLLENBEAK, ET AL EXECUTORS OF WILL OF ALLEN M. RETAN, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

INHERITANCE TAX—*when claimant entitled to a refund.* Upon the facts proven and admitted by the State, the Court enters an award to claimant for the amount of inheritance tax over-paid.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of inheritance taxes erroneously paid into the State Treasury in the estate of Allen M. Retan, late of Kane County, Illinois.

Said decedent died testate April 15, 1918, and will was duly probated.

By an order of the County Judge of said county, entered September 3, 1918, pursuant to proceeding under section 11 of Inheritance Tax Laws a total of five thousand seven hundred seven and 92/100 dollars ($5,707.92) was assessed in the estate, which less 5% discount for payment within six months of decedent's death was paid to County Treasurer said county, the net amount being $5,422.52.

The case was duly appealed to the County Court by the Executors of estate; and January 25, 1921, an order was entered assessing the estate in a total sum of $5,029.61.

The actual amount due the State, is $4,778.13; making therefore an over-payment of $644.39, being the difference between the amount of the two assessments.

The Attorney General agrees that the above facts are true, and consents to the allowance of said sum of $644.39, refund.

The Court therefore awards claimants the sum of $644.39 refund.

WILLIAM JENKINS AND FRANK L. SELLACK, TRUSTEES OF THE LAST WILL AND TESTAMENT OF WILLIAM RILEY, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

INHERITANCE TAX—*when claimant entitled to a refund.* Sec. 25. There being no dispute as to the facts and the law governing this claim, the Court enters an award in favor of claimant for refund of inheritance tax under Section 25, Inheritance Tax Law.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of inheritance taxes under section 25, Inheritance Tax Laws. William Riley Sellack died January 1st, 1915, leaving a will which was admitted to probate in Cook County, Illinois, and claimants were appointed executors, and are now trustees. Deceased left surviving him J. Oscar Sellack and Albert R. Sellack, his brothers, and his only heirs at law him surviving, which heirship was duly proven.

The 5th paragraph of the will bequeathed in trust to the two said brothers, or the surviving brother, as long as they should live, or the survivor should live the residhe of his estate to be held in trust by said trustees for the benefit of said brother or brothers of the survivor; and at the death of the last of said brothers, the residue of the estate to be sold and the proceeds divided among his heirs at law, in equal parts, with the understanding that Bertie B. Tower, of Ottumwa, Ia., shall share equally in said residue with the said heirs at law.

Albert R. Sellack died May 4, 1916, leaving one child, namely, Frank L. Sellack, as his only child and only heir at law, him surviving; and in November, 1919, said J. Oscar Sellack died, leaving only one child, namely, Georgiana Adella Sellack Clark, the wife of George Clark, and leaving no other heirs at law. By the death of said two brothers, and by virtue of the provision of said will, the said Frank L. Sellack, Georgiana Adella Sellack Clark, as heirs as aforesaid together with Bertie B. Tower, stranger, sharing as an heir at law because vested with the entire beneficiary interest in the said property of said estate.

The personal property of said first named decedent, was appraised at $163.00 and approved; adjustment of claims had and all claims and costs paid and the residue of the property delivered to the several legatees. In due time, an order was made and entered by the County Judge of Cook County, taxing said residuary estate one thousand five hundred forty-seven and 67/100 dollars (after the certain life estates therein named) under and by virtue of section 25 of the Inheritance

Tax Law, that amount being the greatest tax possible upon the happening of any of the contingencies to which said remainder was subject by the terms of the will. Said tax at the rate of 6% per annum from date of decedent's death was paid into the County Treasury of Cook County, April 18, 1916, the total payment being $1,668.40. In February, A. D. 1921, proceedings were heard in the Court reassessing the tax on said remainder in the light of the conditions existing upon the termination of the said particular estates, and the total tax so assessed was $812.21, including interest to date of payment, and which amount is claimed to be due claimants as referred to aforesaid. Inasmuch as the amount claimed by claimants is admitted by the Attorney General, it is unnecessary to go into the details of the case further.

An award therefrom is made in favor of claimants in the sum of $856.19, with 3% interest thereon per annum from April 18th, 1916.

JOHN KAPELLA, ET AL

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

GOVERNMENTAL FUNCTION—*State not liable for injuries received by an inmate of its institutions.* The State in conducting the St. Charles School for Boys exercises a governmental function and is not liable for injuries sustained by an inmate thereof.

EMPLOYER AND EMPLOYEE—*when relation does not exist.* The relation of employer and employee does not exist between the State and an inmate of its institution

PUBLIC WELFARE AND SOCIAL JUSTICE—*when award will be made.* Although no elgal liability exist against the State, the Court in the interest of social justice and the public welfare recommends to the Legislature an appropriation to claimant.

Edward J. Brundage, Attorney General, for State.

John Kapella, a minor, sixteen years of age, while an inmate of the St. Charles School for Boys, in this State, was injured by the falling or giving way of an old boiler, where this boy and several others were at work, under the directions and supervision of the officers of said institution. His right leg was broken and badly crushed, necessitating surgical operation and detention in the hospital many months.

The injury, as appears from the indisputed evidence, is permanent and the boy is compelled to use a cane or crutch in moving around. He and his parents are in destitute circumstances, and no other relative legally bound for his support.

The injuries to a very great extent interfere with his ability to perform manual labor.

The boy was not in the employment of the State. He was an inmate of one of the State's charitable institutions to-wit: Home for delinquent boys, and all care and treatment he there received, was free: and the relation of employer and employee between the State and him did not exist, and the case would not fall under the law of the "Workmens Compensation Act," and we know of no other law under which he, from the statement of the case, would be entitled to recover.

But, in view of the fact that injured party was a boy of tender years, and in this school to secure the aid of the State in procuring honorable employment, and improving his usefulness as a citizen, we have decided that in the interest of the public welfare and social justice, the claimant should be to some extent reimbursed for his injuries and permanent inability to earn a living.

We therefore recommend that the Legislature appropriate for the use of John Kapello, the sum of three thousand dollars to be paid of his legal guardian.

BRUCE L. LITTLE

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

RESPONDEAT SUPERIOR—*when State not liable.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

SAME—*not liable for torts of an inmate of a State Institution.* The State is not liable for the torts or acts of an inmate of its institution. (*Elgin, Joliet & Eastern R. R.* v. *State, Supra,* followed.)

Edward J. Brundage, Attorney General, for State.

This is a claim filed by claimant, Bruce L. Little for injuries alleged to have been inflicted upon his face by one of the convicts, over whom, with others, the claimant was guard, at Joliet penitentiary. There is no dispute about the facts in evidence. While so standing guard, and while in the due performance of his duties, as such, one of the convicts, stealthfully and without apparent provocation slashed claimant on left cheek with a knife, running from toward the ear to the corner of the mouth, of the length of about three inches. Claimant had wound dressed, and in two or three weeks, was back at work in same institution. There is no proof that the injuries complained of in any way present him from the performance of manual labor to any extent. The State bore expenses of hospital, surgeon, medicine, etc. We think the weight of evidence discloses the fact that there is only a disfigurement of the face, and that same is permanent.

It has been repeatedly held by this Court that in claims of this character, the State cannot be held liable, but in the interest of public welfare and social justice, we recommend an appropriation for claimant in the sum of nine hundred seventy-one dollars.

J. P. KENYON

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

FEDERAL AID HIGHWAY—*when State is not liable. Respondeat Superior.* **The State is not liable for the negligence, torts and wrong-doings of its employees resulting in injury to other persons.**

Edward J. Brundage, Attorney General, for State.

This is a claim for damages for injuries received on December 1st, 1920, to the person and property of J. P. Kenyon, on a federal aid public highway, known as the Peoria road, running north of Springfield, by running into a large motor truck in the highway about the hour of 11:30 p. m., there being no lights on the front or rear of said truck. The truck belonged to to the Department of the State Division of Highways and had been loaned by the highway department to some person to use in connection with his private business, in taking a load of coal from Springfield to Bloomington and the evidence and argument show that on account of the condition of the roads, he gave up his trip and sold the coal to a farmer and was returning to Springfield with the truck when the motor broke down. He then abandoned the car and left it at the side of the road, where the accident occurred.

The Attorney General has filed a demurrer, setting up that the State is not liable because the doctrine of *respondeat superior* is not applicable to the State. This rule has been upheld in previous decisions of this Court and it is not necessary to cite any authorities.

The evidence shows that the truck was not left in the highway by any agent of the State, but was left there by a person in no way connected with the State.

We are clearly of the opinion that the State is not liable in this case. The claim is therefore rejected.

DOMINIC TOSI, ADMINISTRATOR OF ESTATE OF ROSE TOSI, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

NON-LIABILITY OF STATE—*State not liable for death of an inmate of its institution.* Claimant's intestate, a minor, an inmate in the Illinois School for the Deaf, at Jacksonville, died from the effects of a necessary surgical operation performed under the direction of the authorities of the institution. *Held*, that the State is not liable.

SOCIAL JUSTICE AND EQUITY—*recommendation.* As an act of social justice and equity the Court recommends to the Legislature an appropriation to claimant.

Edward J. Brundage, Attorney General, for State.

It appears from the evidence that Rose Tosi, daughter of Dominic Tosi, a resident of Bureau County, Illinois, was afflicted with deafness, and that her said father placed her in charge of the Illinois School for the Deaf, located at Jacksonville, Illinois, for the purpose of being educated and taken care of by the said institution. That the said child was an inmate of said institution up and until October 30, 1920. It further appears from the evidence that the condition of the health of said child was such that a surgical operation was extremely dangerous. That an operation was performed upon the child under the direction of the immediate authorities of said institution, and that such operation was performed without the consent of the father of said child, the said child being then and there a minor. And it is charged by the said claimant that as a result of said operation and said Rose Tosi died on the 30th day of October, 1920. It further appears from the evidence that the claimant was put to considerable expense on account of the funeral and other incidentals.

The Court finds that there is no legal liability resting on the State of Illinois under this claim; however, as a matter of equity and social justice this Court recommends an appropriation by the Legislature in the sum of fifteen hundred dollars ($1,500).

MILLIKEN TRUST CO., ADMINISTRATOR, ESTATE OF S. H. BAILEY, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

SOCIAL JUSTICE AND EQUITY—*when award will be made.* **Although no legal liability exist against the State the Court as a matter of social justice and equity may recommend to the Legislature an appropriation to claimant, to be used only for the support of herself and minor children.**

Edward J. Brundage, Attorney General, for State.

Samuel H. Bailey, a man of about forty-five years of age, while an inmate of the Peoria State Hospital for the Insane, and on the night of April 21, 1920, he was attacked by another insane person by the name of Dale and choked by that patient in such a manner that he died at the hospital of that institution on the morning of the 23rd. It appears that the inmate Dale was incurably insane and was recognized by the authorities as a troublesome and quarrelsome patient, and was known to step up behind other patients and strike them. And it further appears that the inmates Bailey and Dale were quarreling less than an hour before the trouble occurred, and that they were not put into separate rooms. It appears that the patient Bailey at the time of his death was in good physical health, and was expected to recover his normal mental condition. He left a widow and seven children and very little property. The attorneys for the claimant make no contention of a legal liability on the part of the State. It is believed, however, by the Court, that as a matter of social justice there should be an allowance made to the widow of said deceased. It is therefore recommended by this Court that the Legislature of this State appropriate a sum not to exceed two thousand dollarse ($2,000) to be paid to the widow of said deceased, to be used only for the purpose of herself and the minor children of said deceased.

GEORGE W. DIXON, EXECUTOR OF THE WILL OF ARTHUR DIXON

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

INHERITANCE TAX—*when refund will be made.* Where an inheritance tax has been assessed by the County Judge against an estate and paid, without first deducting the Federal Tax, and afterwards upon proper proceedings the County Court modified the order, by reason of the failure to deduct the Federal Tax, and re-assessed the tax due the State, the claimant is entitled to a refund of the over-payment of the tax under Section 10, of Inheritance Tax Law.

Edward J. Brundage, Attorney General, for State.

This is an action for refund of inheritance taxes erroneously paid into the State Treasury in the estate of Arthur Dixon, deceased.

Briefly, the facts in the case, which are admitted by the Attorney General, are as follows: Arthur Dixon died testate, October 26th, 1917, a resident of Cook County, this State, and George W. Dixon was appointed executor.

In due time the County Judge of said county entered an order assessing an inheritance tax of fifty-three thousand, nine hundred and 61/100 dollars in said estate, which amount less 5% was within the six months paid into the County Treasury to-wit: $51,205.61.

Pursuant to proper proceedings thereafter in the County Court, of which the Attorney General had due notice, an order was made modifying the original order of assessment by reason a failure to deduct the federal estate tax in original compensation. The tax as assessed by the latter order entered October 22, 1919, is forty-seven thousand seven hundred fifty-two and 21/100 dollars. By reason of the payment of the assessment within six months of the decedent's death, the exact amount of the tax due, by reason of the order of modification is forty-five thousand three hundred sixty-four and 60/100 dollars, making an over-payment of taxes of five thousand eight hundred forty-one and 01/100 dollars, which the State consents to this refund.

The Court accordingly awards claimant the sum of five thousand eight hundred forty-one and 01/100 dollars.

JOHN H. CORDES

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1931.

NON-LIABILITY OF STATE—*no liability where claimant injured through his own negligence.* The State is not liable for injuries received by its employee, where the injury sustained resulted from the gross carelessness and negligence of the employee in disobeying the positive orders of his superior officer.

Edward J. Brundage, Attorney General, for State.

This suit was instituted by John H. Cordes, who was a guard and as such, was an employee of the State of Illinois, to recover damages alleged to have been incurred by him, while in the employ of defendant, and while he, claimant, was exercising due care for his own safety. The facts are stated in the opinion.

As an employee, he was receiving $90.00 per month. About the 6th day of May, 1919, the claimant and other guards, and a number of convicts left the prison, to go about five miles out west, what is known as the "New Prison." The trip was made in a truck and an automobile. Claimant was riding in the automobile truck, which was driven by a convict. It had been the custom, until otherwise ordered, to stop the vehicles outside the gate of the new prison, but some several weeks before the accident to the claimant, positive orders had been given by the captain not to stop outside, but to drive inside and stop for the passengers to alight, and that rule had been adhered to ever since then up to the day of the accident inclusive.

The claimant testified that as the vehicle in which he and others were riding, was nearing the outside of the gate, it slowed up, and that he started to get out, and a sudden jerk given the car, by the driver, caused him to fall, his foot going under the car, and the wheel passing over, and crushing his foot. He says the car had about come to a stop or nearly so, when it gave a sudden jerk and started up and threw him. In this, he is very slightly corroborated by William Hilland, who also attempted to get out at same time and fell.

Captain Kulty states that the car had not stopped at time claimant got out, but was slowing down some, and did not stop until it got inside the gate in accordance with his orders, given some weeks before; that car did not stop and start up, but kept running until on the inside of gate. In this, he is corroborated by William Chidsey, another guard, who was in the company at said time, who says the car did not stop

and start with a jerk. He says it never stopped until it go inside the gate. James E. Parker, another guard, states substantially the same thing, and says claimant got off the car while it was still in motion, and before it had gotten inside, to the stopping place.

Mr. Blatt also testified that claimant alighted before they reached the gate, his foot slipped, and he fell, one foot going under the car. The captain had the claimant taken back to the prison hospital, and treated him for broken bones of the foot. The bones forming the arch were broken down so that it produced a "flat foot." The prison physician, Dr. Bloomfield, says that the foot will never be as good as it was, but cannot tell as to the extent it disqualifies him from performance of manual labor. Claimant did return to his job in the prison, and worked two months at same salary as before the accident. Claimant testified that he had paid out about $200.00 in endeavoring to be cured.

As orders had been given some three or four weeks before the date of accident, that the cars and trucks must not stop outside, but must run on inside of the gate before passengers were allowed to alight, the claimant must have been fully apprised of such requirement, and rule. The great weight of the evidence in the case is with the State, and shows that the claimant deliberately endeavored to alight while the car was still running and before it reached its destination or particular place for stopping. He probably jumped out. His entire action in alighting while the vehicle was in motion, and before it reached its stopping place, was in direct violation of a positive command of the captain, as stated. While the truck was slowing up some, still it was heavily loaded, and was moving with a good deal of momentum, and perhaps with much greater speed than was anticipated by claimant. The accident was the result of claimant's own gross carelessness, and for that reason, and other reasons argued by the Attorney General, the State is not liable to respond in damages in this case. But in view of the fact that the claimant is now getting old, and in view of the fact that his foot will never be as good as it was, as stated by the doctor, we have concluded to, and do recommend an allowance of $500.00.

HOWARD KNOWLES AND EDWARD J. KING, EXECUTORS OF THE LAST WILL AND TESTAMENT OF NORMAN ANTHONY, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed April 26, 1921.

INHERITANCE TAX—*when claimant entitled to a refund.* **There being no dispute as to the facts in this case or the law applicable thereto the Court enters an award in favor of claimant for the amount of the claim for the inheritance tax over-paid.**

STATUTE OF LIMITATION—*when claim not barred.* **The claim is not barred by the statute of limitation when the Court of Claims Act is construed with Section Ten (10) of Inheritance Tax Law.**

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of inheritance tax.

Norman Anthony died June 21, 1912, a resident of Knox County, Illinois, leaving a last will and testament, which was afterwards duly admitted to probate in the County Court of said County and Howard Knowles and Edward J. King were appointed executors, and are now acting as such.

On May 7, 1913, the County Judge of said county, approving the report of an appraiser theretofore appointed by him, assessed an inheritance tax in said estate of three thousand five hundred thirty and 02/100 ($3,530.02) dollars. The executors of the estate appealed to the County Court claiming excessive valuation of the property and about the same time, to-wit: On May 21, 1913, paid to the County Treasurer of said county two thousand dollars as part payment of the inheritance tax as assessed by the County Judge.

On March 12, 1915, the County Court of said county entered an order fixing the inheritance tax in said estate at one thousand two hundred seventy-one and 01/100 dollars and neither the State of Illinois nor any other interested party has appealed or otherwise contested said order.

Certified copies of the original order of the County Judge, as well as copy of the inheritance tax receipt, and the order of appeal are contained in the stipulation on file in this cause.

The amount of the final assessment by the County Court being one thousand two hundred seventy-one and 01/100 dollars, and the payment to the County Treasurer above referred to having been made May 21, 1913, it is apparent that interest at the rate of six per cent, from June 21, 1912, the date of the decedent's death, until said payment on March 21, 1914, should be charged, and so, the total amount of taxes and in-

terest due under the order of the County Court on appeal is one thousand three hundred forty and 91/100 dollars ($1,340.91). The sum of two thousand dollars having been paid to the County Treasurer in part payment of the original assessment, it is clear that the executors overpaid the inheritance tax as finally determined, by the sum of six hundred fifty-nine and 09/100 dollars ($659.09).

This amount, together with interest thereon from the time was paid to the County Treasurer, makes a total amount of seven hundred twenty-one and 91/100 ($721.91) dollars.

The Attorney General in his statement admits that the amount overpaid and due claimants, with interest, is $721.91, if the claim is not barred by Statute.

The Court is of the opinion, in construing the Court of Claims Act together with section ten of the Inheritance Tax Law, that the claim is not barred by the Statute.

The claim is therefore allowed for $721.91.

PERKINS, FELLOWS & HAMILTON
v.
STATE OF ILLINOIS.

Opinion filed April 27, 1921.

MUNICIPAL CORPORATION—*Commissioners of Lincoln Park Board are a municipal corporation.* The Commissioners of Lincoln Park Board are a municipal corporation organized for the purpose of creating, improving and maintaining a system of parks, boulevards and driveways.

SAME—*implied powers.* Every municipal corporation has the power to sue and be sued, and the power need not be expressly granted, but it is implied as a necessary incident to its creation.

CONTRACTS—*its power to contract.* As a municipal corporation the Commissioners of Lincoln Park have the power to sue and be sued and to enter into contracts to carry out the purpose for which it was created.

JURISDICTION—*Court of Claims without jurisdiction.* The Commissioners of Lincoln Park being a municipal corporation and capable of suing and being sued, this Court is without jurisdiction to entertain this suit.

Edward J. Brundage, Attorney General, for State.

The claimants have filed a claim for a sum alleged to be due them for labor and services performed as architects at the special instance and request of the Commissioners of Lincoln Park. They allege that they brought suit against the commissioners in the Municipal Court in Chicago upon the aforesaid claim, that the commissioners filed a special appearance in that suit maintining that the Court had no jurisdiction of actions against said commissioners and that they are not a body corporate and have not the power to sue and be sued but they are only a branch or agency of the State of Illinois. The question of jurisdiction was not determined in that Court, the case being continued for the purpose of enabling the plaintiffs to file their claim in this Court. The State has filed a plea to the jurisdiction to this Court setting up that the Board of Commissioners of Lincoln Park is a municipal corporation and that the power to sue and be sued is a necessary incident to every municipal corporation and need not be expressly granted and that the Court of Claims has no jurisdiction over suits against the commissioners of Lincoln Park. The claimants take issue with these contentions raising the question of the jurisdiction of this Court. The Board of Commissioners at Lincoln Park was created by an Act of Legislature approved and in force Feb. 8, 1869, and in the same month Acts were passed by the Legislature creating the West Park and South Park Boards, these three Acts being commonly known as the Park Acts. The functions exercised by the Park Boards are substantially the same as to all three boards. The commissioners of Lincoln Park have been given power in the Acts cited and in subsequent Acts to pass ordinances, ap-

point engineers, surveyors, clerks and prescribe their duties and authority, to possess all the power and authority now by law conferred on the common council of the City of Chicago in respect to the public squares and places in the city and to vacate any public street or alley within the limits of the park to appoint and support a police force, to hold title to lands in trust and under exclusive control, to sell land, borrow money and exercise many other of the functions of a municipality. The Supreme Court of Illinois has already decided a number of cases that the commissioners of West Park and of South Park are municipal corporations.

West Chicago Park Commissioners v. *Chicago*, 152 Ill. 392.
People v. *Salomon*, 51 Ill. 37.
See also 167 Ill. 326; 134 Ill. 170; 103 Ill. 33.

While the intention of the Court as to how far these rulings would apply to the commissioners of Lincoln Park has perhaps been uncertain up to the filing of this claim, the recent case of the *People* v. *The Chicago Motor Bus Company* decided in 295 Ill. 486 expressly declares that they are of this character. The Court there said "the extent of the powers conferred on park commissioners by Legislative Acts has been passed upon by this Court in several cases and it was held the park commissioners are a municipal corporation for the purpose of creating, improving and maintaining a system of parks, boulevards and driveways, and that their powers and authority in these respects are plenary and exclusive of those of the City of Chicago." Citing a number of cases the Court adds "these decisions recognize the powers of the park commissioners with reference to the use and regulation of streets and boulevards under their control except as to street intersections, and that such powers are not concurrent with the powers of the city." This disposes of the claimants' contention that the Board of Park Commissioners of Lincoln Park are not a municipal corporation and it is the opinion of this Court that this decision in its effect practically decides the question before us. The power to sue and be sued and to enter into contracts to effectuate the purposes for which it was created, need not be expressly granted to a municipal corporation to the extent necessary to execute the powers and functions with which it is endowed there is in such a body implied authority to contract obligations and to sue and be sued, citing Cooley, Constitutional Limitations, (2nd Edition) P. 191.

2 Dillon on Municipal Corporations, P. 1139.

It is the opinion of this Court that the purpose of the Acts creating the Park Board of Chicago and subsequent Acts and amendments relating thereto to be gathered therefrom and from the decisions of our Supreme Court relating thereto, was to create substantially similar bodies having similar functions, powers and duties and this opinion is especially confirmed by the recent case of the *People* v. *Chicago Motor Bus Company* above cited. The Court of Claims has no jurisdiction over suits against municipal corporations and it therefore follows from the opinion above expressed that it can have no jurisdiction in this case. The claim is accordingly dismissed.

BERTHA McMURRY

v.

STATE OF ILLINOIS.

Opinion filed April 27, 1921.

RESPONDEAT SUPERIOR—*Little* v. *State, Supra, followed.* **This case is similar to that of *Little* v. *State, Supra,* and the decision of the Court announced in that case governs this case.**

Edward J. Brundage, Attorney General, for State.

The husband of the claimant, one James C. McMurry, was employed as guard in and at the penitentiary located at Joliet, Illinois, and while he was performing his said duty he was attacked and assaulted by an inmate of said institution and killed. That said James C. McMurry died intestate, leaving him surviving this claimant and three minor children, aged seven, nine and twelve, respectively. That the only property left by the decedent was his household effects. That it appars from the evidence that the said claimant and the said minor children were wholly dependent upon the deceased for support. It is the opinion of this Court that there is no legal liability on the part of the State. However, as a matter of social justice this Court recommends the General Assembly of the State of Illinois to appropriate the sum of five thousand dollars ($5,000.00) to be paid to the said widow, the claimant herein for the purpose of supporting herself and her minor children insofar as the same may extend.

WILLIAM HAYWOOD

v.

STATE OF ILLINOIS.

Opinion filed April 27, 1921.

RESPONDEAT SUPERIOR—*Little* v. *State*, *supra*, *followed*. This case is similar to that of *Little* v. *State*, *supra*, and the decision of the Court there announced governs this case.

Edward J. Brundage, Attorney General, for State.

It appears from the evidence that the claimant was employed at the Illinois State penitentiary, at Joliet, for about five years; that he is about fifty years of age. That on the tenth day of July, 1916, he had charge at the penitentiary of a gang of convicts, among whom were many who were mentally deranged. That while in performance of his duties he was attacked by a convict by the name of Earl Morris, who was serving a life sentence for murder. Morris came up behind him, slashing him with a knife across the left cheek cutting a gash from the left cheek to the tip of the nose about five inches long. It appears from the evidence that the claimant was in a hospital for three weeks. That the claimant has never received any compensation of any kind.

It is the opinion of this Court that the doctrine of *respondeat superior* is not applicable to the State, and that the State is conducting the State penitentiary exercises a governmental function and is not liable for injuries to those in attendance in said institution or to those in its employ. Therefore, the Court finds that there is no legal liability against the State of Illinois under this claim. However, the Court recommends, under the circumstances of this case, if the Legislature sees fit to waive the legal defenses of the State, it would be an act of justice to appropriate not to exceed ten hundred dollars ($1,000.00) as relief and compensation for all injuries sustained by claimant in this action.

WILLIAM L. PETTY, JR.

v.

STATE OF ILLINOIS.

Opinion filed April 27, 1921.

RESPONDEAT SUPERIOR—*Little* v. *State*, *supra*, *followed*. This case is similar to that of *Little* v. *State*, *supra*, and the decision of the Court as announced in that case governs this case.

Edward J. Brundage, Attorney General, for State.

The claimant, William L. Petty, Jr., was employed as a guard, or keeper, at the penitentiary at Joliet; that while in charge of a detail of seventeen convicts unloading gravel from a railroad car in the yard of the penitentiary, a convict by the name of Moore attacked the claimant with a knife, which he had concealed in his hand, and in the attack the claimant was cut from the back of his neck around to the cheek bone on the left side of the face, leaving an ugly scar six or eight inches long. And it appears from the evidence that the scar is made in such a manner that no one can shave him without nicking him on the healed wound.

It is the opinion of this Court that the doctrine of *respondeat superior* is not applicable to the State, and that the State in conducting the State penitentiary exercises a governmental function and is not liable for injuries to those in attendance in said institution or to those in its employ. Therefore, the Court finds that there is no legal liability against the State of Illinois under this claim. However, the Court recommends, under the circumstances of this case, if the Legislature sees fit to waive the legal defenses of the State, it would be an act of justice to appropriate not to exceed ten hundred dollars ($1,000.00) as relief and compensation for all injuries sustained by claimant in this action.

FOWLER I. COCHRAN

v.

STATE OF ILLINOIS.

Opinion filed April 27, 1921.

RESPONDEAT SUPERIOR—*Little* v. *State*, *supra*, *followed*. This case is similar to that of *Little* v. *State*, *supra*, and the decision of the Court there announced governs this case.

Edward J. Brundage, Attorney General, for State.

The claimant was, on the 31st day of July, 1918, employed as foreman of the furniture department at the Illinois State penitentiary at Joliet. That while he was acting in the course of his employment a convict by the name of Bobo attacked him and struck him on the head above the eye with a chair leg, knocking him on the floor unconscious. The convict then attacked him with a knife, cutting a gash about four inches long on the right side of his face, extending from the jaw to the top of the right ear, and also inflicting a ragged cut near the right lip. It appears from the evidence that the scars are very unsightly, and from the time of the injury the claimant is troubled with pains through his head originating from where the blow was struck over the right eye; with stinging and drawing pains where the cuts were inflicted. There is a lump which causes the complainant considerable trouble while eating, as at times in chewing he bites the same. Prior to the injuries the claimant had no trouble with his head or face in any way.

It is the opinion of this Court that the doctrine of *respondeat superior* is not applicable to the the State, and that the State in conducting the State penitentiary exercises a government function and is not liable for injuries to those in attendance in said institution or to those in its employ. Therefore, the Court finds that there is no legal liability against the State of Illinois under this claim. However, the Court recommends, under the circumstances of this case, if the Legislature sees fit to waive the legal defenses of the State, it would be an act of justice to appropriate not to exceed one thousand five hundred dollars ($1,500.00) as relief and compensation for all injuries sustained by claimant in this action.

JACOB KUBLER
v.
STATE OF ILLINOIS.

Opinion filed April 27 1921.

NON-LIABILITY OF STATE—*Respondeat Superior.* Claimant's son was killed by the premature discharge of a cannon at Camp Lincoln during the encampment of the Illinois National Guard. *Held*, that under the doctrine of *Respondeat Superior* the State is not liable.

STATUTE OF LIMITATIONS—*when claim is barred.* Where the claim is not filed within five years from the time it first accrues it is barred under Section Ten (10) Court of Claims Act, unless it falls within the exceptions therein stated.

Edward J. Brundage, Attorney General, for State.

Harry Kubler, aged twelve years, a son of Jacob Kubler of Springfield, Illinois, was on the 29th day of July, A. D. 1900, without any fault on his part, injured by the premature discharge of the cannon or gun known as the Sunset Gun, the property of the State of Illinois, at Camp Lincoln, during the encampment of the Illinois National Guards at that place, from which injuries the said Harry Kubler died.

It appears from the evidence that the Board of Inquiry appointed to investigate the cause of the premature discharge of said gun, found that the gun was at said time unfit for use.

It appears also from the evidence that an Act was passed by the General Assembly for the indemnity of Jacob Kubler on account of the death of his son, in the sum of fifteen hundred dollars ($1,500.00) but that the bill was returned by the Governor without his approval.

The State of Illinois, through the Attorney General, has filed a demurrer, setting up the Statute of Limitations, and under the law creating the Court of Claims, it is clear that the claim is barred. It will further appear that under the doctrine of *respondeat superior* in force in this State and upheld by this Court, there is no legal liability on the part of the State to claimant for the death of his son.

The claim is therefore rejected.

However, it appears that the General Assembly recognized that there was merit in this claim by passing the Act above referred to, and it further appears that the father of this boy is a poor man struggling to support his family and has been deprived of the help of his son, who, if living, would now be in the prime of life and would be able to support his father.

Therefore, as an act of social justice, this Court recommends to the General Assembly, that it appropriate to the claimant the sum of fifteen hundred dollars ($1,500.00).

ROBERT SHANNON

v.

STATE OF ILLINOIS.

Opinion filed April 27, 1921.

GOVERNMENTAL FUNCTION—*State not liable for damages caused by an insurrection of inmates of its institutions.* The State is not liable for the torts of its officers, agents, or employees, or inmates of its institution.

SOCIAL JUSTICE AND EQUITY—*recommendation.* Under the facts and circumstances shown the Court recommends claimants demand to the Legislature for its consideration.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by Robert Shannon of *Joliet, Will County, Illinois,* for damages by reason of the loss of machinery belonging to him. It appears that Mr. Shannon had a contract with the commissioners of the new State penitentiary for digging of certain sewer trenches and that the machinery necessary to fulfill this contract had been shipped to the Joliet penitentiary by the Elgin, Joliet and Eastern Railroad Company. While the machinery was on the penitentiary grounds and before it had been unloaded from the freight cars, a riot broke out among the inmates of the penitentiary and as a result numerous fires were started by the convicts. Among other property destroyed were the freight cars in which Mr. Shannon's machinery was placed and as a result of such fire the machinery was damaged, according to the claimant, almost wholly destroyed. The State through its Attorney General filed a demurrer to this claim on the grounds that the doctrine of *respondeat superior* is not applicable to the State and secondly in the presence of the Statutes the State is not liable for the torts of is officers, agents, inmates and employees. We are of the opinion that the contention of the State through its Attorney General, is correct and that the State as a matter of law is not responsible in this kind of an action.

It appears from the evidence offered, and from supplemental statement of claimant, that claimant is largely dependent upon the use of this machine for the support of himself and family, and that the loss has proved a great financial handicap; that he is an elderly gentleman and had no other means of a livelihood, and that he has almost been reduced to a point of bankruptcy by this loss, and that his wife has been committed to the Kankakee State Hospital for the insane.

It is the opinion of this Court that while it is not such a case as would be consistent with former cases before this Court wherein personal injury was sustained or death occurring owing to injury or accident while in the employ of the State, and therefore not within the rules

indicated in the class of cases which come under the head of social justice and equity, yet it is a case that commands public sympathy and consideration.

Therefore, this Court recommends this claim to the Legislature of the State of Illinois for their consideration, as this Court is of the opinion that it is without jurisdiction in the premises.

ELGIN, JOLIET & EASTERN RAILROAD CO.

v.

STATE OF ILLINOIS.

Opinion filed April 27, 1921.

RESPONDEAT SUPERIOR—*Shannon v. State, Supra, followed.* This claim is similar to that of *Shannon v. State, supra*, and the decision of the Court there announced governs this case.

COURT OF CLAIMS ACT—*Par. 4, Sec. 6, construed.* No liability of the State arises under Par. 4, of Section 6, of the Court of Claims Act, as it was not the intention of the Legislature to enlarge the liability of the State in cases of this character, but that section only applies to cases which clearly come within its provisions.

Edward J. Brundage, Attorney General, for State.

This claim was brought on a loss sustained by the claimant during an insurrection among the prisoners at the State penitentiary of Illinois at Joliet, the occurrence taking place on August 19th, 1919. This claim was based on damage to cars by fires started during the disturbance mentioned. The State through its Attorney General filed a demurrer to this claim on the grounds that the doctrine of *respondeat superior* is not applicable to the State and secondly in the presence of the Statutes the State is not liable for the torts of its officers, agents, inmates and employees. We are of the opinion that the contention of the State through its Attorney General, is correct and that the State as a matter of law is not responsible in this kind of an action. The claimant also claims right of action under sub-paragraph 4, section 6 of the Court of Claims Act. We are of the opinion that this case is of such a nature that it would not come under this particular section of the Statute. We believe it has been heretofore decided by this Court that it was not the intention of the Legislature in creating this Court, to enlarge the liability of the State and it is our opinion that if this Court permitted liability on the part of the State in cases of this character, that it would open the field for a vast number of actions far beyond those the Legislature had in mind when the enactment was passed creating this Court and its subsequentt changes and amendments. Therefore this Court denies the claims and sustains the demurrer.

MARY HEATER

v.

STATE OF ILLINOIS.

Opinion filed April 27, 1921.

RESPONDEAT SUPERIOR—*when State is not liable.* Claimant, an employee of the Department of Agriculture at the University of Illinois, suffered a heat stroke while in the performance of her duty. *Held*, the doctrine of *Respondeat Superior* does not apply to the State, and that it is not liable for injuries sustained by its employees in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*recommendation.* While no legal liability exists against the State, in the interest of social justice and equity, the Court recommends to the Legislature an appropriation to claimant.

Edward J. Brundage, Attorney General, for State.

Claimant was employed as a bookkeeper in the dairy husbandry office of the department of Agriculture in the University of Illinois, and while in such employ, on July 14, 1916, she suffered a heat stroke while discharging her said duties in a room provided for that purpose.

The evidence shows that in the building in which claimant was working the Department of Agriculture was sterilizing milk and manufacturing butter and cheese and that such manufacture required a great amount of heat in that portion of the building where this work was carried on. This heat was conveyed by means of pipes from the central heating plant of the University, and was either hot water or steam heat. These pipes, which led in to the manufacturing rooms, ran through the floor of the room in which claimant was employed and added considerably to the natural heat of the room. The evidence shows that July 14, 1916, was a very hot day and that the temperature was very high; that claimant was performing her duties as usual and that in the afternoon of said day she suffered a heat stroke on account of the high temperature of the room in which she performed her work, which temperature was aggravated by the heat from the pipes in the floor of the room where she was working; that she became dizzy and swooned and was carried into an adjoining room where she lapsed into unconsciousness, and remained in such condition for approximately six weeks, and that for a period of nearly two years she has been unable to attend to her usual duties, and the evidence shows that she has not yet recovered from this shock.

Claimant is twenty-nine years of age, and was earning on an average of $65.00 per month.

The State, through the Attorney General, has filed a demurrer claiming that the State is not liable in this case, setting up as a defense that the doctrine of *respondeat superior* does not apply to the State, and

that the State is conducting the University of Illinois, is exercising governmental function, and is not liable for the death or injuries of those it employs.

The rule that the doctrine of *respondeat superior* does not apply to the State has been upheld in many decisions of our Supreme Court, among which are the following:

Elmore v. *Drainage Commissioners*, 135 Ill., 269.
White v. *County of Bond*, 58 Ill., 297.
Hedges v. *County of Madison*, 1 Gilm., 567.

Under these decisions, the State is not liable to claimant and the claim is therefore rejected.

While the Court, as stated above, is of the opinion that the State is not legally liable, as an act of social justice and equity the Court recommends to the Legislature an appropriation to claimant of the sum of two thousand five hundred dollars ($2,500.00).

CHARLES K. WILLIAMS

v.

STATE OF ILLINOIS.

Opinion filed April 27, 1921.

MILITARY SERVICE—*when claimant entitled to an award.* Claimant was injured while in the performance of his duty, as a Corporal, under orders of Commander-in-Chief of the Military Forces of Illinois National Guard in the suppression of the race riots at Chicago, Ill., July 28, 1919. *Held,* claimant entitled to an award, for the injuries sustained, under Section 154, Chapter 129, Hurd's Rev. St. (Sec. II, Art. 16, Military & Naval Code of Ill.)

WORKMAN'S COMPENSATION ACT—*basis of computation.* The provisions of the Workman's Compensation Act is taken into consideration as a basis for compensation in cases of this character.

Edward J. Brundage, Attorney General, for State.

Charles K. Williams, the claimant, on the 28th day of July, 1919, was corporal in Company C, First Infantry, Illinois State Militia, and by order of Commander-in-Chief of the military forces of the State he was ordered to the Eighth Regiment Armory at 35th street and Forest avenue in the City of Chicago for mobilization to suppress the race riots then raging on the south side of said city. With William T. Riggs and two other soldiers he proceeded in uniform to walk to the armory in question, as the street cars were stopped on account of the said riots. At the corner of East 35th street and Forest avenue he and his companions were surrounded by a mob of two hundred people and claimant was assaulted about the head and face and shot in the back with a 45 calibre bullet.

Claimant was removed to the Michael Reese Hospital for treatment and on August 13, 1919, was removed to his home where he was laid up for several months. The bulet with which the claimant was shot passed through his shoulder blade from the left side, struck the spine and was deflected and took an upward course, lodging in the right clavicle, grazing the lungs and diaphragm. Since the injury the claimant has had dizzy spells, suffered headaches, paralysis of the intestines, bowels and lower limbs, accompanied by limitation of motion and is suffering from permanent injuries as the result of this assault and gun-shot wound.

Claimant is a married man, thirty-eight years of age, with four children all under the age of sixteen years, who are dependent upon him for support.

The State of Illinois, through the Attorney General, has entered its appearance in this cause and admits liability on the part of the State,

and states that there is no dispute about the facts set forth in claimant's brief and argument. Under the provisions of section 151, chapter 129, page 2910 of Hurd's Revised Statutes, 1919, the State is liable for injuries suffered by an enlisted man of the National Guard, when in the performance of his duties upon orders from the Commander-in-Chief.

In the opinion of the Court claimant is, therefore, entitled to recover in this case, and taking into consideration the provisions of the Workmen's Compensation Act, making provision for compensation in similar cases, the claimant is awarded the sum of thirty-five hundred dollars ($3,500.00).

FRANK FITZSIMMONS DOING BUSINESS UNDER THE NAME AND STYLE OF FITZSIMMONS CONSTRUCTION CO.

v.

STATE OF ILLINOIS.

Opinion filed June 6, 1921.

CLAIMS—*when allowable.* **Claims which in equity and good conscience ought to be paid are allowable.**

Edward J. Brundage, Attorney General, for State.

This is a claim for damages arising out of the repair and alteration of the Capitol building of the State of Illinois authorized by an Act of the 19th General Assembly. This claim was referred to a commissioner to take testimony and upon conclusion of testimony by the plaintiff the counsel for the plaintiff and for the defendant together with the State supervising architect, upon consideration of the evidence offered and of all the records, files, document and information obtainable, have considered each and every item of the claim declared upon and have agreed that the sum of eight thousand nine hundred ninety-eight and 49/100 dollars ($8,998.49), is due the complainant in equity and good conscience. We concur in this finding and agreement and we therefore award the claimant in full of the above claim the sum of eight thousand nine hundred ninety-eight 49/100 dollars ($8,998.49).

WILLIAM PLACKETT

v.

STATE OF ILLINOIS.

Opinion filed January 17, 1922.

NON-LIABILITY OF STATE—*when liability does not attach to State.* **Claimant was injured while performing his duties as a janitor at Illinois State Normal University, Normal, Ill. *Held*, that no liability against the State attached by reason of the injuries received.**

RESPONDEAT SUPERIOR—*doctrine of not applicable to the State.* **The doctrine of *Respondeat Superior* is not applicable to the State, and the State is not liable for the injuries received by its employees while in the performance of their duty.**

Edward J. Brundage, Attorney General, for State.

This claim was filed by William Plackett to the September term, A. D. 1921, and pleadings completed, January, A. D. 1922.

The declaration alleges in substance, that on March 20, A. D. 1919, and for a considerable time prior thereto, the claimant was in the employ of the defendant, State of Illinois, as a janitor at and in the Illinois State Normal University, located at Normal, Illinois, at a salary of sixty-five dollars a month. That is was the duty of claimant, as such employee, to do general janitor work about the said institution, more particularly at and about the Thomas Medcalf building, one of the said University buildings.

That on said date while so in the employ of the defendant State, and while engaged in the performance of his duties as such janitor, the claimant was washing the sky-lights in said last mentioned building, and while so engaged and while exercising due care and caution for his own safety, he accidently fell through the said sky-light, a distance of fifteen or eighteen feet, striking and falling upon the chairs, desks, etc., almost demolishing the furniture, by reason of which and in consequence of which the claimant sustained permanent injuries, to-wit:

A scalp wound, three or four inches long, internal injuries and injuries to the spinal column, by reason of which and in consequence of which, he, the complainant was sick for a long time, and the ailments or injuries finally resulted in traumatic neurasthenia; that the same totally and permanently disables him for the performance of manual labor, and he claims damages therefor in the sum of five thousand dollars.

The evidence in the case is substantially as alleged in the claimant's declaration, as above indicated, and the State admits there is no evidence to contradict it. It is disclosed by the evidence that the injuries received by the fall through the sky-light resulted in extreme nervous-

ness and traumatic neurasthenia, which is explained by the attending physician to be a nervous condition following injury.

The earlier examinations of claimant by physicians did not disclose a permanent injury, but in May and as late as September 24, 1921, he was thoroughly examined by Dr. Sloan, who testified as to his mental and physicial condition, and said: "In my opinion he (meaning the claimant) is permanently disabled, and cannot be cured." There is evidence, however, to the effect that much of the trouble complained of exists in the mind of claimant.

Nevertheless, the testimony shows that his afflictions did result from the fall and that it totally incapaciated him to do manual labor, and that the injuries are permanent and incurable.

The State offers no evidence, but admits the proof as above indicated, and interposes no objection to a recommendation to the Legislature in this case, that the claimant be paid such an amount as the Court may deem just and equitable.

This Court has repeatedly held that the State was, as a matter of law, is not liable for injuries received by its employees while in its employ, and it is unnecessary to here cite authorities. However, since the passage of the Act of 1917, creating this Court, and defining its jurisdiction and duties, many cases of this character have been decided by this Court.

But, inasmuch as the State interposes no objection to the recommendation by the Court to the Legislature that the claimant be paid a sum which the Court may deem just and equitable, and the Court being of the opinion that in the interest of social justice and public welfare, that the State should compensate its employees for injuries sustained as in this case, recommend that the claimant be paid the sum of six hundred fifty-one dollars expended in his behalf in payment of the bills due for services rendered by his physicians, nurse and drug bills, and in addition thereto for his injuries, we recommend a "lump" sum of twenty-three hundred fifty dollars, making a total of three thousand and one ($3,001.00) dollars.

G. CHARLES GRIFFITHS

v.

STATE OF ILLINOIS.

Opinion filed January 17, 1922.

DISCHARGE OF EMPLOYEE—*termination of service. Possibility of dismissal.* **Employees of the State are charged with knowledge that they hold their position at the will of the appointing officer.**

NON-LIABILITY OF STATE—*failure to secure other employment.* **The State is not liable for expenses incurred, or loss sustained, by a discharged employee, in failing to secure other employment.**

Edward J. Brundage, Attorney General, for State.

This is a claim brought by the complainant growing out of his position as superintendent and managing officer of the St. Charles School for Boys, an institution under the control of the State of Illinois. It appears that complainant entered into such employment and continued to act in same for a period of time as stated by complainant at the will of said defendant. It appears that such employment began on the 17th day of November 1915; that early in September, A. D. 1917, the complainant was informed that his services would be dispensed with as such superintendent and managing officer; that a successor had been selected. The claimant further complaining alleges at the time of such notice it was too late to secure a re-assignment as principal of a school in the City of Chicago; that claimant had entered his children in the Geneva *High School at Geneva, Illinois*; after receiving said notification of dismissal he withdrew his children from the Geneva High School at Geneva and entered them in the Austin High School at Chicago; that said claimant claims that he rented a residence for his wife and family in Chicago, thus requiring a large sum of money for rent and for their support and maintenance; that for a period of more than five months the plaintiff claimed that he was obliged to support and maintain and educate his family in Chicago to the end that his said children's advancement in school by a change in the middle of a school term would not be interfered with and that by reason of the same the defendant the State of Illinois became liable to pay the said plaintiff the sum of $1,000.00; the Attorney General comes and defends and denies liability on the part of the defendant, the State of Illinois. It appears to this Court that the complainant was well aware of the customs and arrangement controlling appointive position such as the one he held, in fact he admits that his appointment continued at the will of the appointing officer and consequently the possibility of his dismissal under the circumstances that actually took place, was within the knowledge of the

complainant at the time he entered the employ of the defendant. Of course another element that would enter into the equity of the situation was the right the complainant had to resign from his position at any time and while this might serve to be a disadvantage to the defendant and its institution at St. Charles, yet there would be no redress against the complainant and we assume no claim would be made by the State in such a contingency and while it is to be regretted that the complainant and his family was discommoded through the arrangement had, yet this Court fails to see any authority vested in it to make a charge upon the taxpayers of Illinois under this claim.

It is therefore ordered by the Court that said claim be disallowed.

J. WILL HUNSAKER

v.

STATE OF ILLINOIS.

Opinion filed January 11, 1922.

RESPONDEAT SUPERIOR—*doctrine not applicable to State.* The State is not liable for injuries received by its employees, unless made so by statutory provision.

REIMBURSEMENT—*State not liable for medical services and expenses, etc.* Nor is the State liable for medical services and expenses incurred, or for loss of time resulting from injuries received by its employees.

ACT OF SOCIAL JUSTICE—While no legal liability may exist against the State the Court may as an act of social justice recommend to the Legislature an allowance to claimant.

Edward J. Brundage, Attorney General, for State.

These two cases will be considered together, as they are between the same parties, and grow out of the same accident.

This claimant, on December 29th, 1920, was in the employ of the State of Illinois, under the Department of Public Works and Buildings as a millwright, assisting to install a heavy piece of machinery in connection with a limestone crusher, at the penitentiary at Chester. In attempting to avoid being struck by said piece of machinery which by accident had fallen while being raised into position, claimant jumped some twelve (12) feet to the ground into a concrete pit, injuring his left foot. The evidence shows that his ankle was dislocated and a bone in the instep was broken or fractured. Claimant claims a permanent and complete loss of the use of his said foot, and his claim in this respect is to some extent supported by the medical testimony.

Claimant has made two claims. Case Number 23 is an action brought for thirteen hundred and twenty-four dollars ($1,324.00) for money paid out for medical services and expenses, and for loss of time while recovering from the injuries, and case Number 24 is for damages for permanent injuries resulting from the accident, amounting to thirty-six hundred and fifty dollars ($3,650.00).

The Attorney General has filed a demurrer to the declaration in both of these cases, setting up that the State is not liable to claimant for the reason that the doctrine of *respondeat superior* is no applicable to the State, and in the absence of Statute, the State is not liable for the torts of its officers, agents or employees, and is not liable for injuries to those in its employ.

These doctrines have been upheld in many previous decisions of this Court and it is not necessary to cite any authorities in support thereof.

The claims are therefore rejected, as under the law, the State is not liable to claimant.

However, regardless of legal liability, claimant has sustained injuries as a result of this accident, and the Court recommends to the Legislature an allowance to claimant, as an act of social justice, of the sum of two thousand dollars ($2,000.00).

INTERSTATE IRON AND STEEL COMPANY

v.

STATE OF ILLINOIS.

Opinion filed May 9, 1922.

FRANCHISE TAX—*when entitled to refund.* Where a corporation pays its annual franchise tax for the current year, but prior to such payment it had filed with the Secretary of State a certificate of decrease of its capital stock the franchise tax should be based upon the capital stock as decreased, and it is entitled to a refund of the difference in the amount paid on the capital stock as shown by its annual report and the amount to be assessed on its capital stock as decreased.

Edward J. Brundage, Attorney General, for State.

The claimant has filed its petition for a refund of ninety-nine dollars and five cents ($99.05) for excess franchise tax paid on its capital stock for the year beginning July 1st, 1920. Claimant paid thirty-five hundred dollars ($3,500.00) as a franchise tax for the year commencing July 1, 1920, on its capital stock of seven million dollars ($7,000,000.00), but prior thereto, to-wit: On April 26th, 1920, it had filed in the office of the Secretary of State a certificate of decrease of its stock to six million, eight hundred and one thousand, nine hundred dollars ($6,801,900.00), and this is the amount on which the franchise tax should have been paid, amounting to thirty-four hundred dollars and ninety-five cents ($3,400.95). The over-payment of $99.05 should be refunded and is a proper allowance against the State.

The Attorney General has entered his appearance and consent to the allowance of this claim, and it appears from copy of letter on file that the Secretary of State admits that there was an excess payment and that there is a refund of $99.05 due the claimant.

Claimant is therefore allowed the sum of $99.05.

THE MONROE BINDER BOARD CO.

v.

STATE OF ILLINOIS.

Opinion filed May 9, 1922.

FRANCHISE TAX—*when claimant entitled to a refund.* **There being no dispute as to the facts and law governing this case the Court enters an order in favor of claimant for the amount of his claim.**

Edward J. Brundage, Attorney General, for State.

This is a claim brought by the Monroe Binder Board Co., of Monroe, Michigan for a refund of a certain franchise tax amounting to one hundred sixty-seven dollars and eight cents ($167.08). No objection or defense of the claim is interposed by or on behalf of the State and the honorable Attorney General consents to an award herein in the sum of one hundred sixty-seven dollars and eight cents ($167.08). Therefore said sum is hereby allowed.

WESTERN ELECTRIC COMPANY, INC., A CORPORATION

v.

STATE OF ILLINOIS.

Opinion filed May 9, 1922.

CONTRACTS—*when the State is liable.* **Where the State through its proper officer enters into a contract for the purchase of specially manufactured articles or supplies for its use, and a mistake is made by the officer in the number of articles wanted and the vendor manufactures the articles contracted for and delivers them to the State and they are accepted by such officer the State is liable for the contract price of the articles furnished.**

Edward J. Brundage, Attorney General, for State.

The claimant, Western Electric Company, incorporated, a corporation, presents its suit to recover from defendant, State of Illinois, the sum of five hundred seventy dollars, and ninety-six cents ($570.96) alleged to be due and owing under contract between the parties.

The facts alleged in the declaration upon which suit is based, and which are admitted by the State to be true, are briefly as follows:

In June, 1920, the State of Illinois through the Department of Public Works and Buildings, through proper officer, purchased and ordered from claimant, four (4) certain items of electrical equipment, known as "Motor Starting Panels" at the contract price of $201.74, for each panel, making a total of $806.96. The claimant agreed to credit this account with $236.00 on account of other equipment returned to claimant which it did, reducing the balance claimed to be due to $570.96. The panels were made to the order of defendant, shipped to and received by defendant.

When the defendant, State, began installing the panels it was discovered that a mistake had been made by the State through its proper officers in making the said order, in that the order should have called for two (2) instead of four (4) panels. But the mistake was not discovered by the defendant, until the goods had been made to order and delivered to defendant, and ready for installation.

Upon the discovery of its mistake, the defendant endeavored to get claimant to take back the *extra* two (2) panels, which it did not need, and give credit for the purchase price, less 10 per cent, and several letters passed between the parties, relative to the matter, which letters are by stipulation, admitted in evidence herein.

The defendant asserts in its letter that the panels mentioned are carried in stock by claimant, and that therefore it would be an easy matter to sell them to other customers and insisted that two panels

should be taken back and credit given for the price of same, less 10%.

On the other hand, claimant says that while such goods are listed in the catalog still these panels are not carried in stock, but are *"Made to Order"* and that claimant would probably be unable to dispose of same. The defendant fails to show this state of facts are untrue, and that its contention is the correct one. The evidence very clearly shows that the mistake was made by the defendant and that the claimant was not at fault, and had no knowledge of the same, until long after the articles were made to order and delivered to defendant.

Under the statement of facts, as alleged by claimant, and admitted by the Attorney General for defendant to be true, we can come to no other conclusion than that the error, (which causes a small loss to the State) was solely the mistake of defendant, without fault of claimant.

It is our opinion therefore that the claims should be allowed. Accordingly, the sum of five hundred seventy dollars and ninety-six cents ($570.96) is awarded claimants against defendant.

FIRST TRUST & SAVINGS BANK OF CHICAGO, TRUSTEE OF THE ESTATE OF GEORGE L. CARMAN, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed May 9, 1922.

INHERITANCE TAX—*refund.* **There being no dispute as to the facts and law in this case, the Court enters an award for the amount of claimant's demand.**

Edward J. Brundage, Attorney General, for State.

This is a claim of the First Trust & Savings Bank of Chicago, trustee of the estate of George L. Carman, deceased, for a refund of inheritance tax in the amount of fifty-four and 10/100 ($54.10) dollars, together with interest at the rate of 3 per cent per annum from August 8, 1914. No objection or defense of the claim is interposed by or on behalf of the State and the Attorney General representing defendant, consents to an award in the sum of fifty-four and 10/100 ($54.10) dollars, together with interest at the rate of three per cent per annum from August 8, 1914.

We therefore award the claimant the sum of fifty-four and 10/100 ($54.10) dollars, together with interest at the rate of three per cent per annum from August 8, 1914, to date when an appropriation to pay this amount is available.

PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS

v.

STATE OF ILLINOIS.

Opinion filed May 9, 1922.

CONTRACT—*no available funds for payment.* **Where a contract entered into between the State and contractor has been completed but before payment is made the appropriation out of which payment is to be made lapses, a legal obligation arises against the State for the contract price.**

Edward J. Brundage, Attorney General, for State.

The claimant, an Illinois corporation, in the year of 1920 amongst other things, engaged in the selling and distribution of water to the defendant, State of Illinois, in and in the vicinity of Pontiac, Illinois.

While thus engaged, claimant as a part of its Public Utility business, sold and delivered to defendant for its use at the Illinois State Reformatory at Pontiac, from the 29th day of September, A. D. 1920, to the 29th day of October, A. D. 1920, six million seventy-four thousand seven hundred and seventy-five (6,074,775) gallons of water, for which the State agreed and promised to pay claimant nine hundred forty-one dollars and fifty-nine cents ($941.59) being amount due under contract price at thirty-one cents per 1,000 gallons, less a discount of 50 per cent. When bill was presented, there seemed to be some little errors, and when finally corrected, and presented for payment, the time had elapsed for payment of the appropriation made to pay for such service, and it becomes necessary to present this case to this Court for adjudication.

The claim has the approval of the proper officials, and the Attorney General concedes in his statement herein, that said sum is due from defendant to claimant.

The Court therefore awards to claimant, the said sum of nine hundred forty-one dollars and fifty-nine cents ($941.59).

CENTRAL TRUST COMPANY OF ILLINOIS, EXECUTOR OF THE ESTATE OF GEORGE H. CLARK, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed May 9, 1922.

INHERITANCE TAX—*when claimant entitled to a refund.* **There being no dispute as to the facts and law governing this case the Court enters an order in favor of claimant for the amount of his claim.**

Edward J. Brundage, Attorney General, for State.

This is a claim of the Central Trust Company, of Illinois, executor of the estate of George H. Clarke, deceased, for a refund of inheritance tax in the amount of five thousand two hundred twenty-eight and 24/100 ($5,228.24) dollars, together with interest at the rate of three (3) per cent per annum from July 20th, 1920. No objection or defense of the claim is interposed by or on behalf of the State and the Attorney General representing defendant; consents to an award herein in the sum of five thousand two hundred twenty-eight and 24/100 ($5,228.24) dollars, together with interest at the rate of three (3) per cent per annum from July 20, 1920.

We therefore award the claimant the sum of five thousand two hundred twenty-eight and 24/100 ($5,228.24) dollars, together with interest at the rate of three (3) per cent per annum from July 20th, 1920, to date voucher is issued upon appropriation by Legislature.

JAMES G. DAVIS, DIRECTOR GENERAL OF RAILROADS AND AGENT APPOINTED BY THE PRESIDENT OF THE UNITED STATES PURSUANT TO THE TERMS OF THE TRANSPORTATION ACT OF 1920.

v.

STATE OF ILLINOIS.

Opinion filed May 9, 1922.

FREIGHT CHARGES—*liability of State.* The State is liable for freight charges for transportation of coal by claimant to State Institution.

Edward J. Brundage, Attorney General, for State.

This is a claim of James G. Davis, Director General of Railroads and agent appointed by the President of the United States pursuant to the terms of the Transportation Act of 1920, for freight charges for transportation of coal during March and April 1918, over C. P. & St. L. R. R. to Illinois School for the Deaf, Jacksonville, Illinois, in the sum of two hundred eighty-eight and 65/100 ($288.65) dollars. No objection or defense of the claim is interposed by or on behalf of the State and the Attorney General representing defendant, consents to an award herein in the sum of two hundred eighty-eight and 65/100 ($288.65) dollars.

We therefore award the claimant the sum of two hundred eighty-eight and 65/100 ($288.65) dollars.

ESTHER FRIEDLANDER, ET AL., EXECUTORS OF THE ESTATE OF GUSTAV FRIEDLANDER, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed September 11, 1922.

INHERITANCE TAX—*when refund will be made. Sec. 25.* The County Judge assessed an inheritance tax upon certain contingent interest under Section 25, Inheritance Tax Law. The tax was paid. Afterwards upon proper proceedings the County Court entered an order finding that the contingent interests had become vested, and the tax was re-assessed. *Held*, claimant entitled to a refund of the difference between the amount paid under the original assessment and the amount of tax found to be due under the re-assessment made by the County Court.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of $1,107.73 on inheritance tax assessed by the County Judge of Cook County, Illinois, in the estate of Gustav Friedlander, deceased, upon certain contingent interests under Section 25 of the Inheritance Tax Law.

The contingent interests have now vested and claimant has secured an order from the County Court of Cook County, re-assessing the inheritance tax and finding such contingent interests to have vested. The total amount of tax originally paid on June 12, 1917, less five per cent discount, was $2,025.47. The amount of the re-assessment, less five per cent discount, is $917.74, leaving $1,107.73 to be refunded, therefore, with interest thereon at three per cent per annum from said June 12, 1917.

The Attorney General has filed a statement in this case, admitting the facts above set forth, and consenting to the allowance of said claim for the amount above mentioned.

Claimant is therefore awarded the sum of $1,107.73 with interest at the rate of three per cent per annum from June 12, 1917, until paid.

LOGAN BAKER

v.

STATE OF ILLINOIS.

Opinion filed September 11, 1922.

RESPONDEAT SUPERIOR—*doctrine not applicable to State.* The State is not liable for injuries sustained by its employees while in the discharge of their duty.

WORKMAN'S COMPENSATION ACT—*not applicable to the State.* The provisions of the Workman's Compensation Act are not binding upon the State, it having never elected to pay compensation under said Act.

NON-LIABILITY OF STATE—*not liable for acts of an independent agency.* Where claimant is injured by an independent agency not connected in any way with the State, or its institutions, no liability can arise against the State for such injuries.

Edward J. Brundage, Attorney General, for State.

The claimant, Logan Baker, was on December 7th, 1920, an inspector in the Division of Game and Fish of the State of Illinois, at a salary of one hundred and fifty dollars ($150.00) per month.

On that date, while traveling by train from Pittsfield, Illinois, to Meredosia, Illinois, and when leaving the train at Bluffs, Illinois, to change cars, he caught the third finger of his right hand in the door of the car and had about one-half an inch of the end of his finger cut off.

The evidence shows that claimant was standing at the door, with his hand up against the door jam, when the door, which had been open, was by a sudden stopping or jerking of the train suddenly and forcibly closed. Claimant received prompt medical treatment for this injury. A portion of the finger was amputated with some of the bone. Claimant paid out for surgical and medical aid the sum of thirty-eight dollars ($38.00); was wholly disabled for five (5) weeks, but received his salary during that time.

Claimant states that he is permanently disabled and asks for an award in accordance with the Workman's Compensation Law of this State.

As has been held in many decisions of this Court, the State is not liable for injuries received by its employees in the course of their employment. While the allowance provided for in the Workmen's Compensation Act have to some extent been followed by this Court in making recommendations as a matter of social justice where no legal liability existed, yet this Court has held that the Workmen's Compensation Act does not apply to the State, and that the provisions of said Act are

not binding in any way upon the State. The State has never elected to pay compensation under said Act.

Under the facts in this case, we do not believe that the injuries received by claimant were sustained in the course of his employment. He was a passenger on this train, going from Pittsfield to Meredosia to perform certain duties in the line of his employment at the latter place. The injuries received by him were received from an independent agency and not from anyone in any way connected with the State, and the State is not liable in any way to claimant, and the claim is therefore rejected.

However, as an act of social justice and equity, we recommend to the Legislature that if it sees fit, it allow claimant the sum of three hundred dollars ($300.00).

MATHILDA MOORE

v.

STATE OF ILLINOIS.

Opinion filed September 11, 1922.

SOCIAL JUSTICE AND EQUITY—*claim may be allowed on ground of social justice and equity.* Claimant while in the performance of her duty as an employee in the Illinois Eye & Ear Infirmary at Chicago, was injured while operating an elevator in the institution. *Held*, that while there exists no legal liability against the State by reason of the injury received, as an act of social justice and equity, claimant is entitled to an award.

Edward J. Brundage, Attorney General, for State.

The claimant, Mathilda Moore, files claim herein for damages resulting from a sprained, bruised and lascerated ankle and leg, incurred while she was in the employ of the State in The Illinois Eye & Ear Infirmary in Chicago.

She alleges that while in line of duty, and without fault on her part, she tripped and fell, injuring her ankle, which gave her pain for two weeks; that later sometime in September, 1919, while endeavoring to operate an elevator, her foot was caught in the door, and she suffered sprained ankles and legs, besides lacerations and bruises on the legs which partially incapacitated her for a period of three months.

In all this, her deductions are sustained by other evidence and not contradicted by the State.

She was a widow, 51 years old, and was getting $27.00 per month. Instead of applying to the State Authorities for medical assistance, which would have been furnished gratis, she chose to have her family physician treat her, and to buy her own drugs, all of which amounted to about $85.00. Her monthly salary was paid regularly without any deductions. She was disabled from the performance of her duties only three weeks, and went back to work, but suffered pain and inconvenience for three months after the accident.

It is very clear that the injuries were not very serious, and that they resulted in no permanent disability to claimant. She was back at her work in three weeks, and entirely well in three months.

While this Court has repeatedly held in this class of cases that the State is not liable, yet in view of the advanced age and poverty of claimant, and in the interest of social welfare and equity, we have decided to make a small allowance for claimant, and we recommend the payment of two hundred dollars.

EBEN P. CLAPP

v.

STATE OF ILLINOIS.

Opinion filed September 11, 1922.

INHERITANCE TAX—when refund will be made. Under the fact proved and admitted by the State, the Court awards claimant the amount of inheritance tax over-paid.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of certain inheritance taxes assessed by the County Judge of Cook County, Illinois, in the estate of Mary N. Clapp, deceased.

At the death of said deceased, she left surviving; her husband, the claimant, Eben P. Clapp, who took out letters of administration, and one child, Matthew N. Clapp, a minor son, as her only child, and only heirs at law her surviving. Claimant was also appointed guardian of said Matthew N. Clapp.

The claim is based upon an order of the County Court of Cook County upon an appeal from the order of the County Judge aforesaid, reducing the assessment so erroneously made by the County Judge.

The appeal was taken in due time, and the evidence and facts submitted in the case and admitted by the State, and are as follows:

Mary N. Clapp, decedent, died March 31st, 1920, Inheritance Tax assessed by County Judge of Cook County, September 30th, 1920, less 5% discount. Order entered by Court on appeal May 4th, 1921.

Eben P. Clapp:

Amount assessed by County Judge.....	$66,046.27	
Amount paid under said assessment.....		$62,713.95
Amount assessed by County Court on appeal..	$63,953.49	
Amount due under order on appeal.....		$60,755.82
Refund due Eben P. Clapp, individually.....		$ 1,988.13

Matthew N. Clapp, minor:

Amount assessed by County Judge.....	$150,492.55	
Amount paid under said order.....		$142,967.92
Amount fixed by County Court on appeal...	$146,306.97	
Amount due under said order.....		$138,991.62
Refund due Eben P. Clapp, guardian of Matthew N. Clapp, minor		$ 3,976.30

The Court under above facts, accordingly award to Eben P. Clapp, individually, $1,988.13; and to Eben P. Clapp, guardian of Matthew N. Clapp, minor, $3,976.30.

AMERICAN EAGLE FIRE INSURANCE CO.

v.

STATE OF ILLINOIS.

Opinion filed September 11, 1922.

INSURANCE TAX—*when refund will be made. Mistake of fact.* Where the tax is paid under a mutual mistake of fact, or where paid on an oversight the claimant is entitled to a refund of the tax paid.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of $2,125.16 paid by the claimant to the Department of Trade and Commerce, May 18, 1921, as the Insurance privilege tax of the claimant for the year ending June 30, 1922.

The claim for refund is based on the assumption that the payment was made by reason of a mutual mistake of fact or an oversight. This appears to be the position of the Attorney General representing defendant. The Attorney General accordingly consents to awarding the claimant.

We, therefore, award the claimant the sum of $2,125.16 without interest.

SWIFT AND COMPANY

v.

STATE OF ILLINOIS.

Opinion filed September 11, 1922.

CONTRACTS—*when State liable for supplies.* **The State is liable for merchandise furnished by claimant to its institution.**

Edward J. Brundage, Attorney General, for State.

This is a claim for goods and merchandise furnished by claimant and consisting of eggs and soap sold to the Illinois Soldiers' and Sailors' Home at Quincy by the claimant from September 29, 1920, to December 7, 1920.

The Attorney General comes and appears in behalf of the defendant, consents to the allowance of said claim in the sum of $607.75.

We, therefore award the claimant the sum of $607.75 without interest.

MINNIE B. MOORE

v.

STATE OF ILLINOIS.

Opinion filed September 11, 1922.

INHERITANCE TAX—*when claimant entitled to refund.* Under the facts proven and admitted by the State, the Court enters an award for refund of inheritance tax paid under Section 25, Inheritance Tax Law.

Edward J. Brundage, Attorney General, for State.

This is a claim under section 25 of the Inheritance Tax Law, for refund of a portion of the inheritance taxes assessed in the estate of David B. Googins who died a resident of Cook County, June 12, 1919.

The order of the County Judge of Cook County, assessing the inheritance tax was entered December 5, 1919, and the entire residue and remainder in the estate after the life estate and award of the widow, was distributed for the purpose of the assessment to Minnie B. Moore, the amount of the assessment against her being $917.50.

Such tax, less 5% discount for payment within six months, to-wit: $871.62 was, on the 10th day of December, 1919, paid to the County Treasurer of Cook County, Illinois, by the claimant herein.

Subsequently, to-wit: July 5, 1920, the widow died and all but $10,000.00 of the said remainder vested indefeasibly in four children of said decedent, to-wit: the claimant, Minnie B. Moore, Joseph B. Googins, Celia E. Vansant and Florence G. Miller, and thereafter, the County Court of Cook County entered an order reassessing the tax on said remainder at $54.38 against each of the said four children with the addition of the sum of $100.00 against Minnie B. Moore by reason of the contingencies applying to the said $10,000.00 trust fund.

Thus a total tax of $317.52 was assessed against said remainder, the sum due thereunder being said sum less 5% discount, $301.64. The claimant, having paid the sum of $871.62, is now entitled to a refund of $569.98 with interest at the rate of 3% per annum from the date of payment, December 10, 1919.

The Attorney General has filed a statement, admitting the above facts, and consenting to the allowance of said claim.

Claimant is therefore awarded the sum of $569.98, together with interest thereon at the rate of three per cent per annum, from December 10, 1919.

JOHN OHMSGERDS

v.

STATE OF ILLINOIS.

Opinion filed September 11, 1922.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in conducting the Illinois State Penitentiary at Joliet exercises a governmental function and is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*recommendation.* Where an employee is injured while in the performance of his duty, the Court as a matter of social justice and equity may recommend to the Legislature an appropriation for his benefit.

Edward J. Brundage, Attorney General, for State.

This is a suit for damages resulting from injuries incurred by claimant from an attack upon him by three convicts while in the lawful discharge of his usual and assigned duties as guard in the Illinois State penitentiary at Joliet, Illinois, one of the institutions of the State of Illinois.

The claimant was in the employ of the State as a guard at the above named penitentiary on a salary of $125.00 per month, and on the 4th day of September, while so employed as a guard, and in the performance of his usual duties, while in the gallery at No. 6 in the west wing of the said penitentiary, three convicts, who had secretly made keys to open their cell doors in said gallery, where they were stationed, opened the doors of their cells and suddenly without warning rushed upon claimant, two approaching him from behind, and one in front of him, and assaulted him with great violence, trying to force him into one of the cells. At that moment, one of the prisoners was heard to exclaim *"God damn, let's get him now,"* when one of them drew from his clothing, a long pair of shears and endeavored to stab claimant. There being no other way or means of escape, claimant jumped off the gallery, alighting on the first landing, which was three floors below, thereby causing fractures and infraction of both feet, breaking the ankles and causing deformities of the feet, causing permanent injuries to the feet of claimant, so that he is now able to move about only by use of a cane. Claimant is a married man, having a wife and one daughter dependent upon him for support.

This evidence is substantiated by a number of other witnesses and no evidence by the State is given to contradict it.

Dr. Alfred M. Houston, a witness, testified in part, that he made an X-ray examination of both feet and ankles of claimant (which are on file in this cause, and constitutes part of the evidence herein), and

found that there was a dorsal dislocation of the proximal end of the first metatarsal on the right foot and evidence of a previous fracture involving the posterior end of the oscalcis of the left foot.

That the conditions found in both feet are causing deformities that will not adjust themselves and which cause difficulty in walking and produce loss of normal function. Dr. Fletcher, the prison physician attended from the time of the injury to December 2, 1921, and as a witness states that his examination "disclosed that there were fractures and infractions to both feet, broken arches, torn ligaments and crushed bones, and that claimant cannot walk as well as before the injury; that there is a deformity to the instep of the right foot and that it is with difficulty, and only by use of a cane, that claimant walks." David Murray also testifies that claimant "walks with a cane." Claimant was in the hospital five weeks, and on being released returned to his work as guard, at same rate of pay as before injury he received. During the entire time he was so incapacitated, he received his regular monthly wages of $125.00 per month. There being nothing in the record to contradict it, is presumed that claimant's medical, surgical and hospital services were furnished him gratis by the State.

In his brief and argument, claimant claims compensation for total incapacity for right foot and 25% partial incapacity of left foot.

The evidences discloses that so far, the claimant lost no money or wages on account of his injuries, nor has he incurred any medical expense, no hospital nor nurse bills, all having been paid for by the State. The claim then, if any, goes only to the permanent disability, and not to the total temporary disability or medical expense.

We cannot concede that the evidence shows a total loss of the use of the right foot, nor 25% loss of use of the left foot. Claimant's own evidence shows that claimant after being discharged, returned to his usual employment, as a guard, on same salary as was received before injury received, and that he walked, but with difficulty and with a cane.

Our ideas are that to be an efficient guard and able to discharge the usual duties incumbent upon him, requires a person of reasonably fair action of the feet, and limbs at least. A person of total loss of use of one foot and 25% loss of the use of the other, would scarcely be put on so important duty as an able bodied guard at full pay.

As long as his present connection with the State continues (receiving his usual salary) his earnings have not been affected by the injury. There is no evidence (except what may reasonably be deduced from the evidence as to the extent of the injury) of the loss of earning capacity in case he leaves his present employment. There is nothing in the declaration to indicate that he is a married man, has a wife or child. The evidence (claimant's affidavit, which is by stipulation admitted as evidence) discloses that claimant has wife and one child (Esther), but does not state age of child, or that it is dependent upon him for its support.

This Court has uniformally held in all cases of the character of at bar, that the doctrine of *respondeat superior* is not applicable to the State. It follows therefore that as a matter of law, the demurrer should

be sustained and claim dismissed, but we view this case as being one where claimant was badly crippled without fault on his part, while in the lawful discharge of his duties as an employee of the State, which at least entitles claimant to equitable relief.

Therefore from an equitable view point and in the interest of social welfare, we recommend to the Legislature that it make an appropriation for claimant in the sum of fifteen hundred dollars.

MERCHANTS LOAN & TRUST CO., ADMINISTRATOR OF THE ESTATE OF LILLIE BILLOW, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed September 11, 1922.

INHERITANCE TAX—*when refund will be made.* Where an inheritance tax is assessed by the County Judge, and is paid, and upon appeal to the County Court it is found that no inheritance tax is due the State, the claimant is entitled to a refund of the tax paid.

Edward J. Brundage, Attorney General, for State.

The claimant prosecutes this suit to recover an inheritance tax erroneously assessed and erroneously paid on the estate of Lillie Billow, deceased.

The evidence of record discloses and same is conceded by the State, that said estate was assessed by County Judge in the sum of $3,363.09, which under protest was paid by administrator, less 5%, making $3,194.94. In due time, this order was appealed to the County Court, which found that no inheritance tax was due to the State from said estate, and ordered a refund of the $3,194.94, less $35.00 cost of the prosecution of said appeal, which was adjudged against the appellant.

This proceeding was never appealed from.

The Attorney General consents to the allowance of the claim of $3,194.94, less $35.00 making $3,159.94.

The interest contended for will be disallowed and an award of $3,159.94 ordered paid to the claimant.

SOPHIE JONES AND JOSEPH MARTIN JONES, BY SAID SOPHIE JONES, HIS MOTHER AND NEXT FRIEND

v.

STATE OF ILLINOIS.

Opinion filed September 11, 1922.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in conducting the Illinois State Reformatory exercises a governmental function and is not liable for injuries sustained by its employees while in the discharge of their duty.

SAME—*State not liable for torts of inmates of its institutions.* The State is not liable for torts committed by inmates of its institutions.

SOCIAL JUSTICE AND EQUITY—*when award will be made.* Although the State is not liable, where the employee sustains an injury while in the performance of his duty, the Court will as an act of social justice and equity enter an award in favor of claimant.

Edward J. Brundage, Attorney General, for State.

This claim is presented by claimants on account of the killing of John S. Jones, an employee of the defendant at the Illinois State Reformatory at Pontiac, Illinois. The act complained of occurred at that institution on June 15th, 1922. It appears that the deceased was a young man about 38 years of age, able bodied and in excellent health at the time of his death. It further appears that he was employed at the Illinois State Reformatory about two years; that he was in charge of what is known as the "yard gang" at that institution, and while he was in charge of his duties an inmate of said institution named Corbridge, came upon Jones while Jones' back was turned and struck him a blow on the back of his head with an iron gas pipe. Jones fell to the floor and Corbridge hit him repeatedly upon the head, neck and face with the gas pipe and as the result of such assault, Jones expired shortly after the assault was made, and as a result of the assault.

The said deceased Jones left as his only heirs and next of kin Sophie Jones, his widow, and Joseph Martin Jones his minor child, who are the claimants in this cause.

The Attorney General appearing in behalf of the defendant and represents to this Court that there is no dispute about the material facts in this case, assuming however that a demurrer would be sustained. This Court is of the opinion that the demurer should be sustained and that the recommendation of this Court and its award herein, can only be considered as a matter of equity and social justice.

In this case it is uncontradicted that the employee Jones while in the employ of the State of Illinois and in the discharge of his duties, was engaged in a hazardous occupation, and as this Court has hereto-

fore announced, the State of Illinois desires to have faithful, efficient and courageous men in charge of the inmates of the various institutions of the State and should therefore accord the employes of the State Institution or their dependents the same consideration at least as is given to the employes of private corporations or individuals. However, it is the opinion of the Court that only under unusual circumstances should this Court depart from the rules of the Workmen's Compensation Act as a measure in the allowance of claims of this character against the State of Illinois. It is of course the belief of this Court that the element of social justice and equity is very prominent in this case and consequently it is our desire to be as liberal as the rules and circumstances will permit.

It is therefore the opinion of this Court that the demurrer of the defendant should be sustained but the Court in view of the principals of equity and social justice for the furtherance of which this tribune was established, is justified in recommending an allowance to the claimants in this case.

It is therefore recommended by this Court that a sum of two thousand five hundred dollars be allowed by the State of Illinois and paid to the legal guardian of the minor child Joseph Martin Jones for the exclusive benefit of said child and that the five thousand dollars be allowed and paid to Sophie Jones, widow in this case for her exclusive benefit.

NORTHERN TRUST COMPANY, TRUSTEE, ESTATE OF EDWARD W. MCCREADY

v.

STATE OF ILLINOIS.

Opinion filed September 11, 1922.

INHERITANCE TAX—*refund made under Section 25.* Under the facts proven and admitted by the State claimant is entitled to a refund, under Section 25, Inheritance Tax Law, to the amount of its claim.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund under Section 25 of the Inheritance Tax Law of a certain amount of the inheritance tax assessed and paid on the estate of Edward W. McCready, deceased.

It appears that decedent died a resident of Cook County in September, 1919, leaving a last will and testament, and as his only heirs at law and next of kin, Caroline P. McCready, widow and daughter, Suzanne McCready. The residue of the estate was devised to the Northern Trust Company as trustee. The Trust Company was to manage the property and pay the income from one-half thereof to the widow during her life and the income from the other half to the daughter for her life.

In the inheritance tax proceedings had on said estate, the remainders over were contingent or defeasible and were in such inheritance tax proceedings, taxed at the highest possible rate. Afterward the daughter died leaving her mother Caroline P. McCready as her only heir, whereby under the terms of the will, the remainder in one-half of the said residue of the estate, became vested indefeasibly in the said Caroline P. McCready. Whereupon pursuant to petition in the County Court of Cook County of which the Attorney General had proper notice, an order was entered re-assessing the tax upon said remainder.

The total inheritance tax assessed in the estate by the original order was $29,323.50, which amount less 5% discount was duly paid March 12th, 1920.

The total tax assessed by the order of re-assessment was $25,923.16, which amount less 5% discount, to-wit: $24,627.00 was the amount due thereunder.

The Attorney General coming and defending makes no objection to this claim and agrees that claimant is entitled to a refund of $3,230.33, together with interest at the rate of 3 per cent from March 12th, 1920.

We, therefore award the claimant the sum of $3,230.33 together with interest at the rate of 3 per cent per annum from March 12th, 1920.

THE MERCHANTS LOAN AND TRUST COMPANY, AS TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF FREDERICK WHITNEY NEWALL, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed September 11, 1922.

INHERITANCE TAX—*when claimant entitled to refund.* There being no dispute as to the facts and the law governing this case the Court enters an award in favor of claimant for the amount of the claim, with interest thereon.

Edward J. Brundage, Attorney General, for State.

This is a claim under section 25 of the Inheritance Tax Law for refund of a portion of the inheritance tax in the estate of Frederick Whitney Newhall, deceased.

The essential facts are as follows: Said decedent died testate August 28, 1914, a resident of Cook County, and the claimant was appointed executor, acted as such and is now acting as trustee under the will. In the inheritance tax proceedings in the estate one-third of the net estate, being subject to certain contingencies, was assessed at the highest possible rate under section 25 of the Inheritance Tax Law on the assumption it would ultimately vest in a stranger, the tax so assessed being one hundred fifty-nine and 05/100 dollars ($159.05). Said tax together with interest at the rate of 6% per annum from decedent's death, to-wit: $20.41, was duly paid by the executor October 16, 1916, the total payment being one hundred seventy-nine and 46/100 dollars ($179.46). Said one-third of the net estate on February 26, 1922, became vested and indefeasible in Myrtle Newhall and Elinor Newhall, daughters of an adopted son of said decedent. Thereafter, an order was entered by the County Court of Cook County which was approved by the Attorney General, reassessing the inheritance tax in said estate in which it was ordered that no inheritance tax is due upon said one-third of the estate.

The Attorney General has filed a statement, admitting the above facts, and consenting to a refund of $179.46, together with interest on same at the rate of 3% per annum from October 16, 1916.

Claimant is therefore awarded the sum of $179.46, together with interest at the rate of three per cent per annum from October 16, 1916.

LOUIS J. BADEN, ET AL. TRUSTEES UNDER WILL OF JOHN BADEN, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

INHERITANCE TAX—*when refund will be made.* Under the facts proven and admitted by the State claimant is entitled to a refund of inheritance tax paid under Section Twenty-five (25) Inheritance Tax Law.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of inheritance tax, by Louis J. Baden, and Charles F. Loerch, trustees under the last will and testament of John Baden, deceased: and payment of the amount of $413.68, with interest thereon at the rate of 3% per annum from June 19th, 1914, is consented to in his reply by the Attorney General.

Under the will, the entire residue of the estate was placed in trust, claimants being named as trustees until decedent's youngest child should attain the age of twenty-one years, who became of age April 2d, 1917.

April 28th, 1914, an inheritance tax was assessed in said estate of $63,544.60 against 2/3 of the residue of the trust property subject to such contingencies as might arise under section 25 of the Inheritance Tax Law.

When the said youngest child reached his majority, the property became by law, divisable to all the legatees, and it is ascertained that the share of no one of the said children would equal $20,000.00.

It is therefore manifest that no inheritance tax is due in said estate. The evidence introduced sustains the declaration, and an award is hereby made to claimants in the sum of $413.68, with interest thereon at the rate of 3% per annum, from June 19th, 1914.

JOSEPH TILLER

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

GOVERNMENTAL FUNCTION—*State is not liable for injuries sustained by an inmate of its institutions during the period of his confinement.* The State in conducting the Joliet Penitentiary exercises a governmental function and is not liable for injuries sustained by the inmates thereof during the period of their confinement.

WORKMAN'S COMPENSATION ACT—*Sec. 5 (Session Laws, 1913, page 340) construed.* The word "employee" as used in the Workman's Compensation Act of 1913, means:

1. Every person in the service of the State under appointment, or contract for hire, express or implied, oral or written, except any official of the State, etc.

2. Every person in the service of another under any contract or hire, express or implied, oral or written.

CONTRACTUAL RELATION—*does not exist between State and inmates of its institution.* Claimant when convicted of crime and sentenced to the State Prison, forfeited his liberty and civil rights, his right to contract and be contracted with—all are suspended during his confinement as a part of the penalty for his crime; and no contract of employment for hire, express or implied, exist between him and the State.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by Joseph Tiller, claimant, an inmate of Joliet State penitentiary of Illinois for compensation for alleged injuries incurred by him while serving, under sentence, and doing time as a convict under the laws of the State.

The facts, as disclosed by the evidence are briefly stated, and are as follows:

On December 31st, 1914, while an inmate of the State penitentiary at Joliet, the claimant who had been assigned the duty of "Ash-pit man," while in the act of cleaning out the ashes from the pit, was badly burned by steam, ashes, etc. The pit, early in the morning, had become filled with water from the boiler, out of which, the flue had blown a short time prior to the accident.

At the request of the chief (officer we suppose) who asked for volunteers to go down in the ash pit and clean it out, claimant volunteered to undertake the job. It is stated in the declaration and argument of counsel for claimant, that the cleaning out of the ash-pit at this particular time, under the particular circumstances, to-wit: The ash pit being full of water and the boiler flues blown out, was a very dangerous operation." The fires in the furnace above had not yet been cleaned out. However, in response to such call for volunteers, the claimant volun-

teered and went down into the ash-pit, which was about four feet deep in water, to clean it out. The water came up to his breast. Claimant went to the manhole to get the car in which to load the refuse from the pit, and while so doing, the fireman (whom we assume was a fellow-convict), turned the grate, releasing a large quantity of fire, ashes, etc., which fell into the water, in the pit, causing an explosion by reason of the contact of the fire and water, and the claimant was badly scalded and burned by the steam thus produced, his arms, hands, face, neck, chest, both ears partially burned off, eyelids on left eye partially burned off, left ear entirely closed up, and caused a cataract on left eye. He was entirely blind in his right eye when he was admitted as a convict in said institution, the cause of which, is not disclosed by the evidence. The sight of the left eye is damaged to the extent of ¾ of normal vision. These afflictions laid him up and he was confined in the prison hospital for eleven months. Before his incarceration in the penitentiary, he was a strong able bodied man, except he was totally blind in right eye. He has since his confinement in the prison and prison hospital, been "released," and is working in Chicago, shoveling coal. He says the prison authorities promised to help him in some way, and that he thought his claim had been filed with the Court of Claims long ago. The declaration states that he believes that this claim has never been presented to any State institution or State officer for payment.

The evidence does not disclose the full extent of his physical disability and our information as to that is mostly drawn from inference from the facts in evidence.

The attorney in his argument and brief states that claimant knew that the act of cleaning out the pit at that time was one of peril and dangerous, and that he, the claimant, was not required or coerced to undertake the "job," but that it was a voluntary act of the claimant in response, however, to a request of the "chief" for volunteer to undertake the task. The attorney classes the claimant as a hero for his attempt to perform this perilous act under circumstances very unusual and hazardous. As the flues had blown out and the pit filled with water, we assume that the cleaning out of the pit at that time was an emergency; and being done at an unusual hour, the fireman, who evidently had not been informed by claimant or any one else of his intentions to enter the pit at that time, turned the grates and let fire and ashes into the water-filled pit below while claimant was at the manhole getting the car, with results, as stated.

The claimant, is a married man, his first wife being dead, and he has married subsequent to his release. That claimant was badly and seriously injured, there can be no doubt, which might have been avoided by claimant or the "chief" giving notice to the fireman of the presence of the claimant in the ash-pit below. But this claim is brought on the theory that the claimant is entitled to compensation under the laws of the Workmen's Compensation Act, citing said Court of Claims Law, Session Laws of 1917, section 6, paragraph 6 in support of his right of action.

This case does not come under the "Workmen's Compensation Act."

The claimant's attorney defines the word "Employer" to mean the "State, County," etc., which is correct; but does not define the word "Employee" as used in said Act.

Section 5, page 340, Session Laws 1913, under what is known as "Workmen's Compensation Act," the word "Employee" is defined as follows: "The term 'Employee' as used in this Act, shall be construed to mean. First—Every person in the service of the State, County, etc., under appointment, or contract of hire, expressed or implied, oral or written, except any official of the State, etc."

The claimant was duly convicted of crime, sentenced to the penitentiary to serve his sentence. He had by his crime forfeited his right of personal liberty, his right of social and business relations with the world, his citizenship, his civil rights to contract or to be contracted with, to collect his earnings from any work he might do while serving his sentence, were suspended and his earnings go to the State, as a part of penalty for his crime. There is no employment, express or implied, for hire between the State and its convicts. The convict has no control over his time, right of occupation or money. The State authorities even prescribe the articles of food and the quantity of each kind, which shall be provided for the convicts; and shall determine the number of hours each day they shall be required to labor. Smith's Illinois Revised Statute 1921, chapter 108, section 13.

The labor of the convict is under the direction of the warden, and goes toward keeping up the expenses of the operation of the penitentiary. Smith's Rev. State, 1921, chapter 108, section 19.

On his discharge, each convict is furnished a suit of clothing, transportation, and $10.00 cash, and whatever small incidental allowances he may have earned by working overtime while hired or leased out to some contractor. Section 21, same chapter, same Statute. This is by consent of warden, and under his supervision. Chapter 108, penitentiaries show clearly the relation of State and its convicts.

Harper's Workmen's Compensation second edition, page 185, section 98 says: It has been said "Employer" and "Employment" are not of the technical language of the law or any science or pursuit and must therefore be construed according to the context and approved usage of language.

Accepting the term therefore in its ordinary signification, an employer is held to be one who uses or engages the services of another for pay. An "Employee" has already been defined by Statute to mean a person in the employ of another, under contract for hire. To pass a law making the State liable for injuries or death to convicts occurring while serving sentence would not tend to the betterment of the economic condition in the State.

It would open a floodgate for the prosecution of numberless questionable claims by an undesirable class of people; most of whom care but little for themselves or the interest of others, or the laws of the State.

The State is not an industrial insurance company for its convicts.

Such laws, if passed, would be contrary to public policy and void. While we sympathize with this claimant in his injured condition, yet we cannot find a shadow of law, whereby he may maintain a claim.

The doctrine of *respondeat superior* is not applicable to the State in this case.

Henry Henke v. *State*, Vol. 2, page 11, C. of C. and cases cited.

Schmidt v. *State*, 1 Court of Claims, page 76.

The claimant does not show a legal or equitable cause at action.

For the reasons set forth, the demurrer is sustained, and that case dismissed.

J. S. LOVELLETTE

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in conducting the St. Charles School for Boys exercises a governmental function and is not liable for injuries received by its employees in the discharge of their duty.

REIMBURSEMENTS—*when reimbursement will be made.* While no legal liability exists against the State, as an act of social justice and equity the Court may award to claimant compensation to reimburse him for various sums of money expended incident to the death and burial of his wife.

Edward J. Brundage, Attorney General, for State.

This claim was filed in this Court by J. S. Lovellette, husband of Grace E. Lovelette, deceased, who had been an employee of the State of Illinois, at the St. Charles School for Boys, at St. Charles, Illinois, from March 14th, 1914, up to and including the date of her death.

The facts in this case are not disputed. The testimony shows that Grace E. Lovellette was employed as, what is known as, a House Mother in the St. Charles School for Boys, owned, maintained and controlled by the State of Illinois; that she was the wife of the claimant, who was also employed at said State institution; that on February 11th, 1921, one of the inmates, Franklin Gossett, attacked Mrs. Lovellette with a heavy iron bar, commonly used as a shaker for the furnace in the cottage at which Mrs. Lovellette resided, and that on February 13, two days later, Mrs. Lovellette died. Franklin Gossett was arrested, confessed to the murder and was duly convicted and sentenced for murder in the Circuit Court of Kane County.

The claimant, in his petition states and the testimony shows that he spent a large sum of money for funeral expenses, railroad fare, the transportation of his wife's remains, for cemetery lot, tumbstone, etc.

Claimant does not claim to be dependent, he, on the contrary admits that he is not. He does not claim damages under the Workmen's Compensation Act. There can be no question but what there is no liability on the part of the State of Illinois, even if the Workmen's Compensation law applied. This question has been decided in numerous cases heretofore passed on by this Court.

The Attorney General, on behalf of the State of Illinois, has filed a demurrer which demurrer, as a matter of law will be sustained.

The Court has carefully reviewed the evidence presented in this case and we find that there is no liability on the part of the State of Illinois.

We find that the claimant has paid out various sums of money for the burial of his wife and other expenses attending her death and burial and that as a matter of social justice and equity he should be reimbursed.

We therefore recommend an award to the claimant in the sum of fifteen hundred dollars ($1,500.00).

JOHN D. SMIDDY

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in conducting the Illinois State Reformatory at Pontiac exercises a governmental function, and is not liable to its employees for injuries sustained through the tortious act of an inmate of the institution.

SOCIAL JUSTICE AND EQUITY—*when allowance will be made.* Although there may be no legal liability against the State where the facts and circumstances justify the Court will as an act of social justice and equity enter an award in favor of claimant.

Edward J. Brundage, Attorney General, for State.

This is a claim for compensation for injuries received by the claimant while in the performance of duties as a guard at the Illinois State Reformatory at Pontiac, Illinois on April 9, 1918, and again while acting as a guard and superintendent of a squad of prisoners from the Illinois State Penitentiary at Joliet, Illinois, who were doing sewer ditch work at the Illinois State Colony near Dixon, Illinois. There is no dispute as to the facts in the case. The claimant then a man 58 years of age received the first injury from blows dealt him on the head with a drill gun in the hands of an inmate of the Illinois State Reformatory, as a consequence of which he received a fracture of the skull and was confined to his bed at his home for about five weeks. The second injury, an assault upon the claimant while in the discharge of his duties was made by a prisoner from the Illinois State Penitentiary at Joliet over whom the claimant had charge. He was struck with an iron implement and his jaw broken. Testimony of physicians who treated him shows that it took about two years for the jaw to mend completely and that the physical condition of the claimant as a result of his injuries is such that he is unable to pursue his former regular employment.

It is not seriously contended that there is any legal liability upon the State in this case, and the Court holding to its already extensive line of decisions in cases of this kind, holds that there is none, but the facts of this case on the other hand, clearly show it to be one of the character in which this Court has repeatedly stated that the doing of equity and social justice requires an allowance to be made to the claimant. He has suffered painful injuries and a lasting disability while engaged in a dangerous duty in behalf of the State of Illinois.

It is therefore recommended by this Court that the sum of four thousand dollars be paid to the said claimant.

ALBERT WILLIAMSON

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

GOVERNMENTAL FUNCTION—*Smiddy* v. *State*, *supra*, *followed*. **This case is similar to that of *Smiddy* v. *State*, *supra*, and the decision of the Court as there announced governs this case.**

Edward J. Brundage, Attorney General, for State.

This is a claim for compensation for an injury received by the claimant while in the employ of the State of Illinois at Watertown State Hospital at East Moline, Illinois. There is no dispute as to the facts in the case. On February 28th, 1921, while engaged in unloading ice at the ice house on the institution grounds, claimant was struck by a chunk of ice and his leg broken. The evidence indicates that the injury resulted from the tortorious act of a patient at the institution. The claimant was in the institution hospital for eight months following the injury and suffered great pain as a result of the injury and the treatment necessary in effecting a cure. It appears that the claimant suffered a permanent partial disability.

The State has demurred as to its legal liability and the demurrer is sustained following our practice in cases of this kind. However there is no serious contention on either side that there is any responsibility except that existing from the standpoint of social justice and equity. The claimant here was injured while in the performance of his duty as an employee of the State of Illinois without his fault and we therefore hold that this case is in line with others in which we have recommended an allowance as a matter of social justice and equity.

It is therefore recommended by the Court that the sum of fifteen hundred dollars be allowed by the State of Illinois and paid to the claimant.

MARGARET PEARSON, ADMINISTRATRIX OF THE ESTATE OF MAURITZ LINDSTROM, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

GOVERNMENTAL FUNCTION—*when State is not liable.* The State in constructing the new penitentiary at the Illinois State Penitentiary at Joliet, exercised a governmental function and is not liable for injuries received by the employees engaged in its construction.

SOCIAL JUSTICE AND EQUITY—*when claim will be allowed.* The Court may enter an award in favor of claimant as an act of social justice and equity although no legal liability exist against the State.

Edward J. Brundage, Attorney General, for State.

This case comes before the Court upon the petition of Margaret Pearson, administratrix of the estate of Mauritz Lindstrom, deceased, praying that the Court will award damages to the amount of $10,000.00, by reason of the death of said Mauritz Lindstrom, caused while in the employment of the State of Illinois.

The testimony in this case shows that the deceased was in his lifetime and on the first day of December, 1921 employed as a carpenter in the construction of, what is known as the new penitentiary at the Illinois State penitentiary in Lockport Township, Will County, Illinois; that said construction was being carried on by the State of Illinois by and through the penitentiary commission; that on the first day of December, 1921, the deceased was assigned to work by his foreman or superintendent, on a scaffold erected about a concrete and steel cell house, known as Cell House E, at a height of about sixty feet, and that the said scaffolding broke and fell to the basement of the cell house, while the said Mauritz Lindstrom was engaged in his work on the same, as a result he fell to and upon the basement, whereby he received external and internal injuries from which he afterwards, on December 2nd, 1922, died; that said Mauritz Lindstrom left him surviving, Britta Lindstrom, his mother, Linnea Lindstrom, his sister, John Lindstrom, Jonas Lindstrom and Alfond Lindstrom, his brothers who all reside in Sweden, also Anna Lindstrom and Margaret Pearson, who reside in Illinois.

The testimony shows that said Mauritz Lindstrom and Eric Lindstrom, now deceased, were contributing equal monthly amounts to their mother in Sweden and had also contributed a considerable amount to their sister, Anna Lindstrom; that said Anna Lindstrom sometimes worked at her trade but that in the past few years she had submitted to several operations which has undermined her health and was dependent on her two brothers for partial support; that the sister, Margaret Pear-

son was not a dependent, neither was the sister, Linnea, who resided in Sweden, although the evidence shows that said Linnea Lindstrom was now living at home with her mother, since the death of her two brothers, owing to the condition of her mother's health, caused by the shock of the death of Mauritz Lindstrom and Eric Lindstrom.

While the testimony does not show that the mother was wholly dependent upon her two deceased sons for her support, still it is not unreasonable to presume that she was, as the two sons, Jonas and Alfond were of tender years and physically incapable of doing heavy manual labor, besides the evidence shows that Alfond was attending school. The son, John, was in the military service in Sweden and by reason of his small pay was unable to contribute but a very small, if any, amount toward the support of his mother. The sister, Linnea, was living away from home, earning her own way it is reasonable to presume that she was unable to contribute toward the support of her mother. The daughters, Anna Lindstrom and Margaret Pearson, evidently contributed nothing toward the support of her mother, as Anna was a dependent of her two deceased brothers, as we have heretofore stated, while Margaret Pearson was married and is dependent on her husband and is, without doubt, financially unable to contribute to the support of her mother.

The Attorney General, on behalf of the State of Illinois has filed a demurrer to this petition, which, as a matter of law will be sustained.

Under the numerous previous decisions of this Court, there can be no question but what the State of Illinois is not liable for injuries sustained by or for the death of its employees while in the performance of their duties, as either the Workmen's Compensation Act or the doctrine of *respondeat superior* is applicable to the State.

The Court has reviewed the evidence and finds that there is no question but that Britta Lindstrom, Linnea Lindstrom, Jonas Lindstrom, Alfond Lindstrom and Anna Lindstrom are dependent on the deceased for partial support, and while we find that there is no liability on the part of the State of Illinois, still we believe, that as an act of social justice and equity an award should be made that would be equal to one-half of the maximum amount allowed under the Workmen's Compensation Act, provided said Act applied to the State of Illinois.

We therefore award to said petitioner, Margaret Pearson, as administratrix of the estate of Mauritz Lindstrom, deceased, the sum of one thousand eight hundred and seventy-five dollars ($1,875.00).

J. WHITFIELD SMITH

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

MEDICAL SERVICES—*when State liable therefor.* Where a physician aging Officer, and the claim is approved by the proper State authorities, the renders medical services at a State institution, at the request of its Man- State is liable for the services rendered.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by Dr. J. Whitfield Smith, for medical services rendered by claimant at the Illinois Soldiers' Orphan Home, at Normal, Illinois, at request of the institution's managing officer, during a period commencing March 22nd, 1919, and ending June 24th, 1921, amounting to $1,065.00.

This claim has been approved by the Director of the Department of Public Welfare. At time the bill for such services was presented to the department for payment, the appropriation out of which it was to have been paid, had lapsed, and a claim is presented to this Court for same.

The Attorney General consents to an award for said amount. The Court accordingly awards the claimant the sum of $1,065.00.

GUST CARLSON, ADMINISTRATOR OF THE ESTATE OF CHARLES NELSON, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

GOVERNMENTAL FUNCTION—*Minnie Johnson* v. *State, Supra, followed.* This case is similar to that of *Minnie Johnson* v. *State, Supra,* and the decision of the Court as there announced governs this claim.

Edward J. Brundage, Attorney General, for State.

This is a case wherein Gust Carlson, Administrator of the estate of Charles Nelson, deceased, files a claim for the sum of $10,000.00, by reason of the death of said Charles Nelson, while in the employment of the State of Illinois.

The testimony in this case is identically the same as in the case of *Minnie Johnson* v. *State of Illinois,* with the exception of the date of the death and the dependents.

The testimony in this case shows that there are the following dependents left, him surviving, Lina Nelson, widow, Myrtle L. Nelson, Walter M. Nelson and Grant C. Nelson, his children, as his sole heirs at law and next of kin, and all of whom were dependents upon him for their support.

The Attorney General has filed a demurrer to said petition, which is sustained by this Court.

That the State of Illinois is not liable for injuries sustained by, or for the death of its employees while in the performance of their duties, has been decided by this Court in numerous cases.

However, as a matter of equity and social justice an award should be made in this case, and the Court recommends an award in the sum of three thousand seven hundred and fifty dollars ($3,750.00).

SAMUEL B. McDANIELS

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

GOVERNMENTAL FUNCTION—*Johnson v. State, Supra, followed.* **This case is similar to that of *Johnson v. State, Supra*, and the decision of the Court as there announced governs this claim.**

SOCIAL JUSTICE AND EQUITY—*when award will be made.* **While the State is not liable, where claimant is engaged in a hazardous employment, the Court will as a matter of social justice and equity will enter an award.**

Edward J. Brundage, Attorney General, for State.

This is a claim for compensation for an injury sustained by claimant on March 13th, 1922, while in the employ of the State as a guard at the Illinois State Penitentiary at Joliet. It appears that the claimant was struck upon the right hand by a rock thrown by a prisoner at the institution and that the bones in the third finger and little finger of the hand were broken. There is no dispute as to the fact that the claimant was in the discharge of his duty and that the injury arose out of and in the course of his employment by the State in an extra hazardous undertaking. A demurrer to the claim has been filed by the State which must be sustained as a matter of law but the considerations of equity and social justice compel the Court to hold in this case as it has in many similar cases that the claimant is entitled to an allowance. It appears that he was compelled to cease the performance of his employment for about five days and carry his hand in splints and bandages for about five weeks. The claimant testifies that his fingers were permanently injured but his is the only testimony to that effect.

It is therefore recommended by the Court that the sum of five hundred dollars ($500.00) be allowed by the State of Illinois and paid to the claimant.

FRANK L. KNESS

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

GOVERNMENTAL FUNCTION—*Jones* v. *State, Supra, followed.* This case is similar to that of *Jones* v. *State, Supra,* and the decision of the Court announced in that case governs this claim.

Edward J. Brundage, Attorney General, for State.

This is a claim for compensation for injuries received by claimant while performing his duties as a guard at the Illinois State penitentiary at Joliet on July 4th, 1921. On the morning of said day he had charge of the dining room where the prisoners at that time were eating breakfast. It appears at that time a negro convict attacked another negro convict with a knife. The claimant attempted to separate the convicts and during the altercating the claimant was cut on the head commencing at a point near the upper part of the right temple, thence directly over the right eye through the base of the claimant's nose and over his left upper lip and cut him also three or four other places in the vicinity of the right temple. As a result of such injuries claimant suffered pain for a considerable period of time and it further appears that the claimant's nose had been disorganized.

The State has demurrer to this claim and it is the opinion of this Court that the demurrer should be sustained as a matter of law. This position has been taken by this Court in this line of cases. However it has also been the practice of this Court to recognize claims of this character from the view point of equity and social justice believing that the claimant was engaged in a hazardous occupation in behalf of the State of Illinois. It is therefore recommended by this Court that the sum of one thousand dollars be allowed by the State of Illinois and paid to the said claimant, Frank L. Kness.

RAYMOND M. KETTINGER, ADMINISTRATOR OF THE ESTATE OF MAUD HELEN KETTINGER, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

RESPONDEAT SUPERIOR—*when State not liable.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*when award will be made.* While there is no legal liability against the State, where claimant is injured while in the performance of her duty, the Court will as a matter of social justice and equity enter an award in her favor.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by Raymond M. Kettinger, administrator of the estate of Maud Helen Kettinger, deceased, on account of injuries sustained by his intestate while employed as a housekeeper at the Women's Dormitory of Illinois State Normal University, at Normal, Illinois, which injuries later caused the death of decedent.

To this declaration, the Attorney General, has demurred generally and specially and has filed brief and argument.

A stipulation was entered into by and between parties of the suit, consenting that the letters attached thereto, might be considered in evidence, as fully as if they had been introduced in evidence by proper legal proceedings.

The facts in the case, as disclosed by the evidence, that decedent was a housekeeper at the Women's Dormitory of the Illinois State Normal University at Normal, Illinois, at a salary of $90.00 per month, and maintenance. That on the 15th day of November, 1921, while in said dormitory, going to supper, "she tripped and fell in the hall, breaking her left hip," that on November 18th, she was taken to Brokaw Hospital in Normal, Illinois, where she received medical attention from Dr. F. C. McCormick, and the services of a special nurse, who was paid by deceased. She remained there until December 24th, 1921, when she was removed to her room at the dormitory, where she received personal care of friends and relatives. On January 30th, 1922, she arose from her bed, and got upon crutches, and fell, breaking her right (other) hip. It is not clearly disclosed by the evidence whether the nurse or attendant was then present. February 2, 1922, she died as a result of the injuries received in this last fall. David Felmy, president of the College in his affidavit, admitted by agreement, in evidence, states that the deceased was housekeeper in said institution; that amongst other things, it was

her duty to purchase supplies, employ the needed help in the hall, and supervise all service rendered by such employees. That, among her duties, was also the supervision of the work of the laundress, who operated the laundry machine, which was a steam laundry, with modern laundry machinery, including a steam washer, centrifugal drying machine, and mangle, that she had supervision of the ice machine, all of which machinery is driven by electric motors.

The claim is filed for the recovery of the total amount stated to be due for compensation under the Workmen's Compensation Act for the period of total incapacity, for necessary hospital, medical and nurse bills, amounting to ten hundred seventy dollars, thirteen cents, as claimed by the attorney for the plaintiff, in his argument and brief. But the bill of particulars sets forth claim for the following items, viz:

Brokaw Hospital bill	$ 351.13
Miss Gaines, 10 days special nurse	60.00
Miss Albers, special nurse	222.00
Dr. McCormick	198.00
Dr. Bian	12.00
Dr. Chapin	25.00
Dr. Gailey	25.00
Funeral and Burial Expenses	150.00
Compensation during period of total incapacity for 12 2-7 weeks and $14.00 week, less compensation, paid by Fell Hall	127.00
Total amount due	$1,170.13

But, as above stated, the attorney for claimant asks for an award of only $1,070.13. Mr. Britton, Assistant Attorney General makes a vigorous and able argument against the allowance of this claim or any part thereof, contending that the State is not liable under any section of the Workmen's Compensation Act; and that if it were liable under such Act, that it was not liable in this case under section 8, as contended by counsel for claimant, as the employment as shown by the evidence is not extra hazardous.

This Court has repeatedly held that the State is not liable for damages in such cases and the demurrer to said cause is sustained, but in the interest of social justice and equity and good conscience, we have decided to recommend that the Legislature make an appropriation for claimant in the sum of eleven hundred seventy and 13/100 dollars to be applied on the aforesaid expense bills.

EDITH SHOTWELL

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

GOVERNMENTAL FUNCTION—*Lamb v. State, Supra, followed.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—*recommendation.* As a matter of social justice and equity the Court under the circumstances in the case, recommends to the Legislature an appropriation to claimant.

Edward J. Brundage, Attorney General, for State.

This is a claim for compensation for injuries received by one Louis F. Shotwell, now deceased, while in the discharge of his duties as a guard at the Illinois State Penitentiary at Joliet on September 10th, 1917, and on September 21, 1920. The claimant is the widow of the Louis F. Shotwell, and he left no issue surviving him and no administration has been had upon his estate. The injuries received were inflicted upon the deceased while he was engaged in his duties and endeavoring to quell or prevent disorder among inmates of the institution. The petition sets forth that in the encounter of September 10th, 1917, he suffered severe knife wounds in the neck, causing great pain and suffering and leaving permanent scars, and that in the encounter of September 21, 1920, two bones in the fingers of his left hand were broken causing a partial loss of the use of said fingers. There is no dispute as to the facts but the State demurred to the claim.

It is the opinion of the Court that the demurrer should be sustained as a matter of law and this Court has repeatedly held in cases of this kind that there is no legal liability upon the State. However, the Court has just as consistently held in many cases where the facts have been similar to those in this case that as a matter of social justice and equity some compensation should be paid. The facts of this case show that the injured man received his injuries while unhesitatingly engaged in the performance of a dangerous duty, we are therefore of the opinion that an allowance should be made to the claimant, his widow. It is therefore recommended by this Court that the sum of twelve hundred fifty dollars be allowed by the State of Illinois and paid to the said claimant, Edith Shotwell.

EDWARD J. BIRK, ET AL.

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

INHERITANCE TAX—*when refund will be made.* **There being no dispute as to the facts and law governing this claim the Court enters an award in favor of claimant for the amount of their claim.**

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of inheritance tax, erroneously assessed and erroneously paid.

Decedent died testate in Cook County, March 2nd, 1920, and his will was duly probated.

By proper proceedings, an inheritance tax was assessed in said estate in the sum of $4,587.27, which less 5% was paid, making $4,357.91, paid into the County Treasury of said county.

Thereafter, it was alleged by the executors that the Federal Government claimed the sum of $15,816.95, as additional income taxes of decedent for the years 1917, 1918 and 1919, which amounts were not deducted in the inheritance tax proceedings in computing the net estate and the inheritance tax due thereon.

And upon petition to the County Court, of which the Attorney General was duly notified, the County Court entered an order August 21st, 1922, modifying the original order of the County Judge, reassessing the tax at $4,289.91, from which order, no appeal was taken. It is found that amount of inheritance tax due the State is $4,289.91, less 5% discount equals $4,075.42, showing claimant entitled to a refund of $282.49.

The Attorney General admits this to be due and consents to an award accordingly. The sum of $282.49, without interest is accordingly awarded claimants, Edward J. Birk, Frank Birk and Amelia Birk, executors of the last will of Jacob Birk, deceased.

A. L. DENTON

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

RESPONDEAT SUPERIOR—*when State not liable.* The doctrine of *Respondeat Superior* does not apply to the State and it is not liable for injuries sustained by its employees while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*recommendation.* While the State is not liable for the injuries sustained by claimant, the Court as an act of social justice and equity recommends to the Legislature an appropriation to compensate him for the injuries sustained.

Edward J. Brundage, Attorney General, for State.

The claimant, A. L. Deaton, files his declaration herein, claiming $30,000.00 for personal injuries alleged to have been incurred by him, while in line of duty, and in the exercise of due caution, care and diligence for his personal safety, while in the employ of the State at the State Capitol on the 18th day of November, A. D. 1922.

In his declaration, claimant alleges that he is a married man, 61 years old, has wife, two daughters, and one son, who reside with him, the latter being under 16 years of age, at the time of the alleged injury. That he has been in the employ of the State of Illinois as an engineer under the Secretary of State since January 2nd, 1912, and immediately prior to that time, he for a period of approximately one year, was employed by the State in a similar capacity at the State Hospital at Bartonville, Illinois. His Salary was, and still is $150.00 per month. That, as such engineer in the office of Secretary of State, it became, and was the duty of claimant to perform such work as the Secretary of State might direct, said work consisting mainly and largely, if not wholly, in the inspection and repairing, when necessary, the elevators, heat and water systems in the Capitol building, commonly known as the "State House," and the power plant of the State at the Capitol City.

In the course of such employment, while in line of his duties, and while using ordinary care and caution for his personal safety, while putting on grease or dressing on the machinery, as directed by his immediate superior, his hand was caught between the drum and steel cable or rope around it, and the elevator being then in motion, the claimant was thrown violently over the said drum, resulting in tearing off his entire left hand, except the thumb, the breaking of one rib, deep cuts and scars in his chin, and face, terribly disfiguring him, and maiming him for life; that he suffered a great nerve shock, and being old, has almost totally incapacitated him from performing of hard

manual labor. The claimant presented his case without counsel. He appeared in open court, and was examined and interrogated orally by the Court and exhibited his wounds. The facts stated in the declaration are not denied by the Attorney General, who files his answer herein, consenting that the documents A, B, C, D and E attached to his answer might be considered in evidence, without objection, and making no objection to the Court's recommendation in such an amount as equity and good conscience may demand.

The various exhibits so introduced are in proof of the various amounts expended by claimant to physicians, hospitals, nurses, etc., amount to about $400.00.

"Exhibit E" is the evidence of Dr. Fred P. Cowdin, who in part, testified as follows: I was called November 18th, 1921, to dress the wounds and to treat claimant. His injuries consist of loss of hand, except thumb; the extensor tendons were torn out of his wrist up into the forearm, resulting in a wrist drop and practical uselessness of the part of the hand that remains." "Also a deep laceration in his chin, which healed, leaving a permanent disfiguring scar, great shock to the nervous system, and cerebral concussion. There were also two ribs broken on the left side, etc."

The claimant's appearance in open court, disclosed to the Court that he was badly disfigured by wounds and that he was almost totally incapacitated from performance of manual labor, as a result of the injuries alleged. While the Court has repeatedly held that the State is not legally liable in such cases, yet in this case, we certainly think this a case strongly appealing to the Court, in equity and good conscience, and in the interest of social welfare, to compensate the claimant in part for his said injuries, sustained. We have decided to, and hereby do award to claimant, the sum of four thousand dollars, and we recommends an appropriation for said amount.

THE WESTERN ELECTRIC COMPANY, INC.

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

CONTRACT—*when State liable for freight charges.* Claimant entered into a contract with the State, through the Department of Public Works, to furnish certain cedar poles of specified length, etc., at a certain price. The poles were delivered prepaid by claimant as per terms of contract. The shipment was refused by the proper authorities and claimant was required to take back the shipment and pay the freight charges on same. *Held*, claimant entitled to recover from the State the freight charges paid.

Edward J. Brundage, Attorney General, for State.

The petition of the Western Electric Company, a corporation, filed in this Court, sets forth the following:

That on or about, to-wit, the 10th day of February, 1921, the State of Illinois, through the Department of Public Works and Buildings, by Fred J. Postel, Supervising Engineer of the Division of Engineering, entered into a contract with the said plaintiff, whereby the said Department of Public Works and Buildings agreed to purchase from the said plaintiff, and the said plaintiff agreed to sell to the said department seven cedar poles of standard grade and quality, each being thirty-five feet long and having a minimum diameter of six inches at the top, for an agreed price for said poles for the sum of two hundred thirty-five dollars and fifty-five cents ($235.55), said poles to be shipped to Menard, Illinois, for the use of the Southern Illinois Penitentiary, freight to be prepaid on same by the plantiff, etc.

The petition set forth that said poles were shipped as per contract; that said shipment was refused by the defendant and that the plantiff was required to take back said shipment and to pay the freight charge on same to and from Menard, Illinois, which said freight charges amounted to the sum of one hundred seventy dollars and fifty-seven cents ($170.57).

The Attorney General, Edward J. Brundage, waives proof of the above claim and says that the defendant has no defense to the same and consents that an award be made by this Court in the sum of $170.57.

It is therefore considered by the Court that the claim be allowed for the said sum of one hundred seventy dollars and fifty-seven cents ($170.57).

ANNA PETERS, EXECUTRIX OF THE WILL OF FRED PETERS, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

INHERITANCE TAX—*refund.* There being no dispute as to the facts and law governing this claim, the Court enters an award in favor of claimant for the amount of her claim.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of inheritance taxes in the estate of Fred Peters, deceased.

Decedent died testate a resident of Iriquois County, Illinois, March 23d, 1921, and claimant was duly appointed executrix of his will, and is now acting as such. Claimant was given power by the will as administratrix to sell the real estate belonging to deceased and to pay the proceeds, after setting aside a fund for decedent's widow, to decedent's eight children, in equal shares, or to the survivor of them in the event that any having no issue surviving before sale.

The County Judge of said county on the 20th day of June, A. D. 1921, assessed a total inheritance tax in said estate of $835.94, against the inheritance of said children, said tax being assessed under section 25 of the Inheritance Tax Law, and at the highest possible rate; and the same with interest was paid to County Treasurer, March 1st, 1922, the total payment being $883.31.

On the 25th day of September, 1922, upon the hearing of petition of the executrix for a re-assessment of the tax, by reason of the fact that the land had then been sold, and the proceeds divided among the said eight children, none having pre-deceased, that event, the County Court entered an order finding no inheritance tax due in said estate, which order no appeal has been taken and none will be taken by the Attorney General, as admitted by the Attorney General.

From the evidence in the case, and admitted by the Attorney General, the Court finds that the sum of $883.31 is due as refund to claimant, together with interest thereon at 3% per annum, from March 1st, 1922, which said sum with interest as aforesaid, is hereby awarded the claimant.

The Attorney General admits the correctness of the award.

J. L. DOYEL, ADMINISTRATOR OF THE ESTATE OF ELIAS DOYEL, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

INHERITANCE TAX—*refund of tax erroneously paid.* In this case the administratrix after the inheritance tax had been assessed and paid, filed a petition in the County Court praying for a modification of the original order of assessment to correct an error in failing to deduct therefrom the Federal Tax and the payment of back general property taxes. The original order was modified by the County Court allowing the deductions. *Held*, claimant entitled to a refund of the excess inheritance tax erroneously paid, without interest.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of inheritance tax erroneously paid by the estate of Elias Doyel, deceased.

The deceased died intestate January 18th, 1922, a resident of Green County, Illinois, and claimant was duly appointed administrator of his estate.

On July 12th, 1922, the County Judge of said county assessed a total inheritance tax in said estate of $4,703.64, which amount less 5% discount for payment within six months of decedent's death, was paid July 14th, 1922, the net payment being $4,468.46.

The evidence discloses that after such payment so made as aforesaid, the administrator filed a petition with the County Judge alleging that after said assessment, certain claims against the estate, not considered in said assessment, had been paid by the estate to-wit: The Federal Estate Tax in said estate, and a certain assessment made by the Board of Review of said Green County for back general property taxes upon said decedent's property; and also alleging in said inheritance tax assessment, a deduction of $1,911.45 was claimed by the administrator, and allowed by the Court on account of general property taxes for 1921; and the petition prayed a modification of said assessment to correct said errors.

Upon hearing of the petition, October 16th, 1922, the County Judge entered an order as prayed in modifying the original order and assessing a total tax in said estate of $4,599.38. This amount less the 5% is the correct amount of the inheritance tax in said estate. The State having been paid $4,468.46, the claimant is entitled to a refund of inheritance taxes erroneously paid of $99.05, without interest, to which award, the Attorney General consents, and award is accordingly made for the said sum of $99.05.

EVA WILSON

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

INHERITANCE TAX—*refund of tax erroneously paid.* Where it appears that certain property was inadvertently and erroneously assessed which did not belong to the deceased, and an inheritance tax paid thereon, and upon proper proceedings the County Court modified the original order and re-assessed the tax, correcting the error. *Held*, claimant entitled to a refund of the tax erroneously paid.

Edward J. Brundage, Attorney General, for State.

This is a claim for refund of inheritance taxes erroneously assessed and erroneously paid.

The decedent died May 30th, 1921, testate, a resident of Cook County, and claimant was duly appointed executrix of the will.

The County Judge of said county assessed a total inheritance tax in the estate of $2,163.48, which less 5% which was paid November 30th, 1921.

Thereafter, it was found that in making the appraisement, certain property was inadvertently and erroneously appraised and assessed, which did not belong to deceased, and thereupon a petition was filed in the County Court, and the Attorney General duly notified of such procedure.

On the 29th day of August, 1922, the County Court re-assessed the inheritance tax in said estate at $362.30, from which order, no appeal was taken. The amount actually due was found to be $344.21. The amount paid was $2,055.31. The difference between the last two sums is the amount due claimant on refund to wit: $1,711.10, and that amount is accordingly awarded to claimant without interest.

MARGARET PEARSON, ADMINISTRATRIX OF THE ESTATE OF ERIC LINDSTROM, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

GOVERNMENTAL FUNCTION—This case is similar to that of *Margaret Pearson, Admr'x. etc.*, v. *State*, *Supra*, and the decision of the Court in that case governs this case.

Edward J. Brundage, Attorney General, for State.

This case comes before the Court for its consideration and opinion, upon petition of Margaret Pearson, administratrix of the estate of Eric Lindstrom, deceased, praying that the Court will award damages to the amount of $10,000.00, by reason of the death of said Eric Lindstrom, caused while in the employment of the State of Illinois.

The testimony in this case is substantially the same as in the case of Margaret Pearson, administratrix of the estate of Mauritz Lindstrom, deceased; that said testimony shows that said deceased was a brother of said Mauritz Lindstrom, deceased, and that each had contributed equal amounts toward the support of their mother and certain sisters and brothers.

The Attorney General, on behalf of the State of Illinois has filed a demurrer to this petition, which, as a matter of law will be sustained.

Under numerous decisions of this Court it has been held that the State is not liable for injuries sustained by, or for the death of its employees, neither does the Workmen's Compensation Act apply to the State of Illinois.

In this case, as in the Mauritz Lindstrom case, this Court has carefully reviewed the evidence and finds that Britta Lindstrom, Linnea Lindstrom, Jonas Lindstrom, Alfond Lindstrom and Anna Lindstrom, were dependent on said deceased, Eric Lindstrom, for partial support, and while we find that the State of Illinois is not liable, still we believe that an award should be made that would equal one-half of the maximum amount allowed under the Workmen's Compensation Act, provided said act was applicable to the State.

We, therefore, as an act of social justice and equity award said petitioner, Margaret Pearson, administratrix of the estate of Eric Lindstrom, deceased, the sum of one thousand eight hundred and seventy-five dollars ($1,875.00).

JOSEPH H. HARTLEY

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

RESPONDEAT SUPERIOR—*when State not liable.* The State is not liable for injuries sustained by its employees in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*when allowance will be made.* While no liability exist against the State for injuries sustained by its employees while in the discharge of their duty, yet as an act of social justice and equity, where the circumstances of the case justify, the court may recommend to the Legislature an allowance of compensation to claimant.

Edward J. Brundage, Attorney General, for State.

The claimant in this case was injured by being struck by lightning on June 10th, 1921, while in the employ of the State of Illinois as a foreman in the instaling of sewers and other like work at the new Illinois State Penitentiary then in course of construction at Joliet, Illinois. The evidence shows that the place at which the injury was received was especially attractive to lightning by reason of the existence of a high tension electric transmission wire and 66,000 volt electric transformer in the immediate vicinity together with the facts that the east wall of the penitentiary which is re-enforced with steel and iron was within some two hundred feet of the spot at which the accident occurred and that the place where the claimant was working was low and damp and that a pool of water stood nearby. It further appears that the claimant prior to the time he was struck by lightning appeared strong and healthy, had working and industrious, and was reputed to be one of the hardest working men at the penitentiary, and that subsequent to the injury he seems to become tired and fatigued easily and frequently ceases work to rest and is nervous and easily excited. His left side was almost completely paralyzed by the shock and this paralysis continued for several days but gradually improved. Testimony of the physician who treated the claimant was that his central nervous system was almost shattered; that he is very nervous and at times hardly able to control himself and that in the opinion of the witness, a part of the nerve cells of the claimant were destroyed and it is questionable whether he will ever recover and the witness is inclined to the opinion that he will not. It is admitted by the State that the employment of the claimant was extra hazardous, that the injury arose in the course of his employment and it is not disputed that it arose out of his employment.

A demurrer to the legal liability of the State was interposed and following our practise in these cases based upon clearly recognized

doctrines of law the demurrer sustained. However, it is also the practise of this Court in seeking to comply with the requirements of equity and social justice to recommend an allowance in cases of this kind where we must hold as we do here that there is a moral responsibility upon the State. Our only further concern is as to the amount which the claimant should be entitled to receive. Claimant is 41 years of age and resides with his family which consists of his wife and four children. The evidence shows that the claimants employment with the State and his salary have not been affected by the injury. He is still receiving a salary of $200.00 per month, the same that he received at the time of the injury. While there is therefore no showing that the claimant is not earning as much as he did before the injury yet the facts of the case clearly indicate that his earning power is actually not as great and were he to lose his employment with the State he would doubtless be unable to secure employment at the salary he is now receiving from the State. The evidence shows that before the injury the claimant was a hoisting engineer and that due to the impairmen of his nervous system as a result of the injury he is no longer able to obtain employment as such. We do not consider however that the injury is such as to entitle claimant to a compensation equal to the maximum amount which he would receive if compensation were computed in accordance with the rules of the Workmen's Compensation Act. We have considered what in our judgment would be a proper allowance in view of all the facts in this case and it is recommended therefore by the Court that the sum of fifteen hundred dollars be allowed by the State of Illinois and paid to the claimant.

MINNIE D. JOHNSON

v.

STATE OF ILLINOIS.

Opinion filed November 28, 1922.

GOVERNMENTAL FUNCTION—This case is similar to that of *Margaret Pearson, Admr'x., etc.*, v. *State*, *Supra*, and the decision of the Court in that case governs this case.

Edward J. Brundage, Attorney General, for State.

This case comes before the Court upon the petition of Minnie D. Johnson, widow of Nels Johnson, praying that this Court award her the sum of $10,000.00 by reason of the death of her said husband, Nels Johnson, caused while in the employment of the State of Illinois.

The testimony in this case shows that the deceased was in his lifetime and on the 1st day of December, 1921, employed as a carpenter in the construction of, what is known as the new penitentiary at the Illinois State penitentiary in Lockport Township, Will County, Illinois; that said construction was being carried on by the State of Illinois by and through the penitentiary commission; that on the 1st day of December, 1921, the deceased was assigned to work by his foreman or superintendent, on a scaffold erected about a concrete and steel cell house, known as Cell House E., at a height of about sixty feet, and that said scaffolding broke and fell to the basement of the cell house while said Nels Johnson was engaged in his work on the same, as a result he fell to and upon the basement, whereby he received external injuries from which he afterwards, on the 2nd day of December, died.

The testimony shows that said Nels Johnson left, him surviving his widow, Minnie D. Johnson, Sophia Johnson, Rudolph Johnson, Agnes Johnson, Harry Johnson, Viola Johnson, Theodore Johnson, Howard Johnson and Alfred Johnson; that all of the said persons were dependent upon the said Nels Johnson for support, except Sophia Johnson and Rudolph Johnson who reside in the City of Chicago and are supporting themselves.

The attorney general filed a demurrer to the petition, which as a matter of law will be sustained.

There can be no question under the law but what the State of Illinois is not liable for injuries sustained by or for the death of its employees while in the performance of their duties, as neither the Workmen's Compensation Act or the doctrine of *respondeat superior* is applicable to the State of Illinois.

However, the Court finds that as a matter of equity and social justice an award should be made and we therefore award the petitioner the sum of three thousand seven hundred and fifty dollars ($3,750.00).

EUGENE H. McCOLM

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

GOVERNMENTAL FUNCTION—*Illinois State Reformatory.* The State in conducting the Illinois State Reformatory at Pontiac exercises a governmental function and is not liable for injuries sustained by its employees while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*when award will be made.* While no legal liability exists against the State for the injury received by its employees in the discharge of their duties as an act of social justice and equity the Court recommends to the Legislature an appropriation to claimant.

Edward J. Brundage, Attorney General, for State.

The declaration in this case discloses that, the claimant, Eugene H. McColm, was, on February 16, 1922, and for a long time prior thereto, a civil service employee of the State of Illinois and was located at Pontiac, Illinois, and employed in the Illinois State Reformatory, said Reformatory being an institution under the control of said State of Illinois; that by the direction of the officials of said institution, he, the said Eugene H. McColm, was on February 18, 1922, stationed as an officer and instructor on duty in the book bindery, that on said day there was a great deal of work to be done in said department, and in the operating of a paper cutter, and while using due care for his own safety, the knife of said machine came in contact with claimant's hand and thereby the index finger of his left hand was severed below the second joint and that plaintiff is thereby permanently injured.

Claimant further shows that he is a book binder by trade, is of the age of 52 years, is married, and has a wife and family, but no minor child or children; that he has been engaged at said State institution since 1904 with the exception of about one year in 1910-1911 and of about 11 months in 1917-1918; that he is injured and damaged by reason of the injury aforesaid and seeks damages in the amount of $2,000.00.

The Attorney General, in behalf of the State of Illinois has filed a demurrer, which as a matter of law will be sustained by the Court.

The law is well established that the doctrine of *respondeat superior* is not applicable to the State and that in the absence of Statute, the State is not liable for the torts of its officers, agents, inmates or employees; that the Workmen's Compensation Act does not apply to the State and that the State in conducting a State institution exercises a governmental function and is not liable for injuries to employees thereof.

Plaintiff's counsel, in his statement to the Court admits that the

claimant suffered no loss of time and that claimant has been to no expense for treatment, treatment having been administered by the physician at the reformatory.

The plaintiff is a man along in years, is married and evidently has been a valued servant of the State of Illinois and while there is no legal obligation on the part of the State to allow an award for any amount, still we believe that as a matter of good conscience, social justice and equity an award should be made in this case.

It is therefore the judgment of this Court that it be recommended to the Legislature that the claimant be awarded as his damages the sum of one thousand ($1,000.00) dollars.

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS AND AGENT OF THE UNITED STATES UNDER THE TRANSPORTATION ACT OF 1920

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

FREIGHT CHARGES—*liability of State.* Upon the facts proven and admitted by the State the Court enters an award in favor of claimant for additional freight charges due and unpaid.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by James C. Davis, Director General of Railroads and agent for the United States under the Transportation Act of 1920, setting forth that the State of Illinois is indebted to the Chicago, Milwaukee and St. Paul Railroad for freight charges.

It appears that shipments of coal were made from Herrin and Lincoln, Illinois, to Dunning, Illinois, to be used at the Chicago State Hospital at Dunning, a State institution controlled and operated by the State of Illinois, in April and May, 1918, as shown by the amended declaration filed in this case; that at the time said shipments were made from Lincoln and delivered to the defendant, herein, the plaintiff collected and the defendant paid, on a basis of $1.01 per net ton and $1.00 per car, whereas it is alleged, the correct rate which the plaintiff should have collected and the defendant should have paid $1.00 per net ton to Chicago and an additional sum of 18c per ton from Chicago to Dunning, Illinois; that at the time the shipments from Herrin were made the plaintiff collected and the defendant paid freight charges on the basis of $1.15 per net ton, whereas it is alleged, the correct rate which plaintiff should have collected and defendant should have paid was $1.27 per net ton; that the additional freight charges due from the defendant to the plaintiff amounts to the sum of $152.61.

The Attorney General admits the receipt of the cars of coal mentioned in the attached bill, waives proof of the claim, and makes no objection to an award in the said sum of $152.61.

In consideration of the statement of the claimant and the statement of the Attorney General, the sum of $152.61, without interest is allowed.

ARTHUR MARES, BY MRS. L. MARES, HIS MOTHER AND NEXT FRIEND

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

NON-LIABILITY OF STATE—*Board of Education of Chicago not an agency of the State.* The Board of Education of the City of Chicago is not an agency of the State, and the State is not liable for an injury sustained by a child, or pupil, on the play-ground owned, controlled and managed by the Board of Education.

Edward J. Brundage, Attorney General, for State.

This is a claim filed for Arthur Mares by Mrs. L. Mares, his mother and next friend. It appears from the declaration filed that on or about the 14th day of April A. D., 1920, there was a certain slide located in the playground of what is commonly known as the Corkey School located at 25th Street and Kildare Avenue in the City of Chicago, Cook County, Illinois. And it further alleged that said slide was owned by the Board of Education of the City of Chicago as an agency of the State of Illinois. It appears from said declaration that the said slide was in bad and unsafe condition so that parts of said slide were broken and splintered and that complainant while sliding, a splinter of the slide ran into one of his limbs and by the result of such accident the boy suffered great pain and inconvenience, and it is further alleged that two hundred dollars ($200.00) was expended in the endeavor to correct said injury. The State of Illinois, defendant, comes and defends said matter as above set forth and contends that said claim was not sufficient in law for the claimant to maintain his action.

It is the opinion of this Court that this is a claim in which there is no legal liability on the part of the State and that the doctrine of *respondeat superior* is not applicable to the State, and that in considering the claim the Court is of the opinion that it is not within the rules in which equity and social justice could be invoked. If there is any possible construction of the statutes or of the Constitution of the State wherein it could be considered that the Board of Education is or was in any way the agent of the State, that such agency if any could be construed, would be very remote and of such a nature as to make it unjust to place a burden on the taxpayers of the State in general.

It is therefore the opinion of the Court that the demurrer filed on the part of the State, should be sustained and the Court further finds that the claimant has no claim against the defendant that could be based upon equity or social justice.

It is therefore ordered by the Court that said claim be dismissed.

CLAUDE HARVE TURNER

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

SOCIAL JUSTICE AND EQUITY—*when award will be made.* Claimant an attendant at the Illinois State Hospital, while in the discharge of his duty contracted the disease of small-pox while attending an inmate of the institution, and as a result of the disease his eyes became infected which later resulted in the loss of his right eye and probable loss of the left eye. *Held*, that, while the State is not legally liable to claimant as an act of social justice and equity he is entitled to an award.

Edward J. Brundage, Attorney General, for State.

The evidence in this case discloses that the claimant, Claude Harve Turner, who resides at 436 S. Irving Avenue, Chicago, Illinois, was employed at the Chicago State Hospital at Dunning, Illinois, for the past three years up to and including December 26th, 1921; that claimant was working in said hospital as a nurse and that said hospital is a State Hospital for the Insane; that his duties were that of an attendant at that institution taking care of insane patients, giving them medicine under direction of the doctors, keeping them in bed and otherwise administering to them; that a patient by the name of Walter Benninger became a patient in the claimant's ward on the 23rd day of December, 1921, that said patient had smallpox; that on December 24th the claimant assisted in the care of said patient, holding him while a Miss Hering tried to take his temperature and get a mouth and throat culture; that because of the patients violence neither Miss Hering or claimant were able to get either mouth or throat culture; that claimant received orders from the attending physician to keep the patient in bed until further orders; that eleven o'clock a. m. said patient was removed to the back end of the ward, the forty bed ward as claimant calls it, and that claimant's orders were to keep him in bed and keep him isolated from the other patients; that claimant was obliged to stay near the patient at all times; that in taking care of the patient the claimant was obliged to come in close contact with said patient, placing his arms around the patient's shoulders and neck, holding him upright while he was taking patient's temperature; that the attending physician told claimant that there was no danger in his doing so; that claimant was about seven and a half hours in constant attendance of said patient; that claimant was ordered to take the patient to the second floor of the hospital, known as the isolation floor and that he was unable to do so without help as the patient was a man weighing about 170 pounds and claimant could not handle him with-

out assistance and that claimant asked for assistance; that the Supervisor informed him she could not furnish assistance, that a Miss Koelling was Supervisor of this ward; that claimant finally took the patient to the second flood without any assistance, but that it took some time to take patient down.

The evidence further shows that claimant had a day off on Monday, December 25th and returned to work at 3 o'clock p. m., said Bemminger was taken out of the hospital at 8 o'clock of that day and taken to the Isolation Hospital, 3411 South Hamlin Avenue, Chicago, Illinois, where the smallpox patients are taken; that on December 27th, 1921, the claimant was vaccinated by Dr. Lenehen and the vaccination pronounced successful by Drs. Foley and Coffey; that on January 3rd, 1922, the claimant was taken with chills and fever and a nausea while on duty at said Dunning Hospital; that on January 6th, 1922, the claimant noticed an eruption on his body and Dr. Archibald L. Hoyne was called in to see patient and diagnosed the case as smallpox; that claimant was sent to the Isolation Hospital at 3411 Hamlin Avenue, Chicago, Ill., and was treated by Dr. Hoyne, claimant being confined in said hospital for the period of six weeks and two days; that claimant was irrational for two weeks; that claimant suffered from eruptions on his body changing into pustules, which became confluent and one perforated the anterior chamber of his right eye and two under left eye lid; that as result of the pustule penetrating the anterior chamber of the right eye the sight was entirely destroyed; that the condition of claimant's health has been very bad and that he is not able to do anything; that claimant has consulted eminent eye specialists of Chicago and has been informed by them that his right eye will probably have to be removed; that there is no chance of improvement of the vision in that eye, the vision is reduced to a mere preception of light, due to an extensive scar, and that there is no prospect of any improvement in claimant's vision; that these specialists further informed claimant, that, if the right eye should become inflamed it may be that the left eye will also have to be removed.

The evidence further shows that claimant has not been employed at any time since contracting said disease and that he has not been able to do anything since that time; that claimant's health is very poor and that at the time of the taking of this evidence, on August 31st, 1922, he has been unable to do work of any kind; that he has been receiving a salary of $55.00 per month from the State of Illinois since his illness; that said salary amounts to the sum of $330.00.

The evidence of the attending physician is substantially the same as the claimant's regarding the disease and its treatment, cause and effect.

The State of Illinois, being represented by the Attorney General, has demurred to the declaration, which as a matter of law will be sustained. However, the Attorney General interposes no objection to a recommendation, pursuant to the policy of the Court in this class of cases in such amount as equity and social justice require.

Considering the sufferings of the claimant, the result of the loathsome disease and the condition in which he now is and will be for the remainder of his life, the Court as a matter of equity and social justice find that the claimant is entitled to an award. We therefore recommend the award at the sum of three thousand seven hundred fifty ($3,750.00) dollars in full settlement of all claims against the State of Illinois.

DAVID S. MYERS, ET AL, EXECUTORS, ETC.

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

RENT—*when lessor entitled to a reasonable rental.* Where a lease of premises is made for a certain term and the amount of rent to be paid by the lessee is not stated or fixed by the terms of the lease, the lessor is entitled to recover a reasonable rental for the premises for the term.

Edward J. Brundage, Attorney General, for State.

David S. Myers, Anne R. Lord, Charles E. Myers, Achalis M. Legg and William Brunskill, executors and trustees of the last will and testament of Harriet Humiston, deceased, brought this suit against the State of Illinois for the recovery of $1,200.00, alleged to be due them as such executors, for rents alleged to be due on certain real estate belonging to deceased in her lifetime.

The only evidence offered is by the claimants, and same shows death of deceased, the lease by deceased to the State, the rental value of same, and amount due claimants, all of which is admitted by the State, except as to the rental value of the land.

The evidence discloses that in her lifetime the decedent, Harriet Humiston, leased to the defendant, State of Illinois, for the use of the Illinois State Reformatory at Pontiac, twenty (20) acres of land near said City of Pontiac, the same to have and to hold for the use and benefit of the said Illinois State Reformatory for a period of four years, from March, 1918, to March, 1922, no price or rental value being mentioned in such lease.

Decedent died October 20th, 1920, and claimants duly qualified as executors in said estate.

The weight of the evidence shows that there are four years rent due claimants and that $1,200.00 is a reasonable rental value of same for the entire period. In fact the evidence tends to show really a larger amount due; but the suit is for only $1,200.00. There has been no appropriation made at any time out of which such rents might have been paid, or any part of it. Hence the necessity for this claim. The Attorney General concedes that the claim for amount sued for appears to be, from the evidence, reasonable and interposes no objections to an allowance of the same.

The Court therefore makes an award for claimants herein, for the sum of twelve hundred dollars ($1,200.00).

BIG FOUR WILMINGTON COAL CO.

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

FRANCHISE TAX—*mistake of fact. When refund will be made.* Where a corporation reduces its capital stock and files a certificate of such reduction in the office of the Secretary of State, and in the office of the recorder of deeds of the proper county, and afterwards through a mistake pays its franchise tax upon its original capitalization, it is entitled to a refund of the amount of the tax over-paid.

Edward J. Brundage, Attorney General, for State.

The declaration in this case shows that the Big Four Wilmington Coal Company is a corporation organized under and by virtue of the laws of the State of Illinois; that it was incorporated for the sum of $650,000 consisting of 6,500 shares of par value of $100.00 each; that for a number of years prior to the 1st day of March, 1922, it had not carried on any active business, but was engaged in liquidating its assets and that on the 1st day of March, 1922, such assets did not exceed in value $13,000; that at a meeting of the stockholders of said corporation held on March 6th, 1922, the capital stock of said corporation was reduced from $650,000.00 to $13,000.00, consisting of 130 shares of the par value of $100.00 each; that the certificate of such reduction of said capital stock was duly filed in the office of the Secretary of State of Illinois and also in the office of the Recorder of Deeds of Cook County, Illinois, on the 24th day of May, 1922; that thereupon all shares of stock issued by your claimant were surrendered to the Secretary of this claimant and in lieu thereof shares of stock were issued to the stockholders in proportion of the original capitalization of said company to said reduced capital stock; that a franchise tax was paid for the year beginning July 1, 1922, amounting to the sum of $325.00.

It is further shown by said claimant that this amount was paid by said corporation to the Secretary of State through a mistake and that the amount that should have been paid was $10.00, thus making a total of $315.00 due the claimant from the State of Illinois.

Contained in the claimant's declaration is a copy of a letter from the Secretary of State of Illinois to said claimant, stating that the claimant appears to have paid to the State of Illinois $315.00 more franchise tax than was due from it and advising said claimant to file its bill with the Court of Claims for said amount.

The Attorney General of this State filed a statement setting forth, substantially, the above facts, interposing no objections to the payment of this claim and consenting to an award.

We believe that the sum of $315.00 was paid by a mutual mistake of facts and that as a matter of law the claimant should be reimbursed.

We therefore award said claimant the sum of $315.00 without interest.

ELMER G. HOLLAND

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

GOVERNMENTAL FUNCTION—*State highways.* The State in owning, operating, controlling and patrolling its State highways, exercises a governmental function and is not liable for injuries sustained by its employees while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*when award will be made.* Where claimant is engaged in a hazardous employment, the Court will as a matter of social justice and equity allow an award, although there be no legal liability against the State.

Edward J. Brundage, Attorney General, for State.

This is a claim presented by Elmer G. Holland, claimant, for personal injuries arising out of his employment as a State motorcycle police patrolman.

We find from the evidence in this case that, said claimant, Elmer G. Holland lives at Wood River in the State of Illinois, that on the 22nd day of October, 1922, he was in the employment of the State of Illinois at State patrolman; that he was employed by the Engineer of Maintenance of the State of Illinois, patrolling the highways from Granite City to Carlinville and from East St. Louis to Effingham and from Wood River to St. Louis; that on the 22nd day of October, 1922, said claimant was patrolling the roads, attending to the duties assigned to him; that he was riding a motorcycle furnished by the State for patroling purposes; that he was following a Ford car, said car going at the rate of 42 miles per hour, as checked by the claimant and a Mr. Waters, also a motorcycle policeman; that said Ford car was exceeding the speed limit under the Statute of this State; that the occupants of said car were apparently intoxicated and the car was swerving from one side of the road to the other at a place in the highway where the traffic was heavy and danger great to the occupants of the passing cars; the claimant and Waters speeded up their machines and endeavored to overtake the occupants about 400 or 500 yards, the driver of the Ford discovered that they were being pursued, threw on his brakes and stopped his car suddenly, the result being that Holland, who was going at a high rate of speed in order to overtake the Ford, ran into the rear end of said Ford and received injuries that required considerable medical attention, rendering said Holland unconscious and necessitated his being taken to St. Elizabeth's Hospital at Granite City.

The claimant further testifies that he had been engaged in this line of work for about 2 months, prior to the accident; that he received com-

pensation for his services from the State for the time he was employed and that he has not since been employed by the State; that he has only worked until 11 days from the date of the accident up until the 8th day of February, the day his testimony was taken; that he did work for a Mr. Reilly, the bus man, driving the bus; that he had tried to ride a motorcycle and found that he got sore and felt bad also that he had tried to do carpenter work and found that it hurt him.

Dr. William E. Howard testified that he lived at Wood River, is engaged in the practice of medicine and surgery and a graduate of Barnes Medical College: that he attended Elmer G. Holland, the claimant here, on October 22nd when he was first called that he found said claimant had 2 or 3 fractured ribs, wasn't sure whether it was 2 or 3, that he bandaged them up, a laceration of the left elbow, one laceration to the bone down to the joint and that his left wrist seemed to be hurt, the ligaments were sprained and pretty badly bruised up, and that he had some lacerations on the hand; that the laceration did not get into the joint of the elbow, just got to the bone and that the bone was not injured: that he doctored the claimant for the injury to his broken ribs about 5 or 6 weeks," saw him off and on" as the doctor says; that the injury to claimant's wrist would interfere somewhat with claimant's work. From the doctor's testimony the injury to claimant's ribs, hands and other minor injuries would not bother him to any great extent, that in time nature would, no doubt, take care of those injuries so that there would be no ill effect for any great length of time.

Dr. Howard further testifying says that he has not been paid for his services.

The Attorney General files a demurrer to the declaration which as a matter of law will be sustained. He also sets out in the demurrer that the doctrine of *respondeat superior* is not applicable to the State; that in the absence of Statute, the State is not liable for the torts of its officers, agents, inmates or employees; that the State in owning, controlling, operating and patrolling the State highways of this State exercises a governmental function and is not liable for injuries to its agents, servants or employees; that the statement of claim shows that the injuries complained of were solely the result of the tort or torts of one who was not an employee, agent or servant of the State of Illinois.

That the Attorney General is right in his contention is not disputed, as these questions have been so decided in numerous cases by this Court.

However, the Court believes that the claimant engaged in a line of hazardous work, that of motorcycle patrolman; that in this line of work the claimant was dealing with a class of persons who drive recklessly and in utter disregard of the lives of other persons; that in this particular case he was pursuing, according to the evidence, men of questionable character, men who were not only intoxicated, but who own a saloon and gambling house, so the witness says, at what is known as Whiskey Shoot in East St. Louis. Claimant considered them dangerous men and from the evidence we believe that they were exceedingly dangerous men with a disregard for, not only their own lives but for others. It is becoming altogether too common for men of this caliber

to "run down" and injure the motorcycle patrolmen of the State. We believe that the claimant was acting in the line of his duty, trying not only to arrest these law breakers, but to protect the lives of others out on this road.

We believe that, while the injuries sustained by the claimant are not of a permanent nature, still he was at considerable expense and some loss of time; that as a matter of social justice; equity and good conscience an award should be made in this case.

We, therefore, recommend an award of the sum of three hundred ($300.00) dollars to said claimant.

ESLIE M. CASTLE, ET AL., BOARD OF EDUCATION, ET AL.

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

NON-LIABILITY OF STATE—*when State is not liable.* The State is not liable for a tort committed by an inmate of its institutions.

SOCIAL JUSTICE AND EQUITY RULE—*when not followed.* In calling into being the rules of equity and social justice the Court at least should know that the State is actually responsible either by its officers, agents, employees or charges.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by the Board of Education of School District No. 98 of Madison County, Illinois, against the State of Illinois, by reason of a school building being destroyed by fire on or about June 19th, 1922. It was alleged that the circumstances attending the same would show that certain inmates of the Alton State Hospital at Alton, were responsible for said fire. The Attorney General in behalf of the State, demurred to this claim and it is the opinion of the Court that there is no legal liability on the part of the State upon a claim of this character, and the Court in further considering the matter, finds that there is no evidence upon which a Court could base a judgment. It would hardly be good logic in law of equity to rule a liability upon any person, municipality or State where there would be no specific evidence or other satisfactory evidence upon which a Court could concluded that the inmates of this institution started the fire in question. In the calling into being the rules of equity and social justice the Court at least should know that the State is actually responsible either by its officers, agents, employees or charges.

It is therefore the opinion of this Court that there is no legal liability and that there is no evidence before the Court wherein the Court would recommend allowance against the State of Illinois. Therefore no allowance is recommended and the demurrer of the State is hereby sustained.

RALPH A. TEATER

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

GOVERNMENTAL FUNCTION—*State not liable. Division of Highways.* The State in exercising its governmental functions is not liable for the torts of its agents, servants or employees.

SOCIAL JUSTICE AND EQUITY—*when award will be made.* The Court as a matter of social justice and equity enters an award in favor of claimant.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by Ralph A. Teater, of the City of Springfield, Illinois, setting forth that on and before October 17th, 1921, the claimant was in the employ of the State of Illinois, as a mechanic's helper in the Bureau of Machinery of the Division of Highways, in the Department of Public Works and Buildings; that while so employed, he was receiving as his compensation or salary, wages at the rate of fifty cents ($0.50) per hour, during all the time so employed.

That on the 17th of October, 1921, and while the claimant was so employed, there was a certain automobile then and there in the possession, ownership and control of the said Bureau of Machinery in the Division of Highways in the said Department of Public Works of said State of Illinois, and which was located on an elevated platform at the State Fair Grounds, in the City of Springfield, Illinois; that claimant at the time and place aforesaid was directed by certain of his superior officers then and there being likewise in the employ of the said State of Illinois, to assist in removing the said automobile from said platform and to that end, it became and was the duty of the claimant and he was so directed by his superior officers to get into the said automobile in order that he might steer the same by means of the steering wheel thereof, while the same was being towed by means of a certain rope or ropes attached to a certain motor truck or vehicle and which motor truck or vehicle was then and there under the control and management and was being driven by a fellow employee of said defendant; that thereupon and pursuant to the order and direction, and while engaged in the performance of his duty and employment as aforesaid, the claimant did get into the automobile and did attempt to steer the same by means of the steering-wheel thereof, while the said automobile was being towed in the manner aforesaid; that the said automobile being thus towed and in which the claimant was riding was defective and insecure, in that the said steering-wheel was not securely fastened to the post to which it was attached and thereby and by reason thereof the

claimant was unable to steer the same; that the claimant had no previous knowledge of this defect and although the claimant made every possible effort to steer the said automobile and to prevent any accident to himself and while in the exercise of all due care and caution for his own safety and although the claimant repeatedly called to the driver of the auto truck, which was towing said automobile, to stop and thereby endeavored to prevent the accident yet the driver of the auto truck negligently failed and neglected to stop same, and continued to proceed therewith, and to pull and tow the said automobile in which the claimant was then riding and which he was attempting to steer or guide, and by reason of the negligence of the said driver of said auto truck and his failure to heed the warning of the claimant herein, and by reason and on account of the defective condition of the said automobile upon which the claimant was riding, the said automobile ran, toppled and fell over the side of said platform to and upon the ground, and the claimant was unable to extricate himself therefrom in time to avoid serious injury to himself; that the claimant was seriously and as he believes, permanently injured about his back, limbs and body and was thereby less able to earn his living in the future and by reason thereof he was required and did lay out expenditures and become liable for divers sums of money for doctor bills, surgical treatment and medicine, and was further thereby deprived of divers gains, profits and wages, which he would have otherwise made and would be able to earn in the future. He asks damages in the sum of $5,000.00.

The evidence shows that claimant is a married man living at Springfield, Illinois, with his wife and two small children, that his age is 28 years, that he was employed at the Illinois State Fair Grounds by the Highway Department of this State at the time of his injury; that during the time he was so employed he was preparing himself, by study, for a registered pharmacist and that he had served his apprenticeship as a drug clerk. Claimant further testifies that he was receiving as his wages from the State of Illinois about $24.00 per week and that he is now employed at Freidman's Drug Store in the city of Springfield at a salary of $30.00 per week; that prior to his injury he was employed at different times during the season as a baseball player and also a basketball player for which he received approximately $500.00 a year in addition to his regular salary or wages; that his physical condition is such at the present time, owing to the injury he received, that he is unable to engage in any athletic sports and that he is deprived of earning the extra salary; that he incurred hospital and doctor bills during his illness amounting to a considerable sum, which are unpaid and for which he is liable.

We are unable to agree with counsel for plaintiff relative to the negligence of the driver of the truck which was towing the defective car. It is stated in the declaration that claimant repeatedly called to the driver, Jones, yet the driver of the truck negligently failed and neglected to stop his car. The evidence is that claimant called as loud as he could for Jones to stop the car, but that Jones was unable to hear him, presumably on account of the noise made by the truck, he sitting quite a distance from the car being towed.

There is no question but what the claimant received very painful injuries and it may be of a permanent character; that said injuries were suffered while in the course of his employment with the State and that without any knowledge of the defect in the car in question and that he exercised due care and caution for his own safety.

It is true, that under the decisions of the Supreme Court, the acceptance of a salary or wages during the period of the disability or incapacity is not a waiver of the right to compensation for such disability whether partial or total, in the absence of an agreement otherwise, but we are of the opinion that such wages or salary received by the claimant since his injury should be taken into consideration in making an award.

The Attorney General, in behalf of the State, has filed a demurrer to the declaration, which, as a matter of law will be sustained. It has been well established heretofore by the decisions of this Court that the doctrine of *respondeat superior* is not applicable to the State; that the State in the ownership, possession and control of said automobiles was exercising a governmental function and is not liable for the torts of its agents in relation thereto. There can be no question but what the Workmen's Compensation Law of Illinois does not apply to employees of the State.

We are of the opinion, however that as a matter of equity and social justice an award should be made in this case to the claimant even though there is no liability on the part of the State. We therefore award to claimant the sum of one thousand five hundred ($1,500.00) dollars in full of all claims of every kind and nature whatsoever against the State of Illinois for injuries sustained by him while in the course of his employment with the State and to compensate him in the event of total disability.

EUGENE PHILLIS WARD AND MARIE JOSEPHINE CATHERINE ELIZABETH ANATOLE DERIQUET, COUNTESS OF CARAMAN-CHIMAY DECOCQ

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

INHERITANCE TAX—*when refund will be made.* In this claim there is no dispute about the facts and law governing the case, and the Court enters an award to claimants for a refund of the difference between the amount of the inheritance tax paid under the original order fixing the tax and the amount found to be due under the final order of the Court re-assessing the tax. Section 25, Inheritance Tax Law.

Edward J. Brundage, Attorney General, for State.

The claimant, Eugenie Phyllis Ward and Marie Josephine Catherine Elizabeth Anatole DeRiquet, Countess of Caraman-Chimay DeCocq bring this suit under section 25 of the Inheritance Tax Law of Illinois for a refund of a portion of the inheritance taxes assessed and paid in the estate of Catherine Morrow, deceased.

Decedent died April 20th, 1915, leaving a last will and testament dated May 21st, 1914, a first codicil thereto dated December 7th, 1914, and a second codicil thereto dated January 15th, 1915, which will and codicils were on October 1st, 1915, duly proved and admitted to probate in the Probate Court of Cook County, Illinois, and the order admitting them to probate was never vacated or appealed from.

John K. Lyon and Calvin Fentress, both of Cook County, Illinois, were by the will appointed to be executors of the will and trustees in and under the trusts created under and by said will and testament. They duly qualified as such and the estate of said deceased was duly administered according to law, and the executors were discharged as such executors November 23rd, 1918, and the trust funds came into their hands as trustees aforesaid. Besides certain legacies, which were paid the testatrix devised the residue of her property to the said trustees to be divided into three funds, to be known and are designated "Marie de Caraman-Chimay Fund," "Joseph de Caraman-Chimay Fund," and "Eugenie Phillis Ward Fund" as near in equal parts as possible might be, the primary beneficiary being three grand children of testatrix after whom the said funds were named as stated.

On the 7th day of February, 1916, the County Judge of Cook County, Illinois, entered an order assessing a total inheritance tax in the estate of $29,257.10, which said tax together with the interest amounting in all to $30,622.43 was duly paid as provided by law. The three grand children aforesaid were in said order taxed upon a life estate in their

said respective "Funds," and the remainder after their respective life estates, together with the remainders after their respective life estates, together with the remainder in a trust fund of $75,000.00, after the life estate of one Esmee Lyon d "Huckeren D" Anthez, were distributed for the purpose of the tax under said section 25 of the Inheritance Tax Law to a stranger, by virtue of certain contingencies in said will, which are not necessary to set out in this opinion as a certified copy of the will with its codicils and the entire proceedings of the Court are filed herein and admitted by the Attorney General to be correct.

The said Joseph D'Caraman-Chimay died January 20th, 1920, leaving surviving him no child or children or issue of deceased child or children and accordingly under the terms of the will the trustees turned over his "Fund" to themselves as trustees of the said "Marie Fund."

The trustees were authorized by the will that upon the happening of certain contingencies, one of which was that when the two said girls last mentioned should respectively attain the age of thirty (30) years the said funds as aforesaid on proper proceedings might be delivered as aforesaid.

On the 15th day of May, 1920, the contingencies happened as to the said Eugenie Phyllis Ward Fund, and the trustees accordingly transferred the then principal of said fund to said Eugenie Phyllis Ward free from any further conditions in said will. On May 14, 1921, these contingencies happened to Marie de Caraman-Chimay Fund and the trustees likewise transferred the then principal of said trust fund to said Marie, including that part paid into it as the Joseph de Caraman-Chimay Fund after the death of said Joseph as aforesaid. All of the contingencies mentioned in the will concerning, limiting and governing these said funds having happened and the properties having been transferred as aforesaid, then thereafter on the 3rd day of November, A. D. 1922, on proper petition of the said Phyllis and Marie, the County Court of Cook County entered an order re-assessing the inheritance tax in said estate, which had in the original order been assessed at the highest possible rate, said order of reassessment taxing said Marie upon one-third of the residue of said estate in fee, and the remainder in one-third after the death of the said Joseph; and Eugenie being taxed upon one-third of the residue in fee, thus leaving assessed against the stranger under section 25, only the remainder in the $75,000.00 fund after the death of Esmee Lyon de Huckeren D'Anthez; and the remainder of the original order assessing the taxes upon the specific legacies remaining the same. On the petition for re-assessment as aforesaid the County Court re-assessed said inheritance taxes at the sum of $15,087.81 without including interest due thereon, which when added at the rate of 6% from the date of the death of said testatrix on April 20th, 1915, to February 7th, 1916, making the total then due the State $15,809.50; and the difference between the said sum of $30,622.43 originally paid, the said sum of $15,809.50 is $14,812.93 which the claimants are entitled to as refund of inheritance taxes with interest thereon at the rate of 3% per annum from the 7th day of February, 1916, to the date of re-payment by the State of Illinois of said amount.

To all this the Attorney General in writing consents. The Court accordingly awards claimants the said sum of $14,812.93 to be paid to them respectively, according to the prayer of their said petition that is to say: the sum of $9,875.28 of said sum with interest as aforesaid to be paid to the said "Marie" and the sum of $4,937.65 with interest as aforesaid be paid to said Phyllis. The Court accordingly recommends appropriations for the payment of the amount so found to be due to said claimants, with interest as aforesaid.

JOHN B. O'MALLEY, JAMES W. O'MALLEY AND VINCENT O'MALLEY, TRUSTEES

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

INHERITANCE TAX—*when refund will be made under Section 25, Inheritance Tax Law.* In this claim there is no dispute as to the facts and the law governing the same, and upon the proofs submitted the Court enters an award for the difference between the amount of tax paid under the original order assessing the tax and the amount found to be due upon the final order re-assessing the tax, with interest thereon at 3%.

Edward J. Brundage, Attorney General, for State.

This is a suit brought by the petitioners, John B. O'Malley, James W. O'Malley and Vincent O'Malley of City of Chicago, Cook County, Illinois, trustees of the estate of John O'Malley, late of said Cook County, deceased, for refund of inheritance tax, claimed to be due claimants.

Said John O'Malley died a resident of Chicago, Illinois, March 17th, 1920, leaving a last will and testament and codicil thereto, under which petitioners were appointed executors and trustees of said will, testament and codicil.

The provisions of said will pertinent to the issues involved in this suit are in proof herein.

The will was duly admitted to probate May 1st, 1920, and said estate duly adjudicated and settled and petitioners discharged as executors.

In the administration of the estate in assessing the inheritance tax upon the property of the estate of said deceased, certain successions were taxed under section 25 of the Inheritance Tax Act of July 1st, 1909, as upon a succession with respect to a specific legacy of $15,000.00 to Mrs. J. J. Hardin, a niece of said decedent—that is to say the $15,000.00 was imposed at the highest rate which, on the happening of any contingencies or conditions, was possible, and was levied on the assumption that said property would pass to said Mrs. J. J. Hardin, and that in assessing the inheritance tax upon the residue of the property of said estate of said deceased, the succession was taxed under said section 25, as upon a succession to Catherine O'Malley, widow of said John O'Malley, deceased, and imposed at the highest rate which upon the happening of any contingencies or conditions was possible, and was levied upon the assumption that the said residue of said property of said estate would pass to Catherine O'Malley.

As trustees of the will claimants were obliged to and did on September 10th, 1920, by order of the County Court did pay the total amount of inheritance tax upon the gifts, legacies, interests, successions

appraised and distributed for taxation by order of the County Court, September 3rd, 1920, amounting to the total sum of $4,774.29 less 5% discount making a net sum of $4,535.58, which included the taxes upon said successions distributed for taxation under said section 25 to said Mrs. J. J. Hardin and Catherine O'Malley.

Under the terms of the will all the estate passed to said trustees, petitioners, and the time fixed for distribution of the estate was at the death of said Catherine O'Malley, widow of said decedent. The said widow O'Malley died August 10th, 1922, at which time all contingencies and conditions were defeated and rendered void, and Sarah E. Stone, sister of deceased became entitled to $15,000.00 free from all trusts, limitations and conditions; and the claimants, John B. O'Malley, James W. O'Malley and Vincent O'Malley, sons of decedent became entitled to said residue, being 1/3 each thereof, freed of all trusts, limitations, conditions and Sarah E. Stone, being the sister of said John O'Malley, deceased, is entitled to an exemption of $10,000.00 and claimants, who are the sons of said deceased became entitled to $20,000.00 each exemption; and Catherine O'Malley being the widow was entitled to an exemption of $20,000.00.

Subsequently an order was made by the Court and the estate reappraised as required by law, and approved by the Attorney General. The latter adjustment by the Court shows that the inheritance tax is assessed in the sum of $2,398.48 and not the sum of $4,774.29 as previously assessed.

From calculations made on the two assessments and the payment made on the original assessment it shows claimants entitled to a refund of $2,257.02 with interest at 3% per annum from September 10th, 1920. To this the Attorney General gives his written consent herein.

It is therefore ordered by the Court that claimants be awarded and paid by the State the sum of $2,257.02 with 3% interest thereon per annum from September 10th, A. D. 1920.

JOHN K. LYON, ET AL., TRUSTEES OF THE LAST WILL AND TESTAMENT OF EBER B. WARD, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

INHERITANCE TAX—*when claimant entitled to a refund.* Where the inheritance tax is assessed under Section 25, of Inheritance Tax Law, upon certain contingent interest, and is paid, and afterwards the contingencies are defeated and the estate vests in the legatees under the will, and the County Court upon proper proceedings enters an order re-assessing the tax reducing the same. *Held*, that claimant is entitled to a refund of the difference between the amount paid under the original order assessing the tax and the amount fixed by the County Court in its order of re-assessment.

Edward J. Brundage, Attorney General, for State.

This is a claim filed under Section 25 of the Inheritance Tax Law for a refund of a portion of the inheritance tax assessed and paid in the Estate of Eber B. Ward, deceased.

Eber B. Ward died in France, May 5th, A. D. 1918, and his will was duly probated in Cook County, Illinois. John K. Lyon, John W. Gary and Calvin Fentress were appointed by said trustees of the trusts named in the will for the benefit of decedent's two daughters, to be known as the "Esmee Ward Fund" and the "Phyllis Ward Fund" respectively.

The latter two trustees resigned and George F. Henneberry and Augustus P. Richardson were appointed their successors, respectively, as provided for under the will, and the said John K. Lyon, George F. Henneberry and Augustus P. Richardson, the claimants became and are now the sole duly qualified trustees of said funds.

Pursuant to proper inheritance tax proceedings the County Judge of Cook County, Illinois, entered an order assessing a total inheritance tax of $94,703.56, which said tax less the five percent discount for payment within the six months of decedent's death was $89,968.38, which was on November 6th, 1918, paid by said John K. Lyon, executor of said will, who as such executor, has since then discharged as executor of said will, and who is now one of the trustees, together with said Henneberry and Richardson, trustees, of said funds, and as such trustees are the claimants in this case.

A portion of said tax was assessed upon certain contingent interests involved in the said trusts under said section 25 of the Inheritance Tax Law at the highest possible rate, and the tax so assessed presumably was paid by the executor as provided by law out of the corpus of said trust property. All as shown by the evidence herein.

The said contingencies having now been defeated, and the said trusts having been vested in the two daughters of the testator under the provisons of the will and by operation of the law, the County Court of said county of Cook thereafter upon petition by claimants herein, of which proceedings the Attorney General had due legal notice, entered an order November the 20th, 1922, re-assessing the inheritance tax in said estate; the total tax so re-assessed being $80,409.94, which less the five per cent show the net amount of $76,389.44, and the only tax affected by said order, being the tax upon the said trust property in the hands of the claimants.

All facts stated herein are matters of record and filed herein and admitted by the Attorney General, proof thereof being by him waived. The evidence sustains all the allegations in the claim, which is admitted by the Attorney General, who consents to an award of the amount of the claim.

It is therefore ordered by the Court that claimants be awarded a claim of $13,578.94 with interest thereon at the rate of 3% per annum from the 6th day of November, 1918, the said award being the difference between the said amount as originally assessed and the amount fixed in the order of re-assessment.

MICHAEL J. KELLY

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

RESPONDEAT SUPERIOR—*State not liable for torts of inmates of its institutions.* The State is not liable for the torts of its officers, agents, employees or inmates.

SOCIAL JUSTICE AND EQUITY—*when award will be recommended.* Where it appears that claimant was engaged in a hazardous employment the Court will recommend to the Legislature an appropriation.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by one Michael J. Kelly who was on the 6th day of September, 1922, employed as an officer in the Illinois State penitentiary at Joliet; that while in the performance of his duties as an officer in said prison, he was assaulted by certain inmates and with a brick, struck him many violent blows and also violently kicked him. It appears from the evidence given by the prison physician that the bruises and discoloration have entirely disappeared; that he has however heavy ringings in his ears, especially in the left and suffers with headaches that appear to be becoming more frequent and severe. The defendant by the Attorney General comes and defends, setting up first that the doctrine of *respondeat superior* is not applicable to the State, and that in the absence of Statute, the State is not liable for the torts of its officers, agents, inmates or employees.

It is the opinion of this Court that the legal defense set up by the Attorney General is well taken and therefore the demurrer is sustained. However it is the opinion of the Court that this is a case that comes within the rules and practice of this Court as a matter of equity and social justice, it appearing that the claimant's employment was hazardous and that he was injured while in line of duty and that he has filed his claim in apt time.

Therefore it is the opinion of this Court that allowance should be made in this case and it is therefore recommended by this Court that the Legislature allow the sum of ($1,500.00) fifteen hundred dollars.

FAYE M. KEPLER

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

RESPONDEAT SUPERIOR—*not applicable to the State.* The doctrine of *Respondeat Superior* is not applicable to the State, and it is not liable for injuries sustained by its employees while in the performance of their d[illegible].

SOCIAL JUSTICE AND EQUITY—*recommendation.* As a matter of social justice and equity, the Court in view of the circumstances of the case, recommends to the Legislature an appropriation to claimant for the death of her husband.

Edward J. Brundage, Attorney General, for State.

This is a claim for compensation for the death of claimant's husband, which occurred November 4th, A. D. 1922, in consequence of his employment in the Division of Highways of Illinois as a patrolman while in the employ of the State.

The State has demurred to the declaration generally and specially.

The evidence is before the Court by stipulation of the parties to the suit, and consists of the affidavits of claimant and George M. Burger and a transcript of the evidence taken before the coroner's jury in the inquest held over the body of deceased. The evidence discloses that the claimant, Faye M. Kepler, is the widow of Roy W. Kepler, deceased, and that she and deceased were married September 22nd, 1920; that she was 24 years old and that deceased was 27 years old at time of his death; that their property, real and personal did not exceed $1,200 or $1,400, at time of his death and a mortgage upon the real estate in the sum of $800; that the claimant now is dependent solely upon her manual labor for her support; that at the death of deceased they had no child or children, nor decendants of child or children.

The evidence further shows that at and several years prior to his death the deceased was an employee of the State of Illinois in the capacity of patrolman of the State Highway Department whose duties it was to patrol and keep in repair part of the State hard road extending east and west through the State of Illinois, known as the Old National Trail and passing through Vandalia, St. Elmo, Altamont, Effingham, etc. That the section of said road so assigned to deceased extended from a point about two miles east of Altamont, thence west to Bluff City, Illinois. At the time of his death he was being paid a salary of $125.00 a month by the State.

That on the 4th day of November, 1922, he was directed by his superior in said employment to go in company with George M. Burger, also an employee of the State in said department to Patoka and to there

get and bring back a motorcycle for the use of deceased in the performance of his duties as such patrolman. Finding the machine not in running order Burger and deceased decided to tow it in to St. Elmo. Accordingly they attached by a wire the disabled machine to the motorcycle in which they came to Patoka. Burger mounted and drove the machine which brought them over and deceased by arrangement between him and Burger mounted the dead motorcycle to guide the same, while Burger drivng the good machine towed the dead one. That while traveling at the rate of about ten miles an hour on the concrete road, conveying the disabled machine to its proper destination, and when at or near the village of Vernon, approaching an intersecting road at said village an automobile was also approaching the cross road, and when the said motorcycles were within about 200 feet of said intersection of roads Burger cut the power off from his motor and the two machines coasted toward the intersection, and that when within about twenty feet of the said intersection the disabled machine on which deceased rode unavoidably coasted out to the left of the leading machine, running off of the concrete road; the connecting wire tightened and the rear or disabled machine was suddenly jerked around causing deceased to be thrown to the ground and the head of deceased was badly cut and torn by the machine in which he was riding. Deceased was cared for by Mr. Burger the best he could; but he only lived about 25 minutes after the accident, causing his death.

No part of the expenses has been borne in this affair. It has so ofter been held by this Court that in such cases the State of Illinois is not liable for damages, that we will not here cite authorities in further support of such holdings, and the demurrer will be sustained. But, the case at bar is one of particular interest and deserving of careful consideration. The deceased was an employee of the State for two years, was faithful and efficient; that while in line of duty, within the scope of his employment, without fault on his part he was accidently killed, leaving a little more than enough property to bury him; and leaving claimant without any means of support except her own manual labor. And as a matter of equity and in the interest of social justice the Court believes the claimant should be compensated for the death of her deceased husband.

We accordingly recommend that the Legislature make an appropriation for claimant in the sum of ($3,750.00) three thousand seven hundred fifty dollars.

THE STATE SAVINGS, LOAN AND TRUST COMPANY, A CORPORATION ORGANIZED AND DOING BUSINESS UNDER AND BY VIRTUE OF THE LAWS OF ILLINOIS.

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

INHERITANCE TAX—*when refund will be made.* Where after the payment of the inheritance tax, the Board of Review assesses back taxes upon the property of the estate, and they are paid, and upon petition by claimant an order is entered by the County Court modifying the original assessment by allowing the deduction for the back taxes paid. *Held*, claimant is entitled to a refund of the amount over-paid.

Edward J. Brundage, Attorney General, for State.

This is a suit brought by claimant, State Savings, Loan and Trust Company, a corporation organized and doing business under and by virtue of the laws of the State of Illinois, against the defendant, State of Illinos, for refund of inheritance tax, paid in the estate of Charles Appleton, deceased.

The facts in the case as shown by the inheritance records of Adams County, the records of the State Treasurer and the records of the Attorney General admitted in evidence herein and consented by the Attorney General to be true are briefly as follows:

Said decedent died August 26th, 1920, a resident of Adams County, State of Illinois, leaving a last will and testament which was duly admitted to probate in the County Court of said County, and the claimant was duly appointed and qualified as adminstrator of said estate with the will annexed.

Pursuant to proper inheritance tax proceedings before the County Judge of said County, a total inheritance tax of $2,844.27 was assessed in said estate, which sum, less five per cent discount for payment within six months of decedent's death, to-wit: $2,702.06 was paid by claimant February 25th, 1921.

Thereafter the Board of Review of Adams County aforesaid, assessed *back taxes* upon the property of said estate to the amount of $9,659.73, which said sum claimant also paid, being paid subsequently to the payment of the said inheritance tax aforesaid.

On the 8th day of January, 1923, the County Judge of said Adams County, upon proper petition by claimant entered an order finding that the claimant had paid back taxes amounting to $9,659.73 subsequently to the payment of the inheritance tax as aforesaid and that the inheritance tax so paid should be reduced to the extent of $289.80, and ordering a modification of the original order fixing the tax so that the

amount of tax to which the estate is liable is $2,554.47 instead of $2,844.27. The Attorney General was represented at said hearing by his assistant and consented to the modifying order as above stated.

Upon this showing the Court finds that the claimant is entitled to a refund of $275.31, without interest, which the Attorney General admits is due and should be paid.

The Court therefore awards claimant the said sum of two hundred seventy-five and 31/100 ($275.31) dollars, without interest.

BESSIE A. TOLMAN AND GRACE T. DAVIDSON, BENEFICIARIES UNDER THE LAST WILL AND TESTAMENT OF SAMUEL A. TOLAN, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

INHERITANCE TAX—*when refund will be made.* Where an inheritance tax is assessed against an estate, and paid, and afterwards claims are allowed against the estate and are paid, and upon proper proceedings the original order is modified by reason of the payment of such claims, the claimant is entitled to a refund under Sections 8 and 10 of Inheritance Tax Law.

INTEREST ON REFUND—*when not allowable.* Interest on a refund can only be allowed under Section 25, of Inheritance Tax Law, it cannot be allowed under Sections 8 and 10 of that law.

Edward J. Brundage, Attorney General, for State.

The claimants, Bessie A. Tolman and Grace T. Davidson file this cailm to recover back a portion of inheritance taxes paid in the Samuel A. Tolman estate.

The said decedent died June 4, 1919, a resident of the city of Chicago, Cook County, Illinois, and on June 24, 1919, the Chicago Trust Company and John A. Davidson were duly appointed executors of the last will and testament of said deceased, by order of the Probate Court in said county of Cook, and as such they duly qualified and made proper distribution of the estate as provided by the will.

On December 15, 1921, said executors made final report which was approved, and they were discharged from further duties as such executors.

Under the terms and provisions of said will, the Chicago Trust Company, John A. Davidson, Jr., and Raymond M. Acheraft were appointed trustees of the estate of the said decedent, and are now acting as trustees of the estate of the said Samuel A. Tolman, deceased.

The appraiser appointed by the Court, reported appraising the estate at one million twenty-nine thousand five hundred eighty-eight and 75/100 ($1,029,588.75) dollars, and the total tax due thereunder was eighteen thousand five hundred eighty-one and 77/100 ($18,581.77) dollars.

After the distribution as aforesaid of the legacies from which the inheritance taxes were deducted by the executors, certain debts were proven against the estate and paid, and on proper proceedings in Court, of which the Attorney General had due notice the fair cash net value of said estate was revised and a new schedule made, greatly reducing the amount as shown by the record in evidence.

The order modifying the original order and assessing the tax against Bessie A. Tolman at $2,223.76 and Grace T. Davidson at $6,673.98, the amounts actually due upon said interests under said order (less 5% discount) being $2,112.57 and $6,340.28 respectively, it is apparent from the records in evidence that there is a refund due on said payment of $217.01 and $8,897.32 respectively.

The Attorney General admits the correctness of the records as aforesaid, and consents to awards in the amounts last expressed respectively.

The claimants, however, claim in their petition the right to collect "legal interest from the date the said sums were so wrongfully paid," as is contended by them.

The entire amount was legally collected by virtue of a valid order of assessment as shown by the original order of the Court, from which no appeal was taken. It is evident that claimants' right of refund in this particular case is based upon Sections 8 and 10 of the Inheritance Tax Laws, the fair intendment of which is that the State shall make proper refund on account of debts proved after assesment and payment; but no provision is made therein for the payment of interest.

Interest at the rate of 3% per annum is allowable only when the claim for refund is brought under Section 25 of the statute where a less tax becomes due by reason of the *happening or non-happening* of contingencies, upon which the interests assessed depend, which is not apparent in this case, and accordingly no interest will be allowed.

The claimants are awarded the following sums respectively, viz.: Bessie A. Tolman, two hundred seventeen and 01/100 ($217.01) dollars, and Grace T. Davidson, eight thousand eight hundred ninety-seven and 32/100 ($8,897.32) dollars, for which sums the Court recommends appropriations and payment.

C. J. CARLSON

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in conducting the Illinois Penitentiary at Joliet, exercises a governmental function and is not liable for injuries sustained by its employees while in the discharge of their duty.

SOCIAL JUSTICE AND EQUITY—*limitation under the rule.* While the Court as a matter of social justice and equity may award compensation to an injured employee of the State engaged in a hazardous employment, yet there must be some limitation within which the State would be free from an obligation of this nature, and five years is long enough time to keep the gates open under the equitable and social justice rule.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by C. J. Carlson who was employed on the 2nd day of December, 1917, and for a number of years prior thereto as a guard or a keeper at the Illinois State penitentiary at Joliet and on the night of said day he had general supervision as night captain of the said penitentiary; that in the discharge of his duties he was required to make regular rounds of the various buildings to ascertain that the prisoners were all confined; that on said day there was confined in said prison in solitary confinement about seventeen convicts who were in course of being disciplined; that while he was engaged he was attacked by three convicts and was beaten about the head with a club and iron bars; that by result of said beating he was inflicted with eight cuts about three or four inches long that caused depression of the skull. As a result of such attack the claimant was confined in the hospital of said penitentiary for a period of one week and was unable to resume his duties for a period of three weeks; that he suffered repeatedly with headache, nervousness and sleeplessness and that he suffered considerable pain and inconvenience that apparently increased as time went on. The defendant, the State of Illinois, by its Attorney General, comes and files a demurrer; also a plea of Statute of Limitations.

It is the opinion of the Court as it has been repeatedly held by this Court that there is no legal liability on the part of the State and all that remains for the consideration of this Court is the consideration of the rule of equity and social justice and in view of the fact allowances are made in these cases as it has been repeatedly held by this Court, only on account of a desire to assist worthy employees while engaged in extra hazardous occupation, yet there must be some limitation, otherwise the time would never come during the lifetime at least of the claimant or

during the administration of his estate when the State would be free from this sort of an obligation.

It is the opinion of this Court that five years is long enough time to keep the gates open under the equitable and social justice rule when if the defendant were a private corporation or an individual, the time for legal relief in the Courts would have passed to the utmost certainty.

Therefore while this Court sympathizes with this claimant, yet we are impelled by a duty to the people of the State of Illinois to disallow this claim for the reasons stated.

The demurrer is hereby sustained as well as the plea of the Statute of Limitations.

FRED B. MEDCALF

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

GOVERNMENTAL FUNCTION—*when State not liable.* The State in conducting the Illinois State Penitentiary at Joliet exercises a governmental function and is not liable for injuries sustained by its employees while in the dicharge of their duty.

SOCIAL JUSTICE AND EQUITY—*when award will be made.* While the State is not legally liable to claimant for the injuries sustained, where the employee is engaged in a hazardous employment the Court will as a matter of social justice and equity allow an award.

This is a claim filed by Fred M. Medcalf who was employed as concrete foreman in the new penitentiary in Will County, Illinois; that while in the course of the performance of his duties on the 2nd day of September, 1922, he was attacked by a convict by the name of Charles Montiel and another convict by the name of Eugene Lemiux who used as a weapon a pick-axe handle and the other convict a pocket knife; that they cut the claimant on the chest, back, arms and head in many places and beat him about the head, arms and body; that one cut was inflicted on claimant's left chest directly over the heart and as a result whereof the claimant suffered great pain and his head and body became permanently scarred.

The Attorney General comes and files his demurrer and according to the practice of this Court in cases of this kind the Court finds no legal liability on the part of the defendant. However the Court according to this practice in such cases, recognizes this case as a matter in which equity and social justice should be considered. The claimant was employed at a hazardous undertaking. He has made his claim in ample time. However, it is the opinion of this Court that reason must be exercised in the allowance of these claims and from the evidence that we have considered it hardly can be claimed that it would be a total disability claim as understood under the Workmen's Compensation Act.

The Court is of the opinion that allowance should be made and it is therefore recommended that an allowance in the sum of $2,000.00 be considered by the Legislature.

We therefore recommend that the Legislature allow the sum of $2,000.00.

MICHAEL J. LEONARD

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

GOVERNMENTAL FUNCTION—*Jackson v. State, Supra, followed.* Thus claim is similar to that of *Jackson v. State, Supra*, and the decision of the Court there announced governs this claim.

Edward J. Brundage, Attorney General, for State.

The claimant, Michael J. Leonard, was an employee of the State of Illinois as a guard or keeper at the penitentiary at Joliet on the 1st day of February, 1919, and he alleges that while he was in the discharge of his duties he was attacked by two convicts who struck the claimant over the head, arms and body with two certain chair legs, bruising his head and cutting gashes along across the top of the head. As a result he further alleges was unable to work for about two weeks and underwent great pain and suffering. To the petition of the claimant the Attorney General in behalf of the State of Illinois, has filed a demurrer, a general and special, setting forth that the doctrine of *respondeat superior* is not applicable to the State, etc.

It is the opinion of this Court as it has been held repeatedly that there is no legal liability on the part of the State in these classes of cases. It appears from the evidence that the claimant was laid up for two weeks on account of the assault. There is no evidence to indicate that he was at any loss on account of medical or hospital services, or that he was damaged by loss of salary or wages. It further appears that this assault occurred about four years before the claim was filed and it would seem that this claimant should have brought forth his claim before that much time had elapsed.

It is the opinion of this Court that this is not a case in view of all the facts and circumstances, particularly in view of the extent that the claimant was injured; that this is a case where the principle of equity and social justice should be considered.

It is therefore considered by this Court that no allowance be recommended in this case and that the demurrer of the defendant be and the same is hereby sustained.

WESTERN GAS & ELECTRIC COMPANY

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

GAS FURNISHED—*when State is liable.* The State is liable for gas furnished and used by it at its institutions.

Edward J. Brundage, Attorney General, for State.

This claim is filed by the Western Gas and Electric Company against the State of Illinois and amounts to the sum of $89.10.

The claimant has filed an affidavit of claim setting forth that on or about September 10th, 1918, while repairing a leak in the gas main connected with the Illinois State Penitentiary at Joliet, Illinois, it was discovered that the gas consumed at the Women's Prison of said institution had not been paid for prior to that time for a long period of time; that upon discovery of that fact, the claimant presented a claim to the Illinois Penitentiary for $1,048.32, the amount then due and unpaid, and that said claim was supported by affidavits of all the facts in connection with said claim.

Claimant further states that E. J. Murphy, the warden of the Illinois State Penitentiary, requested that the claim of said Gas Company be divided into two bills, one for $959.22 which was for gas furnished prior to July, 1918, and the other bill of $89.10 for gas furnished between July, 1918, and September 10th, 1918; that the warden stated that these amounts would be paid out of separate funds, that the larger amount would have to be filed with the Court of Claims and the smaller item of $89.10 would be paid from the regular appropriation for the institution above mentioned.

Claimant further states that said item of $959.22 was duly paid July 13th, 1921, but that the item of $89.10 has not been paid either in whole or in part and that the Western United Gas and Electric Company has a just claim against the Illinois State Penitentiary for said sum of $89.10 for gas used as above stated.

The Attorney General files his consent to an award for the amount of $89.10 and states that the State of Illinois has no defense to the claim.

We therefore make an award to the claimant in the sum of $89.10.

ALFRED C. CHRISTENSON

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

FUGITIVES FROM JUSTICE—*liability of State for expense.* A messenger sent by the proper authorities to return a fugitive from justice is entitled to mileage to be paid him by the State under Section 11, Chapter 60, Hurd's Rev. Statutes of Illinois.

Edward J. Brundage, Attorney General, for State.

This claim amounting to the sum of $364.90 as milegage of claimant, Alfred C. Christenson, as messenger for the return from California in March, 1921, of Eddie Newman, a fugitive from justice, then charged with the crime of robbery in Cook County.

The claim is verified by affidavit and is certified to by the County Judge of Cook County, as required by section 11 of the Fugitives From Justice Act, and attached to the papers is a statement signed by the Administrative Auditor that the claim has never been paid and that had the papers been submitted during the time the appropriation, out of which the expense should have been paid, was available he would have approved said claim.

The claim is a liability of the State of Illinois and should be paid.

The Attorney General interposes no objections to the claim and waives further proof in the premises and consents to an award.

We, therefore, award said claimant the sum of $364.90.

JOHN E. EGAN
v.
STATE OF ILLINOIS.

Opinion filed March 8, 1923.

FUGITIVES FROM JUSTICE—*liability of State for expense.* This case is similar to that of *Christenson v. State, Supra,* and the decision of the Court announced in that case governs this claim.

Edward J. Brundage, Attorney General, for State.

This claim amounting to the sum of $148.84 was filed by the claimant, John E. Egan, same being for mileage of claimant as messenger for the return from New York in May, 1921, of Joseph Kelly, a fugitive from justice then charged in Cook County with the crime of robbery.

The claim is verified by affidavit and is certified to by the County Judge of Cook County as required by section 11 of the Fugitives from Justice Act, and attached to the papers is a statement signed by the Administrative Auditor that the claim has never been paid and that had the papers been submitted during the time the appropriation, out of which the expense should have been paid, was available he would have approved said claim.

There is no question but what the claim is a liability of the State under section 11 of the Act aforesaid, and that said claim has been filed at the earliest opportunity, afforded said claimant.

The Attorney General interposes no objection to claimant and waives further proof in the premises and consents to an award.

We, therefore, award said claimant the sum of $148.84.

CHARLES WELLING

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

FUGITIVES FROM JUSTICE—*liability of State for expense.* This case is similar to that of *Christenson* v. *State*, *supra*, and the decision of the Court announced in that case governs this claim.

Edward J. Brundage, Attorney General, for State.

This claim amounting to the sum of $148.84 was filed by claimant, Charles Welling, same being for mileage of claimant as messenger for the return from New York, in May, 1921, of Arthur Bernstein, a fugitive from justice, charged in Cook County with the crime of robbery.

The claim is verified by affidavit and is certified to by the County Judge of Cook County as required by section 11 of the Fugitive from Justice Act, and attached to the papers is a statement signed by the Administrative Auditor that the claim has never been paid and that, had the papers been submitted during the time the appropriation, out of which expense should have been paid, was available he would have approved said claim.

There is no question but what the claim is a liability of the State under section 11 of the Act aforesaid, and that said claim has been filed at the earliest opportunity afforded said claimant.

The Attorney General interposes no objection to the claim, waives further proof in the premises and consents to an award.

We, therefore, award said claimant the sum of $148.84.

MANUFACTURED ICE AND COLD STORAGE CO.

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

CONTRACT—*when State liable.* The State is liable for supplies furnished for use of Illinois State Normal University.

Edward J. Brundage, Attorney General, for State.

This is a claim for $96.00, on account of ice sold and delivered by the claimant to the State, from December, 1920, to June, 1921, for the use of the Illinois State Normal University at Normal, Illinois.

The Attorney General in behalf of the defendant, comes and consents to an award of $96.00 without interest.

We, therefore, award the claimant the sum of $96.00 without interest.

J. F. HUMPHREYS & CO.

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

CONTRACT—*when State liable.* The State is liable for supplies furnished for use of Illinois School for the Deaf at Jacksonville.

Edward J. Brundage, Attorney General, for State.

This is a claim for $14.21, on account of one barrel of cider vinegar sold and delivered by the claimant, November 30, 1920, to the State for the use of Illinois School for the Deaf at Jacksonville.

The Attorney General in behalf of the defendant, comes and consents to an award of $14.21 without interest.

We, therefore, award the claimant the sum of $14.21 without interest.

THE CONSOLIDATED COAL COMPANY

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

CONTRACT—*when State liable for freight charges.* The State is liable for freight charges on coal sold and delivered to it for its use.

Edward J. Brundage, Attorney General, for State.

The Consolidated Coal Company of St. Louis files a statement of claim, setting forth that it is an Illinois Corporation; that there is due it from the State of Illinois the sum of $194.44 covering freight paid by it on coal sold by it, transported and delivered to the State of Illinois and attaches freight bills to affidavit of claim, together with a copy of letter from Secretary of State acknowledging receipt of the shipments of coal and the approval of the Welfare Department, approved by F. D. Whipp, fiscal supervisor. The Attorney General of the State of Illinois representing the State in this case files his consent to an award in the sum of $194.44 and waives further proof.

The Court therefore awards the claimant the sum of $194.44 in full satisfaction of said claim.

CENTRAL COAL COMPANY

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

CONTRACT—*when State liable.* The State is liable for supplies furnished to the Elgin State Hospital.

Edward J. Brundage, Attorney General, for State.

This is a claim for the sum of $145.49 filed by the Central Coal Company, a Wisconsin corporation, for 102,100 pounds of screenings purchased of the claimant by the State of Illinois for the Elgin State Hospital and shipped from Standard, Illinois, February 25, 1918.

Affidavit of claim is attached to the statement and bears the approval of the Department of Public Welfare, showing that the coal was purchased by express authority of law.

The Attorney General waives further proof of claim and consents to an award in the sum of one hundred forty-five dollars and forty-nine cents ($145.49) without interest.

Therefore the Court awards the claimant the sum of one hundred forty-five dollars and forty nine cents ($145.49) without interest.

SOCIAL SERVICE REGISTRATION BUREAU

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

CONTRACT—*when State liable for services rendered.* **The State is liable for the services rendered by claimant at the request of the State Immigrants Commission.**

Edward J. Brundage, Attorney General, for State.

This is a claim for $101.88 for services rendered by claimant to the State Immigrants Commission at the latter's request during the period from October 1, 1920, to June 30, 1921; the services consisting of 815 reports and notifications at 12½ cents each, regarding persons in whom the Immigrants Commission was interested.

The Attorney General in behalf of the defendant, comes and consents to an award of $101.88 without interest.

We, therefore, award the claimant the sum of $101.88 without interest.

FRED W. METZGER

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

STATE EMPLOYEE—*liability of State for traveling expenses.* The State is liable for the traveling and other incidental expenses incurred by claimant in the discharge of his duty, under the direction of the Department of Registration and Education.

Edward J. Brundage, Attorney General, for State.

This is a claim for $131.95 on account of traveling and other expenses incidental to the attendance by the claimant upon examinations for pharmacists under the directions of the Director of the Department of Registration and Education, in November, 1921.

The Attorney General in behalf of the defendant, comes and consents to the award of $131.95 without interest.

We, therefore, award the claimant the sum of $131.95 without interest.

WESLEY WILSON
v.
STATE OF ILLINOIS.

Opinion filed April 17, 1923.

UNIVERSITY OF ILLINOIS—*power to effect settlement to injured employee.* The University of Illinois, nor any other State institution, have no power to make agreements or settlements with its employees for personal injuries sustained by them while in the discharge of their duty.

RULE OF UNIVERSITY—*acquiesence therein by the State.* While the State is not liable for injuries sustained by its employees in the discharge of their duty, yet where the University has adopted a rule of its own which provides for compensation for such injuries, and an appropriation is made by the State to take care of such charge, it may be reasonably inferred that the State approved such rule and acquiesced therein.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by Wesley Wilson for damages for injuries received by him while in the employ of defendant, while engaged as a carpenter at the State University at Urbana, Illinois.

The facts in the case are as follows:

The claimant, being about sixty years old and being employed as a carpenter by the University of Illinois at a salary of $140.00 per month, was severely injured January 20th, 1920, as a result of the body of an automobile truck, upon which he was working, falling upon or against him, crushing his chest. No bones were broken, but several articulations between the ribs and breast bone and spine were pulled loose, causing also a great nerve shock. And to the date the evidence in the case was taken, April 7th, 1921, the claimant had been unable to do any work.

The evidence is that on the date of the accident, January 20th, 1920, and for ten years prior thereto the claimant, who was a carpenter at the University of Illinois was receiving a salary of $140.00 per month. Claimant was by order of one of his superior officers sent to the power house to assist in the repair of an automobile truck located in a room of the power house, and used for a repair shop by the University. The body of the truck was set up or suspended endwise and while claimant was boring holes through the body for its necessary repair from some unknown cause the body fell toward and upon claimant, crushing him between the body and the other part of the truck, the body having been detached for the purpose of repair. Claimant was instantly rendered unconscious; but was soon rescued by other workmen present or nearby and taken to the hospital, where he remained for several days. Since he left the hospital he has been treated several times by several physicians.

Claimant testified that prior to the said injuries he was a strong, able-bodied man, free from chest troubles or shortness of breath or soreness of chest, of which he now complains; that in consequence of the said injuries he has not been able to do any manual labor on account of hurting or soreness in chest, shortness of breath, and weakness of arms, all of which he alleges are results of the said injuries.

Dr. Burres testified in part as follows:

I was called in fall of 1920 to treat claimant at his house for what he called shortness of breath and pain in chest. I found his breathing rather rapid and spasmodic or irregular and he complained of pain; found he had heart enlarged some and somewhat rapid. Found no physical evidence of injury; but there evidently has been. The breathing and circulation were not normal, which I attributed to some thoracis injury. I thought the injury could be the result of a crushed chest; or crushed walls of the chest. If the condition is due to the injury complained of, as I surmised, then it would probably be permanent. It would impair his ability to work. His condition may have been due to the injuries or it may have resulted from other causes. I did not examine him for six months after the alleged injury.

Dr. Gulick testified in part as follows:

First time I was called to see claimant was last summer, and found him breathing rapidly with a rapid heart and very nervous. Of course that was due to lack of deep respiration, and he was very nervous. He told me how he was hurt in the accident. I made no examination for the result of the injury. Last two times I treated his was for extreme nervousness, and a strong nerve medicine always relieved him, and it appeared to me that his condition was due to the general effect on his nervous system from this crushing injury—the shock. A man of his age being injured in the manner he was and to the extent he seemed to have been injured, does not come back, or recuperate from a nerve shock. The nerve power is not strong. He would not have the power of endurance. My opinion is that his condition is due to nerve shock. Crushing injuries to the chest always bring on nerve shock. I do not know how severe his injury was as I did not examine him then, (meaning at time of injury).

Dr. Beard is the health officer of the University, who having an emergency case at the time asked that another doctor be called. Afterwards he met Drs. Gray and Yantis, all of whom took part in binding up patient's chest and he was taken to hospital. We afterwards had an "X-Ray" taken of Mr. Wilson's chest and could see that certain articulations had been pulled loose both from spine and ribs. With a man of his age convalescence would be very slow and prolonged. It would take considerable time for recovery in such case for a man of his age.

Dr. Yantis had attended claimant at times before this accident and found his respiration all right, and attended him soon after accident and several times since. It is his opinion that the injuries received by the accident are permanent. On being asked about his ability to perform manual labor since the injuries, Dr. Yantis said, "It would lower his nervous resistance; I think the man would not be safe on

high buildings on account of faintaing spells he would take at times, and the muscular action, in lifting and straining, taking into account his age, too, I think it would greatly hamper him in that particular. He is in a state of neurasthenia."

From the weight of the evidence it seems reasonably clear claimant is a neurasthenic; that he has considerable trouble in his chest and possibly some enlargement of the heart; and that these conditions were and are the result of said injuries, as claimant's evidence and the evidence of Dr. Yantis show that prior to the accident none of these conditions existed. But this evidence was all taken April 7th, 1921—being nearly two years since it was taken, and about 15 months after the accident happened.

It appears that the University had adopted a rule or law of its own, which provided that any one injured while in the employ of the University of Illinois should be compensated if the case was meritorious, etc. Some time after this accident the trustees appointed Judge Harker, C. M. McCown, and Lloyd Morey, a committee to investigate and to determine what would be a fair and equitable settlement of this case. Their report to be reported to the Board of Trustees and the President of the University for approval.

This was done; the committee heard evidence with respect to the injuries. The defendant participated therein, testifying in his own behalf as to the extent of the injuries; medical testimony was taken, and the said committee reported recommending a certain settlement, acceptable to the University, and was agreed to and signed by the claimant.

Also the following stipulation by counsel has been submitted in evidence, to-wit:

"Abstract of stipulation with respect to settlement between claimant and University of Illinois."

"It is hereby stipulated by and between the parties hereto by their respective counsel that the paper attached hereto, entitled "proposed settlement with Wesley Wilson for accident January 28th, 1920" is a true copy of the settlement recommended by the committee of the University of Illinois for injured employees in respect to the injuries of the claimant herein; that said settlement was signed by the claimant herein as indicated in said paper; and that the same was approved by the Board of Trustees of the University of Illinois; that the claimant has been receiving payments from the University of Illinois to the present date as provided in said settlement; and that the said University has fully discharged all its obligations under paragraphs 1 and 3 of said settlement, and has paid each payment due to this date under said second paragraph of said settlement."

(Signed) F. T. Carson, Attorney for Claimant.
(Signed) Edward J. Brundage, Attorney General."

"Proposed settlement with Wesley Wilson for accident January 28th, 1920.

1. Allowance of $12.00 per week from date of accident to July 15, 1920, period of disability as per report of examining physicians,

24 weeks at $12.00 per week, $288.00. ($140.00 of this amount has already been paid).

2. Allowance of $24.00 per month from July 15, 1920, until death; but not for more than five years, payable monthly on first of each month. (These payments to cease in case Mr. Wilson resumes full time employment at full carpenter's wages). Maximum total, $1,440.00.

3. Payment of bills for hospital and medical attention on account of said injuries incurred prior to July 15, 1920, estimated $100.00. Estimated maximum total, $1,828.00.

This proposed settlement is acceptible to me. I understand that its status at present is merely that of a recommendation agreed upon by the Commission which must be recommended also by the President of the University and approved by the Board of Trustees in order to become effective.

(Signed) Wesley Wilson.

Approved by Board of Trustees."

The declaration in this case appears to have been filed March 18, 1921; but claimant had up to October 15, 1922, continued to draw the monthly allowance from the University according to the terms of the said agreement between him and the University, and at said date he had received under said agreement the sum of $1,036.00, $100.00 of which is for medical services and hospital expenses. Should claimant live out the full period of five years without resuming work on full pay as provided under said agreement and continue to draw monthly the sum so stipulated and agreed to in said settlement for said period, then he will have drawn the total maximum sum of $1,828.00. He may resume his duties as carpenter in said institution at any time on full pay.

From the fact that the University has paid and continues to pay to claimant the consideration as per the terms of the said settlement, it may reasonably be inferred that the State has acquiesced therein by its appropriations to take care of this charge.

We are not aware of any law authorizing or empowering the University of Illinois, or any of the State institutions to make contracts, agreements, or settlements with any of its employees for damages for personal injuries received by them while in the employ of such institution. But we do not criticize the University for said rule for settlement with its employees. It is probable that the University is in a better position under that rule to give quick, equitable and ample relief to those of its employees who happen to misfortune while in line of duty, than any legal tribunal would be. The rule was no doubt made to aid the University in a more economic management of the institution. In this case at bar a committee of excellent men was named by the Board of Trustees, which heard the evidence of claimant and the physicians and all witnesses to the facts, and upon such hearing made its recommendation as aforesaid, which was approved by the Board of Trustees and agreed to and signed by claimant. The claimant might have presented his claim then to the Court of Claims for its consideration; but he chose to settle with the University. No doubt the settlement made at

that time from the evidence before the committee was a fair, honest and equitable settlement, with which claimant was entirely satisfied.

We assume that the University will continue to discharge its obligations as provided in said settlement, should the State continue to allow its appropriations for that purpose as in the past it has done.

This Court, however, has repeatedly held that the State of Illinois is not liable for injuries sustained by its employees while in the employment of the State; and the Court has so held in all cases of this character both before and after the passage of the act of 1917, creating the Court of Claims, and defining its jurisdiction.

In response to a communication by the Clerk of this Court inquiring of the University if the claimant is still drawing his pay as per his and the University's agreement. We received an affirmative reply. Claimant having chosen to settle with the University in the manner he did; and it appearing to the Court that he is getting and will get under said agreement all he is entitled to as shown by the evidence.

We sustain demurrer and dismiss the case.

CHARLES J. EWERTS, ET AL.

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

ABOLITION OF OFFICE—*the power to abolish.* In the absence of constitutional restraint the power that creates an office has the right to abolish it at pleasure.

SAME—*right of incumbent to salary of office abolished.* When an office is abolished the incumbent has no right to compensation for the unexpired term. The right to the salary for the remainder of the term is to be determined by the power abolishing the office.

COURT OF CLAIMS—*duty of Court.* The Legislature in creating the Court of Claims had in mind that it would be the duty of the Court to hear evidence and propositions of law upon all claims filed against the State, and pass judgment not alone upon the legal rights of claimant from the view point of equity and social justice in order that the court be placed in position to advise and recommend to the Legislature the merits or demerits of a claim.

DISMISSAL OF CLAIM—*when claim will be dismissed.* Where the Court is of the opinion that the claim is one more properly for the Legislature to determine it will dismiss the claim.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by Charles J. Ewerts, to the September, A. D. 1922, term of this Court.

The claimant alleges that he is entitled to recover for services as a member of the State Board of Equalization from the first day of July, A. D. 1919, at which time the said board was abolished by the Legislature of this State until the 31st day of December, A. D. 1920.

It was further alleged by claimant that he was elected to this position from his district on the 7th day of November, A. D. 1916, for a period of four years.

It is further alleged that the General Assembly of the State of Illinois passed an Act entitled "An Act in Relation to the Assessment of Property for Taxation," which said Act went into effect the first day of July, 1919.

By the force of this Act, a tax commission was created to perform the duties previously exercised and performed by the State Board of Equalization, thereby, by reason of such enactment the State Board of Equalization passed out of being.

The claimant further alleges that he was elected to this position and assumed his duties as a member of the State Board of Equalization as then provided by law for a period of four years.

The remuneration for this position was fixed by Statute at $1,000.00 per annum; therefore the claimant further declares that by reason of

his position being abolished on July 1st, 1919, that he was deprived of the salary from July 1st, 1919, to December 31st, 1920, a period of one year and six months for which time the claimant alleges salary would accrue to him, in the sum of $1,500.00.

The defendant by the Attorney General comes and files his brief and argument denying liability on the part of the defendant, the State of Illinois.

The matter of the claim of the said claimant together with the other members of the State Board of Equalization coming on to be heard and the Court after hearing evidence and the arguments of counsel finds that the State Board of Equalization was created by the Legislature of the State of Illinois and by virtue of such enactment, the claimant, as such member of the Board of Equalization entered upon the performance of his duties subject to the powers of the Legislature to change or abolish the law governing same and with the expectancy of receiving the emoluments attached.

It is the opinion of this Court that the Legislature in creating this Court had in mind as the purpose of this Court to hear evidence and propositions of law upon claims filed against the State and pass judgment not alone upon the legal rights of the claimant, but upon the rights of the claimant from the view point of equity and social justice and it is further the opinion of the Court that the intention of the Legislature in the creation of the Court of Claims was to relieve the Legislature insofar as it might be necessary in the matter of hearing evidence and arguments of law and equity so that this Court might be in a position to advise and recommend to the Legislature as to the merits or demerits of a claim, thereby enabling the Legislature to pass equitably and justly upon all demands made upon the State.

It is, however, the opinion of this Court that in the case at bar the Legislature is in a better position to know the legal rights and the equities of these claimants than is this Court because the Legislature created the Board of Equalization and abolished said body and created the new tax commission and in creating the new law and in abolishing the old, the Legislature was fully aware of the advantages to the people and taxpayers of Illinois in the creation of this new law and the disadvantages if any in abolishing the old law, and it naturally follows that the Legislature weighed the rights, advantages and the possibilities that would come to the people of the State of Illinois in abolishing the State Board of Equalization and creating the new body; therefore, it is the opinion of this Court that the Legislature is fully advised in the premises and is in a position to know that action which would best serve the interest of all concerned.

It has in mind and has knowledge of all the facts and circumstances surrounding the law that gave life to and caused the State Board of Equalization to function and likewise had full knowledge of the circumstances that lead to having the Equalization Board abolished.

The Legislature had in mind no doubt, as is stated before, the advantages that would accrue in the State in abolishing this body and

reinstating the new commission and also had in mind the rights and equities of the members of the Board of Equalization who were deprived of their offices and compensation connected therewith when the State Board of Equalization was put out of being.

Therefore, it is considered by this Court that no recommendation be made as to this claim or to any other claim of like character, leaving the adjustment of these claims to the authority that created them and abolished them and the body who is as well advised or better than this Court to pass judgment on the equitable demands of these claimants. That body is the Legislature of the State of Illinois and to which body this Court makes no recommendation; accordingly, this claim is dismissed from further consideration of this Court.

FRED E. CHIDESTER

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

GOVERNMENTAL FUNCTION—*State not liable.* The State in conducting the Illinois Western Hospital for the Insane exercises a governmental function and is not liable to its employees for injuries sustained by them in the discharge of their duty.

WORKMAN'S COMPENSATION ACT—*not applicable to State. Practice.* The Workman's Compensation Act is not applicable to the State for injuries sustained by its employees but it is the practice of the Court where claims of employees for injuries sustained while in the employment of the State, to follow that statute in order that equity and justice be done.

SOCIAL JUSTICE AND EQUITY—*when claim will be allowed.* Where the facts and circumstances justify, and the State makes no objections to the claim, the Court will enter an award in favor of the claimant for the injuries sustained by him in the course of his employment.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by Fred E. Chidester for damages, for injuries sustained in March, 1921, while in the employment of the State of Illinois.

It appears from the affidavit filed in this case that on the 9th day of March, A. D. 1921, the claimant was employed at the Illinois Western Hospital for the Insane, commonly called the Watertown State Hospital, situated in the City of East Moline, Rock Island County, Illinois; that while thus employed at said hospital the claimant received an injury which arose out of and in the course of his employment in said hospital, which was then and there owned, operated and controlled by the State of Illinois; that claimant was employed at said hospital as industrial foreman in the Industrial building, it being one of claimant's duties to do odd jobs of work around said institution to do carpenter work and working on a joiner in the carpenter shop in said Industrial building and while thus engaged under the orders and superintendence of Dr. M. C. Hawley the managing officer of said hospital, the claimant received an injury caused by the blades or knives of the said joiner cutting and tearing the flesh and bone from the first, second and third fingers of the right hand, necessitating the amputation of the first and second phalanges of all three fingers; that the claimant was employed at said Watertown State Hospital for a period of more than five years; prior to said injury; that he received as wages and salary during the year prior to aforesaid injury, the sum of one thousand three hundred and eighty dollars ($1,308.00) per annum; that claimant is a married man and the father of five minor children, three of whom are below the

age of sixteen years, and reside with said claimant in East Moline; that all medical services were furnished by the State and also pay for three weeks temporary total disability; that by virtue of the injuries aforementioned, claimant became partially incapacitated permanently and by reason thereof, he has suffered damages to the amount and extent of one thousand two hundred and seventy-five dollars.

Claimant filed his petition with the Industrial Commission of the State of Illinois, for compensation for said injuries and said Industrial Commission, after hearing the evidence submitted before it, made an award to this claimant in the sum of fifteen dollars ($15.00) per week for eighty-five weeks, totaling the sum of one thousand two hundred and seventy-five dollars ($1,275.00); that a lump sum settlement was approved by said Industrial Commission in the sum of one thousand two hundred and forty-four dollars and thirty-three cents ($1,244.33); that a copy of the settlement contract and the lump sum award are attached thereto; that afterwards the Director of Finance refused to pay said award or lump sum settlement on the advice of the Attorney General because there was no valid appropriation out of which to pay said award and the proper adjustment of claim for a compensation for injuries received by State employees was through the Court of Claims.

The Attorney General has filed a demurrer to the petition herein filed and as a matter of law said demurrer will be sustained.

The State of Illinois is not liable, in the absence of Statute for the torts of its officers, agents, inmates or employees.

The Workman's Compensation Law is not applicable to the State of Illinois for injuries sustained by its employees, but it has been the practice of this Court, where claims of employees for injuries sustained while in the employment of the State, to follow said Statute in order that equity and justice be done to injured employees.

The facts in this case are not disputed and the Attorney General waives proof thereof, and makes no objection to a recommendation by this Court pursuant to its policies in cases of this nature.

We are of the opinion that the claimant is entitled to compensation for injuries sustained as aforesaid and recommend that the sum of twelve hundred forty-four 33/100 ($1,244.33) dollars be awarded to said claimant in full satisfaction of all claims against the State of Illinois for injuries sustained by him.

GREGORY T. VAN METER, ADMINISTRATOR OF THE ESTATE OF KASPER HILDEBRANDT, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

GOVERNMENTAL FUNCTION—*State not liable for injuries sustained by an inmate of its institution.* The State in conducting the Illinois School for the Blind exercises a governmental function and is not liable for injuries sustained by an inmate thereof.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by the administrator of the estate of Kasper Hildebrandt for compensation for the death of claimant's intestate.

It appears from the evidence that the decedent was a boy a little over twelve years old; that on the 9th day of January, 1920, he was placed in the institution for the blind at Jacksonville, by his father, Kasper Hildebrandt, of Morton Grove, Illinois. It appears from the evidence that the boy had some vision, such as "eye shadows." The managing officer of the institution testifies that "he had some vision." It further appears from the evidence that the boy's ward was on the third floor at the end of a wide hall. On that floor there are two windows separated merely by a wide casing, which windows are directly above the entrance to the building, about 28 feet above the cement walk; that the windows are about 28 inches from the floor and the bottom sill is about 20 inches deep.

On the 12th day of January, 1920, three days after the boy was admitted, he was found lying on the cement walk under the windows, dead from concussion of the brain. One or both of the windows were open. No one remembers whether the window had been raised for ventilation as was sometimes done, and it is possible that the boy himself raised the window though the window was somewhat heavy.

The defendant filed a demurrer to the said claim and setting forth as special cause for demurrer, the State of Illinois by its Attorney General shows unto the Court:

First—That the doctrine of *respondeat superior* is not applicable to the State;

Second—That in the absence of Statute, the State is not liable for the torts of its officers, agents inmates or employees;

Third—That the State in conducting the Illinois School for the Blind at Jacksonville, exercises a governmental function and is not liable for the injuries to the inmates thereof.

It is the opinion of the Court that there is no legal liability on the part of the defendant, the State of Illinois, in this case. Therefore, the demurrer is sustained.

It is the opinion of this Court that while this is a case that is to be deplored and that natural sympathy would go out to the parents of the child in question, yet we do not believe that where a case of this kind showing a question as to an equitable liability that any allowance should be made against the people of the State of Illinois. An action of this kind might have occurred in a well regulated home and we do not by this action, intend to relieve the officials or those in authority in our State institutions of the exercise of the greatest care consistent with the plan of their institutions.

It is therefore considered by the Court that no allowance be made in this case.

LOUIS DELL BOWKER, A MINOR, BY HIS NEXT FRIEND, N. D. BOWKER

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923

MILITARY SERVICE—*when claimant entitled to recover for injury sustained.* Claimant a first class private in Battery B, 123rd Field Artillery, 155 Ill. National Guard, under order from his superior officer, was injured while obeying orders in loading a heavy gun onto a freight car. *Held*, he is entitled to recover under Section II, of Article 16, Military & Naval Code of Illinois. (Hurd's Rev. Statutes of Illinois, 1919.)

Edward J. Brundage, Attorney General, for State.

Louis Dell Bowker, a minor, by his next friend, N. D. Bowker, filed his claim the 9th day of November A. D. 1922, with Louis L. Emmerson, Secretary of State and ex-officio clerk of the Court of Claims.

Claimant states that he is a minor under twenty-one years of age; that during the month of July A. D. 1922, and for a long time prior thereto he was a first class private in Battery B, 123rd Field Artillery, 155 M. M. H. Illinois National Guard; that on or about July 26th, A. D. 1922, the claimant was employed in the military service of the State of Illinois; that Ray Nevius, Captain of the Combat Train was in command of a squad of men, members of 123rd Field Artillery, of which this claimant was a member; that the battery of which claimant was a member, was engaged in loading guns and supplies preparatory to moving to Camp Custer; that the commanding officer, Captain Ray Nevius ordered the claimant to assist in loading a heavy gun from the freight platform of the C., B. & Q. freight house in the City of Monmouth, Illinois, onto a freight car; that claimant obeyed the orders of Captain Nevius and assisted in pushing said gun on said car; that claimant went, with other members of the battery, between the front and rear wheels of said gun, took hold of said gun and while pushing the same, and while leaning over forward the wheel of the rear part of the gun carriage struck the heel of claimant's right foot, crushing the bones, ligaments and tearing the flesh of said right foot and claimant was thereby and then and there greatly bruised, hurt and wounded.

The testimony of one of the attending physicians, Dr. J. R. Ebersole, is that, the injury to claimant occurred on July 27, 1922, that he was the first medical man to treat the injury; that the claimant was brought to his office by several of claimant's comrades ten minutes or less after the injury; Dr. Ebersole further testifies that he found claimant's right foot from the instep forward very much bruised, the skin and tissues broken, and the foot was swelling very rapidly and bleeding some; that on x-ray examination he found the second joint of the big toe fractured and part of the condyle; the second toe was also fractured and some dislocation of second joint of the second and third toes, the ligaments in the joint torn, big toe nail mashed and practically torn off; claimant was then suffering very much pain as he did for several days, that he assisted in taking x-ray pictures of the foot, treated the injury and dressed same; that claimant was confined to his bed for about a week and about two weeks after the injury he walked with the aid of crutches

for a month or six weeks; that he, Dr. Ebersole examined the injured foot to-day (the day the testimony was taken); that the injured foot is of rather purplish color, somewhat swollen, circulation still impaired; that claimant suffers great pain when moving the toes of the injured foot; that he has noticed the claimant walking several times recently; that he would state, that, if claimant uses his foot in any usual manual labor which required ordinary amount of walking or being on his feet he couldn't do it without considerable pain; that in the opinion of the doctor one-third of the efficiency of claimant's foot is destroyed and that it may be several years before claimant's foot will recover its efficiency, and would, very probable never be normal; that claimant will never have the normal use of his foot. The evidence of Dr. Glenn Ebersole is substantially the same as that of Dr. J. R. Ebersole.

The evidence shows that the claimant is a young man of athletic type, having engaged somewhat in athletics, that he is industrious, sober and worthy; that he has employed his time during the summer months, when he was not attending school, in working at odd jobs. That since the accident that befell him he has been attending college, preparing himself for a vocation he can follow in his crippled condition.

There is no dispute about the facts, and the Attorney General admits that under the Military and Naval Code of the State of Illinois, the claimant is entitled to an award.

It has been decided by the Commission of Claims of the State of Illinois, in the case of *O'Donnell* v. *The State of Illinois*, page 255 of the Court of Claims reports, that the Commission of Claims can allow claims against the State of Illinois only in cases whereby express statutory provision the Legislature has created a liability on the part of the State for the acts of its agents or rather waived the exemption of the State from such liabilities and to sustain a recovery, it must come within the provisions of Section 4, Article 9, of the Military Code." This Court has so ruled in the following cases:

Phillip R. Crippen v. *State of Illinois*, C. C. Reports, page 45.
Edward J. Lebeau v. *State of Illinois*, C. C. Reports, page 69.
Robert L. Mundelius v. *State of Illinois*, C. C. Reports, page 106.
Franklin A. Denison v. *State of Illinois*, C. C. Reports, page 155.

The Illinois Revised Statute (Cahill) 1921, Chapter 129, Paragraph 113 of Article 16, of the Military Code of Illinois, reads as follows:

In every case where an officer or enlisted man of the National Guard or Naval Reserve shall be injured, wounded or killed while performing his duty as an officer or enlisted man in pursuance of orders from the Commander-in-Chief, said officer or enlisted man, or his heirs or dependents, shall have a claim against the State for financial help or assistance, the State Court of Claims shall get on and adjust the same as the merits of each case may demand, etc.

This is a case that comes clearly within the jurisdiction and duties of this Court and in consideration of the foregoing section of the statute we award the claimant the sum of two thousand five hundred dollars ($2,500.00) in full settlement and compensation for injuries and expenses incident thereto.

GEORGE SALLADE

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

RESPONDEAT SUPERIOR—*doctrine not applicable to State.* The State is not liable for injuries sustained by its employees while in the performance of their duties. (*Jasper* v. *State*, 2 C. C. 323, followed.)

WORKMAN'S COMPENSATION ACT—*does not apply to State.* The Workman's Compensation Act does not apply to State employees.

SOCIAL JUSTICE AND EQUITY—*when claimant entitled to an award.* While the State is not liable for the injuries sustained the Court as a matter of social justice and equity recommends to the Legislature and appropriation to claimant.

Edward J. Brundage, Attorney General, for State.

The declaration in this case states that, the claimant, George Sallade was on the third day of June, 1922, engaged in constructing and repairing certain buildings on the State Fair Grounds near the city of Springfield, Illinois; and that he was engaged by the Department of Highways, a Division of the State of Illinois, by contract, express in its nature of hire in and about the aforesaid constructing and repairing of buildings carried on by the defendant, that he was in the employment of the defendant; and that he further avers that under the laws of the State of Illinois both the plaintiff and the defendant were working under and subject to a Statute known as the "Workmen's Compensation Act"; and the plaintiff further avers, that while so employed on the day aforesaid, under the terms of his contract with the defendant, an accident arose out of the course of the defendant's and plaintiff's work by which accident the plaintiff received painful and lasting injuries and damages; and the plaintiff avers that the aforesaid accident occurred as follows, to-wit: The plaintiff was engaged in placing a board upon the top of the aeroplane hanger and while so engaged the plaintiff slipped and fell a distance of ten feet to the ground alighting upon his arm and shoulder and receiving the following injuries, to-wit: Two broken ribs and the arm and shoulder badly smashed and injured to the extent that said arm has lost seventy-five per cent of its use; the plaintiff further avers that the loss of the use to said arm and shoulder is fully seventy-five per cent; the plaintiff further avers and shows that medical aid and assistance were furnished by the defendant.

The plaintiff further avers that as a result of the aforesaid accident the plaintiff is entitled to receive, under the aforesaid Act and Statute, the sum of $14.00 per week for a period of 30 weeks for tem-

porary total incapacity from work and a further sum of $14.00 per week for a period of 200 weeks for the loss of the use of his arm and shoulder.

The evidence of the claimant shows that he was employed at the State Fair Grounds, being employed by the Highway Department and at the time of the injury he was standing on top of a concrete mixer holding a rafter for one of the employees; that claimant's foot slipped and that he fell a distance of from 8 to 12 feet to the ground; there is nothing to show negligence on the part of the State, but rather on the part of the claimant.

Claimant was working for this State Department for the sum of $3.20 per day of 40c per hour for 8 hours work and during a portion of the time was allowed Saturday afternoons off. He had been employed prior to his connection with the State, as an engineer in the mines and had been receiving a fair salary for his services. He does not state how he came to give up his position at the mines, but at any rate he was working as a common laborer at the time of his injury, and for wages much lower than he was receiving at his regular line of work. Claimant testifies that he was only in the hospital 10 days; that the end of seven weeks after the injury he was back to the Fair Grounds and was employed as a watchman at a salary of 40c per hour, same as he had been receiving; that during the time he was injured up until he went back to work he received his salary with no deductions for time lost; that he lost no time on account of his injury and that shortly after claimant returned to his employment at the fair grounds for the State, he ceased working for the State and accepted a position at the mines; that the mines were working six days ped week and at least 75% of the time or better; that he, the claimant, has drawn the sum of, as he puts it "between $150.00 and $175.00 as monthly wages."

There is some evidence given by a fellow employee that the claimant was unable to use his right arm, Dr. Harmon also testified that the claimant was unable to use his arm; that he, the doctor tried to place claimant's arms into various positions they should go, but couldn't do this on account of the extreme pain to claimant: that claimant could not reach his left shoulder nor extend his arm in a horizontal position.

The Attorney General has demurred to the declaration and as a matter of law this Court will sustain the demurrer.

The Workmen's Compensation Act does not apply to State employees. The rule of *respondeat superior*, does not apply, this question having been decided by this Court in the case of Sadie Jasper, administratrix of the estate of *John Jasper* v. *State of Illinois*, Vol. 2 C. C. Reports, page 323 and in numerous other cases.

While as a matter of law the State is not liable, still we are of the opinion, that as a matter of equity and social justice an award should be made, we therefore recommend an award in the sum of one thousand five hundred dollars ($1,500.00).

H. S. LAMB

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

GOVERNMENTAL FUNCTION—*when. State not liable.* The State in conducting the Chester State Hospital at Menard, Ill., exercises a governmental function and is not liable for injuries sustained by its employees while in the discharge of their duty.

Edward J. Brundage, Attorney General, for State.

This is a claim for compensation for personal injuries sustained by the claimant by accident arising out of and in the course of his employment as guard at the Chester State Hospital, August 19, 1920.

The evidence discloses that the claimant, H. S. Lamb, while in the employment of the State as a guard at Chester State Hospital at Menard, Illinois, on the 20th day of August, A. D. 1920, and while in line of duty and without fault on his part was violently kicked by a burly, strong inmate whom he and others were endeavoring to quiet while unruly. The result of the kick was to cause the left testicle to perish or atrophy at least 60 per cent. The injury was very painful, laying claimant up at home for a month or more, before he could return to his employment. He has to wear a suspensory all the time when he works.

The medical evidence shows "the injury he received is permanent and that the gland is impaired to a very substantial extent in performing its functions; that the result of such an injury is liable to effect his mental condition, and cause him to be depressed all his life." The claimant is 49 years old and is married and has five children. The State has demurred. Claimant has always since said injury remained on same salary as before injury.

The Court has repeatedly held that the State is not liable in such cases and so holds in this case. The demurrer is therefore sustained and case dismissed. But the Court in this class of cases has usually recommended that in the interest of social justice and equity that Legislature make an appropriation for the payment; and following that reasoning we recommend that the Legislature make an appropriation in the sum of three hundred ($300.00) dollars for claimant.

ARTHUR TAYLOR

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

GOVERNMENTAL FUNCTION—*Lamb v. State, Supra, followed.* This case is similar to that of *Lamb* v. *State, Supra*, and the decision of the Court there announced governs this claim.

Edward J. Brundage, Attorney General, for State.

This is a claim brought by claimant, Arthur L. Taylor, for compensation for injuries incurred while in line of duty as a guard in the employ of the defendant, Southern Illinois Penitentiary, December 19, 1921.

The evidence discloses that while thus employed at said time and while searching for a convict who failed to appear and answer at roll call, it became necessary for him to and he did endeavor to climb upon the office of the stone department, and in so doing he took hold of the coping of said building and same being loose fell upon and against claimant's leg, breaking it at and above and in the ankle joint, from which he suffered much pain and for a long period thereafter he was confined to his bed and unable to labor.

That about August, 1922, after he had returned to his employment and while in the performance of his duties as such guard he was set upon by a convict in a riot, and while the convict grappled with claimant endeavoring to take claimant's gun away from him, in the scuffle the claimant's knee of the same limb was wrenched, causing claimant to become a permanent cripple. Claimant's bills were all paid by the State and the salary continued without interruption during his inability to perform manual labor. Claimant has four (4) children under sixteen years of age.

The evidence seems to bear out the fact of about 50% disability. If claimant were entitled to compensation under the Workmen's Compensation Act, and had lost the entire use of one leg he would be entitled to about $2,975 in weekly installments. But he is still working for the State on same salary as before his injuries.

The State has demurred to the declaration, which is sustained. But in the interest of equity and social justice the Court recommends to the Legislature an appropriation in the sum of fifteen hundred ($1,500.00) dollars for claimant.

OWEN P. JACKSON

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

GOVERNMENTAL FUNCTION—*Medcalf v. State, Supra, followed.* This case is similar to that of *Carlson v. State, Supra,* and the decision of the Court there announced governs this claim.

LACHES—*claim should be filed within a reasonable time.* Claimant should file his claim within a reasonable length of time in order to bring himself within the social justice and equity rule.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by Owen P. Jackson who alleges that on the 21st day of June, A. D. 1918, and for two months prior thereto he was employed as a guard or keeper at the Illinois State Penitentiary at Joliet; that on the evening of said day an inmate of said penitentiary without provocation or warning attacked said claimant; that claimant was cut about the forehead, on the end of his nose and on his left wrist and as a result, claimant suffered great pain and inconvenience and was permanently scarred as the result of said injuries and that his clothing was ruined and destroyed.

The defendant by its Attorney General comes and demurs. It is, of course, admitted that there is no legal liability on the part of the State and the only question opened for the consideration of this Court as to whether or not a recommendation should be made to the Legislature as a matter of equity and social justice.

It is the opinion of this Court that a claim of this kind should be filed in a reasonable time and it is believed by the Court that this claim should have been filed at an earlier date, at least in time for consideration of this Court for recommendation at the 1921 session of the Legislature, and it is further the opinion of this Court that while it has been announced as the policy of this Court in these classes of cases that equity and social justice should be considered wherein there was no legal liability, yet it is also the duty of this Court to do justice to the people of the State and that wherein a claim is not brought forth within a reasonable time, that it should not be allowed.

It is therefore considered by the Court that the demurrer of the defendant be sustained and that no recommendation be made to the Legislature for an allowance of this claim.

A. F. PRINCE AND ALEXANDER B. THIELENS, ADMINISTRATORS OF THE ESTATE OF HIRAM D. WAGNER, DECEASED

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

INHERITANCE TAX—*when claimant entitled to a refund.* Where an inheritance tax has been assessed against an estate, and paid, and afterwards claims are filed, and allowed against the estate, and the County Judge upon motion modifies the assessement by allowing a deduction on account of the claims allowed against the estate, the claimant is entitled to a refund under Sections 8 and 10, of Inheritance Tax Law.

Edward J. Brundage, Attorney General, for State.

This is a claim made by A. F. Prince and Alexander B. Thielens, administrators of the estate of Hiram D. Wagner, deceased for refund of a portion of the inheritance taxes assessed and paid in the estate of said deceased.

The decedent died January 22, 1921, a resident of DeKalb County, Illinois, and claimants were duly appointed administrators of his estate and are now acting. July 18, 1921, pursuant to regular inheritance tax proceedings, the County Judge of said county entered an order assessing the inheritance tax in said estate at $2,459.81, which amount less 5% discount as provided by law, to-wit: $2,336.82, was on the same day paid by claimants to County Treasurer of said County.

Thereafter on February 5, 1923, upon motion alleging the filing and allowance of $44,000.00 claims against said estate, not considered in the original assessment, the County Judge modified the said order of July 18, 1921, by allowing a further deduction on account of said additional claims and fixing the total tax in the estate $1,579.81. The original tax having been paid within six months of decedent's death said sum of $1,579.81, less 5% discount ($1,500.82) is found to be the correct sum due as inheritance taxes in said estate. The difference between the sum of $2,336.82 and $1,500.82 equals $836.00 due to claimants as refund under sections 8 and 10 of the Inheritance Tax Law.

The Attorney General consents to this allowance. The Court accordingly awards claimants the sum of $836.00.

PATRICK F. LOFTUS

v.

STATE OF ILLINOIS.

Opinion filed March 8, 1923.

FUGITIVES FROM JUSTICE—*statute of limitations.* Where claim is not filed within the period of limitations fixed by the statute it is barred.

DISMISSAL OF CLAIM—*Rule 12, of Court of Claims.* Under Rule 12 of Court of Claims, if it appears on the face of the declaration that the claim is barred by the statute of limitations the Court may dismiss it.

Edward J. Brundage, Attorney General, for State.

This is a claim for the sum of $155.68 for mileage of claimant, for the return from New York in August, 1916, of James Fulton, a fugitive from justice, who had been charged, in Cook County, Illinois, with the crime of larceny as bailee.

The claim is verified by affidavit and is certified to by the County Judge of Cook County, as required by law.

The expenses were incurred in 1916 in August and should have been filed within the Statute of Limitation. We can see no good reason why, at this late date, some eight years after the services were rendered, the claimant had not filed his expense account and had it acted upon by this Court.

It is more than five years since the claimant's cause of action accrued and the State of Illinois has interposed a plea of the Statute of Limitation.

Rule 12 of the rules of this Court is as follows: If it appears on the face of declaration that the claim is barred by the Statute of Limitations the same may be dismissed.

The plea of the Statute of Limitations having been interposed, it is the opinion of the Court that the claim is barred by the Statute of Limitations, and the claimant is not entitled to an award. His claim is therefore denied.

W. P. McGEE

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

NON-LIABILITY OF STATE—*property lost at State institution.* **This claim is for the value of a suit-case lost while in the custody of the Dixon State Hospital. *Held*, no legal liability exist against the State.**

SOCIAL JUSTICE AND EQUITY—*an award may be made.* **While the State is not liable the Court as a matter of social justice and equity may allow an award.**

Edward J. Brundage, Attorney General, for State.

This is a claim to recover the value of a suitcase and its contents while the claimant was an inmate of the Dixon State Hospital. There appears to be no dispute of the facts that the suitcase was lost while in the custody of the Dixon State Hospital. Neither is there any dispute as to the value of the suitcase or its contents. However, the State interposed a demurrer which is hereby sustained as it is the opinion of this Court that there is no legal liability on the part of the State. It however, appears by statements made in open Court that the claimant is a very poor and worthy person and the loss of the suitcase in question was a matter of serious consequence to him financially.

It is therefore recommended by this Court that the claimant be allowed the sum of sixty-eight ($68.00) dollars as a matter of equity and social justice.

F. J. ALLEN

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

ILLINOIS NATIONAL GUARD—*State liable for supplies.* The State is liable for meals furnished to members of Illinois National Guard, upon order from the Company Commander.

Edward J. Brundage, Attorney General, for State.

Claimant, F. J. Allen, by his attorney, files a claim for $59.85 for meals served to members of "Co. F." Illinois National Guards, while on duty in race riot at East St. Louis, Illinois, by order of Company Commander, O. C. Smith, who O. K.'d the bill as correct. The proof is ample and the itemized statement is very reasonable. We find no denial on file by Attorney General.

We accordingly award claimant fifty-nine and 85/100 dollars.

C. A. POWER PLANING MILL

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

SUPPLIES—*State liable therefor.* The State is liable for supplies purchased by the Department of Public Health.

Edward J. Brundage, Attorney General, for State.

The Attorney General consenting to this claim for $3.30 for lumber purchased by Department of Public Health and approved by said department. An award is allowed to claimant in the sum of three dollars and thirty cents.

GUNTHER HARDWARE CO., INC.

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

CONTRACT—*when State liable.* The State is liable for merchandise purchased by the Department of Public Welfare.

Edward J. Brundage, Attorney General, for State.

Gunther Hardware Company (Inc.) filed herewith sworn statement for goods and merchandise purchased by the Department of Public Welfare for $50.88. And the Attorney General consents to the allowance of same.

An award is therefore made to claimant for fifty and 88/100 dollars.

DAVIS CLEAVER

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

CONTRACT—*when State liable.* **The State is liable for supplies furnished to the Soldiers and Sailors Home.**

Edward J. Brundage, Attorney General, for State.

The claimant furnishes proof of supplying eggs, produce and supplies to the Soldiers and Sailors Home to amount of $197.75, which the Attorney General admits and consents in writing to its allowance. An award is therefore made to claimant in sum of one hundred ninety-seven and 75/100 dollars.

BUELL S. ROGERS

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

MILITARY SERVICE—*when State liable.* **The State is liable for the services rendered by claimant, at the request of his superior officers, in opening and supervising the recruiting office for National Guard for Federal Service.**

Edward J. Brundage, Attorney General, for State.

This claim verified by affidavit of the claimant, amounting to the sum of $777.70, was filed March 22nd, 1922. The claimant states that he is entitled to said sum as compensation for services rendered as Major, Medical Corps, Illinois National Guard; that the service rendered by said claimant was at the request of the Adjutant General of the State of Illinois, in opening and supervising the operation of recruiting offices in Chicago, Illinois, for the National Guard for Federal service, during April, May and June of 1917.

This claim bears the approval of Richard J. Shand, Col., Adjutant General when the services were rendered.

The Attorney General consents to the award and waives further proof.

The Court therefore recommends an award in the sum of seven hundred seventy-seven dollars and seventy cents ($777.70).

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

CONTRACT—*when State is liable.* There being no dispute as to the facts and law governing this case the Court enters an award to claimant for the amount of its claim.

Edward J. Brundage, Attorney General, for State.

Claimant files his claim for $25.00 based on a written contract to furnish use of side track of complainant to Illinois Soldiers and Sailors Home at Quincy for two quarters ending March 31, 1917, and September 30, 1918, for $12.50 per quarter equals $25.00.

The proof is ample and the attorney general files his written consent to allowance of $25.00 for which an award is hereby made.

LYMAN TIFFANY DYER, ET AL., EXECUTORS, ETC.

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

INHERITANCE TAX—*when claimant entitled to a refund. Sec. 25.* There being no dispute as to the facts and law governing this case, the Court enters an award in favor of claimant for the difference between the amount originally paid and the amount found due upon the re-assessment of the estate.

Edward J. Brundage, Attorney General, for State.

The claimants, Lyman Tiffany Dyer and George Jones Dyer, executors of the will of Henry Lyman Dyer, deceased, bring this action for claims for refund of inheritance tax, paid under section 25 and the Attorney General consents to allowance of amount hereinafter awarded.

Decedent died January 18, 1913, testate, a resident of the State of New York possessing certain property, the transfer of which was taxable under laws of Illinois, County Judge of Cook County entered an order assessing the inheritance tax in said estate at $2,411.49 which order was thereafter June 12, 1914, vacated and a tax fixed at $1,607.50, which sum with interest at 6% amounting to $1,744.14 was paid into County Treasury.

In said order of assessment the widow of decedent was assessed upon a life estate in the entire taxable Illinois property, and the remainder amounting in value to $36,250.00 and dependent upon certain contingencies was distributed for the purpose of the tax under section 25 to trustees under the will for the use of Lyman Tiffany Dyer, a nephew of decedent on the assumption he would ultimately succeed to said remainder.

The decedent's widow, Edith L. Dyer, died July 9, 1919, and thereupon the said remainder became vested indefeasibly in Henry Lyman Dyer, a brother of the decedent and the claimant's estate.

Said Henry Lyman Dyer died November 19, 1921, a resident of the State of New York and the Surrogate's Court thereof granted letters testamentary to claimants herein.

On December 16, 1922, the County Court of Cook County upon petition of claimants setting up the foregoing facts entered an order, approved by the Attorney General re-assessing the inheritance tax in said estate of Edward Tiffany Dyer at $400 which sum plus interest at 6% from decedent's death January 18, 1913, to the date of the original tax was paid June 18, 1914, to-wit; $434.00, which is the correct tax due in said estate.

The difference between the sum originally paid, to-wit, $1,744.14 and the said sum of $434.00, to-wit, $1,310.14 is due as refund to claimants with 3% interest per annum from June 18, 1914.

JULIA C. WALSH, ET AL.

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

INHERITANCE TAX—*when claimant entitled to a refund. Sec. 25.* There being no dispute as to the facts and the law governing this case the Court enters an award in favor of claimants for the amount of their claim.

Edward J. Brundage, Attorney General, for State.

This is a claim by claimants, Julia C. Walsh, Elizabeth L. Cudahy, John R. Cudahy and Gerald C. Cudahy, legatees under the will of John C. Cudahy, deceased, claim for refund of inheritance tax.

Decedent died testate in Cook County, Illinois, April 23, 1915, and in October, 1915, the inheritance tax was entered, assessing a total of $6,823.11, which less 5% equals $6,481.96, paid into County Treasury by the executor. Certain contingencies under section 25 Inheritance Tax Law existing in said estate happened whereby the Court later determined and assessed a total tax of $4,820.03 less 5%, to-wit: $4,579.03 being actual amount due the State.

The difference between said sum and amount actually paid being $1,902.94 it is found the sum of $1,902.94 with 3% interest per annum from October 23, 1915, should be refunded to claimants, which we accordingly award to claimants jointly.

THE CITY OF CHICAGO

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

CONTRACT—*when State is liable.* The State is liable for water furnished to the Chicago State Hospital, at Dunning, Ill.

SAME—*when Statute of limitations cannot be pleaded.* Where the contract is a continuing one, and the arrangement and price are reasonable the claim is not barred.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by the City of Chicago against the defendant for water furnished by it to the Chicago State Hospital located at Dunning, Illinois, for the period commencing October 10, 1914, and ending June 30, 1921.

There is no dispute as to the fact of the water being furnished as alleged by the claimant and there is no dispute as to the amount charged for such water service.

The defendant comes and files his plea of the Statute and Limitations.

It appears from the evidence and arguments of counsel that the account was a continuing one and that the arrangement and the price charged was very reasonable and that the account is actually a just one.

It is therefore considered by the Court that the claim should be allowed and it is hereby recommended by this Court that the claimant be allowed the sum of $16,006.37.

VIOLA OGAN

v.

STATE OF ILLINOIS.

Opinion filed April 18, 1923.

GOVERNMENTAL FUNCTION—*calling out of Militia.* **The State in ordering out of National Guard and directing its operation during a railroad strike exercises a governmental function, and is not liable for injuries sustained by claimant by the tortious act of its soldiers, whether such acts were committed by the soldier in the discharge of his duty or not, or whether such acts were tortious or not.**

Edward J. Brundage, Attorney General, for State.

This is a claim filed by Viola Ogan claiming to be a resident of the State of Illinois all her life; that she is a widow 33 years of age residing at 1301 South Madison Street, Normal, Illinois; that her husband died in April, 1918, leaving claimant and a child now 10 years old.

The claimant represents that on August 14th, 1922, the employees of the Chicago & Alton Railroad Company were engaged in a strike at Bloomington, Illinois, and that the men and officers of the Illinois National Guard were engaged in guarding the property of said railroad; that the yards of the said railroad company are located in Bloomington, Illinois, and extend for about three blocks south of Seminary Avenue, a public street running east and west in Bloomington and forming the north boundary of the yards. The claimant further represents that on the evening of August 14th, 1922, sentries had been posted along the south side of said avenue at a distance of approximately 75 feet apart and Lieut. Robert L. Crisp, Co. A 130th Infantry, 33rd Division of the said National Guard and other officers were engaged in maintaining peace upon and about the said shop yards; that the said Lieut. Crisp had just proceeded from a point north of the shop yard in the line of his duty and had been challenged by one of the sentinels on the south side of Seminary Avenue and had stopped on the said avenue about 20 inches south of the beaten track in the street.

It is further alleged that Seminary Avenue at that time was a public street in a very rough condition and that there were no orders closing the street, it being open at that time to all legitimate traffic and for the use of automobiles proceeding along it in a quiet and orderly manner without stopping.

On the said evening about eight-thirty it is further alleged claimand and her child were being driven in an automobile upon said Seminary Avenue toward claimant's home at a speed of twelve to fifteen miles per hour, and that the automobile in which claimant was riding passed

Lieut. Crisp and proceeded east about 50 feet from the point where he was standing. It is alleged that Lieut. Crisp carrying a 30 calibre Springfield rifle, and afterwards claiming to have been struck on the leg by the automobile and to have fired for the safety of the men posted east of him, ran two or three paces and shot the rifle at the automobile, the bullet hitting the automobile on the steel rib supporting the right side of the seat immediately behind the claimant's back. It penetrated claimant's back in a shattered condition, striking claimant's vertbrae and being scattered throughout the portion of claimant's body in hundreds of small particles. The claimant, Viola Ogan, was taken to the hospital where she remained over four weeks. While at the hospital an incision was made from the front part of her body and the wound penetrating this cavity from the rear, was cleaned and drained. From this wound there was removed quantities of the stuffing of the automobile seat and many pieces of lead. The wound remained open and continued to eject automobile seat stuffing and small pieces of lead and to exude puss until about *March 1st, 1923.* The claimant also complained of suffering great pain since that time. The claimant further alleges that she has incurred a hospital bill of $163.10 and physician's bill for $506.00 and that she is the sole support of a child; that she has no relative who is able to afford her any pecuniary assistance; that she has earned a living by washing and doing general housework, and that since being shot, the claimant is totally unable to work and has no means of support excepting her savings and $15.00 per month as a mother's pension. Claimant further avers that she is permanently injured and makes her claim for an amount of ten thousand ($10,000.00) dollars.

The defendant, the State of Illinois, has demurred to the claim on the ground that the State in ordering and conducting the military operations in the course of which the injury is alleged to have occurred, was exercising a governmental function and is not liable for injuries which may have been sustained by persons by the act of one of its soldiers, whether such act was in the discharge of his duty or not, or whether such act is tortious or not.

It is the opinion of this Court that the demurrer filed by the defendant should be sustained as a matter of law.

The Attorney General, while denying the legal liability, admits that this claim is one which appears very strongly to the conscience of this Court; however, it is the opinion of this Court that there is no rule or precedent that permits an allowance in this case.

Therefore, the claim is dismissed.

HERBERT MUFFLER, JOHN F. MURPHY, DAVID MANNING AND W. H. NEWMAN

v.

STATE OF ILLINOIS.

Opinion filed May 1, 1923.

PROPERTY DAMAGE—*liability of State.* **Under the facts proven and admitted by the State claimant is entitled to an award.**

Edward J. Brundage, Attorney General, for State.

This is a claim filed by the above named claimants for injuries sustained, property lost and damaged and loss of time caused by said injuries, and due to the collapse of a State bridge over the Illinois and Michigan Canal at Seneca, Illinois.

The respective amounts filed by said claimants are as follows:

Herbert Muffler	$197.20
W. H. Newman	375.00
David Manning	125.00
John F. Murphy	528.00

The Attorney General admits the truth of the allegations in the statement of claims herein filed, including the amount of damages claimed, waives formal proof of the same and files no objection to the allowance of an award in each case as above set forth.

We, therefore, recommend an award to each claimant as set forth in the petition and affidavit of claim and as above stated.

WILLIAM D. HARRINGTON

v.

STATE OF ILLINOIS.

Opinion filed May 1, 1923.

SOCIAL JUSTICE AND EQUITY—*when an award will be made.* Although no legal liability attaches to the State for loss of property in a State institution destroyed by fire, as an act of social justice and equity the Court may enter an award to claimant for his property destroyed by the fire.

Edward J. Brundage, Attorney General, for State.

This is a claim brought to recover for a loss of personal property by claimant through fire while he was in the employ of the State as printing instructor at the St. Charles School for Boys; that while he was so employed he resided in a frame building belonging to the St. Charles School for Boys; that while residing in said building, it was totally destroyed by fire on the morning of December 12th, 1922, together with all the contents including the personal property of the claimant consisting of bookcases, clothing, traveling bag, Knight Templer's uniform outfit complete, canned fruit, etc., as shown by the itemized statement hereunto attached, which statement amounts to $392.65.

The Attorney General comes and files a demurrer which, according to a long line of precedents, the Court sustains.

It appears, however, that the claim bears the approval of F. D. Whipp, as acting managing officer of the institution.

It further appears from the statements that the fire was caused by faulty heating plant and to the use of mine-run coal forming gas and blowing open the doors of the furnace.

From the above and foregoing facts it is the opinion of the Court that as a matter of equity and social justice that said claim be allowed.

It is therefore recommended by the Court that said claimant be allowed the sum of $392.65.

CHICAGO, MILWAUKEE & ST. PAUL RY. CO.

v.

STATE OF ILLINOIS.

Opinion filed May 21, 1923.

CONTRACT—*when State liable for transportation charges.* There being no dispute as to the facts and law governing this case the Court enters an award in favor of claimant for the amount of its claim.

Edward J. Brundage, Attorney General, for State.

This is a claim filed by the Chicago, Milwaukee and St. Paul Railway Company in this Court on November 18, 1922. The declaration on this claim sets out that in July, 1915, the Adjutant General of the State of Illinois made, executed and delivered to the plaintiff, certain written orders for transportation to be furnished to divers persons named in said orders, upon which orders transportation was issued to said persons as requested; that said persons were transported by the plaintiff as set forth in copy of account attached to said declaration; that said transportation so furnished was of the value of $928.32.

The defendant by its Attorney General comes in open Court and admits that the order given by the Adjutant General as declared by the claimant was actually issued and that the transportation was furnished by them, and that the defendant did make no objections to the allowance of the claim.

It is further considered by the Court that, in view of the record in the case, that the transportation was actually furnished the State of Illinois, and there being no objections by the defendant that the claim be allowed, it is therefore ordered by the Court that the claimant be allowed the sum of $928.32.

CHICAGO, MILWAUKEE & ST. PAUL RY. CO.

v.

STATE OF ILLINOIS.

Opinion filed May 21, 1923.

SUPPLIES—*when State liable.* Where coal is consigned to another and through a mistake in billing the car of coal it is delivered to a State institution and is used by it, the State is liable for coal used.

Edward J. Brundage, Attorney General, for State.

It appears that claimant delivered to the defendant a certain car load of coal weighing 108,500 pounds, which was loaded at Brazil, Indiana, in C. & E. car No. 185953, consigned to the Consumers Company, Yard 128, Chicago, Illinois, and owing to the error in the billing of said car was erroneously delivered to and unloaded by the Chicago State Hospital, Dunning, Illinois, an institution under the control of the defendant, the State of Illinois. Said coal was unloaded and was thereafter retained and used by said Chicago State Hospital, said coal being then and there of the value of two hundred thirty-seven and 37/100 dollars, ($237.37). The defendant by the Attorney General appearing and admitting that said coal was actually delivered to the defendant and used by said defendant in its hospital at Dunning as aforesaid, and therefore making no objections to the said claim on the ground that the State of Illinois has never paid for said coal, and that the said State of Illinois is actually indebted for said coal in the amount of two hundred thirty-seven 37/100 dollars, ($237.37). It is therefore considered by the Court that said claimant be allowed for said coal actually consumed and used by the defendant the sum of two hundred thirty-seven and 37/100 dollars ($237.37).

ROY W. MERRIFIELD

v.

STATE OF ILLINOIS.

Opinion filed May 21, 1923.

MILITARY SERVICE—*Rogers* v. *State, supra, followed.* This case is based upon the same principle as that of *Rogers* v. *State, supra,* and the decision of the Court there announced governs this claim.

Edward J. Brundage, Attorney General, for State.

The claimant, Roy W. Merrifield, brings this claim against the defendant, the State of Illinois, for services rendered as First Lieutenant from May 18th to August 4th, 1917, on the basis of $166.67 per month. The defendant through its Attorney General, comes and files its demurrer.

It appears to the Court that the real basis of this controversy is the question of the age of the claimant and his eligibility for the position he occupied; that the services were rendered for the Federal Government. There is no dispute about the claimant performing the services. And it further appears from letter in files from the Adjutant General that the service of claimant was satisfactory and should be paid.

It is the opinion of this Court that this is a claim based upon the same principle as the case of *Major Bell Rogers* v. *State of Illinois,* in which the claim was allowed, and it is the opinion of this Court that this claim should likewise be allowed.

It is therefore recommended that the claimant be allowed the sum of $433.34.

CARL E. SHELDON

v.

STATE OF ILLINOIS.

Opinion filed May 21, 1923.

FEES AND SALARIES—*salary of City Judge, how fixed.* The salary of a City Judge is not fixed by law but by number of inhabitants of the city in which he is elected.

SAME—*when rule that salary of an officer cannot be changed during term does not apply.* While the salary of an office cannot be changed during the term of an office holder, elected or appointed, the law has no application to an office the salary of which is determined by the number of inhabitants of the election district in which he is elected.

Edward J. Brundage, Attorney General, for State.

The claimant in the above entitled cause alleges that he was Judge of the City Court of the city of Sterling, Illinois, for a term commencing April 1, 1918, and ending March 31, 1922; that prior to January 1, 1920, the only census of the city of Sterling which had been taken was the Federal census of 1910, which showed the population of the said city of Sterling to be more than five thousand and less than eight thousand, and that on January 1, 1920, the Federal census was taken, which showed the population of said city of Sterling to be more than eight thousand and less than twenty-five thousand. It appearing to the Court that, as provided by paragraph 355 of chapter 37 of Smith's Illinois Revised Statutes, 1921; that in cities of more than five thousand and less than eight thousand that the salary of City Judges in cities of the character of the city of Sterling should be $1,500.00 per annum. It further appearing to the Court that the city of Sterling, according to the census of 1920 contained a population in excess of eight thousand inhabitants, and in accordance with such population the salary of City Judge of Sterling would be $2,000.00 per annum. It further appearing to the Court that claimant served as such City Judge of Sterling for two and one-fourth years after the census of 1920 which showed the population of said city to be in excess of eight thousand.

There is no controversy as to the fact of the city of Sterling having an excess of eight thousand population in 1920, and the only proposition before the Court is whether or not the rule of no change in salary during the term of office, such as was held by the claimant, would prevail in this case. In most cases the salary is fixed by law and in consequence there can be no change, as has been well settled by our Courts, during the term to which the office holder was elected or appointed, but in this case it appears to the Court that the salary of the

incumbent was fixed by the number of inhabitants rather than by law, and when the claimant entered upon the performance of his duties in such judicial capacity, he had a right to believe that his compensation would be that which would be awarded according to the population of his city. Consequently in 1920, the period that the population of the city of Sterling had exceeded eight thousand, it become apparent that the salary to be paid to the claimant would by such showing be in accordance with that which was allowed and should be allowed to the position of City Judge when the population had exceeded that of eight thousand, and this Court is of the opinion that the claimant is entitled to his salary of $2,000.00 per annum on and after the showing of the census of 1920, which showed the population of the city of Sterling to be upward of eight thousand. The Court is further of the opinion that the claimant is entitled to an award of $500.00 per year for two and one-fourth years, amounting to $1,125.00.

It is therefore recommended by the Court that the claim be allowed in the sum of $1,125.00, which is in accordance with the provisions of the statute in cases of cities of upward of eight thousand inhabitants.

ILLINOIS CENTRAL RAILROAD CO.

v.

STATE OF ILLINOIS.

Opinion filed May 21, 1923.

CONTRACT—*State liable on contract made by Department of Public Works and Buildings.* There being no dispute as to the facts and law governing this case the Court enters an award in favor of claimant for the amount of its claim.

Edward J. Brundage, Attorney General, for State.

This is a claim for $1,340.76, on account of expense incurred in June, 1918, in constructing a railroad track to the bakery and cold storage plant at the Epileptic Colony, Dixon, Illinois, and repairs made during November, 1918, pursuant to contract between the claimant and the State of Illinois, by its Department of Public Works and Buildings, No. 23594, dated March 5, 1918.

The Attorney General has filed his formal consent to an award, stating that at the time the claim was finally approved in said amount by the Department of Public Works and Buildings, the appropriation out of which it might have been paid had lapsed, and admitted that there is no defense to the claim.

The claimant is hereby awarded the sum of $1,340.76, as claimed.

JOHN WEIR

v.

STATE OF ILLINOIS.

Opinion filed May 21, 1923.

INHERITANCE TAX—*refund where wrong rate is imposed.* Where the wrong rate of taxation by mistake has been imposed in fixing the amount of the tax due, and the tax is paid, and the County Court upon proper proceedings corrects the error and modifies the original order of the County Judge, and fixes the tax at the proper rate, the claimant is entitled to a refund of the difference between the amount of the tax paid and the amount found actually due by the County Court.

Edward J. Brundage, Attorney General, for State.

This is a claim for a refund of a portion of the inheritance tax assessed and paid in the estate of J. M. Jackson, deceased, late of White County, Illinois.

Said decedent died a resident of said county, February 17, 1921, and by his will which was thereafter in said county duly admitted to probate, devised certain property to the claimant herein, a nephew of said decedent.

Pursuant to proper inheritance tax proceedings, the County Judge of said county entered an order February 21, 1923, assessing a total inheritance tax in the estate of $1,118.00, all of which was assessed against the interest received by this claimant under said will.

Said tax, together with interest at the rate of six per cent per annum from the date of decedent's death, February 17, 1921, to-wit, $1,252.15 was by the claimant herein duly paid to the County Treasurer of said county, who in due course transmitted the same to the State Treasurer, with the exception of certain amounts lawfully paid out of said tax on the orders of the County Judge.

Thereafter it was discovered that through mistake and inadvertence the rate of taxation prescribed by the amendment to section 1 of the Inheritance Tax Law, taking effect July 1, 1921, to-wit, six per cent, was imposed, whereas this decedent having died February 17, 1921, the rate established by the amendment of 1919, in force July 1, 1919, to-wit, three per cent should have been imposed. And by consent of all parties including the Attorney General, the County Court of White County entered an order modifying the original order of the County Judge, and fixing the tax against the interest of this claimant at $559.00, which sum plus interest from decedent's death until date of payment, to-wit, $626.08, is the correct amount of inheritance tax and interest to which the State is entitled in said estate.

These facts being shown by the records of the County Court of White County, the Attorney General and the State Treasurer, the Attorney General has consented to an award in the sum of the difference between the amount paid and the amount actually due, to-wit, $626.07. This Court, therefore, hereby awards the claimant herein the sum of $626.07, without interest.

ROSS S. MARSDEN

v.

STATE OF ILLINOIS.

Opinion filed May 21, 1923.

RESPONDEAT SUPERIOR—*when State not liable.* The State is not liable for injuries sustained by its employees while in the performance of their duty.

SOCIAL JUSTICE AND EQUITY—While the State is not legally liable the Court as a matter of social justice and equity recommends an allowance to claimant for loss of time and expense incurred for necessary medical services.

Edward J. Brundage, Attorney General, for State.

This is a claim filed for injuries sustained by claimant on December 13, 1922, while in the performance of his duty as a helper on survey work, and in cross sectioning up a steep slope accidently slipped, and in attempting to regain his balance caught the limb of a tree with the result that the sudden jerk snapped the clavicle bone in his right shoulder causing a complete fracture. He was given immediate medical attention, but was unable to work for seventy-six working days on account of the loss of the use of his right arm. The Attorney General appears in behalf of the defendant and files a general demurrer. It is the opinion of the Court that there is no legal liability on the part of the State, and therefore the demurrer of the defendant is sustained.

However, it is the opinion of the Court in view of the principles heretofore announced by this Court, and as sustained by the Statute creating this Court, that as a matter of equity and social justice in view of the fact that the claimant is a poor man, having a wife and two children dependent upon him for support, and that the accident has worked considerable hardship upon Mr. Marsden and family in view of the fact that by reason of such accident he was deprived of his ability to earn support for his family seventy-six working days, and that said claimant was capable of earning $4.00 per day, and was earning that amount prior to his accident. It is therefore recommended by the Court as a matter of equity and social justice that said claimant be allowed the sum of $352.00, which is his compensation for loss of seventy-six working days at the rate of $4.00 per day, and $48.00 for necessary medical services rendered. This Court therefore recommends that the claimant be allowed the sum of $352.00.

BENJAMIN MANIERRE, JR., A MINOR, BY FRANCIS E. MANIERRE, HIS GUARDIAN

v.

STATE OF ILLINOIS.

Opinion filed May 22, 1923.

INHERITANCE TAX—*when claimant entitled to refund. Section 25.* There being no dispute as to the facts and the law governing the case, the Court enters an award for a refund of the tax paid, in accordance with the provisions of Section 25, Inheritance Tax Law.

Edward J. Brundage, Attorney General, for State.

It appears that Benjamin Manierre, father of the claimant, died leaving a last will and codicil; that said will was admitted to probate in the Probate Court of Cook County, Illinois, that said will remains in force and that the executors have been discharged, said estate distributed and said estate closed, and that by the terms of said will claimant received in trust an estate in remainder in a portion of said decedent's estate after the life of claimant's mother, Lilly C. Manierre, if he survived her, but if he should not survive her, upon the death of said Lilly C. Manierre was to become vested in George Manierre and William R. Manierre, brothers of said deceased, or in the case of the death of either or both, then to the surviving child or children of them, who would be nephews or nieces of said Benjamin Manierre, deceased.

It further appears that the Inheritance Tax Commission of Illinois caused an appraisal to be made of all the estate of said Benjamin Manierre, deceased, and certain taxes were declared upon the several inheritances and successions under said will of Benjamin Manierre, deceased, and thereafter upon petition filed in the County Court of Cook County, said Court entered its judgment in accordance with said appraisal of said Inheritance Tax Commission that under such assessment said portion of said estate so contingently devised and bequeathed to claimant under section 25 of said Act of the Statute of Illinois, thereby assessing the same as if said remainder had vested in a niece or nephew of said Benjamin Manierre, deceased, allowing only $2,000.00 as an exemption, and fixing the rate at two per cent.

It further appears that all said assessments were paid to the Treasurer of Cook County, and that of that amount the sum of $4,097.60 was assessed on account of the estate so held as a remainder for the benefit of a niece or nephew of said Benjamin Manierre, deceased and which could only take effect in possession or fee if claimant should die without issue before the death of his mother, Lilly C. Manierre, and that five per cent thereof was deducted for prompt payment as provided by law, and the net amount of $3,892.72 was paid on

March 16, 1917, in full of said item, that on the fifteenth day of September, 1921, said Lilly C. Manierre died, leaving claimant surviving, so that the said remainder became immediately vested in claimant. The claimant further avers that thereafter he filed a petition in the County Court, Cook County, praying for a revision of said assessment upon the inheritance and successions of the estate of Benjamin Manierre, deceased, based on the death of said Lilly C. Manierre, and the fact that the claimant survived her and such proceedings were had, that a revision was made of said assessment upon said remainder, reducing the former assessment thereon in the sum of $844.40, which sum should be and was reduced by five per cent as provided by law since the payment thereof had already been made, making a net item of $802.16; that no appeal or other proceedings for a review of said judgment of revision has been had, and the same now stands confirmed and in full force. It further appears that the difference between the original assessment so paid and the assessment made upon the revision as aforesaid is $3,090.54, and that claimant is entitled to said difference with interest thereon from March 16, 1917, at three per cent as provided by law to date of repayment as found by said judgment in said County Court. The defendant by its Attorney General makes no objection and consents to allowance as prayed for in petition of claimant. It is therefore considered by this Court that the claimant be allowed the sum of $3,090.54 with interest from March 16, 1917.

KARL L. SICKENBERGER

v.

STATE OF ILLINOIS.

Opinion filed May 22, 1923.

MILITARY SERVICE—*when claimant entitled to award, although injuries not sustained while in discharge of duty.* **Claimant, a member of Illinois National Guard, while examining a shell to see if it was loaded was severely and permanently injured by an explosion of the shell. *Held*, although claimant was not acting in the discharge of his duty he was trying to protect his comrades from severe accident, and is entitled to an award.**

Edward J. Brundage, Attorney General, for State.

This is a claim filed on account of injury sustained by claimant, twenty-one years of age, who was a member of Illinois National Guard, and was duly warranted as sargeant, and is still a member of said battery, now holding rank of staff sargeant; that on August 6, 1922, the claimant while on duty with his battery at Camp Custer in company with other soldiers, a certain shell was being passed around for examination, this claimant being desirous of determining whether it was loaded or not, asked for and received the shell into his hand. Seeing that the plug was still in the end, and thinking it was loaded and dangerous, this claimant dropped the shell, but in a few seconds attempted to pick it up in order to get rid of it, when it exploded just as his hand was about to close upon it; that the explosion tore from the claimant's right hand his thumb, the index and second fingers. The claimant was given medical attention, and according to the findings that the injury according to this claimant was sustained while in line of duty. It appears to the Court that the claimant was a soldier prior to his enlistment in the militia, becoming a private in the Sixth Service Company, Signal Corps, and that he was by trade a telephone maintenance worker. It further appears to the Court that the claimant while not alone acting in the discharge of his duty as a soldier, was trying to protect his comrades from serious accident, and it further appearing that he is maimed for life, greatly handicapping his career. The facts are without dispute, the defendant admitting the allegations of the claimant.

It is therefore considered by the Court that the claimant be allowed the sum of $4,500.00.

JAMES B. DIBELKA

v.

STATE OF ILLINOIS.

Opinion filed May 22, 1923.

CONTRACT—*when State liable for architectural services.* Where services have been rendered and expense incurred by an architect in drawing plans and specifications for State projects, and they are accepted by the State, although the work contemplated by the State is not completed, the State is liable to the architect for a reasonable per cent on the estimated work and the expenses incurred in preparing the plans and specifications.

Edward J. Brundage, Attorney General, for State.

This is a claim filed to recover for services rendered for the defendant of the State of Illinois on account of architectural services in construction work for the State of Illinois. It appears from the declaration of the claimant that services were rendered as shown by claimant's Exhibit A, which exhibit indicates an account for services rendered over a considerable period of time. There is no objection made on the part of the defendant by its Attorney General as to the truth of these items as shown by Exhibit A. By this exhibit it appears that the State is liable for expense in the sum of $2,441.33; it further appearing that claimant as an architect drew plans and specifications for State projects, one for roadways and side walks, entrance gates and exterior wiring at the Epileptic Colony at Dixon, Illinois, estimated to cost $135,000.00, and one at the State Hospital at Alton, Illinois, consisting of two custodial buildings, entrance gates, road ways, and sidewalks, estimated cost $338,000.00.

It appears from the evidence offered that the actual overhead expenses necessary in the preparation of plans and specifications for those two projects would be at least $10,000.00, and it further appearing that the claimant demanded two and one-half percent for services rendered in this connection under the Statute, and after an opinion had been filed by the Attorney General objecting to the two and one-half percent on account of the fact that the work was not fully completed as contemplated by the Statute, and that in view of the evidence that the expenses incurred by the claimant in preparing the plans and specifications did not exceed two percent, and it further appearing that no objections are made on the part of the defendant by its Attorney General as to the accuracy and justice of the two percent allowances for expenses incurred for the Alton and Dixon projects, and that the two percent allowance for expenses would amount to $9,460.00, and that this amount, together with the amount hereinbefore indicated to be allowed claimant on general expenses would make a total due the claimant on the merits of his claim $11,901.33. It is therefore recommended that the claimant be allowed the sum of $11,901.33 in full satisfaction for his claim.

INDEX

PAGE.

ABOLITION OF OFFICE. *(See Fees and Salaries.)*
In the absence of constitutional restraint the power that creates an office has the right to abolish it at pleasure..... 320
Where the office is abolished the incumbent has no right to the salary for the unexpired term..... 320

AGENCY.
Agency cannot be proved by statements and declarations of agent... 5
Board of Education of the city of Chicago is not an agency of the State..... 274

ASSUMED RISK. *(See Employment.)*
When claimant assumes risk of his employment.....92, 136, 151, 158, 162, 166, 168, 177, 188, 216, 238, 247, 249, 256, 303, 304
A guard or keeper at a State Penitentiary assumes all risk and hazards of his employment.....
.....92, 136, 151, 168, 177, 188, 238, 249, 256, 303, 304

AWARD.
Award of arbitrators appointed without authority of law is null and void in claims against the State..... 64
When Workman's Compensation Act used as basis of award..70, 129, 209

APPRAISERS. *(See Award.)*

BURDEN OF PROOF.
Burden of proof is upon claimant to establish his claim..... 97

CANCELLATION.
Claimant is entitled to allowance for earned premium upon calcellation of policies..... 15

CLAIM. *(See Limitations.)*
What does not bar right of recovery..... 171
Claims which in equity and good conscience ought to be paid are allowable.....74, 87, 122, 138, 144, 151, 155, 158, 159, 162, 165, 166, 168, 177, 188, 190, 191, 199, 200, 201, 202, 204, 207, 211, 228, 238, 247, 249, 251, 254, 256, 257, 259, 261, 267, 268, 270, 271, 276, 280, 283, 284, 294, 295, 303, 323, 329, 332, 336, 349, 358
When claim is barred.....301, 304, 333
When claim will be dismissed.....197, 206, 209, 320, 335

CONTEST OF ELECTION.
Legislature determines contest of its members..... 33
Expenses of election contest should be determined by the Legislature 33
The Legislature has the exclusive right to allow or disallow expenses of contest of election of its members..... 33

CONTRACTS. *(See Contractual Relations. Also Implied Contracts.)*
When teacher entitled to salary for full term..... 21
When teacher not entitled to salary for full term..... 21
What does not amount to an implied contract..... 21

PAGE.

CONTRACTS—Concluded.
Material-man must follow provisions of the statute to recover..... 29
State liable for supplies furnished its institutions.....
.....103, 118, 140, 309, 310
The State is liable for telephone service furnished it..... 84
When State is liable for supplies.....106, 232
When State is liable for repairs..... 157
When State is liable for freight charges.....147, 225, 263
When State is liable for additional freight charges..... 273
State is liable for food supplies furnished its institutions.....140, 340
Prices charged for food supplies must be reasonable..... 140
The State is liable for contract price of articles furnished although a mistake is made by the State Officer as to the number of articles wanted 220
When State liable for gas furnished..... 305
State is liable for meals furnished to members of National Guard upon orders from Company Commander..... 337
The State is liable for supplies purchased by the Department of Public Welfare 339
When State is liable for water furnished State Institutions....223, 345
When State liable for use of side track of railroad company..... 342
State liable for coal sold and delivered to it for its use....311, 312, 351
When State liable for transportation charges..... 350
When State is liable for rental as lessee..... 278
When State is liable for supplies purchased by the Department of Public Health 338
State liable for construction of railroad track..... 355

CONVEYANCE. *(See State Officers.)*
When conveyance to the State is a nullity..... 109

CORPORATIONS. *(See Municipal Corporations.)*
When license fee cannot be refunded..... 131
Subsequent legislation changing the license fee does not authorize a refund of fee paid..... 131
When corporation does not come within the provisions of General Incorporation Act of 1919..... 131

COURT OF CLAIMS.
Duty of Court to pass not only upon the legal rights of claimants, but also to determine same from the view point of equity and social justice.....74, 87, 122, 138, 144, 161, 165, 158, 159, 162, 320
No power to declare statute unconconstitutional..... 171

COURT OF CLAIMS ACT.
Par. 4, of Section 6, of Court of Claims Act only provides a remedy by which certain claims may be heard and determined.....26, 206
Par. 4, of Sec. 6, does not enlarge the liability of State..... 26

CREATION OF BOARD.
The State is liable for expenses of Board when Legislature fails to make appropriation therefor.....19, 20, 97

DEMURRAGE.
When the State is liable for demurrage.....113, 135

DURESS. *(See Franchise Tax.)*
When payment is not made under duress..... 11
What does not constitute duress..... 11

EMPLOYERS LIABILITY ACT. *(See Workman's Compensation Act.)*

PAGE.

EMPLOYER. *(See Service.)*
An employee of the State is charged with knowledge that they hold their position at the will of the appointing power..... 214
Inmate of a State Institution is not an employee of the State....57, 243
When State is liable for traveling and other incidental expenses incurred by its employees..... 314

EMPLOYMENT OF INMATES. *(See Employee.)*
Employment of inmates by the State is a part of its governmental function and is not a separate and distinct enterprise.57, 115, 187, 243
The relation of employer and employee does not exist between the State and an inmate of its institutions.....57, 115, 187, 243
No contractual relation exists between the State and inmates of its institution 57, 115, 187, 243

ENTERPRISE. *(See Employment of Inmates.)*

ESTOPPEL.
Court is not estopped from going behind an approval of a claim by a State officer..... 11

FEES AND SALARIES. *(See Abolition of Office.)*
When discharged employee is entitled to salary..... 94
When State employee not entitled to salary.....100, 214
When salary of City Judge is not changed..... 353

FOREIGN CORPORATIONS. *(See Corporations.)*
State cannot collect franchise tax from foreign corporation, admitted to do business in this State, on business transacted outside of State 160, 165
When entitled to recover franchise tax paid.....160, 165

FISH AND GAME.
State is not liable for the value of fish confiscated under the Fish and Game Laws..... 150

GOVERNMENTAL FUNCTION. *(See Respondeat Superior.)*
The State in conducting and operating the Illinois State Penitentiary at Joliet, exercises a governmental function and is not liable for injuries sustained by its employees.....57, 87, 136, 168, 177, 204, 234, 242, 251, 254, 255, 256, 259, 267, 270, 301, 303, 304, 333
Starved Rock Park..... 9
Illinois State Hospital for the Insane at Kankakee..... 77
University of Illinois.....70, 81
Hospital for Insane at Jacksonville..... 72
Lincoln State School and Colony..... 92
Peoria State Hospital..... 191
Soldiers and Sailors Home at Quincy..... 158
Illinois State Reformatory at Pontiac..74, 118, 151, 162, 166, 224, 249, 271
Illinois State Normal University.....182, 309
Chicago State Hospital.....140, 141, 153
Illinois State Penitentiary at Menard.....124, 332
Western Illinois Hospital for the Insane.....17, 250, 323
St. Charles School for Boys.....187, 247
The State in the use of Illinois National Guard exercises a governmental function 144, 346
The State in constructing the new penitentiary at Joliet exercises a governmental function..... 90
The State in operating, controlling and patrolling its State Highways exercises a governmental function.....280, 284

PAGE.

GOVERNMENTAL FUNCTION—Concluded.
Illinois School for Blind 325
Chester State Hospital 331

FRANCHISE TAX.
When paid under duress may be recovered back 171
When claimant entitled to a refund 160, 164, 171, 218, 219
When paid under a mistake of fact it can be recovered back 279
When paid under protest 171

FUGITIVES FROM JUSTICE. *(See Limitations.)*
When State is not liable for expenses incurred in returning fugitives from justice 335
When State is liable for expenses incurred in returning fugitives from justice 306, 307, 308

GAME. *(See Fish and Game.)*

HIGHWAYS. *(See Governmental Function.)*
The State is not liable for the negligence or torts of its employees resulting in injury to other persons 189, 329
The State is liable for its proportionate share of expense in separation of grades 147
The State is not liable for injury sustained by patrolman of its highways 284
The State is not liable for injuries sustained by an employee of the Bureau of Machinery of the Division of Highways 329

IGNORANCE OF LAW.
Ignorance of law is not ground for allowance of claim 29

IMPLIED CONTRACT. *(See Contracts.)*
Where materials are furnished or services rendered and accepted by the State a promise to pay will be implied 16, 89
When law will imply promise on part of the State to pay 21, 106, 278
When legal obligation arises against the State 5

INHERITANCE TAX.
What exemptions are allowed children of testator 48
Refund will be made where no tax due the State 1, 36, 38, 39, 40, 42, 44, 45, 46, 102, 222, 237, 264
When claimant entitled to refund of difference between amount of tax paid and amount found due upon appeal 50, 54, 69, 102, 139, 164, 184, 287, 290, 292
When claimant entitled to interest on refund 50, 48, 95, 222, 224, 287, 290, 292, 343, 344
When claimant not entitled to interest on refund 240, 241, 297, 299
Section 10, and Section 25, Inheritance Tax Law construed 1
Refund under Section 25, where beneficiary becomes vested with entire estate 48
When claimant entitled to refund for over-payment of tax 54, 195, 224, 230, 287, 290, 292, 297, 343
Refund where excessive valuation is placed on estate 54
Facts held sufficient to authorize a refund 56, 146, 181
County Court to determine whether tax is due to the State must have jurisdiction over the beneficiary or the property or its judgment will be void 59
Title to excess of legal tax is in the beneficiary and not in the State 59
What constitutes a valid claim for refund 59
Claimant entitled to refund of tax erroneously paid 62, 107, 265, 266

PAGE.

INHERITANCE TAX—Concluded.
Tax paid under mistake of fact can be recovered 63
Orders of County Judge assessing the tax is binding unless reversed or modified 69, 86
Order of County Judge how reviewed 83, 86
Federal Tax should first be deducted 83, 95, 192, 260
When tax is assessed by the County Judge, and paid, and no appeal is taken from the order, claimant is not entitled to a refund 104
When claimant is entitled to refund under Section 25 ..... 183, 185, 226, 233, 241, 242, 287, 290, 292, 343, 344, 359
When claimant entitled to refund on account of payment of back general taxes against estate 297
When claimant entitled to refund on acount of allowance of claims against estate 299, 334
Refund where wrong rate of taxation is imposed 356

INMATE. *(See Employment.)*
An inmate cannot recover for personal injury sustained through the negligence or tort of an employee of the State 57, 77, 243
An inmate cannot recover for services rendered during the period of his confinement 57, 115, 243
The State is not liable for the torts of an inmate of its institutions 72, 136, 151, 153, 155, 162, 166, 204, 206, 243, 294

INSURANCE TAX.
Where insurance tax is over-paid claimant is entitled to recover the amount over-paid 116, 231
Can be recovered when paid under mistake of fact 116, 231

INTEREST.
Interest on refund cannot be allowed under Section 10 of Inheritance Tax Law 240, 241, 297, 299
Interest on refund can only be recovered under Section 25, Inheritance Tax Law 50, 78, 95, 183, 185, 222, 224, 287, 290, 292, 343, 344

JURISDICTION.
When Court is without jurisdiction to allow claim 9, 197, 320
When Court is without jurisdiction to allow solicitor fees 38
Court of Claims cannot review orders of County Judge 86, 95, 104
Court of Claims is not a court of review 86, 95, 104
When Court is without jurisdiction to entertain the suit 1, 197
Court of Claims exercises an equitable jurisdiction as a court of conscience 74, 87, 153

LESSEE. *(See Lessor.)*

LESSOR.
When State as lessor not liable 9
When State as lessee is liable 278
State as lessor not liable for acts of strangers 9
When lessor should have notice of vacation of premises 112
When lessee entitled to rent for remainder of term 112
State not liable for torts of lessee 112
When State as lessee liable to pay a reasonable rental 112

PAGE.

LIMITATIONS.
State officer cannot waive statute of limitations..... 5
Statute need not be specially pleaded to claims against the State... 5
Claims barred where declaration shows it on its face that cause of action arose more than two years prior to filing thereof..... 74
When claim is not barred.....70, 195
When claim is not filed within five years it is barred unless it falls within exceptions of statute.....203, 301, 333
When claimant barred under social justice and equity rule.301, 304, 333
When claim for expenses of returning fugitives from justice is barred 335
When statute cannot be pleaded..... 345

LACHES. *(See Limitations.)*

MISTAKE OF FACT.
Moneys paid under mistake of fact can be recovered back.....11, 83
Franchise tax paid under mistake of fact can be recovered.....176, 279
Insurance tax paid under mistake of fact can be recovered..... 231

MISTAKE OF LAW.
Moneys voluntarily paid under an unconstitutional statute cannot be recovered back.....67, 115, 117
Moneys voluntarily paid cannot be recovered back.....67, 115, 117
Moneys paid under mistake of law cannot be recovered.....67, 115, 117

MUNICIPAL CORPORATIONS. *(See Corporations.)*
Commissioners of Lincoln Park Board are a municipal corporation. 197
Every municipal corporation has the power to sue and be sued.... 197
Such authority need not be expressly granted but is implied as a necessary incident to its creation..... 197
A municipal corporation has power to contract to carry out the object of its creation..... 197

MILITARY SERVICE.
Where soldier is killed while in performance of his duty, under orders of superior officer, the State is liable..... 119
When State liable for services of nurse..... 108
When claimant entitled to award under Sec. 11, Article 16, Military and Naval Code.....119, 129, 149, 209
Contracting disease causing death not within the provisions of Section 11, Article 16, Military and Naval Code.....122, 138
When claimant entitled to recover.....119, 129, 352
Section 11, Article 16, Military and Naval Code does not expressly provide for a claim for contracting disease while a member of National Guard 122, 138, 327
State is liable for services rendered at request of superior officer in opening and supervising recruiting office for Federal Service.. 341
When claimant entitled to award although not in discharge of duty. 361

MEMBER OF LEGISLATURE. *(See Contest of Election.)*

NON-LIABILITY OF STATE.
State not liable for personal property lost at State institution..... 336
State not liable if officers exceed their authority..... 5
Legislative Committee after final adjournment of Legislature cannot incur expenses or create a liability against the State.....47, 97
State not liable for injuries to employees.....212, 227, 247, 323
State not liable for unauthorized acts of its officers.....64, 124
State not liable for expenses of a committee unless such committee is authorized by an act or joint resolution of General Assembly.20, 97

PAGE.

NON-LIABILITY OF STATE—Concudied.
Not liable for torts of inmates of its institutions.....
...72, 136, 151, 153, 155, 162, 166, 188, 191, 238, 249, 283, 294, 325, 331
Not liable for the death of an inmate of its institution caused by a necessary surgical operation..... 190
Not liable for *Ultra Vires* act of militia-man..... 144
Not liable when injury caused by gross negligence of employee in disobeying positive order of his superior officer.....77, 143, 193
State not liable for expense incurred or loss sustained by a discharged employee 214
State not liable for torts, wrongs or negligence of its employees.... 159
State not liable for acts of an independent agency..... 227
State not liable for injury sustained by a child or pupil on playground owned by Board of Education of Chicago..... 274
State not liable for acts of militia-man while on strike duty, whether such acts were tortious or not.....144, 346
State not liable for damages caused by over-flow of State Canal.... 133

NUISANCE.
Cattle affected with foot and mouth disease are a public nuisance.. 26

NURSE. *(See Military Service.)*

OFFICERS.
De Jure officer when not entitled to salary..... 100
De Facto officer when entitled to salary..... 100
State not liable for family expenses of Deputy Warden at State Penitentiary 124
No power to acquire real estate for the State by private contract... 109

ORDER OF COURT.
Order of County Judge binding unless modified or reversed..... 86
Order of County Judge how reviewed.....83, 86, 104

PAYMENT.
No recovery where payment made voluntarily under an unconstitutional statute 11, 67
Payment made after threat to bring suit not a payment under protest 67

PENSION.
There is no statutory authority for allowance of pension by Court of Claims 155

PHYSICIAN AND SURGEON. *(See Non-Liability of State.)*
State is liable for medical services rendered at a State institution at request of its managing officer.....190, 253
When State not liable for medical services.....216

PRACTICE.
When no plea is filed by the State the case stands on hearing the same as if plea of general issue was filed..... 5

PRESUMPTION.
No presumption is indulged against the State to aid claimant in establishing his claim..... 29

PROPERTY DAMAGE. *(See Equity and Social Justice.)*
When State is liable.....133, 348
State not liable for damages caused by over-flow of State Canal.... 133

PAGE.

PUBLICATION NOTICE.
State liable for publication notices caused to be published by a State officer 179, 180

PUBLIC POLICY.
What acts of State officer are against public policy..... 64

QUARANTINE.
State officer has right to place a quarantine against infectuous disease 26

REPEAL OF STATUTE.
Doctrine of *Respondeat Superior* not repealed by Court of Claims Act of 1917..... 57

REIMBURSEMENT. *(See Services.)*

RES ADJUDICTA.
A former decision to be a bar must decide a case upon its merits... 99

RULE OF UNIVERSITY. *(See University of Illinois.)*

RESPONDEAT SUPERIOR. *(See Governmental Function.)*
Doctrine of *respondeat superior* is not applicable to the State.....
.....9, 15, 26, 74, 81, 90, 120, 127, 141, 155, 166, 168, 188, 199, 200, 201, 202, 203, 206, 207, 216, 227, 268, 294, 329
State not liable for torts of strangers..... 9
State not liable for injuries sustained by an employee in the discharge of his duty.....
....70, 72, 81, 127, 136, 177, 188, 189, 212, 247, 249, 257, 261, 294, 358
State not liable for damages caused by over-flow of State Canal.... 133
State not liable for death caused by premature discharge of gun during encampment of National Guard..... 203
Not liable for injury sustained by an employee through heat stroke. 207

SERVICES. *(See Inmates.)*
What must be shown to recover for services rendered.....11, 100
Claimant must prove nature of services performed, and that the amount claimed is reasonable and proper..... 15
When the State is liable for services performed.....16, 99, 253, 313
Employee cannot recover for services rendered after *sine die* adjournment of Legislature..... 97
State is liable for services rendered at request of State Immigrant Commission 313
When State liable for architectural fees..... 362

SOCIAL JUSTICE AND EQUITY.
Social Justice and Equity rule stated.....
.....212, 216, 228, 238, 247, 249, 251, 254, 255, 256, 257, 259, 261, 267, 268, 270, 271, 275, 280, 283, 284, 294, 295, 323, 329, 332, 336, 349, 358, 74, 87, 122, 138, 144, 151, 155, 158, 159, 162, 165, 166, 168, 177, 188, 190, 191, 199, 200, 201, 202, 204, 207, 211
Claim may be allowed on ground of social justice and equity although the doctrine of *Respondeat Superior* not applicable to State.....
.....74, 87, 90, 92, 120, 127, 137, 155, 165, 182
When claim is barred under statute of limitations..... 74

PAGE.

STATE OFFICER. *(See Employee.)*
State Auditor no power to employ special counsel..... 5
Attorney General cannot be interfered with in the discharge of his duty 5
State officer cannot voluntarily make himself a purchasing agent of the State 64, 124

STATE WARRANTS.
State warrant will be paid to preserve the credit of the State, although illegal, if taken in good faith and in due course..... 170

STATUTES CONSTRUED.
Section 10 and Section 25, Inheritance Tax Law..... 1
Court of Claims Act, Par. 4, Sec. 6.....26, 206
General Incorporation Act, Sections, 102, 105, 108 and 129..... 171
Military and Naval Code, Sec. 11, Art. 16.....119, 129
Workman's Compensation Act, Sec. 5 (Session Law 1913 p. 340).... 243

SURGICAL OPERATION. *(See Physician and Surgeon, also Services.)*

UNIVERSITY OF ILLINOIS. *(See Governmental Function.)*
University of Illinois, nor any other State institution has power or authority to make agreements or settlements for personal injury sustained by its employees..... 315
When rule for such compensation is made and the State appropriates money to take care of the charge acquiesence therein by the State may reasonably be inferred..... 315
Employees not within provisions of Workman's Compensation Act.. 315

UNITED STATES GOVERNMENT.
Action by U. S. Government in paying a claim does not make the State liable 64

WORKMAN'S COMPENSATION ACT.
State is only liable where case falls clearly within the statute..... .....9, 90, 129, 136, 227, 303
Liability of the State is limited to enterprises enumerated in Section 3, of the Act.....74, 87, 90
Does not apply to State where it is not engaged in any of the enterprises enumerated in Section 3, of the Act.....74, 87, 120
University of Illinois does not come within the provisions of the Act 70, 315
When claim falls within the provisions of the Act.....70, 74
When claim does not fall within provisions of the Act..87, 136, 209, 323
When does not apply to State employees.....323, 329
When considered as a basis of award.....70, 129, 209