REPORTS

OF

Cases Argued and Determined

IN THE

COURT of CLAIMS

OF THE

STATE OF ILLINOIS

THE LIBRARY OF THE
OCT 17 1932
UNIVERSITY OF ILLINOIS.

VOLUME 6

Containing cases in which Opinions were filed between
July 1, 1927 and June 30, 1931

SPRINGFIELD, ILLINOIS
1931

[Printed by authority of the State of Illinois]

SCHNEPP & BARNES, PRINTERS
SPRINGFIELD, ILL.
1931

65505—1M

PREFACE

The opinions of the Court of Claims 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 powers and duties," approved June 25, 1917, in force July 1, 1917.

WILLIAM J. STRATTON,
Secretary of State
and Ex-officio Secretary Court of Claims.

820899

JUSTICES OF THE COURT OF CLAIMS

A. J. CLARITY, *Chief Justice.*

B. F. THOMAS, *Judge.*

CLIFFORD G. ROE, *Judge.*

OSCAR E. CARLSTROM, *Attorney General.*

WILLIAM J. STRATTON, *Secretary of State and Ex-officio Secretary of the Court.*

RULES OF THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

TIME OF COURT SESSIONS.

RULE 1. The Court of Claims shall hold a session of the court at the Capital of the State on the second Tuesday of January, the first Tuesday of May and the second Tuesday of September of each year, and may continue its sessions or adjourn them from time to time as it deems proper to expedite the business before it. No cause will be heard at the May term unless the pleadings have been settled and the evidence, abstracts and briefs of both parties have all been filed with the clerk before the first day of the said term.

THE DECLARATION.

RULE 2. Causes shall be commenced by a verified declaration or statement which, together with four copies thereof, shall be filed with the clerk of the court at least thirty days before the term of court to which it is directed. Every declaration before it is filed shall have plainly written on the back thereof the name and address of all attorneys representing the claimant. No person who is not a licensed attorney and an attorney of record will be permitted to appear for or on behalf of any claimant, but a claimant even though not a licensed attorney may prosecute his own claim in person. The clerk will note on the declaration and each copy the date of filing and deliver one of said copies 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. No.....

STATE OF ILLINOIS

RULE 4. Such declaration shall state concisely the facts upon which the claim is based, setting forth the 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.

VERIFICATION OF 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. If the declaration be verified by anyone other than the claimant, a power of attorney authorizing him to prosecute the suit or make the verification must be annexed to the declaration and filed therewith.

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. If the claimant die pending the suit, his death may be suggested on the record, and his proper representatives, on filing a duly authenticated copy of the record of his appointment as executor or administrator, may be admitted to prosecute the suit without special leave, but subject to the objection of the defendant either before or at the trial. If the suggestion of death be made when the case is called for trial, the court may allow time within which a personal representative may be appointed or appear. It is the duty of the claimant's attorney to suggest the death of a claimant when the fact becomes known to him.

RULE 9. Pleadings and practice at common law as modified by the Illinois Practice Act shall be followed. Four copies of all pleadings shall be filed, together with the original.

AMENDMENT TO DECLARATION.

RULE 10. A claimant desiring to amend his declaration or to introduce new parties may do so at any time before he has closed his testimony, without special leave by filing five copies of amended declaration, embodying the amendments desired, but any such amendments or the right to introduce new parties shall be subject to the objection of the defendant either before or at the trial. Any subsequent amendments must be by leave of court.

RULE 11. The declaration and the four copies thereof, and any amendment thereto, shall be provided with a suitable cover, upon which

shall be printed or plainly written the title of the court and cause together with the name and address of the attorney and the name and address of the claimant.

RULE 12. 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 13. 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 the time for pleading be extended.

STATUTE OF LIMITATIONS.

RULE 14. If it appear on the face of a declaration that the claim is barred by the statute of limitations the same may be dismissed.

EVIDENCE.

RULE 15. 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 16. 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 at least thirty days before the first day of the term of court to which the pleadings are directed and all evidence for the defendant shall be filed on or before the first day of such term.

RULE 17. 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 18. 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 19. 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.

RULE 20. 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 21. If a demurrer be sustained, the claimant may by leave of court, amend his declaration within such time as the court may direct; but if he decline or fail to amend, judgment will be rendered dismissing the case.

ABSTRACTS AND BRIEFS.

RULE 22. The abstract and brief of the claimaht, together with proof of service of copies of such abstract and brief on the defendant must be filed in the clerk's office on or before fifteen days before the first day of the term to which the cause will stand for hearing unless the time for filing the same is extended by the Court or one of the Judges thereof. The defendant shall file his brief with like proof of service not later than the first day of the term unless the time for filing the brief of claimant shall be extended, in which case he shall have twenty days from the date on which the brief of the claimant is served upon him. Claimant shall have seven days from the date on which the brief of defendant is served upon him on which to file a reply brief with like proof of service. Upon good cause shown, further time to file the abstract or the brief of either party may be granted by the court, while in session by any judge thereof, or at other times only upon written notice filed with the Clerk while in session, or with one of the judges at other times.

RULE 23. Each party shall file with the clerk five printed or typewritten abstracts of the evidence taken on behalf of such party.

RULE 24. 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. Accompanying such briefs there may be a statement of the facts and an argument in support of such briefs.

RULE 25. 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 26. 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 on time, unless the time be extended for the filing of abstracts or briefs by the State.

RULE 27. 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.

MOTIONS.

RULE 28. Motions shall be filed with the clerk at least one day before they are presented to the court and must be submitted at least one day before the cause stands for hearing. All motions will be presented by the clerk immediately after the daily announcements of the Court but at no other time during the day, unless in case of necessity or in relation to a cause when called in course. All motions and suggestions in support thereof shall be in writing, and when the motion is based on matter that does not appear of record it shall be supported by affidavit. Before a motion can be filed, proof that a copy of the motion and suggestions in support thereof have been served on counsel for the opposite party at least twenty-four hours before the motion is presented for filing shall be filed with the clerk, unless such service shall be shown by affidavit to be impracticable. Objections to motions must be in writing and must be filed within twenty-four hours after the motion is presented to the clerk for filing. All motions shall be submitted without oral argument upon the written suggestions and affidavits for and against the motions.

ORAL ARGUMENTS.

RULE 29. Either party desiring to make oral arguments shall file a notice of his intention to do so with the clerk at least ten days before the session of the court at which he wishes to make such argument.

PETITION FOR REHEARING.

RULE 30. A party desiring a rehearing in any cause shall within fifteen days after filing of the opinion, file with the clerk a notice in writing of his intention to ask for a rehearing, and within twenty-five days after the filing of the opinion, he shall file with the clerk five copies of the petition with proof of service on opposite party. The petition shall state briefly the points supposed to have been overlooked, or misapprehended by the court with proper reference to the particular portion of the original abstract and brief relied upon and with authorities and suggestions precisely stated in support of the points. Argument in support of the petition will not be permitted.

DOCKETING REHEARING.

RULE 31. When a rehearing is granted, the original briefs of the parties and the petition for rehearing, answer and reply shall stand as files in the case on rehearing. The opposite party shall have fifteen

days from the granting of the rehearing, to answer the petition and the petitioner shall have five days to file his reply. Copies of each shall be served on opposing counsel.

COVER FOR PLEADINGS.

RULE 32. All pleadings filed must be provided with a suitable cover. The title of the court and cause, together with name of the plea, motion, brief and argument, shall be printed or plainly written on the cover of all such documents filed.

FOREIGN ATTORNEYS.

RULE 33. Any foreign attorney who files a declaration for a claimant in this court on motion of any resident attorney of this State may be admitted to practice in that case in this court.

RECORDS AND CALENDAR.

RULE 34. 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.

REFERENCE BY GENERAL ASSEMBLY.

RULE 35. 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 regular 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.

ORDER 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 4th day of November, A. D. 1931.

A. J. CLARITY, *Chief Justice.*
B. F. THOMAS, *Judge.*
CLIFFORD G. ROE, *Judge.*

COURT OF CLAIMS LAW

AN ACT *to create the Court of Claims and to prescribe its power and duties. (Approved June 25, 1917. L. 1917, p. 325.)*

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 from the time of his appointment until the second Monday in January next succeeding the election of a Governor, and until his successor is appointed and qualified. This provision in reference to the term of office of the chief justice and of each judge shall apply to the current terms of said offices and the respective terms of the present incumbents shall be deemed to have begun upon the appointment of said incumbents. (As amended by act approved and in force May 11, 1927. L. 1927, p. 393.)

EMERGENCY § 3. WHEREAS, in order that the full salary of said chief justice and of said judges as provided for by act of the 54th General Assembly may be paid out of an appropriation made and now available therefor; therefore an emergency exists and this act shall take effect and be in force and effect from and after its passage and approval. (Act approved May 11, 1927. L. 1927, p. 393.)

§ 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 justice shall each receive a salary of thirty-six hundred dollars per annum, payable in equal monthly installments. (As amended by act approved June 30, 1925. L. 1925, p. 329.)

§ 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. Repeal.

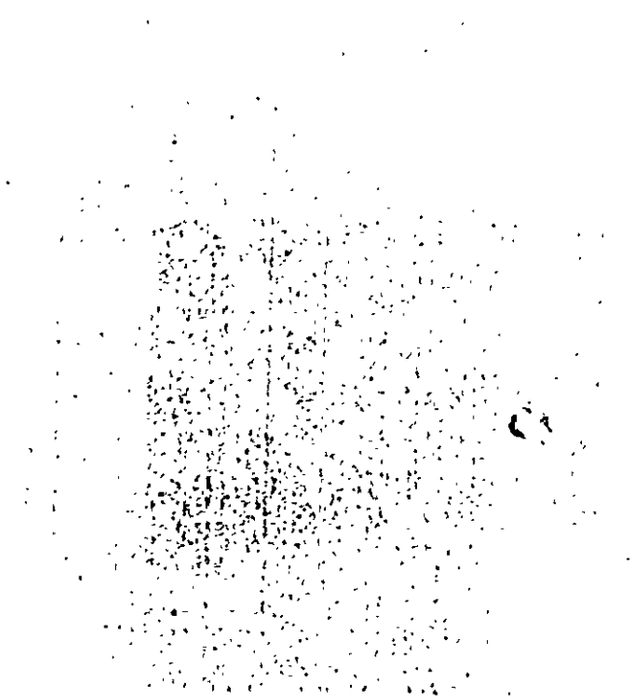


TABLE OF CASES REPORTED IN THIS VOLUME

A

	PAGE
Abert, Edward, v. State	191
Acme Rubber Mfg. Co., The, v. State	204
Acme Steel Company, v. State	41
Adams, Tom, v. State	56
Agar Packing & Provision Co., v. State	33
Alexander-Daley Lumber Co., v. State	567
Allen, Ray H., v. State	360
Alpha Portland Cement Co., v. State	200
American Bank Note Co., v. State	200
American Brake Shoe & Foundry Co., v. State	134
American Bridge Co., et al., v. State	485
American Can Company, v. State	457
American Can Company, v. State	471
American Film Co., Inc., v. State	49
American Forge Company, v. State	102
American Locomotive Co., v. State	458
American Open Racing Ass'n., v. State	265
American Steel Foundries, v. State	411
Anderson, Burton, et al., v. State	287
Anderson, J. B., v. State	542
Anderson, W. S., et al., v. State	318
Ansbro, Patrick, v. State	535
Anton, Frank G., v. State	115
Arkuszeqski, Frank E., v. State	101
Armour and Company, v. State	528
Armour and Company of Delaware, v. State	119
Arney, Luther, v. State	38
Arnold, Walter, Admr., v. State	27
Asp, Elmer J., Admr., v. State	555

B

Backus, Clyde I., v. State	570
Baratona, John, v. State	556
Barr, Earl J., v. State	561
Barton, W. F., v. State	50
Beard, Charles, v. State	258
Beard, Genova, v. State	491
Beavins, Joseph W., v. State	543
Belden, Joseph C., et al., Extrs. v. State	45
Bennethum, Roy, et al., v. State	178
Bennett, John, v. State	563
Benson, Priscilla May, v. State	229
Berta, Joseph & Virginia, v. State	369
Bib MacNeil Company, v. State	499
Bibo, John, et al., v. State	191
Bibo, Joseph, v. State	191

PAGE
Bing, Otto M., v. State 260
Blackford, J. M., v. State 518
Black Star Coal Company, v. State 379
Blackwell, Harry E., v. State 528
Blasi, Tony, v. State 101
Blaw-Knox Company, v. State 495
Board of Education, Dist. 144, Normal, Ill., v. State 429
Board of Education School Dist. No. 42, Crawford Co., Ill., v. State 117
Board of School Inspectors of the city of Peoria, v. State 109
Bokemeier, Reeve B., v. State 547
Booth Fisheries Company, v. State 262
Bouchier, Thomas, v. State 101
Borden Company, The, v. State 414
Borden's Farm Products Co. of Ill., v. State 414
Bowlby, A. H., v. State 302
Bowlby, Ben F., v. State 191
Bowermaster, Charles, v. State 322
Boyd, Arthur, v. State 510
Boyer, C. P., v. State 26
Braun, G. F., v. State 104
Breed, Allyn C., v. State 362
Brenholt, John J. Jr., v. State 428
Bridges, R. E., v. State 118
Brooks, James M., v. State 392
Brown, George W., v. State 566
Brown, Jackson R., v. State 186
Browning, King & Co., v. State 457
Browning, Maxine, v. State 120
Browning, Maxine, v. State 514
Browning, Roy H., v. State 191
Buchman, I. H., v. State 253
Buck, Romella, v. State 148
Buehler, Phoebe B., Extrx., v. State 37
Burpee Can Sealer Company, v. State 378
Burr Vack Company, v. State 406
Bush, Ozell, v. State 269
Bush, Ozell, v. State 516
Buss, Lawrence, v. State 287

C

Cadet Knitting Company, v. State 52
Caledonia Company, The, v. State 176
Cannon, Martin, v. State 101
Carlson Brothers Inc., v. State 573
Carson, C. E. Company, v. State 520
Casey, Guy H., v. State 526
Carter, William C., v. State 191
Carter, Wm., v. State 191
Cefala, Charles, v. State 71
Central Building Materials Co., v. State 425
Central States Portland Cement Co., v. State 472
Certain-Teed Products Corporation, v. State 495
Champlin Refining Company, v. State 413
Chicago Fuse Mfg. Co., v. State 200
Chicago Poultry Breeders Ass'n., v. State 191
Chicago, Wilmington & Franklin Coal Co., v. State 461
Child's, v. State 308
Chumbler, Mildred Alma, Admrx., v. State 138
Clancey, Joseph C., v. State 468
Clapp, Eben P., et al., v. State 47
Clark, Arthur R., v. State 242

PAGE

Clauser, Floyd, v. State 27
Cletcher, Addie, v. State 209
Cletcher, C. M., v. State 209
Clevermann, William, v. State 547
Cochran, Ann E., v. State 568
Coddington, Claude J., v. State 556
Coffin, Percival B., Admr., Benjamin Anderson, v. State 167
Coffin, Percival B., Admr., Delmos Campbell, v. State 167
Coffin, Percival B., Admr., Herbert Durant, v. State 167
Coleman, M. S., v. State 299
Commercial Solvents Corporation, v. State 442
Cone, Edna Elma, v. State 501
Connell, Thomas J., v. State 554
Connole, Thomas W., v. State 477
Conn Peoria Co., Inc., v. State 185
Conrad, Henry W., v. State 246
Consolidated Cement Corporation, v. State 473
Container Corporation of America, v. State 52
Continental Nat'l Bk. & Tr. Co., The, Extrs., v. State 474
Continental Nat'l Bk. & Tr. Co. of Chicago, Trustee, v. State 313
Conway, George, v. State 342
Conway, R. F. Co., v. State 363
Corcoran, William, v. State 569
Cosgrave, Julia, v. State 310
Cox, Clarence C., et al., v. State 191
Cox, William, v. State 244
Crabb, Thomas R., v. State 572
Cunningham, James, Son & Company, v. State 494
Cunningham, James, Son & Company, v. State 495
Curran, I. B., v. State 508

D

Daley, John E., v. State 576
Dannewitz, L. F., Admr. v. State 142
Deerin, Glenn R., v. State 282
DeLaval Separator Company, v. State 410
Dennison Manufacturing Co., v. State 495
DeSale, F. J., v. State 170
Devlin, Francis M., v. State 289
Dhermy, Arthur, Sr., v. State 531
Dime & Savings & Trust Company, v. State 136
Dinon, Emilio, v. State 538
Division of Fire Prevention, v. State 146
Dodson, L. H., Admr. v. State 99
Donaldson, Wm., v. State 191
Dorre, Laura, et al., v. State 132
Dowell, George W., Trustee, v. State 249
Durante, Hector, v. State 101

E

Eagle-Picher Lead Company, The, v. State 99
Edwards, Letta, et al., Extrs., v. State 530
Eichenold, William C., v. State 212
Electric Appliance Company, v. State 184
Ellis, E. W., v. State 191
Ellwood, E. P., et al., v. State 111
Emery, Victor R. Jr., v. State 393
Enockson, Enock, v. State 822
Erickson, E O. and Lena, v. State 369
Erwin, Emmett, v. State 30

F

	PAGE
Farley, Herbis, v. State	538
Farlow, Gerald C., et al., v. State	446
Farmer, John, v. State	105
Farrell, Joseph P., v. State	488
Federal Bridge Company, v. State	160
Federal Ice Refrigerating Co., v. State	32
Federal Paving Company, v. State	243
Felmley, David, v. State	226
Finney, J. W., v. State	349
Fischer, John Edward, v. State	575
Fish, Ida, v. State	315
Fish, Walter E., v. State	315
Fisher, Florence, v. State	298
Fitzmaurice, James Edward, v. State	247
Flanagan, A. Company, v. State	35
Flesburg, Elmer, v. State	368
Florida Portland Cement Company, v. State	474
Foreman Trust & Savings Bank, Admr., v. State	372
Foreman Trust & Savings Bank, Guardian, v. State	191
Fornhals, O. G., et al., v. State	191
Fredrickson, C. J., v. State	347
Freeman, Louis F., v. State	198
Freer, Edward G., v. State	189
French, C. A., et al., v. State	214
French, John B., v. State	127
Friend, Bessie & George B., Extrs., v. State	166
Fries, John J., v. State	395
Fries, Wealthy, v. State	295
Frymire, Herman, Guardian, v. State	381
Frymire, Herman & Beulah, v. State	380

G

Garns, James, v. State	5
Garnsey, John H., v. State	503
Gietl, Louis M., et al., v. State	537
Gillen, Patrick, v. State	276
Gluesing, J. W., v. State	455
Goetz, Albert, et al., v. State	468
Gould, Helen Fitch, v. State	87
Graham, Albert, v. State	15
Graham, William, v. State	14
Graton & Knight Company, v. State	495
Gray, Frank, v. State	404
Green & Sons Company, v. State	373
Grimes, James F., v. State	541
Grivetti, Pauline, v. State	231
Grootens, John, et al., v. State	399
Guinn, Louis, v. State	449

H

Haak, William, v. State	239
Hair, Helen Hartzel, v. State	94
Hall, H. H. Construction Company, v. State	326
Halliday, Nellie G., v. State	501
Halterman, Dan, v. State	454
Hamilton, Ray M., v. State	191
Hamilton, William T., v. State	59
Hamlin, Harry F., v. State	536
Hansen, Albert A., v. State	275
Hansen, Ernestine Sterling, v. State	548

PAGE
Hansen, Ernestine Sterling, Admrx. Virginia Sterling, v. State..... 548
Hansen, Ernestine Sterling, Admrx. Catherine Brockman, v. State..... 548
Harmon, Loren, v. State..... 280
Harness, Charles, v. State..... 126
Harrell, Roy W., v. State..... 193
Harris, Samuel G., v. State..... 514
Harris, Samuel G., v. State..... 121
Harris, W. E., v. State..... 93
Harrison, Tyra, v. State..... 397
Hartkorn, Frank, v. State..... 515
Hartmann-Clark Bros. Company, v. State..... 365
Haslam, Emily, v. State..... 62
Hay, Logan, et al., v. State..... 33
Hayes, Marion C., v. State..... 233
Hays, M. L., v. State..... 307
Hazelwood, Ed., v. State..... 259
Heise, Raymond, v. State..... 267
Henion, Jessie Mead, Extrx., v. State..... 129
Henkel Construction Company, v. State..... 222
Highland, Lloyd, v. State..... 384
Highland, Susie P., v. State..... 384
Hill, J. J., v. State..... 191
Hill, Louise B., v. State..... 323
Hillebrand, Clarence, v. State..... 58
Hillock, Frank, v. State..... 310
Hinrichs & Schroeder, v. State..... 553
Hoeft, Martha, v. State..... 191
Hoenig, Ervin H., v. State..... 562
Hoffman, Michael, v. State..... 154
Hofreiter, Catherine, v. State..... 191
Hogan, Edmund A., v. State..... 241
Holer, William V., v. State..... 130
Holland Butter Company, v. State..... 512
Hollenbeck, Agnes C. and William, v. State..... 330
Hollingshead, R. M. Co., The, v. State..... 495
Hopf, John S., v. State..... 108
Hoppe, Herman, v. State..... 322
Horn, Mary, v. State..... 231
Hoyt, William L., v. State..... 240
Huchberger, Fred L., v. State..... 101
Huckaba, E. E., v. State..... 268
Huguelet, Anna P., v. State..... 181
Hutchins, Jennie C., Admrx., v. State..... 192
Hutson, J. S., v. State..... 273
Hutton, William, v. State..... 297
Hydraulic-Press Brick Company, v. State..... 412

I

Ide, Geo. P. & Co., Inc., v. State..... 95
Iglehart, M. A., v. State..... 152
Illinois Bell Telephone Company, v. State..... 406
Illinois Central Railroad Company, v. State..... 288
Individual Towel & Cabinet Service Co., v. State..... 408
Iowa Bridge Company, v. State..... 272

J

Jackoboice, Edward J., v. State..... 430
Jacksonville Grain & Commission Co., v. State..... 67
Jeffers, Paul, v. State..... 574
Jennings, Charles F., v. State..... 402
Jobst Bethard Company, v. State..... 452

PAGE
Jobst Bethard Company, v. State 453
Jobst Bethard Company, v. State 453
Johnson, A. J., v. State 256
Johnson, Ben, v. State 468
Johnson, Paul B., v. State 570
Johnson, W. A., v. State 283
Jolly, Dock Kenneth, v. State 196
Jones, Opal R., v. State 273
Josephson, Edgar W., v. State 559
Joyce, Peter, v. State 297

K

Kauffman, Blanche, v. State 355
Keig, Joseph, v. State 503
Kell, Ellen, Admrx., v. State 391
Kelly, Shelly, v. State 508
Kennedy, Clara Hart, Extrx., v. State 522
Kerley, Z., v. State 191
Kershaw, Erwin J., v. State 387
Kinkaid, Alexander M., v. State 92
Kinnear Stores Company, v. State 341
Kinney-Rome Company, v. State 208
Kirkpatrick, Ella, v. State 480
Kittle, William, v. State 12
Knowles, Joseph M., v. State 534
Koehler, Fred, v. State 180
Koenig, George T., Trustee, v. State 322
Kramer, George, v. State 531
Kriz, William, v. State 544
Kubec Electric Company, v. State 429
Kuntz, Minnie E., Admrx., v. State 532

L

Lane, William, v. State 205
Lamoreaux Brothers Company, v. State 63
Lampp, H. C., v. State 349
Langston, James M., v. State 191
Larson, Karl Axel Henrick, v. State 493
Layton, I. F., v. State 316
Ledwith, James, et al., v. State 191
Lee, County of, v. State 520
Lee, Robert E., v. State 570
Lehigh Portland Cement Company, v. State 200
Lenox, Harold, v. State 127
Lindberg, John M., v. State 194
Lindley, N. L., v. State 431
Lockie, Dr. G. D., v. State 447
Logan, John R., v. State 106
Lord, Eugene A., et al., v. State 301
Loughran, Francis J., v. State 503
Louisville & Nashville Railroad Co., v. State 202
Love, Frank, v. State 182
Love, Lafayette, v. State 60
Lunkenheimer Company, The, v. State 98
Lytle, James Warren, v. State 191

M

Maher, James E., v. State 255
Manhattan Electrical Supply Co., v. State 462
Marbry, Louis E., v. State 187

PAGE
Marek, Martin L., v. State 468
Marlin-Rockwell Corporation, v. State 206
Mason, Minnie, v. State 405
Mayer, Edgar J., v. State 541
Mayer, Isaac H., et al., Trustees, v. State 46
Maze, Joseph, et al., v. State 1
McCane, Boyd, v. State 559
McClintic-Marshall Construction Co., v. State 251
McCormick, Frank & Elizabeth, v. State 213
McCormack, W. T., v. State 546
McCorry, Charles Lawrence, et al., v. State 160
McCoy, Jesse F., v. State 564
McCreary, Harry D., v. State 278
McDermott, Charles, v. State 545
McDonald, May E., Admrx., v. State 553
McGarrah, Lewis H., v. State 468
McKenney, Douglas L., v. State 113
McLaughlin, Charles J., et al., v. State 384
McMillen, Henry, v. State 310
McPherson, Laverne, v. State 317
McWilliams, Beth Jane, v. State 533
Meaher, Joseph, v. State 380
Means, Joseph D., v. State 191
Meister, Frank, v. State 509
Mercer, Laura A., v. State 20
Merchants Oil Company, v. State 420
Metcalf, Blanche, v. State 162
Metts, Edmund John, v. State 513
Meyer, Dr. J. G., v. State 455
Meyers, O. W., v. State 271
Mid-Continent Construction Co., v. State 402
Miller, G. A. & Son, v. State 274
Mills, Ruth, v. State 284
Minneapolis Threshing Machine Co., The, v. State 467
Missouri Pacific Railroad Company, v. State 466
Mitchell, David R., v. State 191
Mitchell, James A., v. State 322
Mitchell, John, v. State 330
Moline Plow Company, v. State 8
Mooney, William C., v. State 225
Mooney, William C., v. State 503
Moore, Richard Hoyt, v. State 191
Morris, John, v. State 252
Mullins, Will, v. State 236
Musick, R. H., v. State 277
Musick, R. H., v. State 291
Myers, Glenson, v. State 191

N

Nadon, Lyle, v. State 430
National Aniline & Chemical Company, Inc., v. State 11
National Fire Proofing Company, v. State 500
Neighbors, Martha F., v. State 179
Nevin, Henry, v. State 384
Nevins, E N., et al., v. State 435
New Era Construction Co., The, v. State 88
New York, Chicago & St. Louis Railroad Co., v. State 481
Niestadt, Katherine, et al., v. State 476
Nierstheimer, Adolph, Jr., v. State 197
Nofs, Herman, v. State 218
Nolan, Luke, v. State 371

PAGE

Normal, The Town of, v. State 235
North American Car Company, v. State 16
North American Light & Power Company, v. State 200
North American Light & Power Co., of Delaware, et al., v. State 200
North American Light & Power Co., of Maine, v. State 270
North Shore Material Company, v. State 577
North Utica, The Village of, v. State 343
Norton, Robert A., v. State 112
Novak, Joseph, v. State 539

O

Oakford & Fahnestock, v. State 439
O'Brien, Mrs. James, v. State 191
Offerman, A. A., v. State 503
Oglesby, Mathilda Hieronymus, v. State 501
Ohio Casualty Insurance Company, The, v. State 504
O'Neil, W. E. Construction Co., v. State 450
Oppenheimer, S. & Co., v. State 465
Oscar Heineman Corporation, v. State 410

P

Paddock, Earl, v. State 496
Palmer, Honore & Potter, Extrs. Etc., v. State 163
Parker, J. W., v. State 71
Parr, Andrew, v. State 330
Parsons, H. Leet, v. State 191
Paschen, Henry, et al., Admr., v. State 23
Pelka, Anna, Admrx., v. State 390
Pense, Clayton A., v. State 426
Peretz, Sam, Admr., v. State 356
Perry, Dan, v. State 81
Perry, Dudley, E., v. State 409
Peterson, Ed and Martha, v. State 578
Peterson, J. A., v. State 77
Peterson, William H., v. State 77
Pfahler, Fred S., v. State 299
Pierce, A. N., et al., v. State 367
Pioneer Creamery Company, The, v. State 511
Plaut, Michael S., v. State 565
Powers, Rufe, v. State 158
Pratt & Lambert, Inc., v. State 103
Pyle, Eleander, v. State 349

R

Ranson, A. R., v. State 523
Rapinac, Victoria, v. State 325
Redpath, Schuyler E., v. State 298
Regis, John, v. State 568
Reider, Florence, v. State 191
Rendleman, Willis, v. State 571
Republic Flow Meters Company, v. State 200
Rickelm, Henry and Mamie, v. State 382
Rickenberg, Fred, v. State 286
Ritz, Frank, v. State 526
Roark, Bertha, v. State 147
Robeza, Johanna, v. State 231
Rossell, William L., v. State 101
Royal Typewriter Company, Inc., v. State 464

PAGE

Rudd, S. A., v. State 132
Rudow, Frank, v. State 543
Ryan, Adelbert D., v. State 114
Ryerson, Sam, Jr., v. State 479

S

Sanders, Jennie, v. State 151
Sangamo Oil Company, v. State 155
Scanlan, William M., v. State 451
Scanlan, William M., v. State 217
Scharf, Lewis E., v. State 51
Schernau, William, v. State 43
Schnepp, Carroll D., v. State 124
Schoenholz, Frank A., v. State 123
Schultz, Raymond W., v. State 141
Schwartz, Anna Marie, Admrx., v. State 557
Scott, Sherman, v. State 501
Scrivner, Martha, v. State 521
Severns, Horace, v. State 330
Sharp, Isham, v. State 304
Shaw, Fred, v. State 310
Shaw, George, v. State 563
Shaw, Margaret, v. State 375
Sherman, L. Y., et al., v. State 346
Shoff, Louis N., v. State 468
Short, James, v. State 426
Shreve, Julius M., v. State 191
Sipe, Willard C., v. State 276
Smith, Geo. B. Chemical Works, Inc., v. State 498
Smith, John, v. State 524
Smith, John A. and Helene, v. State 348
Smith, Leslie, v. State 133
Smith, William L., v. State 266
Soland, Joseph and Mary, v. State 147
Spafford, M. E. v. State 310
Spalding, A. G. & Bros., v. State 495
Spencer, C. J., v. State 536
Spencer, Hillman F., v. State 481
Standard Oil Company, v. State 139
Standard Oil Company (Ind.), v. State 195
Standard Oil Company, v. State 428
Standard Oil Company, v. State 472
Standard Oil Company, Indiana, v. State 552
Stansbury, L. A., v. State 558
Sta-Rite Hair Pin Company, v. State 436
Stein, Otto, Admr., v. State 329
Stevenson, Fred and John, v. State 322
Stiles, Louis A., v. State 377
Still, Clara, v. State 191
Stillwell, William E., v. State 191
Stoddard, Theodore, v. State 27
Stone, Clyde E., v. State 57
Strelitsky, Louis J., v. State 101
Stromberg Carlson Telephone Mfg. Co., v. State 463
Struck, Steve, v. State 435
Stuart, Howard E., v. State 322
Stuart, Mark, v. State 322
Stubblefield, J. A., v. State 191
Svoboda, Ludwig, et al., v. State 501
Sweet, Richard E., v. State 210

T

	PAGE
Taylor, Horace K., v. State	120
Theller, Frank, v. State	310
Thomas, Edgar, v. State	230
Thomas, W. H., et al., v. State	39
Tobin, Edward J., v. State	232
Todd Company, Inc., The, v. State	463
Townley, Charles A., v. State	150
Transportation Building Corporation, v. State	423
Trego, Etta, Admrx., v. State	193
Trompeter and Sons, v. State	221
Tucker, Charles, v. State	190
Turner, Albert W., v. State	389

U

Ulrich, Robert G., et al., v. State	572
Union Bank of Chicago, Admr., v. State	370
Union Trust Company, Admr., v. State	254
United Profit Sharing Corporation, v. State	495
United States Envelope Company, v. State	495
United States Hoffman Machinery Co., v. State	459
Upper, Arthur C., v. State	558

V

Van Gorder, Arthur, v. State	281
Van Gorder, Arthur, v. State	529
Van Sweringen, Oris P., et al., v. State	461
Vicary, George, v. State	468
Vollbrecht, William, v. State	305

W

Wade, E. M., v. State	107
Wagner Printing Co., v. State	576
Walker, Fay, v. State	560
Wallace, Felix A., v. State	110
Walsh, Mabel A., v. State	421
Walworth Company, v. State	54
Watkins, Eli, v. State	172
Welch, W. M. Manufacturing Company, v. State	551
Wells, Aaron, v. State	517
Wells, Aaron P., v. State	219
Western Electric Company, Inc., v. State	414
Western Indiana Gravel Company, v. State	513
Western Newspaper Union, v. State	467
Western Union Telegraph Co., v. State	406
Wetherby, Judson P., v. State	290
Wheeler, Walter, v. State	65
Wheelock, William W., et al., Receivers, v. State	511
Whiteside, County of, v. State	523
Whitmore, Samuel, v. State	550
Wideman, L. E., v. State	384
Wilken, Helen, v. State	316
Will, County of, v. State	188
Williams, Allen, et al., v. State	514
Williams, Elizabeth E., et al., v. State	292
Williams, J. H. & Co., v. State	460
Williams, Joe, v. State	456
Wilson, Arthur G., Admr., v. State	169
Wilson, Bertha E., v. State	358

PAGE
Wilson, Harry, v. State 270
Winkel, Ralph, v. State 540
Winters, George, v. State 544
Wirtz, Elizabeth, v. State 322
Wiseman, W. L., v. State 128
Withall, Emert, v. State 306
Wittman, Anthony G., v. State 216
Wolfe, George, v. State 361
Wolff, Percy, v. State 566
Woodrow, William, v. State 215
Woods Brothers Construction Company, v. State 300

Y

Yale and Towne Manufacturing Company, The, v. State 200
Yonkers, Viola, v. State 147

Z

Zavilly, Anthony, Guardian, v. State 303

CASES ARGUED AND DETERMINED IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

(No. 1039—Claim denied.)

JOSEPH MAZE, *et al.* Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 28, 1925.

PROPERTY LOSS—*when claimant is entitled to an award for loss of property resulting by reason of an order of the Department of Agriculture for the eradication of certain diseases to plant life.* Where the State, acting under a statute, performs its duty in eradicating a disease to plant life, and such acts are acquiesced in and aided by claimants, no award will be allowed.

STATUTES—*provisions of statute should be construed together with reference to purpose.* The legislature in passing the Court of Claims Act and the Plant Inspection Act of 1917, did not intend that the State should be liable for the destruction of property as a public or private nuisance.

POLICE POWER—*extent of police power of the State.* It is within the police power of the State to abate nuisances, private or public. Where the pecuniary civil interest of an individual and that of the public are in conflict, the private interest must give way to that of the public.

ALVIN C. BOHM AND C. W. BURTON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE PHILLIPS delivered the opinion of the court:

This is a suit brought by Joseph Maze and ninety-five other farmers of Madison County, Illinois, against the defendant, State of Illinois, for the aggregate sum of Seven Thousand Five Hundred Eighty-nine ($7,589.00) Dollars alleged to be due them, respectively, as shown in a bill of particulars filed, for straw burned in 1921 in pursuance with an of the Department of Agriculture of the State of Illinois.

The defendant demurred and evidence was taken by the parties; abstract, agreement and brief were filed by claimants and the case argued orally before the court by Messrs. Burton and Burton, attorneys for claimants and by Mr. Floyd E. Britton, Assistant Attorney General, on behalf of the State.

There is no dispute as to the evidence in the case, which clearly establishes the material allegations in the declaration relative to the burning of the straw by defendant, the amount burned, its value and ownership in the claimants respectively. At the same time the evidence in this case was taken, evidence in the case of William Balke and twenty-nine farmers of Madison County v. the State of Illinois, No. 26, was taken and rported with the evidence in this case. The last mentioned case being for formaldehyde bought and used by the claimants in eliminating "flag smut" from the territory hereinafter mentioned. The evidence is that the claimants always had a market for their straw at a price much larger than the amount claimed.

The evidence discloses and the oral argument of counsel show that, perhaps some time in the summer of 1921 it was brought to the attention and knowledge of the Department of Agriculture of Illinois, that "Flag Smut" was present and attacking the wheat straw of some or all of complainants. Immediately after being so notified the said Department of Agriculture sent men of proper experience into the infested districts. Meetings and consultations were had between the State's agents and the so-called "Flag Smut" committee and the owners of wheat in the territory infected. The Department of Agriculture determined it was necessary to quarantine the territory described in the declaration which embraced the wheat grown by claimants and others in years 1921 and 1922.

The proper notices were given by the said department, and the State entered vigorously into the work of controlling and stamping out said disease. An order was given for all wheat raisers within the territory so quarantined to burn the straw that grew upon their premises in the year 1921, except perhaps enough might be preserved with which to straw their potatoes, and that the wheat must be sprayed with formaldehyde as directed by the agents.

It appears that there was little, if any, protest against burning the straw, except, perhaps by one or two who reluctantly yielded; and all the claimants, willingly and intelligently complied with the order so given and did all in their power to aid the Department in eradicating the dangerous disease.

The State bought and paid for the formaldehyde in 1921; but in 1922 the owners of the wheat, at request of the State, bought and applied the formaldehyde, for which they have filed claims in this court, and the same allowed in another opinion filed in said No. 26 at the present term of this court. In 1922 the order was modified and the straw was not burned in that year. Subsequently the quarantine was raised, we suppose; but the evidence does not disclose that fact. Nobody ever put in any complaint of any grievance or objection to the procedure of the State in ridding the community of the said disease, and our opinion is that the Department of Agriculture acting under the statute in such case made and provided did its whole duty; and that the complainants acquiesced and greatly aided therein.

The contention of counsel for complainants is that the right of recovery in this case is governed by Paragraph 4, Section 6 of the Act to create a Court of Claims and to prescribe its powers and duties, passed and approved May 25th, 1917; in force July 1st, 1917. The paragraph is as follows: "To hear and determine all claims and demands, legal and equitable, liquidated and unliquidated, *excontractu* and *ex delicto*, which the State as a sovereign commonwealth, should in equity and good conscience discharge and pay."

On the 29th day of June, 1917, the Legislature of the State of Illinois, passed an Act known by the short title of "Plants Inspection Act of 1917", defining "insect pests and diseases"; "plants and plant products", etc., and providing for the inspection of all public or private places which might become infected with insect pests or disease, etc.; and giving the Department of Agriculture of the State power, and making it is duty to inspect all places where insect pests and diseases of plants were suspected; the power to quarantine against the spread of same; the power to declare what is a public or private nuisance in connection therewith; and the power to destroy plants or vegetables so infected; and making it the duty of the Agricultural Department to eradicate such pests and disease, etc., and making it the duty of everybody owning plants or crops infected with such insect pests or disease to diligently aid the State in the control and extermination of such insect pests and diseases as shall have been by the Department of Agriculture declared a nuisance, etc. See Secs. 1, 2, 4, 15, 16,

21 of Chap. 5, pp. 114, 117, 118, 119, Cahill's Annotated Statute, 1923.

It will be observed by reading the two acts above quoted from that they were both passed in the year 1917, and that the last act above mentioned was amended as late as 1919. We construe the statute as we find it, and in the light of legislative intent in the making thereof. It is evident to the court that in the passage of these laws for the purposes of controlling and eradicating injurious insect pests and diseases to plant life, it did not intend that the State should be liable for damages to the owners whose crops might be destroyed as public or private nuisances. Had it been the intention of the legislature to provide reimbursement for such pecuniary loss, it would have provided the method of calculating the damages and manner of paying the same, as it did in providing for the payment of diseased animals slaughtered by the State. It is entirely within the police power of the State to control or abate nuisances private or public. In the exercise of this power by public officials it is often necessary to inflict a loss upon a private individual for his own as well as the public welfare. Where the pecuniary civil interest of an individual and that of the public are in conflict the private interest must give way to that of the public.

Had there been no law governing the case at bar, these claimants would have profited as a community by combining their efforts and means in combatting and eradicating the enemy (disease) of their crops just as they have already done in a manner commendable to themselves and the State. We interpret the statute governing this case as we find it. We have no power to add to or to take from the provision and intent of the Statute. This law was passed at the same session (1917) of the legislature that enacted the law creating the Court of Claims and defining its powers and duties; and was amended in 1919 with no provision for the payment of damages as claimed in this suit. The law quoted by counsel for claimants cannot, by legislative intent, as we view it, be construed to allow such claims.

In construing both of these acts we reach the conclusion that the claimants have no right of action in this case. The demurrer is accordingly sustained and case dismissed.

(No. 820—Claim denied.)

JAMES GARNS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1926.

Rehearing denied September 13, 1927.

EVIDENCE—*variance.* It is a fundamental principle that a party cannot make out one case by his pleadings and another by his evidence.

SAME—*what evidence necessary to recover for personal injury.* Before claimant is entitled to recover, he must show by a preponderance of the evidence that he received an injury arising out of and in the course of his employment.

RULES—*Rule 30—when rules must be complied with.* Under Rule 30, a party desiring a rehearing shall, within fifteen days after the filing of the opinion, file with the clerk, a notice in writing of his intention to ask for a rehearing and within twenty-five days after the filing of the opinion, he shall file with the clerk five copies of the petition with proof of service on opposite party.

JAMES P. ST. CERNEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The declaration in this case was filed June 30th, 1924. It alleges that the claimant, while engaged as a laborer in the employment of the State on the hard road between Pekin and Orchard Mines in Peoria County, on the 2nd day of July, 1923, in elevating a concrete post, slipped and fell heavily to the ground and dislocated his hip, causing a permanent injury and rendering him unable to do any work. To this declaration the State has filed a general and special demurrer. Evidence was taken for both the claimant and the State.

There is no evidence in this record that in any way tends to prove claimant suffered a dislocated hip as charged in the declaration. The only evidence that claimant received an injury is his own statement. He testified that about 11 or 12 o'clock on the 2nd day of July, 1923, he, with others, was engaged in setting concrete posts along the hard road, and that while he and one MacMahon were elevating a post to put it in the ground MacMahon gave it a little push, throwing the weight on him, and one of his feet slipped and the weight of the post just spread him apart and hurt his hip; that at the lunch hour he could not sit down to eat because of the pain,

and the foreman, Mr. Buck, asked why he did not sit down and he told him he had hurt his hip putting in a post; that he was given lighter work during the afternoon, and when he got home sent for a physician; that his physician, Dr. Baleke, came the next morning and treated him, and has been treating him ever since for sciatic rheumatism.

Claimant is not corroborated in his statement about the injury by any of the others who were present. A. A. MacMahon, Martin Horton and Louis A. Buck were all present working with claimant at the time he says he received the injury, Buck being the foreman. MacMahon testified that if claimant received any injury, he did not know it, that he made no statement to him about it and continued to work with him at the same character of work the remainder of the day. Mr. Buck testified that he did not learn claimant had received an injury, that claimant did not tell him he had been hurt and that he continued to do the same character of work the remainder of the day, there being no lighter work to be done. Mr. Horton, who was working with them, also testified that claimant received no injury that day and that he continued to do the same kind of work during the afternoon as he had in the forenoon. Claimant never returned to work after the 2nd day of July, and testified that he has been unable to work since that time and under the care of a physician. Buck testified that three or four weeks before the day claimant alleges he received his injury, while the men were at lunch, claimant was walking around eating, and he said to him "Why don't you sit down and eat your dinner"?, and claimant replied "My hip hurts". Andrew Franklin also testified that he heard this conversation and that it occurred about a month before claimant quit work. Claimant admitted in his examination that some two or three weeks before he was injured he stated he had lumbago. Dr. Baleke testified that when he called to see claimant on the 3rd of July he was complaining of pains in the small of his back and that he treated him for lumbago, but that when he called the next time claimant said the pain had gone down his leg and he diagnosed the case as sciatic rheumatism and had been treating him for that ever since. He also said there was no swelling or other evidence of injury that could be seen, and that his hip was not dislocated.

It is a fundamental principle that a party cannot make out one case by his pleadings and another by his evidence. Claimant's declaration alleges he received a dislocated hip, which declaration was sworn to by claimant on the 27th day of June, 1924. Claimant's evidence does not sustain this claim. In fact, there is no evidence that his hip was dislocated or injured in any way. We have carefully read the evidence in this case and do not believe claimant is entitled to recover for any injury. Before he is entitled to recover he must show by a preponderance of the evidence that he received an injury arising out of and in the course of his employment. The preponderance of the evidence shows that he was not injured in the manner and at the time he claims. (It does not seem reasonable that claimant could have received as serious an injury as he says he did and that the men working with him not have known it. He was 58 years old, and admits that he previously suffered from lumbago.) "The evidence tends to show that he may have had an attack of lumbago which was followed by sciatic rheumatism, but it does not show that it was caused by any injury received by him arising out of and in the course of his employment by the State. Claimant having failed to make the proof required by law, his claim is disallowed."

On September 13, 1927, upon petition for rehearing the following additional opinion was filed:

The original opinion in this case was filed on September 14th, 1926, and a petition for rehearing was filed on September 6, 1927.

Under rule 30, a party desiring a rehearing in any cause shall within fifteen days after filing opinion, shall file with the clerk, a notice in writing of his intention to ask for a rehearing, and after twenty-five days after filing the opinion, he shall file with the clerk, five copies of the petition with proof of service on opposite party.

This petition for rehearing was not filed within that rule.

The petition for rehearing does not set up any new matter, or anything that was not passed upon in the original opinion. Therefore, the petition for rehearing is denied.

(No. 687—Claim denied.)

MOLINE PLOW COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

Rehearing denied October 24, 1928.

FRANCHISE TAX—*when court will not take jurisdiction.* The Court of Claims will not take jurisdiction where a claimant has a remedy in a court of general jurisdiction and fails to pursue such remedy.

EQUITY AND GOOD CONSCIENCE—*when court will not invoke rule of equity and good conscience.* The Court of Claims will not invoke the rule of equity and good conscience in a case where claimant has an adequate remedy at law or adopt any rule in connection with the well established practice of courts of general jurisdiction.

SECRETARY OF STATE—*when court will not review acts of.* The Secretary of State is a constitutional officer and the court will not review his acts or conduct in the administration of the duties of his office where the party aggrieved has a remedy at law in courts of general jurisdiction.

L. C. SHONTS, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, a foreign corporation, presents claim for refund of payments demanded and collected from it by the Secretary of State as franchise taxes and initial fees in excess of the amount claimed legally due. We will not discuss the legal merits of this claim or the particular phases of claimant's contention as against the Secretary of State for collecting these fees, or whether or not the fees collected were excessive, illegally collected, or improperly collected as it is the intention of the court to dwell only upon the question of taking jurisdiction of cases wherein a remedy at law was provided by statutes in courts of general jurisdiction.

This court is impressed with the vast increase of demands filed in this court and consequently it is considered necessary and proper to establish a precedent in this line of cases in harmony with opinions heretofore announced in other claims, in that wherein a claimant had a remedy in a court of general jurisdiction and failed to pursue such remedy, that this court would not take jurisdiction.

It cannot be urged that there would be any need of this court if there was a remedy prescribed by statutes for all the cases that could be brought before this court. We do not believe the court should invoke the rule of equity and good conscience in a case where claimant had an adequate remedy at law and it would not seem consistent for this court to adopt any rule in conflict with the well established practice of courts of general jurisdiction in the State of Illinois. In such courts if a complainant slept on his legal rights no court of equity would take jurisdiction on the theory that the claim was just or equitable if the complainant failed to pursue his legal remedy in apt time. Therefore, can it be assumed that the legislature of this State had in mind at the time it created this court, a plan to open wide the doors to all litigants to choose between the courts already established by the Constitution and this court, or was it not the thought, back of the Act creating this court, to give claimants the right to recover legal claims or claims sustained by the rule of equity and good conscience, an opportunity to be heard who had no right either by the basic law of the State or through statute to pursue their claim for relief in any court of general jurisdiction? It is the opinion of this court that it should not invade the field of courts created by the Constitution of the State and we believe that it cannot be contended that the legislature intended to create this court to usurp the powers of, to contradict, or to compete with courts of general jurisdiction.

This court wishes to cite herein the following provisions of the statutes taken from the brief and argument of defendant which seems to support the contentions heretofore in this opinion stated:

Paragraph 172, Chap. 127, Smith-Hurd's Statutes, 1923, (Section 28, of Act in Relation to payment of Public Money of the State into the State Treasury, approved June 9, 1911), the provision that requires the Secretary of State, among other officers, "to hold for thirty days all moneys received for or on behalf of the State under protest and on the expiration of such period, to deposit the same with the State Treasurer, unless the party making such payment shall within such period file a bill in Chancery and secure a temporary injunction restraining the making of such deposit, in which case such payment shall be held until the final order or decree of the Court."

There is also another theory which this court considers proper to comment on in passing on the propositions involved in this case.

The office of the Secretary of State was created by the Constitution of the State. The Constitution and the Legislature placed large responsibilities upon the incumbent of this office. The rapid increase of the population of this State has increased many fold the duties of this officer. Therefore it would seem that this court should be reluctant to enter any order that might presume to review the acts or conduct of the man whom the people of the State of Illinois placed in this high position of prominence and responsibility in view of the fact that in cases of this character the legislature provided a method wherein a claimant would believe himself to be aggrieved by the acts of the Secretary of State that he could proceed as indicated in the statute above cited in courts of general jurisdiction making the Secretary of State a special defendant thereby giving this officer an opportunity of being heard directly and his acts reviewed by a court of general jurisdiction with such rights of appeal that may be provided by law. Therefore it appears to the court in fairness to all concerned that in all cases where the law of this State provides a remedy for a hearing in courts of general jurisdiction that claimant should avail himself of this method rather than come to this court.

Therefore, for the reasons aforesaid, this claim is disallowed.

On October 24, 1928, upon petition for rehearing the following additional opinion was filed:

This court has heretofore held in this case which comes for consideration upon a petition for rehearing, that claimant had a remedy at law through the courts of general jurisdiction. This court is of the opinion after examination of the brief and argument of claimant on the question of rehearing, that claimant has an adequate remedy at law through courts of general jurisdiction.

The court is impressed in the consideration of this case with the elements in the case that would appeal to the rule of equity and good conscience, yet this court cannot be unmindful of the position heretofore held in this case in that there is a remedy at law to claimants in courts of general jurisdiction, that this court must follow the usual rule in denying relief on the question of equity and good conscience.

For the reason above stated the petition for rehearing is denied and dismissed.

(No. 841—Claim denied.)

NATIONAL ANILINE & CHEMICAL COMPANY, INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

Rehearing denied October 24, 1928.

FRANCHISE TAX—The Court denies this claim upon the authority of *Moline Plow Company* v. *State of Illinois* No. 687-A.

JURISDICTION—*when court will not take jurisdiction.* The Court of Claims will not take jurisdiction where a claimant has an adequate remedy at law through courts of general jurisdiction.

EQUITY AND GOOD CONSCIENCE—*when rule of equity and good conscience will not be invoked.* The rule of equity and good conscience will not be invoked where there is a remedy at law in courts of general jurisdiction.

GARDNER & CARTON, for claimant.

OSCAR E. CARLSTROM, Attorney General; EDWARD C. FITCH, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

For the reasons set forth in the opinion filed in this court in the case of *Moline Plow Company* v. *State of Illinois,* Numbers 687 and 687-a, this claim is disallowed.

On October 24, 1928, upon petition for rehearing the following additional opinion was filed:

This court has heretofore held in this case which comes for consideration upon a petition for rehearing, that claimant had a remedy at law through the courts of general jurisdiction. This court is of the opinion after examination of the brief and argument of claimant on the question of rehearing that claimant has an adequate remedy at law through courts of general jurisdiction.

The court is impressed in the consideration of this case with the elements in the case that would appeal to the rule of equity and good conscience, yet this court cannot be unmindful of the position taken by the court in the Moline Plow Company case in that where there is a remedy at law to claimants in courts of general jurisdiction, that this court must follow the usual rule in denying relief on the question of equity and good conscience.

For the reason above stated the petition for rehearing is denied, and dismissed.

(No. 933—Claim denied.)

WILLIAM KITTLE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

Rehearing denied September 13, 1927.

RESPONDEAT SUPERIOR—*doctrine of.* The State is not liable for the negligence of its agents.

PLEADINGS—*when court will consider merits of the case although demurrer to declaration might have been sustained.* After demurrer is filed and testimony is taken before ruling on demurrer, the evidence will be examined to determine whether a case is meritorious even though the demurrer to the declaration might be sustained.

EDWARD L. BROWN AND COLFAX T. MARTIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for damages to a Ford truck of claimant alleged to have been caused by a collision with a truck of the defendant. The declaration charges that on April 11, 1925, while claimant was driving his truck in a westerly direction along an alley in the city of Danville, Illinois, where said alley intersects Gilbert Street, the defendant, by Grant Spaulding, one of its servants, carelessly and negligently ran one of its trucks into and against the truck of claimant and thereby damaged the truck of claimant to the amount of $750.00

To this declaration the Attorney General has filed a general and special demurrer.

The weight of the evidence in this case shows Spaulding was driving south on Gilbert Street in the city of Danville at a rate of speed between 18 and 30 miles per hour; that just before he reached the alley on the east between Seminary and Williams Street, claimant came out of the alley in a Ford truck going from 7 to 8 miles per hour; and that claimant failed to stop his truck before turning into Gilbert Street.

The rule is so well settled in this court that the State is not liable for the negligence of its agents—that the doctrine of *respondeat superior* does not apply to the State—that no citation of authorities is needed to support it. The record

shows Spaulding was going south on Gilbert Street, and Kittle west on the alley. Kittle was therefore approaching Gilbert Street from Spaulding's left. This gave Spaulding the right of way, and it was the duty of Kittle to so operate his truck as not to interfere with Spaulding's crossing the intersection. (Ch. 95a, Sec. 33, Cahill's Revised Statutes, 1925).

The demurrer to the declaration is sustained and the case dismissed.

On September 13, 1927, upon petition for rehearing the following additional opinion was filed:

Claimant has filed a petition for re-hearing in this cause in which he contends the court has misconstrued the evidence and misapplied the law.

One of the reasons urged for a re-hearing is that the court sustained the demurrer to the declaration after evidence was taken in the cause. Under the allegations of the declaration the State is not liable and we might well have sustained the demurrer without considering the evidence at all. After the demurrer was filed, however, both claimant and the State proceeded to take testimony without calling up the demurrer for ruling thereon by the court. In such case the court frequently examines the evidence to determine whether it shows the claimant has a meritorious cause. Such procedure cannot injure a claimant's case as he thereby gets the benefit of his evidence. That procedure was followed in this case.

Since the filing of the petition for a re-hearing, we have again carefully read the record in this case and are fully satisfied that claimant is not entitled to any award.

The petition for re-hearing is therefore denied.

(No. 986—Claim denied.)

WILLIAM GRAHAM, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

Rehearing denied April 25, 1929.

PERSONAL INJURY—This case is controlled by the authority in *Albert Graham by William Graham, his next friend, v. State of Illinois* number 987, *post.*

ELLEN ROURKE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim based on Case No. 987 and for the reasons announced in the latter case, this case is dismissed.

On April 25, 1929, upon petition for rehearing the following additional opinion was filed:

This cause of action coming on to be heard in the above entitled claim and the court now being further advised in the premises finds no reason to change the previous opinion of this court in which said claims were denied.

Therefore the petition for rehearing and the proceedings thereon is hereby dismissed and the said claims are hereby disallowed.

(No. 987—Claim denied.)

ALBERT GRAHAM, BY WILLIAM GRAHAM, HIS NEXT FRIEND, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1927.

PERSONAL INJURY—*when award will not be made.* Claimant went upon Illinois State Fair Grounds and while there received injuries by reason of an explosion of a can into which claimant had thrown a lighted match. *Held* —claimant not entitled to recover.

SAME—*doctrine of attractive nuisance not applicable.* The doctrine of attractive nuisance is not applicable in this case. (*McDermott* v. *Burke*, 256 Ill. 401; *Anderson* v. *Karstens*, 218 Ill. App. 285.)

RESPONDENT SUPERIOR—*when State not liable.* The State is not liable for acts of its officers or agents.

REHEARING—*when rehearing will be denied.* When the Court finds no reason to change its previous opinion, a rehearing will be denied.

ELLEN M. ROURKE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant, a boy about 13 years of age in company with two companions of about the same age, on the afternoon of Sept. 28th, 1925, went on the State Fair Grounds at Springfield, climbing a gate to get in the premises, although it was shown that it was the custom to keep another gate open at another entrance. The object of the trip according to the statements of the three boys, was to find "feathers to make some Indian hats." While going about the grounds for feathers they found several small cans containing liquid which they took to be coal oil. Further on they found a large can also containing liquid, which they thought was water and which they poured out, in order to pour the contents of the smaller cans into the larger can. They carried the larger can a short distance when the claimant dropped a lighted match in the can causing an explosion which severely injured claimant. The extent of the injuries need not be discussed here although appearing to be serious and lamentable, as the court is of the opinion that the only question here to be decided is one of law. It is not considered by the court that this is a case where the rule of equity and good conscience can be invoked.

It appears that claimant relied on "the doctrine of attractive nuisance." This court is of the opinion that this rule cannot be invoked in this case. This opinion is supported by the cases cited by the Attorney General, namely: *McDermott* v. *Burke*, 256 Ill. 401, *Anderson* v. *Karstens*, 218 Ill. App. Page 285, as well as the well established rules of law of the State not being liable for the acts of its officers or agents, etc.

It is further considered by the court that to extend the liability of the State of Illinois to include this class of cases, would not be consistent with the act of the legislature in creating this court. The court recognizes that this boy is entitled to the deep sympathy of the public and that it is unfortunate that the unknown person or persons left this liquid on the Fair Grounds. The question of who was really to blame for the accident is not clear to the court. There is nothing in the record to indicate specific negligence of the State or any of its agents or employes.

Therefore it is ordered by this court that said case be dismissed for the reason assigned.

(No. 1017—Claim denied.)

NORTH AMERICAN CAR COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 20, 1929.

Rehearing denied February 13, 1929.

FRANCHISE TAX—*failure of claimant to avail itself of statutory provision.* Where claimant by reason of its own negligence fails to avail itself of the protection provided by statute in making objections to an assessment of corporation franchise tax, the payment of such tax constitutes a voluntary payment.

SAME—*tax paid voluntarily cannot be recovered back.* A tax voluntarily paid without duress or compulsion, cannot be recovered back.

BENJ. F. CASSIDAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

Claimant alleges, in its declaration filed April 27th, 1926, that it is a corporation organized and existing under the laws

of the State of Delaware, and that it was authorized on June 10, 1922, to do business in the State of Illinois, and entitled to all the rights and privileges granted to foreign corporations for profit under the General Laws of the State of Illinois, having its principal business office for this State in the City of Chicago, with an authorized capital stock of $500,000.00 and 20,000 shares of no par value, and paying $266.67 franchise tax under Section 107 of the General Corporation Act, and $62.92 initial fee based upon .05034 of its authorized capital stock, or $215,850.00; that on June 18th, 1924, it duly amended its charter, by which amendment it changed its name from that of the North American Car Company to that of the North American Commerce Company; that on August 7th, 1924, affidavit of withdrawal of the North American Commerce Company was filed with the Secretary of State of the State of Illinois; that at no time between June 10, 1922, and August 7, 1924, did it in any manner change, alter or amend the amount of authorized capital stock of corporation; that on March 1st, 1923, it duly executed and filed in the office of the Secretary of State its annual report required by law, and in its said report set forth that it was willing to be assessed and pay a franchise tax upon all of its authorized capital stock employed in the State of Illinois, as appears from its said report on file in the office of the Secretary of State of the State of Illinois; that on May 12th, 1923, Louis L. Emmerson, Secretary of State for the State of Illinois, sent it a written notice, which written notice was returned to the Secretary of State's office, accompanied by voucher check, dated July 31, 1923, in the amount of $2437.10; that in said written notice, the claimant was notified to pay as and for its franchise tax for the year beginning July 1, 1923, $1250.00 based upon 100 per cent, or all of its authorized capitalization of $500,000.00 and 20,000 shares of no par value; and that since it had paid an initial fee on only $125,800 of its capitalization, it owed the State an initial fee of $1187.10, making a total amount to be paid of $2437.10; that there was no authority at law for the Secretary of State to make such assessment, and that the assessment should only have been $200.00; that through mistake of fact that the claimant's authorized capital stock of $500,000 and 20,000 shares no par value was all employed in the State of Illinois, assessed as an additional initial fee the sum of $1187.10 on $2,374,200 of its capital stock em-

ployed in this State, whereas only .04932 or $123,300 of its capital stock was employed in this state, on which an initial fee had already been paid, and no additional initial fee should have been assessed, and claimant seeks to recover $2237.10.

A demurrer filed by the Attorney General of the State of Illinois, to this declaration, is sustained as a matter of law.

Under the provisions of the General Corporation Act, providing for the filing of an annual report, and the provisions incident thereto, it is provided that a corporation, such as claimant, must file an annual report between February 1st and March 1st of each year on forms to be prescribed and furnished by the Secretary of State. It provides that the annual report must disclose such facts as are necessary to enable the Secretary of State to compute the franchise tax payable by said corporation. Section 111 vests the power in the Secretary of State to hear and determine objections to any assessment within the time specified in the Corporation Act, and after such a hearing to change or modify any assessment. Section 112 provides that the Secretary of State shall mail between the first day of February and the 16th day of May, of each year, a notice in writing to each corporation against which a tax is assessed, notifying such corporation of the amount of the franchise tax assessed against it for the ensuing year, commencing on July 1st, "and that objections, if any, to such assessment will be heard by the officer making such assessment, upon request by corporation on a day not later than the 25th day of June."

Section 132 provides, among other things, that the interrogatories propounded to the corporation shall be answered directly and positively and without equivocation or evasion. The Secretary of State complied with all of the provisions of the Corporation Act, and the Corporation, upon receipt of notice from the Secretary of State, paid the franchise tax without availing itself of the privilege provided by statute of appearing, with its objections, to the assessment, before the Secretary of State. The fact that claimant did fail to avail itself of the protection of the statute would indicate that it paid the tax voluntarily. It is evidence of the fact that claimant considered this amount as being due from it to the State of Illinois. The burden is placed upon the Corporation to make a proper annual report, and it is impossible for the Secretary of State to endeavor to check up and cor-

rect the annual reports of all corporations which are required to send and make reports to the State of Illinois, so that the failure of claimant to answer the interrogatories is no fault of the Secretary of State, but is rather due to claimant's own negligence or failure to perform its duty under the General Corporation Act. The courts of this State have consistently followed the rule that money voluntarily paid, without duress or compulsion, cannot be recovered.

In view of the facts, above set forth, the claim is disallowed.

On February 13, 1929, upon petition for rehearing the following additional opinion was filed:

This case comes before this court on a petition for a rehearing, claimant seeking to recover the sum of $2,237 10, which it is claimed was erroneously paid to the Secretary of State. After carefully reviewing the evidence and stipulation submitted and reviewing the arguments and briefs, we adhere to our former opinion, and disallow the claim.

(No. 1036—Claim denied.)

LAURA A. MERCER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 29, 1927.

Rehearing denied September 13, 1927.

RESPONDEAT SUPERIOR—*when State not liable.* The State is not liable for injury caused by the negligence, misfeasance, laches or unauthorized exercise of power of its officers.

NON-LIABILITY OF STATE—*State cannot be sued without its consent.* The State being sovereign cannot be sued either at law or equity without its consent.

COURT OF CLAIMS—*creature of Legislature.* The Court of Claims is a creature of the Legislature and is given jurisdiction to hear and determine all claims against the State both legal and equitable.

SAME—*jurisdiction.* The Court of Claims has no power to make an award unless it is shown that claimant has a just demand based on either a legal or equitable principle.

REHEARING—*when rehearing will be denied.* The rehearing will be denied where the petition does not point out facts or principles of law that were overlooked by the Court.

C. W. MIDDLEKAUFF AND PHILIP H. WARD, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant in this case is administratrix of the estate of Jack Mercer, deceased, who was killed in an automobile accident on a state paved road near Elizabeth, February 10, 1926. Briefly stated the facts shown by the evidence are as follows: About a week before his death deceased had been subpoenaed to be in attendance on the circuit court at Galena on February 10th, as a witness for the people in a murder case. On February 9th, deceased asked O. W. Kempster, a sergeant of the state highway police, how he was supposed to go to Galena for the trial. Kempster told him he did not know. Kempster then went to the depot and learned one could not get from Sterling to Galena by train before 3 o'clock in the afternoon of the following day. He then called up A. C. Van Gorder, a member of the state highway police who lived at Freeport and who was also a witness in the same case, and asked him if he would take Mercer with him from Freeport to Galena the next morning. Van Gorder replied that he would

do so if the bus arrived at Freeport on time. Kempster then saw deceased again and told him he could not get to Galena by train in time for the trial and that if he would take the bus to Freeport and got there on time Van Gorder would take him in his car from there to Galena. This arrangement was satisfactory to deceased, and he went to Freeport the next morning on the bus. On arrival there he got in the rear seat of Van Gorder's car, Van Gorder and Clifford Taylor being in the front seat. They started to Galena and when within about a mile of Elizabeth Van Gorder attempted to go round a car ahead of him being driven by Freeman Hancock. Hancock speeded up his car so Van Gorder could not or did not pass him. About this time an oil truck driven by C. F. Williams was seen coming from the opposite direction. Van Gorder then dropped back behind Hancock's car. Hancock slowed down his car and Van Gorder applied his brakes to prevent hitting Hancock's car. The pavement was slippery with snow and Van Gorder's car skidded and collided with the truck. Van Gorder and Taylor were thrown out on the left side of the car and deceased was either thrown or jumped out on the right side, receiving injuries from which he shortly died.

The theory of claimant's declaration is that deceased was killed through the carelessness and negligence of an agent an officer of the State while such officer, in the line of his duty, was conveying him to Galena to testify as a witness for the State in a criminal prosecution and that the State is therefore liable to respond in damages for his death. The Attorney General has filed a general and special demurrer to the declaration, and takes the position that no liability attaches to the State either under the allegations of the declaration or the evidence introduced in support of them. We think this position is sound. No government is liable for injuries caused by the negligence, misfeasance, laches or unauthorized exercise of power of its officers. (*Hollenbeck* v. *Winnebago Co.*, 5 Ill. 148; *Minear* v. *State Bd. of Agricul.*, 259 Ill. 549). It has been repeatedly held by this court, the courts of many states and the supreme court of the United States that a state is not liable for the torts of its officers.

But it is urged that the claim should be allowed as a matter of equity. There is nothing in the record of this case to call for equitable relief. The State, being sovereign, cannot

be sued, either at law or in equity, without its consent. In order that there might be a forum in which claims and demands against the State could be adjudicated in accordance with the well-known principles of law and equity the legislature created the court of claims, and gave it jurisdiction to hear and decide all claims and demands against the State, both legal and equitable. It was not the intention of the legislature in creating this court to give it unlimited power or jurisdiction to make awards to claimants, and it has no power to make an award unless the evidence shows the claimant has a just demand based on either legal or equitable principles. The facts in this case do not bring it within these rules. Van Gorder, with whom deceased was riding when killed, was only a witness going to attend the same trial as deceased. He was not on duty as a police officer at the time of the accident, and was only carrying deceased as a matter of accommodation to him. Deceased was not in the custody of Van Gorder or of any other officer of the State at the time he was killed, nor had any officer of the State compelled him to go to Galena with Van Gorder. He had been subpoenaed as a witness in a murder trial and it was his duty to obey that writ, just as Van Gorder was doing. Having no means of conveyance and being unable to reach Galena by train in time for the trial he voluntarily went to Freeport by bus and started from there with Van Gorder. By no stretch of the imagination can the facts in this case be held to create an equitable cause of action against the State.

The demurrer is sustained, the claim denied and cause dismissed.

On September 13, 1927, upon petition for rehearing the following additional opinion was filed:

Claimant has filed a petition for a re-hearing which is but a re-argument of the evidence taken in the cause. Counsel for claimant have evidently misconstrued the opinion, as they say it is based on the theory that the rule of *respondeat superior* is applicable to the State. The opinion expressly states the contrary to be the rule in the following language: "No government is liable for injuries caused by the negligence, misfeasance, laches or unauthorized exercise of power of its officers. It has been repeatedly held by this court, the courts of many states and the Supreme Court of the United States that a state is not liable for the torts of its officers."

The case has been carefully considered and as the petition for a rehearing does not point out any facts or principles of law that were overlooked by the court, it is denied.

(No. 760—Claim denied.)

HENRY PASCHEN AND FOREMAN TRUST & SAVINGS BANK, ADMINISTRATOR OF THE ESTATE OF FRANK PASCHEN, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 13, 1927.

CONTRACTS—*when State not liable for extra compensation.* Under Section 19 of Article 4 of the Constitution, the State is not liable for extra compensation, fee or allowance to any public officer, agent, servant or contractor after service has been rendered or contract made.

RESPONDEAT SUPERIOR—*State not liable under doctrine of.* The State is not responsible for misfeasance, wrongs, negligence or omissions of duty of its officers, agents or servants.

JURISDICTION—*when court has no power to make awards.* The Court of Claims has no power to make an award in favor of a claimant unless the facts show either a legal or equitable claim against the State.

SONNENSCHEIN, BERKSON, LAUTMANN & LEVINSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

In the spring of 1919 the Board of Supervisors of Lake County determined to improve one of the State aid roads of that county by surfacing it with a concrete pavement. After all the necessary preliminary steps were taken the contract for the work was let to Paschen Brothers, a firm of contractors composed of Henry and Frank Paschen. The contract was dated June 12, 1919, and provided that the work should be completed by December 14, 1919, but it was not finally finished until in 1921. By the terms of the contract the contractors were to furnish all the labor and material except the cement, which was to be furnished by the county. Frank Paschen died, and Foreman Trust & Savings Bank was appointed administrator of his estate, and Henry Paschen and said administrator have jointly filed this claim against the State for the sum of $96,272.64. Claimants charge that the

delay in completing the work was caused by failure of the county and State to furnish cement to the contractors as it was needed, and that such delay necessitated paying extra prices for labor, materials, etc., aggregating the amount for which this claim is filed. Claimants do not contend that the specifications for the work were changed in any way, nor that any additional work or material was necessary to complete it, but their claim is based wholly upon the ground that the contractors were entitled to extra compensation because labor, materials, etc., advanced in price in the years 1920 and 1921 over what they were in 1919; and these increased prices, together with other alleged expenses incident to the delay, constitute the extra compensation for which this claim is filed.

The Attorney General filed a general demurrer to the declaration and afterwards, under a stipulation, evidence was taken by both claimants and the State. The record is very voluminous but, as we view it, there are only two questions necessary for this court to decide.

Section 19 of Article 4 of the Constitution provides that "the General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made," etc. This provision of the Constitution is mandatory and binding upon the General Assembly and all courts of the State. No demand for extra compensation was made upon the State by the contractors until after the work which they were to do had been rendered, and under this provision of the Constitution this court has no power to grant them any extra compensation for such work; and should this court make an award allowing such extra compensation, the General Assembly would have no power, under this provision of the Constitution, to make an appropriation for the payment of it.

It has been repeatedly held by this court, and by the courts of other states, that the State is not responsible for the misfeasance, wrongs, negligence or omissions of duty of its officers, agents or servants, and that the State does not guarantee to any person the fidelity of the agents or officers whom it employs. This rule has been so frequently announced that the citation of authorities is not necessary, and under it claimants cannot maintain their action against the State, even if the State were a party to the contract and the delay had

been caused by the failure of its agents and officers to furnish the cement as claimants contend.

But the record in this cause shows conclusively that the State was not a party to the contract. The contract itself shows that it was made with Lake County and that Lake County alone was bound by its terms. The road which was to be improved under the contract was not a State road but a State aid road, and was under the supervision of the authorities of Lake County. Under the provisions of the Road Law the county had the right to improve any State aid road within the county and pay the whole expense thereof out of any funds in the county treasury not required for other purposes. While it is true that the law provides that the State will repay the county one-half the cost of such improvement, that provision does not make the State a party to the contract for improving such road, nor give the contractor any claim against the State. Should the State fail to pay the county one-half of the cost of such improvement, the county might have a claim against the State which a Court of Claims would allow, because the statute expressly provides that where a county bears the whole expense of improving a State aid road the State will allot and pay to the county one-half of such expense. The contract between the county and the contractors expressly stated that the State assumed no liability except that of approving the plans and specifications and supervising the work, and the contract further expressly provided that failure to furnish the cement should not entitle the claimant to any extra compensation. These provisions were in the contract when it was executed, and the contractors were bound by them. The contract provided that the county would furnish the cement, and it was not material to the contractor where the county procured the cement which it was to furnish, whether from the State or a private individual. The fact that the county had an arrangement with the State whereby the State was to furnish the cement to the contractor for the county did not make the State a party to the contract any more than it would a private individual with whom such arrangement had been made by the county, and if claimants have any cause of action, it is against the county and not the State.

This court has no power to make an award in favor of a claimant unless the facts show either a legal or equitable

claim against the State. It was not the intention of the General Assembly in creating the Court of Claims to give the court discretion to make awards in favor of claimants regardless of whether or not they had legal or equitable claims against the State. There is nothing in the record in this case that would justify an award in favor of claimants, and the claim is therefore disallowed and the cause dismissed.

(No. 900—Claim denied.)

C. P. BOYER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 13, 1927.

DISMISSAL—*when case will be dismissed on motion of claimant.* Where there is no cause shown why case should not be dismissed, same will be dismissed upon motion of claimant.

C. P. BOYER, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Per Curiam: This case coming on to be heard upon oral motion of claimant that the above entitled cause be dismissed and it appearing that the cause should be dismissed,

It is therefore considered that said cause be, and the same is hereby dismissed.

(Claims denied.)

THEODORE STODDARD, 1066; FLOYD CLAUSER, 1067; WALTER ARNOLD, ADMINISTRATOR OF THE ESTATE OF VERNON ARNOLD, Deceased, 1068, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 13, 1927.

GOVERNMENTAL FUNCTION—*construction and maintenance of highways.* The State exercises governmental power in the construction and maintenance of its highways and is not liable for the misfeasance, malfeasance or negligence of its officers.

CONSTRUCTION—*Section 4, Court of Claims Act.* Under Section 4 of the Court of Claims Act, all claims against the State must be based upon either a legal or equitable right.

NEGLIGENCE—*contributory negligence by claimant.* No award will be made where the evidence shows claimant is guilty of contributory negligence.

HIGHWAYS—*maintenance of highways.* Claimant is not entitled to recover where the evidence shows the State has used reasonable care and diligence in the maintenance of its highways.

HAMLIN & ELY, AND ROLAND M. WAGNER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The declarations in these cases were filed July 7, 1926, and are all substantially alike. They allege the following; that the State has built and maintains a highway in Adams County near the town of Paloma; that about one mile from Paloma the State maintained a barricade across the highway in order to establish a detour across the Chicago, Burlington and Quincy railroad, and had full charge and control thereof and of the lights placed thereon July 27, 1924; that the State negligently failed to place in a permanent position on the barricade a sufficient permanent light to warn persons traveling on the highway of the position of the barricade and negligently permitted the light thereon to be knocked down and remain out of order for two or three days, because of which condition persons traveling on the highway at night were unable to see the barricade until coming directly on it; that the State negligently permitted gravel and loose sand to become scattered on the highway in front of the barricade and negligently suffered said condition to exist for several days although by the exercise of caution it could and ought to have known of the

existence of said condition; that on the night of July 27, 1924, claimant (in No. 1068 claimant's intestate) was riding in an automobile on the highway and exercising all due care and caution in his own behalf; that claimant was a stranger in the vicinity and not familiar with the condition of the highway and because of the negligence of the State in the particulars above mentioned and as a direct and proximate result of the negligence of the State claimant was unable to see the barricade until he was in two or three feet of the same and in stopping the automobile because of the presence of the barricade the automobile skidded in said sand and gravel and was thrown over an embankment at the side of the road maintained by the State and caused to be overturned, etc. In the Clauser case, it is alleged claimant is permanently injured and an award of $5000.00 is prayed for. In the Stoddard case certain injuries alleged to be permanent are described, and he asks an award of $20,000.00. In the Arnold case it is alleged that claimant's intestate, Vernon Arnold, died of wounds received in the accident, leaving a father, mother and sister, and an award of $10,000.00 is asked for.

On July 14, 1926, the Attorney General filed a general and special demurrer to the declaration in each case. Afterward evidence was taken on behalf of claimants and the State, and by stipulation of all the parties the cases have been consolidated.

The theory of claimants is that the State having built the highway and assumed the burden of its maintenance is charged with the duty of using reasonable diligence to keep it in a safe condition for travel and is liable for all damages caused by failure to perform such duty. To adopt this theory is to place the State in the same position as a private corporation maintaining and operating a toll road for hire. The State is not required to build roads, neither is it required to maintain roads already built. It may assume those duties or it may delegate them to such local subdivisions of the State as road districts, towns and counties. Public roads are built at public expense for the use of the public and are free to all who desire to use them. The State is but the whole body of people organized for governmental purposes, and in the construction and maintenance of public highways is only exercising governmental powers. Such powers can only be exercised by officials chosen in the manner provided by law. If

such officials, in the exercise of the powers conferred upon them, are guilty of misfeasance or malfeasance or negligence and injury results to anyone thereby, the government—the State—is not liable for such injury; the official causing the injury may be but the State never is. This doctrine is so well settled that citation of authorities is unnecessary.

It is urged by claimants that even if the State is not liable for the negligence of its officials, it should be required to pay as an act of social justice and they cite paragraph 4 of Section 6 of the Act creating the Court of Claims in support of this contention. The language of paragraph 4 is as follows: "To hear and determine all claims and demands, legal and equitable, liquidated and unliquidated, *ex contracto* and *ex delicto*, which the State, as a sovereign commonwealth should, in equity and good conscience discharge and pay." It is clear from this language that the Legislature intended that all claims allowed against the State should be based upon either a legal or equitable right. This question has been before the court a number of times. The Act of 1903 provided the court "shall hear such claims according to its rules and established practice, and determine the same according to the principles of equity and justice." In *Schmidt* v. *State* 1 C. C. 76, it was urged the court had the power, under that clause, to allow a claim that was neither legal nor equitable, and the court said, page 80: "To this proposition we cannot assent. It is our understanding that in the use of the language 'to determine the same according to the principles of equity and justice' is meant and used with a legal signification and that this Commission has no power to make an award in any case unless the facts show a legal or equitable claim against the State. We do not believe it was the intention of the Legislature to leave it discretionary with the Commission to make an award in favor of the claimant regardless of the question as to whether or not he had a legal claim against the State. We are of the opinion further, that it would be an exceedingly dangerous precedent to hold that the Commission had any such discretion." Paragraph 4 does not create any new or additional liabilities against the State. It was not the intention of the legislature in passing it to clothe this court with discretion to make awards in favor of claimants unless the facts show such awards are based on either legal or equitable demands. To hold the State liable in cases of

the character of these claimants would open the field for a vast number of actions far beyond those the legislature intended in creating the Court of Claims. (*Thompson* v. *State* 4, C. C., 26; *E. J. & E. R. R. Co.* v. *State*, 4 C. C. 206.)

If all the facts charged in the declarations were sustained by the evidence, it follows from what we have said that no awards could be made in favor of claimants and the cases would have to be dismissed. But, aside from that, claimants have not made a case against the State under their theory of the law. We have read the evidence carefully and think it shows two facts that bar recovery under claimants' theory: (1) it shows claimants were guilty of contributory negligence, and (2) it shows that the State officials had used reasonable care and diligence to maintain the highway in a reasonably safe condition for travel. If we are right in these conclusions, then of course it follows that claimants cannot recover.

The claims are therefore denied and the cases dismissed.

(No. 702—Claim denied.)

EMMETT ERWIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1927.

Rehearing denied November 9, 1927.

PERSONAL INJURIES—*when award will not be made.* Where the evidence shows that the injuries complained of could not have resulted from the causes alleged, but resulted from natural causes, no award will be made.

ROBERT E. HICKMAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This case comes before the court on declaration filed by Emmett Erwin, to recover damages for injuries which he alleged he sustained in the following manner:—that in order to better fit himself as a miner, he applied to the Superintendent of a Mine Rescue Station at Benton, Illinois, conducted and maintained by the State of Illinois, for the purpose of providing prompt and efficient means of fighting mine fires and of saving lives and property jeopardized by fires, explosions

and other accidents, in coal mines in Illinois, for training at said rescue station; that before beginning his work as a student in said first aid work in coal mining, he was required to enter a room in said Rescue Station filled with gas or sulphur fumes and to remain therein for such period of time as indicated by the Superintendent of said Rescue Station; that on December 13th, 1921, he was fitted with a helmet by said Superintendent, and placed in said sulphur filled room as part of his training; he alleges that the helmet which was placed over his head, eyes, nose and mouth to prevent inhaling gas or sulphur fumes with which said room was filled was leaky and defective and permitted said gas or sulphur fumes to penetrate and enter his mouth, nose, throat, and lungs, and he alleges that he has been permanently injured on account of such occurrence, and claims damages to the amount of $1750.00.

The demurrer filed by the Attorney General, is sustained as a matter of law.

Taking the entire record into consideration, there appears to be quite a marked conflict on the facts. It is true the testimony produced by claimant indicates some injury to him, but the testimony on behalf of the State leads to the conclusion that the injuries complained of could not have resulted from the causes alleged. The testimony of James Weir, Superintendent of the Mine Rescue Station at Benton, rebuts the contention of claimant, that the helmet furnished was leaking, or defective in any way. This same helmet had been used for a year prior to the time when claimant wore the helmet, and has been used since then, and he states positively that it has not been repaired, and that it never was defective.

We must draw the conclusion that the hemorrhage was the result of natural causes. There has been no showing of negligence made in this record and said claim is therefore rejected.

On November 9, 1927, upon petition for rehearing the following additional opinion was filed:

This case is brought to our attention on a petition for a rehearing, filed in this court on April 30th, 1927. Claimant seeks to recover damages for injuries which he sustained in an accident on December 13th, 1921, while taking an exami-

nation and test for training in first aid work, at a Mine Rescue Station conducted by the State of Illinois, at Benton, Illinois. After a careful reconsideration of all the testimony introduced on behalf of claimant, as well as on behalf of the State of Illinois, we concur in the opinion formerly rendered in this case and deny an award to this claimant.

(No. 944—Claim denied.)

FEDERAL ICE REFRIGERATING CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1927.

FRANCHISE TAX—*when court will not take jurisdiction.* The Court of Claims will not take jurisdiction where claimant has a proper remedy at law.

JURISDICTION—*claimant must avail itself of remedies and protection provided by law.* Where claimant has had its proper remedy and has been provided with ample protection of the law in courts of this State, it must avail itself of these remedies and protections, and the court will not exercise its equitable jurisdiction.

HENRY J. & CHARLES AARON, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for a refund of portion of franchise taxes paid by claimant to the Secretary of State of the State of Illinois, under written protest in the years 1920, 1921, 1922 and 1923, which sums total $6702.26. The declaration filed alleges that claimant is a foreign corporation, organized and existing under the laws of the State of Delaware, engaged in the business of manufacturing artificial ice and furnishing icing to railroads and other industries and having an office at 76 West Monroe Street, Chicago, Illinois; that claimant, under authorization of the Secretary of State of the State of Delaware, issued 50,000 no par shares and that each share of no par value stock so issued had a paid in value not exceeding $5.00; that for the privilege of exercising its franchise in the State of Illinois, from July 30, 1920, to June, 1924, claimant paid the Secretary of State the sum of $6702.26, as franchise taxes assessed against such no par

value shares valued at $100.00 a share, and that such payments were forwarded to the Secretary of State under written protest for the reason that these franchise taxes were assessed against no par shares on a $100.00 valuation, and not on the actual paid in value of such shares and that claimant was forced to pay under duress, taxes assessed upon such valuation to the extent that such assessment disregarded the actual paid in value of such shares.

The demurrer filed by the Attorney General of the State of Illinois, is sustained, as a matter of law.

After a careful consideration of all testimony introduced, and analysis of the briefs submitted, we conclude that this is not a proper case for the exercise of our equitable jurisdiction; that where claimant has had its proper remedy and has been provided with ample protection of the law in the courts of this State, it must avail itself of these remedies and protections. An award is therefore denied.

(No. 945—Claim denied.)

AGAR PACKING & PROVISION CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1927.

FRANCHISE TAX—*when tax paid voluntarily cannot be recovered back.* A tax paid with knowledge or means of knowledge of the facts under no legal duress or compulsion is a voluntary payment and even though illegal cannot be recovered back.

SAME—*failure to pursue remedies provided by law.* The failure of claimant to pursue the remedies provided by law and by the Statute is grounds for denying claim.

HENRY J. & CHARLES AARON, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The declaration filed in this case by Agar Packing & Provision Company, a Corporation on July 6th, 1925, alleges that claimant is a domestic corporation organized and existing under the laws of the State of Illinois, engaged in the business of buying, selling, slaughtering and otherwise dealing

in cattle, calves, pigs, sheep, hogs, lambs and other live stock, and having offices at 4057 Union Avenue, Chicago, Illinois; that claimant seeks to recover $1500.01, together with interest thereon from date of payment being money paid by it to the Secretary of State, of the State of Illinois, under written protest in the year 1922, as a franchise tax; that pursuant to a certificate of issuance filed with the Secretary of State, claimant issued 25000 shares of no par value stock, and that each share of no par value stock so issued had a paid in value not exceeding $10.00; that for the privilege of exercising its franchise in the State of Illinois from March 1, 1922, to June 30, 1923, claimant paid the Secretary of State the sum of $1666.67, as franchise taxes, assessed against such no par value shares valued at $100.00 a share; that such payment was forwarded to the Secretary of State under written protest, for the reason that these franchise taxes were assessed against the no par shares on a $100.00 valuation, and not on the actual paid in value of such shares and that claimant was forced to pay under duress taxes assessed upon such valuation to the extent that such assessment exceeded the paid in value of such shares and that such over assessment totals the sum of $1500.01, which claimant seeks to recover in this action, together with interest and reasonable costs and disbursements herein incurred.

The demurrer filed by the Attorney General of the State of Illinois, to the declaration, is sustained as a matter of law.

A tax paid with knowledge or means of knowledge of the facts under no legal duress or compulsion, is a voluntary payment and even though illegal cannot be recovered back. The evidence in this case is such that we cannot say there was any duress or compulsion exercised on the part of the Secretary of the State that would entitle claimant to an award. The failure of claimant to pursue the remedies provided by law and by statute is a further reason why the claim should be disallowed by this court, and an award is accordingly denied.

(No. 946—Claim denied.)

A. FLANAGAN COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1927.

FRANCHISE TAX—*when tax paid under protest cannot be recovered.* The payment of franchise tax under protest automatically operates so that monies paid into the State Treasury are held in a separate fund and claimant having failed to pursue its remedies in courts of law and equity cannot recover back the amount so paid.

EQUITY AND GOOD CONSCIENCE—*when rule will not be invoked.* The rule of equity and good conscience will not be invoked where remedies are provided by law in courts of law and equity.

HENRY J. & CHARLES AARON, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The claimant, A. Flanagan Company, a corporation in its declaration, filed in this court July 6th, 1925, alleges that it is a domestic corporation, organized and existing under the laws of the State of Illinois, engaged in the business of dealing in general school supplies and having an office at 521 South Laflin Street, Chicago, Illinois; that certain sums were paid by it to the Secretary of State of the State of Illinois, under written protest in the years 1920, 1921, and 1922 as a franchise tax, which sums total $720.38, and which it seeks to recover in this action. Claimant further alleges that it issued 5000 shares of stock of no par value, which shares were issued in exchange for 250 shares of outstanding common stock of the par value of $100.00 per share, and that each share of no par value stock so issued had a paid in value not exceeding $5.00, which change was made on or about July 7th, 1920; that on or about December 23rd, 1922, under authority of a certificate of amendment to its Articles of Incorporation filed with the Secretary of State and pursuant to a certificate of issuance filed with the Secretary of State, it issued an additional 1000 shares of no par value stock; that such increase was for the purpose of capitalizing and did, in effect, capitalize a $75,000.00 surplus and that each no par value share so issued had an actual paid in value of not more than $75.00 a share; that for the privilege of exercising its franchise in the State of Illinois, from July 1, 1920, to June 30, 1923, claim-

ant paid to the Secretary of State the sum of $787.50, as franchise taxes assessed against such no par value shares, valued at $100.00 a share, payments being in the amounts and on the dates set forth in the Bill of Particulars attached to and made part of the declaration; that such payments were forwarded to the Secretary of State under written protest, for the reason that these franchise taxes were assessed against the no par shares on a $100 valuation, and not on the actual paid in value of such shares, and claimant prays judgment against the State of Illinois for $720.38, plus interest from the respective dates of payment to the date of the filing of this claim and its reasonable costs and disbursements herein incurred. A demurrer was filed to the declaration by the Attorney General, which is sustained, as a matter of law.

Claimant contends in its brief and argument that because the Secretary of State had no authority to assess upon a valuation more than the actual paid in value of such no par value shares, the payments made were illegal and void, and therefore the claimant is entitled to a refund. It is the contention of the State that even though the payments made have been illegal and void, yet they were made voluntarily and without duress or compulsion and therefore claimant cannot recover an award; that claimant has forfeited its rights by failing to pursue its legal remedies in the courts of law and equity in this State. The payment under protest under the law automatically operated so that the monies paid were held in a separate fund after being paid over to the State Treasurer, together with a copy of the letter of protest. This fund was retained under the law for a period of two years so that if claimant desired it could pursue its remedy and have its rights determined. We do not consider that this is a proper case for the intervention of this court and that it is not a claim which in equity and good conscience we should recognize, and same is accordingly denied.

(No. 953—Claimant awarded $6,708.57.)

PHOEBE B. BUEHLER, AS EXECUTRIX OF THE LAST WILL AND TESTAMENT OF CHRISTIAN BUEHLER, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1927.

INHERITANCE TAX—*when refund will be made.* Where the amount of inheritance tax paid is in excess of the amount due, an award will be made of the amount overpaid upon the consent of the Attorney General.

J. E. HOUSTON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for the refund of $12,096.14 inheritance tax paid in the estate of Christian Buehler, deceased. It is claimed that this amount was paid in excess of the amount that should have been paid.

The Attorney General of this State represents the State of Illinois on the hearing of all questions pertaining to the levy and the hearing of all inheritance tax cases in the various courts of the State. It is the duty of the Attorney General to see that the proper and legal assessments are made. In this case the Attorney General comes and protests against the payment of $5387.87 a part of the above amount.

After examination of the files in the case, this court concurs in the objection of the Attorney General, as to the allowance of the payment of the last above mentioned sum.

The Attorney General consents to an allowance of $6,708.57 in this case.

Therefore, it is recommended that the claimant be awarded the sum of $6,708.57.

(No. 1010—Claimant awarded $161.90.)

LUTHER ARNEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1927.

PERSONAL INJURY—*when award will be made for injuries sustained in course of employment.* An award will be made for hospital and doctor bills incurred by claimant for injuries sustained in course of employment while working as a Highway Maintenance Man.

JOHNSON & PEFFERLE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was employed by the State of Illinois as a maintenance patrolman and was working on Route 4 near Williamsville, Illinois, and while engaged in the performance of his duties, he alleges that on the 25th day of March, 1925, while lifting some heavy pieces of concrete lying on one side of the road, he strained himself claiming that he lifted a chunk weighing about 175 pounds. However at that time the strain did not disable him and he continued to work. On the 13th of April, 1925, he was helping move some 400 pound cans of asphalt and felt a severe pain in his stomach and upon an examination he found quite a lump and swelling in the region of the groin. On the 3rd day of May, 1925, Mr. Arney was operated on. The doctor bill was $115.00 and the hospital bill $46.90, making a total of $161.90 which appears to be the amount the claimant asks.

The Attorney General comes and admits that claimant has properly stated the facts and in his brief he properly stated the law.

From all the records in this case, and the information before the court, it appears that the claimant was injured while in the course of his employment by the State of Illinois, and as a matter of fact would be entitled to his physician and hospital bills as claimed.

Therefore this court recommends that claimant be allowed the sum of $161.90.

(No. 1056—Claim denied.)

W. H. THOMAS, E. A. MIDYETT, AND L. K. SAGER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1927.

Rehearing denied January 11, 1928.

CONTRACTS—*when State not liable under contract.* The State is not liable under a contract to which it is not a party.

SUB-CONTRACTOR—*when State not liable for losses sustained by sub-contractor.* The State is not liable for losses sustained by a sub-contractor when the State is not a party to such contract.

JOHN A. LOGAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover $2,500.00 for work performed by claimants for completing the grading and the building of the shoulders along a portion of Section 4 of the hard surfaced road of Route 14 from stations 554 to 770, being from a point immediately east of the City of Christopher, Illinois.

It appears that Keely Construction Company of East St. Louis, Illinois, entered into a contract with the State of Illinois for the construction of a hard surfaced road known and designated as Route 14. It appears that this road was under the contract in so far as the roadbed and concrete slab was accepted by the State. And it further appears that claimant L. K. Sager under his contract with the Keely Brothers Construction Company, agreed to complete the unfinished portion of the grading work and constructing the shoulders along the said portion of said section. W. H. Thomas and E. A. Midyett were employed by the claimant Sager to assist in the work. It is claimed that more work was required to complete the grading and building of the shoulders than was anticipated, and for this reason this claim is presented. It appears to this court from the record herein that the only agreement or contract to which the State of Illinois was a party, was with the Keely Brothers Construction Company

aforesaid. From the Keely Brothers Construction Company came the authority to the claimants for their undertaking, and it would appear that if there was a legal grievance to be considered it would be between the Keely Brothers Construction Company and the claimants as it does appear that claimants were sub-contractors with the Keely Brothers. As a matter of fact it is the opinion of this court that it is the duty of the Keely Brothers Construction Company to keep the State of Illinois harmless from claims of this character.

It is not deemed necessary to consider this case on the question of the law on contracts, further than the fact of it being well understood that the defendant should have the knowledge at least through an express contract, or through some other well defined meaning before being held responsible in a case of this kind.

The State of Illinois is building a great hard road system which reflects a benefit to the citizens of the State. At the same time it must be considered that the constructing of hard roads brings a great financial obligation upon the people of the State of Illinois. Therefore caution should be exercised in the expenditure of the money the same as would be applied by private corporations and individuals.

It is a well known fact that unexpected conditions in road construction may be expected sometimes to the advantage of the contractor and of course at other times to his disadvantage. Consequently undertakings of this kind should be well considered before contract is made and if there is to be a liability on the part of the State of Illinois, that fact should be expressed by a proper contract before work is undertaken or responsibility assumed by contractor or other individual.

Therefore it is considered by this court that this claim be disallowed.

On January 11, 1928, upon petition for rehearing the following additional opinion was filed:

It is the opinion of the court that the petition of the claimant does not disclose sufficient matter to grant a rehearing.

Therefore it is considered by the court that the petition for rehearing be denied.

(No. 1138—Claim denied.)

ACME STEEL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1927.

FRANCHISE TAX—*when statute of limitations begins to run.* As the cause of action accrues at the time of payment, the Statute of Limitations begins to run from that time even though the illegality may not have been known (citing *Rath v. City of Chicago*, 207 Ill. App. 117).

SAME—*failure to pursue remedies provided by law.* Where claimant fails to pursue its proper remedy in courts of law and equity in this State, no award will be made.

ESSINGTON AND MCKIBBIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed in this case by the Acme Steel Company, a corporation, on January 27th, 1927, alleges that claimant paid moneys to the State of Illinois under duress and protest as and for the franchise taxes for the years beginning July 1, 1920, and July 1, 1921, in excess of the amount legally due to the State of Illinois, under the provisions of the General Corporation Act; that in the year beginning July 1, 1920, and in the year beginning July 1, 1921, it had total authorized capital stock consisting of 20,000 shares of the par value of $100 each and 60,000 shares of common stock without nominal or par value, of which 40,000 shares were issued and paid for by exchange of former par value shares aggregating $500,000.00 or at the rate of $12.50 per share, 20,000 shares of such common stock being unissued in both of said years; that during the month of February of each of said years it duly executed and filed in the office of the Secretary of State the annual report required by law and in said report set forth facts from which the Secretary of State determined that all of its authorized capital stock was represented by property located and business transacted in Illinois, and also set forth that the total authorized capital stock of claimant corporation consisted of par value stock in the amount of $2,000,000.00 and 60,000 shares of no par value common stock; that in April, 1920, and in April, 1921, Louis L. Emmerson, Secretary of State of the State of Illinois, sent to claimant a written notice wherein the claimant was notified

to pay for and as its franchise taxes for each of said years the sum of $4,000.00, stating that same was computed upon the authorized capital stock and setting forth the penalties provided in the General Corporation Act, stating that said penalties would be imposed upon claimant unless said tax was paid on or before July 31st, next following; that said tax was reckoned upon the authorized capital stock of $8,000,000, consisting of $2,000,000 of par value shares and sixty thousand shares of no par value stock; that in arriving at said total of the authorized capital stock the Secretary of State considered each share of no par value to be of the value of $100.00 per share and assessed the total authorized capital stock of claimant corporation at $8,000,000.00, instead of $2,750,000.00, the actual value of its authorized capital stock, computed by multiplying $12.50 the issue price of such shares of no par value as had been issued by 60,000, the number of shares of no par value stock authorized; that the proper tax for each of said years should have been $1,375.00, instead of $4000.00; that it was induced to make said excessive payments aggregating $8000.00, of which $5250.00 was not legally due, by means of duress and through fear that the Secretary of State for the State of Illinois, would enforce the statute and impose the penalties provided in the statute applying to corporations which fail to pay their franchise taxes, and claimant asks to be reimbursed in the sum of $5250.00 on account of said taxes so paid to the State of Illinois.

To the declaration filed, the State of Illinois, by the Attorney General filed a general and special demurrer, which special demurrer alleges that the declaration shows that the claim against the State of Illinois, was filed with the Secretary of this court more than five years after the date of the payment of the amounts upon which refunds are now claimed. The demurrer is sustained as a matter of law.

Claimant contends that the cause of action did not accrue until it was apprised of the illegality of the payment, or at least it did not accrue until the date when the Supreme Court of this State rendered its decision in the case of *Roberts & Schaefer Company* v. *Emmerson*, 305 Ill. 348, namely December 13th, 1922, and that therefore its claim was filed within the five year period.

This question is passed upon in *Rath* v. *City of Chicago*, 207 Ill. App. 117, in which the court states at page 121:

"As the cause of action accrues at the time of payment, the statute of limitations begins to run from that time even though the illegality may not then have been known."

Reasoning from the premise that all persons are presumed to know the law, the statute must begin to run at the date of payment, and not at the time when the payer is corrected in his misapprehension of the law.

Under the statutes of this State, claimant had a right to pay the assessment under protest and then file a suit to restrain the Secretary of State from turning the money over to the State Treasurer and to recover the monies so paid under protest from the Secretary, and this practice has been followed in a number of cases.

We therefore feel that claimant has forfeited its rights because of its failure to pursue its proper remedies in the courts of law and equity in this state and that its claim is long since barred by limitation, hence the claim is disallowed.

(No. 1161—Claim denied.)

WILLIAM SCHERNAU, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1927.

PERSONAL INJURY—*when no award will be made for.* Where claimant receives injuries while working for a private employer on a State Building, and receives adequate compensation for such injuries under the Workmen's Compensation Act by reason of such private employment, no award will be made for additional compensation.

WORKMEN'S COMPENSATION ACT—*when no award will be made under.* Where claimant receives adequate compensation under the Workmen's Compensation Act by reason of personal injuries sustained while working for a private employer, on a State building, no award will be made by the Court of Claims for additional compensation.

A. E. CAMPBELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was on the 11th day of December, 1926, working for the Bicker Heating Company of St. Louis, Mo. That he was engaged as a plumber and steamfitter on

the new addition to the Armory Building and University of Illinois. The testimony shows that on said date the claimant went to Sergeant A. O. Cavanaugh who it appears had immediate supervision of the Rifle Range in this part of the Armory Building, and inquired of him if he could do some work in that part of the building and was told that it would be perfectly all right, only that he should let Sergeant Cavanaugh know a short time before he desired to begin the work and it is claimed that Captain Palmer told him that it was perfectly safe. The claimant together with his helper, one McQuay and H. H. Tyrrell the foreman for the contracting heating company, proceeded with the work and the claimant while at his work heard the crack of a rifle and felt a bullet strike him in the leg. From the testimony it would appear that the rifle was discharged by Sergeant Cavanaugh who testified that it was his duty under such conditions to remove the jammed shells.

It is not clear from the records as to exactly how the shot came to be fired. However it does not appear that there is any contradiction that a bullet was fired and that the claimant was hit while in the discharge of his duties and that the claimant had reason to believe that there would be caution exercised sufficient to protect him while at his work. It is alleged that the bullet struck the claimant in the right leg between the knee and the ankle breaking a bone in the complainant's leg and that claimant was obliged to and did enter hospital, and that the claimant further alleges that he suffered considerable pain and suffering on account of said injury as well as loss of time.

The claimant in his declaration admits that he received from the Globe Indemnity Company of Newark, New Jersey, the sum of Ninety-eight ($98.00) Dollars, as compensation under the Workmen's Compensation Act of this State.

It therefore must be assumed that he received on account of this injury, a reasonable adjustment as measured by the Workmen's Compensation Act of the State of Illinois. If the claimant was in the employ of the State working directly under the supervision of the State and was injured, and if he filed his claim in this court, the statute under the Act creating the Court of Claims, would direct this court in the determination of an allowance to follow the rules prescribed

in the Act commonly called The Workmen's Compensation Act, and would it not be reasonable to assume that the allowance would not be greater than the compensation allowed the claimant as admitted by him. It has been the policy of this court to give the same consideration to its own employees who sought relief from this court, the same consideration as if such employee was working for a private corporation or an individual. In the instant case it would appear to this court that the claimant is asking for a consideration greater than would be allowed an ordinary employee of the State.

It is not considered necessary to discuss here the fact of whether or not the Workmen's Compensation Act is sufficiently liberal or otherwise. However it is a measure in the consideration of claims of this character. There is no showing in this record as far as this court can observe that raises any question as to the amount of compensation received by this claimant being inadequate as admeasured by the Workingmen's Compensation Act of this state.

It is therefore considered by this court that this claim be disallowed.

(No. 1188—Claimant awarded $71,600.01, with interest.)

JOSEPH C. BELDEN AND EDGAR STANTON, AS EXECUTORS OF THE ESTATE OF GEORGE CAMPBELL REW, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1927.

INHERITANCE TAX—*when award will be made for over-payment.* Where the evidence is sufficient to establish the validity of a claim, and the Attorney General consents to the allowance of the claim, an award will be made for over-payment of inheritance tax.

HYDE, HENNINGS, THULIN, WESTBROOK AND WATSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROYCE A. KIDDER, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for a refund under Section 25 of the Inheritance Tax Act of Illinois for inheritance tax overpaid.

The Attorney General in behalf of the State of Illinois, comes and makes his statement and sets forth therein that from an examination of the documentary evidence and proofs filed in support of said claim that he finds said documentary evidence and proof sufficient to prove the correctness of the material allegations of the declaration and sufficient to establish the validity of the claim and accordingly the Attorney General consents to an award in this case in favor of said claimants in the sum of $71,600.01 together with interest thereon at the rate of 3 per cent per annum from Dec. 6th, 1924, to date of payment of said claim.

Therefore it is recommended by this court that claimant be awarded the sum of $71,600.01, together with interest therein at the rate of 4 per cent per annum from Dec. 6th, 1924, to date of payment of said claim.

(No. 1189—Claimant awarded $19,449.64.)

ISAAC H. MAYER, EDWIN F. MEYER, WALTER A. HIRSCH AND RACHEL MAYER TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF LEVY MAYER, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1927.

INHERITANCE TAX—*when award will be made for over-payment.* Where the evidence is sufficient to establish the validity of a claim, and the Attorney General consents to the allowance of the claim, an award will be made for over-payment of inheritance tax.

MAYER, MEYER, AUSTRIAN & PLATT, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROYCE A. KIDDER, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed for refund under Section 8 of the Inheritance Tax Act of the State of Illinois.

The Attorney General comes and files statement in words and figures as follows, "The Attorney General has examined the declaration filed herein and also the documentary evidence and proofs filed in support of said declaration, being claimant's Exhibits 1, 2, 2a, 2b, 3, 4, 5, 6, 7, 8 and 9 and finds that

said documentary evidence and proofs are sufficient to prove the material allegations of said declaration and sufficient to establish a valid claim in favor of said claimants in accordance with the prayer of said declaration. Accordingly the Attorney General consents to an award in this case in favor of the claimants, in the sum of $19,449.64."

It is therefore considered by the court and it is recommended that claimant be allowed the sum of $19,449.64.

(No. 959—Claim denied.)

EBEN P. CLAPP AND EBEN P. CLAPP AS GUARDIAN OF THE ESTATE OF MATTHEW MORTON CLAPP, SOLE HEIRS AT-LAW OF MARY MORTON CLAPP, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1928.

INHERITANCE TAX—*when claim will be denied—jurisdiction.* Court of Claims will not take jurisdiction where claimant has a remedy at law or equity in courts of general jurisdiction.

COURTS—*Court of Claims will not review acts of.* The Court of Claims will not review the acts and conduct of courts of general jurisdiction.

J. E. HOUSTON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover inheritance taxes which is claimed to be paid to the State of Illinois in excess of the amount that should be paid as claimed by claimants.

It appears by the files that the usual course was followed in assessing the taxes in this estate. An adjudication was had upon the taxes in question by the County Court of Cook county, Illinois. A stipulation was entered into between the claimants and the defendant the State of Illinois which recites several facts and conclusions in reference to this case. However the one element of the stipulation which appears to this court controls the issue at question is in words and figures as follows:

Twelfth: That no appeal was taken from the order of the judge of the County Court of Cook county, Illinois, finally determining Illinois Inheritance Taxes, paid as aforesaid and the taxes so paid were not paid under protest.

Therefore it appears that the ground for resistance on the part of the Attorney General that the claimants did not follow their legal remedy, nor make any attempt to do so is sufficient to bar claimant from recovering in this case.

This court has heretofore ruled that if a claimant had a remedy in a court of general jurisdiction that this court would deny relief on the principle that claimant had a means and method to have his grievance adjudicated through a court of general jurisdiction. The statute prescribes a method of appeal in cases of this character and it would appear to this court that the claimant should follow this method of procedure if not satisfied with the ruling of the County Court of Cook County for the reason as above stated that redress could be had in the manner prescribed by law. There is also another reason that would impel this court to refuse to take jurisdiction of a case appealable in the courts of general jurisdiction and that is the fact that in so doing this court would assume the authority to review the acts and conduct of a court of general jurisdiction. The constitution and statute prescribes a method for litigants to follow in a case of this character. An appeal could be had and the trial court could be thus afforded the opportunity to have their judgments considered by a higher court as prescribed by statute and contemplated by the constitution of our State.

Therefore it is considered by this court that said claim be disallowed.

(No. 1088—Claim denied.)

AMERICAN FILM COMPANY, INCORPORATED, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1928.

FRANCHISE TAX—*when failure to pursue remedies provided by statute will not allow claimant to recover.* When the statute provides that all public moneys received by State officers shall be paid into the State Treasury not later than thirty days after the receipt thereof, and where such money is paid under protest and pursuant to such payment under protest, moneys are held for two years, *Held:* Claimant having failed to pursue remedies within two years as provided by statute is not entitled to recover.

CASSELS, POTTER & BENTLEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for the refund of $568.58, excess franchise tax and penalties paid to the Secretary of State of the State of Illinois, in the year 1921, by above named claimant, a corporation duly organized and existing under the laws of the State of Virginia, and duly admitted and authorized to transact business in the State of Illinois. There is no dispute as to the facts in the case, that said sum was paid under protest, on October 24th, 1921, to the Secretary of State, and that said fund was held by said Secretary of State for a period of two years, when same was turned over to the State Treasury. At the time claimant paid the money into the hands of the Secretary of State, the statute in force governing the payment of monies into the State Treasury was the act of 1911, namely: "An Act to amend 'An Act in relation to the payment of public money of the State into the State Treasury'." Approved June 9, 1911, as amended and filed July 13, 1921, laws of Illinois, pp. 586-587, which provided that all public moneys received by said officers should be paid into the State Treasury not later than thirty days after the receipt of same, and that if the money had been paid under protest, then a copy of the statement of protest should be filed with the money, which protested payment would thereby be held in a separate fund by the State Treasurer for a period of two years. This obviously provided a method by which claimant

could have pursued its remedies in a court of record to recover the funds so alleged to be illegally paid, from the State Treasurer, during any time within the period of two years after the date of payment to the State Treasurer. If the claimant, however, did not pursue its legal remedies, or failed therein, then, after a lapse of two years, the State Treasurer could commingle the said special fund with the public funds of the State.

Claimant having failed to pursue its legal remedies, we feel that it is not the purpose of this court to determine the rights of claimant who is or may be barred by the constitutional provision against making the State of Illinois, a party defendant in law or equity, and the claim is accordingly disallowed.

(No. 1092—Claim denied.)

W. F. BARTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1928.

DISMISSAL—*when case will be dismissed.* Where there is no cause shown why case should not be dismissed, same will be dismissed upon motion of claimant.

B. L. KIRK, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Per Curiam: This cause coming on to be heard upon motion of claimant that the above entitled cause be dismissed, and it appearing that there is no reason why said cause should not be dismissed,

It is therefore considered by the court that said cause be, and the same is hereby dismissed.

(No. 1115—Claim denied.)

LEWIS E. SCHARF, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1928.

FEES AND SALARIES—*when claimant not entitled to salary after discharge.* Where the evidence shows that claimant was given no assignment and performed no duties at the Peoria State Hospital after being discharged, no award will be made.

THEODORE SCHARF, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant is a physician. He made application to Dr. George A. Zeller, managing officer of the Peoria State Hospital, for a position in that institution. About October 12, 1925, he was given temporary employment as assistant physician, and remained there until about June 5, 1926. He had never taken the civil service examination and had not been certified by the Civil Service Commission. His salary was $150.00 per month and maintenance for himself and family. His work at the hospital was not satisfactory. Many complaints were made by the Assistant Superintendent and others in charge of the patients of claimant's unconcern for the welfare of those under him. He was neglectful of his duties and there was constant friction between him and those in charge of the various departments of the institution. His conduct was such that it became prejudicial to the best interests of the hospital and its inmates to retain him, and he was notified in the latter part of April, 1926, that he would be relieved from duty May first. He was discharged at that time and thereafter was given no assignment and performed no duties at the hospital. He was permitted, however, by Dr. Zeller the courtesy of occupying his quarters at the hospital until he could find some other position. As these facts are clearly shown by the evidence, it is apparent that claimant is not entitled to any salary after May 1, 1926.

The claim is therefore denied and case dismissed.

(No. 1244—Claim denied.)

CONTAINER CORPORATION OF AMERICA, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1928.

DISMISSAL—*when case will be dismissed.* Where by stipulation and agreement by the parties that the case be dismissed without prejudice, the same will be dismissed.

DAVIS AND ANDREWS, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Per Curiam: This cause coming on to be heard upon the stipulation and agreement by and between the parties in the above entitled case that said cause be dismissed without prejudice, and it appearing that said cause should be dismissed,

It is therefore considered by the court that said cause be, and the same is hereby dismissed.

(No. 1247—Claimant awarded $6,161.09.)

CADET KNITTING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1928.

FRANCHISE TAX—*when award will be made.* Where claimant pursues all remedies at law in courts of general jurisdiction and through error moneys are paid into the State Treasury, an award will be made of the moneys found to be erroneously paid.

PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by claimant, Cadet Knitting Company, a corporation organized and existing under the laws of the State of Delaware, and heretofore duly admitted to transact business in the State of Illinois makes claim for $7,597.77, for moneys heretofore paid to the State of Illinois,

which were not legally due to it, and which through mistake and error on the part of the State officers collecting said funds were turned over to the State Treasury instead of being held by said collecting officer subject to the order of the Court of Record in a suit testing the constitutionality of the franchise tax law under which said sum was paid. Claimant alleges that said sums were paid to the Secretary of State under the franchise tax law, and that a letter of protest was sent with said remittances; that it filed in the Circuit Court of Sangamon county, Illinois, a bill enjoining the Secretary of State from paying said sum or any part thereof over to the State Treasurer until the further order of court and that said court entered such an injunction or restraining order; that later the Supreme Court of the State of Illinois held said tax law under which said sums were exacted to be unconstitutional and void and that said Circuit Court of Sangamon County thereupon ordered said Secretary of State to refund said sums to claimant. The claim above noted for $7,597.77 is made up of three items as follows:—

1. The sum of $3,174.74.
2. The sum of $2,986.35.
3. The sum of $1,436.68.

The demurrer filed by the Attorney General of the State of Illinois, is sustained as a matter of law.

The answer of the Attorney General filed in this matter, recommends that the first two items in said claim, as above enumerated be allowed by this court, claimant having pursued all legal remedies provided under the statute, and the monies there claimed having, through error, been paid by the Secretary of State of the State of Illinois, into the State Treasury. The third item is resisted because it was not made under protest, nor is there adduced any allegation of duress or compulsion, sustainable by law or facts as to said payments and no bills for injunction restraining the Secretary of State from paying said sums to the State Treasurer were filed by claimant.

Therefore we award claimant the sum of $6161.09, being the first two items above listed, and the third item of $1436.68 is disallowed.

(No. 1248—Claimant awarded $9,908.55.)

WALWORTH COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1928.

FRANCHISE TAX—*when award will be made for money erroneously paid into the State Treasury contrary to an injunction order of the Circuit Court, —equity and good conscience.* Where it appears that moneys in the hands of a State officer under an injunction order of the Circuit Court is erroneously paid into the State Treasury by reason of confusion arising as to procedure, an award will be made on the grounds of equity and good conscience and upon the recommendation of the Attorney General.

PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is an action commenced by the Walworth Company, a corporation, organized and existing under the laws of the State of Massachusetts, and duly admitted to transact business in the State of Illinois, for a refund of $10,992.52, which sum their declaration alleges was erroneously, through error on the part of the state officers, turned over to the State Treasury. This sum is made up of four items, as follows:—

1. $1,083.97 paid in June, 1925, franchise fees.
2. $ 332.83 paid December 21, 1925.
3. $3,864.00 paid December 21, 1925.
4. $4,908.80 paid December 21, 1925.

Claimant further alleges in its declaration that in January, 1925, while the Secretary of State for the State of Illinois, still held the sum of $9,105.63, composing items 2, 3, and 4, above, complainant filed its bill in the Circuit Court of Sangamon County, alleging the law under which said sums were assessed against it to be unconstitutional and void and praying an injunction against Louis L. Emmerson, the Secretary of State, for the State of Illinois, from turning over to the State Treasury said sum, and further praying that the defendant, Louis L. Emmerson, be ordered to turn over and refund to complainant, said sum; that the court granted a temporary injunction restraining the defendant, Louis L.

Emmerson, Secretary of State, from paying over to the State Treasury the sum of $8,029.23 of said total sum, but refused to grant an injunction restraining the payment over of $1,076.40; that subsequently the Supreme Court of the State of Illinois, declared the law under which said sums were levied and assessed against claimant and so paid by this claimant to be unconstitutional and void and that thereupon, upon application by this claimant, the Circuit Court of Sangamon County entered an order commanding the defendant, Louis L. Emmerson, as Secretary of State of the State of Illinois, to pay over and refund to this claimant the sum of $8,029.23, previously enjoined by said court; that said injunction was duly served upon said Secretary of State, and that subsequently the order of the court commanding him to refund said sum of $8,029.23 was also served upon said defendant, Louis L. Emmerson, as Secretary of State of the State of Illinois; that in July, 1926, it was again assessed another franchise tax for the year beginning at that time under said invalid law and that it paid the sum so assessed under protest and proceeded to file an injunction bill to restrain the Secretary of State from paying same over to the State Treasury and to require the Secretary of State to refund said fund; that at said time, in July, 1926, it appeared to its attorneys and also to the Attorney General for the State of Illinois, to be best and most convenient for all parties concerned to consolidate the suit already filed, covering the 1925 tax payment with the new suit proposed to be filed covering the 1926 tax payment; that it accordingly prepared a new bill, through its attorneys and set up the necessary allegations with reference to taxes paid in each of said years, and thereupon it filed said bill and secured a temporary injunction covering the amount already in the hands of the Secretary of State for the year 1925, and previously tied up by an injunction as well, as the additional amount paid in the year 1926 and that it thereupon dismissed its bill after service of the new injunction writ upon said Secretary of State; that certain confusion arose because of its procedure and the Secretary of State was erroneously advised that it was no longer necessary to hold the sum of $8,029.23, and thereupon said Secretary of State paid said sum over to the State Treasury of the State of Illinois, in violation of the injunction issued by the Circuit Court of Sangamon County; that claimant had no notice of this action

or of the error until July, 1927, after the law had been declared unconstitutional, and after the Circuit Court of Sangamon County had ordered a refund of a total sum, including said sum of $8,029.23, and claimant alleges that this money would have been paid to it about July 1st, 1927, except for said error and mistake on the part of the State Officer, and therefore claims in addition to said sum, interest thereon at 5% per annum, amounting to $802.92. In the second count in said declaration, claimant alleges that it paid, at the same time as the payment of $8,029.23 referred to in the preceding account, the additional sum of $1,076.40, which additional sum, although paid under protest and duress was not tied up by injunction of the Circuit Court of Sangamon County, and that it paid in the year 1925, as franchise taxes on its original capitalization the sum of $1,083.97, but that said sum was not tied up by injunction.

Motion of claimant to withdraw from its original claim the item of $1,083.97, and to an immediate award of $9,908.55 was filed December 17th, 1927. Demurrer of the Attorney General of the State of Illinois to the declaration of the claimant is sustained as a matter of law.

An answer of the Attorney General to said declaration, recommends the payment to claimant of $9,908.55 and we, believing that in equity and good conscience, the claimant is entitled to said sum, we accordingly award claimant said sum of $9,908.55.

(No. 1272—Claimant awarded $75.00.)

TOM ADAMS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1928.

PROPERTY LOSS—*when award will be made.* An award will be made for loss of property of a State employee used in course of employment upon recommendation of both the officer in charge and the Attorney General.

TOM ADAMS, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was engaged in hauling dirt with his team for the State and while so employed one of his horses became so

injured that it had to be killed. It is shown the horse was worth $75.00. The Engineer of Construction and the Attorney General have both recommended the allowance of the claim and he is therefore awarded $75.00 in accordance with their recommendations.

(No. 1278—Claimant awarded $333.33.)

CLYDE E. STONE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1928.

FEES AND SALARIES—*additional salary of Supreme Court Judge—when an award will be made.* Where the statute provides a certain salary for a judge of the Supreme Court and the Legislature fails to make an appropriation for such salary, an award will be made for the difference between the amount appropriated by the General Assembly and the amount provided by Statute.

CLYDE E. STONE, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant is one of the judges of the Supreme Court of Illinois. He was elected to succeed himself June 6, 1927. The Act of June 21, 1923, provides: Until the first Monday in June, 1924, the salary of each judge of the Supreme Court shall be ten thousand dollars annually. After the first Monday in June, of the year 1924, the salary of each judge of the Supreme Court who is elected after this Act takes effect, shall be fifteen thousand dollars annually. (Sec. 83, ch. 53, Smith-Hurd Revised Statutes of 1927). Claimant's term of office as judge of the Supreme Court began on the first Monday in June, 1927. (Sec. 6, article 6, Constitution 1870). By the provisions of the Act of June 21, 1923, his salary is $15,000.00 annually after that date. This salary cannot be increased or diminished during the term for which he was elected. (Sec. 7, art. 6, Const. of 1870). It was the duty of the General Assembly of 1925 to make an appropriation for the payment of claimant's salary at the rate of $15,000.00 from June 6, 1927, to June 30, 1927. (Sec. 18, art. 4, Const. of 1870). The General Assembly of 1925 made an appropriation for the payment of salaries of judges of the Supreme Court

to June 30, 1927, at $10,000.00 per year. By some oversight no appropriation was made for the payment of the increase of salary from June 6, 1927, to June 30, 1927.

Claimant was paid for the month of June, 1927, at the rate of $10,000.00 per year, which left a balance due him of $333.33 for that month. This amount was not paid because no appropriation had been made for its payment by the General Assembly. Under the provisions of section 7 of article 6 of the Constitution and the Act of June 21, 1923, the State owes him that sum.

It is, therefore, ordered that claimant be and he is awarded the sum of $333.33.

(No. 1204—Claimant awarded $2,000.00.)

CLARENCE HILLEBRAND, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 20, 1928.

PERSONAL INJURIES—*when award will be made for injuries sustained by State employe.* Where it appears that claimant received injuries while in the course of employment, an award will be made under the provisions of the Workmen's Compensation Act.

JUNE C. SMITH, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was employed by the Department of Highways of the State of Illinois on the 19th day of February, A. D. 1927, working on State Road Route No. 12, painting the guard posts which had been set along either side of a fill over which the hard road passes and while thus employed he was struck by an automobile, knocked down and his right leg broken.

There is no contention as to the fact that he was injured while in course of employment and his damages must be measured under the Workmen's Compensation Act of the State of Illinois.

The claimant figures that an award of Twenty-nine Hundred Ninety ($2,990.00) Dollars, should be allowed. The At-

torney General suggests an award of Two Thousand ($2,000.00) Dollars. This court is of the opinion that figuring from the record the extent of the claimant's injuries, that the suggestion of the Attorney General is a fair, reasonable and just allowance.

Therefore this court recommends that claimant be awarded the sum of Two Thousand ($2,000.00) Dollars.

(No. 1212—Claimant awarded $3,750.00.)

WILLIAM T. HAMILTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent

Opinion filed April 26, 1928.

PERSONAL INJURIES—*when award will be made for—Workmen's Compensation Act.* Where the evidence shows that the claimant received personal injury in course of employment while working at a state charitable institution an award will be made and the amount determined in accordance with the provisions of the Workmen's Compensation Act.

JOHN A. MAYHEW, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The claimant, William T. Hamilton, has filed in this court a declaration, in which he sets up that he is a resident of Kankakee, Kankakee county, Illinois, and has been a resident of the State of Illinois for more than ten years last past; that on May 1st, 1923, he was employed by the State of Illinois, and as such employee was working at the Kankakee State Hospital for the Insane at Kankakee, Illinois, and that he had been an employee of said State of Illinois, and had been working at said State Hospital as a carpenter for many years prior to May 1st, 1923; that on said date, in the course of his employment, he suffered an accidental injury, the result of which has left him helpless and unable to follow any line of occupation whatever, and that he is now dependent upon others for support; that the injury complained of resulted as follows: That while doing carpenter work at said State Hospital, hanging a barn door, together with other men, that while lifting said barn door, it got beyond their control and while he was attempting to hold said door, his arm and shoul-

der were wrenched in such a way as to cause him to become partly paralyzed and that he is now helpless; that at the time of the injury he was earning approximately $44.00 per week; that prior to and at the time of said injury he had always been strong and robust and of good health, and was able to work continually, but since said accident he has been unable to carry on any occupation whatever, and has become entirely helpless.

The State of Illinois, by the Attorney General, has filed a demurrer to the declaration, which is sustained as a matter of law.

A statement filed by the Attorney General states that claimant, in his statement, brief and argument fairly sets up the facts and the law and applies the fact to the law. Considerable testimony has been introduced by claimant to substantiate his claim, and we believe that in equity and good conscience an award should be made in this case, and we accordingly award to him the sum of Thirty-seven Hundred and Fifty Dollars, the sum which he would receive, and had he been employed under the provisions of the Workmen's Compensation Act of the State of Illinois.

(No. 1213—Claimant awarded $500.00.)

LAFAYETTE LOVE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 26, 1928.

PERSONAL INJURY—*when award will be made—equity and good conscience.* **Where the evidence shows that the claimant received injury in course of employment while working at a state institution, an award will be made on the grounds of equity and good conscience.**

JOHN A. MAYHEW, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This cause comes before the court on a declaration filed herein on July 7th, 1927, by Lafayette Love, claimant, in which he alleges that he is a resident of Kankakee, in Kankakee county, Illinois, and has been a resident of the State of

Illinois for more than ten years last past; that on August 12th, 1922, he was employed by the State of Illinois, at the Kankakee State Hospital for the Insane, at Kankakee, Illinois, and had been working at said State Hospital as an attendant since April 21st, 1921; that while in the employ of the State as such attendant, and in the course of employment, as such attendant, he suffered an accidental injury, the result of which has left him partially incapacitated and unable to follow his usual line of work, and that his health has been seriously impaired as a result of said accident; that the injury complained of resulted as follows: That while working as an attendant at said hospital, one of the patients from said hospital in one of the wards, namely, Ward No. 7, South, became violent and attacked another attendant and that claimant went to the assistance of said attendant to help said attendant get said violent patient under control, and while so doing he was kicked by the patient and seriously injured; that as a result of said injury two operations were necessary, the first operation being shortly after said injury, and the second operation being in May, 1924, and that at the last operation it became necessary, as a result of said injury to have the right testicle of claimant removed; that he has been in poor health since said injury; that at the time of the injury he was earning approximately Fifty-five Dollars per month and maintenance, and petitioner asks damages in the sum of Ten Thousand Dollars.

The State of Illinois, by the Attorney General, filed a demurrer to the declaration, which is sustained as a matter of law.

There is some conflict in the testimony, as to when the first operation was performed, the records of the hospital in which claimant was treated being incomplete and uncertain. In rendering an award, we take into consideration the fact that claimant is now holding the same position which he held prior to his injury and is receiving more money than he was at the time the injury was received, and that he has lost no wages since the injury. However, we believe that in equity and good conscience claimant should receive some compensation for the permanent disability which he has suffered on account of said injury, and award to him the sum of Five Hundred ($500.00) Dollars.

(No. 1276—Claimant awarded $2,500.00.)

EMILY HASLAM, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 26, 1928.

PERSONAL INJURIES—*when award will be made—social justice and equity.* Where claimant receives personal injury in course of employment while working at a state charitable institution, an award will be recommended upon the grounds of equity and social justice.

SMITH & SMITH, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant alleges that on Jan. 10th, 1925, she was employed as a domestic in the dining room of the Peoria State Hospital at Bartonville, Illinois, and had been employed at said institution for six years prior thereto; that on said day while employed she was injured by a patient of said State Hospital and received an injury on the forehead above the right eye, and an injury at the base of the skull and a lacerated face. She claims that such injury gave her intense pain at the back of the head and over the right eye and caused her eyes to be crossed making her see double and rendering her hearing defective. It is also alleged that she had a partial facial paralysis for a considerable length of time.

There is no contention as to the fact that she was injured in the course of employment by the State of Illinois, and there is no contention as to the fact of her being severely injured causing her severe pain and inconvenience and incapacitating her for a considerable length of time and from the record it appears that she suffered a severe nervous shock in addition to the injuries above described. The defendant the State of Illinois, is endeavoring to give the wards of the State the best possible care and therefore must have employes of the best standard and type obtainable in order to carry on the great charitable program of the State and therefore the employes of the State should have the same protection and consideration as is given to employes by private corporations.

Therefore after considering the records very carefully under the Compensation Act of the State of Illinois and as

a matter of equity and social justice, the court recommends that claimant be allowed the sum of Twenty-five Hundred ($2,500.00) Dollars.

(No. 956—Claim denied.)

LAMOREAUX BROTHERS COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 20, 1928.

CONTRACT—*when no award will be made.* Where it appears from the evidence that no extra expense is incurred and no loss sustained under a contract, no award will be made.

PLEADING—*variance.* It is a familiar rule that a litigant cannot make out one case by his pleadings and another by his evidence.

D. M. MURPHY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On November 19, 1923, claimant entered into a contract to construct an earth roadway 32 feet wide and 15,287.8 feet long on State Bond Route No. 3 in Whiteside County. In the construction of that portion of the work between stations 507 and 592 it is claimed gumbo was encountered and that the work was thereby slowed down and made more expensive to do. It is alleged this additional expense amounted to $3,411.45 and claimant has begun this action to recover that sum.

The Attorney General filed a demurrer to the declaration but before it was called to the attention of the court evidence was taken by both claimant and the State. The case will therefore be considered as though a general traverse had been filed.

The only evidence offered by claimant was the testimony of Henry Pickett and O. F. Goeke. This evidence shows that claimant did not do any of the work but sub-let it all to Mr. Pickett and that he then sub-contracted a portion of it to Bally Eddy. Claimant contracted to do the work for 31 cents per cubic yard for earth work and $2.00 per cubic yard for rock excavation. It sub-let the work to Mr. Pickett for 7% less than it had contracted to do it for and retained 7% of the

contract price as its profit on the work. It thus clearly appears that claimant was put to no extra expense by reason of the gumbo formation encountered in the work and suffered no loss by reason thereof, and that if any loss was suffered it was by the sub-contractors. It is a familiar rule that a litigant can not make one case by his pleadings and another by his evidence. The *allegata* and *probata* must correspond.

But we do not think claimant could recover even had the work been done by it. The State introduced in evidence the notice to bidders, the proposal or bid of claimant, the contract with claimant, its bond and the plans and specifications for the work. The notice to bidders states the proposed work was to be an earth roadway, gave the location of it and stated where the plans and specifications could be examined. The bid of claimant states it will do the work according to the plans and specifications, and declares it has examined the site of the proposed work to its satisfaction and has examined and is familiar with the provisions of the plans and specifications, and agrees to do the earth work at 31 cents per cubic yard and any rock work encountered at $2.00 per cubic yard. The contract signed by claimant recites that the notice to bidders, the proposal or bid of claimant, the plans and specifications for the work and the bond of claimant shall be and all are a part of the contract. The specifications require the contractor to furnish all materials and machinery necessary to do the work at his own expense. The specifications provide that earth excavation shall include the removal of all materials not provided for as rock excavation, and that rock excavation comprises detached boulders of at least one-half cubic yard and all material in compact beds or masses which requires continual drilling and blasting for removal. Under these provisions of the contract it is clear that claimant was not entitled to anything extra because gumbo was found. Gumbo is not rock, it is earth, and under the contract claimant was required to move it at the contract price of 31 cents per cubic yard. There is no basis upon which this claim can be allowed and it is therefore denied.

(No. 1054—Claim denied.)

WALTER WHEELER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 20, 1928.

Rehearing denied September 11, 1928.

PROPERTY DAMAGE—*lateral support.* The principle that one is entitled to have his soil sustained by the support of the adjacent land, only applies to land in its natural condition.

SAME—*no award will be made for damage to property resulting from natural causes.* Where it appears from the evidence that the property damage complained of resulted from natural causes, no award will be made.

RALPH DEMPSEY for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On June 30, 1926, claimant filed his declaration in this action asking $3000.00 damages alleged to have been caused to his property by the construction of State Route No. 9. Claimant's property is a 1½ acre tract of hilly land improved with a dwelling house, wash house, poultry house, barn, hay shed, machine shed, well and cistern. The road extends along the entire south line of the premises, a distance of approximately 340 feet, and the property extends back up the hill north about 245 feet from the road. The house is located on the east part of the lot and the barn and other buildings on the west part. There is a drive about the center of the premises extending from the road up the hill to the buildings. Southeast of the house were a number of fruit trees.

Route 9 is an old established highway upon which the State has constructed a concrete pavement. The plans for the construction of this pavement required the grade of the old road to be lowered and a wider right of way secured in front of claimant's property, and before the work was begun claimant dedicated to the State a strip of ground off the south side of his premises for highway purposes for which he was paid $50.00.

Work began on the road in the summer of 1924. About the last of August or first of September of that year, slides occurred in the southeast corner of claimant's property. These slides continued for some time and the surface of the

land back up the hill from the road a distance of 40 to 60 feet was affected by them. As a result of the slides all claimant's fruit trees were destroyed and the surface of the hill was broken up.

It is alleged by claimant that the removal of the dirt for the purpose of lowering the grade of the road caused the slides and consequent damage to his property, and he invokes the doctrine of the lateral support of adjacent soil to sustain his claim. The principle that one is entitled to have his soil sustained by the support of the adjacent land only applies to land in its natural condition. We do not think, however, a discussion of this question is necessary as we have reached the conclusion that the slides were not caused by the excavation of the road. Claimant's property is situated on a steep hill side, is what is termed bluff-land. The surface is composed of glacial drift of loose material resting upon hard-pan. This loose material is from 1.1 to 5.8 feet thick over the part of claimant's land where the slides occurred, and is very porous and readily absorbs water. The underlying hard-pan is very compact and nearly impervious to water. In times of heavy rainfall the water passes through the loose surface to the underlying hardpan, lubricating the top of it and causing a tendency in the surface to break loose from the hard-pan and slide down the hill. In the months of June, July and August, 1924, just prior to the first slides on claimant's land, the rains had been very heavy in that locality, the fall for these three months being 20.82 inches, while the total for the entire year was only 38.43 inches. Other slides occurred in the year 1926. The rainfall in the area of claimant's land that year was 50 inches, being the heaviest annual precipitation in that area in 63 years, the average annual precipitation for the 71 years the records have been kept being only 34.70 inches. There was no soil removed from claimant's land but the grade of the old road led upon which the pave*ment was laid was lowered 1.52 feet south of* that portion of claimant's land where the slides occurred. West of the part where the slides occurred and where the slope of the land was practically the same, the grade of the old road bed was lowered from 4 to 4½ feet, yet there was no sliding of the surface there. It also appears from the evidence that slides have occurred in this area at points on the road where no excavations were made and even where fills were required

Wherever these slides occur it is only the loose surface material that moves, there being no movement of the hard-pan. We think the sliding of the surface of claimant's land was caused by the unusual heavy rainfall and the peculiar composition of the land and not by the slight excavation made for the purpose of lowering the grade of the old road. It follows that claimant cannot recover and his claim is, therefore, denied.

On September 11, 1928, upon petition for rehearing the following additional opinion was filed.

The claimant in the above entitled cause has asked for a rehearing of his case.

After a careful consideration of the petition for a rehearing, we are of the opinion that the excavation for the construction of the hard road was not the cause of the sliding of the soil, but that such sliding was due to the heavy rainfall.

The decision heretofore rendered is affirmed.

(No. 1057—Claim denied.)

JACKSONVILLE GRAIN AND COMMISSION COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 20, 1928.

PROPERTY DAMAGE—*when no award will be made for.* Where the evidence does not show damage to property by reason of a public improvement, no award will be made.

PUBLIC IMPROVEMENTS—*when no award will be made for damages to property resulting from a public improvement.* Where it appears that claimant's property is benefited by a public improvement, as much as the other property of the municipality no award will be made.

L. O. VAUGHT for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

In its declaration claimant asks for an allowance of $10,000.00 damages to its property and business at Naples, Illinois, alleged to have been caused by the construction of a levee by the State. The Attorney General filed a demurrer to the declaration which we might well sustain; but as both

the claimant and State have taken and filed evidence in the case without waiting for a ruling on the demurrer, we will hear and consider it as though a general traverse had been filed.

The Village of Naples is situated on the east bank of the Illinois River and is subject to overflow in times of high water. Water Street extends north and south along the river bank and Shelley Street extends east from Water Street. The property alleged to have been damaged is immediately south of Shelley Street and east of Water Street, and is 800 feet long east and west and 125 feet wide north and south. An alley extends south from Shelley Street to another street the name of which is not disclosed by the evidence. On this property was located an elevator building about 40 feet wide north and south and about 140 feet long east and west. The property was divided into two lots by the alley and across the alley on the east lot was a large corn crib 40 feet by 80 or 100 feet. The main building was erected in 1885 and was originally built for a warehouse and was remodeled into an elevator in 1913. The elevator building fronted on Water Street. At the southwest corner of this building was the scale for weighing the grain, and east of the scale was the dump. On the north side of the building was the switch where cars were set in for loading. On the east side of Water Street and abutting the elevator was a concrete sidewalk ten feet wide.

In 1913 and 1914 a levee was built along Water Street in front of this property. This levee was 20 feet wide at the base and 8 feet wide on top, the base being parallel with and abutting the sidewalk. Persons wishing to deliver grain to the elevator turned from Shelley Street onto the levee and drove along it till they came opposite the scale, then turned down the levee and across the sidewalk onto the scale and from the scale onto the dump.

This levee was inadequate to protect the village and it suffered severely from the floodwaters in 1922. The village could not raise sufficient funds to build the levee higher, so when the General Assembly met in 1923 the citizens appealed to it for aid. The legislature passed an Act appropriating $10,000.00 to be used in improving and strengthening the levee, the appropriation being made upon the express condition that the village appropriate the maximum amount it

could raise under the constitution and laws for the same purpose. The Act also provided that the money should be expended under the supervision of the Department of Public Works and Buildings. The village raised between $2900.00 and $3000.00, all it could under the limitations placed on its taxing powers by the Constitution. Up to July, 1925, nothing had been done by the Department of Public Works and Buildings. The citizens of the village, knowing the appropriation would lapse if the work was not contracted within the next three months, sent a committee to Springfield to urge the officials to let a contract for the repair of the levee before the appropriation lapsed, and the contract for the work was awarded near the last of September. The village turned its money over to the State officials and the levee was repaired under the supervision of the Department of Public Works and Buildings. The old levee had been constructed to an elevation of 448.5 Memphis Datum and the new, or repaired, levee was raised to an elevation of 452, three and one-half feet higher than the old one.

Claimant purchased the property in question for $5,000.00 October 1, 1924, a year and three months after the money to repair and raise the levee had been appropriated. At the time of the purchase its officers knew the conditions surrounding it and that the levee was to be strengthened and raised. The purchase included all the ground, elevator, scales, cribs and machinery. It operated the elevator until July 1st, 1925, when it leased the property to F. J. Blackburn for one year at a rental of $50.00 per month. At the end of three months, or about October 1, 1925, claimant sold the elevator building to Blackburn for $2000.00, retaining the ground, cribs and scale. Blackburn was building an elevator at Strawn's Crossing and he took down the one claimant sold him and moved it and the machinery there. This sale was made before the new levee was built, it being built in October and November of last year. All the above facts are disclosed by the evidence but it does not disclose why claimant released Blackburn from his contract nine months before it expired.

Claimant, in its declaration, alleges that it has suffered damage of $4000.00 to its building and $6000.00 damages on account of loss of business. The evidence shows, however, that claimant quit the business July 1st, 1925, leasing the property to Blackburn. When private property is taken or

damaged for public use the owner thereof is entitled to just compensation therefor. But the compensation is for the property, not for the business conducted in it. It is not contended that any of claimant's property was taken or used in the repair of the levee but that its elevator building was rendered useless by the raising, of the height of the levee in front of it. We do not think this contention is supported by the evidence. Claimant's property consisted of two lots with an alley between them, the entire length east and west being 800 feet. The evidence shows that the scale could have been moved near the northeast corner of the lot on which the elevator stood at a very small cost. This would have enabled persons with grain for the elevator to drive from Shelley Street on to the scale and then down the alley to the south portion of the lot. By moving the scale from the southwest corner of the building there would have been 33 feet between the elevator and the south line of the lot, giving ample space to turn on to the dump. It is very apparent from the evidence and the situation of the property that with the expenditure of but a small sum it could have been just as conveniently used for an elevator after the levee was raised as before.

The work the State did was done for the benefit of the village, to save it from destruction by floods and the consequent destitution of its citizens and probable loss of life. The construction of the levee was as much for the benefit of claimant's property as of the other property of the village. If the village were destroyed by floods, claimant's property would become valueless. It was to prevent such a calamity that induced the legislature to make the donation to the village.

The claim is denied and the cause dismissed.

(Claims denied.)

J. W. PARKER, 1050; CHARLES CEFALA, 1058, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 11, 1928.

Rehearing denied October 24, 1928.

HIGHWAYS—*control of railroad crossings.* The control of railroad crossings has been conferred by law upon the Commerce Commission by the Public Utilities Act.

SAME—*authority conferred upon local officials.* The Legislature has the power to confer authority of the public highways of the State upon such local officials as it sees proper and to divide such authority in the manner it deems best.

SAME—*what public highways include.* The public highways of the State include the streets and alleys within the corporate limits of cities and villages.

PROPERTY DAMAGE—*when State not liable for.* The failure of a village to pay for damage to property occasioned by the construction of a subway crossing in accordance with an order of the Commerce Commission does not cast the burden of such damage upon the State.

EMINENT DOMAIN—*exercise of power by legislative authority.* The Legislature has conferred upon the Commerce Commission the power to make orders that will result in the taking of private property for public use upon payment of just compensation and in doing so, it took no right from the owner of private property.

RESPONDEAT SUPERIOR—*when doctrine does not apply under general rule—exceptions.* The doctrine of *respondeat superior* does not apply where the damage is caused by the negligence of an independent contractor, and the claim will be denied unless it is shown that the case comes within the exceptions to the general rule.

SAME—*State not liable for torts of officers and agents.* The State is never liable for the torts of its officers or agents.

REHEARING—*when rehearing will be denied.* A rehearing will be denied when the petition for rehearing shows nothing that was not considered by the court in the original opinion.

FRANK J. AND JAMES T. BURNS for claimants.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

As these two claims involve practically the same questions of law and fact, they will be consolidated and heard together.

Claimant, Parker, is the owner of Lot 26 in Block 39 in the Village of Bradley and claimant, Cefala, is the owner of Lot 25 in Block 39 and also of Lots 21 and 22 in Block 41 of

said village. These lots all front on Broadway Avenue, a street extending east and west through the village. State Bond Issue Route No. 44, extending from Joliet to Kankakee, passes through the Village of Bradley on Broadway Avenue. This avenue terminated at or near the right of way of the Illinois Central Railroad. Just east of the Illinois Central right of way is the right of way of the New York Central Railroad. On October 8, 1923, the Department of Public Works and Buildings, Division of Highways, filed its application with the Illinois Commerce Commission for a crossing of State Bond Issue Route No. 44 under the tracks of these railroads in the village at the point of intersection of the extension of Broadway Avenue with the tracks and rights of way of the railroads. After a hearing the Commission granted the crossing and apportioned the cost thereof between the railroad companies, the State and the village.

The construction of this subway necessitated the lowering of the grade of Broadway Avenue in front of Block 39, and it has been stipulated that such depression of the grade damaged Lot 26 $1075.00 and Lot 25 $250.00, for which amounts claimants ask awards against the State. In its order apportioning the costs of the crossing the Commerce Commission directed that the village, as its portion of such costs, should secure all the necessary right of way for the extension of Broadway and pay all consequental damages to abutting property owners on account of the depression of the grade of that street.

The State claims this order makes the village liable to claimants for the damages to their lots caused by the depression of Broadway, while claimants insist they are not bound by the order and that the State should pay them the damages caused by such depression.

The control of railroad crossings has been conferred by law upon the Commerce Commission by the Public Utilities Act, approved June 29, 1921. (*Commerce Commission* v. *Omphghent Township*, 326 Ill. 65.) The legislature has the power to confer authority over the public highways of the State upon such local officials as it sees proper and to divide such authority in any manner it deems best. (*Stevens* v. *C. B. & Q. R. R. Co.*, 303 Ill. 49; *C. B. & Q. R. R. Co.* v. *Cavanagh*, 278 Ill. 609; *Egyptian Trans. System* v. *L. & N. R. R. Co.*, 321 Ill. 580.) The public highways of the State include the

streets and alleys within the corporate limits of cities and villages. (*The People* v. *Chicago Tel. Co.*, 245 Ill. 121.)

Section 58 of the Public Utilities Act provides: "The Commission shall also have power, after a hearing, to alter or abolish any grade crossing, heretofore or hereafter established; when in its opinion the public safety requires such alteration or abolition; or to require a separation of grades at such crossings; or to require a separation of grades at any proposed crossing where a proposed public highway may cross the tracks of any railroad or railroads; and to prescribe, after a hearing of the parties, the terms upon which such separation shall be made and the proportion in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad companies affected, or between such companies and the State, county, municipality or other public authority in interest: Provided, that nothing in this Act shall be construed to repeal "An Act in relation to the crossing of one railroad by another," approved May 25, 1907, in force July 1, 1907.

"The Commission shall also have power by its order to require the reconstruction, alteration, relocation or improvement of any crossing (including the necessary highway approaches thereto) of any railroad across any highway or public road, whether such crossing be at grade or by overhead structure or by subway, whenever the Commission finds after a hearing that such reconstruction, alteration, relocation or improvement is necessary to preserve or promote the safety of the public or of the employees or passengers of such railroad. By its original order or supplemental orders in such case, the Commission may direct such reconstruction, alteration, relocation or improvement to be made in such manner and upon such terms and conditions as may be reasonable and necessary and may apportion the cost of such reconstruction, alteration, relocation or improvement between the railroad company or companies and other public utilities affected, or between such company or companies and other public utilities and the State, county, municipality, or other public authority in interest. The cost to be so apportioned shall include the cost of changes or alterations in the equipment of other public utilities affected as well as the cost of relocation, diversion or establishment of any public highway, made

necessary by such reconstruction, alteration, relocation or improvement of said crossing." Section 58 further provides that no highway or street shall be constructed across any railroad at grade without having first secured the permission of the Commission.

West Avenue is immediately west of the Illinois Central tracks and Washington Avenue is west of West Avenue, block 39 lying between these two streets. A copy of the findings and orders of the Commerce Commission entered in the proceedings had before it relative to this crossing has been introduced in evidence. It shows the Commission was of the opinion the public safety required the separation of the grades at the crossing of the railroads and Broadway Avenue and that such separation should be effected by the construction of a subway under the tracks of the railroads, and that the approach grades for the subway extended from Washington Avenue easterly to Schuyler Avenue east of the railroad tracks. The Commission found the estimated cost of the work and apportioned the entire expense thereof between the Illinois Central Railroad Company, the New York Central Railroad Company, the North Kankakee Electric Light & Railway Company, the Department of Public Works and Buildings, Division of Highways, of the State of Illinois, and the Village of Bradley. It is clear from the language of section 58 that the Commission had the power to apportion the cost and expense of the construction of the crossing between the companies affected, the State and the village. The statute expressly gives it that power. If the order of the Commission required the exercise of the right of eminent domain to determine the damages to property taken or damaged by the construction of the crossing or its approaches, such right could have been exercised by the corporation or municipality required by the order to pay such damages. (Sec. 59 Public Utilities Act.) The damages to the lots of claimants in Block 39 were occasioned by the construction of the approach to the subway crossing. When the Commission ordered that the village pay such damages it became the duty of the village authorities to either agree with claimants upon the amount, or, if unable to do that, to have the damages assessed by a jury as provided by the eminent domain act. The failure of the village to perform that duty did not relieve it of the obligation to do so. Neither did its failure in that re-

gard cast the burden of such damages upon either the railroads or the State. Such a construction would nullify the orders of the Commission and defeat the purpose and intent of the statute.

Claimants urge, however, that they were not parties to the hearing before the Commission and are, therefore, not bound by its orders. The Commission made no order affecting the rights of claimants. Claimants held their property subject to the right of the public to take or damage it for public use upon making just compensation for such taking or damage. It can make no difference to the owner of property taken or damaged for the public by whom his compensation is paid, whether by the State, some sub-division of the State, or some body corporate authorized by the State. When he has been justly compensated for his property he has received all he has the right to ask. The legislature has unlimited power to authorize the taking or damaging of private property for public use upon making just compensation. In the Public Utilities Act it has conferred upon the Commerce Commission the power to make orders that will result in the taking and damaging of private property for public use and to direct by whom the compensation for such property shall be paid. This the legislature might lawfully do, and in doing so it took from owners of private property no right. *(C. B. & Q. R. R. Co. v. Cavanagh, supra.)* The Commerce Commission having ordered the Village of Bradley to pay these damages of claimants, the State is not liable for them and no award therefor can be made by this court.

Claimant, Parker, also asks for $125.00 damages to his building caused by blasting. It is stipulated that the blasting which caused this damage was done by an independent contractor while lowering a sewer. The general rule is that the doctrine of *respondeat superior* does not apply where the damage is caused by the negligence of an independent contractor. There are exceptions to this general rule but as there is nothing in the stipulation to show that this case comes within any of the exceptions the general rule must be applied and the claim denied.

Claimant, Cefala, also asks $100.00 damages on account of injuries to the sidewalk abutting Lots 21 and 22 in Block 41. The declaration states that the servants of the State engaged in the construction of State Route 44 drove heavy

trucks on the sidewalk abutting these lots of claimant and so cracked and demolished it that it will be necessary to replace 16 sections of the walk. We hardly need remark that the sidewalk is not the property of claimant but is a part of the street. But were it a private walk of claimant, his claim could not be allowed. The declaration shows clearly that the injury to the walk was caused by the wrongful conduct of the drivers of the trucks, and the State is not liable for their wrongdoing. The State is never liable for the torts of its officers or agents. This has been announced so often and is such a well known principle that a citation of authorities is unnecessary.

Claimants refer to the consolidated cases of *Peterson et al. v. State* and say that the decision in those cases is *stare decisis* of the questions involved in these cases. In that contention claimants are in error. None of the questions involved in these cases were raised or decided in those cases. All the awards made in those cases were made under and because of a stipulation entered into by the Attorney General and the claimants and no questions of law were raised in the cases or decided by the court.

The claims will therefore be denied and the cases dismissed.

On October 24, 1928, upon petition for rehearing the following additional opinion was filed:

As these two cases involve practically the same questions of law and fact and were considered together by the court in the original opinion, the petition of the claimants for a rehearing will also be considered together.

After a careful consideration of the petition for a rehearing in the above cases, we find nothing in the petition that was not carefully considered and passed on by the court in the original opinion in these cases.

The decision heretofore rendered in these cases is, therefore, affirmed, and the petition for rehearing is denied.

(Claims denied.)

WILLIAM H. PETERSON, 1126; J. A. PETERSON, 1127, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 11, 1928.

HIGHWAYS—*State is not liable for negligence of its officers.* The State, in the construction and maintenance of its highways, exercises a governmental function and is not liable for the wrongs, conduct or negligence of its officers or agents.

PLEADINGS—*insufficiency of pleadings.* Unless the declaration states a cause of action against the State no award will be made.

CONSTRUCTION—*Court of Claims Act.* The Statute creating the Court of Claims, gives it power to hear and determine all claims and demands, legal and equitable, which the State as a sovereign commonwealth, should, in equity and good conscience, discharge and pay and no award will be made unless there is either a legal or equitable obligation of the State to pay it.

PROPERTY DAMAGE—*when award will not be made for damages resulting from natural causes.* Where the evidence shows that the damages to property resulted by an unprecedentedly heavy rain, no award will be made.

M. L. HAY, for claimants.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

As these two cases involve the same questions of law and fact they will be consolidated and heard together.

The declaration of J. A. Peterson alleges he is the owner of the East Half of the Northeast Quarter of Section Thirty-three in Township Fourteen North, Range Five East of the Fourth Principal Meridian in Henry County and that the State by its Department of Public Works and Buildings, in the year 1923, erected and completed a hard road along and on the north side of said land known as Route No. 28 and another hard road along and on the east side of said land known as Route 30; that said roads are hard surfaced roads laid upon high grades; "that said grades were and now are so improperly built and erected that they throw onto the North twenty acres of land in times of high water more than the natural amount of water which without said roads so improperly constructed would be thrown onto said land; that said roads are so constructed that the water so thrown onto this plaintiff's land cannot and does not escape and run off therefrom;" that "by reason of the improper construction of

the grades along said land" the land has been rendered unfit for cultivation and damaged $2,000.00 and the crops for the year 1924 of the value of $750.00 were lost to him.

The declaration of William H. Peterson alleges that he rented the aforesaid lands for the year 1924 and had a portion of it in oats. The declaration describes the two roads and alleges "there was no reason for the construction of the bridge in the grading on the north side of the premises and that the construction of said bridge at that location causes water which flows down Indian Creek and which should flow east to flow in upon the land which he farms;" that said grade and bridges are so constructed that water runs in upon the land farmed by him both from the north and east sides; that on account of the bridges "being improperly constructed" water came onto the land and was held there by the grade of the road and destroyed his oats crop; "that said loss was caused directly by the improper construction of the hard roads erected by the Department of Public Works and Buildings of the State of Illinois."

In his affidavit verifying his declaration William H. Peterson says "he has a good cause of action on account of the improper manner in which the embankments of hard roads number 28 and 30 were constructed" along the east and north sides of the land; "that the improper construction of said hard roads threw surface and channel water upon his land which did not naturally flow thereon;" and "that by reason of the improper construction of said roads" the whole crop of oats was lost to him.

J. A. Peterson asks $2,750.00 damages and William H. Peterson $350.00.

The Attorney General has filed a general demurrer to each declaration.

It is apparent that the damages claimed are based on the negligence or wrongful conduct of the agents of the State in constructing these roads. The State is never liable for the wrongful conduct or negligence of its officers or agents. In *Kinnare* v. *City of Chicago*, 171 Ill. 332, on page 335, our Supreme Court announced that doctrine in the following language: "The State acts in its sovereign capacity, and does not submit its action to the judgment of courts and is not liable for the torts or negligence of its agents, and a corporation created by the State as a mere agency for the more

efficient exercise of governmental functions is likewise exempted from the obligation to respond in damages, as master, for negligent acts of its servants to the same extent as is the State itself, unless such liability is expressly provided by the statute creating such agency. *Town of Waltham* v. *Kemper*, 55 Ill. 346; *Elmore* v. *Drainage Comrs.*, 135 id. 269; *Symonds* v. *Clay County*, 71 id. 355; *Town of Odell* v. *Schrooder*, 58 id. 353; *Wilcox* v. *City of Chicago*, 107 id. 334; *Nagle* v. *Wakey*, 161 id. 387; *15 Am. & Eng. Ency. of Law*, p. 1164; *2 Dillon on Mun. Corp.*, p. 1193." The Department of Public Works and Buildings is one of the departments of the state government. The Division of Highways of that department has the construction and maintenance of state roads in its charge. If in the performance of the duties required of them in the construction of a state road the employees commit a wrong whereby the person or property of a citizen is injured the tort is that of the man or men who do the unlawful act, whether they be public officers or not, and cannot be regarded as the act of the State. (*Cooney* v. *Town of Hartland*, 95 Ill. 516) We know of no exception to this rule. In *Gibbons* v. *United States*, 8 Wall. 269, the court said, "No government has ever held itself liable to individuals for the misfeasance, laches or unauthorized exercise of power by its officers and agents, however gross." In *Jorgenson* v. *State*, 2 Ct. Cl. 134, in discussing this question this court said: "This proposition of law, so well established, has been consistently followed by this court in the adjudication of all claims that have ever come before it, and applies with equal force to the cause now on hearing." Many other cases might be cited announcing the same principle of law, but we deem it unnecessary to do so. It is perfectly clear that neither of the declarations states a cause of action against the State, and unless they do no award can be based upon them.

Claimants seem to recognize the fact their claims are not legal, for they say "they know whatever is allowed them will be allowed out of equity and good conscience." The statute creating the court of claims gives it power to hear and determine all claims and demands, legal and equitable, which the State, as a sovereign commonwealth, should, in equity and good conscience, discharge and pay. It is plain from the language of this statute that no claim against the State can be allowed by this court unless there is either a legal or equit-

able obligation of the State to pay it. Before a claimant can have an award against the State he must show he comes within the provisions of some law making the State liable to him for the amount claimed. If he cannot point to any law giving him the right to an award he cannot invoke the principle of equity to secure the award. Where there is no legal liability equity cannot create one. (*10 R. C. L.*, sec. 132.) Equity is not the court's sense of moral right; it is not the power of the court to decide a case according to a high standard of abstract right, regardless of the law; it is a complex system of established law. In *Murdock Parlor Crate Co.* v. *Commonwealth*, 24 N. E. 855, the Supreme Judicial Court of Massachusetts construed a statute of that state giving the courts of the state jurisdiction of claims against the commonwealth. The statute in question gave the superior court "jurisdiction of all claims against the commonwealth, whether at law or in equity." It was contended that this language made the state "responsible for a tort committed by its servants." In discussing that question, after citing authorities showing the general rule of non-liability of the state for such torts, the court said: "The act we are discussing discloses no intention to create against the state a new, and heretofore unrecognized class of liabilities, but only an intention to provide a judicial tribunal where well-recognized existing liabilities can be adjudicated. Where wrongs are done to individuals by those who are the servants of the government, those injured are not remediless, as such persons may be sued as may be other citizens for the torts which they commit." In *Schmidt* v. *State*, 1 Ct. Cl. 76, in discussing this question, this court said on page 79: "The law creating this commission does not undertake to create a new liability against the State but provides a method by which claims against the State may be heard before this commission, and the claim rejected or an award made in favor of the claimant." And on page 80 of the opinion it is further said: "It is our understanding that in the use of the language 'to determine the same according to the principles of equity and justice' is meant and used with a legal signification and that this commission has no power to make an award in any case unless the facts show a legal or equitable claim against the State. We do not believe it was the intention of the Legislature to leave it discretionary with the commission to make an award

in favor of the claimant regardless of the question as to whether or not he had a legal claim against the State. We are of the opinion further, that it would be an exceedingly dangerous precedent to hold that the commission had any such discretion." See also *Jorgensen v. State, supra.* To give this statute the construction contended for by claimants would result in giving this court power to hold the State liable for the misfeasance and malfeasance of all its officers, the torts of all its servants and agents, and all damages caused by the wrongful exercise of their powers by such officers and agents. We do not believe the legislature intended any such radical and far reaching change in the law when it enacted the statute creating this court. It follows that the demurrers to the declarations of claimants must be sustained.

We will add that we have carefully read and considered the evidence filed in the cases and do not believe it shows claimants' damages were caused by the improper construction of the roads, but were the direct result of an unprecedentedly heavy rain.

The claims will therefore be denied and the cases dismissed.

(No. 1246—Claim denied.)

DAN PERRY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 11, 1928.

Rehearing denied October 24, 1928, second rehearing denied March 28, 1929.

PERSONAL INJURY—*when award will not be made for personal injuries sustained by a State employee.* An award will not be made unless claimant can bring himself within the provisions of some law justifying the award.

SAME—*when State not liable under Workmen's Compensation Act.* The care of the insane in a state institution is not one of the enterprises declared to be extra hazardous by Section 3 of the Workmen's Compensation Act, and no award will be made under that law, although claimant's injuries may have arisen out of and in the course of his employment.

SAME—*assumption of risk.* Where claimant voluntarily enters upon his duties as attendant in a State insane institution he assumes the ordinary perils of the work in which he engages.

COURT OF CLAIMS—*jurisdiction.* The jurisdiction of the Court of Claims is fixed by law and it has no powers except those given by the Act creating it and no claim against the State can be allowed unless there is a legal or equitable obligation of the State to pay it.

WORDS AND PHRASES—*what is "justice" and "equity"*. "Justice" is nothing more or less than exact conformity to some obligatory law. "Equity" is not the chancellor's sense of moral right, or his sense of what is just and equal. It is a complex system of established law.

WORKMEN'S COMPENSATION ACT—*when State not liable under*. The Workmen's Compensation Act applies to the State only when it is engaged in any of the enterprises or businesses enumerated in Section 3, and therein declared to be extra hazardous, but does not apply to one engaged in farming.

REHEARING—*when rehearing will be denied*. A petition for rehearing will be denied where the claimant fails to file his petition within the time prescribed by the rules of the court.

GEORGE W. HOGAN, JR., and NOAH GULLETT, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed as an attendant at the Jacksonville State Hospital for the insane, and while so employed, on April 20, 1926, he was attacked and severely beaten by one of the patients. Claimant was taken to the nurses' home in the hospital where he remained under the care of the hospital physicians for about one month and a half. He then went to work again but was unable to perform his duties and finally left the institution. He claims the injury caused him to become deaf in his right ear and permanently impaired the sight of his right eye; that it has affected his nerves and causes him to suffer constant pains in his head, and has so affected him otherwise that he is unable to perform manual labor, and asks for an award of $10,000.00 damages. The Attorney General has filed no plea on behalf of the State and the cause will be tried as though a general traverse of the declaration had been filed.

Before a claimant can be awarded damages against the State he must bring himself within the provisions of some law justifying the award, and unless he does so his claim must fail. In this case claimant was an employee of the State at the time the injury complained of was received. But that fact, alone, does not entitle him to compensation. If the State had been engaged in a business coming within the classes mentioned in section 3 of the Workman's Compensation Act, then his right to compensation would be determined under

the provisions of that law, for section 6 of the act creating the Court of Claims gives this court power to determine the liability of the State for accidental injuries or death suffered in the course of employment by any employee of the State. But such determination must be made in accordance with the rules prescribed in the Workman's Compensation Act. As the care of the insane in a hospital is not one of the classes of business declared to be extra hazardous by section 3 of that act, claimant cannot be awarded compensation under that law though his injury may have arisen out of and in the course of his employment.

The declaration of claimant alleges that on the date of his injury he "was performing his usual and customary duties as an attendant at the Jacksonville State Hospital * * * and as such attendant had charge of what is commonly known and called the detailed gang consisting of nineteen violent patients who were considered the worst patients mentally that were in the said Jacksonville State Hospital." It is apparent from this allegation that claimant was employed to attend and control insane patients at the hospital and that he knew such patients were liable to become violent. His employment was voluntary and when he entered upon his duties as such an attendant he assumed the ordinary perils of the work in which he was engaged. (*McInturf* v. *State*, 5 Ct. Cl. 314; *Neighbors* v. *State*, 5 Ct. Cl. 238; *Consolidated Coal Co.* v. *Haenni*, 146 Ill. 614; *Illinois Terminal R. R. Co.* v. *Thompson*, 210 Ill. 226.) In the *Tompson case*, *supra*, at page 236, the Supreme Court announces the rule of assumed risk in the following words: "It is true that, when a servant enters into a contract of hire with the master, he assumes the natural and ordinary risks of the business in which he engages, that is to say, he assumes all the risks ordinarily incident to the employment, and is presumed to have contracted with reference to such risks." It is a matter of common knowledge that insane persons are liable to become violent and that their control and management is attended with danger, and one who voluntarily undertakes the duties of their supervision assumes all the risks ordinarily incident to such employment. If the Jacksonville Hospital were a private institution for the care and treatment of the insane, it is manifest claimant could not sustain a cause of action against it

for his injuries. And certainly the State is not obligated where a private institution would not be unless there be some statute imposing such obligation upon it. We have been referred to no such statute and know of none.

Claimant urges, however, that he should be awarded compensation as an act of justice and equity regardless of the principles of law involved. The jurisdiction of this court is fixed by law and it has no powers except those given by the Act creating it. Section six of that act provides: "The Court of Claims shall have power 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." It is obvious from the language of this statute that no claim against the State can be allowed by this Court unless there is either a legal or equitable obligation of the State to pay it. If there is either a legal or equitable obligation resting upon the State to pay a claim, then justice requires that the State should pay it.

What then is "justice" and "equity"? It has been said that "justice consists simply in letting every one enjoy the rights which he has acquired in virtue of the laws." In a judicial sense, justice is nothing more or less than exact conformity to some obligatory law; and all human actions are either just or unjust as they are in conformity to or in opposition to law. (*Borden* v. *State*, 11 Ark. 519.) In other words, justice is merely giving to one that to which he is entitled by law. And unless he can point to some law giving him the right or privilege claimed, he cannot insist on it as an act of justice. Neither can he invoke the aid of equity to secure a right to which he is not entitled under some law. "A court of equity cannot, by avowing that there is a right but no remedy known to the law, create a remedy in violation of law, nor, where there is no legal liability, can equity create one." (*10 R. C. L.*, sec. 132.) Equity is not the chancellor's sense of moral right, or his sense of what is just and equal. It is a complex system of established law. (*Savings Inst.* v. *Makin*, 23 Me. (10 Shep.) 360.)

Claimant's idea seems to be that equity as used in this statute is nothing more or less than the power of the court to decide each case according to a high standard of morality and abstract right, regardless of the law. Such a construe

tion would leave this Court with practically no limitation upon its power to render judgments against the State. It is a principle of universal application that a sovereign state cannot be sued in its own courts without its consent. (*In re City of Mt. Vernon*, 147 Ill. 359.) The State may consent to be sued, and if it does the suit can only be brought in the forum prescribed and for the causes set forth in the statute. Statutes permitting suits against the State, being in derogation of its sovereignity, must be strictly construed. (*25 R. C. L.*, sec. 52.) When the legislature created this court and clothed it with power to hear claims against the State we do not think it thereby intended to waive the right of the State to interpose any legal or equitable defense it might have to the demands of claimants. Such a construction would give this Court the power to hold the State liable for the malfeasance and misfeasance of its officers, the torts of all its agents, and all damages caused in the exercise of its governmental and police powers. Certainly the Legislature did not intend such a radical and far reaching change in the law by the use of the term "equity" in the statute fixing the powers of this court.

Claimant's demand, not being based upon any legal or equitable right, cannot be allowed, however strongly it may appeal to the sympathy of the Court. The Court can only enforce the law as it is, it has no power to change it. The claim will therefore be denied and the cause dismissed.

On October 24, 1928, upon petition for rehearing the following additional opinion was filed:

Claimant has filed a petition for a re-hearing on the grounds that under sub-paragraphs 7½ and 8 of section 3 of the Workmen's Compensation Act he is entitled to an award. In his original brief claimant says that, under the repeated decisions of this court, he fully realizes the facts in this case do not make the State liable for his injury, and basis his right to an award on the principle of justice and equity. He now urges the foregoing paragraphs automatically bring the State under the provisions of the Workmen's Compensation Act, and entitle him to be compensated by the State for his injury.

The Workmen's Compensation Act automatically applies to the State only when it is engaged in any of the enterprises

or businesses enumerated in section 3 of that Act and therein declared to be extra hazardous. Under the provisions of subparagraph 8 nothing contained in the Act "shall be construed to apply to any work, employment or operations done, had or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, or to those who rent, demise or lease land for any such purposes, or to any one in their employ or to any work done on a farm or country place, no matter what kind of work or service is being done or rendered." Claimant was injured while engaged in baling straw on one of the farms of the Jacksonville State Hospital. In as much as the provisions of the Workmen's Compensation Act do not apply to one engaged in farming or to any kind of work or service being done on a farm it follows that claimant cannot recover under the provisions of that Act.

The petition for a re-hearing is therefore denied.

On March 28, 1929, upon a second petition for rehearing the following additional opinion was filed:

On September 11, 1928, the opinion denying an award and dismissing the cause was filed. Under Rule 30 of this court claimant filed his petition for a rehearing. That petition was duly considered by the court and the rehearing denied by an order filed October 24, 1928. On February 1, 1929, claimant filed a second petition for a rehearing and for leave to take additional testimony. This petition was not filed for over 3 months after the first petition was denied. Petitions for rehearing must be filed in accordance with the rules of the court. These rules of the court are adopted for the proper expedition of the business of the court and must be complied with. (*Wolfe* v. *State*, 5 C. C. 18; *Corris* v. *State*, 5 C. C. 76; *Lewson* v. *State*, 5 C. C. 80). They have the force of law and are obligatory upon the court itself as well as upon the parties to causes pending before it. The court has no discretion to apply them, or not, according to its convenience. (*Lancaster* v. *Waukegan & S. W. Ry. Co.*, 132 Ill 492). Rule 30, which relates to rehearings, provides that such petitions shall be filed within 25 days after the filing of the opinion. The second petition in this case was not filed for about 100 days after the last opinion was filed. It cannot, therefore, be considered, and is denied.

(No. 1289--Claimant awarded $51.27.)

HELEN FITCH GOULD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 11, 1928.

FEES AND SALARIES—*when award will be made for traveling expenses.* Award will be made for expense incurred in course of duties as Assistant Attorney General upon the recommendation of the Attorney General.

HELEN FITCH GOULD, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The declaration in this case shows that claimant is the only child and sole heir at law of Edward Churchill Fitch, who died intestate March 1, 1926; that, at the time of his death and for many years prior thereto, the said Edward Churchill Fitch was an assistant attorney general of the State of Illinois; that in the course of his duties as such assistant attorney general it became necessary for him to go to Chicago on February 15, 1928, where he remained until February 18, 1928, and that the expenses incurred by him in making this trip amounted to the sum of Fifty-one Dollars and Twenty-seven Cents. This claim is to reimburse claimant for that amount.

Attached to the declaration are a letter and statement of the Attorney General corroborating the facts as set forth in the declaration and recommending that the claim be allowed. It is, therefore, ordered by the court that the claimant be allowed an award in the sum of Fifty-one Dollars and Twenty-seven Cents.

(No. 871—Claim denied.)

NEW ERA CONSTRUCTION COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

CONTRACTS—*when State not liable under.* Where claimant enters into a contract with the State for the construction of certain grading and excavations and material, and by reason of certain changes resulting in the increase of the quantity of excavations and other work and material on account of the difference in character of the excavations not originally contemplated, claimant could not complete the contract within the time required by the contract; and also where losses are sustained by reason of increase in the cost of labor and material, *Held*, claimant not entitled to recover.

SAME—*when court will not establish a precedent.* No principle will be laid down or precedent established that will render ineffective future contracts and void future bonds.

D. A. HEBEL, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DEHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed by claimant alleges that claimant entered into a written contract with the Department of Public Works and Buildings of the State of Illinois, for the construction of certain grading and excavations and material and other work set out in Contract No. 1403 of Route No. 8, Section 37a, Tazewell county, Illinois, which contract is on file with said Department of Public Works and Buildings, Division of Highways of said State, and copy of which is made part of said declaration; that on or about September, A. D. 1922, claimant commenced work under said contract and undertook to fully and completely carry out and perform all the terms and conditions thereof, as well as certain changes and specifications thereafter from time to time made by the engineers of said Department of Public Works and Buildings, Division of Highways; that because of changes resulting in the increase of the quantity of excavation and other work and material required to be performed by claimant, under said contract, it became physically impossible for claimant to complete said contract within the time contemplated by said contract; that the character of the excavation necessary on route

in question involved a cut through Washington Hill, between the towns of East Peoria and Washington, in said State of Illinois, and that said excavation proved to be of a different character than originally contemplated and involved cutting through deep strata of blue clay and hard-pan with pockets of quick sand and numerous springs of water; that this work was of a kind and character for which claimant was not equipped to perform and that claimant thereupon undertook to equip itself and to faithfully carry out all of the requirements and changes from time to time made by said Department of Public Works and Buildings in said contract; that the stockholders of said corporation consisted of one Jerry Conners and his wife, Alice F. Conners, and one share each was held by two other persons; that said Jerry Conners, as principal stockholder was the individual who personally had charge of the work to be performed under said contract and gave the same exclusive personal attention and continued in the performance of said contract until March 5th, 1923, when he was stricken with double pneumonia and died; that on account of changes and the character of the work which had been made and arisen in connection with the contract, the work at the time of the decease of Jerry Connors was far from completed and claimant alleges that because of the quantity of work to be performed, said contract could not be performed within the time contemplated by said department of State, nor by claimant corporation; that there was a large increase in the cost of labor and material, amounting to about 60% over the cost of labor at the time when said contract was entered into; that it was necessary for claimant to borrow money and pay interest on same; and was also obliged to pay a large bonus to sub-contractors in connection with said contract, and also to pay subsequent to the decease of said Jerry Connors the increased cost of labor in connection with the completion of said contract; that claimant received from the Department of Highways, aforesaid, the sum of $62,162.59; that the total cost of the work and materials furnished was the sum of $78,375.05, and that claimant had necessarily expended in connection with the performance of said contract the sum of $16,212.46 and that unless this claim is allowed, same will be sustained by Alice F. Connors, widow of said Jerry Connors, deceased, and bill of particulars attached to said declaration includes claim for increase of cost of labor

and materials on added work and material, and on account of said contract extending over and into the years 1923 and 1924, $11,679.43; interest on additional funds required because of the changes and additions made in said contract subsequent to the time when the same was entered into, $2,333.03; bonus paid to sub-contractor required on account of higher cost of construction in 1923 and 1924, $2,200.00.

To this declaration, the Attorney General of the State of Illinois, filed a demurrer, which is sustained, as a matter of law.

After a careful review of all the evidence, we are of the opinion that this claim should not be allowed. After the execution of the contract, a bond covering both sections 37a of said Route 8, and Section 36 thereof, was properly executed and accepted by the Division of Highways. Mr. Connors through his company immediately after the acceptance of the contract and bond began the work, and before much of the work was finished, death overtook him. At the time of his death Mr. Connors, through the New Era Construction Company, had other contracts for similar work near Bloomington, Illinois, known as Sections 9 and 10 on Route 9 and one near Eureka, Illinois, on Route 8.

Upon his death his widow and her bank, the Lake View State Bank of Cook county, Illinois, finding the affairs of Mr. Connors and the New Era Construction Company in a complicated condition undertook to straighten out the affairs, complete the work contracted for on the part of the New Era Construction Company, and settle the estate of said Jerry Connors. The New Era Construction Company was re-organized by electing Richard F. Hickey, who was connected with the Lake View State Bank, as President of the company to take the place of Jerry Connors, deceased. When Mr. Hickey took over the affairs of the corporation, he negotiated with other contractors to get them to complete the work. Mr. Maloney, prior to the death of Mr. Connors, had been foreman for the New Era Construction Company and doing work at Carlock, Bloomington, and one place in Indiana and groceries were bought on one account and furnished to all these work gangs. The work on the contract known as Carlock was sublet and the party that finished the work at Carlock was given a bonus paid by the New Era Construction Company in the

amount of $2,200.00 and this bonus of $2,200.00 is charged up as part of the loss on the contract 37-A and asked to be met as a part of the deficit and to be recovered in this claim. The testimony further shows that Morris Canty, a laborer, was paid $205.00 for work that was done before Mr. Connor's death and the foreman, Mr. Maloney, didn't know whether Mr. Canty did the work on Washington Hill or not, for which this payment was made. This item of $205.00 is also included in statement and sought to be recovered in this claim. $663.00 for Mike Shanley is included in this claim, whereas the said Mike Shanley never worked on contract 37-A; similarly a charge of $1,033.02 is charged for liability insurance, and claimant has failed to establish what part of that applied to contract designated 37-A and 36. It is the contention of the defendant, and the court believes that this Carlock bonus, amounting to $2,200.00, interest charges amounting to $2,333.04 and excess wages, amounting to $2,477.27 are all items that under no circumstances could legitimately be included in any alleged loss for contract for sections 27-A and 36.

After Mr. Connor's death, all the contracts except for 37-A and 36 were sub-let, and the widow and Mr. Hickey, as President of the New Era Construction Company, decided to go ahead and complete the work on this contract and employed Mr. Maloney as foreman to do the work. After starting the work in the hill, known as Washington Hill, Mr. Maloney found that instead of being ordinary clay there was a substance known as "Blue Clay" and that same could not be excavated without the use of dynamite. Mr. Maloney, Mr. Hickey and the Division of Highways took up the subject and the question of extra pay for excavating the blue clay in question was discussed, and it was agreed that both parties should station a man at said hill and keep account of the cost of the excavation of said blue clay and that the State would pay the cost thereof plus 14 per cent of such cost as a profit. This agreement was fully consummated and the New Era Construction Company, upon settlement was paid the sum of $19,904.54 for the work done on Washington Hill, with reference to the blue clay, of this sum $2,601.91 being a profit to the New Era Construction Company, over the actual cost of the excavation.

After the work was finished, a final settlement was made with the New Era Construction Company, and this final statement bears the signature of "New Era Construction Company, by R. F. Hickey, President", to each of the sheets composing same, designating the approval of same by said company.

It is unfortunate that this loss must be sustained by the widow of Mr. Connors, but were this court to allow this claim, it would establish a dangerous precedent for cases of similar character. We do not doubt that after the making of the contract, there was a raise in the cost of labor and material, but this situation arises in all departments of business, and the court cannot lay down a principle or establish the precedent that will render ineffective future contracts and void future bonds.

The demurrer filed by the Attorney General is sustained, and the case dismissed.

(No. 1312—Claimant awarded $40.00.)

ALEXANDER M. KINKAID, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

FRANCHISE TAX—*when award will be made for franchise tax paid after the expiration of the corporate charter.* Where it appears that no franchise tax is due by reason of expiration of the corporate charter, award will be made for the tax erroneously paid.

ALEXANDER M. KINKAID, pro se.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for refund of franchise tax erroneously paid by the International Boiler Compound Company, of Chicago, Illinois, for the years of 1924, 1925, 1926 and 1927, to the Secretary of State after the expiration of its charter in October, 1923.

It is admitted by the Secretary of State that the charter of the International Boiler Compound Company had expired

in October, 1923, and that the franchise fees paid for the years 1924, 1925, 1926 and 1927 in the sum of Ten Dollars for each year, making a total of Forty Dollars, should not have been collected by the office of the Secretary of State.

As it is clear no tax was due, and as it is recommended by the Attorney General that an award be allowed the International Boiler Compound Company in the sum of Forty Dollars, an award for that amount is accordingly allowed.

(No. 1351—Claimant awarded $54.61.)

W. E. HARRIS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

FEES AND SALARIES—*when award will be made for traveling expenses.* Where there is no appropriation made to take care of expenses incurred in the performance of official duties as a Deputy Fire Marshall, an award will be made.

W. E. HARRIS, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

Claimant in this case, in his own behalf, represents, in his declaration, that he is now and was during the month of June, 1927, employed by the State of Illinois, as Deputy Fire Marshal in the Division of Fire Prevention of the Department of Trade and Commerce; that during said month, in pursuance of his official duties and under the direction of the Fire Marshal, was obliged to travel between certain cities, viz: Flora, Altamont, Olney and Robinson, all in the State of Illinois; that his traveling expenses in such official duties amounted to $54.61, and an itemized statement appears attached to said petition; that no appropriation was made to take care of said expenses. A statement filed by the Attorney General of the State of Illinois, suggests that a recommendation made by the State Fire Marshall, that same be allowed, be considered by this court.

We accordingly award claimant in this case the sum of $54.61.

(No. 1200—Claimant awarded $469.50.)

HELEN HARTZELL HAIR, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

PERSONAL INJURY—*when an award will be made.* Where it appears that it is in the interest of social justice and the public welfare, an award will be made for actual damages sustained on account of personal injuries received by being struck by a vehicle driven by a state highway officer.

ANNA M. MOORE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant in this case alleges, in her declaration filed on May 25th, 1927, that she was injured by reason of having been struck by a motorcycle, driven by a State Motorcycle Officer, Harold Lenox, on a State road, being Route 2, leaving from Amboy to Dixon, Illinois, while said officer was in the performance of his duties, said accident having occurred on June 15th, 1926; that as a result of said accident she was bruised, injured and wounded and her left leg was broken. Claimant asks only her actual damages sustained. The demurrer filed by the Attorney General of the State of Illinois, is sustained as a matter of law.

In the interest of social justice and the public welfare, we believe that an award should be made in this case, and we accordingly award the claimant the sum of Four Hundred Sixty-nine Dollars and Fifty Cents ($469.50).

(No. 1215—Claim denied.)

GEO. P. IDE & CO., INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

FRANCHISE TAX—*when no award will be made.* No award will be made when claimant fails to pursue remedies in courts of general jurisdiction. (Citing *Moline Plow Company v. State*, 5 CC Page 277.)

COURT OF CLAIMS—*jurisdiction.* The Court of Claims will not take jurisdiction where the controversy may be considered in courts created by the Constitution.

SAME—*when Court of Claims will not review acts of Secretary of State.* Where an adequate remedy is provided in the courts created by the Constitution, the Court of Claims will not review the acts or conduct of the Secretary of State.

SAME—*Powers of the Court of Claims—creature of the Legislature.* Whatever powers the Court of Claims possesses comes from the Legislature and it has no greater power than the department that created it.

SAME—*when Court of Claims has jurisdiction.* Where courts of general jurisdiction passes final judgment in behalf of claimant for money wrongfully or improperly collected, claimant would have a right to present his claim to the Court of Claims to recover the amount found by the judgment or decree by a court of last resort.

MOSES, KENNEDY, STEIN & BACHRACH, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed for the purpose of recovering certain sums alleged to be wrongfully collected by the Secretary of State on account of excess franchise taxes and initial fees paid by the claimant, a New York Corporation, prior to the year 1923. The Attorney General comes and defends, first, on the ground that the fees or taxes were paid without due protest or objection, and was as a matter of fact a voluntary payment. The court is of the opinion that the Attorney General presents sound reasoning on this point and the court believes that an analysis of this case would show a reasonable and sufficient defense. However, the court is of the opinion that this case should be considered largely through the reasoning of the Court of Claims in the case of the *Moline Plow Company v. State of Illinois*, reported in Vol. 5, Illinois Court of Claims Reports, at pages 277 and 278. In that

case this court held that claimants in this line of cases had an adequate remedy in courts of general jurisdiction and that this court did not presume to review the acts or conduct of the Secretary of State. This position is understood to be one of great moment and it certainly can be considered reasonable; that whenever a controversy arises wherein the head of a great department like that of the Secretary of the State of Illinois is involved, and wherein such controversy is permitted to be considered in the courts created by the Constitution of the State, this court or any other commission or department of the State should not take jurisdiction.

There is an element in this case that is urged by the claimant as a reason that should be considered by the court on a different theory other than that which is set forth in the Moline Plow Company case above cited and that is a provision in Section 2a of an Act in relation to the payment of public money in force as amended in 1921, and at the time of the payment of the taxes herein considered. The statute referred to is herein set forth in full, and is taken from Smith's Illinois Revised Statutes of 1921, Chapter 102, paragraph 13, and is as follows:

"13. Moneys under protest deposited with the State Treasurer. 2a. It shall be the duty of every officer, board, commission, commissioner, department, institution, arm or agency brought within the provisions of this Act by section 1 hereof to deposit with the State Treasurer any money received for or on behalf of the State under *protest*, together with a copy of the statement of *protest*, and the State Treasurer shall be ex-officio treasurer of such funds which shall not become part of the funds of the State of Illinois except as hereinafter provided. The State Treasurer shall pay such funds to the person or persons entitled to the same or into the State Treasury upon order of the Officer or his successor, having received such funds under protest. If no such order is received by the State Treasurer he shall at the expiration of two years from the time of the receipt of said funds turn the same into the proper fund into the State Treasury. *Such payment into the State Treasury shall not limit in any manner the right of any person entitled to such funds to present their claim to the Court of Claims nor prevent the General Assembly from appropriating money to pay such claims.* All such money shall be received by the State Treasurer and disbursed by him upon order of the Auditor of Public Accounts and the Auditor of Public Accounts shall keep an account of all such moneys, received, disbursed, and turned into the State Treasury as herein provided. (Added by Act filed July 13, 1921.)"

The above provision of the statute is cited for the purpose of considering the contention of the Attorney General in that proper protest or objection was not made as above

provided, which contention is considered very important as against the merits of this claim. However, the main reason for citing the above provision of the statute in force at the time of payment of the taxes in question, is to consider the force and effect of that part of the above statute regarding the presenting of a claim to the Court of Claims or to the General Assembly. It is the wish of this court to consider that part of the statute in the light of Article 3, Constitution of the State of Illinois, 1870, which is hereinafter set forth as follows:

"Distribution of Powers. Legislative—Executive—Judicial. The powers of the Government of this State are divided into three distinct departments—the legislative, executive and judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted."

In view of the fact that the claimants had a right to an adequate remedy in the courts created by the Constitution of the State, the very nature of any proceedings, whether it be in courts of general jurisdiction or in this court would be to review the conduct of the Secretary of State and his constitutional rights. Also that the question to be considered in this court or in any other court, certainly must be a question of law and one which most certainly ought to be considered by the Judicial Department of the State of Illinois. Therefore, this court, while reluctant about passing on the rights of the three great departments of the State, cannot be unmindful of the constitutional rights of the various departments. It must be admitted that whatever powers this court possesses comes from the Legislature and that this court has no greater power than the department that created it. And can it be assumed that the Legislature should become a court to determine or construe the decisions of the Supreme Court of the State bearing upon the rights of a claimant which is almost wholly of a legal nature, or would the Legislature desire to define or pass judgment upon the definition or construction of a statute from a constitutional viewpoint?

It is, therefore, the opinion of this court in considering the statute above cited, that the Legislature had in mind in passing the Act, the theory and object that a claimant would not be barred from redress in the Court of Claims after he followed the provision of the statute in question in the mat-

ter of protest and had followed all his other legal remedies provided by law and in the courts of general jurisdiction. It would appear proper to this court that if the courts of general jurisdiction would pass final judgment in behalf of a claimant for the payment of money wrongfully or improperly collected by the Secretary of State, that claimant would then have a right to present his claim in the Court of Claims to recover the amount found due him by the judgment or decree of a court of last resort of the State of Illinois.

For the reasons above set forth, it is recommended by this court that said claim be disallowed.

(No. 1217—Claim denied.)

THE LUNKENHEIMER COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

FRANCHISE TAX—*when no award will be made.* This claim was disallowed on the grounds that claimant had an adequate remedy at law in courts of general jurisdiction as expressed in the cases of *Moline Plow Company* v. *State*, and *Geo. P. Ide & Co., Inc.* v. *State*, No. 1215.

GRAHAM & GRAHAM, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, an Ohio corporation, seeks to recover on account of franchise taxes and initial fees alleged to be wrongfully collected by the Secretary of State.

This court is of the opinion that claimant had an adequate remedy at law in courts of general jurisdiction as expressed by this court in the opinion filed in the case of the *Moline Plow Company* v. *State of Illinois*, and in the case of *Geo. P. Ide & Co., Inc.*, v. *State of Illinois*, No. 1215.

Therefore it is recommended by this court that this claim be disallowed.

(No. 1224—Claim denied.)

THE EAGLE-PICHER LEAD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

FRANCHISE TAX—*when no award will be made.* This claim was disallowed on the grounds that claimant had an adequate remedy at law in courts of general jurisdiction as expressed in the cases of *Moline Plow Company* v. *State*, and *Geo. P. Ide & Co. Inc.* v. *State.*

W. F. HEINEMAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, an Ohio corporation, seeks to recover on account of franchise taxes and initial fees alleged to be wrongfully collected by the Secretary of State.

This court is of the opinion that claimant had an adequate remedy at law in courts of general jurisdiction as expressed by this court in the opinion filed in the case of the *Moline Plow Company* v. *The State of Illinois*, and in the case of *Geo. P. Ide & Co., Inc.*, v. *The State of Illinois.*

Therefore it is recommended by this court that this claim be disallowed.

(No. 1254—Claimant awarded $294.75.)

L. H. DODSON, ADMINISTRATOR OF THE ESTATE OF ELTON DODSON, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

PERSONAL INJURIES—*death—when award will be made—dependency for support.* Where claimant receives injuries in course of employment which result in death and there is no evidence of dependency, an award will be made for medical, hospital and funeral expenses.

BENJ. F. CASSIDAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed in this cause on November 7th, 1927, alleges that on June 6th, A. D. 1927, Elton Dodson was en-

gaged, through the Department of Public Works and Buildings, Division of Highways, in the maintenance of certain durable hard surfaced roads within and for the State of Illinois; that it was necessary for said defendant, in the maintenance of said hard surfaced roads to mark the center line of same with asphalt or like material, and was at that time preparing to so mark the hard surfaced roads, at or near Kewanee in Henry county, Illinois; that in such preparation, it was necessary to prepare a fire in a furnace of an asphalt or tar machine before applying it to the center line of said roads, and that it was dangerous and unsafe for a person to start the fire in said furnace by means of oil or kerosene; that defendant ordered said Elton Dodson to start said fire in said furnace of said asphalt or tar machine, by means of oil or kerosene, and that while so acting with all due care and caution for his own safety, did then and there attempt to start said fire in said furnace of said asphalt or tar machine used in the maintenance of said durable hard surfaced roads, and by reason of a combustion or explosion in said furnace, said Elton Dodson was horribly burned about his person, from which burns he died at the St. Francis Hospital, Kewanee, Illinois, at 6:40 A. M., June 6th, 1927; that he left a mother, father, and seven brothers and sisters him surviving, and claimant, as administrator of the estate of Elton Dodson, deceased, asks damages in the sum of $5,000.00.

In the testimony introduced, there is no evidence of dependency, but there are medical, hospital, funeral and transportation expenses, which are proved in a total sum of Two Hundred Ninety-four and 75/100 Dollars ($294.75), and we accordingly award claimant in this suit the sum of $294.75.

(Claims allowed.)

TONY BLASI, 1262; HECTOR DURANTE, 1263; MARTIN CANNON, 1264; THOMAS BOUCHIER, 1265; LOUIS J. STRELITSKY, 1266; FRED L. HUCHBERGER, 1267; WILLIAM L. ROSSELL, 1268; FRANK E. ARKUSZEWSKI, 1269, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

FEES AND SALARIES—*when an award will be made for salary provided by statute.* Where the statute fixes the amount of salary to be paid, but an insufficient amount is appropriated by the Legislature, an award will be made for the difference in the amount appropriated and the amount provided by Statute.

HARRY SMITZ, for claimants.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed on behalf of the above entitled claimants for salary provided for by statute, for the positions which they held, but for which no appropriation was made by the Legislature. This court made an award recommending to the Legislature that they appropriate to the same claimants in other claims for a different period of time, the difference in the amount of the salary which was appropriated by the Legislature and the amount which was provided by statute to be paid them. The Legislature appropriated for award and they have received it. They now ask the court to make awards for the period from January 1st, 1927, to July 1, 1927. Upon receipt of these claims that were forwarded to Hon. George B. Arnold, Director of Department of Labor, for report as to correctness of the facts therein set forth and advise as to what disposition to make of them, he reported and advised by letter, copy of which is with said files and in which letter said Director of Department of Labor recommended that awards be made in each of these cases as listed for salaries.

We accordingly award to Tony Blasi the sum of $500.00; to Hector Durante the sum of $500.00; to Martin Cannon the sum of $500.00; to Thomas Bouchier the sum of $400.00; to Louis J. Strelitsky, the sum of $400.00; to Fred L. Huchberger, the sum of $200.00; to William M. Rossell, the sum of $150.00; to Frank E. Arkuszewski, the sum of $50.00.

(No. 1270—Claim denied.)

AMERICAN FORGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

Rehearing denied February 13, 1929.

FRANCHISE TAX—INITIAL FEES—*when no award will be made.* The decision in this case is controlled by the opinion filed in the case of *Moline Plow Company* v. *State of Illinois*, No. 687 and the case of *George P. Ide & Co., Inc.*, v. *State of Illinois*, No. 1215.

REHEARING—*when rehearing will be denied.* Where the records fail to disclose any reason for a change in the opinion originally filed, the petition for rehearing will be denied.

FOLLANSBEE, SHOREY & SCHUPP, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, a Delaware corporation, seeks to recover on account of franchise taxes and initial fees alleged to be wrongfully collected by the Secretary of State.

This court is of the opinion that claimant had an adequate remedy at law in courts of general jurisdiction as expressed by this court in the opinion filed in the case of the *Moline Plow Company* v. *The State of Illinois* and in the case of *Geo. P. Ide & Co., Inc.*, v. *The State of Illinois.*

Therefore it is recommended by this court that this claim be disallowed.

On February 13, 1929, upon petition for rehearing the following additional opinion was filed:

This is a case before this court on rehearing. The court is of the opinion that the records fail to disclose any reason for a change in the opinion heretofore filed in said claim.

It is therefore recommended by this court that petition for rehearing be denied.

(No. 1271—Claim denied.)

PRATT & LAMBERT, INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

Rehearing denied February 13, 1929.

FRANCHISE TAX—*when no award will be made.* The decision in this case is controlled by the opinion filed in the case of *George P. Ide & Co., Inc.*, v. *State of Illinois*, No. 1215, filed October 24, 1928.

FOLLANSBEE, SHOREY & SCHUPP, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, a New York Corporation, seeks to recover on account of franchise taxes and initial fees alleged to be wrongfully collected by the Secretary of State.

This court is of the opinion that claimant had an adequate remedy at law in courts of general jurisdiction as expressed by this court in the opinion filed in the case of *The Moline Plow Company* v. *The State of Illinois*, and in the case of *Geo. P. Ide & Co., Inc.*, v. *The State of Illinois*.

Therefore it is recommended by this court that this claim be disallowed.

On February 13, 1929, upon petition for rehearing the following additional opinion was filed:

This is a case before this court on rehearing. The court is of the opinion that the records fail to disclose any reason for a change in the opinion heretofore filed in said claim.

It is therefore recommended by this court that petition for rehearing be denied.

(No. 1281—Claim denied.)

G. F. BRAUN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

PROPERTY DAMAGE—*when no award will be made by reason of negligence of a State employee—exception.* No award will be made for damages caused by the negligence of the State's agents or servants, unless there is a statute expressly making it so liable.

HIGHWAYS—*when no award will be made for negligence of an employee in the maintenance of a State highway—governmental functions.* The maintenance of a State highway is a governmental function which the State exercises through its officers and employees. If in the discharge of his duties, an employe is negligent and such negligence causes injury or damage to the person or property of another, the negligence is then an act of the employee and cannot be regarded as the act of the State.

G. F. BRAUN, pro se.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for damages to the automobile of claimant alleged to have been caused by the negligence of the driver of a truck owned by the State and then being used in maintenance work on State Highway No. 36. The declaration is drawn on the theory that the State is liable for injuries caused by the negligent conduct of its employees. The whole case of claimant is presented on the assumption that the same principles of law apply to the State as are applicable to individuals and corporations. In this assumption claimant is in error. Individuals and corporations may be liable for damages caused by the negligence of their agents or servants. The State, however, is never liable for damages caused by the negligence of its servants, agents or officers unless there is a statute expressly making it so liable. This rule has been so frequently announced that it ought to be familiar to all members of the legal profession. In *Kinnare* v. *City of Chicago*, 171 Ill. 332, at page 335, the Supreme Court of the State announced the rule in the following language: "The State acts in its sovereign capacity, and does not submit its action to the judgment of courts and is not liable for the torts or negligence of its agents, and a corporation created by the State as a mere agency for the more efficient exercise of governmental

functions is likewise exempted from the obligation to respond in damages, as master, for negligent acts of its servants to the same extent as is the State itself, unless such liability is expressly provided by the statute creating such agency." The maintenance of a state highway is a governmental function which the State exercises through its officers and employees. If, in the discharge of his duties, an employee is negligent and such negligence causes injury or damage to the person or property of another the negligence is the act of the employee and cannot be regarded as the act of the State. (*Cooney* v. *Town of Hartland*, 95 Ill. 516.) In discussing this question in *Jorgensen* v. *State*, 2 Ct. Cl. 134, this court said: "This proposition of law, so well established, has been consistently followed by this court in the adjudication of all claims that have ever come before it, and applies with equal force to the cause now on hearing." Many decisions of this court announcing the same rule have been made since that time. The law being as it is, it necessarily follows that claimant is not entitled to an award against the State. His right of action is against the driver of the truck.

The claim is therefore denied and the cause dismissed.

(No. 1284—Claimant awarded $100.00.)

JOHN FARMER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

PROPERTY DAMAGE—*when an award will be made for damages to automobile resulting by reason of a collision with a car driven by an employee of the State Highway Department.* An award will be made for damages to an automobile resulting by reason of a collision with an employee of the State Highway Department upon the recommendation of the Division of Highways and the office of the Attorney General.

WHITE & QUINBY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK B. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim to recover damages in the sum of $150.00, alleged to have been sustained by claimant, John Farmer, when his Ford Coupe, collided with a car driven by Ed Young,

head mechanic of the State Highway Department, who works at the Highway Department garage in Carbondale, the accident having occurred on January 9th, 1928, at 6:30 o'clock A. M., while claimant was driving on Route No. 37 between Marion and Johnston City. The claim is for a small sum, and the State, through the Attorney General, has submitted a statement to the effect that no evidence was taken on behalf of the claimant for the reason that the Highway Department and the office of the Attorney General are of the opinion that a $75.00 settlement of this suit, taking into consideration the contingencies of the case, would be better than to attempt to fight it.

Under the circumstances in the case, we feel that an award of $100.00 to claimant is justifiable and equitable, and we do accordingly award to claimant the sum of One Hundred Dollars.

(No. 1285—Claimant awarded $73.86.)

JOHN R. LOGAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

ANIMALS—*when an award will be made to compensate the owner of cattle killed because they reacted to a tuberculosis test.* An award will be made to compensate the owner of cattle destroyed for the purpose of eliminating bovine tuberculosis upon the report and recommendation of the Department of Agriculture.

RALPH R. SHERIDAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim filed on behalf of the claimant, in order that the claimant might be reimbursed for cattle killed because they reacted to a tuberculosis test made by the State of Illinois.

The claim was forwarded to the Director of the Department of Agriculture, for report and he recommended that a claim of $73.86 be allowed.

On the recommendation of the Director of Agriculture an award in the sum of $73.86 is allowed.

(No. 1297—Claimant awarded $13.10.)

E. M. WADE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 24, 1928.

ANIMALS—*when award will be made for the loss of a cow destroyed for the purpose of eradicating bovine tuberculosis.* An award will be made for the loss of cattle destroyed for the purpose of eradicating bovine tuberculosis upon the recommendation of the Superintendent of Animal Industry of the Department of Agriculture.

VAN SANT & BESSE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The Declaration filed in this case, alleges that on March 4th, 1927, claimant had his herd of dairy cattle, consisting of nine head tested for tuberculosis by Dr. B. L. Lake, Chief Veterinarian of the Department of Agriculture, and that one grade Holstein cow, appraised at $85.00 reacted to the test and was later placed under quarantine and shipped to the Union Stock Yards, Chicago, for slaughter; that he received from the Commission House in Chicago for said Holstein reactor the sum of $45.73; leaving a difference of $39.30, of which the Federal Government should pay $13.10 and the State of Illinois $13.10. A statement made by the Attorney General's office, avers that the claim was forwarded to Hon. S. J. Stanard, Director of Agriculture, and by him forwarded to Hon. D. W. Robinson, Superintendent of Animal Industry, by said Director of Agriculture and their letter attached to said statement verifies the correctness of the claim under consideration.

We therefore award claimant in this case the sum of $13.10.

(No. 1197—Claim denied.)

JOHN S. HOPF, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 5, 1928.

PROPERTY DAMAGE—*when State not liable for damage caused by wild game.* The State is not liable for damage caused by wild game even though such game is protected by the State game laws.

GAME—*protection and preservation of game under police power.* The protection and preservation of wild game is a proper exercise of the police power of the State.

JOHN S. HOPF, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The declaration in this case states: "This claim is based on account of wild pheasants, protected under Illinois State Game Laws, scratching out and eating seed corn which necessitated four plantings and failure of crop for year 1925 and a loss of three hundred and sixteen dollars and seventy cents." The Attorney General has filed a general demurrer to the declaration, but no briefs have been filed by either claimant or defendant.

Apparently claimant bases his right to an award upon the theory the State is liable for damages caused by wild birds and animals that are protected by the State game laws.

The title to wild game and birds is in the State, and is held by it for the benefit of all the people of the State. *Schulte* v. *Warren*, 218 Ill. 108. The protection and preservation of wild game is a very common police regulation in all civilized countries and is justified on many grounds, one of which is for the purposes of food. *American Express Co.* v. *The People*, 133 Ill. 649. The protection of the pheasants in question being a proper exercise of its police powers by the State, claimant is not entitled to any compensation for the damages, if any, which he may have suffered consequent thereof.

The demurrer is sustained and the case dismissed.

(No. 1220—Claimant awarded $770.00.)

BOARD OF SCHOOL INSPECTORS OF THE CITY OF PEORIA, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 5, 1928.

SCHOOLS—*when award will be made for maintaining schools for delinquent children.* Where the statute provides for the payment from the State Treasury the excess cost of maintaining and operating classes and schools for delinquent children committed by courts of competent jurisdiction, an award will be made upon the recommendation of the Attorney General.

TODD, MORGAN, PENDARVIS & ARBER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This claim is filed by the Board of School Inspectors of the City of Peoria, Illinois, setting forth that on June 30th, 1925, in the City of Peoria and County of Peoria in the State of Illinois, that the State of Illinois was indebted to the plaintiff in the sum of Seven Hundred Seventy Dollars ($770.00) for money paid out and expended by the plaintiff for the use of the defendant.

It appears from the declaration that the plaintiff pursuant to "An Act to enable school directors and boards of education to establish and maintain classes and schools for delinquent children committed by courts of competent jurisdiction and providing for the payment from the State Treasury of the excess cost of maintaining and operating said classes and schools over the cost of maintaining and operating elementary schools for normal children," approved June 2, 1911, in force July 1, 1911; did expend the sum of Seven Hundred Seventy Dollars ($770.00).

The Attorney General filed a statement of facts and recommended that the sum of Seven Hundred Seventy Dollars ($770.00) be allowed.

The court, therefore, awards the plaintiff the sum of Seven Hundred Seventy Dollars ($770.00).

(No. 1294—Claimant awarded $1,086.95.)

FELIX A. WALLACE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 5, 1928.

INHERITANCE TAX—*when an award will be made.* An award will be made for the amount of inheritance tax over-paid upon the recommendation of the Attorney General.

W. A. LEOPOLD, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is an action to recover inheritance taxes over-paid by plaintiff to the State of Illinois in the amount of $1,086.95. The suit was begun by said plaintiff, Felix A. Wallace by verified declaration and filed in this Honorable Court April 12, 1928. The defendant, State of Illinois, has filed no answer, plea or other pleading of which plaintiff has had notice. Plaintiff duly appealed to the County Court of Cook County from the order of the county judge of said county fixing said tax at $7,171.38. Plaintiff's verified declaration shows that plaintiff's claim has not been presented to an official, individual or corporation or to any tribunal other than to this Honorable Court and that plaintiff has not received any part of the same.

The bill of particulars, plaintiff's exhibit A, sets forth that the amount of said inheritance tax paid was the amount of the original assessment by the said county judge, less the discount of 5% allowed by law, namely, $6,812.81 and that the County Court of Cook County reduced said tax to $6,027.22 and that this latter amount less 5% discount is provided by law, was and is now the full amount of tax the State of Illinois is entitled to, namely, $5,725.86, an overpayment to the State of Illinois of $1,086.95; all of which facts are supported by the evidence in the form of exhibits B, C, D, and E, duly authenticated copies of the public records, respectively, of letters testamentary, order fixing the tax, receipt and acknowledgment of the payment thereof, and final order and judgment of the County Court of Cook County reducing said tax.

The Attorney General has filed a statement with the recommendation that the claim be allowed. We, therefore, allow the claimant the sum of $1,086.95.

(No. 1296—Claimant awarded $50.00.)

E. P. ELLWOOD AND JOHN NELSON, CO-PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF ELLWOOD AND NELSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 5, 1928.

ANIMALS—*when an award will be made for cattle destroyed for the purpose of eradicating bovine tuberculosis.* Where it appears that cattle have been destroyed in accordance with law for the purpose of eliminating bovine tuberculosis an award will be made upon the report and recommendation of the Division of Animal Industry of the Department of Agriculture.

POUST, FISK & MOUDRY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration in this case alleges that E. P. Ellwood and John Nelson, co-partners are engaged in the dairy business in the township of DeKalb, County of DeKalb, and State of Illinois; that they were the owners of one Holstein bull registered as follows: Co. 46-500, St. 1401, 500688 Holstein Barkrest Dione Fobes, which re-acted to tuberculosis test and was thereafter destroyed in accordance with the law on the 23rd day of March, 1927.

The claimant further alleged that this bull was appraised and that they, the claimants, received the sum of Forty-seven and 45/100 Dollars ($47.45) as salvage for said bull, leaving a deficiency of One Hundred Fifty-two and 55/100 Dollars ($152.55) of which the United States is required to pay Fifty Dollars ($50.00) and the State of Illinois Fifty Dollars ($50.00).

The Attorney General files a statement setting forth that this claim was forwarded to the Department of Agriculture for report and advice and the Division of Animal Industry of the Department of Agriculture reported on this claim under date of August 13, 1928, by letter, copy of which is attached and marked exhibit A and made a part of this statement. The Department of Agriculture recommends that the claim be paid. The claimants are, therefore, awarded the sum of Fifty Dollars ($50.00), the full amount of their claim.

(No. 1316—Claimant awarded $2,259.50.)

ROBERT A. NORTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 5, 1928.

MILITARY SERVICE—*when award will be made for personal injury received in line of duty while a member of the Illinois National Guard—Workmen's Compensation Act.* Where claimant receives injuries in line of duty while a member of Illinois National Guard, an award will be made and the amount computed under the provisions of the Workmen's Compensation Act.

EMIL J. BENSON AND JOHN M. PEFFERS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed for the purpose of recovering compensation for the personal injury sustained in line of duty while a member of Battery B, 124th Field Artillery, Illinois National Guard.

In the statement filed by the Attorney General, it is admitted that the claimant in his statement, brief and argument properly states the facts and circumstances surrounding the cause of injury and that the amount of the award should be based on the basis of the Workmen's Compensation Act.

Therefore, it is the opinion of the court, that the claimant be awarded the sum of Two Thousand, Two Hundred Fifty-nine Dollars and Fifty Cents ($2,259.50).

(No. 1819—Claimant awarded $2,000.00.)

DOUGLAS L. McKENNEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 5, 1928.

FEES AND SALARIES—*when award will be made for additional salary due Assistant Illinois Commerce Commissioner.* Where the statute fixes the salary of Assistant Commerce Commissioner and the Legislature fails to appropriate sufficient funds to pay it, such failure of the Legislature to appropriate sufficient funds does not relieve the State from its legal duties to pay the amount provided by Statute and an award will be made.

BENJAMIN S. DEBOICE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On the 4th day of October, 1921, claimant was appointed assistant commerce commissioner and served in that capacity until July 29th, 1925, when he was reappointed, his appointments being made under the provisions of the Act concerning public utilities. Section Five of that Act fixes the salary of the assistant commerce commissioners at $5,000.00 per annum. The Fifty-third General Assembly, in making the appropriations for the ordinary and contingent expenses of the State government, failed to appropriate sufficient funds to pay the assistant commerce commissioners in full and claimant was paid only $4,000.00 a year for the two years following July 1st, 1923, leaving $2,000.00 due him for services rendered during those two years, and he has filed his claim for the $2,000.00 due him. It is conceded by the attorney general that claimant performed the services of an assistant commerce commissioner during those two years and that he is entitled to recover from the State the unpaid balance of his salary.

It is therefore ordered that claimant be awarded the sum of Two Thousand Dollars ($2,000.00).

(No. 1353—Claimant awarded $3,173.98.)

ADELBERT D. RYAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 5, 1928.

PERSONAL INJURY—*when award will be made for injuries sustained while an employee of the Division of Highways*—*Workmen's Compensation Act.* Where the evidence shows that claimant received permanent injuries in course of employment while working as a laborer for the Division of Highways, an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.

LEO P. BAIRD, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant on the 26th day of May, 1927, was an employee of the Division of Highways of the Department of Public Works and Buildings of the State of Illinois as a laborer. And while in the course of such employment moving mud, dirt and rubbish from the concrete roadway on Route 41 near the City of Galesburg, Illinois, an automobile driven in a southerly direction over said highway struck and ran over claimant. It appears from the evidence that claimant will never have full use of one of his legs and that he is permanently disabled from doing physical labor to the extent of fifty per cent.

The court is of the opinion from all the evidence and facts disclosed in the case which is admitted by the Attorney General, that the claimant should and ought to recover, using the Illinois Workmen's Compensation Act as a measure, the sum of Thirty-one Hundred Seventy-three 98/100 ($3,173.98) Dollars.

It is therefore recommended that said claimant be allowed the said sum of Thirty-one Hundred and Seventy-three 98/100 ($3,173.98) Dollars.

(No. 1356—Claim denied.)

FRANK G. ANTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 5, 1928.

SOLDIERS BONUS—*jurisdiction of Service Recognition Board.* No court has jurisdiction to review the actions of the Service Recognition Board, or allow claims for compensation which it has passed upon and denied, and its findings are a final adjudication of the matter.

COURT OF CLAIMS—*when Court of Claims has no jurisdiction.* The Court of Claims will not assume jurisdiction where the statute provided an agency of the State to receive and pass upon the merits of all applications for compensation under the Soldiers Bonus Act.

J. E. BRACH, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court.

Claimant bases his right to an award upon the provisions of the Act of May 8, 1921, providing for the payment of compensation to soldiers and sailors who served in the war with Germany. The Attorney General has filed a general demurrer to claimant's declaration, and claimant has filed a motion to overrule the demurrer and for judgment.

The declaration and the exhibits attached thereto and made a part thereof show that claimant made application to the Illinois Service Recognition Board for compensation under the provisions of that Act, and that his claim was disapproved by that Board July 18, 1925. The declaration also shows that claimant made application for compensation to the Department of Adjusted Compensation of the State of Ohio, and that his claim was disapproved by it also. He now contends that the Illinois Service Recognition Board erroneously disapproved his claim and asks this court to make an award in his favor for $300.00, the amount he alleges is due him under the provisions of the Act.

The Service Recognition Board consisted of the Governor, State Treasurer and Adjutant General. By Section 5 of the Act it is provided, "This board shall have complete charge and control of the general scheme of payments authorized in this Act and may adopt general rules for the making of such payments, the ascertainment and selection of proper beneficiaries and the amount to which such beneficiaries are

entitled, and for procedure. The Service Recognition Board shall adopt general rules for determining the question of whether an applicant was a resident of this State at the time he entered the service; and shall prescribe by rule, the nature of the proof to be submitted to establish the fact of residence."

It is apparent from the provisions of this section that the legislature intended to give the Service Recognition Board full and final jurisdiction of all applications for compensation under that Act. That being true, no court has jurisdiction to review its actions, or to allow claims for compensation which it has passed upon and denied. But it is said by claimant that "this court has power to recognize those claims which the State of Illinois should, 'in equity and good conscience discharge and pay.'" That is true as to claims against the State that have not been passed upon by some other agency of the State. But this court has no appellate jurisdiction. And the Service Recognition Board having heard the evidence of claimant in support of his right to compensation and having found against him its finding is a final adjudication of the matter.

It is urged by claimant that his claim was disapproved by the Service Recognition Board for reasons over which he had no control—for no fault of his. If that be true, he had an opportunity to have the whole matter gone into for the purpose of determining whether or not he was really entitled to the compensation claimed. On November 15, 1927, he was notified that the existence of the Service Recognition Board terminated November 9, 1927. The Legislature recognized that there might be claimants whose claims had been disallowed through no fault of theirs, and passed the Act of July 7, 1927. This Act provides that any person entitled to compensation under the Act of May 3, 1921, "and who in good faith applied for but, through no fault of his own, did not receive such compensation * * * * shall be paid the same compensation as that provided for by said cited Act, if such person makes application therefor within one year from the time this Act takes effect. Application for delayed compensation under the provisions of this Act shall be made to the Adjutant General of Illinois." Section 2 of this Act makes it the duty of the Adjutant General "to receive and pass upon the merits of all applications for compensation

have created the position of business manager and the claimant would have received his salary as a matter of course. They were therefore unable to pay the claimant.

The Attorney General of the State of Illinois has filed a statement in this cause, stating that the facts as set forth in the statement of claimant were correct. Therefore, it is recommended that claimant be allowed the sum of Twenty-eight Hundred Dollars ($2,800.00).

(No. 1376—Claimant awarded $37.10.)

ARMOUR AND COMPANY OF DELAWARE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 5, 1928.

CONTRACTS—*when award will be made for supplies furnished to a State Department.* Where it appears that itemized invoices were not presented for payment during the period specified by the appropriation covering the same, an award will be made for supplies furnished to a State Department.

HARRY B. BOGG, JR., for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

A declaration filed in this case shows that Armour and Company of Delaware, a Delaware corporation, sold and delivered to the Department of Public Welfare of the State of Illinois, one barrel of Green Hospital Soap, weighing net, 434 lbs., at a price of 8¾¢ per lb., or a total of $37.10; that the said shipment was delivered on the same day as ordered, i. e., the 14th day of May, 1925, and was in accordance with order No. 84276-A of said State Department.

Claimant further states that the amount of $37.10 has never been received by it or its agents.

The Attorney General of the State of Illinois files a statement with letter attached from Hon. R. W. Ide, Director of the Department of Public Welfare in which the statement is made:

"Our storekeeper reports the receipt of merchandise described in claim submitted by the above company.

This account was not taken care of, inasmuch as the contractor failed to present itemized invoices in triplicate, during the period specified by appropriation governing same."

There appears to be no question that this is a just claim and that the amount has never been paid to claimant.

We, therefore, recommend that an award be made to claimant in the sum of $37.10.

(No. 1022—Claim denied.)

HORACE K. TAYLOR, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 14, 1920.

DISMISSAL—*upon motion of claimant.* Where there appears to be no reason why case should not be dismissed, same will be dismissed upon motion of claimant.

JOHN M. PEFFERS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Per Curiam: This case coming on to be heard upon oral motion of claimant that the above entitled cause be dismissed and it appearing that the cause should be dismissed,

It is therefore considered, that said cause be, and the same is hereby dismissed.

(No. 1023—Claimant awarded $5,000.00.)

MAXINE BROWNING, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1920.

MILITARY SERVICE—*when award will be made for death of a member of Illinois National Guard.* An award will be made for the death of a member of the Illinois National Guard who is killed in line of duty.

WILLIAM E. KING, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant herein is the widow of Osceola A. Browning, deceased, who was killed in a trench mortar explosion at Camp Grant, Illinois, on the 24th day of August, A. D. 1925.

The husband of the claimant, was, in the opinion of the court, acting in line of duty and it would appear that it was a patriotic duty and it is the opinion of the court that a substantial allowance should be made in view of the fact that the husband of claimant was killed in line of duty and was the support of claimant as admitted.

Therefore, we recommend that the claimant be allowed the sum of Five Thousand Dollars ($5,000.00).

(No. 1071—Claimant awarded $3,750.00.)

SAMUEL G. HARRIS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1929.

MILITARY SERVICE—*when award will be made for injuries sustained by a member of the Illinois National Guard.* An award will be made where claimant receives injury in line of duty while a member of the Illinois National Guard.

CHARLES J. JENKINS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by Samuel G. Harris, plaintiff, setting forth that on the 24th day of August, A. D. 1925, the defendant was possessed of a certain trench gun and shell; and that on said day or prior thereto the said State of Illinois by its duly authorized agent had caused said trench gun and shell to be sent to Howitzer Company of the Eighth Regiment Illinois National Guard then holding practice at Camp Grant, Rockford, Illinois, for and in order that said company might use the said trench gun and shell for practice shooting.

That the plaintiff was then and there a regularly enlisted soldier in said company of the rank of first lieutenant and was in the actual discharge of his duties as such and was then and there exercising all due care and caution for his own safety and for the safety of the members of his company and of the other soldiers and the spectators then and there upon the field.

That the defendant by its agent negligently sent said trench gun to the plaintiff's company for use as a practice gun and same being then and there defective and that by reason of said negligence and said defective gun when a shell was placed therein by the soldiers then and there under the command of Captain Osceola Browning said shell did then and there explode in said trench gun and that steel parts of said trench gun and shell did then and there strike the plaintiff with great force and violence and did then and there knock the plaintiff down to and upon the ground there and did grievously hurt, bruise and wound the plaintiff and inflicted divers wounds upon the plaintiff's arms and body; that plaintiff still has two pieces of shrapnel lodged in his body, two pieces of shrapnel lodged in his right arm and one piece lodged in his left arm, and by reason of said bruising, hurting and wounding of the plaintiff, the plaintiff then and there became lame, sick, sore and disordered and so continued for a long time.

That the plaintiff while not on actual duty as a lieutenant in said Eighth Regiment Illinois National Guard is employed as a clerk in the United States Post Office and earns therefrom a salary of One Hundred Seventy-five Dollars ($175.00) per month; that during all of said time to-wit from thence hitherto was rendered totally incapable of following his occupation and of transacting his business by him during that time to be done; and also thereby the plaintiff during the time since said explosion aforesaid to the date hereof was rendered and is totally incapable of following his occupation and of transacting his business by him during that time to be done and also thereby the plaintiff became and was sick, sore, and disordered as aforesaid; and that the plaintiff further shows that he has always been a good soldier with a clean record and has been a member of the Eighth Regiment National Guard seven years.

The Attorney General filed a demurrer to the declaration which as a matter of law is sustained.

The Attorney General also filed a statement as follows:

"The claimant in his statement, brief and argument makes a correct statement of the facts and the law and properly applies the same in his argument.

"I, therefore, submit this claim to the court for such disposition that they care to make. If the court makes an allowance in this claim in accordance with the allowances made in other claims involved in the same fact, this claimant is entitled to $3,750.00."

The court, therefore, awards the claimant the sum of $3,750.00.

(No. 1199—Claimant awarded $500.00.)

FRANK A. SCHOENHOLZ, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1929.

PROPERTY DAMAGE—*when award will be made for.* **Where it appears from all the evidence that claimant is prevented from the use of his property by reason of the construction of a State Highway, an award will be recommended for such damage.**

HENRY C. WARNER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim to recover damages by reason of construction of State Highway Number 2, between Dixon, Illinois, and the village of Grand Detour, Illinois.

Previous to the construction of this road, there was a slope of the entire distance, down to the old road, but in the reconstruction of the new highway at the increased level, a depression four feet in depth was caused, which prevented the use of the land by claimant.

It appears from all of the evidence that the claimant was damaged and it is therefore recommended that the claimant be allowed the sum of $500.00.

(No. 1279—Claimant awarded $191.40.)

CARROLL D. SCHNEPP, an individual, doing business as CARROLL D. SCHNEPP CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1929.

PROPERTY DAMAGE—*when award will be made for damage to automobile by reason of an unavoidable accident on a hard road.* Where the claimant's automobile is damaged as a result of an unavoidable collision with a traffic line maker operated by the State Highway Department, an award will be made upon the recommendation of the Chief Highway Engineer and the Attorney General.

PENICK, ADAIR & PENICK, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant represents that on the 6th day of October, 1927, he was the owner of a Chrysler Coupe, Model Sixty, purchased new April 9th, 1927; that on October 6th, 1927, the claimant was driving the said Chrysler Coupe, bearing an Illinois automobile license for the year 1927 numbered 1-004-054, from the City of Pittsfield, Illinois, to the City of Barry, Illinois, in Pike County.

Claimant further states that he was driving and operating the said automobile upon the State hard surfaced road, Route number Thirty-six approaching the City of Barry, Illinois, about three miles therefrom, that while so driving on the concrete slab of said road the claimant began the ascent of a grade or incline and when he neared the top of the ascent the grade or incline a machine or device commonly known as a traffic line marker, which was being used for the purpose of marking a black line in the center of the concrete slab on said highway and said Traffic Line Marker was in the rear of and connected to a motor vehicle belonging to the State of Illinois.

Claimant further represents that as he proceeded, with due care and caution, having proper regard for his own safety and for the safety of others, and when about four hundred feet from said Traffic Line Marker, this claimant saw several men motioning him to stop his automobile.

The claimant further represents that he did stop and did drive his automobile as far off the concrete slab as the shoul-

der at the right hand side of said concrete slab would permit.

The claimant further represents that the Traffic Line Marker by some means unknown had become disconnected from said automobile truck and under its own weight and pull of gravity began to descend the grade or incline gaining speed as it approached the automobile occupied by this claimant.

The claimant further represents that said Traffic Line Marker was travelling at a great rate of speed and it swerved into, struck and collided with the claimant's automobile, damaging claimant's automobile in the sum of Five Hundred Ninety-one and 40/100 ($591.40) Dollars.

The Attorney General filed a demurrer which as a matter of law is sustained.

The Attorney General also filed a statement and attached thereto is a letter signed by Frank T. Sheets, Chief Highway Engineer, which is as follows:

"Court of Claims December 8, 1928.

CARROLL D. SCHNEPP
vs. No. 1279.
STATE OF ILLINOIS

HON. OSCAR E. CARLSTROM,
Attorney General
Supreme Court Building
Springfield, Illinois

My dear Mr. Carlstrom:

Answering your communication of November 20th, with reference to the above mentioned case, we have examined the report made by the party in charge of the State truck and marker at the time the accident occurred, and from the report it appears that the accident was unavoidable.

Therefore, we feel that Mr. Schnepp is entitled to reimbursement to the extent of the actual amount of money expended on the repairs to his car, which as we understand from your letter amounts to $191.40.

Very truly yours,

DIRECTOR.

(Signed) FRANK T. SHEETS,
Chief Highway Engineer."

The Attorney General recommends that the court allow the claimant the sum of One Hundred Ninety-one and 40/100 ($191.40) Dollars.

Acting in accordance with the letter of the Chief Highway Engineer and the recommendation of the Attorney General, the court allows the claimant the sum of One Hundred Ninety-one and 40/100 ($191.40) Dollars as full damages in this case.

(No. 1298—Claimant awarded $1,425.10.)

CHARLES HARNESS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1929.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where the evidence shows that claimant received injuries in course of employment while working at the State Institution, an award will be made and the amount computed in accordance with the Workmen's Compensation Act.

DEAN G. CURRY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

A declaration filed in this case shows that the State of Illinois had maintained and operated in the City of Lincoln, County of Logan, and State of Illinois, an institution for the treatment and care of feeble minded persons, that said institution was under the control of the Department of Public Welfare of the State of Illinois; that the said petitioner, Charles E. Harness, prior to the 5th day of November, 1927, was an employee of the said State of Illinois at such institution, as a carpenter.

That while the said Charles E. Harness was so employed and in the course of his duties as such carpenter, on or about the 5th day of November, 1927, was operating an electrical circle saw, with due and proper care for his own safety; said saw did cut, and tear the flesh and bone from the first, second, and third fingers of the left hand; necessitating the amputation of the first and second phalanges of all three fingers; that he was greatly hurt, bruised, and wounded, and was sick, sore, lame, and disordered, and remained so for a long space of time; during all of which time the petitioner suffered great pain, and was prevented from performing and transacting his affairs and business; and also, your petitioner spent large sums of money in endeavoring to be healed of said wounds and sickness.

The statements made in the above declaration were sustained by the evidence.

The Attorney General filed a statement herein setting forth the fact that the claimant received Two Hundred Sixty-

seven and 40/100 Dollars ($267.40) as salary and wages from the date of the injury until he resumed work at the institution and that the claimant has one child under the age of sixteen years dependent upon him for support.

The Attorney General recommends that the claim be allowed in accordance with the Workmen's Compensation Law.

We, therefore, allow the claim in the sum of $1,425.10.

(No. 1373—Claimant awarded $1,500.00.)

HAROLD LENOX, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1929.

PERSONAL INJURY—*when award will be made.* Where it appears from the evidence that claimant received personal injuries in line of duty while employed as a motorcycle officer under the Division of Highways, an award will be made for permanent partial injury.

HENRY C. WARNER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant herein was a motorcycle officer, an employee in the Division of Highways, Department of Public Works and Buildings of the State of Illinois. He received a gun shot wound in his right leg by reason of dropping his gun, which was accidently discharged.

The wound was in the calf of the leg, penetrating entirely through the leg muscle just below the knee, severing the nerve which controls the muscle which raises and lowers the foot.

This accident occurred to the claimant in line of duty in the course of his employment. He was married and had four children under the age of sixteen years at the time of the accident.

It would appear to the court that claimant was injured in line of duty and from all the evidence, it is the opinion of the court that the claimant suffered permanent partial injury and it is the opinion of the court and the court recommends that claimant be allowed the sum of Fifteen Hundred Dollars, ($1,500.00).

(No. 1384—Claimant awarded $901.00.)

W. L. WISEMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1929.

PERSONAL INJURY—*when award will be made.* Where the evidence shows that claimant received the injuries in course of employment and there is no controversy as to the facts, an award will be made.

BENJ. F. CASSIDAY, for claimant,

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This declaration filed by W. L. Wiseman, shows that on the 15th day of March, A. D. 1928, the defendant, through the Department of Public Works & Buildings, Division of Highways, was engaged in the construction, testing and maintenance of certain durable hard surface roads within and for the said State of Illinois, and it became necessary for said defendant in the construction, testing and maintenance of said roads to conduct a research laboratory at First and Ash streets, in the city of Springfield, Illinois, for the purpose of making certain tests of materials used and to be used in the construction and maintenance of said roads, and was at said time and place making laboratory tests of concrete beams and in preparing to make such tests it was necessary to heat a certain piece of iron and bend it into a hook for beam breaker used in testing said concrete beams, and by reason of said piece of iron being so heated and bent as aforesaid, it was dangerous and unsafe for a person to perform such work in such manner and this the defendant knew or by the exercise of reasonable diligence could have known.

That the claimant was instructed and ordered by the defendant to perform such work and said claimant attempted to perform such work with all due care and caution for his own safety, said piece of heated iron being hammered and bent slipped out of the tongs by which it was being held and struck the claimant with great force and violence in the right eye and the claimant was bruised, injured and wounded, and suffered a partial permanent injury to his right eye, bruises and scratches on the face and claimant was sick, sore, lame

and disordered for a long time, during all of which time he suffered great pain and was hindered and prevented from attending to and transacting his affairs and business, the claimant did lay out money, amounting to Twenty-five Dollars ($25.00) endeavoring to be cured of his said wounds and bruises.

The Attorney General files a statement setting forth that there does not seem to be any controversy as to the facts relative to this injury. Attorney for claimant has given a fair presentation of the facts and is claiming the sum of $901.00 as damages, based on medical testimony, which is not disputed by the State.

We, therefore, award the claimant the sum of $901.00, the full amount of his claim.

(No. 1392—Claim dismissed.)

JESSIE MEAD HENION, AS EXECUTRIX, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1929.

DISMISSAL—*when case will be dismissed.* Where it appears that there is no reason why the case should not be dismissed upon motion of claimant, same will be dismissed.

VENT & WARFIELD, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Per Curiam: This cause coming on to be heard upon motion of claimant that the above entitled cause be dismissed, and it appearing that there is no reason why said cause should not be dismissed,

It is therefore considered by the court that said cause be, and the same is hereby dismissed.

(No. 1116—Claimant awarded $7,384.60.)

WILLIAM V. HOIER, DOING BUSINESS AS WM. V. HOIER & COMPANY, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

CONTRACTS—*when award will be made for losses sustained under contract.* Where it appears from the evidence that claimant has sustained losses under his contract for the installation of heating, ventilating and refrigerating systems through no fault of his own, but resulted by reason of delay in the construction of the building, an award will be made for extra labor and material furnished at the direction of the supervising architect.

FREDERICK C. JONAS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On November 1st, 1922, claimant entered into a contract with the State to provide all the materials and perform all the work for the installation of the heating, ventilating and refrigerating systems for the main building and orthopedic building of the research and educational hospitals of the State located in Chicago. The work to be done under this contract included the construction and installation of a temporary boiler plant by claimant. The contract, however, gave the State the right to make additions to and deductions from the work to be performed under it, and some time after its execution the State determined not to have the temporary boiler plant constructed. On August 22, 1923, the State entered into a second contract with claimant whereby he agreed to do certain specified additional work at these hospitals, which included the construction and installation of the temporary boiler plant above mentioned by November 1, 1923. On June 9, 1924, claimant entered into a third contract with the State to provide all the materials and perform all the work for the complete equipment of the power house at these hospitals, the work to be finished by October 15, 1924. On June 11, 1924, the State also entered into a contract with the C. A. Moses Construction Company to provide all the materials and perform all the work for the construction of the power house by October 15, 1924. For some reason not disclosed in this record, but through no fault of claimant, the

construction of the power house had not even been begun on the date it should have been completed, and claimant for that reason was not able to perform his contract to install, the equipment by that date. The failure to have the power house constructed within the time specified necessitated the use of a temporary boiler plant until its completion, which was not until October 1, 1925. As this delay was not the fault of claimant the State officials agreed that if he would leave his temporary boiler plant there and allow the State to use it until the power house could be built and the permanent plant installed he should be paid a reasonable price per day for its use for such time as the State should use, and with that understanding it was permitted to remain and was used for 350 days after October 15, 1924.

Claimant alleges that in the performance of these contracts he furnished the State certain extras for which he has not been paid and that the State should also pay him at the rate of $20.00 per day for the use of his temporary boiler plant for the time the State used it after October 15, 1924, and files this claim for $7,384.60 itemized as follows:

For use of temporary boiler plant 350 days @ $20.00 per day	$7,000.00
For substituting larger pipe	$ 77.00
For installing an additional radiator	$ 81.50
For changing pipe connections	$ 226.10

The evidence of the claimant shows that the use of the temporary boiler plant was reasonably worth at least $20.00 per day and that the extras were furnished at the direction of the supervising architect. The State has introduced no evidence and concedes claimant is entitled to the amount demanded.

It is therefore ordered that claimant be and he is hereby awarded the sum of $7,384.60.

(No. 1131—Claimant awarded $2,700.00.)

S. A. RUDD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

HIGHWAYS—*when award will be made for damages resulting by reason of the construction of a hard road.* After evidence is heard and arguments made and the Attorney General consents to an allowance, an award will be made for damages on the account of the construction of a hard road.

JOHN L. WALKER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim to recover damages on account of building of hard road by the State Highway Department of the State of Illinois, adjacent to the City of Joliet.

Evidence was heard and arguments made and the Attorney General comes and consents to an allowance of Twenty-seven Hundred Dollars ($2,700.00) as compensation to claimant.

Therefore, it is recommended by this court that the claimant be allowed the sum of Twenty-seven Hundred Dollars ($2,700.00).

(No. 1137—Claimant awarded $5,400.00.)

LAURA DORRE, JAMES P. WARD & MAY WARD, FRED F. MEIFERDT & BELLE MEIFERDT, FRANK G. PIERCE & LILLIAN PIERCE, FLORENCE LARKING & RICHARD LARKING, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

HIGHWAYS—The opinion in this case is determined by the authority announced in the case of *S. A. Rudd v. State of Illinois*, 1131, *supra*.

JOHN L. WALKER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim to recover damages on account of building of hard road by the State Highway Department of the State of Illinois, adjacent to the City of Joliet.

Evidence was heard and arguments made and the Attorney General comes and consents to an allowance of Fifty-four Hundred Dollars ($5,400.00) as compensation to claimants.

Therefore, it is recommended by this court that the claimants be allowed the sum of Fifty-four Hundred Dollars ($5,400.00).

(No. 1141—Claim denied.)

LESLIE SMITH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

HIGHWAYS—*when award will not be made for personal injury and property damage sustained on State Highway—contributory negligence.* Where it appears from the evidence that claimant negligently fails to observe warning signals as to the condition of a highway, no award will be made for personal injuries and property damage sustained while traveling on such highway.

COSTIGAN & WOLLRAD, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The claimant in this case files his declaration setting forth that he has a claim against the State of Illinois in the sum of $338.50.

It appears from the declaration and evidence that on Monday, August 16th, 1926, the claimant left the City of Bloomington at approximately 3:00 o'clock in the morning intending to go to Iowa Falls, Iowa; that he proceeded north on State Highway No. 2; that shortly prior to sunrise it became rather foggy and as he proceeded northward about three miles north of Tonica, Illinois, at about 5:00 o'clock in the morning, he saw a red light ahead on the concrete highway to the right side thereof, and thinking that it was a car stopped he turned to the left side, that he went down into a deep hole where construction work was being done on the pavement which had not been completed.

The claimant states that his wife accompanied him on the trip and was in the car when it turned over, that she was badly cut and bruised on the face and hands.

It is admitted that this construction was being done by the State of Illinois upon one of its highways. It is also admitted that the claimant suffered damages to his car and that his wife was somewhat injured.

We are of the opinion that the State assumes no responsibility other than to build the roads and keep them in good repair, they put up warning signals as to the condition of the road and other signs as well as in this case had red lights placed in the road to protect the travelling public. It would appear that the claimant after having seen this warning sign was very negligent in not stopping to determine the condition of the highway at that point.

This case is, therefore, dismissed.

(No. 1230—Claim denied.)

THE AMERICAN BRAKE SHOE AND FOUNDRY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

FRANCHISE TAX—*when no award will be made*—Where claimant has an adequate remedy in a court of general jurisdiction no award will be made. (*Moline Plow Company* v. *State*, 5 Court of Claims, Page 277.)

WHITMAN, MILLER & COON, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed to recover $2,159.58 on account of franchise tax collected in 1922. It appears that the proposition involved here was considered by the court in the opinion filed by this court on the 1st day of May, 1925, which opinion was reported in Volume 5, Court of Claims, page 131. It appears that a subsequent opinion of the Supreme Court of the State of Illinois, gave claimant a reasoning which would justify them in again appealing to this court for a further allowance.

Subsequently to the filing of the opinion in the above case, this court was impressed with a great volume of claims presented and to be presented on the principle involved in the case above reported, and as a matter of justice to the people of the State of Illinois, in view of the overwhelming demands that could be brought against the State of Illinois, this court wrote the opinion known and described as the *Moline Plow Co. v. State of Illinois*, reported in Volume 5 of the Court of Claims, pages 277 and 278, in which it was held that if claimants had an adequate remedy in a court of general jurisdiction, that this court would not consider such claims. This attitude was taken by this court as a matter of justice to the defendant the State of Illinois, and this court is further of the opinion that justice is done to the claimant to deny relief here wherein there was a right and opportunity of having cases of this character determined by the courts of general jurisdiction of the State. As a matter of fact this court is an advisory committee to the Legislature of the State of Illinois, and it is believed by this court that where matters can be litigated in the courts of general jurisdiction, that such a method ought to be followed rather than to bring before this court controverted matters that are in doubt. The courts of general jurisdiction should sift out the questions of law and create precedent by the judicial department of the State that would furnish light for this court and for the Legislature to follow. Can it be assumed that the Legislature of this State should be called upon to determine the legal rights of an individual or private corporation in any proposition wherein the judicial department of the State as created by the Constitution, should and would take jurisdiction.

Therefore it is considered by this court that said claim be disallowed.

(No. 1231—Claim denied.)

DIME AND SAVINGS AND TRUST COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

Rehearing denied May 9, 1929.

INHERITANCE TAX—*when no award will be made.* Where claimant fails to perfect an appeal from an order fixing inheritance tax no award will be made.

SAME—*failure to pursue remedies at law.* Where claimant has a complete remedy at law for perfecting an appeal from an order fixing inheritance tax, and fails to pursue such remedies, no award will be made.

J. E. HOUSTON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The petition sets up and shows that inheritance taxes in the matter of the estate of Elizabeth Becker, who died a resident of the State of Illinois, were fixed and paid upon the beneficial interests passing in said estate, determined upon a gross estate of $243,561.21, and a net estate of $206,733.86.

Stipulations as to all facts involved in the instant case have been entered into by and between the Hon. Oscar E. Carlstrom, Attorney General for the State of Illinois, representing the State of Illinois, respondent, defendant, and J. E. Houston, attorney for the petitioner, claimant, duly signed by the respective parties aforesaid and filed in the office of the clerk of this honorable court, which stipulations set forth and disclose the true value of the gross estate of said decedent within the State of Illinois, the deductions from gross estate, the exemptions of the several beneficiaries thereof, the net taxable estate to the several beneficiaries, together with a computation of taxes respectively due upon the several beneficial interests passing, dates of satisfaction thereof and the difference between the taxes originally assessed and paid and the sums which were properly taxable, had all facts been known at time of entering of original order finding and fixing inheritance tax in the matter of the estate of Elizabeth Becker, deceased, which petitioner, claimant maintains and alleges was wrongfully and erroneously fixed and collected.

The stipulations on file disclose no appeal was taken from the original order of the County Judge of Peoria county, Illinois, finding and fixing tax, said matter originating from Peoria county, Illinois, where decedent resided at time of her demise. Gross values have been established, deductions from decedent's gross estate have been passed upon by the Probate Court of Peoria county, Illinois, and allowed in the sums set forth in the petition bringing this matter before this court, and are evidenced by true, complete certified copies of orders, decrees, reports, etc., and receipts attached to and made a part of the record herein.

It is the opinion of the court that the claimant had an entire and complete remedy at law and claimant should have perfected its appeal if dissatisfied with the ruling of the Probate Court. The court has heretofore taken the position in numerous other cases that where there is a remedy at law, the remedy at law should be taken advantage of instead of coming into the Court of Claims of the State of Illinois and owing to the fact that in this case the claimant did have a complete remedy in a court of law in this State the claim is dismissed.

On May 9, 1929, upon petition for rehearing the following additional opinion was filed:

Per Curiam: This cause coming on to be heard after prayer of petitioner for rehearing granted, and after argument of counsel and due deliberation by the court, and it appearing that there is no cause shown why the order heretofore entered should not remain, it is therefore considered by the court that the claim be denied and the case dismissed.

(No. 1234—Claim denied.)

MILDRED ALMA CHUMBLER, ADMINISTRATRIX OF THE ESTATE OF LYNN CHUMBLER, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

Rehearing denied March 28, 1929.

HIGHWAY—*governmental function—when State not liable.* In the construction and maintenance of roads the State acts in its governmental capacity through its officers and employees, and if such officers perform their duties in a negligent manner, it is the negligence of the officers and not that of the State.

SAME—*non-liability of the State.* No award will be made for damages caused by the negligent construction of a public road unless such liability is expressly provided by statute.

SIMS, WELCH, GODMAN & STRANSKY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On September 11, 1926, Lynn Chumbler was hauling a truck loaded with lumber along State Route No. 5 between Galena and Elizabeth. In going up a steep grade known as Nolan's Hill Chumbler lost control of the truck and it rolled backward down the hill. At the foot of the hill was a fill or embankment about twenty feet high, along which no guard rail or fence had been erected. When the truck reached this fill it went over the embankment and Chumbler was killed in the fall. It is alleged that the failure to erect guards along the fill was the cause of Chumbler's death, and the claim filed is based on the proposition that it is the duty of the State to construct and maintain all State roads in a safe condition for travel and that it is liable for all damages caused by its failure to do so. With this contention we cannot agree.

In the construction and maintenance of roads the State acts in its governmental capacity,—it is exercising its sovereign powers—and it does not permit these powers to be questioned by any tribunal. It can only act through its officers and employees, and if these officers perform their duties in a negligent manner the negligence is the negligence of the officers and not of the State. These well known principles of law are so thoroughly established that citation of authorities seems unnecessary. In *Kinnare v. City of Chicago*, 171 Ill. 332, the rule is announced in the following language at page

335: "The State acts in its sovereign capacity, and does not submit its action to the judgment of courts and is not liable for the torts or negligence of its agents, and a corporation created by the State as a mere agency for the more efficient exercise of governmental functions is likwise exempted from the obligation to respond in damages, as master, for negligent acts of its servants to the same extent as is the State itself, unless such liability is expressly provided by the statute creating such agency." See also *Cooney* v. *Town of Hartland*, 95 Ill. 516; *Jorgensen* v. *State*, 2 Ct. Cl. 134; *Braun* v. *State*, No. 1281, decided by this court October 24, 1928. The General Assembly has never enacted a law making the State liable for damages caused by the negligent construction of a public road, and this court has no power to make an award for such damages in the absence of such a statute.

The claim is denied and the cause dismissed.

On March 28, 1929, upon petition for rehearing the following additional opinion was filed:

On the 5th day of March, A. D. 1929, claimant filed her petition for a rehearing in this cause. In her petition for a rehearing claimant does not set up any matter which the court did not give due consideration in the original opinion in this case. The court fails to see any legal liability on the part of the defendant in this cause and the petition for a rehearing is therefore denied.

(No. 1251—Claim denied.)

STANDARD OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

FRANCHISE TAX—*when no award will be made.* This case is controlled by the opinion in the case of *George P. Ide & Co., Inc.* v. *State of Illinois*, No. 1215, filed on October 24, 1928.

BARR & BARR AND F. E. PACKARD, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover the sum of Eight Thousand Two Hundred and Twenty-five ($8,225.53)—53/100—

Dollars, alleged to be collected by the Secretary of State, Louis L. Emmerson, erroneously during a period beginning Dec. 28th, 1922, and ending June 30th, 1923, on account of franchise taxes.

It is contended and it appears to the court that the said payment was made voluntarily and that no protest was made. Therefore it is assumed that the claimant believed that said collection was made within the law.

It is the opinion of the court that this case is controlled by the opinion of this court in the case of *George P. Ide & Co., Inc., v. The State of Illinois*, No. 1215 which was decided by this court on Oct. 24th, 1928.

In the Ide decision it was held that a claimant had a remedy in the courts of general jurisdiction and from all the facts as shown by the records of the case, both the claimant and the defendant The State of Illinois, must have believed the said collection reasonable and within the law at the time the collection was made, otherwise protest would have been made and claimant would resort to its rights in the courts of general jurisdiction. Therefore this court is of the opinion that if claimant failed to follow its legal remedy as indicated in the Ide case, and consequently cannot come into this court for redress.

If an appropriate action was brought by claimant in a court of general jurisdiction, the rights of the parties would have been adjudicated. The very fact of claimant failing to pursue their remedy in courts of general jurisdiction, would indicate that the Secretary of State was within his authority in making such collection in so far as the viewpoint of the claimant was concerned. In fact it would appear that claimant rested on the verdict of the Secretary of State and by so doing it is assumed that the Secretary of State was within his rights in making the collection complained of, and it is the opinion of this court that subsequent decisions of courts of general jurisdiction, or changes in statutory requirements should not open the gates of this court to a claimant who failed to follow his remedy at law. The Secretary of State acted according to his best judgment and the failure of claimant to pursue his legal remedy would appear to the court as an admission that they believed the Secretary of State to be right at the time the collection of the franchise tax was exacted.

For the reasons above mentioned and the position of the court in the Ide case above cited, this claim is denied.

It is therefore recommended by this court that this claim be disallowed.

(No. 1253—Claimant award $913.43.)

RAYMOND W. SCHULTZ, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

PERSONAL INJURIES—*when award will be made.* Where claimant receives injuries in course of employment an award will be made.

WORKMEN'S COMPENSATION ACT—*when Workmen's Compensation Act will determine the amount of award.* The Workmen's Compensation Act will be followed in measuring the amount of damages for personal injuries sustained by a state employee in course of employment.

LUTHER B. BRATTON AND CHARLES W. KURTZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was injured while employed as a day laborer in the construction of a hard road by the State of Illinois near Morton, Illinois. The injury was sustained on Sept. 9th, 1924. It seemed that claimant was working in due course of employment behind a cement shed when the cement shed started sliding and the claimant was caught under the slide and about two cars of cement were piled on and around him. He was taken to a doctor's office and it was found that the left leg was broken above and below the knee, the left hip dislocated, the right arm cut above the elbow and the face cut and scratched.

It would appear that claimant suffered a very serious injury, however this case must be considered under the Workmen's Compensation Act of the State of Illinois. It appears that all the hospital expenses of the claimant were assumed or paid by the State of Illinois.

The Attorney General comes and contends that the measure of damages would be based on fifty per cent of the permanent loss of the limb in connection with the average daily wages which he was receiving at the time of the injury. It is the opinion of the court that the Attorney General's contention is according to the precedent of this court.

It is therefore considered that claim be allowed and this court recommends that this claimant be allowed the sum of Nine Hundred Thirteen and 43/100 Dollars.

(No. 1258—Claim denied.)

L. F. DANNEWITZ, ADMINISTRATOR OF THE ESTATE OF LEROY W. FAXON, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

NON-LIABILITY OF STATE—*when State is not liable for death of claimant's intestate.* Where there is no witness to an accident upon a hard road and the evidence does not show how the accident occurred, no award will be made for the death of claimant's intestate by reason of such accident.

SAME—*when court will not establish a precedent in holding the State liable for accidents on hard roads.* The Court will not establish a precedent in holding the State liable for accidents on the hard road system caused by the icy condition of the roads.

R. O. LEITCH AND JOHN M. PEFFERS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed in this case on November 8th, 1927, by L. F. Dannewitz, administrator of the estate of Leroy W. Faxon, deceased, alleges that the State of Illinois, on April 21st, 1927, and for a long time prior thereto, in the lifetime of said LeRoy W. Faxon, was possessed of, using, operating and maintaining a public highway in Section 23, Township 37, North Range 6, East of the 3rd Principal Meridian, in the Town of Little Rock, Kendall county, Illinois, and no part of said section traversed by the highway, erected and constructed by the State of Illinois, through said Section 23, is in any incorporated city or village; that a portion of said highway in said Section 23, crosses a stream of water commonly known as "Big Rock Creek," and that across said Big Rock Creek, and as a part of said highway, the defendant, previous to said date, had erected and constructed a bridge to permit the traveling public, in the use of said highway, to cross said creek; that at a point about 75 feet west of said bridge and continuing westerly in said Section 23 for a distance of approximately 300 feet, the defendant, in the erec-

tion and construction of said road, had excavated and removed the dirt and earth in an upward grade or direction, from and through the brow or bluff of a steep hill, and thereafter said defendant erected, constructed and laid a concrete or cement road bed of a width of 18 feet on said highway commonly known as "Route No. 18", that in the erection and construction of said highway in said Section 23, and at a point about 375 feet westerly from the west line of said bridge, the defendant had changed the direction of said road from a straight line to a sharp curve of several degrees, so that said bridge could not be seen west of said 375 foot point; that commencing at the west end of said bridge and continuing westerly for a distance of about 75 feet, and on each side of said highway, and as a part thereof, the soil surface inclines sharply downward for a distance of about 25 feet toward said creek; that said defendant erected and constructed on said highway, for a distance of about 375 feet just west of said bridge, a road bed of cement or concrete of a width of about 18 feet, for the use of the public; that the defendant on said first mentioned date was the owner and in possession, use and control of lands extending for a distance of about 30 feet on each side of the center of said cement road bed through said Section 23, including said bridge; that commencing on the west line of said bridge and continuing westerly for about 75 feet on each side of said cement road bed and where the soil surface at a distance not exceeding 30 feet from the center of said cement road bed deflects sharply downward towards said creek, as aforesaid, the same on said first mentioned date and for a long time prior thereto, was, ever since said time has been, and still is, owned, used and controlled and maintained by the defendant as a part of said Route No. 18; that on April 21st, 1927, on each side of said cement road bed, for a distance of about 375 feet extending westerly from the west side of said bridge, the defendant negligently failed to provide guards, barriers, warning signs or fences to protect the traveling public against accident, danger or casualty while traveling along said highway; that in, on and along such upwardly graded roadbed through said hill, on said date, the defendant failed to provide sufficient drainage for surface water and melting snows, and by reason thereof, during freezing periods of the weather, the surface water and melting snows, would frequently freeze and cause said cement road

bed to be covered with ice, thereby rendering the surface of said cement road bed slippery and dangerous to vehicles used by the public while traveling thereon; that on said day, LeRoy W. Faxton, being then in good physical condition and with no impairment of sight or hearing, was operating and driving an automobile on that part of said highway which traverses said Section 23, traveling in an easterly direction, toward said bridge and some place west of the westerly terminus of said graded portion of said highway and while so traveling thereon, exercising due care and caution for his own safety, and believing said highway to be safe, and secure for traveling purposes, approached said bridge for the purpose of proceeding to his destination, which was supposed to be the City of Aurora, in the State of Illinois; that because of the icy coated surface of said road bed, he became unable to control his automobile so as to remain on the right side of the center of said road bed before reaching said place on the north side of said highway therein the soil surface deflected downward toward Big Rock Creek, and was unable to check the momentum of said auto in time to return to the beaten path or cement roadbed, but he left said main traveled portion or cement road bed and entered into and upon said deflected or inclined portion thereof and by reason of the speed of his auto, was violently projected, thrown, hurled and launched forward and downward to and into said creek in such a manner as to cause himself and his auto to be submerged therein, and unable, on account of the current of said creek, to release himself from said auto and save himself from further danger, and as a result of said accident drowned; that he left a widow, who relinquished her right to administer upon said estate and made application to the County Court of Kendall county, Illinois, for the appointment of plaintiff as such administrator, and letters of administration were duly granted by said court to L. F. Dannewitz, as such administrator on May 6th, 1927; that said LeRoy W. Faxon, was earning from his employment the sum of $250.00 per month.

The demurrer filed by the State of Illinois is sustained as a matter of law.

There are no facts in this case to show how the accident, causing the death of LeRoy Faxon, occurred,—no witness of any kind to the accident. The evidence in the case discloses

that the car was on its right hand side of the road, going in a westerly direction on Route No. 18, and had made the turn around the hill, and then for some cause unknown to anyone, the car commenced to move to the left hand side of the road about seventy-five feet west of the west side of this bridge and hit the culvert and curbing on the left hand side of the road about thirty-one feet west of the left hand side of the bridge and then, traveling said thirty feet to the concrete embankment on the southwest corner of the bridge, and jumping two-thirds of the distance across the bridge, a matter of forty to fifty feet, lighted without turning over in any way. There were no skid marks on the road supposed to have been made by the automobile the deceased was driving, and the road was straight—he had made the turn in the road and was going down hill on a straight road when his car suddenly took to the left curb, jumped over the curb which is ten to twelve inches high and jumped over the embankment forty to fifty feet into the creek. To have gone over this curbing, with a Ford car and jumping forty to fifty feet over a twenty foot embankment, one would have had to be traveling at a high rate of speed. We realize more completely this year probably than in any former years, since the State has maintained its hard road system, the impossibility of keeping the road bed cleared of ice. It would be folly and would establish a dangerous precedent to hold the State liable for accidents, which might occur on account of this condition existing.

The claim of the administrator of the estate of LeRoy W. Faxon is accordingly denied.

(No. 1282—Claim denied.)

DIVISION OF FIRE PREVENTION, DEPARTMENT OF TRADE AND COMMERCE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 5, 1928.

Rehearing denied February 13, 1929.

STATE DEPARTMENTS—*when Court of Claims will not determine a controversy between State departments—jurisdiction.* The Court of Claims has no jurisdiction to determine a controversy between the departments wherein the Division of Fire Prevention of the Department of Trade and Commerce, seeks to direct that certain interest money be paid from the General Revenue Fund into the Fire Prevention Fund.

JOHN P. SNIGG, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant seeks the order of this court to direct that certain interest money be paid from the general fund into the Fire Prevention fund, it being claimed that certain monies collected remain in the custody of divers State Treasurers of Illinois, and that no interest has been placed to the credit of the Fire Prevention fund.

It is the opinion of this court that under the pleadings in the case, that this court has no jurisdiction to determine in this manner, a controversy between departments.

Therefore, it is considered by the court that the claim be dismissed.

On February 13, 1929, upon petition for rehearing the following additional opinion was filed:

This is a case coming on for rehearing, an opinion in same having been filed Dec. 5th, 1928, the claim being denied. After a careful consideration of the petition for rehearing, this court is of the opinion that it is without jurisdiction in this case in the manner and form in which it was presented.

Therefore it is recommended that petition for rehearing be denied.

(Claims allowed.)

JOSEPH AND MARY SOLAND, 1303; VIOLA YONKERS, 1304; BERTHA ROARK, 1305, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

PROPERTY DAMAGE—*when State liable for damages on account of the construction of a viaduct for hard road purposes.* Where it appears from the evidence that claimants suffered damage to real property by reason of a construction of a viaduct for hard road purposes, an award will be made.

JOHN L. WALKER, for claimants.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The above named claimants are all represented by the same attorney and all the cases are considered jointly by the Attorney General and therefore this court will consider them in one opinion.

This court has heretofore held in similar cases that there is a liability on the part of the State on account of the construction of the viaduct over the Elgin, Joliet and Eastern Railroad where it intersects with Route 23, just east of the City of Joliet, in the County of Will and State of Illinois.

It appears that all three claimants were owners of property adjacent to or near this viaduct and that the viaduct did damage the property.

It appears from the statements of the Attorney General, that the damages of these claimants was fairly shown by a real estate expert and from the evidence of this expert and the statement of the Attorney General in which it appears that the amount of damages would be as follows. And this court is of the opinion and does recommend allowance of the following amounts to the above named claimants in the following manner:

To Joseph and Mary Soland, No. 1303, the court recommends an allowance of Twenty-five Hundred Twenty-five ($2,525.00) Dollars.

To Viola Yonkers, No. 1304, the court recommends an allowance of Fourteen Hundred Forty-five ($1,445.00) Dollars.

To Bertha Roark, No. 1305, the court recommends an allowance of Two Thousand Eighty-five ($2,085.00) Dollars.

(No. 1306—Claimant awarded $2,500.00.)

ROMELLA BUCK, A MINOR, BY JOHN ROACH, HER GUARDIAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

PERSONAL INJURY—*when award will be made for death of a State employee resulting from personal injuries sustained in course of employment.* Award will be made for the death of a State employee resulting from personal injury sustained in course of employment while working for the State Highway Department.

SAME—*when amount of award will be determined under the Workmen's Compensation Act.* Award will be made for death resulting from personal injuries sustained in course of employment where claimant is engaged in an occupation declared to be extra hazardous under the Workmen's Compensation Act.

SAME—*what is a proper deduction from the total amount claimant would receive under the Workmen's Compensation Act.* Where claimant receives compensation from a railroad company who operated the train which caused the death of a State employee, the amount so received from said railroad company, is a proper deduction from the total amount claimant would be entitled to under the Workmen's Compensation Act.

JOHN P. PALLISSARD, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration in this case recites that John Roach was appointed guardian of Romella Buck, a minor, and that on behalf of said Romella Buck, he filed this claim against the State of Illinois.

It appears from the evidence that Joseph Buck prior to his death was a resident of Martinton, County of Iroquois, State of Illinois and that he was the husband of Romella Buck; that on the 12th day of December, 1927, and was for a long time thereto, the said Joseph Buck was employed by the State of Illinois through the Department of Public Works and Buildings, Division of Highways, as a highway maintainer, and was on the said 12th day of December, 1927, engaged in doing certain labor in the line of his duties as an employee of the State of Illinois, under the Department of Public Works and Buildings.

The evidence further shows that the said Joseph Buck was operating a tractor grader along and upon the State high-

way between Beaverville, Illinois, and Papineau, Illinois, between section twenty-six on said State highway and at a point where the highway crosses the New York Central Lines, known as the Big Four which was operating between Indianapolis, Indiana, and Chicago, Illinois. That one of the passenger trains of said company consisting of a locomotive engine and coaches was being operated by said railroad company and was proceeding in a northwesterly direction along the line of said railroad at a high rate of speed, that Joseph Buck, deceased, was operating the tractor grader in the line of his duty and that while so performing his duty he was struck with great force and violence by the train operated on said New York Central Lines and was thrown upon the ground sustaining certain mortal wounds and injuries from which wounds the said Joseph Buck died; that said Joseph Buck left surviving him a widow, Romella Buck, who was a minor at the time of the filing of this declaration. He having left no children surviving him.

The Attorney General files a statement as follows:

"The claimant herein has filed his statement, brief and argument in this cause. In said statement, brief and argument it is the opinion of the respondent that the facts were properly stated, the law properly stated and the law properly applied to the facts.

The claimant was driving a tractor grader. Paragraph 7½ of Section 3, Workmen's Compensation Act, is as follows:

> 'Any enterprise in which sharp edged cutting tools, grinders or implements are used, except.'

The exception set out in Paragraph 8 of Section 3 relates to farming and the deceased State employee was working on the hard roads and not farming in any manner.

The estate of said deceased State employee, through the cooperation of the interested parties, the Division of Highways and the office of the Attorney General, received from the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, who operated the train which caused the death of the said employee, Twelve Hundred and Fifty Dollars, which is a proper deduction from the total amount he would be entitled to under the Workmen's Compensation Law.

The total amount, which this claimant could hope to receive under said Workmen's Compensation Law, would be Thirty-seven Hundred and Fifty Dollars, and after deducting the amount received from said railway company on account of the death of said claimant herein, he would be entitled to Twenty-five Hundred Dollars from the State of Illinois.

I, therefore, submit this claim to the court for its consideration for such disposition as it cares to make."

We, therefore, award the said claimant the sum of Twenty-five Hundred Dollars.

(No. 1318—Claimant awarded $1,416.61.)

CHARLES A. TOWNLEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

FEES AND SALARIES—*when award will be made for additional salary due Assistant Illinois Commerce Commissioner.* Where the statute fixes the salary of Assistant Commerce Commissioner and the Legislature fails to appropriate sufficient funds to pay it, such failure of the Legislature to appropriate sufficient funds does not relieve the State from its legal duties to pay the amount provided by statute and an award will be made.

BENJ. S. DEBOICE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant was appointed Assistant Commerce Commissioner October 31, 1921, and served the State in that capacity until December 1, 1924, at which time he retired from office. The statute fixes the salary of Assistant Commerce Commissioners at $5,000.00 per year, and claimant was paid at that rate until July 1, 1923. The General Assembly of 1923 failed to appropriate sufficient funds to pay the salaries of the Assistant Commerce Commissioners in full for the ensuing two years; and for the seventeen months from July 1, 1923, to December 1, 1924, claimant was paid only $5,666.61 on his salary, leaving a balance due him of $1,416.61. The salary of claimant having been fixed by statute, the failure of the Legislature to appropriate sufficient funds to meet it did not relieve the State of its legal duty to pay it. Claimant is therefore awarded the sum of $1,416.61.

(No. 1336—Claimant awarded $3,750.00.)

JENNIE SANDERS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

MILITARY SERVICE—*when award will be made for the death of an officer of the Illinois National Guard—equity and good conscience—Workmen's Compensation Act.* An award will be made for the death of a member of the Illinois National Guard which resulted from an injury sustained in line of duty upon the grounds of equity and good conscience and the amount determined under the terms of the Workmen's Compensation Act.

CHARLES DICKERSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant in this case, Jennie Sanders, seeks to recover compensation on account of the death of her son, Captain Howard A. Sanders, who was at and prior to the time of his death in command of a battery of artillery of the Illinois National Guard, federalized and on duty on the day and at the time of his death, and was an officer in command of said military unit some time prior to the accident, causing his almost instant death. The accident occurred at the close of what is commonly known as Defense Day, a day set apart as a day of demonstration throughout the United States for the purpose of discipline, training and experiment, on September 12, 1924, at a place in the vicinity of Aurora, Illinois, on the State Fair Association premises. Captain Howard A. Sanders was under orders of the Commander in Chief of the military forces of Illinois, and was ordered by proper order to proceed with his battery and participate in the Defense Day activities in the City of Aurora, Illinois, and did proceed out with his battery, and at the conclusion of the parade or demonstration, returning to the fair grounds near Aurora, Illinois, where the battery, including horses, material and other equipment were stored, stabled and housed, and while in the act of returning the battery to its proper quarters, riding up and down the battery line superintending the unloading, directing and moving of men and horses, mounted at that time upon a spirited horse, and as the records show, in all probability not properly shod and riding upon a cinder path where he had a right to be, and while in the per-

formance of his duties, the horse slipped and by the testimony of one experienced officer, owing partly to the smooth shoeing and the nervous condition of the animal, threw Captain Sanders to the ground and the injuries which he received caused his death within a few hours. At the time of his death, and prior thereto, he had been supporting a widowed mother of the age of sixty-three years, and was maintaining a home for her out of his earnings which were in the neighborhood of $250.00 per month, as a bond *salesman, he being the* only support of his mother, and she having no other means of support or income, or any other member of the family contributing or able to contribute towards her support and maintenance.

A demurrer filed by the State of Illinois, is sustained as a matter of law.

On the grounds of equity and good conscience, we feel that an award is justified in this case, and we accordingly award to claimant the amount to which she would be entitled had her son been employed under the terms of the Workmen's Compensation Act of this State of Illinois, or the sum of Three Thousand Seven Hundred and Fifty ($3,750.00) Dollars.

(No. 1337—Claimant awarded $1,200.00.)

M. A. IGLEHEART, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

PERSONAL INJURY—*when award will be made for injury sustained in course of employment at a State institution.* An award will be made for the personal injury sustained in course of employment where the duties are declared to be extra hazardous.

WORKMEN'S COMPENSATION ACT—*when State liable under.* The provisions of the Workmen's Compensation Act apply automatically to the State when it is engaged in any of the enterprises or businesses declared to be extra hazardous.

SAME—*what is "structure".* The heating plant of the Jacksonville State Hospital is a "structure" within the meaning of the Workmen's Compensation Act.

CARL E. ROBINSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed by the State at the heating and ice plants maintained in connection with the State hospital at Jacksonville. He was required to keep the boilers in the heating plant in repair, clean and change them when necessary, and to run the ice plant in the summer. On February 21, 1927, while preparing to clean the flues of one of the boilers in the heating plant, the ladder on which he was standing fell and threw him to the floor. The fall caused a fracture of his right arm, the ankle and hip of his right leg, and otherwise seriously bruised him. He was taken to the State hospital and treated by the physicians of the institution. As a result of the injuries his right leg is about two inches shorter than it was, and the wrist of his right arm is permanently injured. He left the hospital about the first of April and in a week or so thereafter was assigned to the duty of answering telephone calls at the ice plant. Shortly after that he took pneumonia and was again taken to the hospital. After his recovery from pneumonia he stayed at the hospital at night and answered telephone calls at the ice plant during the day until January 10, 1928, when he was discharged from the service of the State. At the time of the injury he was receiving $120.00 per month and was paid at that rate until the first of April. From April 1, 1927, to the time of his discharge he was paid $130.00 per month. He also received his board, lodging and medical treatment from the time of the injury until his discharge.

It is the contention of claimant that he is entitled to recover under the provisions of the Workmen's Compensation Act. The provisions of that Act apply automatically to the State when it is engaged in any of the enterprises or businesses declared by section 3 thereof to be extra hazardous. The maintenance of a hospital for the insane is not one of such enterprises. But the State may be engaged in one business which is not within the act and in another which is. Paragraph 1 of section 3 declares the erection, maintaining, removing, remodeling, altering or demolishing of any structure to be extra hazardous. We think there can be no question but that a heating plant for such a large institution as the Jacksonville State hospital is a "structure" within the meaning of the Act. If that be true, then claimant is entitled to compensation, for at the time he was injured he was em-

ployed in the maintenance of the plant and his injury arose out of and in the course of his employment.

In view of the fact that he is not totally disabled and the State kept him on its payroll after his injury until he drew approximately $1,360.00 and also furnished him with board, lodging and all necessary hospital and physicians' services, we think $1,200.00 is as much as he should be awarded in a lump sum.

It is therefore ordered that claimant be and he is hereby given an award of $1,200.00 to be paid in a lump sum.

(No. 1354—Claimant awarded $500.00.)

MICHAEL HOFFMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

PROPERTY DAMAGE—*when award will be made for damage—equity and good conscience.* Where the evidence shows that claimant's property is damaged by reason of an over-flow of water, caused by insufficient drainage which resulted by reason of the construction of a State highway, an award will be made for such damages on the grounds of equity and good conscience.

JAMES O. MILLER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant in this case, Michael Hoffman, was the owner of Lots 7, 8, 9, 10, 11, 12, 37, 38, 40, 41 and 42, in the Village of Lenzburg St. Clair county, Illinois, on May 13th, 1924, which said platted lots are a portion of the North West Quarter of the North West Quarter of Section 7, Township 3, South, Range 6, West of the 3rd P. M., in St. Clair county, Illinois, through which said lots, State aid road designated as St. Clair County Route 13, Section 23, is located. Claimant entered into a contract for the right of way, as shown by exhibits on file herein, wherein, he received $1,000.00 for land taken. This claim is for damages to land not taken, caused by the construction of said Highway No. 13, through claimant's property. No mention was made of damages to land not taken, but claimant says that the authorities promised him that he would be left in good shape, and that there would be no filling in, etc. In putting in the paving, the two ditches,

one on each side of claimant's lots, were both filled up and the water that formerly ran south in them was diverted to follow along the paving and to the point of lot 12, and then to go through a 12 inch culvert across Second Street, and then along the roadway to the creek. The testimony shows that this culvert was insufficient to take care of the surface water and that it caused it to back up and stand on claimant's property. There is considerable difference of opinion as to how much water overflows these premises and as to what it would cost in order to bring his lots up to a proper elevation or grade whereby there would not be an overflow when it rains. Some witnesses place an estimate as low as $50.00 as to this cost, and others as high as $2,000.00.

The demurrer filed by the State of Illinois is sustained as a matter of law.

We feel however, that the claimant in this case has been damaged, and that in equity and good conscience the State should allow him some compensation so that he may make the necessary changes to properly protect his property from the overflow of water, and we accordingly award the claimant the sum of Five Hundred Dollars.

(No. 1364—Claim denied.)

SANGAMO OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

MOTOR FUEL TAX—*when no award will be made—voluntary payment.* Where money is paid voluntarily, no action can be maintained for its recovery.

SAME—*payment under mistake of law.* Where money has been paid under a mistake of law, no action can be maintained for its recovery.

SAME—*payment under an unconstitutional act.* Where a tax has been paid voluntarily, no action can be maintained for its recovery, although the law imposing the tax afterwards be declared unconstitutional.

SANGAMO OIL COMPANY, *pro se.*

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant's demand is for the refund of $269.30 tax alleged to have been paid by it to the Department of Finance upon gasoline that was not taxable.

In the month of September, 1927, claimant purchased 24,095 gallons of gasoline to be sold at its plants, but on account of a "gas war" in its territory it stored said gasoline until the month of February, 1928. On October 10, 1927, claimant made its motor fuel tax report, under oath, to the Department of Finance showing the amount of gasoline purchased, distributed, sold and used during the month of September previous. This report shows: number of gallons received during the month, 24,095; number of gallons sold during the month, 24,095; total gallons on which tax is due, 24,095; allowance for evaporation and other losses, 723 gallons; net gallons subject to tax, 23,372; total tax @ 2 cents per gallon, $467.44. The report is sworn to by W. H. Jones, president of the company, the oath reciting "I swear that the foregoing is a true return of the amount of motor fuel produced, received, used, sold and distributed by the aforesaid distributor during the month stated." The report also recites that the gasoline sold was delivered by truck to customers at Bethany, La Place and Cisco. Then follows this statement:

"24095 gallons placed in storage until termination of gasoline war in Decatur. Tax is being paid on this gallonage at this time, and during this war we have made arrangements to purchase our gasoline from the Standard Oil Co. and pay them the State tax."

The report was sent to the Department of Finance with a check for $467.44 in payment of the tax reported due.

Prior to February 24, 1928, claimant sold at retail 10,213 gallons of the gasoline it had stored, leaving 13,882 gallons not sold at the time the gasoline tax was held unconstitutional by the Supreme Court. The foregoing statement is made from the allegations contained in the declaration, no evidence having been introduced by either claimant or the State.

Claimant alleges that it "inadvertently" reported said 24,095 gallons of gasoline sold when it was in fact in storage, and claims it is entitled to a refund of $269.30, the amount of tax paid on the 13,882 gallons remaining in storage on February 24, 1928.

No plea to the declaration has been filed by the State and, under the rules of this court, the case must be treated as if a general traverse were on file. As stated above, there is

no evidence before the court to support the allegations of the declaration. But we think it is clear from the declaration itself that claimant is not entitled to the refund demanded. It is a well established principle of law that one who voluntarily pays money to another cannot maintain an action for its recovery. It clearly appears, we think, that the tax was voluntarily paid. It was paid to comply with the provisions of the Motor Fuel Tax Act, approved June 29, 1927. If claimant thought that law required the payment of a tax on gasoline held in storage and made the payment in that belief, such fact would not entitle it to recover, for it is well settled law in this State that an action to recover money paid under a mistake of law cannot be maintained. It is equally well settled that money paid under a mistake of facts cannot be recovered unless the mistake was mutual. This tax was not paid under a mutual mistake as to the facts. Claimant knew whether or not it had sold the gasoline, the Department of Finance did not. Claimant elected to treat it as having been sold, and so reported to the Department under oath, and it will not now be permitted to say its report was false in order to recover money it might not have been required to pay had its report been true.

The fact that the Motor Fuel Tax Act was held to be unconstitutional after claimant paid its tax does not give claimant the right to recover the tax paid. One who voluntarily pays a tax cannot maintain an action for its recovery although the law imposing the tax be afterwards held void.

Under no view of the case is claimant entitled to recover and the cause is therefore dismissed.

(No. 1375—Claim denied.)

RUIE POWERS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 14, 1929.

PERSONAL INJURY—*when no award will be made.* Where it appears from the evidence that the injuries complained of, were not received in line of duty and in course of employment while working at a state charitable institution, no award will be made.

CARL CHOISSER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a case brought by the claimant Ruie Powers, for damages against the State of Illinois by reason of injuries received from a fall when in the course of her duties in the State Hospital for Insane at Jacksonville, Illinois.

The claimant represents that on the 3rd day of January, A. D. 1928, while she was engaged in her duties in the employment of the State Hospital for the Insane at Jacksonville, Illinois, that she was carrying a parcel of butter from the kitchen of said institution to another part of said institution it become necessary for her to pass through the kitchen of said institution and pass near where a large steam meat cooker was located and that the floor near the cooker had been permitted to become coated with grease and that she slipped and fell severely injuring her back and lower bowels; that upon receipt of the injuries the claimant was taken on a stretcher to the hospital at the institution and remained there for three days, at the expiration of which time she was removed to the Nurses' Home at Jacksonville, where she remained until the 15th day of January, A. D. 1928, and afterwards taken to her home in Whittington, Franklin county, Illinois.

The claimant further alleges that since she received the injury she has been unable to perform any manual labor and has been prevented from earning any money and has been dependent, for her support and maintenance, upon her relatives.

The evidence shows that the claimant while she was employed at said institution talked with several persons and

they all testified that the claimant had stated to them in various conversations prior to the time of the alleged injury that she had complained of her back hurting and aching. Evidence further shows that X-ray examinations made at the State institution show that the condition of the claimant's back after the fall and before she was discharged from the hospital and before she left the employ of the State institution was normal. One of the witnesses testified that the claimant told her that ever since the birth of one of her children her back and hips hurt.

There is no question but what the claimant received this fall in the line of her duty and in the course of her employment and that she was taken to the hospital where she received treatment and that she was given physical X-ray examinations. There is nothing in the evidence to show that these examinations which she received, showed injury to her back which she complains of; while on the other hand the evidence does show that her back was found to be in a normal condition.

The claimant was paid her full salary all the time she was at the institution, including the time she was in the hospital until she was discharged from said hospital as having recovered.

We are of the opinion that the claimant did not receive any permanent injury during the course of her employment at said institution which would fall within the Workmen's Compensation Law and that she is not entitled to any compensation under said act.

The claim is, therefore, denied and dismissed.

(No. 1378—Claim dismissed.)

CHARLES LAWRENCE MCCORRY, AND HENRY C. WARNER, EXECUTOR OF THE LAST WILL AND TESTAMENT OF CHARLES MCCORRY, Deceased, Claimants *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

DISMISSAL—*when case will be dismissed upon motion of claimant.* Where it appears that there is no reason why the cause should not be dismissed, the case will be dismissed upon the motion of claimant.

HENRY C. WARNER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Per Curiam: This cause coming on to be heard upon motion of claimant that the above entitled cause be dismissed without prejudice, and it appearing that there is no reason why said cause should not be dismissed,

It is therefore considered by the court that said cause be and the same is hereby dismissed.

(No. 1386—Claimant awarded $5,669.82.)

FEDERAL BRIDGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

CONTRACTS—*when award will be made.* Where it appears from the record that claimant performed all of the duties required of him under his contract with the State Division of Highways and claimant sustained loss through no fault of his own, an award will be made upon the statement of the Attorney General and the report of the Chief Highway Engineer.

B. J. SWEATT, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

This is a case brought by the Federal Bridge Company, claiming the amount on a certain contract No. 2794, Section 17-B, of $3,354.87; on contract No. 2795, Section 19-B, of $1,796.26, and interest on the above amounts from June 15, 1927 to July 1st, 1929, at the rate of five per cent per annum, $518.69, making a total of $5,669.82.

It appears from the statement of the Attorney General that "On August 4, 1926, the Department of Public Works

and Buildings, Division of Highways of the State of Illinois, took bids at a public letting on certain bridge work to be constructed in LaSalle county, Illinois, on State Bond Issue Route No. 18, Federal Aid Project No. 88, Sections Nos. 17-B and 20-B, all in said LaSalle County; that claimant submitted a bid on said work on each of said sections and a combination bid on all three sections as per legal notices to contractors, which combination bid of $39,685.00 was the lowest bid submitted at said letting and was accepted August 4, 1926, by the said Division of Highways; (See Affidavit filed by claimant) that separate contracts in writing were entered into between the claimant and the said Division of Highways. (See affidavit filed by claimant.)

There appears to be no question as to the contractor, the claimant faithfully and fully performing all the duties required of him by the said Division of Highways. It appears that all of this work has not been fully completed, but same not being the fault of said claimant.

Under date of December 14, 1928, a report was received in this case from Honorable Frank T. Sheets, Chief Highway Engineer, which is as follows:

"December 14, 1928.

Court of Claims:

FEDERAL BRIDGE COMPANY
v.
STATE OF ILLINOIS } No. 1386.

HON. OSCAR E. CARLSTROM,
Attorney General
Supreme Court Building
Springfield, Illinois
Dear Sir:

We are returning herewith declaration and exhibit in the above mentioned case, together, with copy of a report received from Mr. Hathaway, Engineer of Construction.

We have checked the several amounts set up in the statement attached to and made a part of the claim and find some discrepancies, which we have indicated in pencil.

In view of the conditions under which this claim was imposed, we feel that the claimant is justly entitled to a consideration in the amount of $5,669.82.

Very truly yours,

DIRECTOR.
(Signed) FRANK T. SHEETS,
Chief Highway Engineer."

Claimant has amended his declaration so as to fully comply with the requests of the Division of Highways. You will note that Mr. Sheets states in his report that, owing to the conditions under which this claim was imposed, he feels that the claimant is justly entitled to a consideration in the amount of $5,669.82. This corresponds to the amount which claimant is asking in his amended declaration and referred to in his said affidavit filed herein.

Claimant took this matter up with the Assistant Attorney General, Roy D. Johnson, who is handling the case for the State, and in view of the report filed by Mr. Sheets, it was not deemed necessary to go to the trouble and expense of taking testimony but that all was necessary for record would be that claimant make an affidavit sworn to under oath, stating briefly the facts in the case and the amount claimed, which he has done.

From the statement of the Attorney General and from the report and letter signed by Frank T. Sheets, we hereby award the claimant the sum of $5,669.82.

(No. 1420—Claimant awarded $4,200.00.)

BLANCHE METCALF, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 14, 1929.

PERSONAL INJURY—*when award will be made—equity and social justice—Workmen's Compensation Act.* Where it appears that claimant's intestate received injuries while acting in course of his employment while an attendant at the Lincoln State School and Colony, an award will be made under the doctrine of equity and social justice and the amount determined under the provisions of the Workmen's Compensation Act.

HOMER B. HARRIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought on behalf of the claimant, a widow and minor child of George Metcalf, deceased, who came to his death on July 9th, 1927, while acting in the course of his employment as an attendant at the Lincoln State School and Colony. It appears that on July 8th, 1927, an inmate of the aforesaid institution, William Beesley struck the decedent

with a table leg with such force and violence that the decedent died on July 9th, 1927.

As this is a case to be measured only by the Workmen's Compensation Act of the State of Illinois, the Attorney General makes no objection to the allowance of the claim.

This is a case that appeals to the court under the doctrine of equity and social justice. Where a man in the prime of life was killed in the line of duty without justification, it appears that he had been an efficient employe doing his duties faithfully and efficiently.

Therefore this court recommends that this claimant be allowed in behalf of herself and minor child of the deceased, the sum of Forty-two Hundred and no/100 Dollars ($4,200.00).

(No. 474—Claim denied.)

HONORE PALMER AND POTTER PALMER, INDIVIDUALLY AND AS EXECUTORS OF AND TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF BERTHA HONORE PALMER, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

Rehearing denied May 9, 1929.

INHERITANCE TAX—*jurisdiction—when Court of Claims has no jurisdiction.* The Court of Claims acquired no jurisdiction by the filing of the original declaration. The Court has no appellate jurisdiction in any case, neither does it have original jurisdiction to determine whether or not an inheritance tax is due the State, or to fix the amount of such tax that is due.

SAME—*what court has jurisdiction.* Original jurisdiction in all inheritance tax matters is given to county judges and county courts.

SAME—*when tax cannot be recovered.* A tax voluntarily paid though illegal cannot be recovered back.

STATUTES—*Inheritance Tax Act—sections 8 and 10.* The Inheritance Tax Act is a code covering the whole subject of such taxes;—the assessment, payment and the method of securing the refund of taxes erroneously paid. Sections 8 and 10 of the act provide the methods by which taxes erroneously paid may be refunded.

WINSTON, STRAWN & SHAW, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On May 5, 1918, Bertha Honore Palmer, a resident of Chicago, Illinois, died testate. On July 24, 1918, letters testa-

mentary were issued to claimants as executors of her last will by the Probate Court of Cook County. Thereafter proceedings were had, as provided by the Inheritance Tax Act, to determine the amount of inheritance tax due, and on November 4, 1918, the county judge of Cook County made and entered an order fixing the inheritance tax at the sum of $276,509.04. On the same day the order fixing the amount of the tax was entered claimants paid the county treasurer of Cook County $262,683.59, being the amount of the tax found due less the 5% discount allowed by the statute for payment thereof within six months of the death of deceased. After the payment of the tax claimants appealed from the order of the county judge, fixing the amount of tax due to the County Court of Cook County. On October 29, 1920, while this appeal was still pending and undisposed of claimants filed their declaration in this court praying "that an order may be entered herein finding that no transfer, inheritance tax, or succession taxes were due and payable to the State of Illinois, by reason of the death of Bertha Honore Palmer, deceased, and that this court enter a further order herein awarding to your petitioners payable out of the treasury of the State of Illinois, the said sum of $262,683.59, together with interest thereon according to law to be computed from the fourth day of November, A. D. 1918, to the date of the repayment of such sum to your petitioners", etc. The grounds upon which this court was asked to grant the relief prayed for were that under the provisions of the will of deceased no tax was due, that the Inheritance Tax Act was unconstitutional, that the appraiser erred in his findings and report, and the county judge erred in approving the findings and report of the appraiser and fixing any tax as due and payable.

It is apparent that this court acquired no jurisdiction of the cause by the filing of the original declaration. The Court of Claims does not have appellate jurisdiction in any case. Neither does it have original jurisdiction to determine whether or not an inheritance tax is due the State, or to fix the amount of such tax that is due. Original jurisdiction in all inheritance tax matters is given to the county judges and county courts.

It is obvious that claimants paid the tax before taking their appeal voluntarily. They were not required to pay it

in order to perfect their appeal, there being no provision in the statute requiring the payment of the tax as a condition of the appeal. It is a familiar rule of law that a tax voluntarily paid, though illegal, can not be recovered back. (*Davis v. Board of Education*, 323 Ill. 269; *School of Domestic Arts v. Harding*, 331 Ill. 330.) Having paid the tax voluntarily claimants were not entitled to have it returned to them.

The appeal was not finally disposed of until July 27, 1928, on which date an order was entered by the County Court of Cook County fixing the amount of the tax due at $170,699.05. Thereafter, on September 25, 1928, claimants filed their amended declaration asking for an award of $100,519.49, being the amount they claim they paid in excess of the tax finally determined to be due. The order of the county judge entered November 4, 1918, was valid and binding until reversed or modified on appeal, and claimants had no right to demand the return of any of the tax paid under that order until the appeal was disposed of. It was a voluntary payment made for their own benefit, and they cannot be heard to ask for its return on the ground that it was illegally assessed.

The Inheritance Tax Act is a code covering the whole subject of such taxes,—their assessment, payment, and the method of securing the refund of taxes erroneously paid. Sections 8 and 10 of the Act provide the methods of having taxes erroneously paid refunded. If claimants can bring themselves with the provisions of those sections they have a forum where their cause can be heard. This court has no jurisdiction to decide cases provided for by those sections.

The award is therefore denied and the cause dismissed.

On May 9, 1929, upon petition for rehearing the following additional opinion was filed:

Per Curiam: This cause coming on for rehearing upon petition of claimant filed on April 20, 1929. After argument of counsel, and the court having sufficiently reviewed the matter brought upon said petition and that it appearing that said petition should be denied,

It is therefore considered by the court, that the said petition be, and the same is hereby denied.

(No. 961—Claim denied.)

BESSIE FRIEND AND GEORGE B. FRIEND, EXECUTORS OF THE WILL OF ISAAC FRIEND, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

INHERITANCE TAX—*when no award will be made.* No award will be made when the Statute provides a method for recovery of taxes erroneously paid.

SAME—*Inheritance Tax Act—Sections 8, 10, 25.* The Inheritance Tax Act is a complete code. The procedure for the recovery of excess taxes paid and taxes erroneously paid, is set forth in Sections 8, 10 and 25 of the Act.

SAME—*jurisdiction.* Court of Claims has no jurisdiction to hear and determine questions involving inheritance taxes.

SONNENSCHEIN, BERKSON, LAUTMANN & LEVINSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Isaac Friend, a resident of Chicago, died testate July 30, 1915, and letters testamentary were issued to claimants September 14, 1915. On January 31, 1916, the county judge of Cook County entered an order fixing the inheritance tax due from the estate and the tax was paid by the executors. On October 7, 1925, the County Court of Cook County entered an order for the reassessment of the taxes under the provisions of Section 25 of the Inheritance Tax Act, and the taxes were reassessed at a lower rate than the original assessment. Claimants then filed this claim for a refund of the excess taxes paid in compliance with the first assessment.

The Inheritance Tax Act is a complete code, and the procedure for the recovery of excess taxes paid and taxes erroneously paid is set forth in sections 8, 10 and 25 of the Act. The application for a refund of such taxes must be made to either the county treasurer of the county or to the State treasurer as the facts in each case warrant. If claimants were entitled to have a portion of the taxes paid by them refunded, they should have made application therefor to the proper official as provided by the statute. This court has no jurisdiction to hear and determine questions involving inheritance taxes.

The Attorney General has filed a motion to dismiss the case on the ground that on December 15, 1925, the State Treasurer refunded to claimants the excess taxes paid by them for this estate. If that be true, and there is no denial of it by claimants, it would be rank injustice to make them an award, even if this court had the power to do so.

The claim is denied and the cause dismissed.

(Claims dismissed.)

PERCIVAL B. COFFIN, ADMINISTRATOR OF THE ESTATE OF DELMOS CAMPBELL, Deceased, 978; PERCIVAL B. COFFIN, ADMINISTRATOR OF THE ESTATE OF BENJAMIN ANDERSON, Deceased, 979; PERCIVAL B. COFFIN, ADMINISTRATOR OF THE ESTATE OF HERBERT DURANT, Deceased, 981, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

Rehearing denied May 9, 1929.

REHEARING—*insufficiency of evidence.* A rehearing will be denied where newly discovered evidence is not sufficient to justify a finding in favor of claimant had it been in the record when the case was originally considered.

EVIDENCE—*when award will not be made on grounds of newly discovered evidence.* Where an examination of newly discovered evidence shows that an award could not have been made, had the new evidence been before the court at the time the case was originally disposed of an award will not be made.

RULES—*when rehearing will be denied for failure to comply with rules of the court—Rule 30.* Where Rule 30 of the Court of Claims requires a petition for rehearing to be filed within twenty-five days after the opinion is filed and the petition for rehearing is not filed until over a year and eight months after the opinion is filed a rehearing will be denied.

WILL N. JOHNSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

An opinion was filed May 12, 1927, denying award in each of these cases and dismissing them. On February 7, 1929, the attorney for claimants filed a petition for a rehearing of each case on the grounds of newly discovered evidence. We have examined the alleged new evidence filed in each case, and

could not have allowed an award in either of them had this evidence been before the court at the time the cases were disposed of. Rule 30 of this court requires all petitions for a rehearing to be filed within 25 days after the opinion has been filed in the case. The petitions for a rehearing in these cases were not filed until over a year and eight months after the opinion was filed. The petition for rehearing is denied in each case.

On May 9, 1929, upon motion to vacate order heretofore entered the following additional opinion was filed:

Per Curiam: This cause coming on to be heard on motion of claimant to set aside and vacate the order heretofore filed and petition for new trial, and the court having sufficiently reviewed the matter brought upon said motion and petition and that it appearing that motion and petition should be denied, it is

Therefore considered by the court, that the said motion be overruled, and the petition for new trial be denied and the motion is hereby overruled and the petition for new trial is denied.

(No. 1052—Claimant awarded $3,000.00.)

ARTHUR G. WILSON, ADMINISTRATOR OF THE ESTATE OF DELBERT BLACKBURN, Deceased, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

MILITARY SERVICE—*when an award will be made for the death of a member of the Illinois National Guard.* An award will be made for the death of a member of the Illinois National Guard resulting from injuries sustained while on active duty.

SOCIAL JUSTICE AND EQUITY—*when award will be made.* An award will be made on the grounds of social justice and equity when it appears that claimant received injuries which resulted in death while on active duty while a member of the Illinois National Guard.

WORKMEN'S COMPENSATION ACT—*when award will be made under.* The Workmen's Compensation Act will be taken into consideration in determining the amount of the award for the death of a member of the Illinois National Guard.

OLIVER D. MANN AND BROWN, HAY & STEPHENS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The facts in this case show that Delbert Blackburn was a second lieutenant, Company A, 130th Infantry, Danville, Illinois; that on or about July 19th, 1925, he was on active duty with his company at the Rifle Range at Danville, Illinois, engaged in firing and giving instructions to members of his company; that while firing his rifle recoiled or "kicked" and he received a sharp blow on his right shoulder; that he complained of his shoulder and ceased firing; that he spent the remainder of the day in the rifle pits; that at that time, shoulder pads were not used to protect the shoulder against the recoil or kick of the rifle while firing and there was general complaint of bruised and sore shoulders from the other members who were firing; that he continued to suffer from pain in his right shoulder; that in the latter part of July, 1925, he had same examined and was treated by Dr. Crist and that the shoulder did not respond to treatment under Dr. Crist; that he worked at his regular occupation until the latter part of September, 1925, but thereafter he was unable to work on account of the injured shoulder; that during the early part of December, 1925, he was examined by Dr. E. E. Howard, who caused Dr. E. G. C. Williams to make an X-ray exami-

nation of his shoulder; that on February 16th, 1926, a Board of Officers, consisting of Henry D. Orr, Col. M. C. Surgeon-General, James J. McKinley, Lt. Colonel M. C. 108th Med. Regiment, and Joseph E. Stettauer, Captain M. C. 108th Med. Regiment, pursuant to special orders No. 18, Par. 4, examined Blackburn and stated in its report that he was "suffering from a cancer (sarcoma) of the right shoulder (scapula) from which he could not recover"; that Delbert Blackburn died February 22nd, 1926, five days after this examination; that he was unmarried, a paperhanger by trade and earned about $25.00 per month; that he left surviving him at the time of his death, his father, Moses Blackburn, his mother, Alice Blackburn, Hiram P. Blackburn, his brother, and Ida May Phillips, his sister, and that he was the main support of his father and mother who are practically destitute.

In equity and social justice we feel that an award should be made in this case, and we do accordingly award to claimant, Arthur G. Wilson, administrator of the estate of Delbert Blackburn, deceased, the sum which he would be entitled to receive had Delbert Blackburn been employed under the provisions of the Workmen's Compensation Act of the State of Illinois, or the sum of Three Thousand and no/100 Dollars ($3,000.00).

(No. 1053—Claimant awarded $731.00.)

F. J. DESALE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

PROPERTY DAMAGE—*when award will be made for damage to automobile by reason of a collision with a motor vehicle operated by a member of the Illinois National Guard.* Where the evidence of claimant is not contradicted, an award will be made for damage to a motor vehicle caused by a collision with an Illinois National Guard truck.

SOCIAL JUSTICE AND EQUITY—*when award may be made.* Where the facts are not disputed and the circumstances of the case warrant it, an award will be made on the grounds of social justice and equity.

THOMAS P. SINNETT, J. J. NEIGER AND J. HAYS BRITTON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The claimant in this case filed his sworn statement or declaration in the office of the Secretary of State on June 30th,

1926. The facts in the case, as disclosed by the record are substantially as follows: F. J. DeSale owned a Buick automobile; that on August 8, 1925, he permitted said car to be operated by one A. J. Coyle; that said A. J. Coyle was driving said automobile on State Route No. 5 to Rockford, Illinois, where he was to transact some business for himself and for the owner of the car, F. J. DeSale; that on August 8, 1925, the National Guard of the State of Illinois was in training at the encampment located at Rockford, Illinois; that the headquarters of said unit which was in training at said encampment was in Chicago, Illinois, and that a large army truck was being used by the National Guard in transporting the soldiers and equipment from Chicago to the encampment at Rockford and was using the most direct route or road known as Route No. 5, which was then and there a hard surfaced paved road, 18 feet in width, with a lane for both east and west traffic; that the car of plaintiff was driven by said Coyle westward on said road about 10 miles east of Rockford, Illinois, at about 10:00 or 10:30 P. M. in the night time and was driving said Buick at about the speed of 30 or 35 miles per hour and was in the exercise of all due care and diligence for his own safety and the safety of said automobile; that as said Coyle was driving said automobile of plaintiff along said road, he suddenly came upon a large truck parked on the right lane of said hard road or lane accommodating westward traffic without any lighted lamps visible; that he noticed said object when he was about a distance of 25 feet from it; that at the same time coming from the opposite direction was another car; that on account of the intense darkness the said Coyle was unable to turn to the right of said artillery truck parked on the right lane of said hard road lest he would run into a ditch; that to avoid hitting the object which proved to be an army truck belonging to the State of Illinois and which was being used by the National Guard, he chose to attempt to turn to the left of the said artillery truck; that the automobile coming from the west reached the spot and place at the same time, rendering it impossible for the plaintiff to clear said artillery truck and he ran into and collided against the body of said army truck and as a direct consequence of the collision both doors of the plaintiff's automobile were knocked off, the body torn from the chassis and crushed and destroyed beyond repair, the crank case was broken, and the frame bent,

and was in such condition that it was impossible to repair it; that he salvaged it for the sum of $69.00; that the blue book value of said Buick at that time was $800.00, and that he is therefore entitled to damages in the sum of $731.00.

The evidence offered by the plaintiff herein is not disputed or in any way contradicted. While there is no legal liability on the part of the State of Illinois to render an award in this case, we feel that in the interests of equity and social justice claimant should receive the amount of damages actually sustained by him, and we do accordingly award to him the sum of Seven Hundred and Thirty-one Dollars ($731.00).

(No. 1205—Claim denied.)

ELI WATKINS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 14, 1929.

Rehearing denied March 28, 1929.

HIGHWAYS—*conveyance of right of way for road purposes.* Where claimant conveys to the State for a valuable consideration, the right of way for a road across his land and the deed recites that the State is released from all damages, resulting from a change in the channel of a natural water course, no action can be maintained for damages resulting therefrom.

NEGLIGENCE—*State is not liable for negligence of officers, agents or employes of the Division of Highways.* The Division of Highways of the Department of Public Works and Buildings, has the maintenance and construction of State roads in its charge and if in the construction of a State road, the employes commit a wrong, such tort is that of the person who did the wrongful act, and cannot be regarded as the act of the State.

COURT OF CLAIMS—*jurisdiction—equity and good conscience.* No claim against the State will be allowed unless there is either a legal or equitable obligation of the State to pay it. Where there is no legal liability, equity cannot create one.

REHEARING—*when rehearing will be denied.* When claimant's petition for rehearing does not set up any matter not fully considered in the original opinion, a rehearing will be denied.

ROLLO SIX, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

Claimant asks $2,250.00 damages alleged to have been caused by the negligent and wrongful changing of the natural

course of Hadley Creek branch and the construction of a grade and bridge in a wrongful and negligent manner adjacent to and across his land by the Division of Highways while improving State Bond Route 36. The contention of claimant is that the change of the channel of the creek and the construction of an inadequate bridge caused claimant's lands to be flooded and damaged.

Claimant conveyed to the State the right of way for the road across his land, the deed being in evidence. This deed shows it was executed in consideration of $850.00 and the benefits resulting from the maintenance of the road and recites that the State is released "from any and all damages resulting from said channel changes." Having released all damages resulting from the change in the channel of the creek he cannot now maintain an action for them.

But if claimant had not released the State from such damages, he could not recover an award for them. His declaration, his evidence and his argument are all on the theory that the Division of Highways was guilty of negligence in changing the channel of the creek and in constructing an inadequate bridge. The question of the liability of the State for the negligent conduct of its officers and agents has frequently been before this court. In the cases of *William H. Peterson* v. *State* and *J. A. Peterson* v. *State*, opinion filed September 11, 1928, the same question was involved as in this case, and we there said: "It is apparent that the damages claimed are based on the negligence or wrongful conduct of the agents of the State in constructing these roads. The State is never liable for the wrongful conduct or negligence of its officers or agents. In *Kinnare* v. *City of Chicago*, 171 Ill. 332, on page 335, our Supreme Court announced that doctrine in the following language: 'The State acts in its sovereign capacity, and does not submit its action to the judgment of courts and is not liable for the torts or negligence of its agents, and a corporation created by the State as a mere agency for the more efficient exercise of governmental functions is likewise exempted from the obligation to respond in damages, as master, for negligent acts of its servants to the same extent as is the State itself, unless such liability is expressly provided by the statute creating such agency. *Town of Waltham* v. *Kemper*, 55 Ill. 346; *Elmore* v. *Drainage Comrs.*, 135 id. 269; *Symonds* v. *Clay County*, 71 id. 355;

Town of Odell v. *Schroeder*, 58 id. 353; *Wilcox* v. *City of Chicago*, 107 id. 334; *Nagle* v. *Wakey*, 161 id. 387; *15 Am. & Eng. Ency. of Law*, p. 1164; *2 Dillon on Mun. Corp.*, p. 1193.' The Department of Public Works and Buildings is one of the departments of the State government. The Division of Highways of that department has the construction and maintenance of State roads in its charge. If in the performance of the duties required of them in the construction of a State road the employees commit a wrong whereby the person or property of a citizen is injured the tort is that of the man or men who do the unlawful act, whether they be public officers or not, and cannot be regarded as the act of the State. (*Cooney* v. *Town of Hartland*, 95 Ill. 516.) We know of no exception to this rule. In *Gibbons* v. *United States*, 8 Wall. 269, the court said, 'No government has ever held itself liable to individuals for the misfeasance, laches or unauthorized exercise of power by its officers and agents, however gross.' In *Jorgensen* v. *State*, 2 Ct. Cl. 134, in discussing this question this court said: 'This proposition of law, so well established, has been consistently followed by this court in the adjudication of all claims that have ever come before it, and applies with equal force to the cause now on hearing.' Many other cases might be cited announcing the same principle of law, but we deem it unnecessary to do so. It is perfectly clear that neither of the declarations states a cause of action against the State, and unless they do no award can be based upon them.

"Claimants seem to recognize the fact their claims are not legal, for they say 'they know whatever is allowed them will be allowed out of equity and good conscience.' The statute creating the court of claims gives it power to hear and determine all claims and demands, legal and equitable, which the State, as a sovereign commonwealth, should, in equity and good conscience, discharge and pay. It is plain from the language of this statute that no claim against the State can be allowed by this court unless there is either a legal or equitable obligation of the State to pay it. Before a claimant can have an award against the State he must show he comes within the provisions of some law making the State liable to him for the amount claimed. If he cannot point to any law giving him the right to an award he cannot invoke the principle of equity to secure the award. Where there is

no legal liability equity cannot create one. (*10 R. C. L.*, sec. 132.) Equity is not the court's sense of moral right; it is not the power of the court to decide a case according to a high standard of abstract right, regardless of the law; it is a complex system of established law. In *Murdock Parlor Grate Co.* v. *Commonwealth*, 24 N. E. 855, the Supreme Judicial Court of Massachusetts construed a statute of that state giving the courts of the state jurisdiction of claims against the commonwealth. The statute in question gave the Superior Court 'jurisdiction of all claims against the commonwealth, whether at law or in equity.' It was contended that this language made the state 'responsible for a tort committed by its servants.' In discussing that question, after citing authorities showing the general rule of non-liability of the state for such torts, the court said: 'The act we are discussing discloses no intention to create against the state a new, and heretofore unrecognized class of liabilities, but only an intention to provide a judicial tribunal where well-recognized existing liabilities can be adjudicated. Where wrongs are done to individuals by those who are the servants of the government, those injured are not remediless, as such persons may be sued as may be other citizens for the torts which they commit.' In *Schmidt* v. *State*, 1 Ct. Cl. 76, in discussing this question, this court said on page 79: 'The law creating this commission does not undertake to create a new liability against the State but provides a method by which claims against the State may be heard before this commission, and the claim rejected or an award made in favor of the claimant.' And on page 80 of the opinion it is further said: "It is our understanding that in the use of the language 'to determine the same according to the principles of equity and justice' is meant and used with a legal signification and that this commission has no power to make an award in any case unless the facts show a legal or equitable claim against the State. We do not believe it was the intention of the Legislature to leave it discretionary with the commission to make an award in favor of the claimant regardless of the question as to whether or not he had a legal claim against the State. We are of the opinion further, that it would be an exceedingly dangerous precedent to hold that the commission had any such discretion." See also *Jorgensen* v. *State, supra*. To give this statute the construction contended for by

claimants would result in giving this court power to hold the State liable for the misfeasance and malfeasance of all its officers, the torts of all its servants and agents, and all damages caused by the wrongful exercise of their powers by such officers and agents. We do not believe the Legislature intended any such radical and far reaching change in the law when it enacted the statute creating this court. It follows that the demurrers to the declarations of claimants must be sustained." We deem it unnecessary to cite other cases.

The claim is therefore denied and the cause dismissed.

On March 28, 1929, upon petition for rehearing the following additional opinion was filed:

Claimant filed his petition for rehearing in this cause on the 11th day of March, 1929. Claimant's petition for a rehearing does not set up any matter that was not fully considered by this Court in the original opinion in this cause. Therefore, the petition for rehearing is denied.

(No. 1241—Claimant awarded $2,262.50.)

THE CALEDONIA COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

FRANCHISE TAX—*when award will be made for franchise taxes erroneously paid.* **Where it appears that franchise taxes have been erroneously paid upon authorized capital stock instead of issued capital stock, which sum was turned into the State Treasury before the error was discovered an award will be made for the difference between the amount paid and the amount lawfully due.**

DENEEN, HEALY & LEE, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The Caledonia Company, the claimant, is an Illinois Corporation with its principal office in the State of Illinois at 1624 W. 63rd St., City of Chicago.

The declaration states that the year 1927 had an authorized stock of 50,000 shares of no par value, that the number

of such shares issued and outstanding is 19,000; that the nominal value of no par stock is $25.00, while the market value of each share of such no par stock is $17.00 per share; that on May 14, 1927, the claimant paid to the State of Illinois, for the year following such date of payment, the sum of $2,750.00; that the franchise tax lawfully due on the account of capital stock issued and for the year following said date of payment was $237.50 and that the amount paid exceeded the amount lawfully due the State of Illinois in the sum of $2,262.50.

That the error in computation resulted through no fault of the claimant but from a misstatement made by the claimant in its annual report to the Secretary of State on May 14, 1927.

The claimant files its claim in the sum of $2,262.50 stating that this amount is for excess paid as franchise tax for the year following May 14, 1927.

The Attorney General of the State of Illinois files his answer and consent to an award which is as follows:

"Now comes Oscar E. Carlstrom, Attorney General, answering the claim herein filed, says that upon recommendation of the Secretary of State, the officer to whom the money was paid, consents to an award in this case, and for reason thereof states that the claimant did pay to the Secretary of State as a franchise fee for the year commencing July 1, 1927, the sum of Two Thousand Seven Hundred and Fifty Dollars ($2,750.00) computed upon the authorized capital stock of claimant, to-wit, 50,000 shares, no par value, at the arbitrary valuation of $100, considered by the statute prior to the amendment of May 12, 1927, as the basis for computing franchise fees; that by an emergency Act approved and in force as of May 12, 1927, the computation should have been based upon the issued capital stock of claimant at the value for which the said corporation did sell the capital stock, to-wit, the sum of seventeen dollars ($17.00) per share, upon 19,000 shares issued, which franchise fee should have been in the sum of Two Hundred Thirty-seven Dollars and Fifty Cents ($237.50); and that, therefore, the sum of Two Thousand Two Hundred Sixty-two Dollars and Fifty Cents ($2,262.50) should be rebated to claimant as paid in error, which sum was turned into the State Treasury by the Secre-

tary of State before the said Secretary of State was aware of the facts entitling this claimant to an award of this amount."

This court has held in numerous cases that when the facts show that a franchise tax was paid through an error in computation or where the franchise tax was erroneously paid that the claimant is entitled to a refund of the franchise tax which was in excess legally due the State. It will be found in the opinion filed May 26, 1927, "*Joyce Watkins Company, Corporation, claimant, v. The State of Illinois, respondent,*" Court of Claims Reports, volume 5, page 429.

There are numerous other cases to sustain this finding. In view of the answer and consent to an award filed by the Attorney General and in view of numerous cases cited in volume 5 of the Reports of the Court of Claims and as a matter of equity, the court awards the claimant the sum of $2,262.50.

(No. 1274—Claimant awarded $775.00.)

ROY BENNETHUM AND CLINTON FRYER, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

ANIMALS—*when award will be made to compensate the owner of cattle destroyed.* An award will be made to compensate the owner of cattle infected with tuberculosis for the difference between the amount received for the cattle and their market value upon the recommendation of the Director of Agriculture.

C. H. GREEN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $2,332.91 damages claimants allege they suffered by the sale of 44 head of tubercular cows. On December 23, 1922, claimants' herd of dairy cows was tested for tuberculosis and was found to be infected with that disease. The cows were branded with the letter "T", and the herd was quarantined.

When claimants could not longer sell the milk from their herd they shipped 39 of the branded animals to Chicago and sold them on December 28, 1925. That was three years after they had been tested and found infected with the disease. This sale netted claimants $1,234.29. They had sold 3 of the cows in January, 1924, and they sold another cow and a bull in June, 1925. These sales all netted claimants $1,377.09 for the 44 animals sold. The award asked is the difference between what they received for the cattle and what they claim was their market value.

The Director of Agriculture appeared before the court in open session and made a statement that he had investigated the facts in this case and recommended that the court allow the claimants the sum of $775.00.

Therefore, on the recommendation of the Director of Agriculture this court recommends to the Legislature, that the claimants be allowed the sum of Seven Hundred and Seventy-five ($775.00) Dollars.

(No. 1283—Claimant awarded $112.00.)

MARTHA F. NEIGHBORS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

PERSONAL INJURY—*when an award will be made.* An award will be made for doctor bills incurred by reason of injuries sustained which resulted by claimant being struck by an automobile operated by an employee of the State, upon the statement of the Attorney General, which included a report from the Director of Conservation.

MARTHA F. NEIGHBORS, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant charges in her declaration in this case that on the 27th day of November, 1927, while she was walking on South Second Street in Springfield, Illinois, she was struck by an automobile owned by the State and being driven by an employee of the State. She alleges that as the result of such accident she was injured and incurred bills and items

of expense in curing herself of such injuries to the amount of $112.00, and asks to be awarded that sum against the State.

The Attorney General has filed two statements in this cause, to one of which is attached a copy of letter from the Director of Conservation.

In view of those statements filed by the Attorney General including the report from the Director of Conservation, the court believes this to be a meritorious claim.

The court recommends an award to the claimant of $112.00.

(No. 1317—Claim denied.)

FRED KOEHLER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

PERSONAL INJURY—*when State not liable for reimbursement for injuries sustained by an employee of a contractor.* The State is not liable to a contractor in the performance of his contract with the State for the amount determined by the Industrial Commission and paid by such contractor for personal injuries sustained by an employee of such contractor.

FRED KOEHLER, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant entered into a contract with the State of Illinois through the Department of Public Works and Buildings whereby he was to clean the debris, weeds and brush off of Cahokia Mound State Park, an institution owned by the State of Illinois.

It appears that in carrying out his contract he employed one Dan Enright to assist and while Enright was working for him in cleaning of said park, he injured his thumb by scratching same upon a barbwire.

That subsequent to said injury septic poisoning set in causing a loss of motion in said thumb making it necessary to cut off part of the bone.

That the said Enright filed a petition before the Industrial Commission for a settlement of the injury under the Work-

men's Compensation Act, and that this claimant settled a claim or action of Enright for the sum of $250.00 and it appears that claimant paid Enright $250.00 in settlement for same.

It is the opinion of this court that the claimant in undertaking the performance of his contract with the State of Illinois, should be diligent in the matter of insurance against damage or injury sustained by his employees. It would seem that he would be mindful of the hazards of such employment as was considered necessary in carrying out the contract with the State, and consequently it would hardly seem consistent for him to call upon the State of Illinois to respond for a claim growing out of the performance of his end of the contract.

Therefore it is recommended that the claim be dismissed.

(No. 1355—Claimant awarded $4,200.00.)

ANNA P. HUGUELET, WIDOW OF EDWARD J. HUGUELET, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

PERSONAL INJURY—*when award will be made for the death of a state employee resulting from personal injuries.* An award will be made for the death of a state employee resulting from personal injuries sustained in course of employment.

WORKMEN'S COMPENSATION ACT—*when award will be made under.* Where death results from personal injuries sustained in course of employment, an award will be made and the amount measured by the Workmen's Compensation Act.

REHEARING—*when award will be made upon petition for rehearing.* After rehearing is granted, an award will be made where the petition presents cause of action not contemplated when the case was heard.

REEDA & PEACE, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant, widow of said deceased, presents a cause of action upon petition for rehearing not contemplated when the case was heard.

Upon application of claimant, rehearing was granted, and it does now appear that said deceased was an employee of the State of Illinois, and while in the course of employment, he sustained injuries which caused his death and therefore under the Workmen's Compensation Act of the State, the widow of said deceased is entitled to recover, as it appears she and one minor child were dependent upon the deceased for a living.

The court believes that the Workmen's Compensation Act controls and that claimant's husband sustained injury and lost his life while in the employ of the State and consequently is entitled to recover, measured by the Workmen's Compensation Act.

Therefore, it is recommended that claimant be allowed the sum of $4,200.00 (Forty-two Hundred and no/100 Dollars).

(No. 1383—Claimant awarded $3,000.00.)

FRANK LOVE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

PERSONAL INJURY—*when award will be made for injuries sustained by a State employee—equity and good conscience.* Where the evidence shows that claimant received injuries while in the performance of his duties as an employee of the Soldiers' and Sailors' Home, an award will be made on the grounds of equity, good conscience and social justice.

CARL CHOISSER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed, in this case, by Frank Love, the claimant sets forth that he is now and has been for many years past a resident of the City of Quincy, Illinois, and that prior to the first day of March, 1925, the State of Illinois had maintained and operated at the City of Quincy in the State of Illinois an institution known as the Illinois Soldiers' and Sailors' Home, established and equipped for the purpose of providing a home for dependent soldiers and sailors, which said institution was established and equipped and maintained by the State of Illinois.

That said institution was under the control and supervision of the Department of Public Welfare of the State of Illinois; that prior to the first day of March, 1925, the claimant was employed by the State of Illinois as a servant in and around the institution. That as a part of his duties in such employment he distributed food from the general kitchen to the different cottages in and around said institution by means of a truck which he, the claimant, and two other servants of the State pushed back and forth over the stone walks owned, maintained and controlled by the State of Illinois.

It is the contention of the claimant that the State of Illinois wrongfully and negligently suffered the stone walks to be and remain in bad repair and said walks became broken and worn, that while the claimant in the performance of his duty and by reason of said defective walks, wrenched his left hand, causing a rupture of the tissues in said hand, resulting in a total loss of said hand, by reason of said injury, that during the time of said injury the claimant suffered great pain and was hindered from transacting his duties and that he was obliged to lay out divers sums of money endeavoring to be healed of his injury.

The Attorney General files a statement wherein he sets forth there was a report of the case furnished to him by O. C. Smith, Managing Officer of said Sailors' and Soldiers' Home in which he states in part as follows: "In view of the deplorable condition in which this man is or will be later, I recommend that the Court of Claims, if they find the State liable, be liberal as he will be totally incapacitated from performing any manual labor and will be unable to even dress himself because he has lost his other hand in an accident some years ago."

Assistant Attorney General, Roy D. Johnson, who handled this case for the State recites in his statement that the above statement of Mr. Smith voices his sentiments also.

The court is of the opinion that this is a case where equity, good conscience and social justice should be extended and we, therefore, allow the claim in the sum of $3,000.00.

(No. 1391—Claimant awarded $67.30.)

ELECTRIC APPLIANCE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

CONTRACTS—*when award will be made for supplies furnished to the Southern Illinois Penitentiary.* **An award will be made for supplies furnished to the Southern Illinois Penitentiary upon the recommendation of the Director of Public Welfare.**

EDWIN O. LINDEN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim based on an order for the delivery of merchandise dated July 5, 1925, and signed by Elmer J. Green of Menard, Illinois, for shipment to the Southern Illinois Penitentiary. The claimant states that shipment of merchandise was made by claimant on July 10th, 1925, at said Southern Illinois Penitentiary at Menard, Illinois, to be used in the Water Works Plant at said penitentiary. A copy of the invoice is attached to the declaration.

The statement filed by the Attorney General has attached thereto a copy of a letter, marked Exhibit B, signed by Rodney H. Brandon, Director, stating that "I believe this is a just claim and should be allowed".

We, therefore, award the claimant the sum of $67.30.

(No. 1397—Claimant awarded $673.30.)

CONN PEORIA CO., INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

CONTRACTS—*when award will be made for supplies furnished to a State institution.* Where it appears from the record that there was no appropriation to pay for certain merchandise furnished to a State institution and no objection is made on the part of the State to the allowance of the claim, an award will be made.

SCHOLES, O'DONNELL & DOUGHERTY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was engaged in the business of selling musical instruments and did bargain with and sell musical instruments and supplies to the Illinois School for the Deaf at Jacksonville, Illinois. It is claimed that the musical instruments were sold to this school at a discount of one-third off and that no question has arisen regarding the quality or condition of these instruments. It appears that the price agreed upon was $624.48 and the reason advanced for not paying for these instruments was that there was no appropriation with which to pay the same.

There are no objections on the part of the defendant to the allowance of this claim as it appears that the musical instruments were furnished in the usual manner.

Therefore it is recommended that claimant be allowed the sum of Six Hundred Twenty-four 48/100 ($624.48) Dollars, *together with accrued interest making an award* Six Hundred Seventy-three 30/100 ($673.30) Dollars.

(No. 1398—Claimant awarded $900.00.)

JACKSON R. BROWN, Claimant, *vs.* STATE OF ILLINOIS, Respondent

Opinion filed March 28, 1929.

FEES AND SALARIES—*when award will be made for additional salary.* Where the statute provides a certain salary and the Legislature fails to make a sufficient appropriation to pay it, an award will be made for the difference between the amount provided by the statute and the amount appropriated.

SCHOLES, O'CONNOR & DOUGHERTY, for claimant.

OSCAR E. CARLSTROM, Attorney General, ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant was employed by the State of Illinois as a State Agent for the Department of Agriculture, Division of Animal Industry in 1923 at a salary of $175.00 per month; that by an Act of the Legislature of the State of Illinois, effective July 1st, 1923, an appropriation went into effect providing for the employment of twelve State agents of the Department of Agriculture, Division of Animal Industry at $2,400.00 per year. This appropriation was re-enacted by the Legislature of 1925, and that claimant did not participate in this salary until July 1st, 1926. It appears to the court that it was the intention of the Legislature to pay men in the capacity of claimant during the period between July 1st, 1923, and July 1st, 1926, a salary of $200.00 per month, which would be $25.00 per month during that period over what the claimant received, making a total of Nine Hundred ($900.00) Dollars, *that would be due the claimant.* The claimant makes claim for interest which we do not feel the claimant should be allowed. It further appears that there is nothing in the record that would indicate any failure on the part of claimant in performing the duties of his employment and it did appear that the Legislature intended that claimant should have $200.00 per month for such employment.

Therefore it is recommended that claimant be allowed the sum of Nine Hundred ($900.00) Dollars.

(No. 1399—Claimant awarded $900.00.)

LOUIS E. MARBRY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

FEES AND SALARIES—*when award will be made for additional salary.* Where the Statute provides a certain salary and the Legislature fails to make a sufficient appropriation to pay it, an award will be made for the difference between the amount provided by the statute and the amount appropriated.

SCHOLES, O'CONNOR & DOUGHERTY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover for an additional salary due claimant under an Act of the General Assembly. It appears that claimant was acting as a State Agent, a Tuberculosis Inspector in the Department of Agriculture. In 1923 his salary was $175.00 per month.

The Legislature of 1923 by an Act made an appropriation providing for the employment of twelve State agents at a salary of $2,400.00 per year. The same appropriation was made by the 1925 Legislature and it appears that during this time this claimant as such agent only drew the salary of $175.00 per month. It does not appear plain to this court why this was done. There is nothing in the record to indicate that this agent did not perform his duties faithfully and it would appear that the Legislature desired that an employe of the State in the capacity of claimant should receive the $2,400.00 per annum salary. It further appears from the records in this case that claimant would be entitled to $900.00 if he received the salary indicated by an Act of the Legislature.

Following what this court believes to be the intent of the Legislature they recommend that claimant be allowed the sum of Nine Hundred ($900.00) Dollars.

(No. 1405—Claimant awarded $31,826.33.)

COUNTY OF WILL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

FEES AND SALARIES—*when award will be made for expense incurred by Will County in the prosecution of convicts for crimes committed in the penitentiary.* Where the statute provides that all fees and costs arising for the prosecution of convicts for crimes committed in the penitentiary at Joliet, shall be paid by the State, an award will be made to reimburse Will County for the fees, costs and expense incurred in the prosecution and execution of certain convicts for crimes committed in the penitentiary.

HJALMAR REHN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for $31,826.33 filed by Will county, Illinois, for costs and expenses incurred by that county in the prosecution of the case of the *People of the State of Illinois* v. *Charles Shader; Walter Stalesky, alias Wm. Stalkowsky; Charles Duschswski, alias Charles Tamulis, alias Charlie Slim; Bernardo Roa; Robert Torrez, alias Robert T. Tjeda; and Gregerio Rizo, alias John Rizo*, for the murder of Peter N. Klein, warden at the Illinois State Penitentiary, in the Circuit Court of Will County and in the Supreme Court of the State of Illinois, and for the expenses incurred in the execution of Charles Shader; Walter Stalesky, alias Wm. Stalkowsky, Charles Duschswski, alias Charles Tamulis, alias Charlie Slim; and Robert Torrez, alias Robert T. Tjeda, said defendants in said cause having been inmates of the Illinois State Penitentiary at the time of the commission of the said crime of murder.

The Attorney General has filed a statement admitting the amount stated in claimant's declaration to be correct, and consents to an award in its favor for the sum claimed.

Section 39, chapter 108, Smith-Hurd's Illinois Revised Statute 1927, at page 2054, provides that all fees and costs arising from the prosecution of convicts for crimes committed in the penitentiary at Joliet, which the county is now required to pay in like cases, shall be paid by the State.

Under the provision of this statute it is the duty of the State to reimburse the county for the fees, costs and expenses incurred and paid by it in the prosecution and execution of the defendants, and claimant is therefore allowed an award in the sum of $31,826.33.

(No. 1406—Claimant awarded $1,500.00.)

EDWARD G. FREER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.
Opinion filed March 28, 1929.

PERSONAL INJURY—*when an award will be made for injuries sustained by a Highway Patrol Officer—Workmen's Compensation Act.* Where it appears from the evidence that claimant received injuries in line of duty as a State Highway Patrol Officer, an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.

EDWARD G. FREER, for pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed against the State of Illinois by Edward G. Freer, claimant, setting forth that on or about the 27th day of December, A. D. 1923, he was appointed State Highway Patrol Officer and has been since his employment engaged in said employment for the State of Illinois.

That in pursuance of and carrying out his duties as employee of the State of Illinois he was furnished with a four-cylinder Henderson motorcycle without sidecar for use in said employment.

The claimant further avers that on the 28th day of June, A. D. 1925, while in the course of his employment he was "chasing three men in a stolen car" between Plainfield and Aurora, Illinois; that he was struck by a car crossing the highway, throwing him from his motorcycle thereby fracturing the metacarpal index finger of his left hand, also cutting and bruising his hand.

The declaration further shows that on or about the 31st day of October, 1925, while the claimant was going to a Justice of the Peace Court as a witness in a case wherein he had made an arrest of a truck driver for driving without lights, his motorcycle skidded throwing him to the slippery pave-

ment breaking his left arm at the elbow from which injury the arm became stiff and is very painful at all times; he also received cuts and bruises on his face and body.

The declaration further shows that the claimant has paid out divers sums of money for hospital and physicians' bills.

The statement of the Attorney General filed herein sets out the law in like cases and calls the court's attention to numerous citations under the Workmen's Compensation Act which would apply in this case and the Attorney General states that this claimant would be entitled to, in the neighborhood of $1,500.00.

We are of the opinion that this is a case coming squarely within the rules of the Workmen's Compensation Act, and, therefore, award the claimant the sum of $1,500.00.

(No. 855—Claimant awarded $1,500.00.)

CHARLES TUCKER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

PERSONAL INJURY—*when award will be made.* Where it appears that claimant receives injuries in course of employment while working as a teamster for the Division of Highways, an award will be made.

JOHNSON AND PEFFERLE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for total disability. It appears that claimant received his injury while in the employ of the State of Illinois. He was engaged in hauling dirt on State Hard Road No. 36. He was hauling dirt from an excavator operated by the State and while driving up he drove his team into a bank and before he could swing them into place the dirt intended for his load, was dumped upon his neck and back disabling claimant. It appears that claimant had two children under the age of 16 at the time of the injury and was receiving $7.00 per day wages, $2.00 for the team and $5.00 for his personal services as teamster.

It appears further that claimant was bedfast for a long period of time and that he is disabled on account of the injury

to his shoulder and that he is permanently, partially disabled. The Attorney General comes and sets up that "if the court saw fit to allow any amount in this cause that Fifteen Hundred ($1,500.00) Dollars would be the proper amount."

The court is of the opinion that the claimant was injured in the course of his employment and that the record in this case indicates a damage to claimant of at least $1,500.00.

Therefore this court recommends that this claimant be allowed the sum of Fifteen Hundred ($1,500.00) Dollars.

(Claims dismissed.)

H. LEET PARSONS, 865; EDWARD ABERT, 890; MRS. JAMES O'BRIEN, 914; JAMES LEDWITH, SUSAN LEDWITH AND CLEMENT LEDWITH, 932; RICHARD HOYT MOORE, 940; WM. DONALDSON, 941; J. J. HILL, 942; CLARA STILL, 949; JOSEPH BIBO, 950; MARTHA HOEFT, 951; JAMES M. LANGSTON, 952; BEN F. BOWLBY, 954; CHICAGO POULTRY BREEDERS ASS'N., A CORPORATION, 894; JULIUS M. SHREVE, 1223; CATHERINE HOFREITER, 955; JOHN BIBO, JULIA BIBO AND ANNA BIBO, 992; Z. KERLEY, 1016; FOREMAN TRUST AND SAVINGS BANK, GUARDIAN OF THE ESTATE OF ALLEN WILLIAMS, A MINOR, 1038; WILLIAM E. STILLWELL, 1047; JAMES WARREN LYTLE, 1059; E. W. ELLIS, 1072; ROY H. BROWNING, 1074; WM. CARTER, 1129; J. A. STUBBLEFIELD, 1202; JOSEPH D. MEANS, 1239; GLENSON MYERS, 1252; CLARENCE C. COX AND MINNIE J. COX, 1291; O. G. FORNHALS, ET AL., 1286; RAY M. HAMILTON, 1309; DAVID R. MITCHELL, 1315; WILLIAM C. CARTER, 1365; FLORENCE REIDER, 1401, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

DISMISSAL—*when case will be dismissed.* Where upon motion of the Attorney General to show cause why the case should not be dismissed for want of prosecution and it appearing that proper notice has been given and no appearance or response to such notice appears upon the record, *Held*, claimants are in default and cases dismissed for want of prosecution.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

PER CURIAM: The above entitled cases come before the court at this time upon the motion of the Attorney General to show cause why the cases should not be dismissed for want of prosecution.

It appears that notice has been given to all of the claimants in the above entitled cases. Since no appearance or response appears upon the record from any of the above named claimants, the court is of the opinion that they are in default. Therefore, it is the order of the court that each and all of the above entitled cases are hereby dismissed for want of prosecution.

(No. 927—Claim denied.)

JENNIE C. HUTCHINS, ADMINISTRATRIX OF THE ESTATE OF HERBERT HUTCHINS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

DISMISSAL—*when cause will be dismissed upon stipulation of parties.* **Where there is no cause shown why case should not be dismissed, the case will be dismissed pursuant to stipulation and agreement of the parties.**

DEFREES, BUCKINGHAM, JONES & HOFFMAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On the 8th day of October, A. D. 1924, Herbert Hutchins while proceeding along one of the principal highways known as Michigan City Road, between Michigan City, Indiana, and Chicago, Illinois, at a point about one-half mile south and east of the intersection of said Michigan City road and a street known as 147th Street in Cook County, was thrown from his motorcycle, due to striking a deep hole in the road. He sustained such injuries that he died the same day.

Jennie C. Hutchins, his mother and duly appointed administratrix of his estate has filed a claim of $10,000.00 damages against the State of Illinois. Claimant says that Herbert Hutchins provided the chief means of support for herself, her daughter, Florence Haegerdorn, and two minor grandchildren. And that the deceased came by his death through the negligence of the County Superintendent and the officers of the State Highways of Illinois. That by reason of the death of said Herbert Hutchins the said Jennie C. Hutchins and Florence Haegerdorn have been deprived of their means of support to the damages of the aforesaid sum.

It has been stipulated and agreed by and between the complainant, Jennie C. Hutchins, administratrix of the

estate of Herbert Hutchins, deceased, by Defrees, Buckingham, Jones & Hoffman, her attorneys and the State of Illinois by Oscar E. Carlstrom, Attorney General, that the cause be dismissed.

It is therefore dismissed as per agreement on file.

(No. 1051—Claim denied.)

ROY W. HARRELL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PLEADINGS—*when demurrer will be sustained.* Where it appears upon the face of the declaration that it is not sufficient in law, a demurrer thereto will be sustained.

H. E. MORGAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The plaintiff, Roy W. Harrell, filed his declaration.

The Attorney General filed a demurrer.

Demurrer is sustained as a matter of law.

(No. 1081—Claim denied.)

ETTA TREGO, ADMINISTRATRIX OF THE ESTATE OF JOHN TREGO, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PERSONAL INJURY—*when award will not be made.* Where it appears from the evidence that claimant's death did not result from injuries sustained in course of employment no award will be made.

MARTIN PETERSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that John Trego, now deceased, was employed by the defendant, the State of Illinois, in the maintenance of

a hard road east of Creston and West of DeKalb, Illinois, and while thus engaged, it is complained that one of his eyes was injured in course of employment, by reason of a piece of rock flying into his eye.

It appears that there is some controversy as to which eye was injured and it is not altogether clear as to the cause of the injury.

The defendant by the Attorney General comes and defends and sets up the question of doubt as to the facts in the case, and it appears to the court that the records do not disclose that Trego came to his death on account of this accident.

The issue appears to be damages on account of the loss of the sight of an eye, and the records do not show that he was deprived of wages during the time of his illness, on account of this accident, and on the face of the record, we do not believe the State of Illinois is responsible in the matter of damages.

Therefore, it is recommended that the claim be dismissed.

(No. 1159—Claim denied.)

JOHN M. LINDBERG, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PLEADINGS—*when claim will be denied—Statute of Limitations*—Where it appears that the claim is barred by the Statute of Limitations, the claim will be denied.

LAGGER & BLATT, for claimant.

OSCAR E. CARLSTROM, Attorney General; GUSTAF B. ERICKSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant, John M. Lindberg, in the fall of 1921, was engaged as carpenter working for the Prison Commission at the new prison at Statesville and was injured in the course of his employment.

The evidence shows that while the claimant was on a staging the staging broke and the claimant fell and was injured.

The Attorney General filed a demurrer setting forth that the statute of limitations had run against the claim.

The demurrer is sustained and the claim is denied.

(No. 1203—Claimant awarded $18.09.)

STANDARD OIL COMPANY (IND.), Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

ILLINOIS NATIONAL GUARD—*when award will be made for supplies furnished to the Military and Naval Department of the State.* Where it appears that supplies furnished to the Military and Naval Department have not been paid for by reason of the lapse of the appropriation for such purpose, an award will be made.

H. G. GRIFFIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The Standard Oil Company of Indiana, claimant presents its claim which they hold against the Military and Naval Department of the State of Illinois, covering deliveries of Red Crown gasoline and Polarine and were made at the claimant's service stations No. 4 and No. 2. The employees of the State of Illinois, whose signatures are shown on the delivery tickets attached to the invoices. The amount of the claim is $18.09.

The Attorney General files his statement setting forth gasoline was furnished the Department of the Adjutant General and was not paid, for the reason that it was not presented before the appropriation lapsed out of which it could have been paid. Attached to the statement of the Attorney General is a letter from C. E. Black, Adjutant General of the State of Illinois in which he said in the second paragraph:

"I am pleased to advise that the bill in the total sum of Eighteen Dollars and nine cents ($18.09), as submitted by the Standard Oil Company, is correct, and that payment has not been made."

The court upon recommendation of the Adjutant General awards the claimant the sum of $18.09.

(No. 1210—Claimant awarded $650.00.)

DOCK KENNETH JOLLY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

MILITARY SERVICE—*when award will be made for injuries sustained by a member of the Illinois National Guard.* Where the claimant receives injuries in line of duty while a member of the Illinois Guard and such injuries result in a partial permanent disability, an award will be made for such disability.

CLARENCE B. DAVIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by Dock Kenneth Jolly, claimant, alleging that he was on the 28th day of November, 1926, a regular and enlisted member of the military force of the State of Illinois, as a private in Troop "G", One Hundred Sixth Cavalry, Illinois National Guard, and was on duty on the twenty-eighth day of November, 1926, at the Illinois State Fair Grounds near Springfield, Illinois, pursuant to orders from his troop commander.

That on the twenty-eighth day of November, 1926, while in the discharge of his regular military duties, the claimant was commanded by his troop commander, Captain Bert Bringle, to participate in the regular troop drill and while in the discharge of his duty the plaintiff while mounted on his horse was kicked by a horse ridden by Corporal Cummings of the same troop.

The claimant further alleges that the knee-cap of his left leg was broken causing the plaintiff great bodily injury and that he was disabled and so remained for a long time and does still suffer great pain by reason of such injury and that he has been incapacitated from his duties and business and is not able to work at the present time.

The Attorney General of the State of Illinois in his statement admits the injury.

The testimony shows that the claimant had no children under sixteen years of age. He now has a 25% partial permanent disability to his leg as a result of his injury. The claimant receives compensation from the Illinois National Guard except the partial permanent disability.

"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 receive emergency needs upon recommendation of a board of three officers, one of whom shall be an officer of the medical department." Smith-Hurd's Illinois Revised Statutes, 1927, Chapter 129, paragraph 143, page 2677.

The Attorney General has computed the amount due the claimant in accordance with the Workmen's Compensation Law.

We are of the opinion that this claim should be allowed, and therefore, allow the sum of $650.00.

(No. 1216—Claimant awarded $200.00.)

ADOLPH NIERSTHEIMER, JR., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

ANIMALS—*when award will be made.* Where the statute provides for payment for cattle destroyed for the purpose of suppression of bovine tuberculosis, an award will be made.

SAME—*when no award will be made.* Where the claimant fails to comply with the statute enacted for the suppression of tuberculosis among domestic cattle, no award will be made.

SCHOLES, O'CONNOR & DOUGHERTY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

This claim is for six pure-bred cows which were tested and found to be affected with tuberculosis. The test was made in November, 1922, and the cows ordered destroyed. In January, 1923, four of them were sent to the stockyards at Peoria and slaughtered, the salvage bringing claimant $141.45. These four cows had been appraised as the law required and claimant complied with all the provisions of the statute. The law in effect at that time was the Act for the Suppression of Tuberculosis Among Domestic Cattle, ap-

proved June 28, 1919. Section six of that Act provides that the owner of cattle destroyed under the provisions of the Act shall be paid one-third the difference between the appraised value of the cattle and the proceeds from the sale of the salvage, provided that in no case shall any payment exceed $25.00 for any grade animal or $50.00 for any pure-bred animal. The four cows slaughtered were appraised at $820.00, two of them at $200.00 each and two of them at $210.00 each. As one-third of the difference between the appraised value and the salvage is more than $50.00 for each cow, claimant can be awarded only the maximum sum of $50.00 per head for the cattle destroyed in compliance with the provisions of the statute.

Two of the cows were not appraised. One of them died soon after the test was made and the other one was shipped to Chicago and sold. As claimant did not comply with the law as to these two cattle he cannot be given an award for them.

It is therefore ordered that claimant be awarded the sum of $200.00.

(No. 1222—Claimant awarded $4,000.00.)

LOUIS F. FREEMAN, Claimant *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

MILITARY SERVICE—*when award will be made for personal injuries sustained in line of duty while a member of the Illinois National Guard.* Where the evidence shows that claimant received injuries in line of duty while a member of the Illinois National Guard which resulted in the loss of more than a year's time, two surgical operations, a shortage of one leg of three fourths of an inch, and a bowed leg to a marked degree, *Held*—an award in this case is justifiable.

LOUIS L. COHEN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by Louis F. Freeman, of Chicago, Illinois, for injuries sustained by him while in the State Militia or National Guard of the State of Illinois, on August 12th, 1926. The facts revealed by the evidence show that he was employed by the Western Electric Company at its Chi-

cago office, in its assembling department, receiving a salary of $44.88 a week; that on August 12th, 1926, he was engaged in maneuvers ordered by his commanding officer in the Village of New Milford, a short distance from Camp Grant; that at that time, he was a staff sergeant in charge of a platoon consisting of a team of horses, a wire reel cart and four men; that about noon of that day Freeman's platoon had completed the gathering up of wire previously strung, in accordance with the orders of his commanding officers; that they had stopped to water their horses and Freeman was about to secure lunch for the men of his platoon, when for some unknown reason the team of horses suddenly became frightened and bolted; that one man in the platoon in charge of the team had hold of the horses but was being dragged along by them; that close by was an orphanage, and in the road in front of which a group of small children were playing; that Freeman sensed the danger to those children and leaped for the horses and grasped hold of part of the harness; that the man in his platoon, who had previously held the horses was compelled to let go, and Freeman found himself alone trying to stop the team; that the team headed down the road in the direction of the children, but Freeman was able to deflect their course sufficiently to avoid running into the group of children; that during the progress of the team's run Freeman was thrown against a tree; the reel cart swung around and caught his leg above the knee, breaking it; that no injuries were sustained by anyone other than Freeman; that he was incapacitated from performing his duties for over a year; that he suffered great pain and anguish during the time his leg was healing; that it was necessary to operate surgically on the leg upon two occasions, separated from each other by almost a year's time, in order to make the recovery which has been made; that he is now suffering from a shortage of the leg about three-quarters of an inch and that in healing the leg became bowed to a marked degree, and that he still suffers pain and has been left a virtual cripple by the accident.

A demurrer filed by the Attorney General of the State of Illinois, is sustained as a matter of law.

We feel that an award in this case is justifiable, and accordingly award to claimant the sum of Four Thousand Dollars.

(Claims denied.)

ALPHA PORTLAND CEMENT COMPANY, A NEW JERSEY CORPORATION, 1225; AMERICAN BANK NOTE COMPANY, A NEW YORK CORPORATION, 1249; CHICAGO FUSE MANUFACTURING COMPANY, AN ILLINOIS CORPORATION, 1207; *LEHIGH* PORTLAND CEMENT COMPANY, A PENNSYLVANIA CORPORATION, 1228; NORTH AMERICAN LIGHT & POWER COMPANY, A DELAWARE CORPORATION, 1198; NORTH AMERICAN LIGHT & POWER COMPANY OF DELAWARE, A CORPORATION AND NORTH AMERICAN LIGHT & POWER COMPANY OF MAINE, A CORPORATION, 1308; REPUBLIC FLOW METERS COMPANY, AN ILLINOIS CORPORATION, 791; THE YALE AND TOWNE MANUFACTURING COMPANY, A CONNECTICUT CORPORATION, 1238, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

FRANCHISE TAX—*when no award will be made.* The principles involved in these claims are the same as were discussed and decided in *Moline Plow Company* v. *State*, 5 Court of Claims, P. 277, and *Geo. P. Ide & Co. Inc.*, No. 1215, opinion filed October 24, 1928.

SAME—*jurisdiction.* Where claimant has a remedy in courts of general jurisdiction and fails to pursue such remedy, the Court of Claims will not take jurisdiction.

CONSTRUCTION—*legislative intent.*—It is not the intent and purpose of the Legislature to hear and consider controversies of a nature that could and should be considered in courts of general jurisdiction.

COURT OF CLAIMS—*when court has no jurisdiction.* The Court of Claims is in its very nature an advisory committee to the Legislature and will not invade the province of a court of general jurisdiction where the constitution provides a method of determining legal and constitutional rights of individuals, corporations and state officers or other officials of state or local government created by the constitution or statute.

DEFREES, BUCKINGHAM, JONES & HOFFMAN, for claimants.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears to be the desire of both parties to consider all of the above entitled claims jointly, and it being satisfactory to this court to consider all the claims in one opinion. All of the claims are based upon and arising out of the payment to and the collection by the office of the Secretary of State of Illinois, of certain franchise taxes, initial fee and penalty, it

being the contention of claimants that the payments complained of were improper and illegal.

This court after a careful consideration of all the claims, is of the opinion that the principles involved in all these claims are the same as were discussed and decided by this court in the case of *Moline Plow Company, Inc.*, v. *State of Illinois*, filed on March 10, 1927, and reported in volume 5 of the Illinois Court of Claims, page 277, and the case of *Geo. P. Ide & Co., Inc.*, v. *State of Illinois*, No. 1215, Illinois Court of Claims, filed in this court on Oct. 24th, 1928.

The Attorney General comes and defends these cases citing the above opinions of this court and further that the moneys paid as complained of, were paid voluntarily. The court is of the opinion that the last contention possesses merit worthy of consideration from a legal viewpoint. However, it is the opinion of this court as stated in the Ide and Moline Plow Company cases, that where claimant has a remedy in courts of general jurisdiction and fails to pursue such remedy, that this court should not take jurisdiction. And it further appears to this court that it is not the intent and purpose of the Legislature of this State to hear and consider controversies between the claimants and the office of the Secretary of State of a nature that could and should be considered in courts of general jurisdiction. In other words, the Legislature does not desire to try lawsuits and as this court is in its very nature an advisory committee to the Legislature, it would not seem consistent for this court to invade the province of a court of general jurisdiction. The Constitution of the State of Illinois provides a method of determining legal and constitutional rights of individuals, corporations and State officers or other officials of State or local government created by Constitution or statute. Therefore it is the opinion of this court that claimants should have taken advantage of their remedies in the courts of general jurisdiction at the time the payments were made to the Secretary of State and thus determine in manner as provided by law the rights of the claimants and the duties of a State official.

For the reasons above set forth all of the above mentioned claims are disallowed.

(No. 1237—Claim denied.)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 14, 1929.
Rehearing denied April 25, 1929.

FRANCHISE TAX—*when court will not take jurisdiction.* Where claimant has a remedy in courts of general jurisdiction and fails to follow such remedy, the Court of Claims will not take jurisdiction. (Citing *Moline Plow Company* v. *State*, 5 Court of Claims, Page 277).

REHEARING—*when rehearing will be denied.* The Court being fully advised in the premises, finds that there is no cause shown for a rehearing and the petition is denied.

CHARLES P. HAMILL, for claimant,

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover additional franchise fees and additional initial fees for certain increases in the authorized capital stock of claimant.

It appears to the court that this case is similar in principle to a case heretofore decided by this court and known as the *Moline Plow Co.* v. *State of Illinois*, reported in volume 5, Illinois Court of Claims, at pages 277 and 278. In said case this court held that where claimant had a remedy in courts of general jurisdiction and fail to follow such remedy, that this court would not take jurisdiction.

It is contended by claimant in reply brief that where a payment is made under "circumstances of uncertainty as to what the law will finally be held to be, it would seem that equity and good conscience would entitle the tax payer to a refund after the law under which the assessment had been made and the tax paid has subsequently been held unconstitutional." It is the opinion of this court that a rule of this kind would impose a hardship on the taxpayers of the State of Illinois. It would as a matter of fact impose a continuing obligation and doubt, wherein if the claimant was a private corporation or an individual, the fact that the claimant did not follow his legal remedy and afterwards a

favorable construction was given by a court of general jurisdiction, the private corporation or individual would not be called upon to respond. It would therefore appear to the court that the Legislature in creating this court did not intend to impose a burden upon the people of the State of Illinois, greater than that assumed by a private corporation or individual. It must be admitted that the questions involved in these cases are sometimes complicated and vague. Yet it must be assumed that claimant corporations were properly and ably represented, fully capable of advising as to all legal remedies. Laws are continually changing. Courts at times change precedent as a matter of public policy or otherwise for the best interests of litigants or to meet the advancements and developments in business or public affairs. At any rate it is the opinion of the court that the Secretary of State should have equal opportunity in the review of his acts or judgment as if he were a private individual or if he acted for a private corporation. It is further the opinion of the court that it must be admitted that the Secretary of State in his endeavor to faithfully and efficiently perform the duties of that office, that he would naturally and properly perform his duties in behalf of his employers the defendant the State of Illinois. If a claimant was dissatisfied in the payment of taxes or fees to the Secretary of State or exacted by the Secretary of State, would it be unfair to ask the claimant to summon the Secretary of State into a court of general jurisdiction and there have the question determined as was intended by the Constitution of the State and the Acts of the Legislature.

For the reasons above assigned, this court recommends that the claim be disallowed.

On April 25, 1929, upon petition for rehearing the following additional opinion was filed:

This matter coming on to be heard upon petition for rehearing and the court being fully advised in the premises finds that there is no cause shown for a rehearing.

Therefore, the petition for a rehearing is denied.

(No. 1250—Claim denied.)

THE ACME RUBBER MANUFACTURING CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

FRANCHISE TAX—*when no award will be made.* The decision in this case is controlled by the opinion filed in the case of *George P. Ide & Co. Inc.* v. *State of Illinois*, No. 1215, filed October 24, 1928.

COBURN, KEARNEY & COBURN, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed to recover for certain franchise tax alleged to have been wrongfully collected by the Secretary of State.

As heretofore held by this court the claimant had an adequate remedy in the courts of general jurisdiction and for a further reasoning this court cites the opinion filed by this court on Oct. 24th, 1928, *Geo. P. Ide & Co., Inc.*, v. *State of Illinois*, No. 1215.

The Attorney General comes and defends and denies the right of claimant to recover.

This court is of the opinion that the law and the facts set out and as set forth and discussed in the Ide case controls.

Therefore it is recommended by this court that said claim be disallowed.

(No. 1259—Claimant awarded $1,521.50.)

WILLIAM LANE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PERSONAL INJURY—*when an award will be made for injury sustained—Illinois National Guard.* Where claimant receives injuries in line of duty, while in the employ of the Military and Naval Department of the State an award will be made.

ART C. JOHNSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a case that comes under the Military and Naval Code of the State of Illinois.

It appears from the statement of the claimant that William Lane, a resident of Rockford, Illinois, was in the employment of the Military and Naval Department of the State of Illinois under the supervision of Adjutant General, C. E. Black, and was injured at Camp Grant, Illinois, on August 5th, 1927.

While employed as a lineman in the Electrical Division, the claimant was running a service to one of the tents used for a repair shop for motorcycles at Camp Grant and it was necessary to use a ladder to get to the top of the tent. This ladder was placed against one of the poles of the tent and while the claimant was on the ladder the stakes holding the guy ropes pulled out of the ground throwing the ladder and the claimant to the ground breaking the claimant's arm just above the wrist. The break was set by Captain Stettauer, one of the army physicians at Camp Grant.

It appears from the evidence that Adjutant General Black was notified of the accident and the statement of the claimant sets forth the fact that there is now due him $1,521.50.

The Attorney General files his statement stating that the claimant has properly stated the facts and set out the law upon which his claim is based and on which the court can make an award. The Attorney General also says in his statement: "I, therefore, submit this claim to the court for

its consideration for such disposition as they care to make with a recommendation that if they make an award herein, it be allowed in the sum of $1,500.00."

We are of the opinion that an award should be made and, therefore, allow the claimant the total amount due him, $1,521.50.

(No. 1275—Claimant awarded $2,996.12.)

MARLIN-ROCKWELL CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

FRANCHISE TAX—*when award will be made—mistake.* Where there is no controversy as to the facts and it appears that a mistake was made in the computation of the amount due the State, an award will be made for franchise tax and initial fees erroneously paid by reason of such mistake in computation.

BEN M. SMITH AND JOHN L. DAVIDSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a case filed by claimant asking a return of initial fees and franchise taxes paid by it pursuant to a statement forwarded to it by the Secretary of State of the State of Illinois. The statement as forwarded by the said Secretary of State called for a total payment of Thirteen Thousand and Ninety-three Dollars and Thirty-eight Cents ($13,093.38) and was computed by the Secretary of State and determined by said officer by the application of the percentage factor of .40013 to the total authorized capital stock of said claimant.

The entire claim was denied by this court on the 24th day of October, A. D. 1928, as being controlled by the decision of this court in the cases of *Moline Plow Company* v. *The State of Illinois*, and *Geo. P. Ide & Co., Inc.*, v. *The State of Illinois.*

Petition for rehearing was filed by claimant on the 19th day of November, A. D. 1928, which petition was subsequently allowed to consider the allegation of claimant that the per-

centage factor of .40013 was not the proper percentage factor to be used in the computation of its fees and franchise taxes.

Subsequent to the allowance of the petition for rehearing claimant filed its amended declaration and the case now comes before the court upon said amended declaration. Claimant alleges that the proper computation of its property and business done in the State of Illinois as applied to the total property and business of claimant everywhere would result in a percentage factor of .30856.

There appears no controversy as to the facts in this case and it appears to the court that the Secretary of State admits having made a mistake in its computation and that the correct percentage factor to be applied to the authorized capital stock of claimant corporation should have been .30856 instead of .40013. The application of the highest percentage above named resulted in a franchise fee and initial fee being paid by claimant in the total sum of Thirteen Thousand and Ninety-three Dollars and Thirty-eight Cents ($13,093.38). The application of the lesser percentage factor would have resulted in the payment by claimant in the total sum for initial and franchise fees of Ten Thousand and Ninety-six Dollars and Ninety-six Cents ($10,096.96), a difference of Two Thousand, Nine Hundred Ninety-six Dollars and Forty-two Cents ($2,996.42).

It appears to the court that the error in computation and in the application of the wrong percentage factor is admitted on behalf of the State by the Secretary of State and that there appears to be no objection to the allowance of the sum of Two Thousand, Nine Hundred Ninety-six Dollars and Forty-two Cents ($2,996.42) to claimant as a return of franchise fees and initial fees paid in error as a result of such mistake in computation.

It is therefore recommended by this court that claimant be allowed the sum of Two Thousand, Nine Hundred and Ninety-six Dollars and Forty-two Cents ($2,996.42).

(No. 1285—Claimant awarded $66.80.)

KINNEY-ROME COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PROPERTY DAMAGE—*when an award will be made for damages to automobile.* An award will be made for damages to an automobile which resulted while passing a truck owned and operated by the State of Illinois upon the statement of the Attorney General that the facts alleged in the claim are supported by the exhibits attached thereto.

B. J. COYLE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

From the statement of claimant filed by the claimant, it appears that on May 4th, 1926, a salesman of the Kinney-Rome Company, while driving on a road near Jacksonville, Illinois, was passing a truck belonging to the State of Illinois and operated by the Jacksonville State Hospital at Jacksonville, Illinois.

That while passing said truck two bales of hay or straw fell off said truck onto said car, damaging the hood, front bumper and right fender.

Claimant further states that they took affidavits of the salesman, copies of which are attached and marked Exhibits "A" and "B" and made a part of this statement.

The claimant alleges the automobile was damaged to the amount of $66.80, the cost of the repairs. A copy of repair bill attached hereto, marked Exhibit "C".

The Attorney General in his statement says that no testimony has been taken in this case nor stipulation entered into, for the reason that the facts alleged in the claim are supported by the exhibits attached thereto. There are eighteen exhibits from which the court finds that there is a liability on the part of the State of Illinois and the court awards to the claimant the sum of $66.80.

(Claims allowed)

C. M. CLETCHER, 1310; ADDIE CLETCHER, 1311, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PROPERTY LOSS—*when an award will be made for loss of property of an employee of the State.* Where claimant had no opportunity to prevent the loss of his property by reason of a fire at a State institution, an award will be made to cover such loss.

A. WAYNE CLEMENS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimants were employed at the Chicago State Hospital at Dunning, Illinois, an institution owned and operated by the State of Illinois; that on Dec. 28th, 1923, while the claimants were in the performance of their duties a fire occurred in said hospital which destroyed clothing, wearing apparel, goods and chattels of claimants, which property was in the quarters of said claimants in said hospital. It further appears that claimants had no opportunity to prevent the loss of their property; that the safety and control of such property was under the control of the defendant.

The Attorney General comes and admits that claimants did sustain the loss and the question to consider being the amount of the loss.

The court after a careful examination of all the files in the case is of the opinion and hereby recommends that the claimant C. M. Cletcher be awarded the sum of $390.00, and that said claimant Addie Cletcher be awarded the sum of $718.00.

(No. 1313—Claimant awarded $1,650.00.)

RICHARD E. SWEET, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

MILITARY SERVICE—*when award will be made for personal injuries sustained in line of duty by an officer of the Illinois National Guard.* Where a member of Illinois National Guard receives injuries while in the performance of his duties, he is entitled to an award under Section 10, Article 16 of the Military and Naval Code of the State of Illinois.

HENRY TIERSKY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant in this case is Richard E. Sweet, a Corporal in Co. F, 132nd Infantry, Illinois National Guard, having enlisted January 12, 1925, for a three year period.

In August, 1926, he was chosen by the Adjutant General of the State of Illinois to attend a course given at Camp Grant, Rockford, Illinois, in the use of hand grenades, rifle grenades, tear gas bombs and smoke screens. On August 6, 1926, the claimant attended the class in the Chemical Warfare School, and after the class had been dismissed, was returning to his tent. Before reaching his tent he noticed a box standing outside of the tent line with no markings on the box, and no one guarding it or in charge of it. The box contained several hand grenade detonators, and the claimant, assuming that the same were not dangerous, due to the fact that no markings were on the box advising of the explosive nature of the detonators, nor was anyone in charge of them, took two of the detonators and proceeded to the tent of the Supply Sergeant, Sergeant Aharonian, who had attended the Chemical Warfare School the year previous, and who knew more about the detonators than the claimant. The claimant told Sergeant Aharonian where he had obtained the detonators and asked him to explain the workings of the detonator to him. Sergeant Aharonian agreed to do so, and proceeded to extract the powder from the detonator he was holding, at the same time explaining to the claimant the mechanism of the detonator. The claimant was examining the detonator he held when it exploded. As a result of the explosion the

claimant's right leg was blown open, the bone broken, and two-thirds of the muscle blown away just above the knee, also the first joint of his right thumb and one and one-half joints of his index finger and one joint of his second finger were blown off. His whole left hand was torn and burned, and his body, right hand and face were burned in many places.

The claimant was given medical attention at the Regimental Infirmary, and was later removed to the Base Hospital where he remained from August 6, 1926, until September 6, 1926, on which date he was transferred to the Chicago Hospital at 49th and Drexel Boulevard, Chicago, Illinois, where he remained from September 6, 1926, until April 30th, 1927, at which time he was discharged from the hospital. During the time the claimant was confined to the hospital, he received the sum of $42.00 per month, the same being a corporal's pay, and received no other compensation, all of his medical bills being paid by the State.

Prior to the injury he sustained by reason of the explosion, the claimant herein was a healthy and able-bodied man, employed as a typist and stenographer by Drs. Fox & Zimmerman, 4 South Austin Boulevard, Oak Park, Illinois, receiving a salary of $190.00 per month. After his discharge from the hospital he was unable to retain his position because of the loss of parts of his thumb, the second finger and the index finger, which loss made it impossible for him to operate a typewriter. He was not able to do work requiring physical exertion, and was, therefore, compelled to take a position as a file clerk at a salary of $100.00 per month which position he now holds.

The claimant is a married man, having a wife and child dependent solely upon him for support. He has no trade or profession aside from that of typist and stenographer, for which he is now unfit because of the injuries he has sustained. The salary of $100.00 which he now earns is not sufficient to provide for himself and his family in the most modest manner. It is, therefore, necessary that the claimant learn another trade or profession which will increase his earning capacity.

The court has held in numerous cases and particularly in the case of *Polion et al. v. State of Illinois*, V. 5, Court of Claims Reports, page 353, that where a claimant is injured or

disabled while in the performance of his duty, so as to prevent his working at his trade or other employment, he is entitled to an award pursuant to Section 10, Article XVI of the Military and Naval Code of the State of Illinois.

The claimant would be entitled to an award under the Workmen's Compensation Act and as a matter of equity and good conscience.

The Attorney General has filed a statement setting forth that the claimant in his statement properly sets up the facts; in his brief properly sets out the law, and in his argument properly applies the facts to the law.

As a matter of equity and good conscience and as a matter of law the court is of the opinion that an award should be made. We, therefore, award the claimant the sum of $1,650.00.

(No. 1390—Claimant awarded $1,500.00.)

WILLIAM C. EICHENOLD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* **Where it appears from the evidence that claimant received injuries in course of employment as a grain sampler, in the Department of Trade and Commerce, an award will be made for such injuries and the amount determined under the provisions of the Workmen's Compensation Act.**

WOODS & BISHOP, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The facts in this case show that claimant was in the employ of the State of Illinois on April 27th, 1928, in the capacity of sampler of grain in the Department of Commerce of the State of Illinois, at a salary of $150.00 per month; that he had been in that same employment for over three years, and is still retained by the State in that employment; that on said day he sustained an accident in the course of his employment, at 140th Street, about four blocks east of Western Avenue in the St. Paul Railroad yards, in Chicago. His work was getting samples of grain out of grain cars. He opened the door on the side of the car with a crow bar. He entered the car and was coming down when his hand slipped from the top of the grain door, and his foot slipped, and his jump landed

him on the crow bar below, which punctured his rectum. He was taken to the Lakeside hospital where he remained about nine days. He was operated upon by Drs. Landau and Dr. Johnstone, both of whom attended him, and he had a private nurse for about a week. He was confined to his home for about seven weeks, during which time he received his salary from the State. He still goes to the doctor for treatment and is not entirely cured. He has not received any remuneration from the State of Illinois for hospital and doctor bills, etc., incurred during his illness, nor for the permanent injuries sustained.

While there is no legal liability on the part of the State of Illinois, to make an award in this case, we feel that inasmuch as claimant was injured while performing duties in the course of his employment by the State of Illinois, that he should be compensated in the same manner as if he were employed under the provisions of the Workmen's Compensation Act of the State of Illinois, and we accordingly award to claimant the sum of Fifteen Hundred Dollars.

(No. 1395—Claimant awarded $2,500.00.)

FRANK McCORMICK AND ELIZABETH McCORMICK, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PROPERTY DAMAGE—*when award will be made.* Where it appears from the evidence claimants have suffered damages by reason of the construction of an over-head bridge by the Department of Public Works and Buildings, an award will be made for such damages.

C. W. BURTON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimants, Frank McCormick and his wife, Elizabeth McCormick, in 1920 purchased a two and one-half acre tract at the junction of the Illinois Traction System with the Edwardsville-St. Louis Road. The place was desirable and adaptable as a small country residence and the claimants built a porch on the five room frame house, built two chicken houses, a garage and greatly improved the premises at this

time. The premises were fronted for a distance of 264 feet by a concrete road known as Route No. 4.

The State of Illinois through the Department of Public Works and Buildings, Division of Highways, in order to secure a separation of grades, constructed an over-head bridge, thereby raising the road twenty-five (25) feet over the tracks of the Illinois Traction System, and constructed an approach on either side of the bridge, consisting of earth embankments, that said embankment extended entirely in front of the claimant's premises and being about 18 to 20 feet high in front of claimant's house.

The claimants further represent that because of the location and construction of said earthen embankment immediately in front of the premises, that the premises and buildings are less desirable, less healthful and less valuable as a home and residence and that the fair cash market value of said premises has been depreciated in the sum of Twenty-five Hundred ($2,500.00).

The Attorney General files his statement stating that the claimants have made a fair presentation of the facts and there appears to be no question but what claimants are entitled to damages.

The court, therefore, allows the claim in the sum of Twenty-five Hundred Dollars ($2,500.00).

(No. 1396—Claimant awarded $2,035.06.)

C. A. FRENCH, FRED FRENCH AND GEORGE E. SCHOPMEYER, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

CONTRACTS—*when award will be made.* Where it appears that claimants performed extra work not called for under contract for a part of the hard road system, an award will be made upon the recommendation of the Attorney General.

VIRGIL W. MILLS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimants performed extra work not anticipating their bid on construction of a part of the hardroad

system on Section 20, Route 15 of the State Highway System of Illinois. It is alleged that extra expense was due to the extra haul which was necessary on account of the grading of bridge and bridge operations of another contractor not being sufficiently advanced to permit the hauling over the new grade as understood the time the contract was entered. It appears that the claim is considered just by the State Highway Department.

And the Attorney General comes and recommends that the claimants be allowed the sum of Two Thousand Thirty-five Dollars and Six Cents ($2,035.06).

It is therefore recommended by this court that claimants be allowed the said sum of Two Thousand Thirty-five Dollars and Six Cents ($2,035.06).

(No. 1400—Claimant awarded $2,500.00.)

WILLIAM WOODROW, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PERSONAL INJURY—*when award will be made for injury sustained by a State employee—Workmen's Compensation Act.* **Where it appears from the evidence that a State employee receives injuries while acting in the course of employment and there is no dispute as to the facts, an award will be made for such injuries and the amount determined under the Workmen's Compensation Act.**

M. D. MORAHN, Attorney, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This claimant was injured on Sept. 9th, 1927, while in the employ of the State of Illinois as a teamster and the injury was occasioned through the course of employment. It appears that a foreman ordered him to drive his wagon on a certain point and while so doing the wagon tipped over pinning the claimant beneath the wagon and dirt. It appears that claimant suffered a dislocated right shoulder and other bruises.

There is no dispute about the facts or that it is a case that should be measured under the Workmen's Compensation Act.

The Attorney General comes and states that if claim is allowed it should be allowed in accordance with the amounts due under the provisions of the Workmen's Compensation Act and that would be in the sum of Twenty-five Hundred ($2,500.00) Dollars.

Therefore the court recommends that claimant be allowed the sum of Twenty-five Hundred ($2,500.00) Dollars.

(No. 1402—Claimant awarded $3,750.00.)

ANTHONY G. WITTMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PERSONAL INJURY—*when award will be made. Workmen's Compensation Act.* Where it appears from the evidence that claimant lost both hands by an infectious disease resulting through the performance of his duties as a staff physician in a State Hospital, an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.

GEO. D. CARBARY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was regularly employed by the State of Illinois as a staff physician in one of the State Hospitals. It appears that part of his duties was to perform autopsies and during the summer of 1913, he performed an autopsy on the body of a colored man. The body was embalmed but at the time of the autopsy the doctor did not know this. The doctor's hands became infected and he lost both of his hands through this condition.

It appears from the record that the claimant suffered a great loss and it is urged by his attorneys that he should recover a gross sum of Nine Thousand Seven Hundred and Sixty-five ($9,765.00) Dollars.

The Attorney General comes and admits that under the Compensation Act that claimant should recover the sum of Three Thousand Seven Hundred and Fifty ($3,750.00) Dollars.

This court deeply sympathizes with the claimant but it appears that to be in line with procedure of this court that

the Workmen's Compensation Law is the only measure upon which this court can consider damages in this case.

It is therefore recommended that claimant be allowed the sum of Three Thousand Seven Hundred and Fifty ($3,750.00) Dollars.

(No. 1407—Claimant awarded $1,000.00.)

WILLIAM M. SCANLAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

FEES AND SALARIES—*when an award will be made for additional salary.* Where the Statute creates the office of Chairman of the Industrial Commission and fixes the salary of such office and subsequently during the incumbency of such officer, the Legislature changes the term of the office and fixes the salary at a lesser amount. *Held:* that the claimant is entitled to the salary provided by Statute during his term of office, on the grounds that under the State Constitution, the salary attached to any public office having a fixed term, shall not be increased or diminished during that term.

WILLIAM M. SCANLAN, pro se.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On the 23rd day of June, A. D. 1925, claimant received a commission, confirmed by the Senate, as Officer and Chairman of the Industrial Commission of the State of Illinois, and served in that capacity until January 1st, A. D. 1929.

Prir to and on said June 23rd, 1925, the salary of said office was fixed by the Workmen's Compensation Act at Seven Thousand Five Hundred ($7,500.00) Dollars per annum, and the term of said office was fixed by the Civil Administrative Code at four years.

Subsequent to June 23rd, 1925, and during claimant's term of office, the Fifty-fourth General Assembly of the State of Illinois, by amendment effective July 1st, 1925, fixed the term of said office at two years and the salary of said office at Seven Thousand ($7,000.00) Dollars per annum.

Up to January 1st, 1927, claimant received salary at the rate of Seven Thousand Five Hundred ($7,500.00) Dollars per annum, and beginning January 1st, 1927, he received salary at the rate of Seven Thousand ($7,000.00) Dollars per

annum, as appropriated by the Fifty-fifth General Assembly, leaving the balance of One Thousand ($1,000.00) Dollars due him for service rendered during those two years. He has filed his claim for said sum.

An examination of the various provisions of the constitution with reference to a change of salary during a term of office discloses that the salary attached to any public office having a fixed term shall not be increased or diminished during that term.

The Attorney General recommends that the claimant recover the unpaid balance of his salary.

It is therefore ordered that claimant be awarded the sum of One Thousand ($1,000.00) Dollars.

(No. 1409—Claimant awarded $313.95.)

HERMAN NOFS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PROPERTY DAMAGE—*when award will be made.* Where it appears that claimant's private automobile is damaged in the course of his employment and in the actual performance of his duties as a State Highway Patrol Officer, an award will be made upon the recommendation of the Attorney General.

McCARTHY & McCARTHY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

This is a case wherein the claimant is asking damages in the sum of $313.95 for damages done to his own private automobile in the course of his employment as highway patrolman on the 16th day of February, 1927, between the City of *Elgin, Kane county,* Illinois, and the City of Maywood, Cook county, Illinois.

Claimant states in his declaration that on the 16th day of February, 1927, while under orders and instructions from his said superior officer and in the direct line of his duties, he was driving in a westerly direction on State Highway Number 5 at or near a point known as the Erbstein Hill, located about five miles east from the City of Elgin; that the weather

was cold and the pavement was extremely icy; and that while he was driving around the curve at said hill, the car which he was driving skidded and swerved to the side of the road and overturned, crushing the roof, damaging the doors, fenders, running boards, upper panels and otherwise injuring and damaging said car; that it became necessary to have repairs to his car which were actually necessary as a result of the damages done in turning over his car.

Hon. H. H. Cleaveland, Director, Department of Public Works and Buildings, and Mr. Frank T. Sheets, Chief Highway Engineer, wrote a letter to Hon. Oscar E. Carlstrom, Attorney General, stating that in connection with the above mentioned case that they had received report from Mr. John Stack, Chief Highway Patrol Officer, stating that Mr. Nofs, was in the actual performance of his duties as a patrol officer, at the time of the accident. They further state that inasmuch as Mr. Nofs was performing his duties as a patrol officer at the time of the accident, and acting under instructions from his superior officer, that they believe he is justly entitled to the cost of the repairs of his car, which amount should be $313.95.

The Attorney General recomemnds to the court that an award be made.

We, therefore, award the claimant the sum of $313.95.

(No. 1410—Claim denied.)

AARON P. WELLS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PERSONAL INJURY—*when no award will be made.* Where there is no evidence to show wherein the State is liable for injuries sustained by an employe working upon the hard road, no award will be made.

WORKMEN'S COMPENSATION ACT—*when State not liable under.* Where the employment does not come within the class mentioned in Section 3 of the Workmen's Compensation Act, the State is not liable.

HARRIS & HARRIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

This is a case where the claimant, Aaron P. Wells was in the employment of the State of Illinois, under the Depart-

ment of Public Works and Buildings, Division of Highways. On May 20th, 1927, he was working as a laborer on the State Hard Road, Route No. 9, at a place north of Bushnell, Illinois, near the junction of that route and Route No. 41; and he was engaged in sweeping cracks in the concrete slab, preparatory to pouring tar in the same. This work was under the order and direction of his immediate superior, Clark Hanks, Maintenance Patrolman. Mr. Hanks with Ed. Osborn and Harvey Sanders, two other laborers, were working a little distance away at other labor connected with the maintenance and repair of the hard road. In the claimant's statement it is admitted that there were two signs on the road warning motorists to go slow because of these men at work on the highway. The claimant was at a point between these two signs and was facing west as he worked.

An automobile driven by Calvin Franks, in which John L. Hood and "Flem" Tannehill were riding, approached from the east on Route No. 9. The car struck the claimant and he was severely injured. The evidence shows that he was taken to a hospital for treatment and that he remained in a serious physical condition for sometime. The evidence further shows that Calvin Franks was a man who had property, having been paid within the time of this accident in the neighborhood of $2,500.00 for his interest in a restaurant in Bushnell, Illinois, and having during that time an undivided interest in a small farm near Bushnell, Illinois, his interest was of the value of $1,000.00.

There is apparently no evidence to show wherein the State of Illinois was liable. On the contrary the evidence is clear that Calvin Franks was liable for the injury sustained by the claimant.

The claimant assumed the ordinary perils of the work in which he was engaged and his injury does not come within the class mentioned in Section 3 of the Workmen's Compensation Act. This being true he would not be entitled to recover any money on account of his injury.

While this is a court of equity, social justice and good conscience, still we cannot go beyond the law and establish precedents, which we would be doing in this case if we made an award.

We are of the opinion that there is no liability on the part of the State of Illinois, and the claim is, therefore, denied and the cause dismissed.

(No. 1411—Claimant awarded $695.52.)

TROMPETER AND SONS, A CO-PARTNERSHIP, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

CONTRACTS—*when award will be made.* Where a contractor does extra work in the construction of a hard road, not called for by a contract, an award will be made for such extra work upon the recommendation of the Director of the Department of Public Works and Buildings, and the Attorney General.

SCANLAN & MASSIEON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for extra hauling of equipment which became necessary in order to take care of the construction and laying of extra pavement on Section 121 State Bond Issue Route No. 89.

There is no dispute about the facts and the Director of the Department of Public Works and Buildings recommends the allowance of the claim, and in view of the record the Attorney General comes and recommends the allowance of the claim in the sum of Six Hundred and Ninety-five—52/100 ($695.52) Dollars.

Therefore it is recommended that claimant be allowed the sum of Six Hundred Ninety-five—52/100 ($695.52) Dollars.

(No. 1418—Claimant awarded $2,894.00.)

HENKEL CONSTRUCTION COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

CONTRACTS—*when award will be made for loss sustained under.* Where claimant sustains loss under his contract for the construction of a hard road by reason of delay of the Highway Division, in securing a right of way, an award will be made upon the recommendation of the Division of Highways.

SCANLAN & MASSIEON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EGGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The Henkel Construction Company of Mason City, Iowa, a co-partnership consisting of William Henkel and Carl Henkel, claimants set out in their declaration that they have been engaged as general contractors in the business of building and constructing highway improvements in Illinois and other states, for several years. That the claimant submitted its bid to the Department of Public Works and Buildings, Division of Highways, at the letting held on January 17, 1927, for the building and constructing of sections 101 and 102, State Bond Issue Route 162, and were advised by the Chief Highway Engineer, of the Division of Highways, of the State of Illinois, that claimants bid was the lowest, evidenced by a copy of a letter dated February 11, 1927, signed by Frank T. Sheets, Chief Highway Engineer. The claimant was also advised by a telegram from Frank T. Sheets, Chief Highway Engineer, that the contract for building and constructing said improvement was awarded to the claimant, which telegram was confirmed by letter, a copy of which telegram and letter are attached to the declaration.

That claimant within a few days after the award of said contract entered into a contract with the State of Illinois through the Department of Public Works and Buildings, Division of Highways, for the building and constructing of said sections 101 and 102 of said State Bond Issue Route 162, and executed and delivered the bond required by law and the rules of said Division of Highways. That the said improvement of sections 101 and 102, State Bond Issue Route 162, was located

in Bureau county, Illinois, and extended from Route 7 at Spring Valley, passing through the villages of Ladd, Cherry and Arlington, to Route 18, at Lamoille.

That the claimant shortly after the notice of the award submitted to the Division of Highways, a progress chart of its proposed program for the improvement of said sections 101 and 102 and on this progress chart claimant indicated its intention to build its first set-up or proportionment plant at Ladd and from this set-up start paving operations at the south end of section 102, which was the southern most of the two sections, and work northerly to a point in the north edge of the Village of Cherry and then to establish its second set-up or proportionment plant in the Village of Arlington, and from this second set-up pave from the north edge of Cherry, northerly, to the end of section 101 at Lamoille.

That the claimant shortly after entering into said contract secured a location at Ladd, on which it located its camp and constructed its first set-up or proportionment plant, and from this set-up commenced the work of building and constructing said improvement at the south end of section 102, intending to carry on said work to the north edge of Cherry.

That the claimant on July 9, finished the work of constructing said improvement from Spring Valley north to Ladd and was ready to begin the work of laying down the concrete slab from a point north of Cherry south to Ladd, in accordance with the program for said improvement shown on the progress chart previously submitted to the Division of Highways but the said Division of Highways not having determined whether the pavement was to be built on location "A" or "B", claimant began laying down concrete pavement on July 9th, at a point south of Cherry and paved south to Ladd, finishing same on July 22nd, 1927.

That on July 22nd, 1927, the claimant having completed all of the work from the south end of section 102 to the south end of location "A" near Cherry, and being still under orders from the Division of Highways to omit all work on location "A" tore down its set-up and proportionment plant at Ladd, and moved the lumber and material of which it was constructed and also its camp to a location selected at Arlington on which it located its camp and built and erected its second set-up or proportionment plant and from this set-up, began work at a point one and one-half (1½) miles south of Arling-

ton, and commenced to lay down the concrete slab north to Arlington. Then claimant began at Route 18 at Lamoille and laid down the concrete slab south to Arlington.

The Division of Highways not having yet decided as between locations "A" and "B" claimant then began the laying down of the concrete slab at the north edge of Cherry where locations "A" and "B" intersect, and carried said work north to join up with the completed concrete pavement south of Arlington, finishing this stretch on September 24th, 1927.

That claimant by the letter of February 11th, 1927, from the Chief Highway Engineer, a copy of which is set out in full above, was advised that it was the low bidder; was also advised that all the right of way had not been secured.

That claimant expecting to be awarded the contract for said improvement became anxious about the right of way and on February 17th, 1927, wrote a letter to the District Engineer at Dixon, Illinois, who was in charge of the making of said improvement for the Division of Highways, asking what progress had been made in obtaining the necessary right of way.

The claimant received a letter from the said District Engineer, a copy of which letter is attached to the declaration, said letter being dated February 19, 1927; also a copy of a letter from District Engineer dated March 22, 1927, another letter from District Engineer dated April 1, 1927, and still another letter dated April 11th, 1927.

The claimant under date of April 18th, 1927, wrote to H. E. Surman, of the Division of Highways, at Springfield, advising that from information gathered at the Dixon office, claimant finds that the awarding of the contract on sections 101, 102 and 101B, is being held up due to relocation at Cherry, and that unless the bridges on section 101B are awarded at once the work on them will delay both the grading and slab work under the paving contract and would entail a serious loss to claimant if it would have to shut down both crews and wait for the completion of and curing of the bridges. The letter further stated that since there was no question about the right of way on section 101B claimant would like to have the award made as to the bridges on section 101B at once.

From the statement of the claimant and the copies of the letters thereto attached, there seems to be no question but what an award should be made.

The Attorney General has filed his statement of claim which is as follows:

"This is a claim for extra expenses that could not be paid by the Division of Highways, Department of Public Works and Buildings, under the contract entered into between the claimant and the respondent.

This claim was forwarded to the Division of Highways, Department of Public Works and Buildings, for report and advice as to disposition.

Said Department reported and advised by letter, a copy of which is hereto attached, marked "Exhibit A" and hereby made a part of this statement, advising that the claim was meritorious and should be allowed.

I therefore, submit this claim to the court for such disposition as they care to make, with the recommendation of the Division of Highways of the Department of Public Works and Buildings that same be allowed."

This case was submitted solely upon the statement of the claimant and the letter of C. M. Hathaway, Engineer of Construction, and from the statement, letters and evidence we find that an award should be made.

We therefore, award the claimant the sum of $2,894.00.

(No. 1430—Claimant awarded $671.75.)

WILLIAM C. MOONEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PERSONAL INJURY—*when award will be made.* Where it appears from the record that claimant received injuries in line of duty, as a guard at the State penitentiary at Stateville, an award will be made upon the recommendation of the Attorney General.

SAME—*when no award will be made for loss of time and wages.* The court is of the opinion that a claim for loss of time and wages is not within the rules of the Workmen's Compensation Act.

WILLIAM C. MOONEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant states that while employed by the defendant in the capacity as guard at the state prison at Statesville and while making his rounds at nine o'clock in the evening and the darkness occasioned by the turning out of cell lights,

he struck his left foot against one of the concrete steps and caused him to fall. It appears that claimant's foot became infected and thereafter an operation was performed by removing the first phalanx of the big toe on the left foot which *resulted in ankilosis of the second phalanx* and according to the testimony of the physician of the State Prison claimant suffered a fifteen per cent loss of the use of his left foot. The claimant's doctor bill which is not disputed, amounted to One Hundred Ninety-five ($195.00) Dollars, and his hospital bill amounted to the sum of One Hundred Eighty-four 75/100 ($184.75) Dollars, these amounts in addition to the sum of $292.00 based on a fifteen per cent loss of foot making the sum of Six Hundred Seventy-one 75/100 ($671.75) Dollars. The claimant is also asking in addition thereto for loss of time and wages which the court is of the opinion not within the rules of the Workmen's Compensation Act, and which additional amount is not recommended by the Attorney General. The Attorney General however does recommend that an award in the sum of $671.75 be made and which appears to be proper to this court.

Therefore the court recommends that claimant be allowed the sum of $671.75.

(No. 1433—Claim denied.)

DAVID FELMLEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1920.

OFFICERS—*when no award will be made to an officer for moneys advanced from his private funds—public policy.* Where it appears that a claimant, an officer of the Illinois State Normal University advances moneys from his private funds to cover an equal amount stolen from the vault of the Illinois State Normal University, no award will be made on the grounds that it would be against public policy.

DAVID FELMLEY, pro se.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant in this case is David Felmley, President of the Illinois State Normal University and is based upon an advancement from his private funds to cover an equal sum

stolen from the vault of the Illinois State Normal University on March 12-13, 1928, same being sum of $653.28.

It is not denied by the respondent that the money was stolen from the safe of the Illinois State Normal University and the Attorney General states that his office is not requiring claimant to submit evidence in this case as the facts are not disputed.

In a letter dated Springfield, Illinois, November 28, 1928, to Hon. Oscar Nelson, Auditor of Public Accounts, Springfield, Illinois, the same being written by the Attorney General, correspondence is as follows:

"State of Illinois, Law Department
Springfield, November 28, 1928.

Oscar E. Carlstrom,
Attorney General
File No. 1704
State Officers:
Liability for funds.
HON. OSCAR NELSON
Auditor of Public Accounts
Springfield, Illinois.
Dear Sir:

I have your letter of recent date, in which you state that on March 21, 1928, a remittance was received from the Illinois State Normal University, showing a deduction on account of money stolen from its vault on March 12th. Attached to the itemized remittance sheet is an affidavit of the President of the University in support of the claim that the combination of the vault had been broken off, the vault opened and the contents stolen. You desire to know if under the facts stated the deduction should be allowed.

In reply, I will say that the decisions of the courts in this country are somewhat conflicting on the question presented by your letter but the great weight of authority is in favor of holding public officers handling public funds to a strict accountability. In a majority of the jurisdictions the liability of a receiver of public moneys is that of an insurer. The basis of this rule is public policy. In the case of *Tillinghast v. Merrill*, 151 N. Y. 135, the Court said:

'In the case of an officer disbursing the public moneys much may be said in favor of limiting his liability where he acts in good faith and without negligence, and a strong argument can be framed against the great injustice of compelling him to respond for money stolen or lost while he is in the exercise of the highest degree of care and engaged in the conscientious discharge of duty. When considering this side of the case it shocks the sense of justice that the public official should be held to any greater liability than the old rule of the common law which exacted proof of misconduct or neglect.

It is at this point, however, that the question of public policy presents and it may well be asked whether it is not wiser to subject the

custodian of the public moneys to the strictest liability, rather than open the door for the perpetration of fraud in numberless ways impossible of detection thereby placing in jeopardy the enormous amount of the public funds constantly passing through the hands of disbursing agents.

We think the weight of the argument, is in favor of the rule of strict liability which requires a public official to assume all risk of loss and imposes upon him the duty of account as a debtor for funds in his custody.'

In the case of *People* v. *McGrath*, 279 Ill. 550, 557, the court said:

"The rule of law is well settled in this state that a public officer and his sureties are liable upon his official bond for money received by him by virtue of his office as an insurer, and are not relieved from liability by the loss of the money without the officer's negligence or default. It was so held in *Estate of Ramsay* v. *People*, *Supra*; *Swift* v. *Trustees of Schools*, 189 Ill. 584; *Oeltjen* v. *People*, 160 id. 409, and *Thompson* v. *Board of Trustees*, 30 id. 99. In those cases it was clearly decided that the liability of the officer was not that of a bailee but that he was an insurer of the funds coming to his possession, and could not be relieved from payment by unavoidable accident or by the misfeasance or negligence or felony of another, or by any other reason than the act of God or the public enemy. The same doctrine is held in *United States* v. *Prescott*, 3 How, 578, and *Smythe* v. *United States* 188 U. S. 156. The decisions of this court have settled the question in this State, and though there is a sharp conflict of decision in other states, are in accordance with the great weight of authority elsewhere."

From a consideration of the foregoing, I am, therefore, of the opinion that the affidavit in question is insufficient for the purpose of allowing the deduction, and I am of the further opinion that the Legislature alone can afford relief in the premises.

Yours very truly,

OSCAR E. CARLSTROM, (Signed)
Attorney General."

The Attorney General in his statement further says:

"That from this correspondence, it will be noted that the Attorney General's office has taken the position that the decisions of the courts in this country are somewhat conflicting on the question presented, but the great weight of authorities is in favor of holding officers, handling public funds, to a strict accountability, and that in a majority of the jurisdictions, the liability of a receiver of public moneys is that of an insurer; the basis of this rule being public policy."

The court notes that Mr. Shelton recommends to the court that $653.28 which was stolen and afterwards advanced from private funds to cover an equal amount stolen from the State Normal University, be refunded to President Felmley.

However, in view of the cases cited by the Attorney General we are of the opinion that it would be against public policy for this court to establish a precedent and allow this claim.

It would be opening the doors of carelessness and negligence on the part of the officers of the State Institution.

We, therefore, adhere to the law as laid down by the Attorney General and deny the claim.

(No. 1437—Claimant awarded $1,902.30.)

PRISCILLA MAY BENSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where it appears that claimant receives injury in course of employment, while employed at the Jacksonville State Hospital, an award will be made and the amount determined under the Workmen's Compensation Act.

GILLESPIE, BURKE & GILLESPIE, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by Priscilla May Benson alleging that her claim arises by reason of an injury suffered by her in course of her employment while employed by the State of Illinois in the Illinois State Hospital for the Insane at Jacksonville, Illinois; that the injury of which she complains is the crushing, bruising and burning of her left hand which accidently and without fault on her part, became caught in a mangler in the laundry of said State Hospital, by reason of which injury she was and is now prevented and will be prevented from performing any service or entering into any employment which requires the use of her left hand.

This court has repeatedly held that in cases of this character, when an employee of the State of Illinois has been injured in line of duty that an award should be made under the Workmen's Compensation Act.

The Attorney General filed his statement in which he says this is a case which the Attorney General's office is not opposing, in fact counsel for the State is of the opinion that this claim should be allowed, and recommends that an award of $1,902.30 be made in this case. We therefore make an award of $1,902.30.

(No. 1439—Claimant awarded $4,000.00.)

EDGAR THOMAS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* When it appears the claimant received injury in course of employment while working upon a hard road, an award will be made and the amount determined under the Workmen's Compensation Act.

REED CUTLER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant while employed by the defendant the State of Illinois on Dec. 31st, 1927, and in the course of his employment while assisting in loading concrete right of way marker into the back of a truck at a point just east of the hardroad on State Bond Issue Route No. 31 south of the city limits of Lewistown, Illinois, his hand and arm were caught and the right arm torn from the socket at the shoulder, it appearing the accident completely disabled his arm for many months. And it also appears from the record that claimant is generally disabled. It appears also that claimant is the father of five children all under the age of 16 years at the time of the accident. It also appears that there is a doctor and hospital bill accrued at the time of filing the claim of $170.25.

This is a case where the injury occurred in the course of employment and should be considered under the Workmen's Compensation Act.

Taking all the facts under consideration the court recommends that claimant be allowed the sum of Four Thousand Dollars.

(Claims allowed.)

JOHANNA ROBEZA, 1141; PAULINE GRIVETTI, 1487; MARY HORN, 1486, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PERSONAL INJURY—*when award will be made for injuries resulting in death—Workmen's Compensation Act.* Where it appears that claimants intestate received injuries resulting in death while in line of duty and the course of their employment in the maintenance of a State highway, an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.

ACTIONS AND DEFENSES—*when allowance of an award does not affect right of action.* The allowance of an award does not affect a right of action which anyone might have against the tort feasor.

HOLLERICH & HURLEY AND PAUL D. PERONA, for claimants.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

These cases are consolidated by agreement between the parties with the consent of the court. The same facts, excepting as to amounts due being involved in each case.

It appears that the deceased in each instance, Joseph Grivetti, George Horn, and Peter Robeza, were employed in the maintenance of hard roads near the Village of Depue, Bureau county, Illinois.

The deceased were, on the morning of January 23, 1929, about 3:30, returning with a load of cinders to the plant of the Mineral Point Zinc Company at Depue, Illinois, and had been during that night hauling cinders from this plant over this railroad crossing to the curves and hills and bad places in the road because of their slick and icy condition. While so operating this State truck they were struck by the Chicago, Rock Island and Pacific Railroad passenger train traveling west about 3:30 in the morning.

One of the deceased was killed instantly, and the other two died within a very short time.

The amount of damages in these cases following precedents and law must be measured under the Workmen's Com-

pensation Act. Therefore, the only controversy before the court is, did these deceased receive their injuries resulting in death in line of duty in the course of their employment, and if so the amount due them under said act.

The court is of the opinion that the deceased received their injuries, resulting in death, in line of duty in the course of their employment, and that these claimants were entirely dependent upon them for support.

It is further stated that the allowance of these awards is not in any way to affect any claim or right of action of any kind whatsoever, which the dependents and next of kin of these deceased or anybody else might have against the railroad company, whose passenger train was the direct cause of the accident and injuries resulting in the death of these deceased.

It is, therefore, recommended that Pauline Grivetti, claimant in claim No. 1487, receive $4,000; that Mary Horn, claimant No. 1488, receive $3,625 and that Johanna Robeza, claimant in claim No. 1441, receive $3,600.

(No. 1442—Claimant awarded $230.00.)

EDWARD J. TOBIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

SERVICES—*when award will be made for services rendered to the State.* Where it appears that claimant performed surveying and engineering services for the State in connection with the State Farm of the Lincoln State School and Colony, an award will be made upon the recommendation of the Attorney General.

DEAN G. CURRY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The declaration in this case states that Edward J. Tobin is a resident of the City of Lincoln, County of Logan, State of Illinois, and has been for many years past; that he is an engineer and surveyor; that at the request of the State of

Illinois he performed certain surveying and engineering services for the State of Illinois, in connection with the State farm of the Lincoln State School and Colony, located in Logan county, Illinois.

The claimant further alleges that this fee for said services rendered was $362.00 and of this amount the State of Illinois had paid the sum of $132.00 for services rendered from October 19th, 1927, to October 29th, 1927, leaving a balance due said claimant of $230.00.

The petitioner submits a bill of particulars which is attached to the declaration setting out in detail the facts relative to the claim.

The Attorney General has filed a statement which contains copies of letters from C. H. Diehl, managing officer and R. W. Ide, director.

It is admitted by the exhibits attached to the statement of the Attorney General that the claim should be paid and it is also recommended, by the Attorney General that the court make an award in this case.

We, therefore, award the claimant the sum of $230.00.

(No. 1449—Claimant awarded $392.20.)

MARION C. HAYES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PERSONAL INJURY—*when award will be made for hospital and doctor bills.* Where it appears from the evidence that claimant suffered injuries in the discharge of his duties as a foot ball coach, an award will be made upon the recommendation of the Attorney General, although there is no legal liability on the part of the State to pay compensation for such injuries.

MARION C. HAYES, pro se.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The claimant, Marion C. Hayes, represents that he is a member of the Educational Department of the Northern Illinois State Teachers College, and that he assisted the physical director in coaching the football team, at the request of

the president of the college. The claimant represents that he has served the college as a teacher since September, 1926, and he assisted the football coach for more than three weeks.

That on October 8th, while in the discharge of his duties on the football field he suffered a compound fracture of the clavicle and was, at the time, instructing some of the football squad in the throwing and receiving of forward passes. That during the course of his instruction of the football team he fell on his left shoulder incurring a compound fracture of the left clavicle. He was immediately taken to the office of Dr. G. H. Joost of DeKalb, Illinois, he attending to his injury. The broken bones did not grow together so after two weeks Dr. Joost put a valpeau bandage on the left shoulder and assured him repeatedly that the clavicle would be in good condition. After five weeks of suffering, X-rays showed that the clavicle was not knitting and that he was advised by Dr. Joost to go to Dr. A. H. Conley, 4100 West Madison Street, Chicago, Illinois. Dr. Conley set the broken bones and compelled him to go to bed with a "salt bag" between his shoulder blades and in such position he remained for sixteen days. The claimant was compelled, by reason of his injury to go to the University Hospital in Chicago, under the care of Dr. Conley and to make numerous trips to Chicago to see the doctor. Proof shows that the claimant is still suffering pain from the clavicle which is broken and has not completely recovered the use of his left arm and shoulder.

The claimant attaches to his declaration as exhibits the hospital bill and physician bills amounting to the sum of $392.20.

The payment of the claim is recommended by Dr. A. N. Shelton, Director of Registration and Education and also by the Attorney General.

We, therefore, award the claimant the sum of $392.20.

(No. 1457—Claimant awarded $2,642.83.)

THE TOWN OF NORMAL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

SPECIAL ASSESSMENTS—*when award will be made for interest on paving assessments.* **Where the Legislature fails to make an appropriation sufficient to pay the interest upon assessments for paving streets in a municipal corporation adjacent to the property of the State Normal University, provided for by ordinance, an award will be made upon the recommendation of the Attorney General.**

LESTER H. MARTIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

A claim has been filed by the Town of Normal for the sum of $2,642.83 for interest due on the paving assessment against the State of Illinois for paving streets adjacent to the property of the Illinois State Normal University.

Inasmuch as there were no funds available for the payment of the State's share, which amounted to $21,990.00, at the time of completion of the work it was necessary to appropriate a sum for the specific purpose at the session of the 55th General Assembly. Said sum was appropriated at that time and paid to the Town of Normal by the State of Illinois on the 30th day of August, 1927.

The ordinance for the paving specifically stipulated that interest at the rate of six percent per annum should be paid from the date of the issuance of the first voucher for work done, which was September 21st, 1925. However, the Legislature neglected to provide in the appropriation a sufficient sum to take care of the interest.

The Attorney General recommends that this claim be allowed.

It is therefore ordered that claimant be awarded the sum of $2,642.83.

(No. 1158—Claimant awarded $133.60.)

WILL MULLINS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

ANIMALS—*when award will be made for losses sustained upon the sale of cattle infected with bovine tuberculosis.* **Where it appears from the evidence that claimant sustained losses upon the sale of cattle, which cattle, reacted to tuberculosis test, an award will be made.**

POUST, FISK & MOUDRY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim filed by Will Mullins of the Town of Shabbona, County of DeKalb, Illinois, representing that he is engaged in farming and that on March 14, 1928, was the owner of two thoroughbred cows, which were on the farm operated by him in said Shabbona Township; that said cows were tested for tuberculosis by the State veterinary and that they reacted and were appraised at $200.00 per head.

Claimant further alleges that on or about the 14th day of March, 1928, he shipped said cows to Stafford Brothers Commission Merchants at Chicago, Illinois, through the Lee Livestock Shipping Association and that said cows were sold by Stafford Brothers to D. Levy on March 15, 1928, at 9½c per pound, or $99.75 and $99.90 respectively.

Attached to the claimant's declaration is an affidavit from Emery Johnson, setting forth that he is a resident of DeKalb County and that on March 14, 1928, the manager of the Lee Livestock Shipping Association and that while acting in such capacity he shipped two cows to Stafford Brothers Commission Merchants of Chicago, Illinois, and that on March 15th, 1928, said cows were sold to D. Levy; that the affiant E. A. Johnson personally investigated this claim and knows of his own knowledge that these facts are true and correct.

We, therefore, award the claimant the sum of $133.60.

(No. 1459—Claims allowed.)

BURTON ANDERSON, HENRY RUSSELL, A. G. HASEMANN, ERNEST E. ENGEL, FRANK HEIN, ARTHUR BERNARDONI, FRED STIEG, W. E. JACKSON, C. G. BRAINARD, JOHN SHEA, PETER J. FREIDERS, R. M. BEAN, W. E. SULLIVAN, M. C. WILCOX, HENRY QUEDENFELD, ALBERT RUTH, KATY SCHUMACHER, CHAS. W. FULTON AND PETER BENSON, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

ANIMALS—*when award will be made.* Where it appears that claimants cattle were destroyed to prevent the spread of bovine tuberculosis in order to carry out a program for the betterment of public health and for which the public at large received the benefits, an award will be made where the reasonableness of the amount is not questioned.

RAY PADDOCK, for claimants.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim wherein all the above claimants join in the same cause of action.

It appears that claimants had their cows tested for bovine tuberculosis and by result of such test certain of their cows were slaughtered to prevent the spread of the disease and to protect the consumers of the milk, and it further appears from the statement of Stillman J. Stanard, Director of Agriculture, which statements are in words and figures as follows: "While these tests were not performed under authority given by this department, the tests did serve to eliminate tuberculosis from the State of Illinois. The State therefore benefited by the elimination of the reactors from these herds."

The said Director in words and figures further sets forth, in his statement the following: "The farmers did not receive the customary indemnity for their animals and since the spirit of the law has been served, the tuberculosis eradication program benefited and the individual herd owners damaged by not receiving their indemnity, and action in causing the cattle to be tested being caused by an emergency which was not of their making, I can see no reason why these claims should not be allowed as has been done in the past."

And it further appears that the Fifty-fifth General Assembly of the State of Illinois made appropriations to the Department of Agriculture for the purpose of indemnity for eradication of bovine tuberculosis.

This court is of the opinion this is a program for the betterment of public health, and that in view of doing equity and justice to those who suffered a loss for the benefit of the public at large, this court is of the opinion that the claims should be allowed the reasonableness of which is not questioned.

Therefore it is considered and recommended by the court that the above claimants be allowed the following awards:

Name.	Number of Head.	Amount of Award.
Burton Anderson	2	$ 60.00
Henry Russell	16	480.00
A. G. Hasemann	11	330.00
Ernest E. Engel	7	210.00
Frank Hein	4	120.00
Arthur Bernardoni	1	30.00
Fred Stieg	7	210.00
W. E. Jackson	2	60.00
C. G. Brainard	22	660.00
John Shea	6	180.00
Peter J. Freiders	13	390.00
R. M. Bean	7	210.00
W. E. Sullivan	4	120.00
M. C. Wilcox	1	30.00
Henry Quedenfeld	10	300.00
Albert Ruth	17	510.00
Chas. W. Fulton	5	150.00
Peter Benson	28	840.00
Katy Schumacher	38	1,140.00

(No. 1464—Claimant awarded $410.00.)

WILLIAM HAAK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 23, 1929.

ANIMALS—when award will be made to reimburse claimant for animals destroyed by order of the State authorities. Where it appears that claimant's horses are destroyed by order of the State authorities to prevent the spread of the disease of glanders, an award will be made to reimburse the owner of the animals for such loss and the amount determined according to the fair market value of such animals.

CHAS. E. LEE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant on the 2nd day of November, 1928, and for some years prior thereto was engaged in operating a farm in Logan county, Illinois, and in conduct of such business he owned and used certain horses.

It further appears that the horses owned by claimant became infected with a disease called "glanders;" that on Nov. 2nd, 1928, W. V. Nesbitt, a licensed vererinarian residing at Lincoln, Illinois, examined five horses belonging to claimant and found all five horses infected with the disease called "glanders."

It further appears that thereafter said five horses were ordered by the State veterinarian of the State of Illinois to be killed on account of their being diseased with glanders and for the prevention of the spread thereof.

It further appears that it is the rule and practice of the defendant the State of Illinois to reimburse the owners of animals killed in manner as aforesaid to prevent the spread of a disease of this character, and it would appear that this is a reasonable and fair caution and for the best interests of the animal industry of the State. It appears that the fair market value of the horses was $410.00.

The Attorney General comes and admits the facts set forth in said claim and that the claimant is entitled to the sum of $410.00.

It is therefore recommended that the claimant be allowed the sum of $410.00.

(No. 1465—Claimant awarded $560.00.)

WILLIAM L. HOYT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

REIMBURSEMENT—*when reimbursement will be made to a State employee for money expended for living quarters.* Where it appears that claimant was to be furnished with living quarters in addition to his salary while employed as custodian of a State park, an award will be made to reimburse claimant for moneys expended for rental while the living quarters furnished by the State is undergoing repairs.

WILLIAM L. HOYT, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant entered into the employment of the State of Illinois as custodian of Blackhawk State Park and that as such custodian he was to receive from the State a salary of $100.00 per month, and that as a further consideration he was to be furnished with living quarters on said park for himself and family, and that until such time his living quarters could be furnished on said park, he was to receive in addition to his salary of $100.00 per month, the reasonable rental of living quarters for himself and family elsewhere; that there is now being repaired by the State for the living quarters of claimant and his family and such residence can and will not be completed and ready for occupancy until after the 8th day of April, 1929.

It appears that the fair rental value of a suitable residence would be Forty ($40.00) Dollars per month, making a total claim of Five Hundred and Sixty ($560.00) Dollars.

It further appears that H. H. Cleveland, Director of Public Works and Buildings of the State of Illinois, approved the claim as submitted.

In view of the foregoing this court recommends that claimant be allowed the sum of $560.00.

(No. 1466—Claimant awarded $2,067.00.)

EDMUND A. HOGAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

PERSONAL INJURIES—*when award will be made.* Where it appears that claimant received injuries in course of employment while working as a stationary fireman at a State institution, an award will be made.

MICHEL & BARNES, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant in this case represents that he is a resident of 107 Harrison Street, Bartonville, Illinois, and that he has resided at Bartonville, County of Peoria, State of Illinois, for the past twelve years; that he is married and lives with his wife and nine children who are solely dependent upon him for their income, support and maintenance. Claimant further alleges that he was an employee of the State of Illinois as a stationary fireman at the Peoria State Hospital and was so employed for the past eleven years, receiving a compensation for his services at the rate of $140.00 per month.

That while the claimant was so employed, on August 30, 1928, he fell from a running board between two boilers, on the premises of the Peoria State Hospital, where he was doing some repair work; claimant alighted on a hard surfaced floor and by reason of the fall broke the bones in each foot and as a result of this injury claimant was confined to his home in bed for several months, from August 30, 1928 to March 1st, 1929; that during the time the claimant was injured he received compensation from the State of Illinois and was treated for said broken feet and fractures by George H. Weber, physician and surgeon of Peoria, Illinois. That the claimant, because of his injury is unable to pursue any gainful employment and is incapable of working. The claimant requests that he be allowed the full amount which would apply to cases of total disability.

The Attorney General files his statement in which he says that the claimant has properly stated the law and the facts and properly applied the facts to the law.

We, therefore, award the sum of $2,067.00.

(No. 1475—Claimant awarded $26.33.)

ARTHUR R. CLARK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.

ANIMALS—*when award will be made.* When it appears claimant failed to receive compensation for the destruction of a dairy cow, which reacted to a tuberculosis test for the reason that the appropriation for such purpose had lapsed, an award will be made upon the recommendation of the Attorney General.

CHARLES H. THOMPSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for $26.33 which represents one-third of the appraised value of a dairy cow which was slaughtered after a tuberculosis test had been made and which the said animal reacted. It appeared that the Director of Agriculture approved the claim as being just and on account of delay in mails or for other reasons the claim was not paid until the appropriation under which these claims are handled, had lapsed.

The Attorney General recommends an award in said amount, and therefore this court recommends that claimant be awarded the sum of $26.33.

(No. 928—Claim denied.)

FEDERAL PAVING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

DISMISSAL—*when case will be dismissed upon motion of the Attorney General.* A cause will be dismissed upon motion of the Attorney General where claimant fails to comply with the rules of the court in regard to taking testimony.

RULES—*when case will be dismissed for failure to comply with the rules.* Where claimant fails to obey the rules relative to taking of testimony, the case will be dismissed.

THOMAS M. ZASADIL, JR., for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court.

It appearing to the court that the above entitled claim was filed on the 30th day of April, A. D. 1925, and that the claimant has taken no testimony in its behalf in support of said claim and that the Attorney General has been ready and willing to take such testimony at all times;

And it further appearing to the court that the Attorney General has filed a motion herein asking that said cause be dismissed for failure on the part of the claimant to prosecute same and that notice of such motion has been made by mail upon such claimant;

The court finds that the claimant has failed to obey the rules of said court in regard to the taking of testimony in said cause;

Therefore it is hereby ordered by the court that said cause be, and the same is, hereby dismissed.

(No. 1158—Claim denied.)

WILLIAM COX BY PAUL P. THOMPSON, HIS CONSERVATOR, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.

Rehearing denied May 9, 1929.

PLEADINGS—*when demurrer will be sustained.* Where the declaration does not state such facts as entitled claimant to an award, the demurrer to the declaration will be sustained.

SAME—*when facts must be alleged and proved.* The court will not assume the facts necessary to support an award, but they must be alleged and proved.

L. E. STONE, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $554.53 paid by Frank J. Heinl, conservator of claimant, to the managing officer of the State Hospital for the Insane at Peoria. It is alleged that Heinl paid the money March 23, 1914, and that he was at that time the conservator of Cox and paid it for the maintenance of his ward at the hospital. It is further alleged that the law under which the payment was made was held unconstitutional by the Supreme Court on April 19, 1917, and that Heinl filed a claim in this court for an award against the State for the same money which was denied.

The Attorney General has filed a general and special demurrer to claimant's declaration. The demurrer will have to be sustained, as the declaration does not state such facts as entitle claimant to an award. So far as this declaration shows, Heinl may not have charged claimant with the amount paid the hospital. If he did not, then there could be nothing due claimant from the State. This court will not assume the facts necessary to support an award, they must be alleged and proven. The demurrer is sustained.

We will also say we are not impressed with the justice of this claim. Heinl filed suit in this court for an award in his favor for this same money. In that case he made oath that he paid this money himself and asked to be reimbursed for it himself. He did not claim it had been paid out of his

ward's funds and did not ask for an award in favor of his ward. He alleged he had paid the money March 23, 1914, and he did not bring suit in this court against the State until July 2, 1926, twelve years after the payment. The opinion denying his claim was filed January 19, 1927. He resigned as conservator in February, 1927, and this present suit was filed March 8, 1927. No explanation of these facts is set forth in the declaration.

If Heinl paid the money out of his own funds, as he alleged in his suit, then the present claimant has suffered no loss and is entitled to no award. If he wrongfully paid the money out of claimant's estate, he and his bondsmen are liable to claimant for it, and claimant is not injured thereby.

Claimant can not be used as a cat's-paw to assist Heinl to get money from the State which, under the law he is not entitled to.

The cause is, therefore, dismissed.

On May 9, 1929, upon petition for rehearing the following additional opinion was filed:

Per Curiam: This cause coming on for rehearing upon petition of claimant filed on April 22, 1929, and the court, having sufficiently reviewed the matter brought upon said petition, and that it appearing that said petition should be denied,

It is therefore considered by the court, that the said petition be, and the same is hereby denied.

(No. 1163—Claimant awarded $351.51.)

HENRY W. CONRAD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PROPERTY DAMAGE—*when award will be made—equity and good conscience.* Although there is no legal liability on the part of the State, an award will be made on the grounds of equity and good conscience for damages to claimant's motor vehicle, resulting by reason of a collision with a State highway truck.

JOHN G. FRIEDMEYER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration filed in this case by the claimant, Henry W. Conrad, sets forth that on December 6th, 1926, one LeRoy DeYoung was employed by claimant as a bread salesman and truck driver, claimant being in the wholesale bread business; that he owned a Reo delivery truck which was a six cylinder truck with panel body, and was in good, first class condition, which truck was on that day being driven by said DeYoung on Route 17, being a State highway, towards routes 25 and 8, which lead to 17; that as DeYoung was driving east on route 17, which was the route between Kankakee and Momence in Kankakee County, and as he came opposite the farm buildings of the Huskins farm, located on route 17, where the cement road at that point is 18 feet in width, the farm being located about four miles east of the City of Kankakee, and while driving on the right hand side of the road, at about 3:30 o'clock in the afternoon, he noticed a truck about a block ahead of him, which was travelling at a speed of about 15 miles per hour; that he commenced blowing his horn while a block behind said truck, in the lead, and he turned north, or to the left, to go around it, when suddenly the driver of that other truck in the lead, giving no signal, turned directly in front of the Reo truck, throwing the Reo truck against a telephone pole at that point, and doing considerable damage to it. The truck so turning to the left was a Packard State truck, with platform on the rear and an enclosed cab, driven by Harry Goodknecht, who was in the employ of the State of Illinois in the Highway Commission

service; there was no cross road where the State truck turned to his left across the road in front of the Reo truck and the driver gave no signal with an outstretched hand, or otherwise that he intended to make such a turn, the turn leading into a private driveway leading to the farm buildings above mentioned. The damage to the Reo truck amounted to $351.51.

The demurrer filed by the State of Illinois, through the Attorney General, is sustained as a matter of law.

Although there is no legal responsibility on the part of the State of Illinois, in cases of this character, we feel that in equity and good conscience, an award should be made, and we accordingly award to claimant the sum of $351.51.

(No. 1195—Claim denied.)

JAMES EDWARD FITZMAURICE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURIES—*State is not liable for injuries to inmates of charitable institutions.* The State is not legally or equitably liable to an inmate who receives an injury while confined in one of its institutions.

WORKMEN'S COMPENSATION ACT—*when State is not liable under.* The State is not liable under the Workmen's Compensation Act for injury sustained by an inmate of a State institution.

JOHN BRODERICK, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

It is agreed between the attorney for claimant and attorneys for the State that the facts in this case are as follows: that claimant was sentenced by one of the courts of Cook County to serve a term in the Pontiac Reformatory at Pontiac, Illinois, on the charge of burglary; that after he had served his term, or a sufficient part thereof, he was paroled subject to his being confined at the Dixon State Colony at Dixon, Illinois; that subsequently he was incorrectly adjudged a feeble minded person and sent to said

school and colony for that condition, but that claimant was not a feeble minded person but was an epileptic; that the first few months he was in said colony claimant had more than twenty-five or thirty epileptic convulsions a month; that he responded very rapidly to treatment for his condition as an epileptic and within the course of about four months the convulsions ceased; that two months after the convulsions had ceased he was placed upon a work detail at the colony and while on said work detail worked with a concrete mixer making concrete for use at the colony; that, while working on said concrete mixer, claimant, against the orders of the State employee in charge of said work detail, went to the opposite side of the machine, took a stick dipped in some grease and was attempting to put some grease on said mixer; and that, as a result of his efforts to grease the machine, his hand became caught in the gears of the machine, so mangling it that it was necessary to amputate most of the first or index finger and all of the other three fingers of his right hand; that all of the patients of said institution on said work detail, and the State employees in charge at the time of the accident, stated that claimant did not have any convulsions at the time the accident occurred and that the injury was not the result of any epileptic condition.

In his declaration claimant does not state the amount claimed but says that previous to his confinement in said institution he was employed as a teamster and received as wages approximately $36.00 per week.

The Attorney General has filed a general and special demurrer to claimant's declaration. Claimant's attorney has submitted the case without brief or argument.

Claimant was not an employee of the State at the time of the accident, but was an inmate of a State institution, and would not come under the provisions of the Workmen's Compensation Act. This court has repeatedly held that the State is not legally or equitably liable to an inmate who receives an injury while confined in one of its institutions.

The demurrer is therefore sustained and the cause dismissed.

(No. 1208—Claim denied.)

GEORGE W. DOWELL, TRUSTEE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.
Rehearing denied May 9, 1929.

PROPERTY DAMAGE—*when award will not be made for.* Where the evidence shows that claimant's property is not damaged by reason of the construction of a hard road, no award will be made.

GEORGE W. DOWELL, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

George W. Dowell, the complainant in this case, in his declaration states that he is the lawful possessor of certain lands and premises, situated in the County of Jackson, which said lands and premises, he used and enjoyed.

The premises being described as a strip of ground in the Southeast Corner of the Southeast Quarter of the Southwest Quarter of Section 5, Township 7 South, Range 1 West of the Third P. M. containing about 15 acres.

That the Department of Public Works and Buildings, during the months of August, September, October, 1923, constructed a certain public highway known as Route No. 2 and during the construction of said Route No. 2 it became necessary for the department to excavate and make a certain drainage ditch and raised the ground on the highway and the claimant avers that prior to the excavation by the Department of Public Works and Buildings that large quantities of rain water and surface water and standing water, ran and flowed from the said ditch or excavation down to and upon the premises of the above described land and that by reason of the excavation of said road and ditch the premises of the claimant became and are wet and swampy and less fit for use, occupation and cultivation, that the rain water and surface water flowing in a different direction since the construction of the road and ditch and with much greater force and violence, that the water backed up against and on the land and premises of the claimant and undermined,

washed away, damaged and destroyed the lands of the claimant.

The evidence fails to show that any of the claimant's land or premises was taken in the construction of the road known as Route No. 2. Three witnesses testified on behalf of the claimant. Isaac Wagner, one of the witnesses of the claimant testified on cross-examination, that he was a coal miner and lived near the premises of the claimant, that the premises of the claimant and the premises on the opposite side of the road was low and swampy; that after hard rains of several hours duration he has seen water get over the hard road; that the water in receding as a natural water course would go down on the east side of the road and within a few hours on the west side of the road, which was where the claimant's property was located. The engineers who were employed by the Division of Highways, Department of Public Works and Buildings of the State of Illinois, testified that taking everything in consideration the drains were ample and that twice as many openings or culverts in the hard road as a theoretical matter and now considered them ample.

As the Attorney General says in his statement: "This is not a suit brought on Eminent Domain Act as apparently contemplated by the claimant herein, who in his brief cites only the Eminent Domain Act or cases involving said Act. No property was taken or used of the claimant in the construction of said hard-surfaced road along or in front of claimant's premises. Therefore, eminent domain is not involved. This is a case where damages are complained of by reason of the construction of said hard road and the respondent does not believe that the premises of the claimant was damaged in said construction work or by the construction of said hard road.

The witnesses all testified that the premises of the claimant is low and a continuation of the swampy ground directly east and on the opposite side of the road from these premises."

The court is of the opinion that there is no liability for damages to claimant's property as a matter of law. The claim is, therefore, denied and the case dismissed.

On May 9, 1929, upon motion to set aside the order heretofore entered the following additional opinion was filed:

Per Curiam: This cause coming on to be heard upon motion of claimant to set aside the order of the court heretofore entered and to grant rehearing, and after argument of counsel and the court having sufficiently reviewed the matter brought upon said motion, and that it appearing that said motion should be denied,

It is therefore considered by the court, that the said motion be, and the same is hereby denied.

(No. 1209—Claim denied.)

McCLINTIC-MARSHALL CONSTRUCTION COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

DISMISSAL—*when case will be dismissed for want of prosecution.* Where motion to dismiss case for want of prosecution is not resisted by claimant, the case will be dismissed.

BUSBY, WEBER, MILLER & DONOVAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On June 30th, 1927, claimant filed its claim for refund of a franchise tax claimed to have been illegally paid. On April 30th, 1929, the Attorney General made a motion to dismiss the case for want of prosecution. Claimant does not resist said motion. It is therefore ordered that the case be dismissed for want of prosecution and the same is dismissed.

(No. 1236—Claim denied.)

JOHN MORRIS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 14, 1929.
Rehearing denied May 9, 1929.

PROPERTY DAMAGE—*when no award will be made for.* Where the evidence shows claimant was negligent by not accepting assistance in protecting his property from damage, no award will be made.

REHEARING—*when rehearing will be denied.* Where no further evidence or statement is offered that would alter or contradict the former opinion of the court, the petition for rehearing will be denied.

ROY C. MARTIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The evidence in this case shows that claimant was driving a Hudson coach from the City of McLeansboro to the City of Benton, Illinois, on the evening of March 7, 1927, with his wife and children; that when a few miles out of McLeansboro he drove under a viaduct. It had been raining and water was standing under this viaduct and in driving his car through this water he claims it stalled his motor. The evidence shows that water in this subway at the time he drove into it was eight inches deep. The claimant endeavored to start his engine but the battery run down and he was unable to do so. The evidence further shows that at the time he was stalled under this viaduct, one, Claude McElvain offered to assist him in getting his car out of the water, that he refused his assistance. Sometime after the refusal of assistance the water became very deep upon the car and he claims that his clothing as well as the clothing of his wife and children were ruined and also that the mud and sand accumulated in the crank case of his car.

It is our opinion that this claimant should have at the time of his engine being stalled accepted the help of Claude McElvain and permitted his car to be pulled from under the viaduct in this low place where water was fast accumulating and that he was negligent in not doing so. The testimony is without contradiction that in ordinary rains the drainage outlets in this subway were sufficient prior to the laying of pavement in the City of McLeansboro, which, while it prob-

ably did not materially increase the drainage area did rush the water into this subway many times faster.

We fail to see wherein the State of Illinois is liable for the damages and therefore, this claim is denied and dismissed.

On May 9, 1929, upon petition for rehearing the following additional opinion was filed:

In the matter of rehearing in the case of John Morris, rehearing being granted, and no further reappearance of the attorney for the claimant and no further evidence or statement that would alter or contradict the former opinion of this court offered, the court finds that there is no reason to vary or contradict the original opinion of the court.

Therefore, the petition for rehearing is denied and the case dismissed.

(No. 1292—Claimant awarded $2,268.00.)

I. H. BUCHMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act social justice and equity.* Where claimant receives injury in course of employment while working as an engineer in the State Highway Department, an award will be made upon the grounds of social justice and equity and the amount determined under the Workmen's Compensation Act.

MCCARTHY & MCCARTHY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The declaration in this case sets forth that I. H. Buchman, the claimant, on the 11th day of June, A. D. 1926, was working as an engineer in the Highway Department of the State of Illinois and that he was stationed at Elgin, Illinois, under the direction of George N. Lamb, district engineer for the Northern District of Illinois; that it was a part of his duties as engineer to survey right of way and supervise the construction and location of roads and highways being built by the State of Illinois.

The claimant further alleges that on the 11th day of June while he was going to work on a section of road then under construction in Lake County, he was struck and severely crushed, maimed and injured and the bones of his hips were crushed and broken; that the claimant was confined to a

hospital and to his home for more than one year thereafter.

Claimant alleges that his leg was shortened through the knitting of the bones more than three inches and that he has been and is permanently crippled thereby.

The Attorney General filed a statement and argument and in his argument he says: "Under the Workmen's Compensation Law this claimant will be entitled to doctor and hospital bills amounting to $418.50, necessary travelling expenses, consisting of $125.00 making a total of $543.50 and from 75 to 90 per cent for loss of the use of his leg."

The court feel that as a matter of good conscience, social justice and equity and following the law as laid down by the Workmen's Compensation Act, we are of the opinion that an award should be made and we, therefore, award the claimant the sum of $2,268.00.

(No. 1290—Claimant awarded $14,517.49.)

UNION TRUST COMPANY, ADMINISTRATOR DE BONIS NON OF THE ESTATE OF ROBERT GLENDINNING, Claimant, deceased, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

INHERITANCE TAXES—*mistake.* Where it appears that inheritance tax was paid by error in computation, an award will be made upon the recommendation of the Attorney General for the amount erroneously paid.

SOBERG, HUMMELAND & WINANS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant asks for an award of $14,517.49 on account of excess inheritance taxes alleged to have been erroneously paid by the executors of the last will and testament of Robert Glendinning, deceased. In its declaration claimant states that on July 30, 1920, the county judge of Cook County entered an order approving the appraiser's report fixing the inheritance tax due from the estate at $121,221.94 and that the then executors of the estate, on July 31, 1920, paid to the county treasurer of Cook County $115,160.84, being the amount of tax fixed by the appraiser less than 5% discount allowed for the payment thereof within 6 months after it be-

came due. It is also alleged that the appraiser made a mistake in adding the appraised cash value of the estate and in computing and fixing the amount of taxes assessed, and that said mistake was discovered a long while after it was made. That on January 16, 1928, a petition was filed with the county judge of Cook County and that the said county judge on the same day entered an order correcting and amending the appraiser's report so as to make it show the amount of tax due from the estate to be $105,940.37. The difference between this sum, less 5% and the sum paid is the amount for which an award is asked against the State.

The Attorney General has filed a general demurrer to the declaration, and urges the State is not liable to refund the amount claimed, afterward he withdrew the demurrer and recommended that the court allow the sum of $14,517.49 as a refund. Therefore, upon the recommendation of the Attorney General an award is recommended in the sum of $14,517.49.

(No. 1295—Claim denied.)

JAMES E. MAHER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PROPERTY DAMAGE—*when no award will be made.* Where it appears from the evidence that damages have not been established, no award will be made for loss of crops destroyed by water backing up on claimants property by reason of the construction of a bridge.

W. W. WRIGHT, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for damages to the property of claimant in the County of Stark and State of Illinois. It is claimed that by reason of the construction of the bridge in question here, the embankment or approachments leading thereto acted as a dam, thereby causing the water to remain and back up on claimant's property, and by reason of which conditions, claimant's crops were destroyed as claimed.

It is the opinion of the court, as urged by the Attorney General, that damages have not been established in the re-

view of all the facts and circumstances in this case. It is the opinion of the court that the contention of the Attorney General is correct.

Therefore, it is recommended that the claim be denied.

(No. 1301—Claim dismissed.)

WILLIAM L. SMITH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

DISMISSAL—*upon oral motion of claimant.* The cause will be dismissed upon oral motion of claimant where there appears to be no reason why same should not be dismissed.

CLARENCE B. DAVIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Per Curiam: This cause coming on to be heard upon oral motion of claimant to dismiss the case, and it appearing that said case should be dismissed, it is therefore considered by the court that the said cause be and the same is hereby dismissed.

(No. 1307—Claim denied.)

A. J. JOHNSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1929.
Rehearing denied May 9, 1929.

PROPERTY DAMAGE—*when an award will be made for damages resulting by reason of the construction of a hard road.* Where the evidence does not show that the loss of crops by an over-flow of water resulted by reason of faulty construction of a hard road, but due to continuous rains which were far above the average at that time, no award will be made.

BELLATTI, SAMUEL & MORARITY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed by A. J. Johnson, residing on a farm located about two miles north of Alexander, Morgan county,

Illinois, Mr. Johnson having been a tenant on a farm of 510½ acres for a period of over forty years. Three hundred and twenty acres of the farm is first class farming land for which Mr. Johnson paid $9.00 an acre cash rent, each year for the last five years. A portion of the 320 acres abuts upon the hard road known as State Highway No. 3. This claim is based upon damages done to sixty acres of the land which is located in the East Half of Section 13, Township 15, North, Range 9, West of the Third Principal Meridian, Morgan county, Illinois, and which is immediately west of the hard road. Claimant asks damages in the sum of $1,500.00 on account of loss of crops during the year 1926, when the water falling upon said sixty acres reduced the yield of the crop so that claimant sustained a total loss of $1,500.00, and claimant avers that this loss was due to faulty construction of the hard road and improper means of drainage.

The demurrer filed by the Attorney General is sustained as a matter of law.

We have carefully considered the testimony introduced in support of this claim, and have studied the plat submitted by the State. We find that the highest point on said hard road involved in this case was at the southern end of said damaged property and has an elevation of 649.60; that the highest point in the ditch on said hard road involved in this suit was on the south and is 649.4 and has a gradual downward slope entirely along and in front of said alleged damaged farm lands; that the right of way line along the west side of said premises is at all points higher than the highest point in said ditch involved in this case; that the ditch to the west of the hard road involved in this case is at all points therein lower than the lowest point in the said farm lands alleged to be damaged as a result of water being held on said premises; that the climatological data given shows the continous rains during the months of May, June and July, in the year 1926 to be far above the average, and the fact that water was not properly drained from said premises during that period was due to no negligence on the part of the defendant, the State of Illinois. The claim is accordingly denied.

On May 9, 1929, upon petition for rehearing the following additional opinion was filed:

Per Curiam: This cause coming on for rehearing upon petition of claimant filed on April 22, 1929, and after argument of counsel and the court having sufficiently reviewed the matter brought upon said petition, and that it appearing that said petition should be denied,

It is therefore considered by the court, that the said petition be, and the same is hereby denied.

(No. 1331—Claim denied.)

CHARLES BEARD, A MINOR, BY HIS MOTHER AND NEXT FRIEND, BEULAH BEARD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURIES—*State is not liable for injuries sustained by an inmate of a State institution.* The State is not legally liable for the injury of an inmate serving a sentence in one of its institutions.

WILLIAM J. LAWLER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant in his declaration alleges that he is a minor of the age of 14 years. That on the 16th day of July, 1926, he was recommitted to the St. Charles School for Boys of the State of Illinois for a violation of parole, he having been previously committed by the legal authorities of the State to serve a sentence for a violation of the criminal law. That on August 5th, 1927, while an inmate of that institution, he was feeding corn into an electric corn grinding machine; that the machine became clogged and claimant placed his right hand in the machine to remove some of the corn which had caused the machine to become clogged; that while he was removing the corn from the machine his hand became caught in the machine and was greatly cut, lacerated, torn and injured, and by reason thereof the first finger was amputated at the first joint, the second finger at the second joint and the third finger at the second joint, and by reason thereof his hand was permanently crippled and disabled. He files his claim for $1,500.00 for said injuries.

The Attorney General has filed a demurrer to the declaration and attorney for claimant has submitted his claim without brief and argument. This court has repeatedly held that the State is not legally liable for the injury of an inmate serving a sentence in one of its institutions. (*Ryan* v. *State*, 4 C. C. 57; *Tiller* v. *State*, 4 C. C. 243). The demurrer is sustained and the claim dismissed.

(No. 1338—Claim denied.)

ED HAZELWOOD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when no award will be made for injuries sustained by an inmate of a State institution—Workmen's Compensation Act.* The State is not legally or equitably liable to an inmate who receives an injury while confined in one of its institutions and does not come under the provisions of the Workmen's Compensation Act.

CARL E. ROBINSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

The declaration shows that on August 30th, 1927, claimant was an inmate of the Illinois State Farm near Vandalia, serving a sentence for petit larceny; that it was his duty, under the direction of certain State employees, to repair certain tractors belonging to and in use by the State; that on August 30th, 1927, claimant was ordered by the head farmer of said State Farm to convey a tractor which was out of repair to a place on said farm where it could be repaired by the claimant; that, pursuant to this order, claimant was riding another tractor and was pulling the disabled tractor; that a one armed inmate of the farm was, under the direction of the head farmer, riding and guiding the disabled tractor, although the head farmer knew that he was incompetent to manage said tractor, and that, because of the incompetency and negligence of said inmate, the disabled tractor ran against and upon the other tractor, crushing claimant and holding him in such a position that his left foot and ankle were badly burned by the hot motor of the tractor on which he was rid-

ing; that because of such burn he has been ill ever since said accident and has suffered great pain; that on September 9th, 1927, he was discharged from the State Farm, but has been and is unable to work and perform the labors usually done by him, and that his left foot and ankle are permanently crippled.

Claimant alleges damages of $5,000.00 and asks for an award against the State.

The Attorney General has filed a general demurrer to the declaration. Claimant's attorney has submitted the case without brief or argument.

Claimant was not an employee of the State at the time of the accident but was an inmate of a State institution and would not come under the provisions of the workmen's Compensation Act. This court has repeatedly held that the State is not legally or equitably liable to an inmate who receives an injury while confined in one of its institutions.

The demurrer is therefore sustained and the cause dismissed.

(No. 1360—Claim denied.)

OTTO M. BING, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PROPERTY DAMAGE—*when no award will be made for damages to an automobile.* **Where the record does not show a cause of action against the State for damages to an automobile resulting by reason of a collision with a State highway truck, the claim will be denied.**

HART & BRODIE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

This claim is based on a claim for damages sustained to a Cadillac car owned by the claimant in a collision with a State truck on March 5, 1927, about 10 miles west of Gibson City, Illinois.

The declaration states that on or about the 5th day of March, 1927, the claimant was the owner of and in possession of, operating and controlling a certain motor vehicle in a northwesterly direction upon and along the State highway at or near Gibson City, Illinois. Claimant alleges that while operating his motor vehicle, a servant or agent of the defendant was operating a motor truck upon and along said highway, that said motor truck ran into and collided with the motor vehicle of the claimant and that the motor vehicle of the claimant was greatly injured and damaged.

As we view the evidence in this case we find that the truck of the defendant was on the shoulder and right hand side going east on the Hard Road Route No. 9 near Gibson City, Illinois, that the claimant was driving west on said road at the same time which was on a curve and near the county line between the counties of Ford and McLean; that when almost around said curve his car ran off the pavement onto a soft shoulder of the road and while attempting to get back on the pavement the claimant's car skidded into the front end of the truck of the defendant.

The evidence shows that the claimant stated that his claim had been paid by an insurance company in the sum asked for.

We are of the opinion that there is no cause of action against the State of Illinois and the claim is denied and the cause dismissed.

(No. 1366—Claim denied.)

BOOTH FISHERIES COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.
Rehearing denied June 26, 1929.

FRANCHISE TAX—*voluntary payment.* A tax voluntarily paid cannot be recovered back although the law under which it was paid, is unconstitutional.

LIMITATIONS—*when Statute of Limitations applies.* 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.

APPEALS AND ERRORS—*failure to pursue remedies provided by law.* Where no appeal is perfected from an order of the Circuit Court dismissing a bill for an injunction to restrain the payment of tax into the State Treasury, no award will be made, on the grounds that a court having jurisdiction of the subject matter and parties to the cause before it is binding upon the parties until reversed or set aside by a court having appellate jurisdiction.

COURT OF CLAIMS—*jurisdiction.* The Court of Claims has no appellate jurisdiction and cannot reverse or set aside the judgment of the Circuit Court.

REMEDIES—*failure to pursue remedies provided by law.* Where a claimant has a remedy in a court of general jurisdiction and fails to pursue such remedies the Court of Claims will not take jurisdiction.

REHEARING—*when rehearing will be denied.* Where the petition for rehearing does not set up any matter not fully considered by the court in the original opinion the petition for rehearing will be denied.

PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

This claim is for the refund of $9,456.62 franchise taxes alleged to have been illegally collected from claimant, a foreign corporation, by the Secretary of State. The taxes asked to be refunded were paid as follows:

July 26, 1920, $2,031.30.
Sept. 17, 1921, $1,860.60.
July 30, 1923, $1,298.83.
July 30, 1924, $1,404.68.
July 11, 1925, $1,437.31.
June 28, 1926, $1,423.90.

Since the taxes were paid the Supreme Court has held the law under which they were collected unconstitutional, and claimant now asks for an award against the State on the ground that the State had no legal right to collect them. A tax voluntarily paid cannot be recovered back although the law under which it was paid is unconstitutional. (*Yates* v. *Royal Ins. Co.*, 200 Ill. 202). Many other cases announcing the same rule could be cited but we deem it unnecessary. The stipulation appearing in the record shows the taxes paid in the years 1920 and 1921 were not paid under protest. Having been voluntarily paid claimant cannot maintain an action for their recovery.

Section 10 of the Act creating the Court of Claims provides that 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 accrued. The claim for the refund of these taxes accrued immediately upon their payment to the Secretary of State. This suit was not filed until August 7, 1928, more than five years after the payment of the taxes in July, 1923. This statute is mandatory and bars an award for the taxes paid for the years 1920, 1921 and 1923.

Section 2a of the Act in relation to the payment of the public money of the State into the State Treasury provides that every officer receiving public moneys for the State paid under protest shall hold such moneys thirty days and upon the expiration of that period deposit the same with the State Treasurer unless the party making such payment shall within such period file a bill in chancery and secure a temporary injunction restraining the making of such deposit, in which case such payment shall be held until the final order or decree of the court. The stipulation in the record shows that claimant, within thirty days after making payment of the tax for the years 1923, 1924 and 1925, filed a suit in equity in the Circuit Court of Sangamon County and secured a temporary injunction restraining the Secretary of State from depositing the tax paid in the State Treasury, each of said suits being based on the alleged unconstitutionality of the statute under which they were collected; that the Attorney General filed a demurrer to the bill in each case; that the demurrer was sustained in each case and the bill dismissed

for want of equity; that no appeal was taken from the order dismissing the bill in either case; and that the order dismissing the bill in each and all of the cases was entered on the theory that the law was valid and constitutional.

It is fundamental in our jurisprudence that the judgment of a court having jurisdiction of the subject matter and parties to the cause before it is binding upon the parties until reversed or set aside by a court having appellate jurisdiction. This rule is so universally known that citation of authorities is unnecessary. As claimant did not have these judgments reviewed either on appeal or writ of error they are still in full force and effect and binding upon it.

The Court of Claims has been given no appellate jurisdiction and cannot review or set aside the judgments of the Circuit Court of Sangamon County, and to allow an award for these taxes would, in effect, be doing that.

Claimant says that the amount involved in the cases was too small to warrant an appeal to the Supreme Court. It also says that because of the erroneous decision of the Circuit Court in the suits above mentioned it was not considered practical to secure an injunction covering the 1926 tax payment. The statute gave claimant a remedy to recover the taxes if they were illegally collected. Claimant elected not to pursue that remedy. Where a claimant had a remedy in a court of general jurisdiction and failed to pursue such remedy this court will not take jurisdiction. (*Moline Plow Co. v. State*, 5 Ct. Cl. 277). The claim is therefore denied and the case dismissed.

On June 26, 1929, upon petition for rehearing the following additional opinion was filed:

The original opinion in this case was filed on May 9, 1929. On May 24, 1929, claimant wired the Secretary of State that a petition for rehearing would be filed, and on June 4, 1929, petition for a rehearing was filed by claimant. This petition does not set up any matter for rehearing which was not fully considered by the court in the original opinion in the case.

The petition for rehearing is denied.

(No. 1377—Claim denied.)

AMERICAN OPEN RACING ASSOCIATION, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 13, 1929.

Rehearing denied March 28, 1929.

CONTRACTS—*when State not liable under.* When it appears from the evidence that the State did not receive moneys derived from the sale of admission tickets to the bleachers at the State Fair, no award will be made on the theory of moneys had and received under a contract with the Department of Agriculture.

ORAMEL B. IRWIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant's demand is for $879.50, and is based on a contract with the Department of Agriculture. The contract is set out in and made a part of the declaration as an exhibit thereto. By the terms of the contract claimant agrees to furnish auto races at the State Fair on the 18th and 25 days of August, 1928, to promote and manage the races and to pay all prizes or purses for the two days' races. The claimant is to collect all admission fees paid for entrance to the Fair Grounds or to the main grand stand box and reserve seats and other admissions of said grand stand and bleachers on the respective days of said races and out of such fees so collected is to pay the State for the rights and privileges therein conferred fifty per cent of said fees collected on the day the same are collected.

The declaration alleges that subsequent to the execution of the contract it was agreed by the parties thereto that the State should sell all tickets for admission to the bleachers, grand stand and box seats, collect the monies therefor and pay one-half of all said money so collected to claimant; that the State sold all tickets for admission to bleachers, grandstand and box seats on August 25, 1928, collected all money therefor and duly paid the claimant one-half of the monies so collected from the sale of tickets for admission to grand stand and box seats but failed and refused to pay claimant one-half or part of the monies received by it from the sale of

tickets for admission to the bleachers; and that one-half of the monies received by the State from the sale of tickets of admission to the bleachers is the sum of $879.50.

No plea has been filed to the declaration and, under the rules of this court, the cause must be heard as though a general traverse had been filed.

This suit is based on the theory that the State received the money derived from the sale of tickets for admission to the bleachers on August 25th, and refuses to pay claimant one-half thereof as it had agreed to do; in other words, it is a suit to recover money had and received by the State for the use of claimant. The only evidence introduced is an affidavit of S. J. Stanard, Director of Agriculture. In it he states positively that the State did not receive any portion of the monies derived from the sale of bleacher tickets on August 25th.

As the State received no money for admissions to the bleachers on August 25th, it owes claimant nothing on that account. The claim is therefore denied and the case dismissed.

On March 28, 1929, upon petition for rehearing the following additional opinion was filed:

Petition for rehearing in the above cause was filed on the 9th day of March, A. D. 1929. In the original opinion in this cause the court took into consideration all the matters and facts set up in the petition for rehearing and was unable to see where the defendant was legally liable to the claimant and *found* for the defendant. The petition for rehearing will therefore be denied and the original opinion affirmed.

On May 9, 1929, upon motion to set aside order denying the petition for rehearing the following additional opinion was filed:

Claimant filed a petition for rehearing in the above cause on the 9th day of March, 1929, and this petition was denied on March 28th, 1929. On April 25th, 1929, claimant filed a motion to set aside the order filed on March 28th denying the petition for rehearing. Claimant's motion is denied.

(No. 1381—Claim denied.)

RAYMOND HEISE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when no award will be made for injuries sustained by an inmate of the State Reformatory—Workmen's Compensation Act.* The State is not legally or equitably liable to an inmate who receives an injury while confined in one of its institutions and does not come under the provisions of the Workmen's Compensation Act.

JOSEPH A. LONDRIGAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

The declaration alleges that on the 8th day of April, 1927, claimant, who was then a minor, was confined to the State Reformatory at Pontiac; and that on that date, while he was pouring chlorinated lime into a washing machine, under the orders of the reformatory authorities, the lime splashed into his right eye, resulting in serious injury thereto. The declaration also alleges that claimant was in the exercise of due care and caution, and that the accidental injury was due to the negligence of the State in not providing goggles to the inmates or some method of protection from such injury; that claimant was released from the reformatory on October 15, 1927; that ever since said accident he has suffered great pain, and has been prevented from following any gainful occupation; that he has spent $1,000.00 endeavoring to be cured of said wound, and that he has lost the complete and permanent use of his right eye. He alleges damages in the amount of $10,000.00 and asks for an award against the State.

The Attorney General has filed a general demurrer to claimant's declaration. Claimant's attorney has submitted the case without brief or argument.

Claimant was not an employee of the State at the time of the accident, but was an inmate of a State institution and would not come under the provisions of the Workmen's Compensation Act. This Court has repeatedly held that the State is not legally or equitably liable to an inmate who receives an injury while confined in one of its institutions.

The demurrer is therefore sustained and the cause dismissed.

(No. 1382—Claim denied.)

E. E. HUCKABA, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

HIGHWAYS—*when State not liable for damages resulting from a change in the location of a State highway.* Where the evidence shows that no damages resulted by reason of a change in the location of a State highway, no award will be made.

E. E. HUCKABA, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for damages resulting from an alleged purposed change in the location of State Route No. 11 in front of claimant's farm.

We are of the opinion that the claim for damages of this matter would not lie against the State of Illinois even if the route was changed on the theory that the State has the right to change any part of said hard road system at any time it deems advisable. The claimant on cross-examination in answer to this question; "You have not been damaged any, as yet, because of any change or contemplated change, have you?" his answer was, "I have not been hurt any yet, no."

The claim is denied and the cause dismissed.

(No. 1393—Claimant awarded $3,442.00.)

OZELL BUSH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

MILITARY SERVICE—*when award will be made for injuries sustained in line of duty—Workmen's Compensation Act.* Where it appears from the evidence that claimant receives injuries in line of duty while a member of the Illinois National Guard, an award will be made and the amount determined under the Workmen's Compensation Act.

BENJAMIN G. POLLARD, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant on Aug. 5th, 1927 as a member of Co. F, Illinois National Guard and during said guard's period of encampment and while in line of duty a fractious horse ridden by another member of the National Guard jumped on claimant striking him in the back causing a hernia tumor to appear in his back, and it does appear that claimant received a dangerous and permanent injury and that such injury occurred in the line of patriotic duty. The claimant asked for Ten Thousand ($10,000.00) Dollars, but in line of precedent the only measure that can be considered here is the Workmen's Compensation Act.

The Attorney General comes and taking into consideration the fact that the extent of the injury of claimant according to the testimony was estimated to have been eighty per cent and sixty per cent respectively and taking that as a basis and the fact of the dependents of the deceased, the claimant ought to recover measuring the Workmen's Compensation Act together with the medical and hospitalization expenses, the sum of Three Thousand Four Hundred and Forty-two ($3,442.00) Dollars.

Therefore it is recommended that claimant be allowed Three Thousand Four Hundred Forty-two ($3,442.00) Dollars.

(No. 1394—Claim dismissed.)

NORTH AMERICAN LIGHT AND POWER COMPANY OF MAINE, Claimant,

vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

DISMISSAL—*when case will be dismissed.* Where it appears that there is no reason why a case should not be dismissed upon motion of claimant, same will be dismissed.

DRYER & BROWN, for claimant.

OSCAR E. CARLSTROM, Attorney General, DAVID J. KADYK, Assistant Attorney General, for respondent.

Per Curiam: This cause coming on to be heard upon motion of claimant, that it be allowed to dismiss its claim in the above entitled cause without prejudice and it appearing that there is no reason why the cause should not be dismissed;

It is therefore considered by the court, that the case be, and the same is hereby dismissed.

(No. 1408—Claimant awarded $701.25.)

HARRY WILSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be made.* Where it appears that claimant received injuries in course of employment while working as a clerk and chauffeur for the Department of Public Welfare, an award will be made upon the recommendation of the Attorney General.

HARRY WILSON, pro se.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The claimant in this case, Harry Wilson, was on the 20th day of November, A. D. 1928, employed in the Department of Public Welfare of the State of Illinois, as messenger clerk and chauffeur and while working for the State in that department, he was directed to deliver packages to the Lincoln State School at Lincoln, Illinois. While in the performance of his duty he was injured.

The facts concerning the accident are agreed and the Attorney General has recommended an award of $701.25.

We, therefore, make an award in the amount of $701.25.

(No. 1429—Claimant awarded $169.25.)

O. W. MEYERS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PROPERTY DAMAGE—*when award will be made—equity and good conscience.* Where it appears from the evidence that claimant's property is damaged by reason of a collision with a State highway truck driven in a negligent manner by a State employee, an award will be made for such damages on the grounds of equity and good conscience.

KUHN & BENSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a claim for damages by reason of a highway accident. From the statement of claim it appears that O. W. Meyers of the Town of Batavia, County of Kane, State of Illinois, was riding in an automobile on the public highway from the City of Aurora to the City of Batavia; said highway being known as State Bond Issue Route No. 22 under the operation and control of the State of Illinois; that on the 17th day of October, A. D. 1924, a motor truck, bearing No. 122 and bearing state motor truck vehicle license No. 4488 for the year 1924 and being under the care and management, control and maintenance of the State of Illinois. That said motor truck was driven by an employe of the State and the claimant alleges that the motor truck struck the motor car of the claimant and that the claimant sustained damages in sum of $169.25.

The only evidence in the case is a sworn statement of the claimant on behalf of the claimant and Exhibit "B", same being a copy of a letter from G. N. Lamb, District Engineer, which Exhibit "B" is attached to the statement of the Attorney General filed in this case.

G. N. Lamb, District Engineer, states that he is unable to find any data in his files concerning the accident which O. W.

Meyers alleges to have damaged his car. Mr. Lamb further states in his letter that he interviewed one of the State employees, Clyde Hallock, who saw the accident and gave Mr. Lamb an account of the accident substantiating everything that Mr. Meyers had told him. Mr. Hallock stated that the driver of the truck was entirely at fault.

After reading the sworn statement of the claimant and the Exhibit "B," a copy of the letter from G. N. Lamb, we believe as a matter of equity and good conscience this claim should be allowed.

We, therefore, allow the claimant the sum of $169.25.

(No. 1432—Claimant awarded $12,618.51.)

IOWA BRIDGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

CONTRACTS—*finding of facts without recommending award.* Where the claimant enters upon the performance of his contract with the State without knowledge of the unusual hazards due to a misunderstanding, the court finds as a matter of fact that claimant suffered damages for a specific amount, which amount is recommended, if the Legislature sees fit to make the appropriation to pay such damages.

GEORGE F. BARRETT, and CHARLES V. BARRETT, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Per Curiam: The claimant in this case seeks to recover from the State of Illinois, a deficiency of $12,618.51, sustained by them, on account of the erection by claimant of a bridge about one-half mile south of the Mackinaw River bridge, on Route 24, Tazewell County, Illinois, referred to as the Green Valley bridge; over and above the amount received by them from the State of Illinois, of $10,138.19, which was the amount they bid on the contract for the construction of same. Claimant relies for recovery, on the fact that after excavation was begun it was discovered that the sub-soil at a depth of about fifteen feet was a *fine water bearing sand*, which, at a depth necessary to perform the contract, had a tendency to boil under pressure that this necessitated a complete change in the method of operation and also lengthened the time to complete the job, and that claimant in bidding on the work in question received a notice from the Department of Public

Works & Buildings, Division of Highways, State of Illinois, in which it was stated that the soil where the bridge was to be erected, consisted of clay and gravel.

It does appear from the records in this case that there was a misunderstanding as to the nature of the soil when the bid was made and that claimant entered upon the contract without knowledge of the unusual hazards.

In view of all the facts in this case, the court is of the opinion that if an award should be allowed, it should be in the sum of $12,618.51.

This court therefore recommends that if the Legislature sees fit to make an award to the claimant, that the award should be for the sum of $12,618.51.

(Claimants awarded $556.00.)

OPAL R. JONES, 1434; J. S. HUTSON, 1435, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PROPERTY DAMAGE—*when award will be made.* Where it appears that the facts have been correctly stated and there is no dispute as to the law, an award will be made upon the recommendation of the Attorney General for loss of crops by fire, which was set along the highway and spread upon adjoining land.

CLARK & NOEL, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

This is a consolidated claim which is filed for damages growing out of the burning of certain crops of corn on the respective claimants' lands. The lands of the claimants abut upon the public highway known as State Bond Issue Road, between the villages of Homer and Sidney in the County of Champaign, State of Illinois.

On the 10th day of October, A. D. 1928, an employe of the State of Illinois acting under the direction and supervision of the Highway Department of the State of Illinois set fire to grass and weeds growing along said highway and by reason thereof the fire spread on the adjoining lands owned

by the claimants causing growing corn to catch fire and be consumed. This was a total loss to the claimants.

The Attorney General filed his statement setting forth that the facts have been correctly stated and that there is no dispute as to the law, and recommends that an award be made.

We therefore, award the claimants the sum of $556.00.

(No. 1440—Claimant awarded $900.00.)

G. A. MILLER AND SON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

ANIMALS—*when award will be made for the destruction of cattle infected with tuberculosis.* Where it appears that cattle were destroyed by order of the State of Illinois for the purpose of eradicating bovine tuberculosis, an award will be made upon the recommendation of the Director of Agriculture to reimburse the owner of the cattle for the losses sustained.

RUNYARD & BEHANNA, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The declaration in this case shows that G. A. Miller and R. B. Miller were doing business under the name and style of G. A. Miller and Son, Lake County, Illinois.

The declaration states that they are bona fide residents and tax payers of the State of Illinois; and that on or about the 15th day of April, 1926, by order of the State of Illinois they consented that a herd of eighteen pure bred Holstein cattle be destroyed by reason of a positive tubercular showing made upon the tests of Dr. G. A. Jensen of Antioch, Illinois.

That within thirty days after said cattle adjudged to be infected with tuberculosis they were destroyed; that said herd had been owned for more than six months by the claimants and that none of the herd was imported into this State within three years of the date of test.

Claimants further allege that four grade cattle were also destroyed at the time and under the same conditions as the pure bred herd.

The Attorney General filed a statement of claim, attached thereto was a copy of a letter marked Exhibit "A" written to the Attorney General by Stillman J. Stanard, Director of Agriculture in which the Director of Agriculture states that in his opinion the claimants have a just claim and should be reimbursed in the amount of $900.00.

We, therefore, award the claimants the sum of $900.00.

(No. 1452—Claimant awarded $3,000.00.)

ALBERT A. HANSEN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be made although the State is not legally liable.* Where it appears from the evidence that claimant receives injuries in line of duty as a keeper at the penitentiary at Joliet, an award will be made upon the recommendation of the Attorney General although there is no legal liability on the part of the State to pay compensation for such injuries.

FAULKNER & FAULKNER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed as a keeper at the penitentiary at Joliet. On the 29th day of November, A. D. 1926, while engaged in his employment, he was seriously and permanently injured in an accident for which he was in no way responsible. The injury necessitated two operations. His hospital and physician's bills amounted to $568.00, none of which was paid by the State. His condition is such that he has had to be treated by a physician at least once each week since leaving the hospital, and the evidence shows these weekly treatments will have to be continued as long as he lives. As a result of the injury he was incapacitated from work and will never be able to perform any work that requires him to be on his feet. He has a wife, and one child ten years of age.

There is no legal liability on the part of the State to pay claimant compensation for his injuries. But in view of the circumstances under which these injuries were received the Attorney General recommends that claimant be compensated and we feel that he should be. We therefore recommend that the General Assembly allow him the sum of $3,000.00.

(No. 1456—Claim denied.)

PATRICK GILLEN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

DISMISSAL—*when case will be dismissed.* Where it appears that the claim is barred by the Statute of Limitations, the case will be dismissed upon motion of the Attorney General.

NOAH GULLETT, for claimant.

OSCAR E. CARLSTROM, Attorney General, FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Now on this 8th day of May, A. D. 1929, in open court, the court granted the motion filed by the Attorney General, and case dismissed on ground of barred by statute of limitations.

(No. 1460—Claimant awarded $700.00.)

WILLARD C. SIPE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

MILITARY SERVICE—*when award will be made for injuries sustained in line of duty—Workmen's Compensation Act.* Where it appears from the evidence that claimant received injuries in line of duty while a member of the Illinois National Guard, an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.

JOSEPH L. MCLAUGHLIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRILL F. WEHMHOFF, Assistant Attorney General, for respondent.

MR. JUSTICE LEECH delivered the opinion of the court:

The declaration was filed by Willard C. Sipe, the claimant, who represents among other things that he is a resident citizen of Sullivan, Illinois, that on the 30th day of July, A. D. 1926, he enlisted in the National Guards of the State of Illinois, and was in the regular discharge of his duties in said employment and that while enroute from the City of Sullivan to the regular encampment place at Camp Grant, Illinois, he received an injury. That while passing through the coach of the train at the regular call when the noon day

lunch was to be served to the guardsmen and while going through to the baggage car, an officer's bedding roll fell, on account of the jostling of the train and struck him upon the extended knee and the blow and weight of the impact crushed or fractured the bone in his ankle joint.

It further appears from the evidence that the claimant was completely disabled for seven and one-half (7½) months and that thereafter for a period of three (3) months he was partially incapacitated.

The Attorney General has filed a statement as follows:

"The claimant in his statement states the facts in accordance with the record, properly states the law in accordance with the Workmen's Compensation Act, and properly applies the fact to the law in his argument. However, on account of the fact that he has the use of his ankle and has only pain in it when *the weather* is damp or stormy, the respondent believes that the per cent of loss of use of said ankle, as stated in his statement of facts, is high.

The respondent does believe that this claimant, if the court feels that he is entitled to something, would be entitled to $700.00, in accordance with the Workmen's Compensation Law.

I, therefore, submit this claim to the court for such disposition as they care to make, with the recommendation that this claim be allowed in the sum of $700.00."

We, therefore, award the claimant the sum of $700.00.

(No. 1462—Claimant awarded $531.85.)

R. H. MUSICK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be made to reimburse claimant for hospital and doctor's bills.* Where it appears that claimant sustains injuries, not permanent, in line of duty as a State highway patrol officer, an award will be made for the necessary doctor's, hospital and nurse's bills.

RIDGELY & RIDGELY, for claimant.

OSCAR E. CARLSTROM, Attorney General; R. D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a case in which the claimant, R. H. Musick, is asking for an award in the sum of $531.85; said amount being

for doctor bills, hospital and nursing bills, as a result of an injury which he sustained while in the course of his employment for the State of Illinois. It appears that on or about October 14, 1924, said claimant while acting as State highway patrolman on Route 8 between Eureka and Chenoa, and while in the exercise of ordinary care for his own safety, was riding his motorcycle. A Ford sedan came out from a yard on the right side of the road near the eastern limits of Eureka, and the fender of the Ford hit or struck the hub of the side car attached to the motorcycle of claimant, and claimant was thrown fifteen or eighteen feet on the pavement, causing an injury to his head and breaking the hip bone at the ball and socket joint.

It further appears according to the evidence that no permanent injury has been sustained by claimant and the said amount which he is asking for, as aforestated, is for his reasonable doctor, hospital and nursing bills, and is a just claim.

It is, therefore, recommended that the sum of $531.85 be awarded to claimant.

(No. 1463—Claimant awarded $2,020.00.)

HARRY D. McCREARY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* **Where it appears from the evidence that claimant sustained injuries while in line of duty as a state highway engineer, an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.**

BROWN, HAY AND STEPHENS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimant in this case files his declaration which is sworn to by him.

The Attorney General files his statement as follows:

"That the facts in this case are about as follows:

That on the 7th day of February, A. D. 1927, and for a long period of time prior thereto, claimant was an employee of the State of Illinois, and

that he was, as such employee assistant highway engineer of the Highway Department of said State; that as such assistant highway engineer, it was his duty to supervise the clearing of the right of way of the completed sections of the hard surfaced roads of said State; that on said date, in line with said duties, he was directed by his superior to go to the city of Virginia, Cass County, Illinois, to supervise the clearing of the right of way of what is known as Section 5 of Route 3 of the system of hard surfaced highways in said State of Illinois, and that pursuant to such orders, he went to said city of Virginia and commenced his work there; that as such assistant highway engineer, he was furnished by said State of Illinois with an automobile to be used by him in going to and coming from his work; that on said date, he drove to said city of Virginia in said automobile so furnished by said State of Illinois; that upon the completion of said work in said city of Virginia, he started to return to the city of Springfield, Illinois, in said automobile, and that in returning to said city of Springfield, he drove upon and along Route 3 from the city of Virginia to the village of Alexander and from said village of Alexander, he proceeded in a northeasterly direction upon and along Route 10, which leads from said village of Alexander to said city of Springfield; that on said Route 10, approximately one mile west of the junction of Route 10 and 4 southwest of the city of Springfield, claimant was driving said automobile toward said city of Springfield at a rate of speed between thirty and thirty-five miles an hour; that as claimant approached a certain turn or curve on said Route 10, located as above described, an automobile coming upon and along said Route 10 from the east, made said curve and proceeded to the south along said Route 10 toward the claimant; that said automobile was driven at a high rate of speed and as it approached the claimant, it suddenly swerved and turned across the hard surfaced portion of said Route 10 immediately in front of the said automobile driven by claimant; that said automobile was driven by one of two Italians, one of whom was named Scalisia, the name of the other being unknown; that diligent efforts have been made to ascertain which of said parties were driving said automobile at the time of said accident but that it has been impossible to obtain said information; that said automobile was driven with such force and violence into and against the automobile driven by claimant as to force it off the hard surfaced portion of said Route 10 into the ditch upon the east side of said road and that as a result of said collision, the claimant was rendered unconscious and was severally bruised and injured; that as a result of said accident and collision, the claimant sustained an impacted fracture of the femur of the left leg; that following said collision and as a direct result thereof, the claimant was confined in St. John's Hospital in the city of Springfield, Illinois, from said date until the 30th day of April, 1927; that thereafter, until the 15th day of July, A. D. 1927, the claimant was confined to his home; that thereafter, until the first day of September, 1927, claimant was unable to do more than walk slowly about the neighborhood in which he lived, with the aid of crutches; that as a further result of said collision and injury the claimant was unable to take up his duties above described until the first day of September, 1927; that from the date of said collision until the present time, the claimant has been under the care of a physician and that the claimant still is forced by reason of said collision and injury to take medical

treatments for his said injury; that a portion of his expenses, including hospital expenses and doctor bills, have been paid by the State of Illinois, but that since said injury and accident and as a result thereof, the claimant has expended for medicine, treatments, dentist's expenses, additional expenses at said hospital and for various other necessaries the sum of $500.00, and that as a result of said injury, he will be compelled to expend further sums of money, the amount of such expenditure being unknown; that as a result of said collision and injury, the claimant's left leg is considerably shorter than the right one and that the claimant has sustained a serious permanent injury which will, during the remainder of his life, handicap him in the prosecution of the duties of his profession; that at the time of said collision and injury, the average weekly wage of the claimant was $48.67 that he also has two children at a tender age which, under the Workmen's Compensation Act, he would be entitled to an additional amount for them."

The Attorney General has computed the amount which would be due the claimant under the Workmen's Compensation Act and has found the amount to be $2,020.00. The Attorney General recommends that this amount be paid.

We, therefore, award the claimant the sum of $2,020.00.

(No. 1468—Claimant awarded $1,196.50.)

LOREN HARMON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be made for doctor's bills and loss of time.* Where it appears that claimant, an employe under the Department of Public Works and Buildings, of the Division of Highways, received injuries in course of employment, an award will be made for doctor's bills and loss of time upon the recommendation of the Attorney General.

M. J. FALETTI, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was employed by the State of Illinois in the Department of Public Works and Buildings, Division of Highways. It appears that while on a bumper choking truck, another truck crashed into the claimant and received an injury to his left hip and that hip was draining for a long time; that the State did not pay his doctor bills; that he had to undergo an operation in December, 1928.

It appears that the doctor bills and other services for the benefit of claimant and loss of time amounted to $1,196.50. The Attorney General comes and recommends that claimant be allowed said amount.

Therefore it is recommended by the court that claimant be allowed the sum of Eleven Hundred Ninety-six and 50/100 ($1,196.50) Dollars.

(No. 1470—Claimant awarded $123.00.)

ARTHUR VAN GORDER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*award will be made for medical and hospital service.* Where it appears that claimant received injury in line of duty as a State highway patrol officer, an award will be made for medical and hospital services under the provisions of the Workmen's Compensation Act.

RALPH P. SHERIDAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

This claimant, on the night of October 8, 1927, while in the performance of his duties as a State highway patrol officer, was attempting to stop a violator of the Motor Vehicle Laws of this State. That, while attempting so to do, an automobile coming from the opposite direction side-swiped the motorcycle on which this claimant was riding, thereby throwing him off, causing him great bodily injuries.

Under the Workmen's Compensation Law this claimant is entitled to medical and hospital services. Sufficient proofs have been given that this claimant expended $100.00 for medical services, and $23.00 for hospital services as a result of said injury.

We, therefore, recommend that this claim be allowed in the sum of $123.00.

(No. 1471—Claimant awarded $234.00.)

GLENN R. DEERIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be made for dental and doctor bills —Workmen's Compensation Act.* Where it appears that claimant received injuries in line of duty as a state tuberculosis inspector, an award will be made for dental and doctor bills and the amount determined under the provisions of the Workmen's Compensation Act.

GUY L. SMITH, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This cause coming on to be heard and upon stipulations of the parties and entries of appearance and the testimony taken by the respective parties in this cause, the court finds that it has jurisdiction of the parties and the subject matter in the said cause that Glenn R. Deerin on December 16, 1928, while in the employ of the State of Illinois as tuberculosis inspector, in driving upon and along the hard road between Taylorville and Geneva in the performance of his duty as such inspector, suffered injuries as a result of an automobile accident as follows:

Loss of ten teeth, a scalp wound, a sprained shoulder, puncture of left leg below knee, two broken ribs and fracture of sternum.

The court finds that under the compensation act of the State of Illinois that the claimant paid out as a result of said accident the following items:

Work done in replacing teeth	$193.00
Doctor bill	7.00
X-Ray pictures	14.00
Other expense	20.00
Total	$234.00

And that under the Compensation Act he is entitled to compensation for the replacement of his teeth and the work done as above itemized in the sum of $234.00.

That he was receiving a salary of $225.00 per month, it is therefore recommended by the court that the claimant be allowed the sum of $234.00 for his expenses.

(No. 1472—Claimant awarded $3,135.35.)

W. A. JOHNSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be for personal injuries, hospital and doctor's bills—Workmen's Compensation Act.* Where it appears that claimant received permanent injuries in course of employment as a State tuberculosis inspector, an award will be made for personal permanent injuries, doctors and hospital bills and the amount determined under the provisions of the Workmen's Compensation Act.

GUY L. SMITH, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This cause coming on to be heard and upon the stipulations of the parties and entries of appearance and the testimony taken by the respective parties in this cause the court finds that it has jurisdiction of the parties and the subject matter in the said cause.

That W. A. Johnson on December 16th, 1928, while in the employ of the State of Illinois as tuberculosis inspector in driving upon and along the hard road between Taylorville and Geneva in the performance of his duty as such inspector suffered injuries as a result of an automobile accident; that two ribs were broken; jaw was broken and his right leg was broken in three places causing Mr. Johnson to have the total loss of the use of his right leg and the complete loss of his automobile.

The court finds that under the Compensation Act of the State of Illinois that the claimant paid out as a result of the said accident the following items:

Doctor bill	$ 30.00
Removal of case	5.00
Set of teeth	50.00
Doctor bill (Dr. Sloan)	175.00
Hospital bill	25.35
Total expense	$475.35

and that under the Compensation Act he is entitled to compensation at the rate of Fourteen Dollars ($14.00) per week

for one hundred ninety (190) weeks, making a total of Two Thousand Six Hundred Sixty ($2,660.00) Dollars. That he was receiving a salary of Two Hundred Twenty-five ($225.00) per month.

The court further finds that the claimant makes no claim for the loss of his automobile or for temporary total incapacity.

It is, therefore, ordered by the court that the claimant be allowed the sum of Four Hundred Seventy-five Dollars and Thirty-five Cents ($475.35) for his actual expenses and the further sum of Two Thousand Six Hundred Sixty Dollars ($2,660.00) compensation for the total loss of the use of his right leg, making a total of Three Thousand One Hundred Thirty-five Dollars and Thirty-five Cents ($3,135.35).

(No. 1473—Claimant awarded $2,000.00.)

RUTH MILLS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 6, 1929.

MILITARY SERVICE—*when award will be made—equity and social justice.* **Where it appears that claimant loses the support of her son by reason of his death from a disease contracted in line of duty while a member of the Illinois National Guard, an award will be made upon the grounds of social justice and equity.**

HALL & DUSHER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The evidence in this case states that Ruth Mills is the mother of Thornton Anthony Mills, Jr., and that her said son was born on April 12, 1911, and enlisted in Co. K, 129th Infantry, Illinois National Guard, on or about the first day of October, 1926; that he trained with said company until the summer encampment of his regiment at Camp Grant, Illinois, in the year 1927; that he attended said encampment and reported at Camp Grant, Illinois, for duty with his said company, on or about the 31st day of July, 1927, and was on duty with his said company at said camp until August 13, 1927.

That on the 13th day of August, 1927, the said Thornton Anthony Mills, while he was on duty at Camp Grant, with his said company was ordered by his commanding officer to do kitchen police duty, which meant that he was to assist in the preparation and serving of food to his company and washing dishes and cleaning up the dining room and kitchen after the meal was served to his said company; that after the meal was served he ate several sandwiches filled with meat which was tainted and caused him to become sick; which developed into multiple neuritis or infantile paralysis, and then into Lobar pneumonia from which he died on November 1, 1927.

That the claimant has no means of support except by her own efforts and she has two children now living which she is obliged to support besides supporting herself. That the father of said children and of Thornton Anthony Mills, is dead; and that the said Thornton Anthony Mills, Jr., before he reported for duty at Camp Grant, Illinois, in the 1927 summer encampment worked for the Winnebago County Forest Preserve and that he made about $5.00 each day and that he contributed this sum to the support of the claimant and that by reason and on account of the death of said Thornton Anthony Mills, Jr., claimant has been deprived of his contribution and the support that he gave to her and to her said children.

This is a case that comes within the Military and Naval Code rather than under the Workmen's Compensation Act. We are of the opinion that as a matter of social justice and equity the claimant who was the mother of the deceased is entitled to an award for the reason that she has lost the support of her son and we are of the opinion that there is a liability on the part of the State of Illinois.

We, therefore, award the claimant the sum of $2,000.00.

(No. 1476—Claimant awarded $2,000.00.)

FRED RICKENBERG, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be made to an inmate of a state institution.* Where it appears that claimant an inmate of the Illinois State Reformatory, whose record is endorsed by the officials at the institution, received permanent injuries while acting under the orders of an officer, an award will be made on the grounds that while the State has had the right to control and restrain him, yet he had a right to maintain his health and bodily strength and return to society in as healthy a condition as when he entered the institution.

RAY SESLER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was an inmate of the Illinois State Reformatory located at Pontiac, Illinois; that on the morning of Oct. 21st, 1927, at the direction of an officer of said institution the claimant was directed to enter at the manhole of one of the boilers of said institution for the purpose of cleaning out said boiler; that while in the performance of his duties an explosion occurred and the claimant was very seriously burned on both legs, arms and abdomen and it appears that the injuries were permanent.

It appears that the claimant was considered a high grade prisoner performing his duties faithfully and while the defendant has the right to control and restrain him in accordance with the law, yet the claimant had the right to maintain his health and bodily strength. Therefore it would appear that he should be returned from his restraint as healthy in body as when he was committed.

This is sustained by a very strong letter written by the County Judge of Livingston County who speaks in very laudible terms of the character and efficiency of claimant and recommends that something should be done in his behalf. The record of claimant has been endorsed by officials of said institution.

The claimant urges that he should be given the opportunity of returning to society in a healthy condition as when he entered the said institution and claims that he should be awarded the sum of $5,000.00 as he is wholly incapable of supporting himself.

This court is reluctant about making an award of any kind under the circumstances but it is the belief of the court that in view of the fact of the very fine record of the claimant and that he was injured in the performance of a duty assigned to him by his superiors and that the court should consider the injuries under the Workmen's Compensation Act as the claimant was really working for the State performing a duty when he was injured.

The court is of the opinion and hereby recommends that claimant be awarded the sum of Two Thousand ($2,000.00) Dollars.

(No. 1477—Claimant awarded $3,000.00.)

LAWRENCE BUSS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where it appears from the evidence that claimant loses the sight of both eyes, in course of employment, while working as a laborer in the Division of Highways, an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.

B. L. KIRK, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This claimant was, on the 8th day of October, 1927, a laboror in the Division of Highways, Department of Public Works and Buildings of the State of Illinois. As such laboror it was a part of his duties to work and watch a tar pot or kettle used in keeping tar warm for use on the public highways of this State.

While in the performance of his duties, working with said tar pot or kettle on said date same exploded, throwing

hot tar into his face, therefore, completely blinding him in both eyes.

Under the Workmen's Compensation Law this claimant is entitled to $3,750.00, plus doctor and hospital bills. After making deductions for payments heretofore made while not on duty this claimant is entitled to $3,000.00 under said Act.

We, therefore, recommend that this claim be allowed in the sum of $3,000.00.

(No. 1478—Claim awarded $255.95.)

ILLINOIS CENTRAL RAILROAD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

CONTRACTS—*when award will be made.* Where it appears that claimant, a railroad company furnished repairs to a spur track connecting the Illinois Normal University and no objection is made by the State, an award will be made upon the recommendation of the Attorney General.

GRAHAM & GRAHAM, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed to recover from the State of Illinois the sum of $255.95 for repairs to a spur track in connecting the Illinois Normal University.

It appears that the work was done and no objections made by those in charge representing the State of Illinois.

It is recommended by the Attorney General that the claim be allowed.

It is therefore considered by the court that claimant be awarded the sum of $255.95.

(No. 1491—Claim denied.)

FRANCIS M. DEVLIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

FEES AND SALARIES—*when claim will be denied.* The Court will not assume the authority to fix and regulate salaries where claimant had an opportunity to have the matter determined by the legislature, or others in authority.

FRANCIS M. DEVLIN, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant alleges that he was appointed to the position as a member of the State Mining Board on Dec. 1st, 1922; that he performed the duties of said member since his appointment; that the 52nd General Assembly enacted a law which went into effect July 1st, 1921 increasing the salary of this claimant from $500.00 to $1,000.00 per annum; that he received the sum of $500.00 per annum or Five Dollars per day for one whole day's services; that since Dec. 1st, 1922, the salary was increased from Five to Ten Dollars per day and the claimant alleges that there is now due him from the 1st day of July, 1927, the sum of One Thousand ($1,000.00) Dollars which has not been paid by the State. It does appear that this court did grant relief up until July 1st, 1927.

The Attorney General comes and submits the disposition of the case to the court.

The court is of the opinion that it would not be proper to *assume the authority to fix and regulate salaries. If an* emergency presents itself where the Legislature and others in authority have not the opportunity to adjust matters and claims of this character then it would seem the court ought to furnish relief but we believe ample time has elapsed and opportunity has presented itself since this controversy started sufficient to have this matter determined independent of this court.

It is therefore recommended that this claim be denied.

(No. 1480—Claimant awarded $4,000.00.)

JUDSON P. WETHERBY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be made for medical, hospital and nurse's services.* Where it appears that claimant sustained injuries in course of employment as an assistant highway engineer, an award will be made for medical, hospital and nurse's services.

C. T. IRELAND, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a case in which claim is filed for necessary first aid, medical and surgical services, hospital service and nursing for claimant who as assistant engineer was in the employ of the Division of Highways since Nov. 10th, 1922. It appears that in 1928 he was resident engineer in charge of certain sections under State Bond Issue Route No. 89. It further appears that on Sept. 20th, 1928, claimant in the course of his employment while the blasting of stumps was being carried on and while about 600 feet away from the blasting a very large fragment was propelled through the air and struck claimant's leg. It appears that his limb was broken in three places, the tibia was broken in three places with one piece moved clear away from the other pieces. The limb was badly bruised and lacerated. The limb was opened up and loose fragments replaced with a plate.

The claimant was given first aid and it appears that one doctor had a charge of $950.00 and another $136.00, one nurse for $558.00 and another nurse for $654.00. The claim for hospital services were $1,259.00, also a claim for $192.00 for board and room for the nurse and for ambulance services the sum of $45.00, making a total claim for medical, nursing and hospital services of $3,794.00.

The court is certainly impressed with the fact that everything was done for the claimant that could be done, but the court is of the opinion that while the defendant the State of Illinois is willing to do everything that a private corporation could do, yet we do not feel that any additional obliga-

tion should be placed upon the State of Illinois beyond that of a corporation of a private nature.

The evidence shows that claimant was receiving the sum of $210.00 per month which it appears he is still receiving. We believe the defendant has been very kind to the claimant in this respect and taking all the facts into consideration and measuring the situation from the Workmen's Compensation Act, and the grievious injury to the claimant, the court recommends that claimant be allowed the sum of Four Thousand ($4,000.00) Dollars.

(No. 1482—Claim dismissed.)

R. H. MUSICK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when a second award will not be made for the same injury.* Where award has previously been made and paid by the proper authorities of the State, a second award will not be allowed for the same injury.

DISMISSAL—*when case will be dismissed.* Where claimant has received compensation for personal injury under an award previously made, the case will be dismissed upon motion of the Attorney General.

RIDGELY & RIDGELY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On the 18th of May, 1925, while employed by the Department of Public Works and Buildings of Illinois as a highway patrol officer, and in the pursuit of his regular duties, claimant was riding a motorcycle, patrolling a section of State Bond Issue Route No. 8, near El Paso, Illinois. His motorcycle had a sidecar attachment and on this sidecar, and attached thereto, was a large box about 3 feet in height and about 30 inches square which obstructed the view of the person riding the motorcycle. In attempting to pass a team and wagon driven by Samuel Culp, of El Paso, on account of said sidecar attachment obstructing claimant's view, the fender of the sidecar hit the wagon, causing the motorcycle to turn over and breaking and crushing claimant's right leg. Claimant has filed a petition with this court for $10,000

damages for permanent injury. The Attorney General has filed a motion for dismissal on the ground that under date of March 1, 1927, claimant filed a claim, Number 1154, for the same injuries for which he is asking compensation in this cause. In Cause Number 1154 the court made an award of $3,000.00 which appears in the Court of Claims appropriation bill of 1927, and said amount was paid by the proper State authority to this claimant or his attorney of record. The court cannot allow a second award for the same injury and the motion of the Attorney General is therefore granted and the claim dismissed.

(No. 1483—Claimant awarded $4,777.60.)

ELIZABETH E. WILLIAMS, SURVIVING WIDOW OF HARRY C. WILLIAMS, Deceased; AND AS NEXT FRIEND FOR MURRAY P. WILLIAMS, HARRY K. WILLIAMS, GAYLORD V. WILLIAMS AND JULIA P. WILLIAMS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be made for personal injury resulting in death.* Where claimant received injuries in course of employment, as supervising patrolman of the Maintenance Department of the Division of State Highways which results in death, an award will be made as a matter of social justice and equity for such death and the amount determined under the provisions of the Workmen's Compensation Act.

BOYER & LEONARD, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE LEECH delivered the opinion of the court:

The claimants, Elizabeth E. Williams, widow of Harry C. Williams, deceased, and as next friend for Murray P. Williams, Harry K. Williams, Gaylord V. Williams, and Julia P. Williams, respectfully represent to this court, the following:

1. That on March 28, A. D. 1929, Harry C. Williams, the husband of the claimant, Elizabeth E. Williams, and the father of the claimants, Murray P. Williams, Harry K. Williams, Gaylord V. Williams and Julia P. Williams, was injured by reason of an accident arising out of and in the course of his employment as supervising patrolman of the

Maintenance Department of the State Highway Department of Illinois, at Rantoul, Illinois, and that as a direct and proximate result of such injury the said Harry C. Williams died at Burnham Hospital in the City of Champaign, Illinois, on April 4, A. D. 1929.

2. The time of said accident was in the afternoon of March 28, 1929, and the place of said accident was in the garage or storage shed, at Rantoul, Illinois, rented by the State Highway Department of the State of Illinois, from Mr. Holtapp for the storage of machinery and implements used by the Maintenance Department of the State Highway Department in looking after the State paved highways in Champaign County, Illinois, under the jurisdiction of the said Highway Department of the State of Illinois.

3. The amount claimed herein is the sum of Four Thousand Five Hundred Fifty Dollars ($4,550).

4. The other facts necessary for a full understanding of this claim are as follows:

The said Harry C. Williams has been continuously employed by the State of Illinois for more than five years, as supervising patrolman of the Maintenance Department of the Department of Highways of the State of Illinois, with jurisdiction over what are known as Illinois State Route 25, from the City of Urbana to and beyond the northerly limits of Champaign County, Illinois, and over Illinois State Route 10, from the City of Urbana eastwardly to and beyond the county line of Champaign County, Illinois, he being under the jurisdiction of the Department of Highways of the State of Illinois, and being employed and paid by the State of Illinois; that his duties consisted of supervising the maintenance of the said State highways, keeping the earth shoulders adjacent to the paved portions of the said public highways suitably maintained and keeping the weeds and grass mowed on said earth shoulders and within the limits of the highway lines on said State highways, and in having the general supervision of the repairs and maintenance of the road machinery owned by the State of Illinois and used by its Department of Highways in maintaining the said State roads; that the said State Highway Department used and rented a certain garage owned by a man named Holtapp, in Rantoul, Illinois, which

said garage was used for the storage and the making of repairs on the road machinery owned by the State; that on March 28, 1929, there was in said garage a certain mowing machine owned by the State of Illinois, and shipped to Rantoul, Illinois, to be used upon the said State highways, under the jurisdiction of the said Harry C. Williams, which said mowing machine had been shipped from the factory and was not completely assembled; that in the course of his duties as supervising patrolman of the Maintenance Department of the Highway Department of Illinois, the said Harry C. Williams was assisting one George Overholtz, another employee of the State Highway Department, in assembling the said mowing machine, and in so doing the said Harry C. Williams was engaged in cutting a number of wires which were used to tie up the springs, and other parts of the said mowing machine, and in so doing, one of the said wires when cut by the pliers of the said Harry C. Williams, punctured the right hand or the thumb on the right hand of the said Harry C. Williams; that the said wire was painted and somewhat rusty; that the said wound commenced paining the said Harry C. Williams badly by six o'clock of the same afternoon (March 28, 1929), and he consulted Dr. P. C. Casto early the next morning, March 29, 1929, and on Saturday, March 30, 1929, he was removed to Burnham Hospital, where he died on April 4, 1929; that the cause of his death was sceptic infection, or streptococcus infection, commonly called blood poisoning, occasioned by the said wound on the thumb of the right hand, caused by the puncturing of said hand by the wire as aforesaid, on the occasion aforesaid; and that said death was directly and proximately caused by the said accident, which arose out of and in the course of the employment of the said Harry C. Williams by the State of Illinois, through the State Highway Department in the Department of Public Works and Buildings of the State of Illinois.

5. Claimants further state that the said Harry C. Williams at the time of his death, left him surviving the claimant, Elizabeth E. Williams, his widow, aged 48 years; and his minor children, the claimants, Julia P. Williams, aged 17; Murray P. Williams, aged 12; Harry K. Williams, aged 8, and Gaylord V. Williams, aged 5; and that all of said claimants were dependent upon him for support, and that he was

under legal obligation to support them at the time of his injury: that he was living with the said claimants, and that they were entirely dependent upon him for support at said time.

6. Claimants further state that the said Harry C. Williams for more than one year prior to his death, had been continuously in the employ of the same employer, namely: The State of Illinois through its State Highway Department, in the Department of Public Works and Buildings of said State, and that his average annual earnings were the sum of One Thousand Six Hundred Eighty ($1,680) Dollars, and that therefore, under the requirements of the Workmen's Compensation Act of Illinois, he would be entitled to the maximum amount of weekly payments for the purpose of computing compensation under said Act; that as a direct and proximate result of the injuries aforesaid, he was immediately treated by Dr. P. C. Casto of St. Joseph, Illinois, and was, as above set forth, removed to Burnham Hospital in Champaign, Illinois, where he died and was also treated by Dr. W. L. Gray, 412 Illinois Building, Champaign, Illinois.

7. Claimants further state that the said Harry C. Williams received no compensation payments of any kind from said employer, or from anyone else, as a result of said accident nor have any of his medical or hospital expenses been paid.

8. Claimants further state that the said Henry C. Williams was the father of more than three minor children, above named, under the age of sixteen years, as above set forth, and that therefore the maximum schedules provided by the Illinois Compensation Act, in Section 7 thereof, should apply, and that the claimants are entitled to the sum of Four Thousand Five Hundred Fifty ($4,550) Dollars, plus the actual medical surgical and hospital fees for services incurred by reason of the accidental injury above set forth.

Claimants therefore say that the State of Illinois whose direct agency or arm the State Highway Department in the Department of Public Works and Buildings of said State is, is liable to the claimants for the death of the said Harry C. Williams, resulting from the injury sustained by him aforesaid, in the course of his employment as afore-

said in accordance with the rules prescribed by the Act commonly called the "Workmen's Compensation Act of Illinois," the items of which said compensation are as follows:

(a) Medical and hospital services, including $103.10 to the Burnham Hospital, at Champaign, Ill., and to Julia Donahue, nurse, and Harriet Tucker, nurse; $74.50 for the services of Dr. P. C. Casto of St. Joseph, Ill., and $50.00, for the services of Dr. W. L. Gray, of Champaign, Illinois	$ 227.60
(b) For the death of the said Harry C. Williams, leaving more than 3 children under the age of 16 years at the time of his death, as hereinabove set forth, and as fixed by Section 7 of the Workmen's Compensation Act of Illinois.....	$4,550.00
	$4,777.60

Claimants further state that their claim has not been presented to any State department or State officer, nor to any person, corporation, or tribunal; and claimants further state that they have not received any payment on account of such claim, directly or indirectly.

Claimants further state that no other person has any interest in said claim and that they have hereinbefore set forth in detail each item of the amount claimed on account of the death resulting from the injury aforesaid.

Wherefore, claimants pray that this Court will hear and determine the liability of the State of Illinois for the accidental injuries aforesaid suffered by the said Harry C. Williams in the course of his employment as aforesaid, in accordance with the rules prescribed by the Act commonly called "The Workmen's Compensation Act."

The Attorney General filed on May 2, 1929, a statement in which he admits that the amount of the award in this claim is $4,550.00 plus doctor and hospital bills of $227.60 making a total of $4,777.60.

We are of the opinion that the claimant is entitled to an award under the Workmen's Compensation Act and also as a matter of social justice and equity. We, therefore, award the claimant the sum of $4,777.60.

(No. 1484--Claim dismissed.)

WILLIAM HUTTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

LIMITATIONS—*when case will be dismissed.* Where it appears that the claim is barred by the Statute of Limitations, the case will be dismissed upon motion of the Attorney General.

C. A. JONES, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Now on this 8th day of May, A. D. 1929, in open court, the court granted the motion filed by the Attorney General, and case dismissed on ground of barred by Statute of Limitations.

(No. 1485—Claim dismissed.)

PETER JOYCE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

LIMITATIONS—*when case will be dismissed.* Where it appears that the claim is barred by the Statute of Limitations, the case will be dismissed upon the motion of the Attorney General.

C. A. JONES, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Now on this 8th day of May, A. D. 1929, in open court, the court granted the motion filed by the Attorney General, and case dismissed on ground of barred by Statute of Limitations.

(No. 1492—Claim denied.)

SCHUYLER E. REDPATH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

FEES AND SALARIES—This case is controlled by the opinion of the Court in the case of *Francis M. Devlin, v. State of Illinois*, 1491 *supra*.

SCHUYLER E. REDPATH, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim appearing to be similar to the case of *Devlin v. State of Illinois*, No. 1491 and for the reasons set forth in the opinion in that claim it is recommended that this claim be denied.

(No. 1494—Claimant awarded $4,175.00.)

FLORENCE FISHER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where it appears that claimant was killed in line of duty and in the course of employment as a State highway patrolman an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.

GRAHAM & DYSERT, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that Robert L. Fisher the husband of the claimant was an employee of the State of Illinois and in the course of his employment on April 17th, 1929, as a highway patrolman at a point two miles north of Rossville he was struck by a north bound automobile and killed. There is no contention about the employment of the claimant's husband or that he was killed in the course of employment and that he was receiving $175.00 per month. It does appear further that said decedent left surviving him his widow this claimant and one child aged 6 years and also another child a stepson.

The Attorney General coming and admitting the facts as above set forth and setting forth that measuring the damages under the Workmen's Compensation Act that claimant ought to be allowed the sum of $4,175.00.

This court therefore recommends that claimant be allowed the sum of Four Thousand One Hundred Seventy-five ($4,175.00) Dollars.

(No. 1495—Claim dismissed.)

M. S. COLEMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

LIMITATIONS—*when case will be dismissed.* Where it appears that the claim is barred by the Statute of Limitations, the case will be dismissed upon motion of the Attorney General.

M. S. COLEMAN, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Now on this 9th day of May, A. D. 1929, in open court the court sustained the demurrer filed by the Attorney General herein. The case is, therefore, dismissed on the ground that this claimant has received his full wage as provided for in the Civil Administrative Code of the State of Illinois.

(No. 1496—Claim dismissed.)

FRED S. PEAHLER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

LIMITATIONS—*when case will be dismissed.* Where it appears that the claim is barred by the Statute of Limitations, the case will be dismissed upon motion of the Attorney General.

FRED S. PEAHLER, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Now on this 9th day of May, A. D. 1929, in open court the court sustained the demurrer filed by the Attorney General

herein. The case is, therefore, dismissed on the ground that this claimant has received his full wage as provided for in the Civil Administrative Code of the State of Illinois.

(No. 1197—Claimant awarded $5,219.97.)

WOODS BROTHERS CONSTRUCTION COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 17, 1929.

CONTRACTS—*when award will be made.* **The Court examines the evidence and finds that claimant performed its contract with the State in the construction of a culvert over the Illinois and Michigan Canal and makes an award upon the recommendation of the Director of Purchases and Construction and the Attorney General.**

NEWTON JENKINS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This claimant, on or about January 5, 1928, entered into a contract with the respondent herein for the construction of a culvert, known as the Gum Creek Culvert, over the Illinois and Michigan Canal, in the City of Marseilles, in the County of LaSalle and State of Illinois, at actual and necessary cost, plus 15% thereof. In accordance with the terms of said contract the claimant herein constructed said culvert at a net expense to itself including the 15% over and above actual cost, of $5,219.97.

It appears from the records and files of the Division of Waterways filed in this cause that the claimant did construct said culvert in accordance with its contract with the respondent, the engineers of the Division of Waterways having approved all of said works it appears that the claimant herein is entitled to the amount asked. The same has also been approved by Honorable H. H. Kohn, Director of Purchases and Construction, and Honorable Oscar E. Carlstrom, Attorney General.

We, therefore, recommend that this claim be allowed in the sum of $5,219.97.

(No. 934—Claim dismissed.)

EUGENE A. LORD AND JOHN D. TALBOTT, CO-PARTNERS, DOING BUSINESS UNDER FIRM NAME OF LORD & TALBOTT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 26, 1929.

DISMISSAL—*when case will be dismissed for want of prosecution.* Where upon motion of the Attorney General to show cause why case should not be dismissed for want of prosecution, and no appearance or response by claimant appears upon the record, the case will be dismissed for want of prosecution.

LOUIS H. HANNA, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now on this 26th day of June, A. D. 1929, being the day heretofore fixed for the hearing of said motion, comes the State of Illinois, respondent, by its attorneys, Oscar E. Carlstrom, Attorney General of said State, and Roy D. Johnson, Assistant Attorney General of said State;

And it appearing unto the court that the State of Illinois, the respondent, having heretofore filed its motion to show cause why said case should not be dismissed for want of prosecution;

And it further appearing that notice of said motion has been given to claimants in said above entitled case;

And it further appearing that no appearance or response appears upon the record from the said claimants, the court is of the opinion that said claimants are in default.

Therefore, it is the order of the court that the said above entitled case is hereby dismissed for want of prosecution.

(No. 1142—Claim dismissed.)

A. H. BOWLBY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 26, 1929.

DISMISSAL—*when case will be dismissed upon motion the Attorney General.* Where upon motion of the Attorney General to show cause why the case should not be dismissed for want of prosecution and it appearing that proper notice has been given and no appearance or response to such notice appears upon the record, *Held:* Claimant is in default and case dismissed for want of prosecution.

JAMES D. BRUNER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now on this 26th day of June, A. D. 1929, being the day heretofore fixed for the hearing of said motion, comes the State of Illinois, respondent, by its attorneys, Oscar E. Carlstrom, Attorney General of said State, and Roy D. Johnson, Assistant Attorney General of said State;

And it appearing unto the court that the State of Illinois, the respondent, having heretofore filed its motion to show cause why said case should not be dismissed for want of prosecution;

And it further appearing that notice of said motion has been given to claimant in said above entitled case;

And it further appearing that no appearance or response appears upon the record from the said claimant, the court is of the opinion that said claimant is in default.

Therefore, it is the order of the court that the said above entitled case is hereby dismissed for want of prosecution.

(No. 1147—Claim dismissed.)

ANTHONY ZAVILY, GUARDIAN AND NEXT FRIEND OF ANNA ZAVILY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 26, 1929.

DISMISSAL—*when case will be dismissed upon motion of the Attorney General.* Where upon motion of the Attorney General to show cause why the case should not be dismissed for want of prosecution and it appearing that proper notice has been given and no appearance or response to such notice appears upon the record, *Held:* Claimant is in default and case dismissed for want of prosecution.

GARNSEY, WOOD & LENNON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now on this 26th day of June, A. D. 1929, being the day heretofore fixed for the hearing of said motion, comes the State of Illinois, respondent, by its attorneys, Oscar E. Carlstrom, Attorney General of said State, and Roy D. Johnson, Assistant Attorney General of said State;

And it appearing unto the court that the State of Illinois, the respondent, having heretofore filed its motion to show cause why said case should not be dismissed for want of prosecution;

And it further appearing that notice of said motion has been given to claimant in said above entitled case;

And it further appearing that no appearance or response appears upon the record from the said claimant, the court is of the opinion that said claimant is in default.

Therefore, it is the order of the court that the said above entitled case is hereby dismissed for want of prosecution

(No. 1151—Claim dismissed.)

ISHAM SHARP, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 26, 1929.

DISMISSAL—*when case will be dismissed upon motion the Attorney General.* **Where upon motion of the Attorney General to show cause why the case should not be dismissed for want of prosecution and it appearing that proper notice has been given and no appearance or response to such notice appears upon the record, *Held:* Claimant is in default and case dismissed for want of prosecution.**

L. E. STONE, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now on this 26th day of June, A. D. 1929, being the day heretofore fixed for the hearing of said motion, comes the State of Illinois, respondent, by its attorneys, Oscar E. Carlstrom, Attorney General of said State, and Roy D. Johnson, Assistant Attorney General of said State;

And it appearing unto the court that the State of Illinois, the respondent, having heretofore filed its motion to show cause why said case should not be dismissed for want of prosecution;

And it further appearing that notice of said motion has been given to claimant in said above entitled case;

And it further appearing that no appearance or response appears upon the record from the said claimant, the court is of the opinion that said claimant is in default.

Therefore, it is the order of the court that said above entitled case is hereby dismissed for want of prosecution.

(No. 1169—Claim dismissed.)

WILLIAM VOLLBROCHT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 26, 1929.

DISMISSAL—*when case will be dismissed for want of prosecution.* Where it appears that claimant fails to appear or respond to a notice of a motion to show cause why the case should not be dismissed for want of prosecution, claimant is held to be in default, and the case will be dismissed.

MARKS ALEXANDER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now on this 26th day of June, A. D. 1929, being the day heretofore fixed for the hearing of said motion, comes the State of Illinois, respondent, by its attorneys, Oscar E. Carlstrom, Attorney General of said State, and Roy D. Johnson, Assistant Attorney General of said State;

And it appearing unto the court that the State of Illinois, the respondent, having heretofore filed its motion to show cause why said case should not be dismissed for want of prosecution;

And it further appearing that notice of said motion has been given to claimant in said above entitled case;

And it further appearing that no appearance or response appears upon the record from the said claimant, the court is of the opinion that said claimant is in default.

Therefore, it is the order of the court that the said above entitled case is hereby dismissed for want of prosecution.

(No. 1177—Claim dismissed.)

EMERT WITHALL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 26, 1929.

DISMISSAL—*when case will be dismissed for want of prosecution.* Where it appears that claimant fails to appear or respond to a notice of a motion to show cause why the case should not be dismissed for want of prosecution, claimant is held to be in default, and the case will be dismissed.

JOHN D. TURNBAUGH, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now on this 26th day of June, A. D. 1929, being the day heretofore fixed for the hearing of said motion, comes the State of Illinois, respondent, by its attorneys, Oscar E. Carlstrom, Attorney General of said State, and Roy D. Johnson, Assistant Attorney General of said State;

And it appearing unto the court that the State of Illinois, the respondent, having heretofore filed its motion to show cause why said case should not be dismissed for want of prosecution;

And it further appearing that notice of said motion has been given to claimant in said above entitled case;

And it further appearing that no appearance or response appears upon the record from the said claimant, the court is of the opinion that said claimant is in default.

Therefore, it is the order of the court that the said above entitled case is hereby dismissed for want of prosecution.

(No. 1358—Claim dismissed.)

M. L. HAYS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 26, 1929.

DISMISSAL—*when case will be dismissed upon motion of the Attorney General.* Where motion is filed by the Attorney General to show cause why case should not be dismissed for want of prosecution and it appearing that notice of the motion has been given to claimant and no appearance or response appears upon the record from said claimant: *Held:* Claimant is in default and case dismissed for want of prosecution.

CARL CHOISSER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now on this 26th day of June, A. D. 1929, being the day heretofore fixed for the hearing of said motion, comes the State of Illinois, respondent, by its attorneys, Oscar E. Carlstrom, Attorney General of said State and Roy D. Johnson, Assistant Attorney General of said State;

And it appearing unto the court that the State of Illinois, the respondent, having heretofore filed its motion to show cause why said case should not be dismissed for want of prosecution;

And it further appearing that notice of said motion has been given to claimant in said above entitled case;

And it further appearing that no appearance or response appears upon the record from the said claimant, the court is of the opinion that said claimant is in default.

Therefore, it is the order of the court that the said above entitled case is hereby dismissed for want of prosecution.

(No. 1363—Claim denied.)

CHILD'S, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

Rehearing denied June 26, 1929.

FRANCHISE TAX—*when judgment binding upon parties.* A judgment or decree of a Court having jurisdiction of the subject matter and parties of a cause before it, is binding upon the parties until reversed or set aside.

SAME—*Court of Claims has no appellate jurisdiction.* The Court of Claims has no appellate jurisdiction and cannot reverse or set aside the orders and decrees of the Circuit Courts of the State.

SAME—*failure to pursue remedies at law.* Where claimant has a remedy in a court of general jurisdiction and fails to pursue said remedy, the Court of Claims will not take jurisdiction (*Moline Plow Company v. State of Illinois*, 5 Court of Claims 277).

REHEARING—*when rehearing will be denied.* Where by verbal agreement of the parties, the petition for rehearing is submitted on the original record, a rehearing will be denied where there is nothing in the original record to justfy the court in granting a rehearing.

PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for the refund of $7,654.03 initial fees and franchise taxes paid as follows:

April, 1924, initial fee	$1,819.60
April, 1924, franchise tax	$2,426.13
July, 1925, franchise tax	$1,776.30
July, 1926, franchise tax	$1,632.00

Claimant is a foreign corporation. Since these fees and taxes were paid the Supreme Court, in a suit to which claimant was not a party, has held the law under which they were paid unconstitutional. Claimant now asks for an award against the State for the amount of fees and taxes paid on the ground that the State had no legal right to collect them.

It has been stipulated by the Attorney General and attorney for claimant that within thirty days after the payments made in April, 1924, and July, 1925, were paid to the Secretary of State claimant filed a bill in equity in the Circuit Court of Sangamon County, and secured a temporary injunction restraining the Secretary from paying said fees and taxes into the State Treasury, alleging the law under which the fees and taxes were paid was unconstitutional and

said fees and taxes were not legally due to the State; that the Attorney General filed a demurrer to the bill in each case and the bill was dismissed for want of equity; that no appeal was taken from the decree dismissing the bill in either of the cases; that all the cases were decided before the Supreme Court had held the law unconstitutional; and that the decree in each case was entered on the theory that the law was valid and constitutional.

It is a fundamental principle of our jurisprudence that a judgment or decree of a court having jurisdiction of the subject matter and parties in a cause before it is binding upon the parties until reversed or set aside. This rule is so well known that the citation of authorities is not necessary.

Claimant brought its suits in equity in the Circuit Court of Sangamon County for the same relief it is asking here, i. e., for an order for the refund of these fees and taxes on the ground the law under which they were collected was unconstitutional. That court held against claimant and refused to order the moneys refunded to it. If claimant felt itself aggrieved or wronged by those decisions, the law gave it the right to have them reviewed by the Supreme Court of the State. Claimant chose not to exercise that right but acquiesced in the decrees. It is therefore bound by them. This court has no appellate jurisdiction and cannot review or set aside the orders and decrees of the Circuit Courts of the State. To grant the relief asked for in this case would, in effect, set aside and reverse the decrees entered in those cases by the Circuit Court of Sangamon County. This court has no power to do that directly or indirectly.

Section 2a of the Act in relation to the payment of the public money of the State into the State Treasury provides that every officer receiving public moneys for the State paid under protest shall hold such moneys thirty days and upon the expiration of that period deposit the same with the State Treasurer unless the party making such payment shall within such period file a bill in chancery and secure a temporary injunction restraining the making of such deposit, in which case such payment shall be held until the final order or decree of the court. This provision of the law gave claimant the right to have the validity of the tax paid in 1926 determined by a court of general jurisdiction, and to secure a decree for the repayment of it to claimant if the court found it had

been illegally collected. Claimant elected not to avail itself of the right given by this statute and permitted the tax to be paid into the State Treasury. Having made its election, it is bound by it. Where a claimant had a remedy in a court of general jurisdiction and failed to pursue such remedy this court will not take jurisdiction. (*Moline Plow Co.* v. *State*, 5 Ct. Cl. 277.)

The claim is therefore denied and the case dismissed.

On June 26, 1929, upon petition for rehearing the following additional opinion was filed:

The original opinion in this case was filed May 9, 1929, and by verbal agreement of parties the petition for rehearing was submitted on the original record. There is nothing in the original record in this case that will justify this court in granting a rehearing and the petition is therefore denied.

(Claims denied.)

FRANK THEILER, 1413; JULIA COSGRAVE, 1414; HENRY MCMILLEN, 1415; M. E. SPAFFORD, 1416; FRANK HILLOCK, 1417; FRED SHAW, 1450, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.
Rehearing denied June 26, 1929.

PROPERTY DAMAGE—***State is not liable for damages to real estate by reason of the over-flow of water from the Illinois and Michigan Canal—Governmental function.*** **The State, in the operation of the Illinois and Michigan Canal is exercising its sovereign powers and is not liable for damages caused by flooding of land.**

SAME—***State is not liable for negligence of its officers, servants or employes.*** **The State is not liable for damages caused by the negligence of its officers, agents, employes or servants in the absence of a statute making it so liable. If such officer or employe perform their duty in a negligent manner, the negligence is that of the officer or employe and not of the State.**

ILLINOIS WATERWAY ACT—***provisions of.*** **The Illinois Waterway Act provides a method for making claims for damages. Section 24 of the Illinois Waterway Act provides that all claims for damages, shall be filed with the Department of Public Works and Buildings and sets forth in detail the procedure to be followed in determining whether damages shall be allowed, how the amount shall be ascertained and fixed and the manner of payment.**

JOSEPH KEIG, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

By stipulation of the parties these cases are consolidated. Claimants' demands are for damages alleged to have been caused by flooding their lands with water from the Illinois and Michigan canal. The declarations are all substantially alike. The first count charges that the employees of the State carelessly and negligently permitted the waters in the canal to rise to such heights that they overflowed and weakened the banks of the canal so that the banks broke and thereby overflowed the lands of claimants. The second count charges that the officers and employees of the State charged with the control and operation of the canal permitted the banks of the canal to become so weak and deteriorated that when on the 4th day of June, 1927, there was a heavy rainfall the banks by reason of said weakened and deteriorated condition could not hold the waters which flowed into the canal and said waters burst and broke the weakened and deteriorated banks and overflowed the lands of claimants.

It has been often held by this court, the courts of other states, and the federal courts, that the State is not liable for damages caused by the negligence of its officers, agents, employees or servants in the absence of a statute making it so liable. In the operation of the Illinois and Michigan canal the State is exercising its sovereign powers, and it does not permit these powers to be questioned by any tribunal. It can only act through or by its officers and employees, and if such officers or employees perform their duties in a negligent manner the negligence is the negligence of the officers or employees and not of the State. In *Kinnare* v. *City of Chicago*, 171 Ill. 332, the rule is stated by our Supreme Court, at page 335, as follows: "The State acts in its sovereign capacity, and does not submit its action to the judgment of courts and is not liable for the torts or negligence of its agents, and a corporation created by the State as a mere agency for the more efficient exercise of governmental functions is likewise exempted from the obligation to respond in damages, as master, for negligent acts of its servants to the same extent as is the State itself, unless such liability is expressly provided by the statute creating such agency." See also *Cooney* v. *Town of Hartland*, 95 Ill. 516; *Jorgensen* v. *State*, 2 Ct. Cl. 134; *Braun* v. *State*, No. 1281, opinion filed Oct. 28, 1928; *Peterson* v. *State*, No. 1127, opinion filed Sept. 11, 1928. Under this rule complainants cannot maintain

actions against the State for the negligence alleged in their declarations.

We have read the abstracts of the evidence filed in these cases and find that the claimants have wholly failed to prove any negligence on the part of the employees of the State in relation to the canal in question. The mere fact that the canal overflowed its banks or that a washout in the bank occurred is not standing alone proof of negligence. There is no evidence of failure on the part of the employees to do all they could be reasonably expected to do under the circumstances that existed. Even if the State were liable for the negligence of its employees claimants would have to prove the break in the canal bank was caused by their negligence. This they have wholly failed to do. The break was caused by an exceptionally heavy rainfall—a cloudburst, as some of the witnesses described it. Even a private corporation operating the canal would not be liable for damages occasioned an adjacent landowner by extraordinary floods which could not be foreseen.

The portion of the Illinois and Michigan canal involved in these claims is a part of the Illinois waterway and is under the jurisdiction of the Department of Public Works and Buildings. *Illinois Water Way Act.* Smith-Hurd 1927 Statutes, pp. 221-226. Section 24 of that Act provides that all claims for damages shall be filed with the Department of Public Works and Buildings, and sets forth in detail the procedure to be followed in determining whether damages shall be allowed, how the amount shall be ascertained and fixed, and the manner of payment.

In no view of the case are claimants entitled to an award by this court.

The claims are denied and the cases dismissed.

On June 26, 1929, upon petition for rehearing the following additional opinion was filed:

Claimants in these cases have filed a petition for a rehearing. The petition in fact is but a reargument of the questions involved in the cases. In the opinion filed in these cases we not only followed the consistent holding of this court that the State is not liable for the negligence of its agents, but we specifically found from the evidence submitted that claimants had wholly failed to prove negligence on the

part of the employees of the State. We have again examined the evidence on that question and are fully satisfied that our finding in that regard is correct. The petition for a rehearing is denied and the order denying awards and dismissing the claims is ordered to stand as the final judgment of the court.

(No. 1455—Claim denied.)

CONTINENTAL NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF SAMUEL C. SCOTTEN, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.
Rehearing denied June 26, 1929.

INHERITANCE TAX—*Inheritance Tax Act—Section 8 and 10.* The Inheritance Tax Act is a code covering the whole subject of such taxes, assessment and payment and sections 8 and 10 of the act provide the methods for securing the refund of taxes erroneously paid.

COURT OF CLAIMS—*jurisdiction.* The Court of Claims has no jurisdiction to decide cases where sections 8 and 10 of the Inheritance Tax Act provides a method for securing a refund of taxes erroneously paid.

REHEARING—*when rehearing will be denied.* Where the petition for rehearing does not contain anything not taken into consideration in the original opinion, a rehearing will be denied.

MAYER, MEYER, AUSTRIAN & PLATT, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On August 5, 1920, Samuel C. Scotten, a resident of the City of Chicago Cook county, Illinois, died testate. On or about February 5, 1921, an order was entered by the County Judge of Cook county, Illinois, assessing the inheritance tax to the State from the estate of said decedent and fixing the tax at $48,334.35. Said amount of tax less five percent discount allowed to said estate for payment of a tax within six months from date of death of decedent, of a net amount of tax amounting to $45,917.63, was paid to the County Treasurer of Cook County on February 4, 1921.

After providing for the payment of debts and funeral expenses, decedent bequeathed and devised the residue and remainder of his estate in trust for the benefit of his three daughters; by the second clause of the will it is provided that

when the youngest surviving daughter arrived at the age of forty years, one-half of the trust estate should be equally divided among the said daughters, and the remaining half of the trust estate should remain undistributed for a period of ten years thereafter. Said will also provided that if all of testator's said daughters should die during the period of the trust, leaving no child or descendants of a child surviving, said trust estate should then go to the heirs at law and next of kin of the testator. Because of this provision in said will, the trust estate was assessed by the County Judge under the provisions of section 25 of the Inheritance Tax Act, which provides for the assessment of the trust estate in view of these contingencies at the highest possible rate.

After the arrival of the youngest daughter of Josephine Scotten, at the age of forty years, an order for reassessment was secured. It appears from a certified copy of said order that the tax as reassessed was found to be $28,518.27. Subtracting from this the five percent discount a net amount of $27,092.37 was arrived at as the tax. Subtracting this amount from the $45,917.63 paid on February, 1921, there is a sum of $18,825.26 which the plaintiff claims should be refunded to him.

The Inheritance Tax Act is a code covering the whole subject of such taxes, their assessment, payment, and the method of securing the refund of taxes erroneously paid. Sections 8 and 10 of the Act provide the methods of having taxes erroneously paid, refunded. If claimants can bring themselves within the provisions of those sections they have a forum where their cause can be heard. It has been held in the case "*Honore Palmer* et al. v. *State of Illinois*," No. 474, that this Court has no jurisdiction to decide cases provided for by those sections.

The award is therefore denied and the cause dismissed.

On June 26, 1929, upon petition for rehearing the following additional opinion was filed:

The original opinion was filed in this case on April 25, 1929. Notice of petition for rehearing was filed May 8th, 1929, and petition for rehearing was filed by claimant on May 20th, 1929. There is nothing in the petition for rehearing that was not taken into consideration in the original opinion in this case. Therefore, the petition for rehearing is denied.

(No. 792—Claim dismissed.)

WALTER E. FISH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1929.

DISMISSAL—*when case will be dismissed.* Where the court is fully advised in the premises the case will be dismissed for want of prosecution upon motion of the Attorney General.

NEIL KERR, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This cause coming on to be heard upon motion of the Attorney General to show cause why this cause should not be dismissed for want of prosecution, and the court being fully advised in the premises, it is thereupon, this 10th day of September, 1929, ordered that the said cause be and the same is hereby dismissed for want of prosecution.

(No. 793—Claim dismissed.)

IDA FISH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1929.

DISMISSAL—*when the case will be dismissed.* Where the court is fully advised in the premises the case will be dismissed for want of prosecution upon motion of the Attorney General.

NEIL KERR, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This cause coming on to be heard upon motion of the Attorney General to show cause why this cause should not be dismissed for want of prosecution, and the court being fully advised in the premises, it is thereupon, this 10th day of September, 1929, ordered that the said cause be and the same is hereby dismissed for want of prosecution.

(No. 880—Claim dismissed.)

I. F. LAYTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1929.

DISMISSAL—*when case will be dismissed.* Where the court is fully advised in the premises the case will be dismissed for want of prosecution upon motion of the Attorney General.

McGINNIS & McGINNIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This cause coming on to be heard upon motion of the Attorney General to show cause why this cause should not be dismissed for want of prosecution, and the court being fully advised in the premises, it is thereupon, this 10th day of September, 1929, ordered that the said cause be and the same is hereby dismissed for want of prosecution.

(No. 910—Claim dismissed.)

HELEN WILKEN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1929.

DISMISSAL—*when case will be dismissed.* Where the court is fully advised in the premises the case will be dismissed for want of prosecution upon motion of the Attorney General.

L. H. VOGEL, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This cause coming on to be heard upon motion of the Attorney General to show cause why this cause should not be dismissed for want of prosecution, and the court being fully advised in the premises, it is thereupon, this 10th day of September, 1929, ordered that the said cause be and the same is hereby dismissed for want of prosecution.

(No. 968—Claim dismissed.)

LAVERNE McPHERSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1929.

DISMISSAL—*when case will be dismissed.* Where the court is fully advised in the premises the case will be dismissed for want of prosecution upon motion of the Attorney General.

VIRGIL M. JACOBY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This cause coming on to be heard upon motion of the Attorney General to show cause why this cause should not be dismissed for want of prosecution, and the court being fully advised in the premises, it is thereupon, this 10th day of September, 1929, ordered that the said cause be and the same is hereby dismissed for want of prosecution.

(No. 1021—Claim denied.)

W. S. ANDERSON, R. S. BERRY, J. J. DUNNEGAN, A. W. MURPHY, E. A. REED, AND E. S. WELCH, CO-PARTNERS, DOING BUSINESS AS J. J. DUNNEGAN CONSTRUCTION COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1929.

CONTRACTS—*when no award will be made for losses sustained under.* Where claimant enters into a contract for the construction of a hard road with full knowledge of its provisions relative to the plans, specifications and materials to be used, no award will be made for losses sustained by reason of the rejection of materials not of the quality required by the specifications.

CONSTITUTIONAL LAW—*language of Section 19 of Article 4 of the Constitution unambiguous.* Section 19 of Article 4 of the Constitution provides: "The General Assembly shall never grant or authorize extra compensation, fee or allowance, to any public officer, agent, servant or contractor, after service has been rendered or contract made", etc., and this language is clear and unambiguous.

EXTRA COMPENSATION—*what is extra compensation.* Extra compensation is a payment or allowance in excess of that which was fixed by law or contract when the services were rendered. (Citing *Porter* v. *Loehr*, 332 Ill. 353.)

PRINGLE & FEARING, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On the 14th day of June, 1923, claimants, a co-partnership doing business as J. J. Dunnegan Construction Co., entered into a contract with the State of Illinois to construct the portion of State Bond Issue Route No. 18 known as Section 12 Project No. 59 for the total sum of $161,826.10. The contract was awarded to claimants upon a bid which they had previously submitted. After their bid had been accepted claimants leased a gravel pit and installed machinery thereat for the purpose of removing and preparing the gravel for use in the construction of the work awarded them. Samples of this gravel were submitted to the State authorities having the supervision of the construction of the work and claimants were notified that it was not satisfactory.

The contract was executed and about two miles of the road were constructed before claimants began to use any gravel

from the pit they had leased, the machinery for handling the gravel at the pit not being installed ready for work until the latter part of July. After this machinery was installed claimants began using the gravel from this pit. Soon after they began to use this gravel the State inspectors discovered that it was unsuitable and did not meet the requirements of the specifications. In an endeavor to make it comply with the specifications changes in the method of treating it were made but were unsuccessful. On August 28, 1923, after 3,835 linear feet of pavement had been constructed with it, the State officials notified claimants that no more of that gravel would be accepted as it was not of the kind and quality required by the specifications. Claimants then quit using gravel from that pit and finished the work with gravel procured from other sources, and when it was completed were paid in accordance with the terms of their contract.

Claimants have filed this suit against the State for $21,954.58 damages, which sum they allege represents the difference in the actual cost of completing the work under their contract and what the actual cost would have been had the gravel from this pit been accepted by the State.

The contract of claimants with the State is attached to the declaration and made a part thereof. This contract provides: "That for and in consideration of the payments and agreements mentioned in the proposal hereto attached to be made and performed by the party of the first part, and according to the terms expressed in the bond referring to these presents, the party of the second part agrees with said party of the first part at his own proper cost and expense to do all the work, furnish all materials, and all labor necessary to do the work in accordance with the plans and specifications hereinafter described, and in full compliance with all specifications hereinafter described, and in full compliance with all of the terms of this agreement and the requirements of the engineer under it. And it is also understood and agreed that the Notice to Contractors, Proposal, Bond, Specifications, and Plans hereto attached or hereinafter referred to, are all essential documents of this contract and are a part hereof." To this contract is attached the Notice to Contractors, the Proposal of Claimants, and the Specifications for the work. The specifications provide that tests of material samples shall be made by the Division of Highways of the Department of Public

Works and Buildings, that samples of materials may be taken by the Inspectors of the Division of Highways from time to time, that the contractor shall furnish such samples when requested by the Inspectors, and that "the approval of preliminary samples shall not be considered as a guarantee of acceptance of all materials from the same source, and it shall be understood that all materials delivered on the work and which do not meet the requirements of these specifications may be rejected by the engineer." The specifications further provide that the Inspector shall see that the provisions of the contract and specifications are fulfilled by the Contractor and, in case they are not, report the same to the Engineer; that instructions given the contractor by the Inspector shall in no wise be construed as releasing the contractor from the proper fulfillment of the terms of the contract as determined by the Engineer; that the Engineer shall act as referee in all questions arising under the contract between the parties and his decision shall be final and binding upon both; that insufficient, imperfect or damaged work or material when pointed out to the contractor by the Engineer shall be immediately remedied and made good or removed and replaced to conform to the plans and specifications; that the ommission of the Engineer to disapprove or reject defective work or material during construction shall not be deemed an acceptance of such work or material nor be construed as in any way releasing the contractor from making good any defective work or material so as to conform to the plans and specifications; and that "it is understood by the contractor that the compensation as provided in the contract is accepted as full payment for furnishing of materials, labor, tools and equipment and for performing the work contemplated and embraced under the contract; also, for all loss or damages arising out of the nature of the work or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered during the prosecution of the work, and for all risks of every description connected with the prosecution of the work; also for any expense incurred by or in consequence of the suspension or discontinuance of said work as herein specified, or for any infringement of patent, trade-mark or copyright." The specifications provide the payment shall be of concrete and that the coarse aggregate of the concrete shall consist of particles of clean,

hard, tough, durable rock in the form of either gravel or crushed material and shall contain no shale, slate, coal, ochre or other materials which easily disintegrate, shall be free from vegetable or other deleterious matter and contain no soft, thin or elongated pieces; that gravel used for coarse aggregate shall show high resistance to abrasion, and no gravel which in the opinion of the Engineer does not show wearing qualities at least equal to crushed stone having a French coefficient of wear of 6 shall be used.

These provisions of the contract were all known to claimants long before they leased the gravel pit. In their bid or proposal they recite they have examined the specifications, including all special provisions, and form of contract, and are thoroughly familiar with them. Having executed this contract with these provisions in it they are bound by them.

When claimants began to use the gravel from the pit they had leased it developed that it had ochre and clay balls in it, that it was too soft and not of the quality required by the specifications. The State officials permitted claimants to endeavor to remove the objections to the gravel and various plans were tried in their endeavor to do so, but none of them was successful. That went on till after the middle of August. Finally the Chief Highway Engineer, Mr. Older, went out to the place and examined the paving work already done and the gravel being used from the pit. After this examination and a consultation with the assistant engineers the Chief Engineer had claimants notified the gravel was unsuitable for use in the paving work and that no more of it would be accepted. Under the terms of the contract it was the duty of the inspectors and engineers to see that the work was done in accordance with the specifications. If these officers had permitted this gravel to be used after they had found it unsuitable they would have been guilty of culpable neglect of duty. Even had they consented to the use of gravel not up to the requirement of the specifications such consent would not have bound the State, the contract specifically providing it should not do so. It is not claimed that the inspectors and engineers acted either arbitrarily or corruptly in refusing to accept any more of the gravel, but simply that their action lessened the profits which claimants would otherwise have made. A sufficient answer to that is that they are not entitled to profits made by the use of bad material. Claimants admit the com-

pleted job was accepted and paid for by the State. That being true they are entitled to no more compensation on account of that contract.

Section 19 of Article 4 of the Construction provides: "The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made," etc. This language is clear and unambiguous and its purpose cannot be misunderstood. It was adopted by the people for their protection against claims such as this. "Extra compensation is a payment or allowance in excess of that which was fixed by law or contract when the services were rendered." (*Porter* v. *Loehr*, 332 Ill. 353). Claimants have been paid all their contract called for. They performed no work other than that which their contract required them to perform, and this court has no power to award them extra compensation for that work.

The claim is therefore denied and the case dismissed.

(Claims denied.)

CHARLES BOWERMASTER, 1421; HERMAN HOPPE, 1122; ENOCK ENOCKSON, 1423; MARK STUART, 1421; JAMES A. MITCHELL, 1425; FRED STEVENSON, AND JOHN STEVENSON, 1426; ELIZABETH WIRTZ, 1427; GEORGE T. KOENIG, TRUSTEE IN BANKRUPTCY IN THE MATTER OF WILLIAM JAMISON, BANKRUPT, 1428; HOWARD E. STUART, 1431; Claimants, *vs.* STATE OF ILLINOIS, Respondents.

Opinion filed May 9, 1929.
Rehearing denied September 10, 1929.

PROPERTY DAMAGE—*when no award will be made.* These claims are denied for the reasons set forth in the opinion of the Court filed on April 25, 1929, in the case of *Frank Theiler, v. State of Illinois*, No. 1413.

REHEARING—*when rehearing will be denied.* Where the petition for rehearing points out no fact or principle of law that was not considered by the Court in arriving at its decision a rehearing will be denied.

SCANLAN & MASSIEON, for claimants.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

For the reasons set forth in the opinion, filed in this court April 25th, 1929, in the case of *Frank Theiler* v. *The State of*

Illinois, No. 1413, *Julia Cosgrave* v. *State of Illinois*, No. 1414, *Henry McMillan* v. *State of Illinois*, No. 1415, *M. E. Spafford* v. *State of Illinois*, No. 1416, *Frank Hillock* v. *State of Illinois*, No. 1417, and *Fred Shaw* v. *State of Illinois*, No. 1450, these claims are denied.

On September 10, 1929, upon petition for rehearing, the following additional opinion was filed:

The petition for a rehearing in these cases is but a reargument of the questions involved in them, and points out no fact or principle of law that was not fully considered by the court in arriving at its decision. We have, however, again carefully read the abstract and brief of claimants and find no reason for changing our views. The petition for a rehearing is therefore denied in each of the cases.

(No. 1438—Claim denied.)

LOUISE B. HILL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.
Rehearing denied September 10, 1929.

PROPERTY DAMAGE—*when State not liable for the negligent acts of its agents in the construction of the Illinois and Michigan Canal.* In constructing and operating the Illinois and Michigan Canal the State is exercising its sovereign powers and is not liable for the negligent acts and conduct of its agents, employees and officers.

SAME—*when court has no jurisdiction to hear claims for damages resulting by reason of the construction and operation of the Illinois and Michigan Canal.* The Court of Claims has no jurisdiction to hear claims for damages arising out of the construction and operation of the Illinois and Michigan Canal when the statute provides that all claims for damages shall be filed in accordance with Section 24 of the Illinois Waterway Act.

HIBBS AND POOL, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant's demand is for damages alleged to have been caused to her property by the construction of an embankment on the right of way of the Illinois and Michigan canal in such a negligent and improper manner as to cast the water back upon the premises of the claimant. The first count charges that her premises were flooded on September 23, 1926, and sustained damages to the amount of $359.70. The second

count charges that they were again flooded May 27, 1927, and sustained damages to the amount of $252.00.

The cause of action is based upon negligence. The State is not liable for the negligent acts and conduct of its agents, employees or officers when acting in its sovereign capacity. In constructing and operating the Illinois and Michigan canal the State is exercising its sovereign powers. In their performance it can only act through or by its officers and employees, and if such officers or employees perform the duties in a negligent manner, the negligence is the negligence of the officers and employees and not of the State. *Kinnare* v. *City of Chicago*, 17 Ill. 332; *Cooney* v. *Town of Hartland*, 95 Ill. 516; *Jorgenson* v. *State*, 2 C. C. 134. See also opinions of this court in *Braun* v. *State*, No. 1281, filed October 28, 1928; *Peterson* v. *State*, No. 1127, filed September 11, 1928; *Thieler* v. *State*, No. 1413, filed April 25, 1929. Under the rule announced in these cases claimant cannot maintain her action against the State for the negligence alleged in her declaration.

This court has no jurisdiction to hear claims against the State for damages alleged to have been caused by the construction and operation of the Illinois and Michigan canal. This canal is a part of the Illinois waterway and is under the jurisdiction of the Department of Public Works and Buildings. *Illinois Waterway Act*, Smith-Hurd 1927 Statutes, pp. 221-226. Section 24 of that Act provides that *all claims for damages* shall be filed with the Department of Public Works and Buildings, and sets forth in detail the procedure to be followed in determining whether damages shall be allowed, how the amount shall be ascertained and fixed, and the method of payment. Inasmuch as the General Assembly has seen fit to provide that claims for damages arising out of the construction of the Illinois Waterway shall be filed with the Department of Public Works and Buildings and heard by it, this court has no jurisdiction.

The claim is therefore denied and the case dismissed.

On September 10, 1929, upon petition for rehearing, the following additional opinion was filed:

The petition for rehearing was filed by claimant on June 1, 1929. She sets up in her petition that the issues for rehearing are the same in this case as in cases Number 1421 to Number 1428, both inclusive, and Number 1431, and adopts the petition in those cases as her petition in this one.

The court has considered the petitions for rehearing in the above cited cases in this case, and, after full consideration of the petitions in the cases cited, has arrived at the same conclusion in this case as in those cases and the petition for a rehearing is denied.

(No. 1164—Claim denied.)

VICTORIA RAPINAC, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.
Rehearing denied September 10, 1929.

PERSONAL INJURY—*when no award will be made for personal injuries sustained by reason of accident on hard road.* Where it appears from the evidence that a hard road has not been taken over by the State no award will be made, either as a matter of law, or equity and good conscience, for personal injuries sustained while riding upon such hard road.

JOHN G. FRIEDMEYER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover compensation for injuries sustained by a young lady who was a passenger in an automobile driven by one James De Rose, between Havana and Mason City, Illinois, on Detour Route No. 3, on the 15th day of August, 1926.

The respondent submits an argument in defense, setting forth the fact that the State of Illinois did not take control of this road and states in his brief, the following section of the statute:

"That the public highways upon which said roads are being constructed shall, during the construction period and continuously thereafter, be under the jurisdiction and control of said Department of Public Works and Buildings, but the duty of maintaining such highways shall rest on the local authorities until said construction work has been completed." Section 277, Chapter 121, Smith-Hurd's Revised Statutes 1927.

The court is of the opinion that the contention of the respondent is correct. While the accident is regretable, yet, bearing in mind, the citation referred to, no damages can be allowed, either as a matter of law, or as a matter of equity and good conscience.

Therefore, it is recommended that the claim be denied and the case dismissed.

On September 10, 1929, upon petition for rehearing the following additional opinion was filed:

This matter coming on to be heard upon the petition for rehearing and the court being fully advised in the premises, finds that there is no cause shown for a rehearing.

Therefore the petition for a rehearing is denied.

(No. 868—Claim denied.)

H. H. HALL CONSTRUCTION COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 7, 1929.

CONTRACTS—*when no extra compensation will be allowed under.* Where claimant voluntarily signs a contract containing provisions that no extra compensation will be allowed for delays he is bound by them, and such terms effectually bar any claim for damages.

CONSTITUTIONAL LAW—*section 19 of article 4 of the Constitution is mandatory and binding.* Section 19 of Article 4 of the Constitution providing that "the General Assembly shall never grant or authorize extra compensation, fee, or allowance to any public officer, agent, servant or contractor after service has been rendered or a contract made", etc., is mandatory and binding upon the legislature and all the courts of the State.

JOSEPH A. CONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General, S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant is a corporation organized under the laws of Illinois and authorized by its charter to construct public highways and to do other construction work and exercise such rights, powers and privileges as are incidental thereto. Pursuant to its bid of November 20, 1921, a contract was thereafter entered into between claimant and the Department of Public Works and Buildings of Illinois whereby claimant agreed to construct sections 1, 3, 4, 5, 6, 7 and 8 of State Bond Issue Route No. 2 and sections 5, 6, 7, 8, 9 and 10 of State Bond Issue Route No. 15, aggregating 67.75 miles. The road was to be surfaced with a concrete pavement 18 feet wide

and was to be constructed according to the proposals, plans and specifications therefor which were made a part of the contract between claimant and the State. The prices for which claimant agreed to do the work aggregated approximately $1,551,000.00, and it was required to and did give a bond for $1,500,000.00 conditioned for the construction of the work according to the terms of the contract. The contract provided the work should be completed during the year 1922, and that claimant should be paid upon estimates made by the engineers as the work progressed. Payments were made from time to time and when the work was finally completed in the latter part of 1923 it was accepted by the State and claimant was paid in full the balance due.

Claimant admits it has been paid the full amount of the price for which it agreed to do the work. But it contends the State was to furnish all cement necessary to the construction of the work and failed to do so as rapidly as it was needed; that such failure prevented claimant from completing the work in 1922 and compelled it to continue the work through the construction season of 1923 thereby causing it to have to pay increased prices for labor, materials and supplies and to maintain its construction and business organization for a longer period than would have been necessary had the cement been furnished at the times it was needed; and that the neglect of the State to furnish cement at the times it was needed caused claimant to lay out and expend, over and above what would have been occasioned if the State had furnished the cement as required, for labor $192,234.40, for stone $5,453.04, for sand $5,093.89, for general expenses and clerks' wages $28,972.08, for leases on camp sites $1,609.00, for additional overhead charges $39,502.96, for depreciation and loss of rentals on use of equipment $155,158.58. For these items aggregating the sum of $428,023.95 claimant has filed its demand for an award against the State.

The contract is not in the record but it is stated by counsel representing both the claimant and the State that the following are its provisions applicable to this case:

"Cement Furnished. When so indicated in the 'Notice to Contractors', cement (not in the sacks) will be furnished the Contractor F. O. B. any steam railroad station in the County by the Department of Public Works and Buildings for the work in hand without charge, under the following conditions:

"As the progress of the work warrants, shipments of cement shall be ordered by the Contractor, upon written authorization by the Department of Public Works and Buildings, from the Cement Company with whom contract has been entered into by said Department for furnishing cement for the particular work in question.

"It is expressly understood by the Contractor that no responsibility is assumed by the Department of Public Works and Buildings for the delivery of the cement at the time desired, and that no extra compensation will be allowed the contractor for delays."

It is manifest from these provisions of the contract that the claimant and the State officials understood that delays might be caused by failure of the cement companies to make prompt deliveries, that the State assumed no responsibility for the delivery of cement, and would pay no extra compensation to claimant on account of such delays. Claimant, having voluntarily signed a contract containing these provisions, is bound by them. Their terms are clear and explicit and effectually bar any claim for an award against the State for damages occasioned by delays of the cement company in the delivery of cement.

Counsel for the State contend that even if the contract did not contain the above provisions claimant would still be barred from recovering an award in this case against the State. We think counsel are right in this contention. Section 19 of Article 4 of the Constitution provides that "the General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made," etc. This provision of the Constitution is mandatory and binding upon the legislature and all courts of the State. (*Pachen Bros.* v. *State*, No. 760, opinion filed Sept. 13, 1927.) Its language is clear and unambiguous and its purpose cannot be misunderstood. (*Fergus* v. *Brady*, 277 Ill. 272.) It was adopted by the people to protect themselves from the mischiefs and evils likely to arise out of claims such as this. (*Dunnegan Construction Company* v. *State*, No. 1021, opinion filed Sept. 10, 1929.) The contract in question fixed the compensation claimant was to receive for doing the work. The work has been completed and the compensation fully paid, and this court has no power to award extra compensation for that work. The claim is therefore denied and the case dismissed.

(No. 1091—Claim denied.)

OTTO STEIN, ADMINISTRATOR OF THE ESTATE OF EVELYN STEIN, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 7, 1929.

NON-LIABILITY OF THE STATE—*when State not liable.* The State is not liable for death by drowning in a park lagoon under the jurisdiction of the West Chicago Park Commission.

COURT OF CLAIMS—*jurisdiction—equity and good conscience.* The act creating the Court of Claims did not authorize the court to obligate the State, either as a matter of law or equity and good conscience to assume obligations for death in a park lagoon under the jurisdiction of the West Chicago Park Commission.

SISSMAN & SISSMAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover from the State of Illinois on account of the death by drowning of Evelyn Stein in a lagoon in Douglas Park in October, 1925, which park is under the jurisdiction of the West Chicago Park Commission.

It is alleged that there is some doubt whether the park system would be legally liable or not.

This Court has in former opinions expressed itself as to extending the liability of the State of Illinois in cases of similar nature, and the court is of the opinion that the Legislature of the State of Illinois did not intend to include in the act creating the Court of Claims any authority to obligate the State of Illinois, either as a matter of law or through equity and good conscience to assume obligations of this character. The court does not wish to discuss the position that the courts of general jurisdiction should take in this case, but this court is of the opinion that this case cannot be maintained in this court and therefore the demurrer filed by the Attorney General in behalf of the State of Illinois is hereby sustained.

(Claims denied.)

AGNES C. HOLLENBECK AND WILLIAM HOLLENBECK, 1111; JOHN MITCHELL, 1112; HORACE SEVERNS, 1113; ANDREW PARR, 1114, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 7, 1929.

ILLINOIS AND MICHIGAN CANAL—*when appropriation would be in aid of.* Any appropriation to meet the expenses or liabilities connected with or growing out of the operation of the canal would be in aid of it.

SAME—*when appropriation prohibited for loss of crops by reason of overflow of.* Any appropriation to pay for loss of crops resulting by reason of an overflow of the canal is "in aid of the canal", and is therefore prohibited. Citing separate Section 3, Const. of Illinois, and *Burke* v. *Snively*, 208 Ill. 328.

SAME—*when claims for loss of crops are payable.* Claims for loss of crops by reason of the overflow of the canal arise out of the maintenance and operation of the canal and are only payable, if at all, out of the earnings of the canal.

SAME—*powers and duties vested in Department of Purchases and Construction.* Enactment of Civil Administrative Code and amendments thereto, vesting rights, powers and duties in the Department of Purchases and Construction did not change Section 9 of the Act, relative to the payment of costs, expenses and damages out of the earnings of the canal.

ILLINOIS WATERWAY ACT—*when State liable under.* When portions of the Illinois and Michigan Canal are used and improved under the provisions of the Illinois Waterway Act, the State is liable for damages to real estate which shall be overflowed or otherwise damaged by reason of its construction, maintenance and operation, and the amount shall be ascertained, determined and fixed in accordance with Section 24 of the Act.

COURT OF CLAIMS—*when court has no jurisdiction.* The Court of Claims has no jurisdiction to pass upon claims for damages to property arising out of the construction, maintenance or operation of any portion of the Illinois and Michigan Canal when the matter is covered by constitutional and statutory provisions.

SAME—*when court will not follow precedent.* The Court will refuse to follow a decision heretofore rendered or recognize it as a precedent when they become cognizant that such decision is erroneous.

CONSTITUTIONAL LAW—*constitution, the supreme law of the State.* The Constitution is the supreme law of the State,—it is a mandate from the people which executive, legislative and judicial officials are all bound to obey.

ARLEY MUNTS AND SCANLON & MASSIEON, for claimants.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

By agreement these four cases have been consolidated for hearing, and decision.

The claims are for crops alleged to have been destroyed by the overflow of the Illinois and Michigan Canal on August 8, 1924, and it is charged that the overflow was the result of the carelessness and negligence of the agents and employees of the State in charge of the canal. The Attorney General has filed a demurrer to each of the declarations.

There has been much legislation in connection with this canal. From the earliest history of the State to the present there has been a continuous desire to secure a waterway connecting Lake Michigan with the Mississippi River. In 1822, Congress passed an Act authorizing the State of Illinois to survey and mark the route of the canal through the public lands of the United States. In 1827 Congress granted to the State approximately 300,000 acres of land in aid of the construction of this canal. Work on it was finally begun in 1836 and it was opened for navigation in 1848. It had cost up to that time about $6,000,000.00, and large sums were later expended in repairs and improvements. For a number of years after its completion, the canal carried large volumes of freight, and the tolls produced a large revenue for the State. But, with the development and extension of railroads the business of the canal decreased and its earnings became greatly diminished. This changed condition caused many people to fear that the canal would in time become a liability to the State—a financial burden that would have to be met by increased taxes. These questions led to much discussion in the constitutional convention of 1870, and after full debate that body included the following separate section which was later adopted by the people: "The Illinois and Michigan Canal shall never be sold or leased until the specific proposition for the sale or lease thereof shall first have been submitted to a vote of the people of the State at a general election, and have been approved by a majority of all the votes polled at such election. The General Assembly shall never loan the credit of the State, or make appropriations from the treasury thereof, in aid of railroads or canals: *Provided*, that any surplus earnings of any canal may be appropriated for its enlargement or extension." (Const. Separate Sec. 3.) It will be observed that this section prohibits the Legislature from making appropriations from the State Treasury in aid of canals. Any appropriation to meet expenses or liabilities connected with or growing out of the operation of the canal

would be in aid of it. If the Illinois and Michigan Canal were a private company or corporation, and claimants were damaged in the manner they allege, such damages would be a liability of the canal, and an appropriation by the State to pay them would be "in aid of the canal."

In *Burke* v. *Snively*, 208 Ill. 328, the construction of this section of the Constitution was before the court. In 1903 the General Assembly made an appropriation of $50,000.00 per annum for the purpose of maintaining the canal in a navigable condition. Suit was brought against the canal commissioners, the State Treasurer and the Auditor of Public Accounts to restrain the Auditor from drawing warrants in favor of the commissioners for the sums appropriated and to enjoin the Treasurer from paying them. The trial court dismissed the bill. On appeal to the Supreme Court the Act was held to be in contravention of the above section of the Constitution, and in discussing the provision of the Section prohibiting appropriations in aid of canals (pp. 340-344) the court said: "The constitution of a State derives its force and authority from the vote of the people adopting it. For that reason, it is a general rule that in construing the provisions of a constitution the words employed therein shall be given the meaning which they bear in ordinary use among the people. The natural and ordinary meaning of the words is to be accepted except where a word is used the meaning whereof is established by statute or by judicial construction. The word "aid," employed in the body of the sentence, has no such established meaning, or any technical meaning different from that given it by the lexicographers as the meaning thereof as understood generally among men. In ordinary acceptation it means to help to support; to assist; to sustain; to succor or to relieve; and so it is defined by Mr. Webster. The inhibition against making appropriations from the treasury of the State in "aid" of canals, if the word "aid" be given its natural and ordinary meaning, would deny to the Legislature the power to appropriate money from the treasury for any of the purposes of the Illinois and Michigan Canal here asked to be enjoined, if the word "canals," used in the body of the sentence, includes the Illinois and Michigan Canal.

"If the proviso had not been appended to the body of the sentence some weight and force would attach to the argu-

ment that the general word "canals," found in the body of the sentence, had no reference to the canal owned by the State: that it was absurd to speak of the State loaning its credit to itself, as the owner of the Illinois and Michigan Canal, and that a prohibition against the application of the public moneys in aid of canals should not, in reason, be understood to forbid the application by the State of moneys from the treasury to defray the necessary expenses of operating, repairing, maintaining and preserving a canal which belonged to the State: that under the correct interpretation and construction the prohibition was against lending the credit of the State or appropriating the moneys of the State in aid of railroads or canals, which individuals or private corporations owned or were preparing to construct as the business enterprises of private proprietors. The true constitutional intent can, however, only be ascertained by the careful consideration of the entire sentence,—the body thereof and the proviso,—for one of the offices of a proviso is to qualify the generality of the body of the sentence of which it is a part, though it can have no potency to enlarge the scope or force of the enactment. (*Sarah* v. *Borders*, 4 Scam. 341; *Huddleston* v. *Francis*, 124 Ill. 196; *In re Day*, 181 id. 73.) The office intended to be served by the proviso here in review is clear. Manifestly the proviso, though the words "any canals" are employed therein, had and has reference only to the canal that was owned by the State,—the Illinois and Michigan Canal. The State had the right to control and direct the application of the earnings of that canal, and of no other. Under the statutes then in force the "surplus earnings" of the Illinois and Michigan Canal were required to be paid into the treasury of the State, and the State had power to permit such surplus earnings to be drawn out of its treasury and applied to the extension or enlargement of the canal owned by the State. The State had no power to control the manner in which the surplus earnings of any canal other than the Illinois and Michigan Canal should be expended. The State owned but one canal,—the Illinois and Michigan Canal,—had power to control the surplus earnings of but that one canal, and the proviso had reference only to that canal. The words "any canal" were no doubt used in the proviso in an excess of caution, in order that the proviso might apply as well to any other canal of which the State

might possibly afterward become the owner, in order the restriction might be general and uniform, but it could in no contingency apply to a canal not owned by the State. The body of the sentence (the proviso being excluded) prohibits the appropriation of any of the public moneys "In aid" of canals generally. The proviso appended thereto authorizes the appropriation of the "surplus earnings" of the Illinois and Michigan Canal to the enlargement and extension of that waterway. The body of the sentence is general in its terms and its objects, and prohibits the appropriation of any of the public moneys in aid of any and all canals. The proviso qualifies the generality of this prohibition by excepting therefrom any moneys which have come into the treasury of the State from the "surplus earnings" of the Illinois and Michigan Canal, and by providing that any such surplus earnings may be devoted by the General Assembly to the purposes of enlarging or extending that canal. The rule of construction in such instances is that the proviso is to be strictly construed, and that it takes no case out of the prohibition declared in the body of the sentence other than the precise case that is included in the terms of the proviso.

"The proviso to the sentence of the Constitution here under consideration carves a special exception, only, out of the general inhibition in full force and vigor, save only to the extent it is qualified by the exception of the proviso. The proviso therefore takes out of the general inhibition that which, but for the proviso, would have remained within such general inhibition, and leaves within the general inhibition found in the body of the sentence all that is not specifically taken out by the terms of the proviso, strictly construed. The inhibition against the application of the public moneys that had been or should be gathered into the treasury of the State by taxation of the property of tax-payers of the State, to the purpose of "aiding" the canal, was not qualified by the proviso or in any manner affected thereby. On the contrary, the presence of the proviso demonstrates that it was the understanding of the framers of the constitution that the body of the sentence prohibited the appropriation of the public money in aid of the Illinois and Michigan Canal, and that the proviso was added for the purpose of so qualifying that prohibition that it might be lawful to use the "surplus earnings" of that canal which should come into the treasury in enlarg-

ing or extending it, if the General Assembly should ever deem that course to be desirable. Therefore, it seems to us to be so clear as to be beyond doubt or debate, that the proviso was annexed to the sentence for the reason it was the understanding of the convention that the word "canals," employed in the body of the sentence, was intended to include the Illinois and Michigan Canal, and that the body of the sentence, in the absence of the proviso thereto, would absolutely inhibit the appropriation of any of the public moneys in aid of that canal, and that as to the Illinois and Michigan Canal an exception to the general inhibition was intended, namely, that appropriations of the surplus earnings of the Illinois and Michigan Canal might be made for the purpose of extending or enlarging it. Such being the object intended to be secured by the addition of the proviso, it is unmistakable that it was the understanding of the framers of the Constitution that the body of the sentence absolutely inhibited the appropriations of the public moneys in aid of or for any of the purposes of the Illinois and Michigan Canal and that the proviso was added to qualify, in a degree, the generality of the language of the body of the sentence and to limit the inhibition against the appropriation of any money from the treasury of the State to the purposes of or in aid of the canal, to such an extent as would leave it within the power of the Legislature to appropriate the moneys which had come into the treasury from the surplus earnings of the canal to the extension or enlargment of that waterway.

"The constitutional intent, then, to be gathered from the entire provision is, that the power to sell or lease the canal shall remain with the people: that the control and management thereof, and the operation of the same, if that shall seem wise and best, should be possessed by the Legislature, to which power of management, control and operation there was attached an inhibition against the application of the public moneys which should be derived from taxation of the property of the citizens of the State to any of the purposes of the canal, but that any moneys which should be paid into the treasury of the State as surplus earnings of the canal might be drawn therefrom and applied to the extension or enlargement of the canal. The constitutional intent was and is, that the canal shall be self-supporting and that the people of the State shall not be taxed to aid it in any way."

And on page 356 of the opinion the court further said: "We are of the opinion that the true meaning of the constitutional provision with reference to the canal is, that the Legislature should have power to operate it to the extent, and to the extent only, that the income of the canal would defray the expenses of operation, maintenance and preservation, and that no moneys shall be appropriated from the treasury of the State in aid of the operation, maintenance or preservation thereof, and that if the earnings of the canal produced a surplus, appropriations of such surplus might be made to aid in the enlargement or extension of the canal, should the Legislature deem it wise to so appropriate such surplus."

We think it was the purpose of the framers of the Constitution when they wrote this section and of the people when they adopted it to prevent the maintenance and operation of the canal from ever becoming a source of expense to the State,—to protect the people from ever being taxed to support it—and to require the expenses and liabilities incurred in its maintenance and operation to be paid out of its earnings. The claims in question all arose out of the maintenance and operation of the canal and are only payable, if at all, out of the earnings of the canal, their payment out of the general revenues of the State being prohibited by the provisions of this section of the Constitution.

On April 22, 1871, "An Act to settle up and close the Trust of the Board of Trustees of the Illinois and Michigan Canal" was approved and went into effect. Section 2 of that Act made it the duty of the canal commissioners to take care of and exercise full control over the Illinois and Michigan Canal, and contained the following provisions: "*Provided*, that any claim, for which the State trustee is now liable, may be prosecuted against the said commissioners, and shall be paid by them out of the resources of the canal. *Provided*, that all moneys received for rents and tolls, not necessary for the expenses of the canal and for keeping the same in repair, shall be paid, quarterly, into the State Treasury, and that the rate of toll shall not be increased without the consent of the General Assembly." Prior to the adoption of the Constitution of 1870 it had been held that an action would lie against the State trustee for loss and damage occasioned by negligence in the management and operation of the canal.

The foregoing Act of April 22, 1871, was passed by the first Legislature elected under the Constitution of 1870 and shows that Legislature understood the new Constitution to prohibit appropriations for the payment of claims against the canal and required them to be paid out of its earnings.

On March 27, 1874, "An Act to revise the law in relation to the Illinois and Michigan Canal, and for the improvement of the Illinois and Little Wabash rivers" was approved and went into effect the first of July of that year. This Act gives the canal commissioners the control and management of the Illinois and Michigan Canal. Section 9 of the Act states the duties of the commissioners. The second paragraph of the section makes it their duty to keep the canal, locks and dams in good and sufficient repair and condition for use and authorizes them to "enter upon and use, overflow or damage any contiguous lands, and procure and appropriate all such material as in their judgment may be necessary or proper to be used in making such repair, build or construct any dam, lock, or other improvement, and may take proceedings in their official name to ascertain the compensation therefor in the manner at the time provided by law for the exercise of the right of eminent domain: *Provided,* that the damages, cost of materials and improvements shall in all cases be paid out of the net proceeds derived from tolls." The third paragraph of the section directs the commissioners to cause suits to be brought against persons trespassing on the canal, locks, dams and canal lands and then recites: "They may also appraise or cause to be appraised and adjust all claims for damages growing out of the negligence or carelessness of the persons in charge of said canal by means whereof parties navigating said canal shall sustain damages, and when so appraised or adjusted they may pay the same from the tolls collected, and make report thereof: *Provided,* that such claim for damages and appraisement therein in no single case shall exceed the sum of $100.00. If in excess of that sum they shall report the same to the Governor for further legislation." It will be observed that this section requires all cost of materials and improvements and all claims for damages to be paid out of the earnings of the canal, clearly indicating that the Legislature recognized the Constitution prohibited their payment out of funds derived from any other source.

By the enactment of The Civil Administrative Code of Illinois in 1917 the rights, powers and duties vested by law in "The Canal Commissioners" were given to the Department of Public Works and Buildings and, by the Act approved June 2, 1925, amending The Civil Administrative Code, they were conferred upon the Department of Purchases and Construction. None of these Acts, however, in any way changed Section 9 above mentioned except to transfer the powers and duties of the commissioners to said departments, and that section is still in full force and effect in so far as it relates to the payment of costs, expenses and damages out of the earnings of the canal.

In 1908 an amendment was adopted to separate section 3 of the Constitution which added thereto a provision authorizing the issue of bonds of the State in a total amount not to exceed Twenty Million Dollars to provide funds for the construction of a deep waterway from the present water power plant of the Sanitary District of Chicago near Lockport in Will County to a point in the Illinois River at or near Utica. This amendment did not alter the section as originally adopted except the proviso thereto which was changed to read as follows: "Provided, that any surplus earnings of any canal, *waterway or water power*, may be appropriated *or pledged*, for its enlargement, *maintenance* or *extension*." The words in italics are those added by the amendment. It is obvious that the added words do not change the construction we have given the section as originally framed. Their addition has the effect of making the prohibition of the section apply to the *waterway* or *water power* as well as to the canal.

Pursuant to the Constitutional Amendment of 1908 the General Assembly in 1919 enacted the Illinois Waterway Act devolving the construction, maintenance, control and operation of the waterway upon the Department of Public Works and Buildings. Section 2 of the Act describes the general route of the waterway and then provides: "If, in the judgment of the Department of Public Works and Buildings, the utilization of sections of the Illinois and DesPlaines rivers is not practicable or feasible, then the general route above described may be deviated from in such sections and in lieu thereof the Illinois and Michigan Canal may be used and improved, or channels outside of such rivers may be constructed." This provision clearly gives the Department

power to use portions of the canal under the conditions mentioned and such portions of it as they have used or may use in the construction of the waterway are or will become subject to the provisions of the Illinois Waterway Act. Section 23 of the Act provides the State shall be liable for damages to real estate which shall be overflowed or otherwise damaged by reason of the construction, maintenance or operation of the Illinois Waterway and for all damages to persons caused by its construction, maintenance or operation. Sections 24 and 25 provide how such damages shall be ascertained and paid.

Section 24 is as follows: "All claims for damages to persons (except to employees) and all claims for damages to property, real or personal, shall be ascertained, determined and fixed by the Department of Public Works and Buildings, and paid out of any moneys which shall from time to time be provided for the payment of such claims. In case the claimant and the Department of Public Works and Buildings cannot agree on the amount of such damages, the question shall be submitted to arbitration. The claimant shall select one arbitrator and the Department of Public Works and Buildings shall select another. If the arbitrators so selected cannot agree, then the two arbitrators shall select a third arbitrator. In case the two arbitrators cannot agree upon a third arbitrator, then the resident judge, or if there be none, the presiding judge of the Circuit Court of the county wherein the damages arose shall select such third arbitrator. The decision of a majority of such arbitration board shall be binding and conclusive upon the State and the claimant. The compensation of the arbitrators shall be fixed by the Department of Public Works and Buildings in advance of appointment and such compensation shall be paid by the State. All claims for damages to persons or property shall be filed with the Department of Public Works and Buildings within five years after the injury complained of."

Section 25 gives the Court of Claims jurisdiction in cases of accidental injuries or death suffered by employees arising out of and in the course of their employment while employed by the Department of Public Works and Buildings in the construction of the waterway or its appurtenances or any part or parts thereof.

The amendment of the Civil Administrative Code, approved June 2, 1925, transferred the powers and duties of the Department of Public Works and Buildings in relation to The Illinois Waterway to the Department of Purchases and Construction, and that Department is now clothed with all the powers and charged with all the duties given by the Illinois Waterway Act to the Department of Public Works and Buildings. It is clearly apparent from these constitutional and statutory provisions that the Court of Claims has no jurisdiction to pass upon claims for damages to property arising out of the construction, maintenance or operation of any portion of the Illinois and Michigan Canal. If the damages claimed relate to those portions of the canal incorporated in the Illinois Waterway, the amount of the damages must be ascertained, determined, fixed and paid in accordance with the provisions of said Section 24 of the Waterway Act. If they relate to portions of the canal not included in the Illinois Waterway and are such damages as are mentioned in Section 9, of the Act approved March 27, 1874, to revise the law in relation to the Illinois and Michigan Canal, then the amount of such damages must be ascertained and paid as provided by said Section 9 of that Act. If the damages claimed do not come under the provisions of either of those acts and arose out of the maintenance or operation of the canal the Constitution prohibits the appropriation of any money from the general revenues of the State for their payment, as such appropriation would be in aid of the canal.

Claimants urge that claims of like character as theirs have been allowed by this court. It may be that the court has heretofore made mistakes but that does not justify a repetition of the error. It is the duty of all tribunals when they become cognizant of having made an erroneous decision to refuse to follow such decision or recognize it as a precedent. Separate Section 3 of the Constitution plainly provides that appropriations from the State Treasury shall never be made in aid of the Illinois and Michigan Canal. The Constitution is the supreme law of the State,—it is a mandate direct from the people which executive, legislative and judicial officials are all bound to obey.

It necessarily follows from the views we have expressed that the demurrers must be sustained, and they are sustained accordingly.

The claims are therefore denied and the cases dismissed.

(No. 1320—Claimant awarded $800.00.)

KINNEAR STORES COMPANY, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.
Rehearing granted June 26, 1929.
Opinion on rehearing filed November 7, 1929.

FRANCHISE TAX—*failure to pursue legal remedies—voluntary payment.* Where franchise tax is voluntarily paid before the date when payment is due, and claimant fails to follow legal remedies in courts of general jurisdiction the claim will be disallowed.

REHEARING—*when rehearing will be granted.* Where a sufficient reason has been advanced by claimant a rehearing will be granted.

FRANCHISE TAX—*when award for tax erroneously assessed and paid will be made.* Where it appears from the evidence that an error was made in the assessment of corporation franchise tax upon issued capital stock an award will be made for such erroneous assessment and payment.

BROWN, HAY & STEPHENS, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover for franchise taxes alleged to be wrongfully collected by the Secretary of State on or about June, 1927.

As it has been held by this court a claimant of this kind should follow the legal remedy in courts of general jurisdiction, the Attorney General comes and presents his objection together with the fact that the payment complained of was made voluntarily before the date when payment was due.

Therefore it is recommended by this court that claim be disallowed.

On June 26, 1929, upon petition for rehearing the following additional opinion was filed:

This court is of the opinion that sufficient reason has been advanced by claimant for rehearing to grant a rehearing.

It is therefore considered by the court that a rehearing be granted.

On November 7, 1929, the following modified opinion was filed:

It appears by statement of the Attorney General and admitted by the Secretary of State that an error had been made relative to assessment of certain capital stock made by the office of the Secretary of State upon the issued capital stock of claimant. It is admitted that there is an error over-assessing the capital stock in the sum of Eight Hundred ($800.00) Dollars.

It is therefore considered by the court that claimant be awarded the sum of Eight Hundred ($800.00) Dollars.

(No. 1357—Claim denied.)

GEORGE CONWAY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 7, 1929.

NON LIABILITY OF THE STATE—*when State is not liable.* Where it appears from the evidence that ordinary care was not exercised the State is not liable for damages by reason of a collision with a State truck.

SNAPP, HEISE & SNAPP, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant, a married man having no children, was driving south on Scott Street in the City of Joliet on March 5th, 1928, and as he approached the intersection of Scott and Jackson Streets, from the north he claimed he slowed down and looked to the right and saw nothing except a State truck nearly a block away. Seeing no other cars he shifted gears and ran into the intersection at an increasing rate of speed. It is claimed the State truck, a Ford, without a speedometer, was being driven east by a laborer hired by the Highway Department. There was a collision. The State of Illinois contends that the employee of the State was on the right and states that there is conflicting evidence as to the speed of the car which the court is inclined to believe to be the case.

This court is of the opinion that if the drivers of these cars exercised ordinary care that no accident would have occurred. The court does not believe that the State of Illinois

should be held responsible for an accident based upon the facts as set out in this case.

Therefore it is ordered by the court that the claim be disallowed.

(No. 1448—Claim denied.)

THE VILLAGE OF NORTH UTICA, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 7, 1929.

STATUTE OF LIMITATIONS—*when claim barred.* Unless the claim is filed within five years after it first accrues the court has no discretion in the matter and must deny it regardless of whether it be based upon on a legal or equitable right.

ILLINOIS AND MICHIGAN CANAL—*when award in aid of Illinois and Michigan Canal prohibited.* An appropriation from the State Treasury to pay for repairs of a bridge over the Illinois and Michigan Canal would be in aid of the canal and is prohibited by separate Section 3 of the Constitution of 1870.

MUNICIPAL CORPORATIONS—*when power to repair bridges rests upon municipal corporation.* Where the legislature has conferred the power upon cities and villages to construct and repair bridges within their corporate limits, all other bodies are deprived of the exercise of such power, and the duty to keep such bridges in repair is upon such municipal corporation.

ILLINOIS AND MICHIGAN CANAL—*canal commissioners have no power to construct and maintain bridges over canal.* The Act to revise the law in relation to the Illinois and Michigan Canal approved March 27, 1874, gives no power to the canal commissioners to construct and maintain bridges over the Illinois and Michigan Canal.

HIBBS AND POOL, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for moneys alleged to have been expended by the Village of North Utica in the repair and maintenance of a bridge over the Illinois and Michigan canal during the years 1920 to 1927 inclusive and aggregating the total sum of $1,648.30. The declaration was filed February 28, 1929. It is conceded by claimant that $1,271.39 of this sum is barred by the statute of limitations, but it is urged that under the principle of equity and good conscience an award should be

made notwithstanding the statute. No award can be made against the State by this court unless the claim is based on some legal or equitable right. The statute creating the Court of Claims specifically provides: "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" etc. This statute is mandatory and the court has no discretion in the matter. If the claim be not filed within the time fixed by the law the court must deny it regardless of whether it be based on a legal or equitable right. The statute applies to "every claim against the State cognizable by the Court of Claims" which clearly includes both legal and equitable claims. The remainder of the demand is for repairs made less than five years prior to the filing of the claim and does not come within the inhibition of the statute.

If it be the duty of the State to keep the bridges over the canal in repair as part of the expense of operating it the cost of such repairs can only be paid out of the earnings of the canal. Separate Section 3 of the Constitution of 1870 provides: "The General Assembly shall never loan the credit of the State or make appropriations from the treasury thereof, in aid of railroads or canals: Provided, that any surplus earnings of any canal, waterway or water power, may be appropriated or pledged for its enlargement, maintenance or extension." This section applies to the Illinois and Michigan canal and prohibits appropriations from the State Treasury in aid of it. (*Hollenbeck et al.* v. *State*, Nos. 1111 to 1114, opinion filed this term; *Burke* v. *Snively*, 208 Ill. 328). If the repair of bridges over the canal be included in the expense of its operation an appropriation from the State Treasury to pay for such repairs would be in aid of the canal and is prohibited by the above provisions of separate Section 3 of the Constitution.

But we do not think the canal authorities were either clothed with the duty or given the power to maintain the bridges over the canal. By the common law the burden of opening and repairing highways and constructing and maintaining bridges rests upon the counties. (*The People* v. *Canal Trustees*, 14 Ill. 402.) This burden may be divided upon and between the county and smaller municipal divisions, and so

may the jurisdiction and duties of supervision and repair, as the legislature may think proper. The whole subject is under legislative discretion. (*Dennis* v. *Maynard*, 15 Ill. 477; *The People* v. *Wabash R. R. Co.*, 265 Ill. 530.) By the seventh clause of section 1 of article 5 of the Cities and Villages Act the legislature has devolved upon cities and villages the power to establish and open streets and alleys within their corporate limits and clothed them with the duty of maintaining such streets and alleys in a safe condition for public travel after they have been established and opened. By clause twenty-eight of the same section cities and villages are given the power to construct and keep in repair bridges, viaducts and tunnels within their corporate limits. By conferring these powers upon cities and villages the legislature deprived all other bodies of its exercise. (*The People* v. *I. C. C. R. Co.*, 266 Ill. 240.)

It is alleged in the declaration that the bridge in question is over the canal where it intersects Clark Street, and that said street is and for many years has been in the possession and under the control of the Village of North Utica. The bridge is, therefore, a part of Clark Street and the duty of keeping it in repair, is upon the village. (*People ex rel.* v. *Meyer*, 251 Ill. App. 475.)

The act to revise the law in relation to the Illinois and Michigan canal, approved March 27, 1874, in sections 8 and 9 very fully sets out the powers and duties of the canal commissioners relative to the control, management, operation and maintenance of the canal, its locks, dams and other improvements and appurtenances. Bridges are not mentioned any place in the act except in section 24. That section provides that no bridge shall be constructed across the canal by any one without having first submitted the plan thereof to the canal commissioners and obtained their consent thereto. When all the provisions of this act are considered it is obvious that the legislature did not intend to give the commissioners power to construct and maintain bridges over the canal but to charge them with the duty of preventing the construction of bridges in such manner as would or might interfere with its use for navigation.

The claim is therefore denied and the case dismissed.

(No. 840—Claim denied.)

L. Y. SHERMAN AND NOAH C. BAINUM, PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF SHERMAN & BAINUM, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1929.

LEGAL SERVICES—*when no award will be made for legal services rendered for the State.* No award will be made for legal services rendered the State where it appears that the Legislature is fully advised at the time the matter of appropriations for such services were considered by that body.

COURT OF CLAIMS—*an advisory body.* As a matter of law the Court of Claims is an advisory committee to the Legislature.

SAME—*province of the Court of Claims.* The province of the Court of Claims is to consider from a legal and equitable viewpoint the claims in which the Legislature has not the time and opportunity to consider.

SAME—*consideration of matters between different Departments of the State—exception.* Controversies between the Departments of the State should be determined between themselves, excepting where there is a mutual request for a determination of the subject matter by the Court of Claims.

SAME—*jurisdiction.* The Court of Claims will not take jurisdiction in matters wherein the Legislature is well informed.

C. H. JENKINS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed to recover for legal services in behalf of the State of Illinois. It is claimed and from the records in this case apparent that claimants performed services for the defendant under the direction of the Attorney General of the State. It is also shown by the record that the Legislature of this State failed to make sufficient appropriation to carry on the program of litigation as was then proposed by the Attorney General of the State of Illinois. The reasons for the Legislature failing to make the appropriation cannot properly be discussed here as this court is in the position as a matter of law an advisory committee to the Legislature. The province of this court is to study a proposition that the Legislature has not the time or opportunity to examine or consider from a legal and equitable viewpoint and to give our opinion on the particular line of facts, so the Legislature might be informed with the least inconvenience as to the

character of the claim presented and the equitable and legal reasons sought to be considered.

The Attorney General of the State of Illinois now comes and objects to this claim setting up that there are no legal or equitable grounds for an allowance in this case. Therefore the court must determine whether or not this is a case that the Legislature would require information. This court is of the opinion that this case is one which the Legislature was fully advised at the time the matter was considered by that body. That subsequent sessions of the Legislature had opportunity to consider the merits of this case and could have granted a remedy if that body so desired. This court is of the opinion that matters between the departments of this State should be determined between themselves as far as possible excepting in such instances where there is a mutual request for a determination of the subject matter by this court.

This court is reluctant about expressing an opinion or granting an award in matters wherein the Legislature is well informed and in view of the fact that the Attorney General of this State now comes and objects most vigorously, this court is of the opinion that it should not take jurisdiction in the matter involved in this issue.

It is therefore recommended by this court that the claim be dismissed.

(No. 1261—Claim denied.)

C. J. FREDRICKSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1928.

PROPERTY DAMAGE—*when no award will be made for.* Where property damage results from the negligence of a State employee no award will be made for such damages.

NEGLIGENCE—*State is not liable for negligence of its employees.* No government is liable for the negligence of its employees in the absence of a statute making it liable for such negligence.

ALSCHULER, PUTNAM, FLANNIGEN & JOHNSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $173.98 damages to claimant's automobile caused by the driver of a State truck negligently backing

the truck into the automobile of claimant.

The claim being based upon the negligence of an employee of the State cannot be allowed. No government is liable for the negligence of its employees in the absence of a statute making it liable for such negligence. (*Gibbon* v. *U. S.*, 8 Wal. 268; *Minear* v. *State Board of Agriculture*, 259 Ill. 549; *Hollenbeck* v. *Winnebago Co.*, 95 Ill. 148.) If the injury complained of was caused by the negligence of the driver of the truck, claimant's remedy is against the driver and not against the State. (*Cooney* v. *Town of Hartland*, 95 Ill. 516.)

The claim is therefore denied and the case dismissed.

(No. 1314—Claim denied.)

JOHN A. SMITH AND HELENE SMITH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.

Rehearing denied December 18, 1929.

PROPERTY DAMAGE—*when no award will be made for damage to property by reason of the construction of a hard road.* Where the record shows that the benefits to an adjacent property owner exceed the damages by reason of the construction of a hard road no award will be made.

REHEARING—*when rehearing will be denied.* The Court being fully advised in the premises finds no cause for a rehearing and therefore denies the petition.

JOHN LAUX, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court.

It appears that in the year 1924 and subsequent thereto, the claimants owned a piece of property at the intersection of route 19, State hardroad system. The property was located in the town of Fox River Grove. It is claimed there is a hotel and a boat and livery business on the property. In 1925 the State Highway Department built a bridge and it is claimed that the grade of the road approaching the bridge was raised from one to six feet.

The court, in going over the whole matter, is of the opinion that there must be some benefits to a claimant of this char-

acter in the building of the hard road by his place of business, and we do not believe the record in the case shows any damage beyond the benefits that can be considered.

Therefore, it is recommended that claim be denied.

On December 18, 1929, upon petition for rehearing the following additional opinion was filed:

This matter coming on to be heard upon petition for rehearing and the court being fully advised in the premises find no cause for rehearing.

Therefore petition for rehearing is denied.

(Claims denied.)

H. C. LAMPP, 1368; J. W. FINNEY, 1369, ELEANDER PYLE, 1379, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1929.

Rehearing denied December 18, 1929.

PROPERTY DAMAGE—*when claimant is barred by condemnation proceedings—Eminent Domain Act.* Where claimant has the right to have the question of damages, resulting by reason of the construction of a hard road, determined in condemnation proceedings under the Eminent Domain Act, and fails to have such damages determined, he is barred by the judgment in that proceeding from asking an award in this or any other court under the doctrine of *res adjudicata.*

SAME—*when conveyance of right of way will be presumed to cover all damage.* In a voluntary conveyance of a right of way over land to the State it will be conclusively presumed that all damages were included in the consideration paid for such conveyance the same as an assessment of damages in a condemnation suit would be presumed to embrace.

EQUITY AND GOOD CONSCIENCE—*when rule will not be invoked.* Where claimant fails to show that the claim is based upon some law making the State liable the rule of equity and good conscience will not be invoked.

REHEARING—*when rehearing will be denied.* The Court finds all questions raised in the petition for rehearing were considered in the original opinion and denies a rehearing.

ULYS PYLE AND CHARLES T. RANDOLPH, for claimants.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

By stipulation of the parties these three cases have been consolidated, and this opinion will apply to all of them.

The claims are all for damages alleged to have been caused to the lands of claimants by the construction of State Bond Issue Route No. 14. Route 14 extends east and west on the section line between Sections 13 and 24 in Township 5 South, Range 8 East of the Third Principal Meridian in White County. Claimant Lampp's land lies immediately south of and adjoining the road, being the Northwest Fourth of the Northeast Quarter of Section 24. Claimant Finney's land also adjoins the road on the south, being the Northwest Fourth of the Northwest Quarter of Section 24. Claimant Pyle's land is the Northeast Fourth of the Northeast Quarter and the Northeast Fourth of the Northwest Quarter of Section 24 and the Southeast Quarter and the East Half of the Southwest Quarter of Section 13, except that part of the East Half of the Southeast Quarter lying on the north side of the Louisville and Nashville railroad. The two forty acre tracts in Section 24 adjoin the hard road on the south and three forty acre tracts in Section 13 adjoin it on the north. The lands of all three claimants are in Seven Mile creek bottoms. Route 14 extends across this bottom for about two miles. All the lands in this territory are very flat and subject to overflow in times of heavy rainfall. Their only outlet for drainage is Seven Mile creek, which flows in a northeasterly direction and empties into the Skillet Fork of the Little Wabash river about five miles north of Route 14. Seven Mile creek is formed by two branches, called in this record the East Branch and West Branch. They unite in Section 13 some distance north of the hard road to form the main channel. These branches and the main channel of the creek are all shallow, very crooked and obstructed with logs, brush and drifts. This condition greatly retards the flow of the water and lessens the carrying capacity of the streams. Before Route 14 was improved by the State the streams would not carry the water in times of heavy rains and these bottom lands were at such times overflowed. Less than one half mile north of Route 14 and parallel with it the Louisville and Nashville railroad extends across the Seven Mile bottoms upon a grade which is considerable higher than the general level of the lands.

Route 14 was a public highway for many years before it was paved by the State, but was not graded up above the level of the adjacent lands to any considerable extent. When

the State took it over for improvement as one of the bond issue routes it built a grade some two miles long and about 5 feet high through this bottom. In this grade four openings were made where streams crossed the road, one being 120 feet long, one 80 feet long, one 40 feet long and one 12 feet long, all of them being 6 feet high or more above the bed of the streams.

The declarations of claimants are all substantially the same. Claimants Lampp and Finney charge the openings in the grade are not sufficient to permit the water to get away and that the grade catches the water and throws and holds it back on their lands and causes them to overflow, thereby rendering them unfit for cultivation and causing loss of crops. Lampp also charges that his dwelling house, barn and other buildings have been greatly damaged and rendered unfit for habitation etc. Claimant Pyle makes the same charges relative to his lands south of the road and, in addition, charges that on the north side of the road barrow pits were so constructed as to change the flow of the water of Seven Mile creek and bring it down across and onto his lands, thereby making his dwelling unfit for habitation, destroying his crops, etc., so that his farm has become worthless. Lampp asks $4,862.00 damages, Finney, $1,950.00 and Pyle $15,000.00. Lampp and Finney each have 40 acres of land and Pyle 306 acres, all claiming their lands have been rendered wholly worthless by the construction of the road in the manner in which it was constructed.

The right of way of Route 14 crosses lands of all the claimants. Pyle and Finney executed deeds conveying the necessary right of way over their lands to the State but Lampp refused to do so and the right of way across his land was taken under the provisions of the Eminent Domain Act, and he was awarded $50.00 damages. His claim in this court is for damages to land not taken for right of way purposes and which he alleges were caused by the construction of the road. We do not know whether or not, in the condemnation proceeding, he asked damages other than for the land actually required for the right of way. He had the right to have the question of damages to his other lands heard and determined in that proceeding; he not only had the right to do that but, if he claimed any such damage, it was his duty to make such claim in that suit. If he did make

such claim the award of $50.00 is, of course, final and binding and the matter cannot be again litigated in this or any other court. The Eminent Domain Act provides that when private property is taken or *damaged* for public use the compensation for such taking or *damage* shall be ascertained by a jury. The act contemplates that the entire compensation to be paid the owner, whether it be for land taken or land damaged or both, shall be ascertained by one jury and in one proceeding. It does not purpose that such compensation shall be assessed piecemeal, a part by a jury in condemnation proceedings and a part recovered in a separate action by the property owner who was the defendant in the condemnation case against the petitioner in that case. In *Springer* v. *Darlington*, 198 Ill. 121, at page 124, the Supreme Court announced the rule in such cases in the following words: "The doctrine of *res adjudicata* is not limited to those things which are actually pleaded and litigated, but it extends to every other matter properly involved in the litigation which might have been raised and determined in it." See also *Bennett* v. *Star Mining Co.*, 119 Ill. 9. Having had his day in court where every question raised in this case either was or might have been litigated claimant is barred by the judgment in that proceeding from asking for any award in this.

Claimants Pyle and Finney executed deeds conveying to the State the right of way required for the road in 1923. Where a person conveys a right of way over his land it will be conclusively presumed that all the damages to the balance of the land, past, present and future, were included in the consideration paid him for his conveyance the same as an assessment of damages on a condemnation would be presumed to embrace. The conveyance of the right of way to the State by Pyle and Finney had the same effect upon the parties to the deeds that a condemnation for the same lands would have had. If the right of way conveyed by them had been acquired by condemnation not only would the compensation for such right of way have been determined in that proceeding by the damages to their other lands caused by the construction of the road would also have been assessed. It follows that had the State condemned this right of way no recovery could be had by these claimants for the damages here sued for. They would have been included in the assessment of damages made on the condemnation, and whether in

fact included or not, they would be conclusively presumed to have been included. The same result follows from the voluntary conveyance by them of the right of way to the State. *Chicago, Rock Island and Pacific Railway Co. v. Smith*, 111 Ill. 363. The conveyance of the lands for the barrow pits was for the purpose of removing dirt therefrom to make the fill or grade of the highway, and specifically recited that the grantor waived all damages of every name and nature that might accrue to him because of the pits or of any excavation or removal of material therefrom. Having waived all damages that he might suffer by the excavation of the barrow pits he cannot now maintain an action for them. The fact that contract was made with the State does not make it any the less binding upon him nor relieve him from its enforcement.

Claimants say that in equity and good conscience they should be reimbursed by the State for their losses caused by the construction of the road. The road in question is one of the public highways of the State. It could not be improved and made safe for continuous travel without being graded. Its improvement required additional right of way for the road proper and also the so called barrow pits from which material might be obtained to make the necessary grade. This right of way could only be had in one of two ways,—by condemnation or by the voluntary conveyance by the owners of the land. Lampp allowed his to be condemned, and his compensation was fixed in the manner provided by law in such cases. This court has no jurisdiction to review that proceeding,—it has no appellate jurisdiction—and the judgment in the condemnation suit is *res adjudicata* of the question. Pyle and Finney conveyed the right of way to the State voluntarily. They did not have to do so, but having done so they are held to the legal effect of the conveyance. It follows that neither of claimants has any legal cause of action against the State.

Before claimants can have an award against the State they must show their claim falls within the provisions of some law making the State liable to pay them. If they cannot point to such law they cannot invoke the principle of equity to secure an award. Where there is no legal liability equity cannot create one. (*10 R. C. L.*, sec. 132, p. 383.)

Equity is not the court's sense of moral right; it is not the power of the court to decide a case according to a high standard of abstract right, regardless of the law; it is a complex system of established law. Clearly claimants have shown no equitable cause of action against the State. It was not the intention of the Legislature to clothe this court with the power to make awards unless the facts show such awards are based on either legal or equitable demands. It follows, therefore, that the claims cannot be allowed as a matter of equity.

Claimants cite *Peterson et al.* v. *State*, 5 Ct. Cl. 409, as authority for the allowance of their claims. In that case this court did not pass upon the claims involved. The Attorney General and counsel representing the claimants entered into a stipulation that certain specified sums should be allowed the claimants and all this court did was to recommend that the claimants be allowed the amounts so stipulated, leaving the Legislature to decide whether or not they should be paid, and is not an authority upon any question.

The claims are therefore denied and the cases dismissed.

On December 18, 1929, upon petition for rehearing the following additional opinion was filed:

Claimants filed their petition for a rehearing in the above cases on the 5th day of October, 1929. The court, after a careful consideration of this petition, finds that all questions raised in it were carefully considered and passed on in the original opinion in these cases.

The petition for rehearing, is therefore denied.

(No. 1469—Claim denied.)

BLANCHE KAUFMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1929.

PERSONAL INJURY—*when State not liable.* The State is not liable for the negligence of its agents or employees, and if injuries result from the negligence of employees of the State, such negligence is the negligence of the employees and not of the State.

MUNICIPAL CORPORATIONS—*when court has no jurisdiction to consider claims against a municipal corporation.* The West Chicago Park Commissioners is a municipal corporation, and has exclusive control of the parks, streets, and boulevards within its jurisdiction and the Court of Claims has no jurisdiction to consider claims for personal injuries sustained by reason of the negligence of a municipal corporation.

WILLIAM H. KATT, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant asks an award of $2,500.00 for damages caused by a fall on a sidewalk of Jackson Boulevard in the City of Chicago on October 9, 1928. She alleges the sidewalk was in the possession and under the control of the State and that the State wrongfully and negligently suffered the same to be and remain in bad and unsafe repair and broken condition and that such condition caused her to stumble and fall and dislocate her knees. It has been often decided by this court that the State is not liable for the negligence of its agents and employees. If claimant was injured through the negligence of employees of the State, the negligence was the negligence of the employees and not of the State. (*Cooney* v. *Town of Hartland*, 95 Ill. 516.)

The evidence in this case shows, however, that Jackson Boulevard was under the control of the West Chicago Park Commissioners at the time of the alleged injury. The West Chicago Park Commissioners is a municipal corporation, and has exclusive control of the parks, streets and boulevards within its jurisdiction. (*West Chicago Park Com'rs.* v. *Chicago*, 152 Ill. 392.) Such streets as are not under the control of the various boards of park commissioners are under the control of the city. The State has nothing to do with their maintenance, that duty having been delegated to the city and park commissioners.

If claimant was injured through the negligence of the agents of either the city or park commissioners her remedy is against the municipality causing her injury and not against the State, and this court has no jurisdiction. (*Perkins, Fellows & Hamilton v. State*, 4 Ct. Cl. 197.)

The claim is denied and the case dismissed.

(No. 1479—Claim denied.)

SAM PERETZ, ADMINISTRATOR OF THE ESTATE OF GEORGE PERETZ, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1929.

PERSONAL INJURY—*State is not liable for the death of a pupil resulting from injuries sustained while attending public school.* School trustees, school districts and boards of education are local *quasi* corporations and exist for the sole purpose of performing the duties necessary to the maintenance of free schools within their respective jurisdictions, and in the exercise of these duties it is but an agency of the State, and the State is never liable for damages caused or suffered by the negligent or careless conduct of its agents or servants.

PLEADINGS—*when declaration fails to state a cause of action.* When the declaration fails to state a cause of action a demurrer thereto will be sustained.

MILLER, GORHAM AND WALES, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The declaration alleges that on April 19, 1928, Plamondon Public School in the City of Chicago was under the jurisdiction of the Board of Education of the City of Chicago; that along the north yard of the school was an eight foot brick wall built to protect the pupils from traffic in an alley running along the school yard; that plaintiff's intestate, George Peretz, was a pupil at the school: "that it was the duty of the Board of Education of the City of Chicago through its employees, agents and servants to inspect, maintain and keep in repair the said wall so that it would not be likely to cause injury to anyone upon the premises, but that the Board of Education through its employees, agents and servants wholly failed in its duty to keep the wall in a safe condition;" that

on the 19th day of April, 1928, while plaintiff's intestate in the exercise of all due care and caution was lawfully on said premises as a pupil at said school, said wall "by reason of and as a proximate result of the aforesaid negligence of the employees, agents and servants of the Board of Education of the City of Chicago, suddenly collapsed and fell, pinning the said George Peretz underneath much debris from which he received and suffered fatal injuries, whereof he died on the 19th day of April, A. D. 1928." The declaration also alleges the appointment of claimant as administrator of the deceased, the heirs of deceased, etc., and asks an award of $10,000.00 against the State. To this declaration the State has filed a general demurrer.

There is nothing in the declaration, or the argument in support of it, indicating upon what theory claimant has filed his suit against the State instead of the Board of Education of the City of Chicago. The declaration itself shows if claimant has any cause of action it is against the Board of Education and not against the State. The constitution has imposed upon the General Assembly the duty of providing "a thorough and efficient system of free schools, whereby all children of this State may receive a good common school education." (Constitution, Sec. 1, Art. 8). In compliance with this provision of the constitution the General Assembly has created school trustees, school districts and boards of education and imposed upon them the duty of maintaining schools in their respective jurisdictions. They are clothed with certain specified powers and charged with the performance of certain named duties, but such powers and duties are limited to the territory included within their boundaries. They are local *quasi* corporations created by general law to aid in the administration of the government in their respective localities. They own no property, have no corporate interests and derive no special benefits from their corporate acts. They are mere agencies of the State existing for the sole purpose of performing the duties necessary to the maintenance of free schools within their respective jurisdictions. They can only act through agents and servants and are not liable for damages caused by the negligence or carelessness of such agents and servants. (*Kinnare* v. *City of Chicago*, 171 Ill. 332; *Lindstrom* v. *City of Chicago*, 331 Ill. 144; *Lincke* v. *Moline Board of Education*, 245 Ill. App. 459).

The Board of Education of the City of Chicago is given general management and supervision of the public schools of the city and is charged with the duty of maintaining an efficient public school system in the city whereby all the children of the city may receive a good common school education. It is clothed with all the powers necessary to effectually perform that duty. In the exercise of these duties it is but an agency of the State, and the State is never liable for damages caused or suffered by the negligent or careless conduct of its agents. (*Lindstrom* v. *City of Chicago, supra; Kinnare* v. *City of Chicago, supra.*)

The declaration fails to state a cause of action against the State and the demurrer must be sustained.

The case is therefore dismissed.

(No. 1498—Claim denied.)

BERTHA E. WILSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1929.

PERSONAL INJURY—*when no award will be made.* Where it is apparent from the evidence that the State is in no way responsible for an accident resulting in personal injuries but due to the lack of care on the part of claimant no award will be made.

WORKMEN'S COMPENSATION ACT—*maintenance of insane hospital not extra hazardous enterprise—when no award will be made under.* No award will be made under the Workmen's Compensation Act because the maintenance of a hospital for the insane is not an extra hazardous enterprise and because the injuries complained of did not arise out of and in the course of her employment.

MANUEL M. WISEMAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed as an attendant at the Alton State Hospital for the Insane. In the basement of Amusement Hall there is a bowling alley which the employees are permitted to use. On Sunday evening, March 31, 1929, claimant and another employee started to the bowling alley. A flight of seven or eight steps led from the outside down to the basement where the bowling alley was located. It was dark and

raining and claimant was carrying an umbrella. When they reached the steps her companion went down ahead of her. Claimant turned to put down her umbrella as she started down the steps and missed the first step causing her to fall to the bottom. She was assisted to the hospital where she was examined by the physician in charge and given treatment. She remained in the hospital about five days and was discharged as cured. She was told by the physician to go back to work and did so, and has continued to do her work ever since. She claims the second vertebra was fractured and her spine otherwise injured and that her nervous system has been permanently injured, and asks an award of $5,000.00.

At the time she received her alleged injuries claimant was not engaged in any duties of her employment. Her services for the day ended and she was going to the bowling alley for her own amusement. She was thoroughly familiar with the location of the steps and knew they were not lighted. It is apparent from the evidence that her fall was caused by her own lack of care. It was an accident for which the State officials were in no way responsible. Had her injury been caused by the negligence of the agents of the State she would not be entitled to recover, as the State is never liable for the negligence of its officers and agents. She is not entitled to compensation under the Workmen's Compensation Act (1) because the maintenance of a hospital for the insane is not one of the enterprises declared by section 3 of that Act to be extra hazardous, and (2) because her injury did not arise out of and in the course of her employment.

The evidence clearly shows she was not permanently injured and that none of her vertebra was fractured. She was able to go back to her work in five or six days after the accident and has been at her work ever since. Under no theory is she entitled to an award.

The claim is therefore denied and the case dismissed.

(No. 1532—Claimant awarded $2,898.00.)

RAY H. ALLEN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1929.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where the evidence shows claimant, a state employee, received injuries in course of employment an award will be made and the amount measured under the Workmen's Compensation Act.

CHIPERFIELD & CHIPERFIELD, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that the claimant was employed by the Western Illinois State Teachers College at Macomb, to officiate as a referee in a basket-ball tournament and while thus employed, the claimant received an injury by being struck by a basket-ball thrown by one of the team of the State School for the Deaf, which struck the claimant in his right eye and caused him to lose the sight thereof.

Following precedent, this claim should be measured under the Workmen's Compensation Act. There is no contradiction as to the question of the loss of the sight of the eye and the only evidence as to medical service and hospital aid, given to claimant amounted to $1,098.00.

As this court views the law, the claimant could only be properly allowed $15.00 per week and for 120 weeks, making a total of $1,800.00.

Therefore, this court recommends that claimant be allowed $2,898.00.

(No. 1542—Claim denied.)

GEORGE WOLFE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1929.

RES ADJUDICATA—*when plea of former adjudication will be sustained.* This cause having been heard and decided at the September 1924 Term it will not be decided again and the plea of former adjudication will be sustained.

GEORGE WOLFE, pro se.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant asks an award for damages alleged to have been caused by mistreatment he received in 1912 and 1913 while a prisoner in the State Reformatory at Pontiac. He charges that while he was a prisoner there he was assaulted and beaten by the guards, physicians and other officials, as a result of which he became sick and suffered loss of memory and other mental and physical disorders. To the declaration the State has filed a plea of former adjudication.

Claimant filed a claim in this court based on the same facts and circumstances as this claim in 1921 and upon a hearing thereof the same was denied at the September term, 1924. (*Wolfe* v. *State*, 5 Ct. Cl. 18.) The cause having once been heard and decided by this court will not be considered again.

If the claim had not been previously considered and determined against claimant it would have to be denied as it has long been barred by the Statute of Limitations.

The claim is denied and the case dismissed.

(No. 1332—Claim denied.)

ALLYN C. BREED, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1930.

PERSONAL INJURY—*when no award will be made.* Where it appears from the evidence that the driver of an automobile fails to exercise reasonable caution while driving upon a State highway no action will lie against the State, and the claim will be denied.

SCHOLES, O'CONNOR & DOUGHERTY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant, was riding from Freeport, Illinois, enroute to Rock Island, Illinois, on the fifth day of July, 1927, the car being driven by the wife of claimant by whom it is alleged that the car was being driven at the rate of thirty to thirty-five miles an hour and at a point about three miles East of Morrison, Illinois, in passing another automobile going in the opposite direction, the right rear wheel dropped off the pavement and in an attempt to get the car back on the pavement, on account of the alleged fact that the shoulder was six inches below the pavement, which caused the car to swerve and run off the road into the ditch injuring the claimant's wife and daughter.

From all of the facts and circumstances in the case, it would not appear that a prudent driver would recognize a necessity of going off the pavement under the circumstances in question and therefore, it is the opinion that no action should lie against the State of Illinois.

It is also shown that the shoulder was not six inches below the pavement and that if reasonable caution was exercised by the driver of the car in question, that no accident should occur.

This court recommends that this claim be disallowed.

(No. 1412—Claim denied.)

R. F. CONWAY CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 7, 1929.

Rehearing denied January 15, 1930.

CONTRACTS—*when no extra compensation will be allowed under a contract for the construction of a hard road.* Where it appears from the evidence that claimant received full compensation under the contract for the construction of a hard road no award will be made for extra expense incurred in such construction on the grounds that to allow such extra compensation would be in violation of Section 19 of Article 4 of the Constitution which provides that "The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made," etc.

REHEARING—*when rehearing will be denied.* Where the petition for rehearing discloses no reason for changing the views expressed in the opinion denying the award, a rehearing will be denied.

E. S. & J. W. CUMMINGS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On April 22, 1924, claimant entered into a contract with the State to construct section 23 of State Bond Issue Route No. 18 in Bureau County. Claimant was to furnish all labor and material necessary for the construction of the road and was to do the work in accordance with the plans and specifications therefor, the proposal to contractors, bond, specifications and plans all being made a part of the contract. The work was started and had progressed to within about a mile of the Village of LaMoille when claimant was notified that about one half mile of the road would not be built because the right of way for that portion had not been procured from the owner of the land. When the work reached the point where the right of way had not been secured claimant, at the direction of the State Engineer, moved its equipment forward about one half mile and proceeded with the work. In about a month after that move the engineers notified claimant that the State had decided to build the omitted portion of the road and asked claimant to proceed with the construction of it. Claimant asked the engineers if it would be paid any

extra compensation if it moved its equipment back and built the omitted portion and was told by all of them they were not authorized to state that any extra compensation would be allowed, and no one representing the State ever promised to pay any extra compensation or assured claimant that it would receive any. Claimant then moved part of its equipment back and constructed the omitted portion of the road for which it was paid the full contract price, but no extra compensation was paid or allowed. When the entire road was completed it was received by the State and claimant was paid in full in accordance with the terms of its contract for all the work done.

Claimant now asks for an award of $4,000.00 to compensate it for alleged extra expense incurred by being required to skip the omitted portion of the road and then return and build it later.

In its contract claimant agreed to construct the portion of the road skipped, it was a part of the work claimant contracted to do. It was not extra work but had it been claimant could not recover for many of the items making up its demand, as the specifications provide no charge shall be made for them should work not covered by the plans and specifications be done by the contractor. As claimant is barred from recovery on other grounds it is not necessary to discuss those items in detail.

Section 19 of Article 4 of the Constitution provides that "the General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made," etc. This provision of the Constitution is mandatory and binding upon the Legislature and all courts of the State. (*Pachen Bros.* v. *State,* No. 760, opinion filed Sept. 13, 1927.) Its language is clear and unambiguous and its purpose cannot be misunderstood. *Fergus* v. *Brady,* 277 Ill. 272.) It was adopted by the people to protect themselves from the mischiefs and evils likely to arise out of claims such as this. (*Dunnegan Construction Co.* v. *State,* No. 1021, opinion filed Sept. 10, 1929.) The contract between claimant and the State required claimant to do the work in question and fixed the compensation it was to receive for doing the work. The work has been completed and the con-

tract price for it fully paid and no extra compensation can now be allowed. To do so would be a patent violation of the above provision of the Constitution.

The award is therefore denied and the claim dismissed.

On January 15, 1930, upon petition for rehearing the following additional opinion was filed:

Claimant has filed a petition for rehearing and reconsideration of this case. We have duly considered the reasons set forth in the petition for a reconsideration of the case and find no reason for changing the views and reasons given in the opinion denying the award. The petition for a rehearing is therefore denied.

(No. 1474—Claimant awarded $6,147.29.)

HARTMANN-CLARK BROS. COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.
Rehearing granted June 26, 1929.
Modified opinion filed January 15, 1930.

CONTRACTS—*when State not liable for losses sustained by reason of weather conditions.* The State is not liable for losses sustained under contract for construction of a girder bridge by reason of weather conditions unless the same is specified in the contract.

REHEARING—*when rehearing will be granted.* The Court being fully advised in the premises grants a rehearing.

CONTRACTS—*when award will be made.* Where the correctness of the claim has been approved by the State Highway Department, and the Attorney General concurs in the belief that claimant has suffered damages an award will be made.

E. V. CHAMPION, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant an Illinois corporation, entered into a contract with the State of Illinois by its Department of Public Works and Buildings for the erection and construction of a girder bridge on a part of the State Bond Issue Route No. 24, Tazewell County, Illinois. It appears by said contract that

claimant was to receive the sum of $23,131.90. The claimant entered upon the performance of his contract and it is alleged that on or about the 27th day of May, 1927, an unprecedented flood occurred which washed away the construction work done on said bridge with materials to be used in the construction of said bridge together with tools belonging to claimant causing claimant a loss for which he asks to recover the sum of Ten Thousand ($10,000.00) Dollars. It further appears after said flood and loss that the Highway Department thought it best to discontinue the contract. The court fails to find that any protest was made by claimant on this ground.

The Attorney General comes and submits the matter to this court for such disposition as the court would care to make.

This court is of the opinion that it would be an unusual precedent to attempt to reimburse a contractor in a loss of this character, it being assumed by the court that a contractor would enter upon a project of this kind mindful of the hazards attendant thereto and while it is unfortunate for claimant to sustain this loss, yet it would appear that a private corporation would not be expected to undertake the problem of underwriting a hazard of this character. The court does not think the State of Illinois ought to be called upon to insure a roadbuilder or bridgebuilder against weather hazards unless the same is specified in the contract.

Therefore it is recommended that the said claim be denied.

On June 26, 1929, upon petition for rehearing, the following order granting rehearing, was filed:

The petition for rehearing coming on to be heard, by the Court, and the Court being fully advised in the premises finds that petition for rehearing should be granted and therefore the same is hereby granted.

On January 15, 1930, the following modified opinion was filed:

This is a case that has heretofore been passed upon by the court and claim denied and rehearing granted and now the matter comes on for rehearing and the court feels that the expenses incurred, by claimant, the correctness of which was approved by the State Highway Department, and the

defendant, through the Attorney General concurs in the belief that claimant suffered damages in the sum of $6,147.29.

Therefore, the court recommends that claimant be awarded the sum of $6,147.29.

(No. 1481—Claimant awarded $400.00.)

A. N. PIERCE, GEORGE PIERCE, AND JOSEPH PIERCE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1930.

PROPERTY DAMAGE—*when award will be made.* The Court finds from all the facts and circumstances that damage and loss of crops resulted by fire from an asphalt tank furnace used upon a State highway spreading upon claimant's land and recommends an award to cover such damage.

ROLLA BABCOCK, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim to recover damages suffered by claimants on April 5th, 1929, caused by reason of a fire communicated from an asphalt tank furnace of the defendant while working along and upon the State road, bordering upon claimant's property.

From all facts and circumstances, it would indicate that the fire was communicated from coals of fire from this tank and that about forty acres of clover crop of the claimants, was damaged and destroyed.

The claimants ask for $20.00 an acre, or $800.00 as reasonable damage, but from all of the evidence in this case, this court is convinced that, that allowance would be more than the facts would permit; however, there should be some allowance and the court recommends that claimants be allowed $10.00 an acre, for the loss of the clover crop in question, or a total of $400.00.

Therefore, we recommend an award in the amount of $400.00.

(No. 1504—Claimant awarded $125.00.)

ELMER FLESBURG, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1930.

ANIMALS—*when award will be made—equity and good conscience.* Where it appears from the evidence that a bovine tuberculosis test was hazardously made by a State Veterinarian which resulted in the death of the animal an award will be made on the grounds of equity and good conscience.

FRED W. POTTER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant a farmer located in Roberts township, Marshall county, Illinois, claims damages for the loss of a cow. It is alleged that the animal died from fright occasioned by being tested by the State veterinarian for tuberculosis. It is claimed further that the cow in question gave birth to a calf and that the veterinarian insisted that this cow be tested with the other cattle although the owner protested that on account of the delicate condition of the cow that the test would be very dangerous. However it appears that the test was then and there made and the cow died shortly after the test.

This court is of the opinion that the intent of the law to protect animal industry and eradicate the disease in question was to protect owners as far as possible and from all the records we are of the opinion that the test made in question was at least hazardously made on an animal as it appears was done in this case. It is therefore considered by the court that an allowance should be made for the animal in question and as a matter of equity and good conscience this court recommends that the sum of One Hundred and Twenty-five Dollars be allowed.

(No. 1514—Claim denied.)

E. O. ERICKSON, AND LENA ERICKSON, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1930.

PROPERTY DAMAGE. This case is controlled by the decision announced in the case of HENRY RICKEIM, No. 1513.

TOM W. SMUBB, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The declaration and pleadings in this case are identical with those in *Rickeim* v. *State*, No. 1513, and for the reasons set forth in the opinion filed in that case this claim is denied and the case dismissed.

(No. 1515—Claim denied.)

JOSEPH BERTA, AND VIRGINIA BERTA, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1930.

PROPERTY DAMAGE. This case is controlled by the decision announced in the case of HENRY RICKEIM, No. 1513.

TOM W. SMUBB, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The declaration and pleadings in this case are identical with those in *Rickeim* v. *State*, No. 1513, and for the reasons set forth in the opinion filed in that case this claim is denied and the case dismissed.

(No. 1522—Claim denied.)

UNION BANK OF CHICAGO, ADMINISTRATOR OF THE ESTATE OF MARY ROTCHILD, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1930.

PERSONAL INJURY—*when court has no jurisdiction.* The court is without jurisdiction in a claim for personal injuries resulting in death by reason of an accident in Humboldt Park, Chicago, Illinois, which park is under the jurisdiction of the West Chicago Park Commissioners, a board that is capable of suing and being sued, and cites the rule laid down in *Perkins, Fellows & Hamilton* v. *State*, 4 Court of Claims, 197.

DAILEY & SCHRADZKI, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim based on an alleged fact that Mary Rotchild a minor aged 10 years was playing upon a slide in Humboldt Park, located in the City of Chicago, Illinois, and it is claimed that said slide was not in good order and proper repair, the guard rails being broken off. It appears that the said child fell from said slide and was injured to such an extent that she died from same on the 30th day of July, 1928.

The defendant through the Attorney General comes and files a demurrer and the consideration of this claim now rests upon a question of law which the court wishes to cite its position in the case of *Perkins, Fellows & Hamilton* v. *State of Illinois*, which appears in Court of Claims Reports, volume number 4, page 197, and therefore this court finds no reason to depart from this rule as it cannot be urged that said Humboldt Park is not under the jurisdiction of the West Chicago Park Commissioners capable of suing and being sued.

Therefore it is the opinion of this court that the Court of Claims is without jurisdiction in the matter of this suit and the demurrer is sustained.

(No. 1235—Claim denied.)

LUKE NOLAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.

HIGHWAYS—*when State not liable for loss of property resulting by reason of a defective highway.* Where it appears from the evidence that the highway has not been taken over by the State the court is without jurisdiction to make an award for the loss of property by reason of such defective highway.

JOSEPH R. MARTIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant, the owner of a certain horse named Prince, 8 years old, while driving said horse along the highway running to Cuba from the north.

Near the City of Cuba there was a mud hole according to the allegations of claimant and in attempting to pass this spot the horse became mired in said mud hole and sustained a broken leg which it is claimed made it necessary to kill the horse.

It is contended by the State that the highway in question was not taken over by the State under either the $60,000,000 or $100,000,000 bond issue but still being a State aid road and this court would be without jurisdiction.

From all the evidence in this case, it is the opinion of this court that the contention of the defendant is correct and therefore said claim is disallowed.

(No. 1299—Claim denied.)

FOREMAN TRUST & SAVINGS BANK, ADMINISTRATOR OF THE ESTATE OF MICHAEL CORDASCIO, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.

PERSONAL INJURY—*when no award will be made on grounds of attractive nuisance.* Where it appears from the record that it is doubtful whether or not an attractive nuisance existed no award will be made either as a matter of law or equity and good conscience for injuries sustained resulting in death while claimant's intestate was playing upon the premises of Research and Educational Hospital.

WM. E. RODRIGUEZ & JOHN E. MOLONY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON and ROY D. JOHNSON, Assistants Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that Michael Cardascio, fourteen years old, was playing on the premises of the Illinois State Research Hospital located at 1819 West Polk Street, in the City of Chicago, together with other boys. It appears further by claimant's statement that an iron gate was resting against a brick and stone gate post and it is alleged that the iron gate provided a kind of a ladder upon which the children could climb. It appeared Michael climbed to the top of the gate and while attempting to take hold of the stone ball which was part of the masonry on said gate post, it broke loose from the post causing Michael to fall downward onto one of the iron pickets which injured him to such an extent that he died on the same day. The main claim was based on the fact as alleged that defendant was maintaining an attractive nuisance.

It would seem that defendant would be drifting far into an avalanche of responsibility to assume a liability in this case. In close examination of all the files in the case the court is of the opinion that there is a doubt as to whether or not an attractive nuisance prevailed as alleged by claimant. It can be assumed with reason that it is almost impossible to create a neighborhood where children would play and not encounter danger of any kind. There is constant danger in

almost all walks of life and to start in to anticipate the possibilities would be a grave undertaking. Children are injured in their own homes, on the streets, in the school grounds and play grounds and to attempt to impose an obligation upon the taxpayers of Illinois in a claim of this kind, would in the opinion of this court go far beyond the problems of the Court of Claims.

It is expected of this court that all reasonable demands be met fairly and justly but it is the opinion of the court that in this case equity and good conscience in the matter of an allowance cannot be considered and of course as a matter of law no claim could attach in this case.

Therefore this court recommends that said claim be disallowed.

(No. 1339—Claim denied.)

GREEN & SONS COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1929.
Rehearing denied March 12, 1930.

CONTRACTS—*when failure to publish notice of time and place at which proposals shall be received for entering into contracts will not entitle claimant to an award.* Claimant entered into a contract with the State to superintend the construction of the retaining wall, lock and dam for the Brandon Road pool of the Illinois Waterway, and was to receive for such service a commission of ten per cent on the fee cost of the contract: *Held*, that the agreement upon which the claim is based is invalid in that Section 13, Paragraph 91, Chapter 19 of the Illinois Waterway Act, requiring prior publication of notice of the time and place at which proposals shall be received for entering into contracts where such contract entails the expenditure of Five Thousand Dollars or more, has not been complied with.

REHEARING—*when rehearing will be denied.* When the court is fully advised in the premises and finds no reason to change the opinion heretofore rendered the petition for rehearing will be denied.

DENT, DOBYNS & FREEMAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This claim is brought against the State of Illinois for the sum of $50,692.49 for compensation for eight months service

by it as Superintendent of Construction on contracts numbers 5 and 6 on the Illinois Waterway, known as the retaining wall, lock and dam for the Brandon Road Pool.

The services claimed on, were performed during eight months between November 1st, 1927 and July 1st, 1928. The claim is based on an agreement, that the State agreed to furnish all of the material and labor by direct employment for performance of the contracts and agreed to employ Green & Sons Company and its officers, Robert H. Green, Earl R. Green and Roy Shackleton in the superintendence of the construction and pay for such service, a commission of ten percent on the fee cost of the contract.

The defendant, the State of Illinois, comes and files their demurrer, and the issue now before the court, is upon same.

In the first instant, the court wishes to cite section 13, paragraph 91, chapter 19 of the Illinois Waterway Act, Smith-Hurd's Revised Statutes, 1927, as follows:

"Before any contract entailing the expenditure of Five Thousand Dollars or more is entered into, public notice shall be given of the time and place at which proposals shall be received for entering into contracts, which notices shall be previously published for at least once a week for four weeks in two daily newspapers printed in the city of Chicago, in two engineering and contracting journals of general circulation in the United States, and in such other publication as may be deemed proper."

The court is further of the opinion that the real intent of the Legislature in all acts affecting the taxpayers of the State in all matters, and involving the expenditure of considerable sums of money, is to give every opportunity for competitive bids.

It would seem that if power is given, or intended to be given by the Legislature to officers of the State to enter upon any contract, or arrangement for the expenditure for large sums of money without the public having full knowledge and opportunity of bidding as contemplated by the above cited section of the statute, that injustice might be done.

From the records, there is nothing to disclose that the matter was not entered into in good faith by claimant and the officers making the agreement with them, but it is the opinion of the court that this agreement upon which this claim is based was invalid as is set forth in the Attorney General's opinion in this case.

This court is further of the opinion, therefore, that the State of Illinois, is not bound in view of all the facts before

the court, and the court hereby sustains the demurrer of the defendant, the State of Illinois.

On March 12, 1930, upon petition for rehearing the following additional opinion was filed:

This matter coming on to be heard upon the petition for rehearing, and the court now being further fully advised in the premises, finds no reason to change the order, and decree heretofore entered.

Therefore the petition for rehearing is denied.

(No. 1404—Claim denied.)

MARGARET SHAW, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1929.
Rehearing denied March 12, 1930.

WORKMEN'S COMPENSATION ACT—*when not applicable to the State.* The maintenance of an insane hospital is not an enterprise declared to be extra hazardous under Section 3 of the Workmen's Compensation Act.

ASSUMED RISK—*when claimant assumes risk of employment.* Where one voluntarily undertakes the duties of supervising and caring for insane persons confined in a State institution such person assumes all the risks ordinarily incident to such employment, and is not entitled to compensation for personal injuries sustained by reason of such employment.

REHEARING—*when agreement of attorneys for claimant and respondent does not make the State liable under the Workmen's Compensation Act.* Whether or not the Workmen's Compensation Act applies to the State is to be determined from the provisions of the Act and not by agreement of the parties, nor from the evidence.

FRANCIS C. VONACHEN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was a night attendant in one of the violent wards of the Peoria State Hospital for the Insane. She alleges that on the 21st day of December, 1927, one of the patients struck her a blow on the head knocking her down and, that in falling, she struck her left limb on an iron bed and permanently injured it. She asks compensation under the provisions of the Workmen's Compensation Act on the theory said act applies automatically to the State.

The provisions of the Workmen's Compensation Act automatically apply to the State only when the State is engaged in some of the enterprises declared to be extra hazardous by section 3 of that act. The maintenance of a hospital for the insane is not an enterprise declared extra hazardous by that section, and the provisions of the Workmen's Compensation Act do not apply. (*McInturff* v. *State*, 5 Ct. Cl. 314.)

Claimant voluntarily accepted the employment in which she was engaged at the time of her alleged injury and assumed the ordinary perils of the work she was engaged to perform. (*Neighbors* v. *State*, 5 Ct. Cl. 238; *Consolidated Coal Co.* v. *Haenni*, 146 Ill. 614; *Illinois Terminal R. R. Co.* v. *Thompson*, 210 Ill. 226.) It is a matter of common knowledge that the care of the insane is attended with danger. One who voluntarily undertakes the duties of supervising and caring for such persons assumes all the risks ordinarily incident to such employment. As claimant's alleged injury was the result of the risks she assumed she is not entitled to an award.

The claim is therefore denied and the case dismissed.

On March 12, 1930, upon petition for rehearing, the following additional opinion was filed:

Claimant bases her petition for a rehearing on the ground that prior to the taking of testimony it was agreed by the attorneys for claimant and the State that the Workmen's Compensation Act applied to the case and, relying on such agreement, claimant took no testimony relative to the State being subject to that act. Whether or not the Workmen's Compensation Act applies to the State is to be determined from the provisions of the Act and not from evidence. As we pointed out in the opinion, that Act only applies to the State when the State is engaged in some one of the enterprises declared by section 3 of the Act to be extra hazardous, and the maintenance of a hospital for the insane is not such an enterprise. The petition for rehearing is denied.

(No. 1451—Claim denied.)

LOUIS A. STILES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1929.

Rehearing denied March 12, 1930.

PERSONAL INJURY—*when no award will be made.* Where it appears from the evidence that there was no negligence on the part of the State employee in the operation of a State truck, no award will be made for personal injuries sustained by claimant by reason of an accident on a State Bond Issue Route.

REHEARING—*when rehearing will be denied.* When the court finds no reason to change the order and decree heretofore entered the petition for rehearing will be denied.

WALLACE J. BLACK & CLYDE M. WEST, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant bases his cause of action upon injuries sustained by reason of an accident which occurred on Route 29, about one mile and a half north of Mossville on February 15th, 1928.

Claimant alleges he was driving a team in a northerly direction in the morning of said date and met a driver with a State truck coming in a southerly direction. It seems that the team became frightened and the claimant was injured.

It appears to the court from all evidence that there was no negligence on the part of the truck driver and that he was driving at a moderate rate of speed. On the other hand, it appears that the claimant was driving a young team and should, in view of that fact, exercise the greatest degree of care and comprehend the danger incidental to driving such a team and meeting cars, trucks and other conveyances upon the highways.

This court is of the opinion, in view of all of the facts as shown here, that the defendant, the State of Illinois, should not be charged with liability in a claim of this character.

Therefore, it is recommended, that the claim be disallowed.

On March 12, 1930, upon petition for rehearing, the following additional opinion was filed:

This matter coming on to be heard upon the petition for rehearing, and the court now being fully advised in the premises, finds no reason to change the order and decree heretofore entered.

Therefore the petition for rehearing is denied.

(No. 1499—Claimant awarded $17.15.)

BURPEE CAN SEALER COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.

FRANCHISE TAX—*when money paid by mistake may be recovered back.* Money paid by mistake is not deemed to have been voluntarily paid and may be recovered back.

BURPEE CAN SEALER COMPANY, pro se.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant's declaration alleges that in the year 1928 it paid by mistake $17.15 more franchise tax than it was legally required to pay. To this declaration the State has filed a general demurrer. While the declaration may be informal, the demurrer is only general, and we think the declaration states sufficient grounds to sustain an award, and the demurrer will be overruled.

Money paid by mistake is not deemed to have been voluntarily paid and can be recovered back. It is not contended that the State did not receive $17.15 more franchise tax from claimant in 1928 than it was entitled to receive.

Claimant is therefore awarded the sum of $17.15.

(No. 1500—Claimant awarded $37.50.)

BLACK STAR COAL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.

FRANCHISE TAX—*when money paid by mistake may be recovered back.* Money paid by mistake is not voluntarily paid and can be recovered back by the party making the payment.

BLACK STAR COAL COMPANY, pro se.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

In its declaration claimant alleges that for the years 1924 to 1928, inclusive, it paid $7.50 more franchise tax each year than it was legally required to pay and that such payments were made by mistake, the mistake occurring in the computation of the tax. The State has filed a general demurrer to the declaration. The declaration is informal but we think it is sufficient in substance to sustain an award and the demurrer, not being special, will be overruled.

That claimant paid the excess tax of $7.50 for the years alleged is not denied; neither is it denied that such payments were made by mistake. Money paid by mistake is not voluntarily paid and can be recovered back by the party making the payment.

Claimant is therefore allowed an award of $37.50.

(No. 1505—Claim dismissed.)

JOSEPH MEAHER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.

DISMISSAL—when case will be dismissed upon motion of claimant. Where claimant moves to dismiss the suit for the reason that the claim has been satisfied and paid, and the court being fully advised in the premises, the case will be dismissed.

CHARLES T. RANDOLPH, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This cause coming on to be heard upon motion of claimant to dismiss the above entitled cause for the reason that the claim has been satisfied and paid, and the court being fully advised in the premises, and there being no reason why the case should not be dismissed, it is therefore considered by the court that the cause be, and the same is hereby dismissed.

(No. 1506—Claim dismissed.)

HERMAN FRYMIRE AND BEULAH FRYMIRE, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.

DISMISSAL—*when case will be dismissed upon motion of claimant.* Where claimant moves to dismiss the suit for the reason that the claim has been satisfied and paid, and the court being fully advised in the premises, the case will be dismissed.

CHARLES T. RANDOLPH, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This cause coming on to be heard upon motion of claimant to dismiss the above entitled cause for the reason that the claim has been satisfied and paid, and the court being fully

advised in the premises, and there being no reason why the case should not be dismissed, it is therefore considered by the court that the cause be, and the same is hereby dismissed.

(No. 1507—Claim dismissed.)

HERMAN FRYMIRE, GUARDIAN OF MARY ELOISE FRYMIRE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.

DISMISSAL—*when case will be dismissed upon motion of claimant.* Where claimant moves to dismiss the suit for the reason that the claim has been satisfied and paid, and the court being fully advised in the premises, the case will be dismissed.

CHARLES T. RANDOLPH, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This cause coming on to be heard upon motion of claimant to dismiss the above entitled cause for the reason that the claim has been satisfied and paid, and the court being fully advised in the premises, and there being no reason why the case should not be dismissed, it is therefore considered by the court that the cause be, and the same is hereby dismissed.

(No. 1513—Claim denied.)

HENRY RICKEIM, AND MAMIE RICKEIM, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1930.

Motions to vacate previous orders denied, March 12, 1930.

PROPERTY DAMAGE—*when State not liable for damages resulting by overflow of Illinois and Michigan Canal.* The State is not liable for damages caused by the overflow of the Illinois and Michigan Canal where that portion of the canal is a part of the Illinois Waterway and subject to the provisions of the Illinois Waterway Act.

ILLINOIS WATERWAY ACT—*when and how claims for damages may be fixed.* The Illinois Waterway Act permits the use and improvement of portions of the Illinois and Michigan Canal as a part of the waterway, and claims for damages to property is determined and paid by the department in charge of the waterway, and this court has no jurisdiction to pass upon claims for damages to property arising out of the construction, maintenance or operation of the Illinois Waterway.

ILLINOIS AND MICHIGAN CANAL—*when appropriation for damages prohibited.* An appropriation for damages caused by an overflow of the Illinois and Michigan Canal would be in aid of the canal and is prohibited by Separate Section 3 of the Constitution.

TOM W. SMURR, for claimants.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for $246.00 damages alleged to have been caused by the overflow of the Illinois and Michigan canal in the City of Marseilles. It is charged in the declaration that the overflow causing the alleged damage was the result of the negligence of the lock tender in charge of the lock and gates located near Chicago Street in Marseilles. The Attorney General has filed a special plea for the State averring that the portion of the canal involved in this claim is a part of the Illinois waterway. Claimants have demurred to this plea. The demurrer admits the facts set up in the plea to be true.

Section 2 of the Illinois Waterway Act permits the authorities charged with the construction of the Illinois waterway to use and improve portions of the Illinois and Michigan canal as a part of the waterway. Such portions of the canal as they use in the construction of the waterway are under

the jurisdiction of these authorities and subject to the provisions of the Waterway Act. (*Hollenbeck et al* v. *State*, opinion filed Nov. 6, 1929.)

Section 24 of the Waterway Act provides that all claims for damages to persons (except to employees) and all claims for damages to property, real or personal, shall be ascertained, determined and fixed by the department of the State government in charge of the waterway and paid out of moneys which shall be provided for the payment of such claims. It is clearly manifest from these provisions of the statute that this court has no jurisdiction to pass upon claims for damages to property arising out of the construction, maintenance or operation of the Illnois Waterway. (*Hollenbeck et al.* v *State*, *supra.*) If the portion of the canal in question in this action is a part of the Illinois Waterway, as averred in the plea, then the court of claims has no jurisdiction of this case, and it should be dismissed. By demurring to the plea claimant admits that portion of the canal to be a part of the waterway. As the facts stated in the plea are a complete defense to the claim in this court, the demurrer should be overruled and the case dismissed.

Even if the portion of the canal causing the alleged damage were not a part of the Illinois Waterway, the claim could not be allowed for the reason that separate section 3 of the Constitution prohibits the appropriation of any money in aid of canals. (See *Hollenbeck et al.* v. *State*, *supra*, for a full discussion of this question.)

The demurrer is overruled and the claim dismissed.

On March 12, 1930, upon motions to vacate the judgments overruling the demurrers to the pleas and dismissing said cases and for leave to file replications, the following additional opinion was filed:

Claimants in this case and in cases No. 1514 and No. 1515 have filed their motions to vacate the judgments overruling the demurrers to the pleas and dismissing said cases and for leave to file replications averring the portions of the Illinois and Michigan canal involved in the claims were not and are not a part of the Illinois Waterway.

We stated in the last paragraph of the opinion overruling the demurrers and dismissing the cases that even if the portions of the canal causing the alleged damage were not a part

of the Illinois Waterway the claims could not be allowed for the reason that separate section 3 of the Constitution prohibits the appropriation of any money in aid of canals, and referred claimants to the opinion in the case of *Hollenbeck et al. v. State* for a full discussion of that question. As no award could be allowed claimants even if their replications should be sustained, it would not avail them anything to permit them a hearing on that issue.

The motions are therefore denied.

(Claims denied.)

LLOYD HIGHLAND, 1517; L. E. WIDEMAN, 1518; SUSIE P. HIGHLAND, 1519; HENRY NEVIN, 1520; CHARLES J. MCLAUGHLIN, MARIE MCGRATH, GENEVIEVE ROTH, ANN MEAGHER, MARGARET MEAGHER, AND CATHERINE MCLAUGHLIN, 1530; Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.

PROPERTY DAMAGE—*when State not liable.* The State is not liable for the malfeasance or misfeasance of its officers or agents in the absence of a statute expressly making it so liable.

SAME—*immunity of State does not relieve its agents from responsibility.* The immunity of the State does not relieve its agents from responsibility for their trespasses or torts upon the rights of citizens.

SAME—*what remedy may be invoked.* Injunction is a proper remedy where public officers, under color of power or claim of right, are illegally attempting to take or injure the property or impair the rights of a citizen.

SAME—*when acts of the State not subject to review—governmental function.* In the construction of State bond issue roads the State acts in its sovereign capacity and its acts are not subject to review by the courts without its consent.

TOM W. SMURR, for claimants.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

By stipulation of the parties these claims have been consolidated.

The declarations are all substantially the same. Each of them alleges the claim arises out of damages to growing crops during the years 1926 and 1927 and subsequent thereto, such damage being caused by the diversion of water out of its

natural course upon and across the claimants' land, and the destruction of the outlet of certain tile drains; and that such diversions of water and destruction of the outlets resulted from the acts of the defendant, through its servants, in constructing State Route No. 7. Each declaration further alleges that in August, 1926, the servants of the defendant obstructed the flow of the water in a natural water course and blocked and filled the same by depositing therein trees and tree trunks, brush and dirt and other obstructions, thereby preventing the water from flowing in its natural course and causing it to flow upon and flood and submerge the crops of claimants and destroy the same. It is also charged in each declaration that the outlet of a certain tile drain was obstructed and the tile in the drain broken and damaged whereby the drainage of the land of claimant was impeded and obstructed and the land rendered less productive. Lloyd Highland claims $500.00 damages, L. E. Wideman $1,500.00, Susie P. Highland $1,500.00, Henry Nevin $1,000.00, and Charles J. McLaughlin, et al. $1,000.00.

These claims are based upon the theory that the State is liable for the torts of its officers, agents and employees. No government is liable for the malfeasance or misfeasance of its officers or agents in the absence of a statute expressly making it so liable. This principle of law is so well settled that citation of authorities is not deemed necessary. Claimants seem to entertain the view that the State is governed by the same rules and principles of law as individuals, cities and villages, and corporations created for profit, and have cited many authorities holding individuals, corporations, cities and villages liable for damages caused by the torts of the agents of such persons and municipalities; but those cases have no application to these claims. Every private person who, by his wrongful act, causes injury to another is liable to respond in damages for such injury; and a corporation is also liable for the damages caused by the wrongful conduct of its agents and servants. Cities and villages may also be held liable for the torts of their agents and servants in certain cases. But cities and villages are voluntary municipalities created by the action of their inhabitants. When the people of a given community by their action voluntarily organize that community into a city or village the municipality thus created becomes clothed with certain powers and burdened with certain obli-

gations. It is not an involuntary municipality, such as towns and counties, created for governmental purposes. It has many rights and powers conferred upon it by law such as the right to improve its streets by special assesments or special taxation, the right to own and operate public utilities, and many others not enjoyed by involuntary municipalities. With these rights is coupled certain duties and obligations such as the duty to maintain its streets in a reasonably safe condition for travel and the liability to pay any damage caused by the neglect to do so. But neither the State, nor any subdivision of the State for governmental purposes, is liable for damages caused by the failure of any officer to keep the highways in a safe condition for travel or for any damages caused by the negligence of any officer in repairing or constructing any highway, unless there be a statute making the State, or such subdivision thereof, liable for such negligence. The person damaged by the negligence of such officer is not without remedy, however. The negligence is not the negligence of the State, or subdivision thereof, but of the individual performing the act causing the injury, and such individual is liable for any damage his wrongful act may have caused. If the contractor who constructed Route 7 did obstruct the natural flow of the water in a water course, as charged in these declarations, by placing trees, brush and other things therein, and thereby caused damage to the crops of claimants, and if he broke and destroyed their tile, he is liable for such damage as his acts caused, and claimants had a remedy against him for such damage. But his wrongful acts will not be imputed to the State in the absence of a statute making the State liable for them. The immunity of the State, however, does not relieve its agents from responsibility for their trespasses or torts upon the rights of citizens. (25 R. C. L., sec. 50, p. 413). These principles of law have been many times announced by this court and by our supreme court. (See *Peterson* v. *State*, No. 1126 and 1127; *Theiler* v. *State*, Nos. 1413, 1414 and 1415 consolidated; *Braun* v. *State* No. 1281; *Tuttle* v. *State*, 5 Ct. Cl. 3; *Heiss* v. *State*, 5 Ct. Cl. 298; and cases cited in those opinions).

It is urged by claimants that the constitution provides their property shall not be taken or damaged for public use without just compensation and they are therefore entitled to an award for their alleged damages. Claimants were not

required to stand by and allow the agents of the State to damage their property without first having the just compensation for such damage ascertained in the manner provided by the statute. They could have enjoined the State officials and contractor from performing the alleged tortious acts until the damages occasioned thereby had been ascertained and paid. It is well settled that injunction is a proper remedy where public officers, under color of power or claim of right, are illegally attempting to take or injure the property or impair the rights of a citizen. (*Lowery* v. *City of Pekin*, 186 Ill. 387; *Stiles* v. *State*, No. 1380, and cases there cited.)

In the construction of the State bond issue roads the State acts in its governmental capacity—its sovereign capacity—and its acts are not subject to review by this or any other court without its consent. No statute has been enacted in Illinois making the State liable for the negligence of its officers, servants, agents or employees in the construction of these roads and, in the absence of such a statute, this court has no power to declare it liable for such negligence.

The awards are therefore denied and the claims dismissed.

(No. 1523—Claim denied.)

ERWIN J. KERSHAW, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1930.
Rehearing denied March 12, 1930.

PROPERTY DAMAGE—*when State not liable—Illinois National Guard.* The State is not liable for the torts of its officers or agents in the absence of a statute making it so liable. The Illinois National Guard is a part of the State government and if an officer of the National Guard causes damages to a citizen by his wrongful act the wrongful act is the individual act of the officer and not of the State, and the injured person can have his action against the person causing the injury.

REHEARING—*when rehearing will be denied.* When the petition for rehearing does not present any matter that was duly considered in the original opinion in the case a rehearing will be denied.

MELVILLE MUCKLESTONE, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $4,160.00 damages alleged to have been caused by the wrecking of a Lincoln Paige aeroplane belong-

ing to claimant on April 5, 1929, at the Municipal Airport of Chicago in a collision with a Douglas aeroplane being operated by Lieutenant Reginald Kuhn of the 108 Observation Squadron of the Illinois National Guard. It is charged in the declaration that the collision and resultant injury to claimant's plane was caused by the negligence and carelessness of Lieutenant Kuhn in the operation of the plane he was piloting, and that at the time of the collision Kuhn was an officer and agent of the Illinois National Guard.

The Illinois National Guard is a part of the State government, and this action is based on the theory that its officers are agents of the State and the State is liable for the damages caused by the careless and negligent conduct of its agents. It is an almost universal rule that the State is not liable for the torts of its officers and agents in the absence of a statute making it so liable. If an officer of the National Guard causes damage to a citizen by his wrongful act the wrongful act is the individual act of the officer and not of the State. (*Haye et al.* v. *The State*, 5 Ct. Cl. 359; *Joos* v. *Ill. Nat'l Guard*, 257 Ill. 138; *Hollenbeck* v. *Winnebago Co.*, 95 Ill. 148; *Cooney* v. *Town of Hartland*, 95 Ill. 516). The injured person is not without remedy, however. He can have his action against the person causing the injury for the damage suffered thereby.

There being no liability on the part of the State for the damages claimed, the award is denied and the case dismissed.

On March 12, 1930, upon petition for rehearing, the following additional opinion was filed:

The claimant Erwin J. Kershaw by his attorney, filed his petition for rehearing on the 7th day of February, 1930, and the court heard oral argument of the claimant's attorney in open court on March 12, 1930.

The claimant in his petition for rehearing and also the oral argument did not present any matter that was not duly considered by this court in the original opinion in this case.

The petition for rehearing is denied.

(No. 1549—Claimant awarded $3,500.00.)

ALBERT W. TURNER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.

PERSONAL INJURY—*when award will be made*—*Workmen's Compensation Act.* Where it appears from all the facts and circumstances that claimant received injuries in course of employment while working for the Division of Highways, an award will be made and the amount computed in accordance with the provisions of the Workmen's Compensation Act.

MACDONALD AND MORGAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was working for the Highway Department for the State of Illinois on the 27th day of April, 1929, and in the course of his employment while being transported from his work on the truck of the Highway Department on State Highway No. 11 between East St. Louis and Carlinville, it appears that claimant was seriously injured on account of the driver who drove off the highway and in endeavoring to get back the truck skidded and the truck was thrown around and threw claimant off the truck. In falling he received a complete fracture of the skull.

There is no question raised as to the accident happening while in the course of employment by the defendant. It is claimed that claimant has not been able on account of such accident to do any labor; that he lost the sight of his left eye. He claims that he paid $1,087.60 for medical and hospital services of which the State has paid $476.10 and he is making claim for the balance, in accordance with the Workmen's Compensation Act.

The court being fully advised in the premises is of the opinion that claimant is entitled to award in view of all the facts and circumstances in the case.

Therefore the court recommends that claimant be allowed the sum of $3,500.00.

(No. 1551—Claim denied.)

ANNA PELKA, ADMINISTRATRIX OF THE ESTATE OF ANDY PELKA, Deceased, CLAIMANT, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.

GOVERNMENTAL FUNCTION—*when State not liable—respondeat superior.* In the conduct of a charitable institution the State exercises a governmental function and is not liable to respond in damages for the negligent acts of its officers, servants or employees, and the doctrine of *respondeat superior* does not apply.

G. A. HICKMAN AND CARL CHOISSER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Anna Pelka as administratrix of the estate of Andy Pelka, deceased, asks an award against the State of $5,000.00 for the death of claimant's intestate.

It is charged in the declaration that Andy Pelka was an inmate of the Anna State Hospital, an institution maintained by the State for the purpose of treating patients for mental diseases; that the officials of the hospital, on January 18, 1929, negligently and carelessly placed Pelka in a room with one Jesse Windland, another inmate of the hospital, well known to be a desperate and dangerous man accustomed to attack other patients; and that Windland did then attack Pelka and beat and strangle him, thereby then and there causing his death.

The Anna State Hospital is one of the charitable institutions of the State maintained and conducted for the sole benefit of citizens of the State suffering from mental diseases. The institution is maintained and supported by funds derived solely from general taxes. In maintaining this and other like institutions the State is exercising a governmental function and rendering a gratuitous service to its unfortunate citizens which the public policy of the State has declared to be necessary for the general welfare. In the conduct of such institutions neither the State nor any of its agencies are liable to respond in damages for the negligent acts of any of its servants. (*Parks* v. *Northwestern University*, 218 Ill. 381; *Burghardt* v. *State*, 5 Ct. Cl. 221). If the purpose of the institution be charitable, if it is maintained solely for the bene-

fit of the public, the agency maintaining and conducting it incurs no liability for the negligence of its officers, servants or employees, whether that agency be the State, a city, county or private corporation. (*Tollefson* v. *City of Ottawa*, 228 Ill. 134; *Johnston* v. *City of Chicago*, 258 Ill. 494; *Hogan* v. *Chicago Lying-In Hospital*, 335 Ill. 42). The rule exempting such institutions from liability for the negligence of employees is stated in 13 R. C. L., at page 944, in the following language: "Strictly public institutions created, owned, and controlled by the state or its subdivisions, such as state asylums for the insane, city hospitals, reformatories, etc., are not liable for the negligence of their agents. The doctrine of *respondeat superior* does not apply. They are held to be governmental agencies brought into being to aid in the performance of the public duty of protecting society from the individual unfortunate or incompetent in mind, body, or morals, and the rules applicable to municipal corporations and public officers generally are applied." The author cites many cases in support of the rule, and it is in accord with the holdings of our own Supreme Court. The General Assembly has enacted no statute changing this rule of the common law, and in the absence of such a statute this court has no power to make awards for claims of this character.

The claims is therefore denied and the case dismissed.

(No. 1552—Claimant awarded $3,750.00.)

ELLEN KELL, ADMINISTRATRIX OF THE ESTATE OF JAMES T. KELL, Deceased, CLAIMANT, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.

PERSONAL INJURY—*when award will be made.* Where it appears that claimants intestate received injuries in line of duty which resulted in death while employed as an automobile investigator for the State, an award will be made and the amount determined in accordance with the provisions of the Workmen's Compensation Act.

L. P. HARRIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought by Ellen Kell as administratrix of the estate of James T. Kell, deceased. It appearing from

allegations of claimant that the said deceased was employed as an automobile investigator for the State of Illinois; that while in the performance of his duties on State Highway Route No. 2 North of DuQuoin, Illinois, and while passing an automobile the motorcycle on which he was riding collided with a telephone pole causing his left leg to be broken and internal injuries from which he died on July 26th, 1929, the accident happening on July 24th, 1929. There appears to be no contradiction that said Kell sustained the injuries complained of while in the employ of the State of Illinois and that his mother, the complaining administratrix was dependent upon him for support. Therefore the only question to be considered is the amount of an award. There appears to be no objection as to this contention on the part of the defendant and it would appear that the Workmen's Compensation Act would prevail.

It is therefore recommended that complainant be allowed the sum of Three Thousand, Seven Hundred Fifty Dollars ($3,750.00).

(No. 1562—Claimant awarded $33.00.)

JAMES M. BROOKS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.

PERSONAL INJURY—*when award will be made for medical bills.* Where it appears that claimant sustained injuries in course of employment while employed as an automobile investigator an award will be made for his physician's bill.

JAMES M. BROOKS, pro se.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant while in the act of performing his duties as an investigator from the office of William J. Stratton, Secretary of State, in the enforcement of motor vehicle law, while pursuing a stolen car in the City of Chicago and in trying to avoid striking a child he turned his motorcycle in

the sidewalk and was thrown from it and as a result of such fall, he sustained injuries. It appears that claimant is asking for no compensation other than his doctor bills in the sum of Thirty-three ($33.00) Dollars.

It would appear that this is a modest request in view of claims that have been filed herein and that the injuries complained of were suffered in the performance of his duties and that his physician's bill should be allowed as requested.

It is therefore recommended by this court that claimant be allowed the sum of Thirty-three ($33.00) Dollars.

(No. 839—Claimant awarded $2,337.54.)

VICTOR R. EMERY, JR., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 28, 1930.

CIVIL SERVICE—*when employee cannot be discharged from civil service employment.* Where claimant is under the classified civil service of the State he cannot be legally discharged except in accordance with the provisions of the State Civil Service Act.

SAME—*Section 12—provisions of, mandatory.* The provisions of Section 12 of the Civil Service Act are mandatory and must be complied with, otherwise any appointing officer can render the law nugatory.

SAME—*when claimant entitled to salary and expenses.* Where the provisions of the civil service law were not complied with, the attempted removal of claimant was void, and he is entitled to his salary and expenses so long as he retained his position.

ADSIT, THOMPSON & HERR, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On September 9, 1917, claimant was employed in the Game and Fish Division of the Department of Agriculture. On May 18, 1918, he took the examination for the position of warden. He passed the examination, was certified, and in September, 1919, was made Deputy Game and Fish Warden at a salary of $125.00 per month under the classified civil service of the State. On January 23, 1923, the Director of the Department of Agriculture sent him a letter notifying him

that his services would not be further needed and his name would be dropped from the payroll on February first. After receiving this letter claimant continued to perform his duties as such Deputy Game and Fish Warden, making reports of his activities regularly to the Division of Game and Fish until August 1, 1924. These reports were received and accepted by the Division of Game and Fish. The State also furnished claimant an automobile for use in the performance of his duties until in July, 1923.

The record shows claimant never resigned his position, was never demoted or removed, and that no charges were ever preferred against him. It also shows that he was paid no salary after February 1, 1923, and that he was not reimbursed for his expenses incurred.

Claimant was under the classified civil service of the State and could not be legally discharged from such service except in accordance with the provisions of the State Civil Service Act. Section 12 of that Act provides no employee in the classified civil service of the State shall be removed by the appointing officer, except for just cause, and that a statement of the cause of such removal shall be made in writing and signed by the appointing officer which statement shall be in duplicate and one copy thereof be delivered to the employee and the other filed in the office of the Civil Service Commission. These provisions of the law are mandatory and must be complied with, otherwise any appointing officer can render the law nugatory. (*The People* v. *Coffin*, 282 Ill. 599). Those provisions of the law were not complied with in the case of claimant and his attempted removal was void, and he was entitled to be paid his salary and expenses so long as he retained his position. (*The People* v. *Stevenson*, 272 Ill. 215). Claimant remained in the service of the State for 18 months after his attempted removal. His salary was $125.00 per month and he incurred expenses amounting to $87.54, no part of which he has been paid. He is, therefore, allowed an award of $2,337.54.

(Claims denied.)

WEALTHY FRIES, 1256; JOHN J. FRIES, 1257, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 28, 1930.

PERSONAL INJURY—*when no award will be made for personal injuries sustained on State highway.* Where it appears from the evidence that the newly constructed highway has not been taken over by the State, no award will be made for personal injuries and property damage sustained by reason of an accident upon such highway.

TRUMAN A. SNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimants in suits No. 1256 and 1257 were driving in a southerly direction in an automobile on Section 23, hard road Route No. 16 in Macoupin County, Illinois.

It is alleged that a gap of considerable length where said Route No. 16 crosses at the one track of the Illinois Traction System and three tracks of the Wabash Railroad Company was unfinished; that on the 12th day of June, 1927, while the claimants were driving in their automobile as aforesaid, they suffered an accident and it is claimed that both claimant and wife were injured and that the automobile, property of claimants was damaged in the neighborhood of $1,000.00.

It does appear from the record in this case that this is a dangerous spot and that proper warning signs were not displayed.

The Attorney General comes and defends and states that a sign directing people going from Mt. Olive to Staunton, between which places the accident occurred, was on display and that this sign was not taken down until after the accident; that this sign warned travelers to go on the detour; that claimants did not follow the directions on said sign.

It is however claimed and we fail to find any contradiction of the records to the contrary that the stretch of road on which the accident complained of happened, had not been taken over by the State of Illinois and that the jurisdiction over said road or control of said road rested with the local

authorities and therefore the State had not assumed any liability that might be attached. The following statute has been drawn to the attention of this court by the Attorney General's office and is in words and figures as follows:

"That the public highways upon which said roads are being constructed shall, during the construction period and continuously thereafter, be under the jurisdiction and control of said Department of Public Works and Buildings, but the duty of maintaining said highways shall rest on the local authorities until said construction work has been completed. After a road in said State-wide system has been completed and taken over by said Department of Public Works and Buildings said road shall thereafter be maintained by the state" * * * (Paragraph 277, Chapter 121, page 2409, Smith-Hurd's Illinois Revised Statutes, 1927).

The court is of the opinion that the records disclose a lack of reasonable diligence on the part of the claimants and their failure to observe the detour sign and of course that question would be an issue in the event that the State of Illinois had taken over this road, but in accordance with a previous ruling of this court, the State of Illinois is not bound as a matter of law until the road would be taken over by the State. In many instances it is well known that local authorities in their desire to permit early traffic let down barriers and permit traffic in order to meet the demand of the public. This cannot be considered good practice and of course the State of Illinois is not supposed to open its arms to any proposition until they assume complete control and this court assumes that the Legislature had in mind when they passed the above enactment, to avoid responsibility before the State duly accepted and assumed control of any road project.

It is the opinion of the court that liability on the part of the State of Illinois should be safeguarded in a manner equal to that of private corporations. The court regrets the accident and the injuries sustained by claimants but are of the opinion that legal responsibility for the accident in question cannot be placed upon the State of Illinois in view of the Act of legislature above cited.

Therefore this claim is disallowed.

(No. 1509—Claim denied.)

TYRA HARRISON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 28, 1930.

PERSONAL INJURY—*when burden of proof upon claimant.* The burden of proof is upon claimant to show by a preponderance of the evidence that his injury was caused at the time and in the manner he alleged.

WORKMEN'S COMPENSATION ACT—*when act not applicable to the State.* The Workmen's Compensation Act applies to the State only when the State is engaged in some of the enterprises declared by Section 3 of that Act to be extra hazardous.

SAME—*when Act does not apply.* The building and maintenance of a dirt road is not a dangerous or extra hazardous occupation and therefore not within the terms of the Workmen's Compensation Act.

FRED H. SNYDER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant asks an award of $2,000.00 to compensate him for an alleged injury received March 22, 1929, while dragging the dirt shoulders of State Route No. 9 near Canton in Fulton County. His contention is that he is entitled to compensation from the State under the provisions of the Workmen's Compensation Act.

Claimant testified that on March 22, 1929, while he was riding a road drag being pulled by a truck driven by Mitchell Libby, he was thrown against the lever of the drag which caused him severe pain. He said Libby was driving at the rate of 10 miles per hour at the time and ran over a steel plate throwing him against the lever of the drag, and that he told Libby of his injury and asked him to drive more slowly; that he ate supper at Libby's that evening and threw it up and when he told Libby about it Libby only laughed and called him a tenderfoot. He also testified that the next day he told Walter Nixon that he got hurt the day before. On the day following his alleged injury he hauled dirt in the forenoon and dragged the road in the afternoon. His testimony is contradicted by both Libby and Nixon. Libby testified that he did not drive over 2 or 3 miles an hour while dragging the road and that claimant never told him he was injured and did not complain of being hurt in any way, and

that he did not know he threw up his supper. He also said he remembered driving over a steel plate but that the plate was smooth and it did not jerk the drag and throw claimant against the lever. Nixon testified that claimant never complained to him of any injury received while working for the State. Dr. Nelson testified that on March 23, 1929, claimant came to his office complaining of a pain in his left side and on examination he found a hernia and advised him to get a truss and wear it. The doctor stated that the hernia appeared to be of recent origin but he could not state positively that it was.

It hardly seems probable that claimant could have been injured in the manner he says he was and as seriously as he claims to have been and Mr. Libby not have known it. The burden of proof is on claimant to show by a preponderance of the evidence that his injury was caused at the time and in the manner he alleged. (*Green* v. *Industrial Com.*, 337 Ill. 514; *Berry* v. *Industrial Com.*, 335 Ill. 374.) This we do not think he has done.

The Workmen's Compensation Act applies to the State only when the State is engaged in some of the enterprises declared by section 3 of that Act to be extra-hazardous. An employer may be engaged in more than one enterprise,—some under the Workmen's Compensation Act because extra-hazardous and others not. (*Peterson* v. *Industrial Com.*, 315 Ill. 199.) And if an employee is injured while working in a business or enterprise not made extra-hazardous by that Act, the provisions of the Act will not apply.

At the time claimant is alleged to have received his injury he was engaged in dragging the dirt shoulders of a State road. If that was an extra-hazardous occupation, then the State is liable, otherwise it is not. A road may be a "structure" but work on all structures is not necessarily extra-hazardous. And unless the work is extra-hazardous, it does not come within the provisions of the Workmen's Compensation Act. In *Village of Chapin* v. *Industrial Com.*, 336 Ill. 461, and *McLaughlin* v. *Industrial Board*, 281 Ill. 100, the Supreme Court held that the building and maintenance of a dirt road is not a dangerous or extra-hazardous occupation and therefore not within the terms of the Workmen's Compensation Act. And in *Brennan* v. *Industrial Com.*, 289 Ill.

49, that court held that an employee who was injured while engaged in pulling a float over the soft concrete of a State aid road that was being paved with concrete and brick was not engaged in an extra-hazardous occupation within the meaning of the Workmen's Compensation Act, and set aside an award made him by the Industrial Commission.

Under the rules announced in these cases it is clear claimant is not entitled to compensation and his claim is therefore denied and the case dismissed.

(No. 1511—Claim denied.)

JOHN GROOTENS, ALBERT BECK, AND FRANCES BECK, HIS WIFE, Claimants, *vs.* STATE OF ILLINOIS, *Respondent.*

Opinion filed March 12, 1930.

Rehearing denied May 28, 1930.

PROPERTY DAMAGE—*when State not liable—governmental function.* In the construction of public highways the State acts in its governmental capacity, and is not liable to respond in damages for the negligent acts of its servants.

RESPONDEAT SUPERIOR—*rule not applicable to the State.* The rule of *respondeat superior* is not applicable to the State and was not changed by the law creating the Court of Claims which gave it power to hear and determine all legal and equitable claims against the State.

REMEDIES—*when claimant not without remedy.* Injunction is a proper remedy where public officers, under color of power or claim of right are illegally attempting to take or injure the property, or impair the rights, of a citizen.

PROPERTY DAMAGE—*when court has no power to declare State liable.* The Court of Claims has no power to declare the State liable for damages caused by the negligence of its agents in the construction of highways in the absence of a statute making it so liable.

EUGENE W. KREITNER, for claimants.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $12,000.00 damages alleged to have been caused to the property of claimants by the construction of State Route No. 13. The property is located in Park Place Addition to the City of Carbondale and is adjacent to Route 13. The declaration charges that the State of Illinois

through its agents and servants, improperly, negligently and unlawfully constructed said highway, in this, that it failed to provide the necessary and adequate culverts, and other adequate drains, wherewith to adequately drain the water from the property.

Route No. 13 is one of the public highways of the State constructed and maintained for the use of the general public. In the construction of public highways the State acts in its governmental capacity, and in the performance of such governmental function it is not liable to respond in damages for the negligent acts of its servants. (*Parks* v. *Northwestern University*, 218 Ill. 381; *Kinnare* v. *City of Chicago*, 171 Ill. 332.)

Claimants have cited a number of cases in their brief holding that drainage and sanitary districts, cities and villages and corporations organized for profit are liable for damages caused by the negligent acts of their servants and agents. There is no question but that the rule of *respondeat superior* applies to such corporations in many instances. Drainage and sanitary districts, cities and villages are voluntary corporations organized at the instance of the people affected thereby. When the people of any given territory organize such territory into a drainage or sanitary district, a city or village, the municipality thus created becomes vested with certain rights and powers and burdened with certain duties and obligations. Among these is the right to take or damage private property for the benefit of the municipality and the obligation to compensate the owner of the property for such taking or damage. These obligations are not thrust upon such municipalities *nolens volens*,—they are voluntarily assumed,—and having been so assumed the municipality is liable for the consequences that legally follow. (*Johnston* v. *City of Chicago*, 258 Ill. 494.) But this rule does not apply to the State, nor to any governmental subdivision of the State for governmental purposes. In *Parks* v. *Northwestern University*, *supra*, at page 383, the Supreme Court says: "Counties and towns under township organization are created as agencies of the State for the purpose of exercising locally certain governmental functions, and in the performance of duties of that character neither the State nor any of its agencies are liable to respond in damages for the negligent acts of any of its servants." To apply the rule of

respondeat superior to the State, as claimants contend we should, would make the State responsible for any wrongful conduct or negligent act of its many officers and employees that might result in damage to a citizen. We cannot think the Legislature intended such a drastic change in the law when it created this court and gave it power to hear and determine all legal and equitable claims against the State.

The immunity of the State from liability for the negligent or wrongful acts of its agents does not relieve the agents from responsibility. (25 R. C. L., sec. 50, p. 413; *Peterson* v. *State,* Nos. 1126 and 1127; *Theiler* v. *State,* Nos. 1413, 1414 and 1415; *Braun* v. *State,* No. 1281; *Tuttle* v. *State,* 5 Ct. Cl. 3; *Heiss* v. *State,* 5 Ct. Cl. 298; and cases cited in those opinions.)

If the agents of the State, by their negligent, wrongful and unlawful conduct have damaged the property of claimants they are liable to claimants for such damage, and claimants are not without remedy. Claimants were not required to permit the contractor or other agents of the State to damage their property in the construction of the road until such damage had been ascertained and paid for. They could have enjoined them from performing the alleged wrongful acts until the damage had been ascertained as provided by law. It is well settled that injunction is a proper remedy where public officers, under color of power or claim of right, are illegally attempting to take or injure the property or impair the rights of a citizen. (*Lowery* v. *City of Pekin,* 186 Ill. 387; *Stiles* v. *State,* No. 1380 and cases therein cited.)

No statute has been passed making the State liable for damages caused by the negligence of its agents in constructing State highways and, in the absence of such a law, this court has no power to declare it so liable.

The award is denied and the claim dismissed.

On May 28, 1930, upon petition for rehearing, the following additional opinion was filed:

Claimant has filed a petition for rehearing in this case. All the points urged in the petition were considered and decided by the court at the hearing, and the opinion is in accord with a long line of decisions of this court in similar cases.

The rehearing is therefore denied.

(No. 1525—Claim dismissed.)

MID-CONTINENT CONSTRUCTION COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 28, 1930.

DISMISSAL—*when case will be dismissed.* When the court is fully advised in the premises and it appearing that there is no reason why the case should not be dismissed, it will be dismissed upon motion of the claimant without prejudice.

BUSBY, WEBER, MILLER & DONOVAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This cause coming on to be heard upon motion of claimant filed on May 23rd, 1930, to dismiss the above entitled cause without prejudice and the court being fully advised in the premises and it appearing there is no reason why said cause should not be dismissed it is therefore considered by the court that said cause be and the same is hereby dismissed without prejudice upon the motion of the claimant.

(No. 1536—Claim denied.)

CHARLES F. JENNINGS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 12, 1930.
Rehearing denied May 28, 1930.

PERSONAL INJURY—*when State not liable.* The State is not liable for personal injuries sustained as a result of a collision with a truck driven by a State employee when such employee is not acting in line of duty and in the course of regular employment for the State.

REHEARING—*when rehearing will be denied.* Where the petition for rehearing shows no additional reason for further consideration of the claim a rehearing will be denied.

VAUGHN & NEVINS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed to recover for damages sustained by claimant while driving a Chevrolet truck on Route No. 4 of

the St. Louis-Springfield hard road at a point in Madison County; that he was run into by a truck belonging to the State of Illinois and then driven by Frank Hill an employee of the State. A stipulation is herewith presented in evidence to sustain the facts alleged. It appears that there has been no objection as to the contention of the claimant as to the injuries sustained, it appearing from the evidence that the accident was due to the negligence of Hill the driver and that he was under the influence of liquor or other stimulant and as a result of the accident the claimant's truck was demolished and that claimant was very seriously and grievously injured.

This court understands that as a matter of sympathy there can be no question as to the unhappy result of this accident to claimant. However, it appears to the court that there can be no contention as to the fact that the State is not liable for the torts or negligence of its officers, agents, etc. However, the State has been endeavoring to take care of its employees and others injured as a matter of good conscience. In this case there is a feature that impresses the court very seriously and that is the fact according to the stipulation filed in which there appears a communication by C. M. Slaymaker, District Engineer, that Hill had no orders to be on this road on this date and in fact had received orders to perform certain work on a patrol south of Edwardsville which he disregarded.

The point that comes to the court, is that even if the State was responsible for the acts of its agents or servants that wherein an agent or servant disregarded the instructions of his superior, and was on a mission entirely beyond the line of duty as delegated to him by his superiors and an accident occurred, that it would be hard to conceive a legal liability. If the accident occurred through the fault of the driver of this truck while acting in line of duty under the directions of his superior, then another question would arise as to the responsibility of the defendant, the State of Illinois. It could not be urged that if this accident occurred through the negligence of this driver at a time of day or night outside of the hours required of him in the line of duty that the defendant would be liable and this court cannot conceive that the State has the power to extend such obligation to the act of an agent or servant outside the line of duty or outside the course of employment.

To announce a different rule would extend the obligation of the defendant, the State of Illinois much further than was contemplated in the act creating this court and would impose upon the State of Illinois a burden that would be indefinite, vague and uncertain.

And while the court regrets this unfortunate accident, yet it feels that it should not extend an obligation upon the State in which an employee could create a liability upon the State while not in the line of duty or in the course of regular employment under the direction of their superior.

Therefore it is recommended that this claim be disallowed.

On May 28, 1930, upon petition for rehearing, the following additional opinion was filed:

It appears that no additional reason has been brought to the attention of this court for further consideration of this claim.

Therefore petition for rehearing is denied.

(No. 1554—Claimant awarded $600.00.)

FRANK GRAY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 28, 1930.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where an employee of the State received injuries in course of employment an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.

RUNYARD & BEHANNA, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant was in the employment of the State as a common workman and was paid sixty cents per hour. His average weekly wage while working for the State was about thirty dollars. On April 24, 1929, while engaged in work on a bridge of State Route No. 42 near Zion City, he suffered an injury to his left hand which necessitated the amputation of the left index finger. The injury arose out of and in the course of his employment and, under the provisions of the

Workmen's Compensation Act, he is entitled to compensation from the State. The State paid his hospital and surgical bills and kept him on the payroll during the time he was unable to work. Section 8 of the Workmen's Compensation Act provides an employee shall receive fifty per cent of his average weekly wage for the loss of an index finger during forty weeks. Claimant is therefore entitled to $600.00 and that sum is awarded him.

(No. 1567—Claimant awarded $425.00.)

MINNIE MASON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 28, 1930.

PERSONAL INJURY—*when award will be made.* Where it appears that claimant sustained injuries in course of employment while working at the Peoria State Hospital an award will be recommended.

MINNIE MASON, *pro se.*

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was an employee of the State Hospital for the Insane at Bartonville. She claims the loss of a finger called the index finger and the loss of the second finger of the right hand which injury she claims she sustained while employed in the performance of her duties and in the exercise of ordinary care for her personal safety. There seems to be but little question as to the facts alleged and the only question that remains for the court to consider is the amount of the award that should be allowed.

The Attorney General comes and makes defense and admits that if there should be any allowance made the sum of Four Hundred and Twenty-five ($425.00) Dollars, would be proper taking into consideration medical services in the matter. This court is of the opinion that the amount suggested would be a fair and just allowance for the claimant.

Therefore the court recommends that the sum of Four Hundred and Twenty-five ($425.00) Dollars, be allowed the claimant.

(Claims denied.)

INDIVIDUAL TOWEL & CABINET SERVICE CO., 1517; THE WESTERN UNION TELEGRAPH COMPANY, 1556; ILLINOIS BELL TELEPHONE COMPANY, 1558; BURR VACK COMPANY, 1561, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 18, 1930.

EVIDENCE—*when letters written by State Officer not sufficient in evidence.* Where no evidence is offered in support of the claim except letters written by a State officer that the bills are correct, and were not paid because the appropriation for that purpose had been exhausted, such letters do not take the place of evidence, as no officer or agent can admit away the rights and interests of the State, and such practice is contrary to public policy.

CONTRACT—*when State officer prohibited from making contracts.* Under Section 30 of the Act in relation to State finance no officer has the right to contract any indebtedness on behalf of the State in excess of the amount of money appropriated.

SAME—*when State officer subject to penalty for contracting indebtedness in excess of the amount of money appropriated.* The provisions of Section 208 of Division 1 of the Criminal Code is clear in that a State officer is subject to a penalty for contracting for the expenditure of a greater sum of money than may have been, at the time of making the contracts, set apart by law to be expended upon the subject matter of the contracts.

SAME—*when contract void.* Where a State department contracts for services and supplies after the appropriation for its expenses has been exhausted, such contracts are void.

JOS. M. COLLNER, SECY., INDIVIDUAL TOWEL & CABINET SERVICE CO.; ROBERT WHITELAW, THE WESTERN UNION TELEGRAPH COMPANY; BEN B. BOYNTON, ILLINOIS BELL TELEPHONE COMPANY; FRANK H. REPETTO, BURR VACK COMPANY, for claimants.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

As these claims are all for services and supplies alleged to have been furnished to the State Athletic Commission and not paid for because the appropriation for the expenses of the commission had been exhausted, we have consolidated them for decision.

The claim of the Illinois Bell Telephone Company is for $284.72 for telephone services rendered the commission prior

to June 26, 1929; the claim of the Western Union Telegraph Company is for $28.89 for telegraph services rendered the commission for the months of May and June, 1929; the claim of the Burr Vack Company is for $50.00 for supplies furnished the commission during the months of April and May, 1929; and the claim of the Individual Towel and Cabinet Service Company is for $7.70 for towels furnished the commission during the months of May and June, 1929.

No evidence has been offered by claimants in support of their claims. There are copies of letters written the Attorney General by the secretary of the commission in which he states the bills of claimants are correct and were not paid because the appropriation had been exhausted. This does not take the place of evidence. No officer or agent of the State can admit away the rights and interests of the State, and especially is this true where the officer or agent attempting to do so is the officer or agent for whom the services were rendered or the materials furnished by claimant. To recognize such practice might lead to grave injustice, and is contrary to public policy. (*Lewson* v. *State,* 5 Ct. Cl. 80.)

Section 18 of article 4 of the Constitution requires the General Assembly to provide for all the appropriations necessary for the ordinary and contingent expenses of the government. Under this provision of the constitution the General Assembly determines what is a reasonable and proper amount to be expended by each department of the State government for the ensuing two years and makes such appropriation as it deems proper for each department to expend within that period. In the act providing for the ordinary and contingent expenses of certain departments of the State government, approved June 30th, 1927, the General Assembly appropriated to the State Athletic Commission the sum of $120,700.00, of which $15,000.00 was for office expenses, (Session Laws of 1927, p. 172), and the commission had no right of authority to incur any expenses beyond the amount appropriated to it for that purpose. Section 30 of the act in relation to State finance provides that no officer, institution, department, board of commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in any amount in excess of the amount of money appropriated. And section 208 of division 1 of the Criminal

Code provides that every person holding any public office (whether State, county or municipal), trust or employment who shall be guilty of contracting directly or indirectly, for the expenditure of a greater sum or amount of money than may have been, at the time of making the contracts, appropriated or set apart by law or authorized by law to be contracted for or expended upon the subject matter of the contracts, shall be fined not exceeding $10,000.00, and may be removed from his office, trust or employment. These provisions of the law are clear, and under them the commission had no power to contract the debts for which claimants are asking awards. (*Fergus* v. *Brady*, 277 Ill. 272; *Whittemore* v. *The People*, 227 Ill. 453.) It is true the claims are for small amounts, but that is of no consequence. If a department of the State government can contract for $50.00 worth of supplies in excess of the sum appropriated to it for supplies it can contract for any amount it may see fit. To tolerate such practice not only ignores the plain provisions of the law but opens the way for all State officers, departments, boards and commissions to disregard the will of the General Assembly with reference to the amount of money they can expend and substitute their own in its place. (*Lawson* v. *State, supra.*)

The State Athletic Commission being without power or authority to contract for the services and supplies furnished it by claimants after the appropriation for its expenses had been exhausted the contracts are void and no awards can be made for their payment. The claims are, therefore, denied and the cases dismissed.

(No. 1586—Claimant awarded $686.37.)

DUDLEY E. PERRY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 18, 1930.

MILITARY SERVICE—*when award will be made for illness contracted in line of duty.* Where it appears that claimant contracted tuberculosis in line of duty while a member of the Illinois National Guard, an award will be made upon the report of the Adjutant General and the recommendation of the Attorney General, and the amount computed under the Military and Naval Code.

O. C. SMITH, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought by the reason of the fact that claimant being a corporal in Co. L, 130th Inf., Illinois National Guard, and while acting in that capacity on or about the 30th day of June, 1929, he was confined in a hospital on account of tuberculosis alleged to be contracted in line of duty.

It appears that Hon. Carlos E. Black, the Adjutant General, Springfield, Illinois, was requested by the Attorney General's Office for a report as to the correctness of the facts set forth by claimant. It appears that General Black reported that according to his understanding that the claim was made under the Military and Naval Code and for a period of 323 days which would amount to $686.37½. It appears further that the attorney for claimant reported that this settlement would be satisfactory.

And it appearing further that the Attorney General would recommend the allowance of said sum. Therefore this court recommends that claimant be allowed the sum of $686.37.

(No. 775—Claim denied.)

OSCAR HEINEMAN CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

DISMISSAL—*when case will be dismissed.* Where the Attorney General moves the dismissal of the case as being controlled by the decisions heretofore filed, and the attorney for the claimant consents to such motion and to such dismissal the case will be dismissed and the award disallowed.

PADEN & KROPF, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now on this 9th day of September, A. D. 1930, being one of the regular days of the September session of this court, comes Oscar E. Carlstrom, Attorney General of the State of Illinois, and moves the dismissal of this case as being controlled by the decisions of this court heretofore rendered in the cases of *Moline Plow Company* v. *The State of Illinois*, and *George P. Ide & Company, Inc.* v. *The State of Illinois*.

And it appearing to the court that the attorney for the claimant herein consents to such a motion and to such dismissal as being controlled by said cases, it is therefore ordered, adjudged and decreed that the case be dismissed and the award disallowed.

(No. 1211—Claim denied.)

DELAVAL SEPARATOR COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

DISMISSAL—*when case will be dismissed.* Where the Attorney General moves the dismissal of the case as being controlled by the decisions heretofore filed, and the attorney for the claimant consents to such motion and to such dismissal the case will be dismissed and the award disallowed.

VENT & WARFIELD, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now on this 9th day of September, A. D. 1930, being one of the regular days of the September session of this court,

comes Oscar E. Carlstrom, Attorney General of the State of Illinois, and moves the dismissal of this case as being controlled by the decisions of this court heretofore rendered in the cases of *Moline Plow Company* v. *The State of Illinois*, and *George P. Ide & Company, Inc.* v. *The State of Illinois*.

And it appearing to the court that the attorney for the claimant herein consents to such a motion and to such dismissal as being controlled by said cases, it is therefore ordered, adjudged and decreed that the case be dismissed and the award disallowed.

(No. 1232—Claim denied.)

AMERICAN STEEL FOUNDRIES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

DISMISSAL—*when case will be dismissed.* Where the Attorney General moves the dismissal of the case as being controlled by the decisions heretofore filed, and the Attorney for the claimant consents to such motion and to such dismissal the case will be dismissed and the award disallowed.

PAM & HURD, for Claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now on this 9th day of September, A. D. 1930, being one of the regular days of the September session of this court, comes Oscar E. Carlstrom, Attorney General of the State of Illinois, and moves the dismissal of this case as being controlled by the decisions of this court heretofore rendered in the cases of *Moline Plow Company* v. *The State of Illinois*, and *George P. Ide & Company, Inc.*, v. *The State of Illinois*.

And it appearing to the court that the attorney for the claimant herein consents to such a motion and to such dismissal as being controlled by said cases, it is therefore ordered, adjudged and decreed that the case be dismissed and the award disallowed.

(No. 1243—Claim denied.)

HYDRAULIC-PRESS BRICK COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

DISMISSAL—*when case will be dismissed.* Where the Attorney General moves the dismissal of the case as being controlled by the decisions heretofore filed, and the Attorney for the claimant consents to such motion and to such dismissal the case will be dismissed and the award disallowed.

MAC CHESNEY, EVANS & ROBINSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now on this 9th day of September, A. D. 1930, being one of the regular days of the September session of this court, comes Oscar E. Carlstrom, Attorney General of the State of Illinois, and moves the dismissal of this case as being controlled by the decisions of this court heretofore rendered in the cases of *Moline Plow Company* v. *The State of Illinois*, and *George P. Ide & Company, Inc.*, v. *The State of Illinois*.

And it appearing to the court that the attorney for the claimant herein consents to such a motion and to such dismissal as being controlled by said cases, it is therefore ordered, adjudged and decreed that the case be dismissed and the award disallowed.

(No. 1342—Claim denied.)

CHAMPLIN REFINING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

DISMISSAL—*when case will be dismissed.* Where the Attorney General moves the dismissal of the case as being controlled by the decisions heretofore filed, and the Attorney for the claimant consents to such motion and to such dismissal the case will be dismissed and the award disallowed.

SHURTLEFF & NIEHAUS, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now on this 9th day of September, A. D. 1930, being one of the regular days of the September session of this court, comes Oscar E. Carlstrom, Attorney General of the State of Illinois, and moves the dismissal of this case as being controlled by the decisions of this court heretofore rendered in the cases of *Moline Plow Company* v. *The State of Illinois*, and *George P. Ide & Company, Inc.*, v. *The State of Illinois*.

And it appearing to the court that the attorney for the claimant herein consents to such a motion and to such dismissal as being controlled by said cases, it is therefore ordered, adjudged and decreed that the case be dismissed and the award disallowed.

(Claims denied in part and allowed in part.)

WESTERN ELECTRIC COMPANY, INCORPORATED, 1370; THE BORDEN COMPANY, 1371; BORDEN'S FARM PRODUCTS CO. OF ILLINOIS, 1372, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1929.
Rehearing denied January 15, 1930.
Modified opinion filed September 10, 1930.

FRANCHISE TAX—*failure to pursue remedies in courts of general jurisdiction—Court of Claims has no appellate jurisdiction.* The Court of Claims has no appellate jurisdiction to review the judgments and decrees of the regularly constituted courts of the State, and it will not adjudicate upon a case where the law provides an adequate remedy in the courts of general jurisdiction.

SAME—*when payment deemed voluntary.* Payment of money to avoid penalties and the expenses of litigation will be deemed a voluntary payment and cannot be recovered.

SAME—*what constitutes duress and compulsion.* To constitute duress and compulsion the danger must not only exist but must be shown to have actually operated upon the mind and to have constituted the controlling motive for the performance of the act sought to be avoided.

SAME—*when award will be made.* Where it appears from the amended stipulation that claimant did all the law requires to entitle it to a recovery of franchise tax wrongfully collected, an award will be made.

CUTTING, MOORE & SIDLEY, for claimants.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

These cases are claims for the refund of franchise taxes paid by claimants. The amount claimed by the Western Electric Company is $7,175.72, by the Borden Company $3,049.85, and by Borden's Farm Products Company $1,909.90. The Attorney General has filed a demurrer to the declaration in each case, and, as the same questions are involved in all of them, they will be consolidated and decided together.

Claimants are foreign corporations licensed to do business in Illinois. Each company filed the returns with the Secretary of State required by law. The Secretary thereupon assessed a franchise tax against each of claimants. Upon the assessment of the tax each claimant protested to the secretary that the tax so assessed was illegal and void for the reason that the law under which it was assessed was uncon-

stitutional. To prevent the Secretary from enforcing the penalties provided by the law for the non-payment of the taxes each claimant paid the tax assessed against it. Within thirty days after the tax was paid each of the claimants filed a suit in the Circuit Court of Sangamon County to restrain the Secretary from paying the tax paid by it into the State Treasury and for an order directing him to refund or repay the tax to the complainant. The court granted a temporary injunction as to a portion of the tax in each case and, on a final hearing, ordered the Secretary to repay such portion to the complainant, but refused to order the balance of the tax paid refunded. From this decree no appeal was taken, or writ of error sued out to review it.

It is fundamental in our law that a judgment or decree is binding upon all parties to the action so long as it stands unreversed. The suits were based upon the allegation that the statute under which the taxes were assessed was unconstitutional, and claimants could have had their cases reviewed by the Supreme Court if they were not satisfied with the decree of the circuit court. They elected not to do so, for what reason does not appear and is not material. This court has no appellate jurisdiction to review the judgments and decrees of the regularly constituted courts of the State, and it will not adjudicate upon a case where the claimant has an adequate remedy in the courts of general jurisdiction. (*Moline Plow Co. v. State*, 5 *Ct. Cl.* 277.) The demurrer is sustained, the claims denied, and the cases dismissed.

On May 9, 1929, upon petition for rehearing the following additional opinion was filed:

Claimants filed a petition for a rehearing in these cases, and the court relaxed the rules and permitted them to support their petition by oral and written argument. We have again carefully considered the record in the cases and the argument in support of the rehearing and file this as supplemental to the opinion heretofore filed.

The General Incorporation Act in force at the time these taxes were paid required the Secretary of State to notify each corporation, not later than May 15th, of the amount of such tax assessed against it, and the declarations allege the required notice was given in each case. The Act also pro-

vided the taxes did not become delinquent and that penalties could not be added until after July 31st. The Act further provided that if the tax was not paid on or before July 31st the Secretary of State might issue a warrant for their collection, and gave him the right to revoke the certificate of authority of a foreign corporation failing to pay its tax on or before that date.

The declarations charge the Secretary of State demanded payment of the taxes on the assumption that they were lawful franchise taxes; and that the claimants protested to him against the payment of the taxes on the ground that the statute was not valid and constitutional and that the taxes, and each and every part thereof, were not authorized by law and that they were not required to pay them. The declarations also allege the Secretary of State threatened, if the taxes were not paid, to assess the penalties provided by law and revoke the authority of claimants to transact business in Illinois; and that the taxes were paid under protest and duress as shown by the letters of claimants attached to the declarations and made part thereof. The letters show the payments were made "to avoid penalties and controversies and litigation for failure so to do and without prejudice to the right of the company to seek to recover later the whole or any part thereof. The grounds of this protest are that the provisions of the Act entitled an Act in relation to Corporations for Pecuniary Profit in force July, 1919, and as amended by an Act in force July, 1921, and as further amended by an Act approved by the Governor May 3, 1923, impose an unconstitutional, unjust and unlawful tax upon this company in violation of its rights under the Constitution of the United States and the Constitution of the State of Illinois."

Claimants paid these taxes, as they say, "to avoid penalties and controversies and litigation for failure so to do." Payment of money to avoid penalties and the expenses of litigation will be deemed a voluntary payment and cannot be recovered. (21 R. C. L., p. 151, sec. 176; *People* v. *Bandy*, 239 Ill. App. 273.)

The fact that the taxes were illegal does not, of itself, give claimants the right to recover them. When claimants paid these taxes they knew the law under which they were assessed was unconstitutional, and protested against paying

them on that ground. "That a tax voluntarily paid cannot be recovered back the authorities were generally agreed, and it is immaterial in such a case that the tax has been illegally laid or even that the law under which it was laid was unconstitutional. The principle is an ancient one in the common law and is of general application. Every man is supposed to know the law, and if he voluntarily makes a payment which the law would not compel him to make, he cannot afterwards assign his ignorance of the law as a reason why the State should furnish him with legal remedies to recover it back." (Cooley on Taxation, 2nd Ed., p. 809; *Board of Education* v. *Toennings*, 297 Ill. 469.) Proof that one party is under no legal obligation to pay the money and that the other has no right to receive it is of no consequence unless the payment was compulsory, in the sense of depriving the one making the payment of the exercise of his free will. (*Ill. Glass Co.* v. *Chicago Tel. Co.*, 234 Ill. 535; *School of Domestic Arts* v. *Harding*, 331 Ill. 330.)

It is clear from these well settled principles of law claimants are not entitled to recover these taxes unless they were paid under duress, for it is axiomatic that the tax must not only have been paid under protest but also under duress. A party who has paid a tax voluntarily, under a claim of right, shall not afterwards recover back the money, although he protested at the time against his liability. But it is otherwise when a party is compelled, by duress of his person or goods, to pay money for which he is not liable. When one is called upon, peremptorily, to pay a tax for which he is not liable and can save himself and his property in no other way than by paying the illegal demand, he may give notice that he so pays it *by duress, and not* voluntarily, and by showing he is not liable to recover it back. (*Conkling* v. *City of Springfield*, 132 Ill. 420.) To constitute duress the danger must not only exist, but must be shown to have actually operated upon the mind, and to have constituted the controlling motive for the performance of the act sought to be avoided. (*Yates* v. *Royal Ins. Co.*, 200 Ill. 202.) To render a payment compulsory such pressure must be brought to bear upon the person or property, and the compulsion must furnish the motive for the payment sought to be avoided. (*School of Domestic Arts* v. *Harding, supra.*) Tested by these rules were the taxes

paid under duress? We do not think so. Claimants were notified of the amount of taxes due not later than May 15th. The taxes were not payable until the first day of July following and could not be declared delinquent until August the first thereafter. No warrant for their collection was in the hands of the sheriff and none could be issued until August 1st. The Secretary of State had no right or power to cancel or revoke their certificates of authority, to do business in Illinois, or to add any penalties to the taxes, or to take any steps to collect them, or in any way to interfere with claimants in the conduct of their business because or on account of their failure to pay the taxes until August first. Claimants were in no immediate danger of suffering any injury to their property or right to do business in the State. The law gave them until the end of July to determine what action they desired to take. They knew the Secretary of State believed the taxes legal: they believed them to be illegal—that the law under which they were assessed was unconstitutional. No fraud or deception was practiced upon them by the Secretary of State. With the knowledge of these facts claimants paid the taxes. The law under which the taxes were assessed was unconstitutional, and the Secretary of State had no power under it to revoke the certificates of authority issued to claimants authorizing them to do business in this State. Neither did he have the right to assess any penalties against claimants for not paying the taxes or to issue a warrant to any sheriff directing him to sell property of claimants to pay the taxes. The taxes were void and claimants could have maintained a bill in equity against the Secretary of State to restrain him from collecting them. It has been many times held by the Supreme Court of this State that where a tax or assessment has been levied or imposed where there was no law authorizing it to be levied courts of equity will interfere and by injunction prevent the collection of such tax, and the tax payer is not required to exhaust his legal remedies before he may apply to equity for relief. (*Drainage Comrs.* v. *Kinney*, 233 Ill. 67; *Sanitary Dist.* v. *Board of Review*, 258 Ill. 316; *St. Louis Bridge Co.* v. *Eisele*, 263 Ill. 50; *Baltica Ins. Co.* v. *Carr*, 330 Ill. 608.) By invoking the aid of a court of equity claimants could have been relieved from the payment of any of the taxes and from the danger of having their

certificates of authority to do business in Illinois revoked. They had ample time to do that after receiving the notices of the amounts of the taxes claimed. Their payment of the taxes under these circumstances was not compulsory. "The rule allowing a person to recover money which he has paid, on the ground that it was paid under compulsion, is intended for the relief only of those who are entrapped by sudden pressure into making such payments, and who have no other means of escaping an existing or iminent infringement of their rights of person or property. Therefore where a person has time and opportunity to relieve himself from his predicament without making such payment by resorting to ordinary legal methods, but nevertheless pays the money, the payment will be deemed voluntary, and he can not recover it." (21 R. C. L., p. 151, Sec. 176.) In *Illinois Merchants Trust Co.* v. *Harvey,* 335 Ill. 284, on page 292, our Supreme Court says: "If he (the payer of an illegal demand) may avoid the payment of such demand by resorting to a remedy in equity but does not avail himself of such remedy the payment is not compulsory even though pressure for payment is re-enforced by a threat to commit injury."

The declarations all allege the Secretary of State, between February 1st, and May 15th of each year, gave notice of the amount of taxes due from each claimant for the year beginning the first day of July following. As the taxes were not delinquent until August 1st claimants had 75 days within which to invoke the aid of a court of equity to avoid the payment of the taxes claimed. This was ample time in which to apply for such relief. It follows that the payment of the taxes was voluntary and not under compulsion or duress. (*Illinois Merchants Trust Co.* v. *Harvey, supra.*) "It is well settled that in the absence of fraud taxes so paid cannot be recovered, even though they are illegal because laid under an unconstitutional law, where there is no statute authorizing such recovery." *Richardson Lubricating Co.* v. *Kinney,* 337 Ill. 122.)

As claimants had an adequate remedy in the courts of general jurisdiction to avoid the payment of the taxes and failed to avail themselves of that remedy but elected to pay the taxes the payment will be deemed voluntary, and the petition for a rehearing denied.

On September 10, 1930, upon an amended stipulation of facts the following modified opinion was filed:

Since the filing of the petition for a rehearing in these cases an amended stipulation of facts has been filed. It appears from this amended stipulation that the Western Electric Company, in its bill for injunction, asked to have the Secretary of State restrained from paying into the State Treasury, the taxes in question paid by it. It thus appears this claimant did all the law requires in order to entitle it to an award for the return of the taxes. The opinions heretofore filed herein are modified to the extent of allowing the Western Electric Company an award in the sum of $6,278.22 and in all other respects are adhered to, and the petition for a rehearing is denied.

(No. 1385—Claim denied.)

MERCHANTS OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

MOTOR FUEL TAX—*when tax paid under unconstitutional act cannot be recovered back.* Taxes voluntarily paid cannot be recovered back even though they are illegal because laid under an unconstitutional law, where there is no statute authorizing such recovery.

S. A. BLEISCH, for claimant.

OSCAR E. CARLSTROM, Attorney General; S. S. DUHAMEL, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $349.08 gasoline tax paid by claimant under provisions of the Motor Fuel Tax Act of 1927 held unconstitutional by the Supreme Court.

Claimant alleges it paid the tax in advance of its sales and that when the Act was held unconstitutional it had on hands and unsold 17,454 gallons of gasoline on which it had paid a tax of $349.08, and urges the State should re-imburse it for that sum on the grounds the gasoline had not been sold.

It is not contended that the tax was not voluntarily paid by claimant. In fact it is admitted that it was so paid. It is a familiar rule of law that money voluntarily paid can not

be recovered back. That the party making the payment is under no legal obligation to pay the money and the party to whom it is paid has no right to receive it is of no consequence where it is paid voluntarily. (*Ill. Glass Co.* v. *Chicago Tel. Co.*, 234 Ill. 535; *School of Domestic Arts* v. *Harding*, 331 Ill. 330.) In this case the tax now sought to be recovered was not due when it was paid, and the State officials charged with its collection had no right to demand its payment at that time. Claimant knew this when it made the payment, and paid the tax because it was more convenient for it to do so then than to wait till it sold the gasoline. It is not therefore entitled to recover the tax so paid. The fact that the law under which the tax was paid was later held unconstitutional does not aid the claimant in any way. At the time it paid the tax claimant believed the law to be valid and the payment was made to comply with its requirements. It is well settled that taxes so paid cannot be recovered, even though they are illegal because laid under an unconstitutional law, where there is no statute authorizing such recovery. (*Richardson Lubricating Co.* v. *Kinney*, 337 Ill. 122.) As there is no statute authorizing a recovery of taxes paid under an invalid law claimant is not entitled to an award against the State for them.

The claim is therefore denied and the case is dismissed.

(No. 1493—Claim denied.)

MABEL A. WALSH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

PROPERTY DAMAGE—*when State not liable for damages sustained by reason of an accident upon a hard road—governmental function.* In the construction and maintenance of public highways the State exercises a governmental function and is not liable for damages caused by either a defect in the construction or failure to maintain it in a safe condition for travel unless there is a statute expressly making it so liable.

EVAN L. SEARCY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for $350.00 damages alleged to have been sustained by claimant as the result of her automobile skid-

ding into a small ditch on State Route No. 2 near Cobden. The substance of the declaration is that the State so negligently constructed the road at the place of the accident that dirt washed from the embankment on the side of the road onto the pavement and was negligently permitted to remain there by the employees of the State without warning signs being put up to notify claimant of its condition, and that on account of the condition of the road at said place the automobile of claimant skidded off the road and into a small ditch about twenty feet away.

All roads in the State built and maintained at public expense by the State, or by such governmental sub-divisions of the State as towns and counties, are public highways constructed and maintained for the benefit of the general public. They are the people's highways and in their construction and maintenance the people exercise their sovereign power. State Route No. 2, is such a highway. It was built by the State for general use and paid for out of the public funds. In its construction the State was in the exercise of its sovereign capacity. Neither the State, nor any sub-division of the State for governmental purposes, is liable for damages caused by either a defect in the construction of a public road or failure to maintain it in a safe condition for travel unless there is a statute expressly making it so liable. This principle of law has been so frequently announced by this court and our Supreme Court that a citation of cases is unnecessary.

As the Legislature has not passed any Act making the State liable for such damages as claimant alleges she sustained it follows no award can be allowed her.

The claim is therefore denied and the case dismissed.

(No. 1545—Claim denied.)

TRANSPORTATION BUILDING CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

CONTRACT—*limitation of powers of department to enter into contracts.* Sub-section 13 of Section 36 of the Civil Administrative Code limits the power of the Department of Finance to lease office space in buildings for a longer period than two years and persons dealing with it are bound by the limitations placed upon it.

SAME—*when contract void.* A contract made in violation of the statute is void and cannot be enforced, for the law cannot at the same time prohibit a contract and enforce it.

SAME—*when State not bound for an amount in excess of the money appropriated.* Under Section 3 of the Act in relation to State finance no officer, institution, department, board or commission shall contract any indebtedness on behalf of the State nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law, and any attempt to do so is wholly void.

HARMON, LEBARON & SWARTZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant is asking an award of $935.04. The claim, it is alleged, is for $750.00 office rent and $35.04 electric light furnished the Athletic Commission. The claim is based on a contract entered into between claimant and the Department of Finance. The contract is dated April 30, 1927, and purports to lease the premises therein described to the State for the use of the Athletic Commission for a period of two years and two months. It provides for the payment of $9,750.00 rent payable in monthly installments of $375.00, the electric light furnished by claimant, and all attorney fees incurred by claimant in any litigation necessary to enforce the obligations of the lessee.

Section 36 of the Civil Administrative Code defines the powers of the Department of Finance. Sub-section 13 of that section provides: "The Department of Finance shall have power to lease, for a term not exceeding two years, office space in buildings for the use of the several departments." Under the provisions of the section the Depart-

ment of Finance had no power to enter into a lease for a longer period than two years. The Legislature had the right to limit the powers of the department and the officials of the department and all persons dealing with it are bound by the limitations placed upon it. To hold otherwise is to permit officials to ignore plain provisions of the law, to substitute their own for the legislative will.

The contract being in violation of the statute is void, (*The People* v. *Sperr*, 314 Ill. 205) and, being void, it cannot be enforced for the law cannot at the same time prohibit a contract and enforce it. (*DeKam* v. *City of Streator*, 316 Ill. 123.)

The record in this case shows that the Athletic Commission had exhausted the appropriation made by the General Assembly for its office expenses leaving no funds out of which to pay this claim. Section 18 of Article 4 of the Constitution provides that each General Assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time. This provision gives the General Assembly the exclusive power to fix the amount of money that may be expended by any department of the State Government. Section 3 of the Act in relation to State finance provides: "No officer, institution, department, board or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law." This section of the statute is so plain that its meaning cannot be misunderstood. The Athletic Commission had no power to contract an indebtedness for rent, or for any other purpose, in excess of the appropriation made for it and its attempt to do so is wholly void. This question was before this court in *Lewson* v. *State*, 5 Ct. Cl. 80. In that case, on page 83, we said: "The Legislature ascertains biennially what is a reasonable and proper amount to be appropriated for each officer and department. It is a vital part of the duties of the Legislature, in its wisdom and deliberations, to

carefully ascertain what amount of money our State should expend in the succeeding two years. * * * To allow this claim would be to establish a most dangerous precedent. It would open up the avenue for all State officers and State departments to ignore the limitations of the appropriation for their respective offices or departments, if they saw fit so to do, and rely on the Court of Claims to take care of all claims made in excess of such appropriations. We believe the Legislature and Governor are much better informed on matters of appropriations than the Court of Claims is, or ever will be, and that the subject is exclusively within their powers and duties, and we will not usurp it." We see no reason for changing the views there expressed, and the claim is denied and the case is dismissed.

(No. 1557—Claimant awarded $46.20.)

CENTRAL BUILDING MATERIALS CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

MATERIALS—*when award will be made for materials furnished the State.* Where it is conceded that the State never paid for materials furnished to, received and used by the Division of Highways, an award will be made.

L. J. SIESENER, SECY., for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

This claim is for 55 tons of Mississippi River sand sold to the Division of Highways at 84 cents per ton and shipped May 29, 1929. The sand was received and used by the State. It is conceded the State has never paid for it, and claimant is awarded the sum of Forty-six Dollars and Twenty Cents.

(No. 1571—Claimant awarded $219.46.)

CLAYTON A. PENSE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

FEES AND SALARIES—*when State officer entitled to salary fixed by statute.* This case is controlled by the opinion of the court filed in the case of JOHN B. FRENCH, No. 1573, post.

SCANLAN & MASSIEON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim based upon the same principle as involved in the opinion of this court in the case of *John B. French* v. *State of Illinois*, and it appearing no objection being made by the defendant, the court recommends that the claimant be allowed the sum of $219.46.

(No. 1572—Claimant awarded $208.34.)

JAMES SHORT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

FEES AND SALARIES—*when State officer entitled to salary fixed by statute.* This case is controlled by the opinion of the court filed in the case of JOHN B. FRENCH, No. 1573, post.

SCANLAN & MASSIEON, for claimant,

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim based upon the same principle as involved in the opinion of this court in the case of *John B. French* v. *The State of Illinois*, and it appears no objection being made by the defendant, the court recommends that the claimant be allowed the sum of $208.34.

(No. 1573—Claimant awarded $208.34.)

JOHN B. FRENCH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

FEES AND SALARIES—*when State officer entitled to salary fixed by statute.* When the salary of a State officer is fixed by statute and the legislature fails to appropriate a sufficient amount to cover such salary, an award will be made for the difference between the amount fixed by statute and the amount appropriated.

SCANLAN AND MASSIEON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was appointed by the Governor of the State of Illinois to the office of Industrial Officer of the Industrial Commission of the State of Illinois; that said claimant qualified by filing bond, etc., that he assumed his duties at such office on the 23rd day of June, 1925; that subsequent to the said appointment the 56th General Assembly of the State of Illinois by an amendment to the Civil Administrative Code effective July 1st, 1929, fixes salary of said claimant as such officer at $5,000.00 per annum; that the 56th General Assembly of the State of Illinois so fixing said salary and while continuing to act in that capacity claims a back salary $208.34. It appearing that no objection being made by the Attorney General, and it appearing that the Chairman of the Industrial Commission admits the correctness of the claim and in view of the foregoing the Court recommends that claimant be allowed the sum of $208.34.

(No. 1574—Claimant awarded $208.34.)

JOHN J. BRENHOLT, JR., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

FEES AND SALARIES—*when State officer entitled to salary fixed by statute.* This case is controlled by the opinion of the court filed in the case of *John B. French, v. State of Illinois*, No. 1573, *ante*.

SCANLAN AND MASSIEON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim based upon the same principle as involved in the opinion of this court in the case of *John B. French v. The State of Illinois*, and it appearing no objection being made by the defendant, the court recommends that the claimant be allowed the sum of $208.34.

(No. 1578—Claimant awarded $106.85.)

STANDARD OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

MATERIAL—*when award will be made.* Where it appears that material has been sold, delivered to, and used by the Division of Highways, and has not been paid for, an award will be allowed.

F. E. PACKARD, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for 14 cases, containing 742 gallons of N.R.S. cut-back asphalt sold and delivered to the Division of Highways by claimant on June 7, 1929, at 14.4 cents per gallon. It is conceded by the officials of the Division of Highways that the asphalt was received and used by the State, and has not been paid for.

Claimant is therefore allowed an award of $106.85.

(No. 1580—Claimant awarded $296.40.)

KUBEC ELECTRIC COMPANY, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

MATERIALS—*when claimant entitled to the amount due for material furnished to a State institution.* Where it is conceded that material has been sold and delivered to a State institution and has not been paid for, an award will be made for the amount due.

KUBEC ELECTRIC COMPANY, pro se.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant asks an award of $296.40 for electrical fixtures sold and delivered to the Kankakee State Hospital. The authorities of the hospital admit the goods were received and have not been paid for. Claimant is therefore awarded the sum of $296.40.

(No. 1582—Claimant awarded $399.25.)

BOARD OF EDUCATION, DISTRICT 144, NORMAL, ILLINOIS, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

SERVICES—*when award will be made for goods furnished and services rendered.* Where it is conceded that claimant furnished goods and rendered services to the State for which claimant has not been paid, by reason of the appropriation lapsing before the bill is vouchered for payment, an award will be made for the amount due.

PEARL FORD, Clerk, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The State Normal University used the Central School Building of claimant for extra classes during the six weeks beginning June 8th and ending July 20th, of the year 1928. Claimant furnished the towels, paper, light and water and the janitor service during the six weeks its school building was used by the University. A bill for the amount due claimant was rendered but the officials of the University failed to issue a voucher in payment of it until after the appropriations for 1928 had lapsed. It is conceded claimant has not been paid and that its bill is just. Claimant is therefore

awarded the sum of $399.25, being the amount its itemized statement shows is due.

(No. 1584—Claimant awarded $55.00.)

LYLE NAIDON, BY EDYTHE NAIDON, HIS NEXT FRIEND, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

PROPERTY DAMAGE—*when award will be made.* Where it appears that claimant's property is destroyed through no fault of his own but by reason of being struck by a truck driven by a State employee, an award will be made for the loss sustained.

McCARTHY & McCARTHY, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that the claimant's bicycle was destroyed by a truck owned by the State of Illinois and driven by an employe of the State of Illinois, which got beyond the control of the driver and ran across the side walk and into the claimant's bicycle, completely demolishing it without fault of claimant. The bicycle was worth $55.00 and was a new vehicle.

From the facts in the case, it would appear that the claim of this boy was reasonable and that no objections being made by the defendant, this court recommends that this claimant be allowed the sum of $55.00.

(No. 1585—Claimant awarded $301.54.)

EDWARD J. JACKOBOICE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

MERCHANDISE—when award will be made. Where the State received merchandise which the State officials admit has not been paid for, an award will be made for the amount due.

TAGGART & KINGSTON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant sold to the Division of Highways one Monarch road scraper at the price of $301.54, the scraper being shipped June 15, 1929, and received about July 1st following.

It is admitted by the State officials that claimant has not been paid and that his claim is due. He is therefore awarded the sum of $301.54.

(No. 1596—Claim denied.)

N. L. LINDLEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

PLEADING—*what allegations and proof necessary to recover.* Where a person seeks to recover damages for personal injuries sustained he must allege and prove due care on his part and negligence on the part of the defendant.

LICENSEE—*duty of owner of premises to licensee.* The only duty the owner of premises owes to a licensee is not to injure him wilfully or intentionally.

PERSONAL INJURY—*when State not liable.* Where there is no statute making the State liable for personal injuries resulting by the wrongful acts of the members of the Illinois National Guard, the Court of Claims has no power to declare it liable for such acts.

SAME—*when claimant not without remedy.* If a member of the National Guard injures anyone, either negligently or wilfully, he is answerable to the party injured in the civil courts, and the fact that he is a member of the National Guard does not relieve him from his liability.

HINCHLIFF, MILLER & THOMAS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant asks an award of $162.10 for damages to his automobile, loss of time suffered on account of personal injuries received and money paid out for physician's services. He charges in his declaration that on August 8, 1927, while his automobile was parked beside one of the concrete roads in Camp Grant a team of horses being driven by members of the Illinois National Guard became frightened and ran into his car damaging it and injuring him to such an extent that he lost nine days' work. No evidence has been introduced to support the claim and we might well deny it for that reason but we will put our decision on other grounds.

The declaration is not good—it does not state a cause of action. It does not allege claimant was in the exercise of

reasonable care nor does it state any facts from which such can be inferred. Neither does it charge the alleged injuries were caused by the negligence of the men in charge of the horses or state any facts showing negligence on their part. It is fundamental in pleading that where one seeks to recover in cases such as this against either a natural or corporate person he must allege and prove due care on his part and negligence on the part of the defendant.

Camp Grant is in the possession of the State and is used to give military training and instruction to the National Guard of the State. There is nothing in the declaration that in any way connects claimant with the Camp, either as an employee, a member of the Guard or otherwise. He was, at most, a mere licensee while on the grounds. The only duty the owner of premises owes a licensee is not to injure him wilfully or intentionally. (*Haye et al. v. State*, 5 Ct. Cl. 359 and cases there cited.) So far as this record shows the injuries to claimant were the result of an accident for which no one was responsible.

But if the declaration showed that claimant's damages were caused by the negligence of the men in charge of the horses it does not follow that the State is liable therefor. There is no statute making the State liable for the wrongful acts of the members of the National Guard, and in the absence of such law this court has no power to declare it liable for such acts. If, however, a member of the National Guard wrongfully injures any one, either negligently or wilfully, he is answerable to the party injured in the civil courts. The fact that he is a member of the Guard does not relieve him from his liability. If claimant has any cause of action for the injuries he received it is against the men themselves and not against the State.

The claim is therefore denied and the case dismissed.

(No. 1599—Claim denied.)

LOGAN HAY, R. ALLAN STEPHENS, PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF BROWN, HAY & STEPHENS, AND GEO. B. WHITE, AND S. E. QUINDRY, PARTNERS, DOING BUSINESS AS WHITE & QUINDRY, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

ELECTION CONTEST—*when court will make no recommendation for compensation for legal services in an election contest.* Where the legislature has exclusive power to determine the rights and qualifications of its members and is fully informed as to the expenses incurred and services performed in a legislative election contest, the Court of Claims being an advisory body, and a creature of the legislature, will not assume to make a recommendation concerning compensation for legal services rendered in connection with such election contest, but will leave the matter entirely to the discretion, power and authority of the legislature.

BROWN, HAY & STEPHENS, and WHITE & QUINDRY, for claimants.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a case where claimants bring action to recover $500.00, for attorney fees and $288.60 for transportation, hotel bills, meals, telephone, stenographic hire and printing, making a total of $788.60.

It appears that this claim is based upon services rendered by claimants in the matter of an election contest, growing out of an election held on November 6, 1928, in the Fiftieth (50th) Senatorial District of the State of Illinois.

Claimants allege further that this matter was heard before the Legislature and they were employed to represent Wallace A. Bandy before a committee of the Illinois Legislature in the hearing of the contest. That they spent a large amount of time and energy in a successful defense of the contestee resulting in a finding that contestee was duly elected and qualified as representative of the Fiftieth (50th) Senatorial District.

It appears to the court that services were rendered as claimed, but that the matter of employment was a legislative

act and entirely within the knowledge of the Legislative Department of the State of Illinois.

The Court of Claims is simply an advisory committee of the Legislature. Its functions are to hear and determine facts and make recommendations to the Legislature. This is a means to expedite transaction of business and to give the Legislature the benefit of the investigation and determination of this court.

In a matter wherein the Legislature is fully advised of all the facts in the matter in controversy and are in a position to understand fully the power given and the work performed, as expressed in this case, this court is of the opinion that it should not take a position of advising in the case at issue.

The Constitution of the State of Illinois empowers the Legislature with the right to determine the qualification of its members. The Legislature has the power to retain or expel a member of that body. It is very important that the membership of that great legislative body should be safeguarded to the utmost.

Therefore, the Constitution gave the legislative body the exclusive power to determine the rights of its members and in this case, the Legislature in pursuing its powers, heard and determined the case in question and were fully informed as to the expenses incurred and the services performed by all persons in all hearings in this legislative contest.

Therefore, this court is of the opinion that the Legislature is entirely informed and has exclusive power to carry out in full the program in question without the advice or counsel of an advisory body such as this court and therefore this court makes no recommendation, leaving the matter entirely to the discretion, power and authority of the Legislature of the State of Illinois. Case dismissed without prejudice.

(No. 1610—Claim denied.)

STEVE STRUCK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

LIMITATIONS—*when claim barred.* Where a claim is not filed within five years after it first accrues it will be dismissed and disallowed as being barred by the Statute of Limitations.

HAROLD W. LEWIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was injured while in the employ of the State of Illinois as a carpenter in and around the Illinois Soldiers' and Sailors' Home on or about the 25th day of April, 1921, and while so employed on or about that date, he suffered an injury. He filed his claim on June 30th, 1930, which is of course more than five years and the Attorney General coming and filing his objections on the ground of the Statute of Limitations in the nature of a demurrer and this court following the rule prescribed by statute finds that said claim has not been filed within five years. Therefore, the claim is dismissed and disallowed.

(No. 1640—Claim denied.)

E. N. NEVINS, AND PEARL O'BRIEN, WIDOW OF GEORGE P. O'BRIEN, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

ELECTION CONTEST—*when court will make no recommendation for compensation for legal services in an election contest.* This case is controlled by the opinion of the court filed in the case of LOGAN HAY, ET AL. V. STATE OF ILLINOIS, No. 1599.

E. N. NEVINS, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim based upon the same premises as set forth in case No. 1599, where Logan Hay, et al., are claimants and

the State of Illinois defendant and the same principles being involved, this court makes the same finding as in the above cited case, No. 1599.

(No. 1221—Claim denied.)

STA-RITE HAIR PIN COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1930.

PLEADINGS—*meaning of plea at common law.* A plea at common law meant a defense of matters of fact. Its province was to state the facts upon which the defendant relied to defeat the action of the plaintiff.

SAME—*demurrer is not a plea.* Since a demurrer is not a plea, it neither affirms nor denies any matter of fact, but presents an issue of law, and is an excuse for not pleading.

SAME—*purpose of providing for general traverse to be considered as filed.* The purpose of providing that a general traverse shall be considered as filed if the State fails to plead within the time prescribed by the rules is to prevent defaults against the State and compel claimants to prove their claims with the same strictness that would be required if a plea of general issue was filed.

STATUTE OF LIMITATIONS—*when claim barred—statute is mandatory.* The provision of Section 10 of the Act creating the Court of Claims requiring every claim against the State cognizable by the court shall be forever barred unless it is filed within five years after it first accrues, is mandatory and an award will be refused if it appears from the declaration or the evidence that the claim falls within its inhibition.

FRANCHISE TAX—*tax voluntarily paid cannot be recovered back.* Where the tax is voluntarily paid it cannot be recovered back, and it is immaterial that the tax is illegally laid, or the law under which it is laid is unconstitutional.

SAME—*failure to pursue remedy in courts of general jurisdiction.* The act in relation to the payment of public money into the State Treasury provides a method of determining the validity of the tax in a court of general jurisdiction and if claimant fails to avail himself of such remedies the Court of Claims will not take jurisdiction.

MCLAUGHLIN & BILLMAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $246.10 excess franchise taxes alleged to have been paid by claimant for the years 1918 to 1925 inclusive and $91.33 interest thereon. The declaration was

filed July 12, 1927. On April 17, 1929, the Attorney General filed a general and special demurrer to the declaration. No evidence has been taken and the case is submitted on the declaration and demurrer.

The special grounds for demurrer are that it appears from the declaration that the alleged excess taxes paid in the years 1919 to 1922 inclusive were paid more than five years before the filing of this claim. Claimant urges (1), that as the State did not file any plea within thirty days after the filing of the declaration it is now barred from filing a demurrer, citing rule 12 in support of its contention; and, (2) that the question of limitations cannot be raised by demurrer but must be specially pleaded. Rule 12 provides that if the State shall fail to plead within thirty days after the declaration is filed a general traverse of the declaration shall be considered as filed.

A plea at common law meant a defense of matters of fact. Its province was to state the facts upon which the defendant relied to defeat the action of the plaintiff. A demurrer is not a plea. It neither affirms nor denies any matter of fact. It presents an issue of law to the court, and is an excuse for not pleading. The purpose of providing that a general traverse shall be considered as filed if the State fails to plead within thirty days after the filing of the declaration is to prevent defaults against the State and compel claimants to prove their claims with the same strictness that would be required if a plea of general denial was filed. The declaration in this case was filed July 12, 1927. Under rule 16 it was the duty of the claimant to have taken its testimony and filed it 30 days before the September term of that year. It could have called its case on the convening of court and asked for a rule on the Attorney General to plead or demur to its declaration within a fixed time, but it did not do so. It took no steps to bring the matter to an issue of any kind. No issue was made until the demurrer of the State was filed, which raises only an issue of law. Rule 12 was not intended to bar the court from deciding such issues when properly raised. The demurrer admits the facts stated in the declaration to be true, and if such facts do not warrant the allowance of an award to claimant it would be useless to require claimant to go to the expense of proving them.

Whether or not the bar of the statute of limitations can be raised in this court by demurrer is not important. Section 10 of the act creating the Court of Claims specifically provides that every claim against the State cognizable by the court shall be forever barred unless it is filed with the Secretary of the Court within five years after the claim first accrues. This provision of the statute is mandatory, and whenever it appears to the court, either from the declaration or the evidence, that a claim falls within its inhibition it is the duty of the court to refuse to allow it. No award can, therefore, be made for the excess taxes paid in the years 1919 to 1922 inclusive.

The declaration states, in substance, that claimant was assessed and paid franchise taxes for the years 1918 to 1925 inclusive in excess of what it was legally bound to pay. So far as the declaration shows these taxes were voluntarily paid. The fact that the tax was illegal does not, alone, give the taxpayer the right to recover it. Its payment must have been compulsory,—it must have been paid under protest and duress before it can be recovered back. "That a tax voluntarily paid cannot be recovered back the authorities are generally agreed, and it is immaterial in such case that the tax has been illegally laid or even that the law under which it was laid was unconstitutional. The principle is an ancient one in the common law and is of general application. Every man is supposed to know the law, and if he voluntarily makes a payment which the law would not compel him to make he cannot afterwards assign his ignorance of the law as the reason why the State should furnish him with legal remedies to recover it back." (*Cooley on Taxation*, 2 Ed., p. 809; *Board of Education* v. *Toennigs*, 297 Ill. 469.)

The act in relation to the payment of public money into the State Treasury provides a means whereby claimant could have had the question of the validity of the tax determined by a court of general jurisdiction. It did not do so but elected to pay the tax. Where a claimant had a remedy in a court of general jurisdiction and failed to avail himself of such remedy the Court of Claims will not take jurisdiction. (*Moline Plow Co.* v. *State*, 5 Ct. Cl. 277.)

As the facts stated in the declaration show claimant cannot be allowed an award the demurrer is sustained and the case dismissed.

(No. 1335—Claim denied.)

OAKFORD & FAHNESTOCK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1930.

FRANCHISE TAX—*when tax voluntarily paid cannot be recovered back.* A tax voluntarily paid cannot be recovered even though the law under which it is laid and collected is unconstitutional.

SAME—*payment under protest not sufficient—must show payment was made under duress.* The mere fact that payment was made under protest gives no right of recovery, but claimant must show that payment was made under duress.

REMEDIES—*when equitable remedies may be invoked.* Where a tax is illegal the aid of a court of equity may be invoked to prevent the collection of such tax.

SAME—*failure to pursue remedies in courts of general jurisdiction.* Where claimant fails to have the legality of taxes determined by a court of general jurisdiction the Court of Claims will not take cognizance of it.

HUNTER, KAVANAGH & MCLAUGHLIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant is an Illinois corporation engaged in the wholesale grocery business. It alleges in its declaration that for the years 1923 to 1926 inclusive the Secretary of State demanded and insisted upon receiving the sum of $800.00 as a franchise tax for each of those years, basing his contention upon the claim that the franchise tax assessable should be assessed not against the outstanding capital stock of claimant, but upon the authorized capital stock, and that thereupon claimant did, under protest, pay such tax so demanded by the Secretary of State; that the difference between the taxes demanded and paid and the amount lawfully due for those years is $576.05; and that the Secretary of State was unable to refund the taxes so lawfully collected because he had paid them over to the State Treasurer. To this declaration the State has filed a general demurrer.

The contention of claimant is that the law under which the taxes were assessed and collected was unconstitutional and the Secretary of State had no legal right to collect them and they should, therefore, be refunded by the State.

It is fundamental that a tax voluntarily paid cannot be recovered back. The fact that the law under which the tax is laid and collected is unconstitutional does not of itself give the right to have it refunded. No one is required to pay an illegal tax, and no officer can legally collect such a tax. Every person is supposed to know the law, and if he voluntarily pays an illegal tax, he cannot afterwards assign his ignorance of the law as a reason for having it refunded to him. (*Board of Education* v. *Toennings*, 297 Ill. 469.) If claimant paid these taxes in ignorance only of its legal rights the fact that it was under no legal obligation to pay them and the Secretary of State had no legal right to collect them is of no consequence unless the payment was compulsory. (*Ill. Glass Co.* v. *Chicago Tel. Co.*, 234 Ill. 535; *School of Domestic Arts* v. *Harding*, 331 Ill. 330.)

It is alleged in the declaration that "the claimant did, under protest, pay said tax so demanded by the Secretary of State." This is not sufficient to relieve the payment of its voluntary character. The Secretary of State claimed the right to collect these taxes, and the fact claimant protested that right at the time of their payment does not give it the right to recover them back. (*Conklin* v. *City of Springfield*, 132 Ill. 420.) Before claimant is entitled to recover them it must also allege they were paid under duress. (*Yates* v. *Royal Ins. Co.*, 200 Ill. 202; *School of Domestic Arts* v. *Harding*, *supra*.)

Section 112 of the General Corporation Act in force when these taxes were paid provided that between the first day of February and the fifteenth day of May of each year, the Secretary of State should notify each corporation against which a franchise tax was assessed of the amount of such tax assessed against it, and that objection thereto would be heard on request of the corporation on a day not later than the twenty-fifth day of June. There is no allegation in the declaration that this notice was not received. Section 108 of that act provided the tax should be due on July first, and Section 114 that it should not become delinquent until August first. Section 116 provides that if the tax was not paid on or before July thirty-first the Secretary of State should issue a warrant for its collection. Under these provisions of the statute claimant's business could not be interfered with in any way

by the Secretary of State until the first day of August even if the tax was not paid prior to that time. (*Parker Holladay Co.* v. *Bokum*, 252 Ill. App. 135.) If claimant believed the tax illegal it had ample time after receiving notice of the amount claimed to be due to invoke the aid of a court of chancery to restrain the Secretary of State from attempting to enforce its payment. A court of equity will interfere and by injunction prevent the collection of an illegal tax. (*Drainage Comrs.* v. *Kinney*, 233 Ill. 67; *Sanitary District* v. *Board of Review*, 258 Ill. 316; *St. Louis Bridge Co.* v. *Eisele*, 263 Ill. 50; *Baltica Ins. Co.* v. *Carr*, 330 Ill. 608.) By invoking the aid of a court of equity claimant could have been relieved from the payment of these taxes if they were illegal. It did not do so but chose to pay the taxes, and it cannot now ask to have them refunded on the ground they were illegal. (*Ill. Merchants Trust Co.* v. *Harvey*, 335 Ill. 21; *R. C. L.*, p. 151, sec. 176.) The taxes were not paid under duress.

But claimant also had another remedy to have the validity of the taxes determined by the court. Section 2A of the act in relation to the payment of the public money of the State into the State Treasury provides that every officer receiving public money paid under protest shall hold such money thirty days and on the expiration of that period deposit the same with the State Treasurer unless the party making such payment shall within that period file a bill in chancery and secure temporary injunction restraining the making of such deposit, in which case such payment shall be held until the final order or decree of the court. Under this statute claimant could have had the legality of the tax decided by a court of general jurisdiction and secured an order for its repayment if the tax was held to be invalid. As claimant had the right to have the legality of the taxes determined by a court of general jurisdiction and failed to do so, the Court of Claims will not take cognizance of it. (*Moline Plow Co.* v. *State*, 5 Ct. Cl. 277.)

For the reasons above stated, the demurrer is sustained and the case dismissed.

(No. 1436—Claim denied.)

COMMERCIAL SOLVENTS CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1930.

FRANCHISE TAX—*when claim barred by Statute of Limitations.* Every claim against the State cognizable by the Court of Claims shall be forever barred unless the claim is filed within five years after the claim first accrues.

SAME—*when tax will be presumed to have been paid voluntarily.* Where claimant fails to avail itself of the method provided by law to prevent the Secretary of State from paying the fees and taxes into the State Treasury until their validity could be established, such payment is not compulsory but will be presumed to have been made voluntarily and the fact that the tax is illegal or that it was paid under an unconstitutional statute does not change the rule.

GILLESPIE, BURKE & GILLESPIE, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant is a corporation organized under the laws of Maryland. It filed its application for a certificate of authority to do business in Illinois July 13, 1923, and the certificate was issued August 3, 1923. Thereafter it made annual reports for the years 1924 to 1926 inclusive to the Secretary of State as required by the provisions of the General Corporation Act. The Secretary of State computed the initial fees and franchise taxes to be paid by claimant pursuant to the provisions of Sections 96, 101 and 105 of the General Corporation Act then in force. He also assessed additional initial fees for the years 1925 and 1926 pursuant to the provisions of the same sections. These fees and taxes aggregated the total sum of $16,887.01, all of which was paid by claimant, during the years for which they were assessed.

In the case of *The O'Gara Coal Co.* v. *Emmerson* the Supreme Court at its April term in 1927 held Sections 96, 101 and 105 of the General Corporation Act invalid as against foreign corporations, and claimant has filed this suit asking to have these fees and taxes refunded to it by the State, alleging they were paid under protest, duress and compulsion.

The fees and taxes for the year 1923 amounted to

$4,802.86 and were paid on August third of that year. This suit was filed February 18, 1929, more than five years after these taxes were paid. Section 10 of the act creating the Court of Claims provides that 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 persons under disability two years from the time the disability is removed. This statute is mandatory and the court has no power to make an award for a claim that does not come within its terms. It follows that no award can be made for the initial fees and taxes of $4,802.86 paid August 3, 1923.

It is the settled law of this State that taxes voluntarily paid cannot be recovered back. This claimant concedes. It becomes necessary therefore to determine whether or not claimant paid these fees and taxes voluntarily or under protest, compulsion and duress. The facts in the case have been stipulated. This stipulation recites: "(12) That the only initial fee, franchise tax or additional initial fee paid by claimant under protest during said years, 1923 to 1926 inclusive were the initial fees and franchise tax paid by claimant on August 3, 1923, in the aggregate sum of $4,802.86. (13) That claimant paid the initial fee, additional initial fee and franchise taxes in question without duress or compulsion other than the force, forfeitures and penalties of the General Corporation Act of 1919, as amended and in force during the year 1923 to 1926, inclusive." In the statement of its case claimant says, "No protest was made by claimant in the payment of any initial fee, additional initial fees or franchise taxes assessed against it upon the basis of the unconstitutional sections of said act, except the payment of the initial fee and franchise taxes paid by it during the years 1923 to 1926, inclusive." In the statement of its case claimant says, "No protest was made by claimant in the payment of any initial fee, additional initial fees or franchise taxes assessed against it upon the basis of the unconstitutional sections of said act, except the payment of the initial fee and franchise taxes paid by it during the year 1923 at the time it was granted its original certificate of authority to do business in the State of Illinois. Claimant paid the initial fee, additional initial fees and franchise taxes in

question without duress or compulsion other than the force, forefeitures and penalties of the General Corporation Act of 1919, as amended and in force during the years 1923 to 1926, inclusive."

It is not contended that the Secretary of State made a mistake in the computation of the fees and taxes paid by claimant. The contention is that the sections of the statute which he followed in making the computations were unconstitutional and void as against claimant and therefore he had no right to demand them and claimant was not legally required to pay them.

The fact that a tax is illegal or that it was paid under an unconstitutional statute will not give the tax payer the right to its recovery if it was paid voluntarily. (*Board of Education* v. *Toennings*, 297 Ill. 469.) The fact that the officer to whom the tax was paid had no right to receive it and the person paying was under no legal obligation to pay it does not change the rule. (*Ill. Glass Co.* v. *Chicago Tel. Co.*, 234 Ill. 535; *School of Domestic Arts* v. *Harding*, 331. Ill. 330.)

At the time these fees and taxes were assessed and paid the Secretary of State believed the law under which he computed them to be valid. It is not contended that any fraud or misrepresentation was practiced upon claimant by the Secretary of State in the computation and collection of these fees and taxes. Neither is it contended that he used any duress or compulsion to enforce their payment. With the exception of the first payment in August, 1923, they were all paid without protest, and for the years 1925 and 1926 they were paid before they were due. We think it is obvious that claimant believed the law under which the taxes were paid was valid and paid them in that belief. Such a payment is voluntary. If the payment of these fees and taxes had been made voluntarily and with the intention of seeking to have them refunded, the presumption is that claimant would have availed itself of the method provided by law to prevent the Secretary of State from paying them into the State Treasury until their validity could be established. (*Richardson Lubricating Co.* v. *Kinney*, 337 Ill. 122.) It will be presumed, in the absence of evidence to the contrary, that all payments of taxes were voluntary. (*Yates* v. *Royal Ins. Co.*, 200 Ill. 202.) And the fact that the party paying the tax paid it under

mistake as to his legal obligation to pay it does not, of itself, give him the right to have it refunded. (*Illinois Merchants Trust Co.* v. *Harvey*, 335 Ill. 284.)

It is urged by claimant that these fees and taxes were paid under duress and compulsion because the statute subjected it to certain forfeitures and penalties if it refused to pay them. No protest was made by claimant against paying them at the time they were paid, and there is nothing in the record to show they were paid to avoid these forfeitures and penalties. Mere knowledge of the fact that failure to pay them would subject claimant to a forfeiture of its right to transact business in the State does not alone constitute duress. (*Yates* v. *Royal Ins. Co., supra.*) And one who pays a tax he believes to be legal will not afterwards be heard to say he was coerced into doing so. (*Richardson Lubricating Co.* v. *Kinney, supra.*)

If claimant believed these fees and taxes were illegal and that the Secretary of State had no right to collect them it was not required to pay them in order to avoid the imposition of the forfeitures and penalties mentioned in the statute. It could have filed a bill in equity to restrain the Secretary from collecting the fees and taxes and enforcing the forfeitures and penalties. It has long been the rule in this State that where a tax has been laid under an unconstitutional law courts of equity will interfere by injunction to prevent the collection of the tax. (*Drainage Comrs.* v. *Kenney*, 233 Ill. 67; *Baltica Ins. Co.* v. *Carr*, 330 Ill. 608.)

Claimant had another remedy to have the validity of these fees and taxes determined by a court of equity. Section 2A of the act in relation to the payment of public money into the State Treasury provides that every officer receiving public money paid under protest shall hold such money thirty days and on the expiration of that period deposit the same with the State Treasurer unless the party making such payment shall within that period file a bill in chancery and secure a temporary injunction restraining the making of such deposit, in which case such payment shall be held until the final order or decree of the court. If claimant believed the fees and taxes to be illegal at the time it paid them and paid them with the intention to afterward ask for their refund we think it would have availed itself of these provisions of the law.

If one may avoid the payment of an illegal demand by

resorting to such a remedy in equity but does not avail himself of such remedy the payment is not compulsory. *(Ill. Merchants Trust Co. v. Harvey, supra.)* It follows that the payment of these fees and taxes by claimant were voluntary and not under compulsion.

The claim is therefore denied and the case dismissed.

(No. 1510—Claim denied.)

GERALD C. FARLOW, MILDRED L. NELSON, FORMERLY MILDRED L. FARLOW, MARY E. FARLOW, RACHAEL WINIFRED FARLOW, AND JEANETTE J. FARLOW, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1940.

EMINENT DOMAIN—*when service upon title owner of record is sufficient in condemnation proceedings.* **Where the State obtains service upon the title holder of record in a condemnation proceeding in procuring land for highway purposes, and the condemnation proceedings are regular, and reasonable compensation allowed and accepted by the owner of record, and the State is at no fault in obtaining service upon the record title owners, such service of process is sufficient and the holder of an unrecorded deed to the land in question is precluded from maintaining an action in this court either as a matter of law or as a matter of equity and good conscience.**

L. FRED O'BRIEN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

In this case the claimants asked for Seventy-five Hundred ($7,500.00) Dollars for certain land taken from them through a condemnation proceedings in the construction of a State Bond Issue Road. The land in question is located three miles west of Augusta, Illinois, and known as the Farlow Farm.

A condemnation proceedings was had in a court of general jurisdiction. At the time of the condemnation the records of the county showed that the title was in one W. O. Farlow; that damages were awarded by the jury in the sum of $100.00 and accepted by the said W. O. Farlow. It now appears that claimants allege that they had a deed to said premises but it was not recorded at the time of the filing of the condemnation proceedings. Therefore the State only got service on W. O. Farlow the title owner on the records of the County of Hancock.

There is nothing in the records to indicate other than that the condemnation proceedings were regular and that a proper and reasonable compensation was allowed by a verdict of a jury in the sum of $100.00 and it appears that W. O. Farlow accepted this money and it would seem that, that should settle the controversy as to the land taken in question. It would appear to this court that there is no reason either as a matter of law or as a matter of equity and good conscience in any question determined in a court of general jurisdiction on the question of value. It would appear that a jury's verdict would be a good criterion as to the damages sustained. Therefore this court will not pass on that question.

It would appear to the court that this is a matter between W. O. Farlow and claimants and it would not appear proper for the State of Illinois through this court to consider a matter in behalf of the claimants who failed to file their deed in proper time and wherein a jury passed upon the matter of damages and wherein the State of Illinois was at no fault in the matter of getting service on the record title owners in the condemnation proceedings.

Therefore this court recommends that the claim be disallowed.

(No. 1531—Claim denied.)

DR. G. D. LOCKIE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.
Rehearing denied on November 12, 1930.

MEDICAL SERVICES—*when no award will be made.* The State is not liable for medical services rendered to its employees in the absence of an agreement to pay for them or of a statute requiring it to do so.

REHEARING—*when rehearing will be denied.* Where there is no law authorizing a state officer to furnish medical services to an injured employee an agreement to provide such medical aid is void and a rehearing will be denied.

EVAN L. SEARCY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant is asking an award of $225.00 for medical services rendered Charles Morgan. Mr. Morgan was a building

inspector in the employment of the Department of Public Welfare. On February 5, 1928, he was taken ill with pneumonia at Wilmington. His brother, Harry F. Morgan, called on claimant at Springfield and asked him to go to Wilmington and treat Charles, telling claimant at the time, that he would see if he could not get the State to pay him for his services. Claimant made three trips to see the patient and his claim is for those trips.

Claimant admits that he was never authorized by any agent or official of the State to treat Mr. Morgan and that no one representing the State ever agreed or promised that the State would pay for treating him. The State is not liable for medical services rendered its employes in the absence of an agreement to pay for them or of a statute requiring it to do so. It is not contended in this case either that there was an agreement by the State to pay claimant or that there is a statute requiring it to do so. The claim is therefore denied and the case dismissed.

On November 12, 1930, upon petition for rehearing, the following additional opinion was filed:

Claimant has filed a petition for rehearing. The reasons given for asking the rehearing are that he can show by Roy W. Ide who was Director of the Department of Public Welfare at the time he treated Morgan that it was understood his services in treating him would be paid for by the State, and that at the time of the hearing Ide was in Europe and his testimony could not be received. There is no law authorizing the Director of Public Welfare to make such an agreement, and if he did so it was void. The petition for a rehearing is denied.

(No. 1534—Claimant awarded $1,406.25.)

LOUIS GUINN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1930.

PERSONAL INJURY—*when award will be made for injuries sustained while a member of the Illinois National Guard.* Where it appears the claimant received injuries in line of duty while a member of the Illinois National Guard, an award will be recommended for such injuries.

CLARENCE B. DAVIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant during the summer of 1928 was a member, a private in Co. L and was in Camp Grant, Illinois, at the Tour of Annual Encampment in pursuance of an order from the Adjutant General of Illinois and was entrained with other members of his company and was returned to Metropolis. It is alleged that during the travel on the train a lieutenant who was in command of Co. L, was accused of taking money from claimant. An argument resulted and the lieutenant hit the claimant and claimant returned the blow. It is further alleged that the lieutenant went to the baggage car and secured one of the army rifles and shot the claimant in the left arm. It appears that the lieutenant has since been incarcerated in the Insane Asylum at Jacksonville, Illinois.

This was a very unhappy circumstance and one that must be deplored. However, the claimant was injured while under the command of a superior officer and while on duty as a soldier in behalf of the State of Illinois. The claimant asked for $4,000.00 but it appears that $1,406.25 is the amount shown to be the real claim.

The Attorney General makes no objection and submits the defense on the facts set forth in the statement, brief and argument of claimant.

In view of the foregoing facts before this court there is but one method to pursue and therefore makes the allowance asked for in this claim.

The court therefore recommends that claimant be allowed the sum of $1,406.25.

(No. 1546—Claim denied.)

W. E. O'NEIL CONSTRUCTION CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.
Rehearing denied November 12, 1930.

CONTRACT—*when no extra compensation will be allowed.* **The language of Section 19 of Article 4 of the Constitution is clear and unambiguous in that it prohibits the General Assembly from granting or authorizing extra compensation, fee of allowance to any public officer, agent, servant or contractor, after service has been rendered or contract made, and this provision is binding upon the courts of the State as well as the General Assembly.**

SAME—*what is extra compensation.* **Extra compensation is a payment or allowance in excess of that fixed by law or contract at the time the service is rendered.**

REHEARING—*when rehearing will be denied.* **Where the court finds no reason for changing the views expressed in the opinion filed, a rehearing will be denied.**

EVAN L. SEARCY, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant asks an award of $11,364.32 as extra compensation for the construction of the Naval Armory at Chicago. It charges that in building the armory it was put to extra expense not contemplated, due to delays on the part of the State and to the rise in the water level of Lake Michigan. The contract is not in evidence and we have no information as to its terms and conditions. There is no contention, however, that claimant was not paid the contract price for the construction of the building.

Section 19, Article 4 of the Constitution provides that "the General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made." This provision of the constitution is mandatory and binding upon the courts of the State as well as upon the General Assembly, and this court has no power to grant an award such as is asked for claimant. (*Paschen Bros. v. State*, No. 750, Opinion filed September 13, 1927.) The language of this provision is clear and unambiguous and its purpose cannot be misunderstood. (*Fergus v. Brady*, 277

Ill. 272.) When the people adopted the constitution they included this clause to protect themselves from such evils and mischiefs as are likely to arise out of such a claim as this. (*Dunnegan Construction Company* v. *State*, No. 1021, opinion filed Sept. 10, 1929.) Extra compensation is a payment or allowance in excess of that fixed by law or contract at the time the service is rendered. (*Porter* v. *Loehr*, 332 Ill. 353.) The work has been completed and the contract price therefor fully paid, so far as this record shows, and no extra compensation for it can now be allowed (*Conway & Co.* v. *State*, No. 1412, opinion filed November 6, 1929.)

The claim is denied and the case dismissed.

On November 12, 1930, upon petition for rehearing, the following additional opinion was filed:

Claimant has filed its petition for a rehearing in which it is set forth the court overlooked certain matters of fact appearing in the record and misconstrued certain provisions of the statute and constitution. We have carefully considered the points on which the rehearing is asked and find no reason for changing our views as expressed in the opinion filed in the case. The petition is therefore denied.

(No. 1579—Claimant awarded $562.50.)

WILLIAM M. SCANLAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1930.

FEES AND SALARIES—*when State officer entitled to salary fixed by statute.* Where the salary of a State officer is fixed by statute and the legislature fails to appropriate a sufficient amount to cover such salary, an award will be made for the difference between the amount fixed by statute and the amount appropriated.

SCANLAN & MASSIEON, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for back salary for acting as Industrial Officer and Chairman of the Industrial Commission of the

State of Illinois. It appears that there is no objection on the part of the defendant as to the legality of the claim and that the amount claimed $562.50, is admitted to be mathematically correct in a letter from the State Auditor to the Attorney General.

Therefore the court recommends that the claimant be allowed the sum of $562.50.

(No. 1591—Claimant awarded $25.85.)

JOBST BETHARD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1930.

SUPPLIES—*when award will be made.* Where it appears from the record that goods were shipped to a State institution and consumed by the inmates thereof, for which the purchase price had not been paid, an award will be recommended.

JOBST BETHARD COMPANY, pro se.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim in the sum of $25.85 for 10 cases of No. 10 Peas shipped February 4th, 1929, at the request of the State of Illinois to the Illinois School for the Blind located at Jacksonville, Illinois. It appears from the record that there is no question about the goods being received and consumed by the inmates of the institution in question.

Therefore the court recommends that the claimant be allowed the sum of $25.85.

(No. 1592—Claimant awarded $18.56.)

JOBST BETHARD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1930.

SUPPLIES—*when award will be made.* Where it appears from the record that goods were shipped to a State institution and consumed by the inmates thereof, for which the purchase price had not been paid, an award will be recommended.

JOBST BETHARD COMPANY, pro se.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim in the sum of $18.56 for four barrels of table salt shipped Oct. 26th, 1928, to the St. Charles School for Boys, located at St. Charles, Illinois. It appears from the record that there is no question about the goods being received and consumed by the inmates of the institution in question.

Therefore the court recommends that the claimant be allowed the sum of $18.56.

(No. 1593—Claimant awarded $167.60.)

JOBST BETHARD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1930.

SUPPLIES—*when award will be made.* Where it appears from the record that goods were shipped to a State institution and consumed by the inmates thereof, for which the purchase price had not been paid, an award will be recommended.

JOBST BETHARD COMPANY, pro se.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim in the sum of $167.60, for 40 boxes of prunes, fifty pounds each, shipped on or about July 5th,

1928, at the request of the State of Illinois to the St. Charles School for Boys, located at St. Charles, Illinois. It appears from the record that there is no question about the goods being received and consumed by the inmates of the institution in question.

Therefore the court recommends that the claimant be allowed the sum of $167.60.

(No. 1598—Claimant awarded $225.00.)

DAN HALTERMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1930.

PROPERTY DAMAGE—*when award will be made.* Where there are no objections as to the liability of the State, an award will be recommended for damages to property resulting by fire spreading upon claimants land through the act of certain employees and inmates of a State institution.

A. J. PICKRELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for property damages suffered as a result of a fire which spread to his lands from an adjacent farm. It is claimed that this fire was caused through the negligent act of certain employees and patients of the Anna State Hospital.

There does not appear to be any objections on behalf of the defendant as to the liability of the State in this case. However, the State does object to the amount of claimant's claim $650.00. The defendant claims that from all the evidence in the matter that $225.00 would be proper and sufficient award on this claim.

This court is of the opinion that $225.00 is a sufficient and reasonable award and therefore recommends that claimant be awarded the sum of $225.00.

(No. 1601—Claim denied.)

DR. J. G. MEYER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.
Rehearing denied November 12, 1930.

MEDICAL SERVICES—*when State not liable.* The State is not liable for medical services rendered to a State employee in the absence of a statute making it so liable.

WALTER E. LINDGREN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $76.00 for medical services rendered J. O. Schofield by claimant. It is alleged that Schofield, an employee of the Department of Public Health, ran a splinter in his hand while opening a box on October 8, 1928, and that claimant treated him on account thereof from October 11th, to November 9th. Claimant has introduced no evidence to support his claim, but it is clear from the allegations of the declaration that there is no liability on the part of the State. The State is not liable for medical services furnished its employees unless there is a statute expressly so providing. It is not pretended there is any statute authorizing the State to pay for medical services rendered employees of the Department of Health.

The claim is denied and the case is dismissed.

On November 12, 1930, upon petition for rehearing, the following additional opinion was filed:

Claimant has filed a petition for rehearing of this case. The rules of law announced in the opinion filed herein are adhered to, and the petition for a rehearing is denied.

(No. 1602—Claimant awarded $133.54.)

J. W. GLUESING, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1930.

SERVICES—*when award will be made.* Where it is conceded claimant rendered services and incurred expenses while a member of the Dental Examining Committee which was not paid because the bill had not been presented prior to the lapsing of the appropriation for that purpose, an award will be made for such services and expenses.

ANDREW R. KOPP, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $258.77 alleged to be due claimant for services and expenses as a member of the Dental Examining Committee. Before claimant presented his bill for these services, the appropriation for the period to cover them, had lapsed so that it could not be paid. No evidence has been taken but it is conceded by the Department of Registration and Education that the State owes him $133.54 for such services and expenses, and the Attorney General recommends an award for that sum.

Accordingly claimant is allowed an award for the sum of $133.54.

(No. 1641—Claim denied.)

JOE WILLIAMS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1930.

JURISDICTION—*when court has no jurisdiction.* The House of Correction in the city of Chicago is not a subdivision of the State under the control of the Department of Public Welfare, and the Court of Claims has no jurisdiction to consider a claim for personal injuries sustained by an inmate therein.

AUGUSTUS L. WILLIAMS, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was on the 18th day of October, 1927, given a sentence of 30 days in the House of Correction in the City of Chicago, Illinois. The sentence was imposed by a Judge of the Municipal Court of that city. The claimant avers that while he was serving this sentence, he was injured by an attack by a fellow inmate and claims to be seriously injured and asked that he be remunerated by the State of Illinois in the sum of $15,000.00.

The defendant, the State of Illinois, appears and files a Plea to Jurisdiction and the court now being advised in the premises, is of the opinion that said House of Correction is not a sub-division of the State of Illinois under the control of the Department of Public Welfare and that this is not a claim that can be reviewed by this court. Therefore the plea of the defendant is sustained and claim dismissed.

(No. 962—Claim denied.)

AMERICAN CAN COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1206—Claim denied.)

BROWNING, KING & Co., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of

prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

VAIL, ROE & PLAMONDON, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(Nos. 1214–1240—Claims denied.)

AMERICAN LOCOMOTIVE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

FRANCHISE TAX—*when no award will be made.* Where claimant has an adequate remedy at law and fails to follow the statutory procedure set up by the State Legislature, the payment of franchise tax must be considered as having been made voluntarily and cannot be recovered back.

WILLIAM L. PATTON AND MILES GRAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

For the matter of consideration and opinion this court will pass upon both of the above entitled cases as consolidated, as the questions of law involved are the same although the facts are somewhat different.

In No. 1214 the claimant is asking for the return of franchise fees paid during the years 1923, 1924, 1925 and 1926,

each in the sum of $1,000.00, the claimant alleging that the payments were made under compulsion, which compulsion arose through fears of penalties, provided under the Corporation Laws of the State of Illinois.

In Case No. 1240 the claimant appears assignee of the claim from the Railway Steel Spring Company in a New Jersey Corporation now dissolved, it appearing the assignor paid corporation franchise fees for the year 1923. The declaration alleging was made under the same compulsion as in 1214 above. It is contended by claimant that the General Corporation Act concerning penalties for non-payment of franchise fees are of themselves compulsion for the payment of such fees and that payment under protest would be useless.

This court is of the opinion that claimant had an adequate remedy at law or in courts of general jurisdiction and to sustain this position, this court will recite a paragraph from the brief and argument of the Attorney General in words and figures as follows:

"If claimant had considered this payment as being involuntary it would have made the payments under protest and filed its bill in a court of competent jurisdiction for a writ of injunction to restrain the receiving officer from paying the amount into the State Treasury in accordance with the statutory procedure set up by the State Legislature. This the claimant did not do. It must be considered therefore that the payment was made voluntarily and therefore cannot be recovered back. (*Richardson Lubricating Co.* v. *Kinney*, 337 Ill. at 128; *Standard Oil Co.* v. *Bollinger*, 337 Ill. at 357.)"

It is therefore recommended by this court that said claims be denied and petitions dismissed.

(No. 1218—Claim denied.)

UNITED STATES HOFFMAN MACHINERY CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

WINSTON, STRAWN & SHAW, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1219—Claim denied.)

J. H. WILLIAMS & CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

WINSTON, STRAWN & SHAW, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1226—Claim denied.)

CHICAGO, WILMINGTON & FRANKLIN COAL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

ADAMS & HAWLEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1227—Claim dismissed.)

ORIS P. VAN SWERINGEN, AND OTTO MILLER, TRUSTEES FOR THE STOCKHOLDERS OF THE CALUMET AND CHICAGO CANAL & DOCK COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

ARTHUR D. CLOUD, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1229—Claim denied.)

MANHATTAN ELECTRICAL SUPPLY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1242—Claim denied.)

THE TODD COMPANY, INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

WINSTON, STRAWN & SHAW, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1245—Claim denied.)

STROMBERG CARLSON TELEPHONE MANUFACTURING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

WINSTON, STRAWN & SHAW, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, *it is hereby* ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1255—Claim denied.)

ROYAL TYPEWRITER COMPANY, INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

WINSTON, STRAWN & SHAW, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1273—Claim denied.)

S. OPPENHEIMER & CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

FRANCHISE TAX—*when taxes voluntarily paid cannot be recovered back.* Taxes voluntarily paid cannot be recovered back unless there is a statute providing for such recovery.

SAME—*when payment under protest gives no right to refund.* The fact that payment of tax is under protest does not of itself give the right to have such taxes refunded.

SAME—*payment under duress must be shown to justify recovery.* Before an illegal tax can be recovered back, the taxpayer must show the payment was made under duress.

SAME—*failure to resort to court of equity—voluntary payment.* Where the statute provides a remedy in a court of equity to have the legality of taxes determined and claimant having failed to pursue that remedy it will be presumed that the taxes were paid voluntarily and without intending to ask for their refund.

HERWIN MICHAEL HART, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $2,585.26 alleged excess franchise taxes and license fees paid by claimant for the year 1925. The declaration charges that there was unlawfully assessed against it for the year 1925 a franchise tax of $1,534.42 and an additional license fee of $1,338.39, making a total of $2,872.81; that the amount lawfully due the State for that year is $287.55; that claimant protested against the payment of the assessment of $2,872.81 but in order to avoid the assessment of penalties, on June 29, 1926, paid the Secretary of State, under protest, the said sum of $2,872.81.

The Attorney General has demurred to the declaration.

It is the settled law of this State that taxes voluntarily paid cannot be recovered back unless there is a statute providing for such recovery. Payment to avoid penalties will be deemed a voluntary payment. (*21 R. C. L.*, p. 151, sec. 176; *People* v. *Bandy*, 239 Ill. App. 273.) The fact that the taxes may have been illegal does not alone give claimant the right to recover them. (*Board of Education* v. *Toennigs*, 297 Ill. 469.) Neither does the fact alone that it made the payment under protest give claimant the right to have the

taxes refunded. (*Standard Oil Co.* v. *Bollinger*, 337 Ill. 353.) Before an illegal tax can be recovered back by the taxpayer he must show the payment was made under duress. And if he might have avoided the payment by resorting to a court of equity but did not do so the payment will be held to be voluntary. (*Ill. Merchants Trust Co.* v. *Harvey*, 335 Ill. 284.)

Under Paragraphs 171 and 172 of Chapter 127, Smith's 1929 Statutes claimant had a remedy in a court of equity to have the legality of these taxes determined and the taxes refunded if found to be illegal. Not having pursued that remedy it must be presumed that claimant paid the taxes voluntarily and without intending to ask for their refund. (*Richardson Lubricating Co.* v. *Kinney*, 337 Ill. 122.) The demurrer is sustained and the case dismissed.

(No. 1280—Claim denied.)

MISSOURI PACIFIC RAILROAD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

WHITNEL & BROWNING, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1287—Claim denied.)

THE MINNEAPOLIS THRESHING MACHINE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

L. E. STEPHENSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1340—Claim denied.)

WESTERN NEWSPAPER UNION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(Claims denied.)

LEWIS H. McGARRAH, 1343; LOUIS N. SHOFF, 1344; ALBERT GOETZ, WILLIAM SALZENSTEIN, AND BEN JOHNSON, 1345-1346; JOSEPH C. CLANCY, 1347; BEN JOHNSON, 1348; MARTIN L. MAREK, 1349; GEORGE VICARY, 1350, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 10, 1930.

Rehearing denied December 17, 1930.

PROPERTY DAMAGE—*when no award will be made for damage to property by reason of the construction of a hard road—governmental function.* The State in the construction of the state wide system of durable hard surfaced roads exercises a governmental function and is not liable for the torts or negligence of its agents.

SAME—*when State not liable.* The State is not liable for damages caused by its agents unless there is a statute making it so liable.

REHEARING—*when rehearing will be denied.* Where the petition for rehearing is but a reargument of the facts and principles of law urged in the original briefs, the court finds no reason for changing their views and denies the petition.

SHURTLEFF & NIEHAUS, for claimants.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

As all of these claims are based upon the same general facts they have been consolidated for hearing and decision.

The declarations are all alike. Each charges that prior to June, 1924, the State built a bridge across Kickapoo Creek on the Farmington Road, and, on either side of the bridge

and adjacent thereto, also built a dam or levee varying in height from 10 to 20 feet and of the total length of 700 feet; that the construction of the levee prevented the water from flowing over that 700 feet of land in times of heavy rainfall and so backed the water up in the creek as to cause it to overflow the banks of the creek and inundate the lands of claimant and destroy his crops; that on June 27, 1924, September 21, 1926, and May 18, 1927, unusual rainfalls fell in the neighborhood of the creek and the land of claimant was overflowed on each occasion and his growing crops destroyed. Claimants are asking for awards for the following sums: Vicary for $14,784.00; McGarrah for $584.00; Shoff for $873.60; Goetz for $23,324.00; Clancy for $1,459.00; Salzenstein for $11,662.00; Johnson for $10,722.00; Marek for $4,998.00, a total of $68,406.60.

The bridge and the so-called levee or dam mentioned in the declarations are part of State Bond Issue Route No. 8, and the levee is the fill constructed across the low lands adjacent to Kickapoo Creek. This fill instead of being from 10 to 20 feet, as charged in the declarations, is shown by the evidence to be not to exceed 8 feet at its highest point. The lands of claimants were all subject to overflow by Kickapoo Creek in times of heavy rainfall before this fill on Route No. 8 was built. But claimants contend that its construction retarded the flow of the water over the lands lying on the lower side of the fill and caused it to stay on their lands longer than it otherwise would have done, thereby causing them to lose their crops in the years, 1924, 1926 and 1927.

State Route No. 8, is one of the public highways improved by the State in the construction of the State wide system of durable hard surfaced roads. In constructing these roads the State exercised its governmental functions—acted in its capacity of sovereign. When the State acts in its sovereign capacity it does not submit its actions to the judgments of courts, and is not liable for the torts or negligence of its agents. (*Kinnare* v. *City of Chicago*, 171 Ill. 332.) It follows that if the wrongs complained of were committed by the agents of the State, the State is not liable for the damages thereby caused. This is not a new doctrine but has been the long established law in Illinois. It has uniformly been held in this State that sub-divisions of the State for governmental purposes, such as towns and counties, are not liable for

damages caused by agents of such sub-divisions in the performance of their duties,—that such damages can be recovered from the individuals only whose acts cause the injury. The exemption of the municipality from liability is based on the grounds that it is a sub-division of the State for governmental purposes—a mere agency of the State. Among the many cases announcing this rule are the following: *Town of Waltham* v. *Kemper*, 55 Ill. 346; *Elmore* v. *Drainage Comrs.* 135 Ill. 269; *Symonds* v. *Clay County*, 71 Ill. 355; *Town of Odell* v. *Schroeder*, 58 Ill. 353; *Wilcox* v. *City of Chicago*, 107 Ill. 334; *Nagle* v. *Wakey*, 161 Ill. 387.

It follows that unless there is a statute making the State, or a sub-division thereof for governmental purposes, liable for damages caused by the agents of the State or such sub-divisions no recovery can be had against the State or such sub-divisions for damages caused by such agents, but the remedy is against the agents themselves. If the public road in question had been constructed just as it was by the town in which it is located the town would not be liable for the damages claimants allege its construction has caused them, in the absence of a statute making it so liable. Claimants have not cited any statute making the State liable for these alleged damages, and there is none.

Claimants have cited cases from other jurisdictions but they are not authority in this State where the contrary rule is established. Claimants have also cited many cases holding cities and villages and corporations liable for damages caused by the acts of their agents, but such cases have no application to actions against the State, or a sub-division of the State for governmental purposes.

If the Legislature in providing for the construction of the State wide system of durable hard surfaced roads had intended the State should pay such damages caused by the construction thereof as claimants are asking, it would undoubtedly have enacted a law to that effect. Certainly it did not intend to clothe this court with that power. This court can only allow claims against the State where there is a legal liability of the State to pay, and the State not being legally liable for the alleged damages of claimants, no awards can be made for them.

The claims are all denied and the cases dismissed.

On December 17, 1930, upon petition for rehearing the following additional opinion was filed:

Claimant in these cases have filed a petition for rehearing. The petition is but a reargument of the facts and principles of law urged by them in their original briefs in support of their claims, all of which were considered by the court in arriving at its conclusions. We find no reason for changing the views expressed in the opinion filed and the petition is denied.

On January 13, 1931, upon motion to vacate orders previously entered, the following additional opinion was filed:

This cause coming on to be heard upon motion of claimants to set aside and vacate its order entered December 17, 1930 denying petition for rehearing and the further motion to reconsider the petition for rehearing and the Court being fully advised in the premises and it appearing that there is no reason why said motion should be granted, it is therefore considered that said motion be and the same is hereby denied.

(No. 1352—Claim denied.)

AMERICAN CAN COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

PAUL O'DONNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1359—Claim denied.)

STANDARD OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

BARR & BARR, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1387—Claim denied.)

CENTRAL STATES PORTLAND CEMENT COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

CUTTING, MOORE & SIDLEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1388—Claim denied.)

CONSOLIDATED CEMENT CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

CUTTING, MOORE & SIDLEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1389—Claim denied.)

FLORIDA PORTLAND CEMENT COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

DISMISSAL—*when case will be dismissed.* Where it appears that cause has not been shown why the case should not be dismissed for want of prosecution the claim will be denied without an award and the case stricken from the docket upon motion of the Attorney General.

CUTTING, MOORE & SIDLEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Now comes Oscar E. Carlstrom, Attorney General, and makes his motion for dismissal, pursuant to an order to show cause entered by this court on the 13th day of November, A. D. 1930, wherein the claimant was ordered to show cause on or before December 3rd, 1930, why this case should not be dismissed for want of prosecution.

And it appearing to the court that cause has not been shown by claimant in accordance with said order, it is hereby ordered that the claim be dismissed without an award and the case stricken from the docket.

(No. 1454—Claim denied.)

THE CONTINENTAL NATIONAL BANK AND TRUST COMPANY, (SUCCESSOR OF THE CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK), JOHN R. THOMPSON, JR., AND HENRY M. HENRIKSEN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF JOHN R. THOMPSON, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 17, 1930.

INHERITANCE TAX—*when no award will be made—jurisdiction.* Where claimant fails to follow the procedure prescribed by statute for making application for a refund of inheritance tax from the State Treasurer the court will not take jurisdiction and recommend that the claim be disallowed.

MAYER, MEYER, AUSTRIAN & PLATT, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROYCE A. KIDDER, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that one John R. Thompson died on June 17th, 1927, a resident of Lake County, State of Illinois, leaving a last will and testament which was duly probated in the Probate Court of Lake county, Illinois, and letters testamentary were duly issued thereon on July 2nd, 1927, to the Continental and Commercial Trust & Savings Bank, John R. Thompson, Jr., and Henry M. Henriksen, the persons named in said will as executors thereof.

That on the 15th day of December, 1927, the County Court of Lake County entered an order approving the appraiser's report in the appraisement of the estate of said decedent, John R. Thompson. It is alleged that said order identified and determined the relationship of the beneficiaries taking by said will and of all persons, corporations and transferees taking property or interests appraisable by reason of the death of the said John R. Thompson and determine the value of the successions, transfers and gifts to the beneficiaries under said will and the tax due the State of Illinois as shown by such appraisement and order.

It is further alleged that at the time of the determination of the inheritance tax there was allowed as a deduction on account of the claim of Rose H. Thompson, the widow of said decedent, the sum of $39,026.63; that on the 14th day of May, 1928, an order was entered by the Probate Court of Lake County allowing claim to said widow in the sum of $289,026.63 further alleging that $250,000.00 of said claim was not included as deduction against the gross value of said estate.

In the first place the record does not disclose as far as this court can ascertain much about the nature of this widow's claim. It appears by a copy of the order of court (of the County Court of Lake County) that two of the executors of the estate consented to its allowance; that the third executor made no objection. It would appear to this court that the widow of said deceased, claimant as aforesaid, was advised of the hearing in the matter of the inheritance tax as this court understands and believes the law to be that all parties in interest shall have proper notice of hearing on in-

heritance tax in which any interest would be affected. Therefore it would appear that claimant would naturally be aware of the proceedings and the effect of inheritance tax proceedings and it would naturally seem reasonable that she would advise the executors of her claim and have same presented and allowed before the inheritance taxes were determined as there appears to be ample time between the appointment of executors and the date of the inheritance tax hearing. It also appears to the court that the Attorney General of Illinois should be given notice in the matter of allowance of a large claim of this kind which so materially affects the rights of the People of the State of Illinois in the matter of the taxing powers of the State. The Attorney General contends that a petition should have been filed in the County Court of Lake County seeking a new order fixing the correct amount of the inheritance tax. If this was done the Attorney General would have been notified and given the right to appear for the State and if the court would find that a lower tax value should be fixed it would appear that no trouble would be had in the claimant's application for a refund from the State Treasurer.

It is the contention of this court that if a method had been followed as prescribed and intended by the statute of the State of Illinois, that claimant would be furnished with the relief sought and it is therefore the opinion of this court that jurisdiction should not be taken in this case in this court and it is therefore recommended that the claim be disallowed.

(No. 1548—Claimant awarded $8,724.00.)

KATHERINE NIESTADT, MINNIE HILDEBRANDT, ELISABETH HILDEBRAND, FREDERICK A. RINGLER, WILLIAM RINGLER, JR., FRED RINGLER, INDIVIDUALLY, AND WILLIAM RINGLER, JR. AND FRED RINGLER, CONSERVATORS OF THE ESTATE OF GEORGE RINGLER, AN INSANE PERSON, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

HIGHWAYS—*when award will be made for land taken for highway purposes.* Where it appears that land is taken by the State for the construction of a State bond issue route for which no compensation has been paid an award will be recommended to cover the damages sustained.

WILLIAM G. THON, for claimants.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a case wherein the claimants are asking for damages in the sum of Thirteen Thousand Nine Hundred Fifty-eight ($13,958.00) Dollars for 6,970 square feet of land which was taken for highway purposes by the State of Illinois for the construction of the State Bond Issue Route No. 19 in the County of Cook and City of DesPlaines.

It appears that the Attorney General makes no contention as to the fact that the land in question was taken by the State of Illinois for the construction of the Northwest Highway and that the pavement was laid in October and November, 1928. It appears that the only contention for the consideration of this court as to whether according to claimant that claimant should be allowed $2.00 a square foot, or according to the defendant $1.25 a square foot. This court is of the opinion that the contention of the Attorney General in view of all the facts before the court that $1.25 a square foot would be an adequate remuneration for the land taken which would amount to $8,724.00. The court considers this a fair consideration.

Therefore the court recommends that the claimant be awarded the sum of $8,724.00.

(No. 1603—Claimant awarded $1,442.00.)

THOMAS W. CONNOLE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

WORKMEN'S COMPENSATION ACT—*when enterprise declared to be extra hazardous.* The construction of a paved road is an enterprise or business declared by Section 3 of the Workmen's Compensation Act to be extra hazardous.

PERSONAL INJURY—*when award will be made.* Where the evidence conclusively shows that claimant's injury arose out of and in the course of his employment while an employee in the construction of a hard road, the State is liable, and compensation will be awarded under the provisions of the Workmen's Compensation Act.

A. B. JOHNSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant was an employee of the State engaged in construction work on State Bond Issue Route No. 108 near Carrollton. On August 12, 1929, a truck he was driving overturned and the lower part of his left leg and the left foot were badly burned the foot being permanently injured so that he has to wear a brace. The injury necessitated his being taken to a hospital and his hospital and physician's bills, amounting to $1,362.25, were paid by the State. At the time of his injury claimant was earning $21.00 per week. In addition to the hospital and physician's bills of claimant paid by the State he has expended $50.00 for a brace. He was not taken to the hospital for about a month after receiving the injury and during that time he was nursed and cared for by his sister, Margaret Connole. After he was taken to the hospital his mother, Julia Connole, waited upon and nursed him thereby saving the expense of a regular trained nurse. The evidence shows the services of these women were worth $345.00 a sum very much less than would have been required to employ regularly trained nurses. The proof also shows the State paid claimant compensation at the rate of $10.50 per week for about 35 weeks, the total amount paid being $370.50.

Section 3 of the Workmen's Compensation Act specifically provides that the provisions of the act shall apply automatically to the State when engaged in any enterprise or business declared by that section to be extra hazardous. The construction of a paved road is an enterprise or business declared by section 3 of the act to be extra hazardous. (*Van Hoorbeke* v. *State*, 5 Ct. Cl. 337.)

The evidence shows conclusively that claimant's injury arose out of and in the course of his employment and the State is, therefore, liable to pay him the compensation provided for in the act. Item 14 of paragraph (e) of section 8 of the act provides that an employee shall be paid fifty per centum of his average weekly wage during 135 weeks for the permanent and complete loss of the use of a foot. We think the evidence shows that, for all practical purposes, claimant has lost the use of his left foot and is entitled to be compensated therefor as provided in said item 14. One half of his weekly wage is $10.50 which for 135 weeks would be $1,417.50. Of this amount he has already been paid $370.50

leaving due him $1,047.00. We think he should also be allowed the $50.00 he paid for his brace and the $345.00 the evidence shows the services of his sister and mother were worth. Claimant is therefor allowed an award of $1,442.00 to be paid in a lump sum.

(No. 1608—Claimant awarded $395.75.)

SAM RYERSON, JR., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

PROPERTY LOSS—*when award will be made—equity and good conscience.* Where it appears that claimant, a State employee, suffered loss of his property by fire while assisting in saving a large amount of property of the State, compensation will be recommended on the grounds of equity and good conscience.

SAM RYERSON, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim suffered as a result of a fire which occurred on the 5th day of June, 1930, at the State laboratory of the Department of Agriculture, Springfield, Illinois. The claimant was at the time of the alleged damages and is now, or at the time of the filing of the claim, an employee of the State of Illinois as an assistant in making tests, investigations, etc., relative to the Department of Agriculture experiments. It appears that claimant had clothing and other personal effects in the building at the time of the fire; that claimant was instrumental in assisting in saving property of the State of Illinois valued at around $70,000.00 and that in so doing he disregarded his own property, books and effects.

The claimant shows that he sustained a loss of Three Hundred Ninety-five and 75/100 ($395.75) Dollars. The Attorney General comes and recommends the allowance of this award provided this court is of the opinion that it is a claim that equity and good conscience would sustain.

This court is of the opinion that wherein an employee of the State of Illinois unselfishly permits the destruction of his

own property in order to save a large amount of property for the People of the State of Illinois, that he should be compensated.

Therefore this court recommends that claimant be allowed and awarded the sum of Three Hundred Ninety-five 75/100 ($395.75) Dollars.

(No. 1642—Claim denied.)

ELLA KIRKPATRICK, NEXT FRIEND OF DUNCAN LOUISE KIRKPATRICK, A MINOR, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.

PERSONAL INJURY—*when no award will be made for personal injuries sustained by a pupil of a public school.* The Board of Education of the city of Chicago has the management, control and supervision of the schools of the city and the State is not liable for personal injuries sustained by a pupil while attending such schools.

PLEADINGS—*when demurrer will be sustained.* Where the declaration fails to show a cause of action against the State, the demurrer filed by the Attorney General will be sustained.

AUGUSTUS L. WILLIAMS, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The declaration in this case charges that Louise Kirkpatrick, a child of the age of four years and a student in the kindergarten department of the Hayes school of the City of Chicago, on December 12, 1929, while walking out of the school to the schoolyard, down the stairway of the school, was shoved by other children also walking and playing while leaving said school, which resulted in her being thrown upon the cement sidewalk and trampled upon by many of the children causing her to sustain permanent injuries, for which $12,000.00 damages are asked against the State. To this declaration the Attorney General has filed a demurrer, and the cause is submitted on the declaration and demurrer.

It does not appear why this claim is filed against the State. The Board of Education of the City of Chicago has the management, supervision and control of the schools of the city. As the declaration fails to state any cause of action against the State the demurrer is sustained and the case dismissed.

(No. 1516—Claimant awarded $1,528.40.)

HILLMAN F. SPENCER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1930.

PERSONAL INJURY—*when award will be made.* Where it appears from the evidence that claimant received injuries in course of employment by the Division of Highways, an award will be recommended.

CAPPS & WEAVER, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears from the evidence in this case, that claimant was on the 17th day of August, 1928, and for over a year prior thereto, employed by the Department of Public Works and Buildings of the State of Illinois, in the Division of Highways and while assisting in moving a portable or collapsible office building from Kiser to Carrolton, and while engaged in his duties, riding on a truck, he was thrown from the truck, his right foot caught in a tire carrier, and dragged five hundred feet. His flesh and tendons were torn and lacerated.

It appears that the State has already paid claimant $350.00 and consents to a further award for injuries, etc., of $1,528.40.

It is therefore recommended that the claimant be allowed $1,528.40.

(Nos. 765, 766, 768—Claims denied.)

NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1926.
Rehearing denied January 19, 1927.

Motion to set aside previous orders allowed March 10, 1927.
Opinion heretofore filed confirmed and cause dismissed on January 14, 1931.

PUBLIC UTILITIES ACT—*when moneys paid to, cannot be recovered.* Where the Public Utilities Act provided an adequate remedy for an appeal to the Circuit Court and on to the Supreme Court, moneys paid to the Public Utilities Commission cannot be recovered back through the Court of Claims, unless the plan provided by statute is followed and the Supreme Court has passed judgment in favor of claimant.

Equity and good conscience—*when rule will not be invoked.* The rule of equity and good conscience will not be invoked where claimant is provided by statute with a clear legal remedy.

Court of Claims—*legislative intent in creation of.* It was the intention of the Legislature when the Court of Claims was established to give it jurisdiction only in such cases that could not be heard or determined by any other court or by any other process of law provided by statute.

Public Utilities Act—*right of appeal.* The Public Utilities Act provides for an appeal to the Courts of the State from rulings or decisions of the Public Utilities Commission.

Rehearing—*when rehearing will be denied.* Where there is no reason disclosed by a petition for rehearing to change or alter the opinion theretofore filed a rehearing will be denied.

Alschuler, Putnam & Flannigen, for claimant.

Oscar E. Carlstrom, Attorney General; David J. Kadyk, Assistant Attorney General, for respondent.

Mr. Chief Justice Clarity delivered the opinion of the court:

It appears from a stipulation filed herein that claimant on or about Feb. 3rd, 1919, in pursuance of the Public Utilities Law of the State of Illinois, applied to the Public Utilities Commission for its approval of the issue by claimant of its evidence of indebtedness in the form of its second and improvement mortgage bonds secured by a second and improvement mortgage, said mortgage being a lien upon the entire railroad property of the claimant, and it further appears by such stipulation that said issue of bonds in the principal sum of Four Million One Hundred Thirty-five Thousand (4,135,000.00) Dollars, were approved by the said Public Utilities Commission of Illinois, and an order was entered by said commission directing claimant to pay an amount equal to ten cents on every one hundred dollars of the bonds authorized by this order, and that said amount should be paid into the State Treasury of Illinois before said bonds could be issued.

In pursuance of said order the claimant on or about Feb. 21, 1919, after stating to the commission and to the State Treasurer of Illinois, that it should not pay a sum equal to ten cents on every one hundred dollars of notes authorized, paid into the State Treasury of Illinois Four Thousand One Hundred and Thirty-five ($4,135.00) Dollars, being the charge prescribed by said order of said commission.

It was further stipulated that if witnesses were offered by the claimant and examined they would testify that the funds should be immediately available to meet, discharge and refund obligations incurred and that claimants could not wait without inconvenience and loss any further orders of said commission, or of any court, and that it was of urgent necessity to said claimant that the issue of said bond be approved by said commission immediately and without delay in order that the same might be sold at once to provide funds for the aforesaid purpose; by reason whereof the said money was paid into the State Treasury to avoid such inconvenience and loss.

The stipulation contained other clauses but the above as recited shows the main contentions of the claimant and said stipulation or the part recited above appears to the court to be similar in cases Nos. 765, 766 and 768. Therefore the disposition of all three cases will be controlled by this opinion. The essence of the contention of the claimant is that a portion of the payments made by them should not be made owing to the fact that certain of the property and assets upon which the aforesaid bonds were to be secured, were without the State of Illinois. It is not necessary to discuss the amount of property in the State or outside of the State in view of the opinion of this court as the question to be considered here is whether or not the claimant is entitled to recover any part of the charges paid by them. A contention of the State is that the Public Utilities Act of 1913 provided claimant with a specific remedy by appeal from the orders complained of herein, and that the orders of the Public Utilities Commission are not subject to review by the Court of Claims.

It is the opinion of this court that the Public Utilities Act provided an adequate remedy for the claimant by an appeal to the Circuit Court and on to the Supreme Court of the State of Illinois, if they saw fit to pursue the matter for a final adjudication.

Having failed to follow the plan as provided by the statute, the claimant cannot obtain the relief sought in the Court of Claims. If the statute had been followed and the Supreme Court has passed judgment in favor of the claimant, then of course this court would follow the law or judgment of the Supreme Court in the instant cases.

It is urged that this case is one that should be considered as a matter of equity and good conscience. It does not appear to the court as reasonable to employ this rule in this case in view of the fact that claimant was provided by statute with a clear legal remedy.

It is the opinion of this court that it was the intention of the Legislature when the Court of Claims was established to give jurisdiction to the Court of Claims only in such cases that could not be heard or determined by any other court or by any other process of law provided by the statutes of the State of Illinois. The Public Utilities Act provided a means as the Legislature intended for those who were dissatisfied by the rulings or decisions of the commission to appeal to the courts of the State for an adjudication of any dispute that might arise or any injustice that might appear to any party or person in interest.

It is therefore considered by the Court that Claims Nos. 765, 766 and 768 be disallowed.

Subsequently, on January 19, 1927, the following order was filed:

This matter coming on for a further consideration on petition for a rehearing, and the court after reading and considering the said petition, is of the opinion that there is no reason disclosed by such petition or suggestions therein to change or alter the opinion of this court heretofore filed.

Therefore it is considered by this court that said petition for rehearing be and the same is hereby denied.

On March 10, 1927, the following order was filed:

This matter coming on to be heard on the motion of the complainant, in the above entitled cause, the New York, Chicago, and St. Louis Railroad Company, asking that the order entered herein, denying the motion for a rehearing, filed by said complainant, be set aside, and the court, having heard arguments of counsel, and the State of Illinois being represented by the Attorney General and the complainant by its counsel, and the court being fully advised in the premises, it is, therefore, ordered that the order entered by this court, denying the petition for rehearings filed on the behalf of the complainant in the above entitled claims, be and is hereby set aside.

It further appears to the court that in order that the complainant may have a just and fair consideration of its petitions for rehearing, that said petitions for rehearing be and shall be considered along with said other petitions for rehearings pending to certain other claims involving the same subject matter as to facts and law.

On June 14, 1931, the following additional order was filed:

Now this cause coming on to be heard upon the statements filed by claimants and statements filed by the Attorney General on behalf of the State, and the court having considered said statements and the petitions for rehearing herein heretofore filed.

And it appearing to the court that nothing contained in the statements filed by the claimants reveal sufficient cause or reason for the modification or change of the opinion heretofore filed in these cases, it is ordered by the court that the opinion heretofore filed be, and it is hereby confirmed and the cause dismissed.

(No. 1260—Claim denied.)

AMERICAN BRIDGE COMPANY, ET AL., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 14, 1931.

FRANCHISE TAX—*when cost of an appeal cannot be considered an element of duress.* Since recourse by appeal to courts of superior jurisdiction is the right of all litigants, the cost thereof cannot be considered as an element of duress and compulsion in the payment of taxes.

SAME—*failure to exhaust legal remedies.* Where claimants had an opportunity to appeal but determined not to do so, no award will be made on the grounds that they have not exhausted their legal remedies in courts of general jurisdiction.

FYFFE & CLARKE, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The above entitled case involves the claims filed by fourteen corporations all consolidated as parties claimant in one

case, and the facts of the individual claims are considered in this consolidated opinion upon consolidated briefs and arguments filed by the claimants, the brief and argument filed by the State, and the reply brief of the claimants.

The claims are as follows by the following designated corporations:

AMERICAN BRIDGE COMPANY, a corporation organized and doing business under the laws of the State of New Jersey	$ 200.00
THE AMERICAN STEEL AND WIRE COMPANY OF NEW JERSEY, a corporation organized and doing business under the laws of the State of New Jersey	2,250.00
BENJAMIN MOORE & Co., a corporation organized and doing business under the laws of the State of New Jersey	627.15
THE GILBERT AND BENNETT MANUFACTURING COMPANY, a corporation organized and doing business under the laws of the State of Kentucky	480.17
HASKELITE MANUFACTURING CORPORATION, a corporation organized and doing business under the laws of the State of New York	956.66
H. J. HEINZ Co., a corporation, organized and doing business under the laws of the State of Pennsylvania	1,000.00
ROBERT W. HUNT COMPANY, a corporation organized and doing business under the laws of the State of Delaware	200.00
LACLEDE STEEL COMPANY, a corporation organized and doing business under the laws of the State of Missouri	750.21
NATIONAL CANDY Co., INC., a corporation organized and doing business under the laws of the State of New Jersey	483.97
ORION STOVE Co., a corporation organized and doing business under the laws of the State of Delaware	250.00
NATIONAL TUBE COMPANY, a corporation organized and doing business under the laws of the State of New Jersey	1,000.00
PEERLESS LIGHT Co., a corporation organized and doing business under the laws of the State of Maine	609.82
THOMAS J. WEBB Co., a corporation organized and doing business under the laws of the State of West Virginia	150.00
WESTERN FELT WORKS, a corporation organized and doing business under the laws of the State of West Virginia	1,500.00

It appears from the declaration filed that each of the fourteen corporations is a foreign corporation licensed to do business in the State of Illinois; it appears further that each of the claimants paid the amounts set opposite the names above to the Secretary of State as franchise fees for the privilege of transacting business in the State of Illinois, and that each payment so made was paid under protest; it appears further that each of said companies did, within thirty days after the date of the payment of such amounts, file a bill for an injunction in the Circuit Court of Sangamon

County restraining the Secretary of State from paying that amount collected over to the State Treasurer, that a temporary injunction was issued in each case, and that a demurrer was filed on behalf of the Secretary of State to each bill of complaint.

It appears further that upon a hearing on the demurrer as filed in the Circuit Court of Sangamon County the Judge of the Circuit Court indicated that the fees were properly and legally collected, were valid, and that he, the court, would sustain the demurrer of the Secretary of State to each bill filed.

The stipulation entered in this claim indicates that the claimants desired to hold the cases in the Circuit Court of Sangamon County in abeyance pending the appeal of certain other cases, but that the Assistant Attorney General who had charge of the cases in the Circuit Court insisted upon the dismissal of the cases of the claimants herein unless appeals were had from the decision of the Circuit Court, and that thereupon claimants dismissed their cases in the Circuit Court.

Claimants now ask for an award of the various amounts by this Court of Claims on the theory that the Act involving the payment of the franchise taxes paid by them was subsequently held invalid by the Supreme Court of Illinois in cases appealed by other corporations. It appears also from the briefs and arguments submitted by the claimants that the facts involving the appeal in the cases wherein the corporations were successful were not identical nor the same with the facts involved in their own cases, and claimants even admit that perhaps the Supreme Court would not have determined the Act unconstitutional or invalid upon the facts as involved in their own cases, since all of their authorized capital stock was issued.

It seems inconsistent that the claimant should ask an award and the return of their moneys in this court when they admit, in effect, that they would not have been successful in obtaining the return of those moneys in the Supreme Court of the State of Illinois.

Claimants also advance the theory that the cost of an appeal would have been prohibitive in these cases. It is exceedingly difficult as a practical matter to decide whether or not the cost of an appeal would be prohibitive in the above

entitled claims. It perhaps would be prohibitive in the instance of a claim for the amount of $150.00, but would not be prohibitive for the amount of $1,000 or more. This court, however, will not pass upon such a proposition since it is undoubtedly true that recourse to courts of superior jurisdiction is the right of all litigants and the cost thereof cannot be considered as an element of duress and compulsion in the payments of taxes.

The court has often held that taxes voluntarily paid cannot be recovered in this court. It has also held that if a claimant has not exhausted its remedies in courts of general jurisdiction that the amounts involved cannot be recovered in this court.

It is the opinion of this court that claimants in this case have not exhausted their legal remedies in the courts of general jurisdiction since they had the opportunity to appeal but determined not to do so.

It is therefore ordered that the above mentioned claims be disallowed and that this case be, and it is hereby dismissed.

(No. 1302—Claim denied.)

JOSEPH P. FARRELL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 7, 1929.
Rehearing denied January 15, 1931.

WORKMEN'S COMPENSATION ACT—*when provisions apply to the State.* The provisions of the Workmen's Compensation Act apply to the State when it is engaged in any enterprise or business declared by Section 3 to be extra hazardous.

SAME—*maintenance of highways is an extra hazardous enterprise.* Under paragraph 1 of Section 3 of the Workmen's Compensation Act the maintenance of one of the paved highways of the State is an extra hazardous enterprise or business.

PERSONAL INJURY—*when full recovery from injury will not entitle claimant to an award.* Where the evidence shows claimant has fully recovered from his injury and is able to earn in any suitable employment as much after his injury as he earned before it he is not entitled to an award, and the fact that he is not able to do the same work is not material.

SAME—*when claimant not entitled to hospital and doctor bills.* Where claimant receives his average weekly wage from the State during the time he was incapacitated from work and such amount is sufficient to cover compensation, including doctor and hospital bills, under the Workmen's Compensation Act, no award will be made.

REHEARING—*argument in support of petition for rehearing not permitted—reason for rule.* Under the rules of the court argument in support of a petition for rehearing is not permitted for the reason that the State has no opportunity to be heard upon the petition.

SAME—*when rehearing will be denied.* Where the petition for rehearing discloses no reason for granting a rehearing the petition will be denied.

ELLIS, WESTERN & BRITTAIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed by the State as a laborer in maintenance work on one of the State highways, near Elgin. While engaged with other employees in marking the traffic line on the pavement he fell from a truck and fractured his right leg. The injury occurred June 10, 1927, and the next day he was taken to the Sherman Hospital at Elgin where he remained until August fifth following. He received surgical attention while at the hospital by Dr. W. S. Brown and also for a considerable time after he left. The hospital bill introduced in evidence is $201.50 and Dr. Brown's bill, also introduced, is $401.00. Claimant in his declaration asks an award for $4,000.00 to compensate him for his injury, basing his claim upon the provisions of the Workmen's Compensation Act. The provisions of this Act apply to the State when it is engaged in any enterprise or business declared by Section 3 of the Act to be extra hazardous. Under paragraph 1 of that section the maintenance of one of the paved highways of the State is an extra hazardous enterprise or business.

Claimant was receiving from the State at the time of his injury an average weekly wage of $30.25 and was paid at that rate during all the time he was incapacitated from work, the total payments amounting to $605.00. On October 31, 1927, he went back to work for the State at the same wage and worked until February 14, 1928, when he quit of his own volition, having secured other employment.

Sub-section (A) of Section 8 of the Workmen's Compensation Act provides the employer shall provide the necessary first aid medical and surgical services, and all necessary medical, surgical and hospital services thereafter, limited,

however, to that which is reasonably required to cure or relieve from the effects of the injury. Sub-section (b) of section 8 provides the employee shall be paid 50 percent of his earnings during the period of his temporary total incapacity, but not less than $7.50 per week nor more than $14.00 per week. Sub-section (d) of section 8 provides that where the employee is partially incapacitated he shall receive 50 percent of the difference between the average amount which he earned before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. "The object of this section of the statute is to compensate the injured employee for his reduced earning capacity, and if the injury does not reduce his earning capacity he is not entitled to compensation. There is no intent expressed in the statute to allow compensation for pain and suffering. The phrase, 'or is able to earn in some suitable employment or business', was added to the section to prevent a person from loafing or refusing to work in order to collect compensation." (*Groveland Coal Co.* v. *Industrial Com.*, 309 Ill. 73.) An employee is physically able to work when he can do so without seriously endangering his health or life. (*Voight* v. *Industrial Com.*, 297 Ill. 109; *St. L. & O'F. Coal Co.* v. *Industrial Com.*, 321 Ill. 117.)

The evidence shows claimant has fully recovered from his injury and was able to earn and did earn as much after his accident as before. "When an employee is physically able to work and is able to earn in a suitable employment the same wages as he received before he was injured an award for partial incapacity is not justified." (*Paradise Coal Co.* v. *Industrial Com.*, 301 Ill. 504.) Claimant testified that he is not able to do the same work since his injury that he could do before. That is not material. If he is able to earn in any suitable employment or business as much after his injury as he earned before it then he is not entitled to an award.

Claimant also testified his injury had decreased his earning power more than half. This testimony was objected to, and is not competent. (*Old Ben Coal Co.* v. *Industrial Com.*, 293 Ill. 524.)

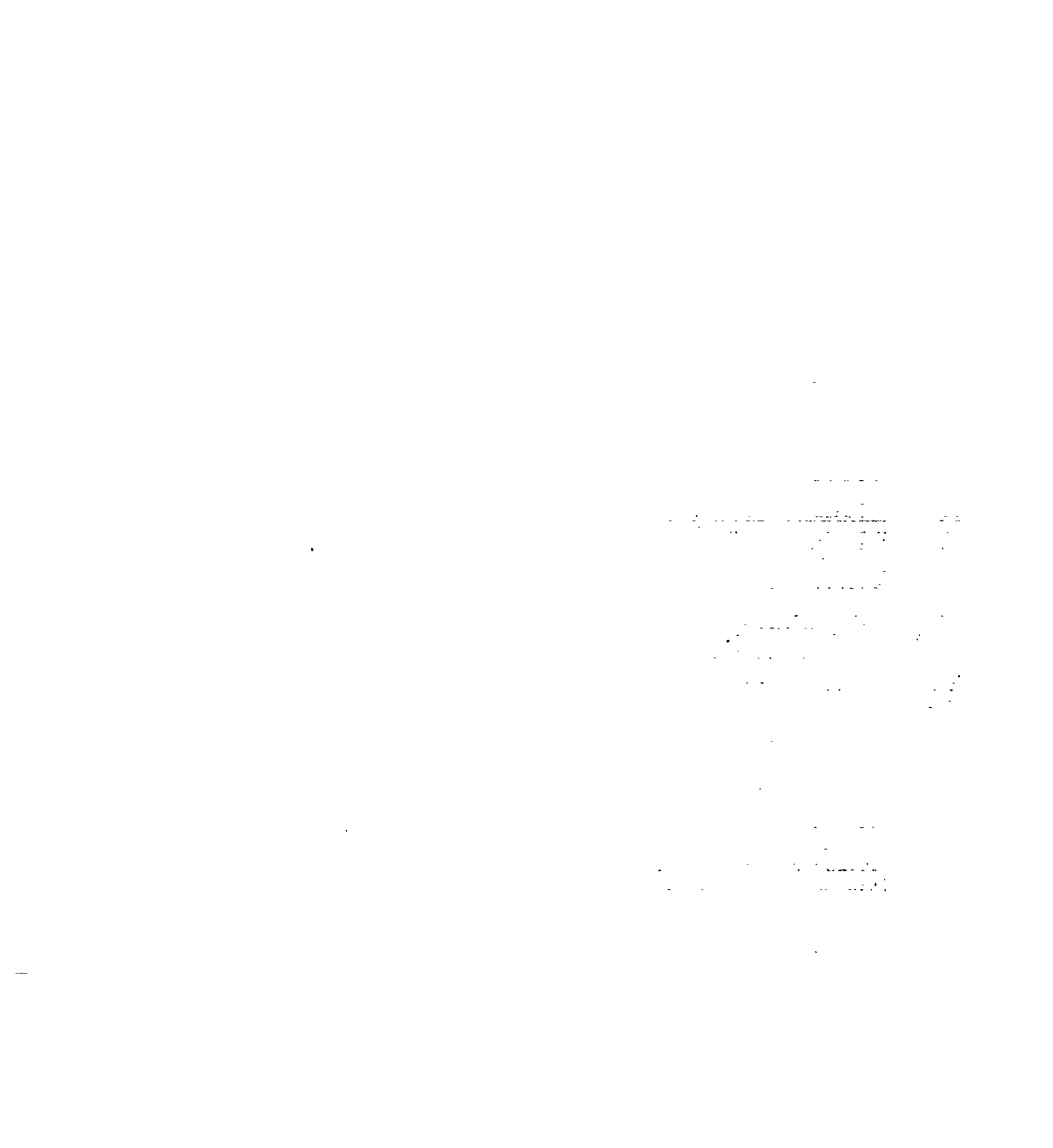
Approximately twenty weeks intervened between the date claimant was injured and the date he returned to work. For that period the maximum amount he was entitled to receive as compensation was $280.00. It is conceded he was paid

CORRECTION

THIS DOCUMENT

HAS BEEN REPHOTOGRAPHED

TO ASSURE LEGIBILITY



It further appears to the court that in order that the complainant may have a just and fair consideration of its petitions for rehearing, that said petitions for rehearing be and shall be considered along with said other petitions for rehearings pending to certain other claims involving the same subject matter as to facts and law.

On June 14, 1931, the following additional order was filed:

Now this cause coming on to be heard upon the statements filed by claimants and statements filed by the Attorney General on behalf of the State, and the court having considered said statements and the petitions for rehearing herein heretofore filed.

And it appearing to the court that nothing contained in the statements filed by the claimants reveal sufficient cause or reason for the modification or change of the opinion heretofore filed in these cases, it is ordered by the court that the opinion heretofore filed be, and it is hereby confirmed and the cause dismissed.

(No. 1260—Claim denied.)

AMERICAN BRIDGE COMPANY, ET AL., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 14, 1931.

FRANCHISE TAX—*when cost of an appeal cannot be considered an element of duress.* Since recourse by appeal to courts of superior jurisdiction is the right of all litigants, the cost thereof cannot be considered as an element of duress and compulsion in the payment of taxes.

SAME—*failure to exhaust legal remedies.* Where claimants had an opportunity to appeal but determined not to do so, no award will be made on the grounds that they have not exhausted their legal remedies in courts of general jurisdiction.

FYFFE & CLARKE, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The above entitled case involves the claims filed by fourteen corporations all consolidated as parties claimant in one

case, and the facts of the individual claims are considered in this consolidated opinion upon consolidated briefs and arguments filed by the claimants, the brief and argument filed by the State, and the reply brief of the claimants.

The claims are as follows by the following designated corporations:

AMERICAN BRIDGE COMPANY, a corporation organized and doing business under the laws of the State of New Jersey	$ 200.00
THE AMERICAN STEEL AND WIRE COMPANY OF NEW JERSEY, a corporation organized and doing business under the laws of the State of New Jersey	2,250.00
BENJAMIN MOORE & CO., a corporation organized and doing business under the laws of the State of New Jersey	627.15
THE GILBERT AND BENNETT MANUFACTURING COMPANY, a corporation organized and doing business under the laws of the State of Kentucky	480.17
HASKELITE MANUFACTURING CORPORATION, a corporation organized and doing business under the laws of the State of New York	956.66
H. J. HEINZ CO., a corporation, organized and doing business under the laws of the State of Pennsylvania	1,000.00
ROBERT W. HUNT COMPANY, a corporation organized and doing business under the laws of the State of Delaware	200.00
LACLEDE STEEL COMPANY, a corporation organized and doing business under the laws of the State of Missouri	750.21
NATIONAL CANDY CO., INC., a corporation organized and doing business under the laws of the State of New Jersey	483.97
ORION STOVE CO., a corporation organized and doing business under the laws of the State of Delaware	250.00
NATIONAL TUBE COMPANY, a corporation organized and doing business under the laws of the State of New Jersey	1,000.00
PEERLESS LIGHT CO., a corporation organized and doing business under the laws of the State of Maine	609.82
THOMAS J. WEBB CO., a corporation organized and doing business under the laws of the State of West Virginia	150.00
WESTERN FELT WORKS, a corporation organized and doing business under the laws of the State of West Virginia	1,500.00

It appears from the declaration filed that each of the fourteen corporations is a foreign corporation licensed to do business in the State of Illinois; it appears further that each of the claimants paid the amounts set opposite the names above to the Secretary of State as franchise fees for the privilege of transacting business in the State of Illinois, and that each payment so made was paid under protest; it appears further that each of said companies did, within thirty days after the date of the payment of such amounts, file a bill for an injunction in the Circuit Court of Sangamon

County restraining the Secretary of State from paying that amount collected over to the State Treasurer, that a temporary injunction was issued in each case, and that a demurrer was filed on behalf of the Secretary of State to each bill of complaint.

It appears further that upon a hearing on the demurrer as filed in the Circuit Court of Sangamon County the Judge of the Circuit Court indicated that the fees were properly and legally collected, were valid, and that he, the court, would sustain the demurrer of the Secretary of State to each bill filed.

The stipulation entered in this claim indicates that the claimants desired to hold the cases in the Circuit Court of Sangamon County in abeyance pending the appeal of certain other cases, but that the Assistant Attorney General who had charge of the cases in the Circuit Court insisted upon the dismissal of the cases of the claimants herein unless appeals were had from the decision of the Circuit Court, and that thereupon claimants dismissed their cases in the Circuit Court.

Claimants now ask for an award of the various amounts by this Court of Claims on the theory that the Act involving the payment of the franchise taxes paid by them was subsequently held invalid by the Supreme Court of Illinois in cases appealed by other corporations. It appears also from the briefs and arguments submitted by the claimants that the facts involving the appeal in the cases wherein the corporations were successful were not identical nor the same with the facts involved in their own cases, and claimants even admit that perhaps the Supreme Court would not have determined the Act unconstitutional or invalid upon the facts as involved in their own cases, since all of their authorized capital stock was issued.

It seems inconsistent that the claimant should ask an award and the return of their moneys in this court when they admit, in effect, that they would not have been successful in obtaining the return of those moneys in the Supreme Court of the State of Illinois.

Claimants also advance the theory that the cost of an appeal would have been prohibitive in these cases. It is exceedingly difficult as a practical matter to decide whether or not the cost of an appeal would be prohibitive in the above

entitled claims. It perhaps would be prohibitive in the instance of a claim for the amount of $150.00, but would not be prohibitive for the amount of $1,000 or more. This court, however, will not pass upon such a proposition since it is undoubtedly true that recourse to courts of superior jurisdiction is the right of all litigants and the cost thereof cannot be considered as an element of duress and compulsion in the payments of taxes.

The court has often held that taxes voluntarily paid cannot be recovered in this court. It has also held that if a claimant has not exhausted its remedies in courts of general jurisdiction that the amounts involved cannot be recovered in this court.

It is the opinion of this court that claimants in this case have not exhausted their legal remedies in the courts of general jurisdiction since they had the opportunity to appeal but determined not to do so.

It is therefore ordered that the above mentioned claims be disallowed and that this case be, and it is hereby dismissed.

(No. 1302—Claim denied.)

JOSEPH P. FARRELL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 7, 1929.
Rehearing denied January 15, 1931.

WORKMEN'S COMPENSATION ACT—*when provisions apply to the State.* The provisions of the Workmen's Compensation Act apply to the State when it is engaged in any enterprise or business declared by Section 3 to be extra hazardous.

SAME—*maintenance of highways is an extra hazardous enterprise.* Under paragraph 1 of Section 3 of the Workmen's Compensation Act the maintenance of one of the paved highways of the State is an extra hazardous enterprise or business.

PERSONAL INJURY—*when full recovery from injury will not entitle claimant to an award.* Where the evidence shows claimant has fully recovered from his injury and is able to earn in any suitable employment as much after his injury as he earned before it he is not entitled to an award, and the fact that he is not able to do the same work is not material.

SAME—*when claimant not entitled to hospital and doctor bills.* Where claimant receives his average weekly wage from the State during the time he was incapacitated from work and such amount is sufficient to cover compensation, including doctor and hospital bills, under the Workmen's Compensation Act, no award will be made.

REHEARING—*argument in support of petition for rehearing not permitted—reason for rule.* Under the rules of the court argument in support of a petition for rehearing is not permitted for the reason that the State has no opportunity to be heard upon the petition.

SAME—*when rehearing will be denied.* Where the petition for rehearing discloses no reason for granting a rehearing the petition will be denied.

ELLIS, WESTERN & BRITTAIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed by the State as a laborer in maintenance work on one of the State highways, near Elgin. While engaged with other employees in marking the traffic line on the pavement he fell from a truck and fractured his right leg. The injury occurred June 10, 1927, and the next day he was taken to the Sherman Hospital at Elgin where he remained until August fifth following. He received surgical attention while at the hospital by Dr. W. S. Brown and also for a considerable time after he left. The hospital bill introduced in evidence is $201.50 and Dr. Brown's bill, also introduced, is $401.00. Claimant in his declaration asks an award for $4,000.00 to compensate him for his injury, basing his claim upon the provisions of the Workmen's Compensation Act. The provisions of this Act apply to the State when it is engaged in any enterprise or business declared by Section 3 of the Act to be extra hazardous. Under paragraph 1 of that section the maintenance of one of the paved highways of the State is an extra hazardous enterprise or business.

Claimant was receiving from the State at the time of his injury an average weekly wage of $30.25 and was paid at that rate during all the time he was incapacitated from work, the total payments amounting to $605.00. On October 31, 1927, he went back to work for the State at the same wage and worked until February 14, 1928, when he quit of his own volition, having secured other employment.

Sub-section (A) of Section 8 of the Workmen's Compensation Act provides the employer shall provide the necessary first aid medical and surgical services, and all necessary medical, surgical and hospital services thereafter, limited,

however, to that which is reasonably required to cure or relieve from the effects of the injury. Sub-section (b) of section 8 provides the employee shall be paid 50 percent of his earnings during the period of his temporary total incapacity, but not less than $7.50 per week nor more than $14.00 per week. Sub-section (d) of section 8 provides that where the employee is partially incapacitated he shall receive 50 percent of the difference between the average amount which he earned before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. "The object of this section of the statute is to compensate the injured employee for his reduced earning capacity, and if the injury does not reduce his earning capacity he is not entitled to compensation. There is no intent expressed in the statute to allow compensation for pain and suffering. The phrase, 'or is able to earn in some suitable employment or business', was added to the section to prevent a person from loafing or refusing to work in order to collect compensation." (*Groveland Coal Co.* v. *Industrial Com.*, 309 Ill. 73.) An employee is physically able to work when he can do so without seriously endangering his health or life. (*Voight* v. *Industrial Com.*, 297 Ill. 109; *St. L. & O'F. Coal Co.* v. *Industrial Com.*, 321 Ill. 117.)

The evidence shows claimant has fully recovered from his injury and was able to earn and did earn as much after his accident as before. "When an employee is physically able to work and is able to earn in a suitable employment the same wages as he received before he was injured an award for partial incapacity is not justified." (*Paradise Coal Co.* v. *Industrial Com.*, 301 Ill. 504.) Claimant testified that he is not able to do the same work since his injury that he could do before. That is not material. If he is able to earn in any suitable employment or business as much after his injury as he earned before it then he is not entitled to an award.

Claimant also testified his injury had decreased his earning power more than half. This testimony was objected to, and is not competent. (*Old Ben Coal Co.* v. *Industrial Com.*, 293 Ill. 524.)

Approximately twenty weeks intervened between the date claimant was injured and the date he returned to work. For that period the maximum amount he was entitled to receive as compensation was $280.00. It is conceded he was paid

$605.00. Deducting the $280.00 compensation he was entitled to leaves $325.00, to cover hospital and surgical services. The employee has the right to secure his own hospital and surgical services at his own expense. So far as this record shows he did so. The employer is not liable for all hospital, medical and surgical services the employee may elect to secure. His liability is limited "to that which is reasonably required to cure or relieve from the effects of the injury." We think $325.00 was amply sufficient to have secured the necessary hospital and surgical aid required in this case.

The liability of the State for injuries to its employees while engaged in extra hazardous enterprises is the same as that of private citizens or corporations engaged in similar enterprises, and is to be determined "in accordance with the rules prescribed in the act commonly called the Workmen's Compensation Act." Under the provisions of this Act claimant is not entitled to any more compensation than he has received.

The award is therefore denied and the claim dismissed.

On January 15, 1931, upon petition for rehearing the following additional opinion was filed:

Claimant has filed a petition for rehearing, which is to a large extent but a re-argument of the case. Under the rules of this court, argument in support of a petition for rehearing is not permitted. The reason for this rule is, the State has no opportunity to be heard upon the petition. However, we have again examined the record in the case and find no reason for granting a rehearing and the petition is therefore denied.

(No. 1097—Claim denied.)

GENEVA BEARD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 26, 1928.
Rehearing denied March 11, 1931.

PERSONAL INJURY—*when no award will be made for injuries sustained on a new hard road.* Where it appears from the entire record that the driver of an automobile upon a newly constructed hard road failed to exercise proper caution no award will be made for personal injuries sustained while traveling upon such road.

HIGHWAYS—*when State not liable for injuries sustained on.* Where the records show a hard road has not been taken over by the State, the

State is not liable for personal injuries sustained while riding upon such highway.

REHEARING—*when rehearing will be denied.* When it appears from the petition for rehearing that there is no good reason to change the opinion heretofore filed a rehearing will be denied.

R. J. BRANSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court.

The claimant is bringing action here for damages on account of injuries received while riding as a passenger in an automobile near Chester, Illinois, in Sec. 75 of Hard Road No. 3. She claims she left her home at six-thirty or seven o'clock in the evening on Oct. 11th, 1924, on her way to a carnival. On the way back about two miles out of Chester on the same evening on hard road Route No. 3, she claims that the car in which she was riding ran into a stump that was in the center of the pavement which caused the car to turn over and resulted in breaking the right leg of the claimant. The accident is of course a regrettable one. The claimant alleges there was no light on the stump in question and that the stump was placed there by one of the engineers in charge of the work and it is further alleged by claimant that this road was open for local travel by the State of Illinois through orders of Mr. Sewell, State engineer, the State engineer in charge of the construction of this new road. It appears however by the declaration of claimant that because of piles of gravel having been placed on the right side of pavement, the driver of said touring car was obliged to drive on the left side of said pavement. This thought suggests to this court the fact that claimant or the driver of her car should be placed upon his guard to use every possible caution in attempting to travel upon this road, and it appears from the record in the testimony of Mr. Midgaas who was charged with placing this stump on the highway, that he did not place any stump of any kind in any place on the highway excepting one stump in the middle of said road and placed a sign on which it said, "Barricade—400 feet" or "Slow" on that stump.

This court is impressed with the fact that the building

of a great highway system entails a good many difficulties and we understand the anxiety of the public to travel over a new road as early as possible, but we are impressed from the record that in view of the fact of the gravel or other road material being on the road, that any person travelling over such road should be filled with the highest caution and it would seem that if a driver exercised a caution that should be required on a new road of this character that he might observe an obstruction of this kind, and from the record we are also of the opinion that this road had not been taken over by the State through its Department of Public Works and Buildings, and that being the case the State would not be liable according to our judgment.

Therefore taking the entire record into consideration this court is of the opinion that this claim should be disallowed.

On March 11, 1931, upon petition for rehearing the following additional opinion was filed:

This claim coming on for rehearing and the court after consideration of the petition for rehearing finds no good reason to change the opinion heretofore entered. Therefore the petition for rehearing is denied.

(No. 1300—Claim denied.)

KARL AXEL HENRICK LARSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 16, 1930.
Rehearing denied March 11, 1931.

PROPERTY DAMAGE—*when no award will be made for damage on account of construction of a hard road.* Where the record shows that damages to property resulted from excessive rainfall, and not by the construction of a hard road no award will be made.

SAME—*when value to adjacent property owners will be considered by reason of the construction of a hard road.* Where there is a claim for damages against the State on account of the construction of a hard road, the value of such hard road to adjacent property owners will be considered in such claim for damages.

REHEARING—*when rehearing will be denied.* Where no good reason appears from the petition for rehearing to change the opinion heretofore entered a rehearing will be denied.

E. P. FIELD, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for damages alleged to be done to crops on account of the improper construction of hard road Route 3, which is supposed to have caused poor drainage of the claimant's land. The land in question has been termed "low land on general level" and from the evidence disclosed by the record it appears that in dry years, crops could always be raised and in wet years they could not raise crops and it does appear that the years in question were exceedingly wet years.

The State contends that it would be an impossibility to build a bridge that would take care of the situation following extraordinary heavy rains. The Attorney General also contends that the damages to the crops of this claimant were caused only on low land after extra heavy rainfalls; that the State is not responsible for damages therefrom and from all the evidence this court is of the opinion that the contention of the Attorney General is correct and it is further the opinion of the court that the building of these hard roads throughout the State has been of considerable value to adjacent property owners which ought to be considered wherein there is a claim for damages as in this case.

Therefore it is recommended that this claim be denied and the claim dismissed.

On March 11, 1931, upon petition for rehearing the following additional opinion was filed:

This claim coming on for rehearing and the court after consideration of the petition for rehearing finds no good reason to change the opinion heretofore entered. Therefore the petition for rehearing is denied.

(No. 1321—Claim denied.)

JAMES CUNNINGHAM, SON & COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 11, 1931.

FRANCHISE TAX—*when franchise tax cannot be recovered—statute of limitations.* Where it appears that the claim for refund of corporation franchise

tax is not filed within five years no recovery can be had on the ground that such claim is barred by the Statute of Limitations. (Citing Section 10 of the Court of Claims Act.)

BROWN, HAY & STEPHENS, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court.

This is a claim brought to recover for certain franchise taxes alleged to be improperly levied and collected by the Secretary of State. It appears that the claim arose from taxes paid in 1922 and that this claim was filed on June 29th, 1928.

The Attorney General in behalf of the State of Illinois files a demurrer on the theory that more than five years elapsed.

There can be no question as to this point as Section 10 of an Act to Create the Court of Claims sets forth specifically that all claims must be filed within five years. Therefore the demurrer is sustained and claim dismissed.

(Claims denied.)

JAMES CUNNINGHAM, SON & COMPANY, 1322; A. G. SPALDING & BROS., 1323; BLAW-KNOX COMPANY, 1324; CERTAIN-TEED PRODUCTS CORPORATION, 1325; DENNISON MANUFACTURING CO., 1326; GRATON & KNIGHT COMPANY, 1327; THE R. M. HOLLINGSHEAD CO., 1328; UNITED PROFIT SHARING CORPORATION, 1329; UNITED STATES ENVELOPE COMPANY, 1330, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 11, 1931.

FRANCHISE TAX—*failure to pursue remedies at law.* The Court finds no reason to depart from the rule requiring claimant to pursue remedies at law for obtaining refunds of corporation franchise tax alleged to have been wrongfully collected.

BROWN, HAY & STEPHENS, for claimants.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

By request of claimants the above cases have been combined as they are all of a similar nature and involve similar principles.

It appears that the claimants complain that the Secretary of State of Illinois wrongfully collected franchise taxes in each instance and therefore wish to recover back the taxes so alleged to be wrongfully collected.

In certain of the cases, the Attorney General raises the question of the Statute of Limitation which in the court's opinion has merit. However, the strongest contention and which the court believes is a good defense is that claimants did not proceed with their remedy at law. This is the position taken by this court in numerous cases heretofore, passed on and we fail to find any reason in these claims where this court should depart from that rule.

Therefore this court recommends that all of the above named and numbered claims be disallowed.

(No. 1563—Claim denied.)

EARL PADDOCK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 11, 1931.

ANIMALS—*power of the State to destroy animals infected with tuberculosis.* **The State has power to destroy animals infected with disease if deemed necessary to the public welfare under the maxim that "the safety of the people is the supreme law."**

SAME—*when no compensation will be allowed for the destruction of animals infected with tuberculosis.* **The statute providing that no compensation shall be paid to any person for an animal condemned for tuberculosis if the owner retains the animal for more than thirty days after it has been adjudged infected with tuberculosis is mandatory, and the court has no power to change or disregard it.**

A. V. SMITH, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant is asking an award against the State for $124.80 to reimburse him for loss sustained on account of the sale of a bull infected with tuberculosis. The bull, a registered Holstein animal, was tested by the State Veterinarian and found to be tubercular. On the 19th of July, 1929, the bull was condemned and claimant ordered to dispose of it within

30 days, as the law provides. The animal was appraised at $350.00. On August 22, 1929, it was sold to the Central Live Stock Commission Company at Chicago for $162.79, resulting in a loss of $187.21. The Bovine Tuberculosis Act, in force July 1, 1929, provides the State shall pay one-third of the difference between the appraised value of a tubercular animal and the proceeds of the sale of the salvage, not exceeding $70.00 for a pure-bred animal, where the United States assists in the eradication of tuberculosis in cattle and two-thirds of such difference, not exceeding $140.00 for a pure-bred animal, where the United States does not cooperate with the State in the eradication of that disease.

Section 8 of that Act provides: "No compensation shall be paid to any person for an animal condemned for tuberculosis: (4) If the owner retains the animal for more than thirty days after it has been adjudged infected with tuberculosis."

Cattle infected with a disease such as tuberculosis become a public nuisance and the State has the power, if deemed necessary to the public welfare, to order their destruction without compensation to the owner. (*Durand* v. *Dyson*, 271 Ill. 382; *Mayfield* v. *State*, 5 Ct. Cl. 226.) And if the State sees fit to limit the amount of compensation it will pay to the owner of property destroyed in the exercise of such power or to make payment of compensation contingent upon compliance by the owner with certain imposed conditions no one can question its authority to do so. Under the maxim "the safety of the people is the supreme law" the State had the right to order claimant's animal destroyed without paying him any compensation therefor. The statute is so plain it cannot be misunderstood. It provides compensation shall not be paid if the owner retains the animal more than thirty days after it has been adjudged infected. That is the law and this court has no power to change it nor to disregard it. The Legislature deemed thirty days ample time for owners of such diseased animals to dispose of them. There is certainly nothing in this record to show claimant could not have disposed of his animal within the time fixed by the statute. But, be that as it may, the statute is plain and mandatory, and claimant not having complied with its provisions is not entitled to any award.

The claim is therefore denied and the case dismissed.

(No. 1618—Claimant awarded $5,185.05.)

GEO. B. SMITH CHEMICAL WORKS, INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 11, 1931.

CONTRACT—*when award will be made after deducting necessary cost of repairs.* Where the evidence conclusively shows that the performance of work was not done in a good workmanlike manner, and without the supervision and control of the proper authority of the State, an award will be made for the balance of the contract price after deducting the amount required to make necessary repairs.

EVAN L. SEARCY, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant is asking an award for the sum of $6,185.05 balance alleged to be due it for repair work done on buildings at the Lincoln State School and Colony at Lincoln in 1928. Claimant's total bill for the work done was $16,170.69 all of which was paid except the bills for resurfacing floors for which payment was not made, because the work was improperly done. The record does not disclose whether or not claimant had a written contract for this work but it does show no bid was submitted by it and that the work was not let to the lowest responsible bidder as the statute plainly requires. When claimant undertook to do the work it was bound to do it in a good workmanlike manner. The evidence of claimant shows conclusively that it did not so perform the work of repairing the floors and that it knew it was not doing such work in a proper manner. It seeks to justify its failure in that regard by saying the officials in charge of the school were urging it to complete the work as quickly as possible. There is no evidence, however, that these officials ever urged or requested the work to be done in an improper manner. But even had they done that claimant would not have been justified in following their directions for they had no power or authority to say how the work should be done. The statute specifically provides that the Department of Purchases and Construction shall have the supervision and control of the construction and repair of all buildings belonging to the

State. Claimant was fully aware of this provision of the law and knew the superintendent of the school had no control over the manner in which the work should be done.

The evidence shows that it will cost between $800.00 and $1,500.00 to make the repairs necessary to put the floors in the condition in which claimant should have left them. The cost of doing that should be borne by claimant. We think $1,000.00 is the probable cost of that work and will deduct that sum from claimant's demand.

It is therefore ordered that claimant be awarded the sum of $5,185.05.

(No. 1654—Claim denied.)

BIBB MACNEIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 17, 1930.
Rehearing denied March 11, 1931.

FRANCHISE TAX—*when taxes voluntarily paid cannot be recovered back.* Where it appears upon the face of the declaration that the tax is voluntarily paid the demurrer will be sustained and the case dismissed.

REHEARING—*when rehearing will be denied.*—When the court finds no reason for changing the views expressed in the opinion filed in the case, a rehearing will be denied.

JOSEPH L. MOORE, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $294.00 alleged excess franchise taxes and penalties paid by claimant for the years 1927, 1928 and 1929. The declaration does not charge the taxes were paid under duress or protest. So far as appears from the declaration the taxes were voluntarily paid. The Attorney General has demurred to the declaration on behalf of the State, and the cause is submitted on the declaration and demurrer.

It is the settled law of this State that taxes voluntarily paid cannot be recovered back. This doctrine has been announced by our Supreme Court and by this court so often that a citation of authorities is unnecessary. It is equally well settled in this State that a plaintiff or claimant must state a cause of action in his declaration,—must set forth

therein such a state of facts that if proven will show he is entitled to recover. Admitting everything set forth in claimant's declaration to be true it is not entitled to recover the taxes sued for. The demurrer is therefore sustained and the case dismissed.

On March 11, 1931, upon petition for rehearing, the following additional opinion was filed:

We have considered the grounds set forth in the petition for rehearing and find no reason for changing the views expressed in the opinion filed in the case. The rehearing is therefore denied.

(No. 1681—Claimant awarded $644.29.)

NATIONAL FIRE PROOFING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 11, 1931.

FRANCHISE TAX—*when award will be made as a result of mutual mistake.* Where a foreign corporation licensed in this State ceases to do business by filing certificate of withdrawal and subsequent thereto pays franchise tax for the ensuing year upon an erroneous assessment, an award will be made upon the ground that the payment was a result of a mutual mistake.

MCILVAIN, MURPHY & MOHN, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant is a foreign corporation which was licensed to do business in Illinois. On April 9, 1930, claimant filed its certificate of withdrawal, having ceased to do business in this State. Thereafter the Secretary of State, through an oversight, sent a bill to claimant for the franchise tax for the year beginning July 1, 1930, and ending June 30, 1931, amounting to $644.29, and the same was paid. It is admitted by the Secretary of State that no tax was due from claimant and its payment was the result of a mutual mistake, and the Attorney General concedes claimant is entitled to have it refunded.

Claimant is therefore allowed an award in the sum of $644.29.

(Claims allowed.)

LUDWIG SVOBODA, FRANTISKA MIKULECKA, JOHN SVOBODA, AND ANTON SVOBODA, 1700; NELLIE G. HALLIDAY, 1701; EDNA ELMA CONE, 1702; SHERMAN SCOTT, 1703; MATHILDA HIERONYMUS OGLESBY, 1704; Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 11, 1931.

SOLDIERS COMPENSATION—*when award will be made to heirs of deceased soldiers—Soldiers' Bonus Act.* Where the Act terminating the Service Recognition Board provided an appropriation for the payment of compensation allowed by the Service Recognition Board, and vouchers were issued to soldiers who died before such vouchers could be presented for payment, and the appropriation for the payment of such vouchers having lapsed, an award will be made to the heirs of the deceased soldiers for the compensation allowed under the Soldiers' Bonus Act.

Claimants pro se.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimants in these cases are the heirs of deceased soldiers of the World War to whom compensation had been allowed under the provisions of the Act approved May 3, 1921, and generally called the Soldiers' Bonus Act. After the compensation had been allowed each of the soldiers died before the vouchers issued to them had been paid. Section 3 of the Act terminating the Service Recognition Board, approved July 11, 1927, provides that in all cases where compensation has been allowed by the recognition board but payment has not been made it is the duty of the Adjutant General, as soon as satisfactory proof is furnished him, locating the soldier or his heirs, to certify such fact to the State Treasurer who shall make payment of the sum so allowed by the recognition board to the person entitled thereto.

After the passage of the Act of July 11, 1927, and before the Adjutant General had approved and certified their claims in accordance with its provisions the appropriations made for the payment of compensation payable under it had lapsed so that no funds were available out of which to pay them. Claimants thereupon filed their claims in this court asking that awards be allowed them for the respective amounts of compensation allowed said deceased soldiers and remaining

unpaid. The Attorney General concedes the claims are just and that awards should be made the respective claimants for the amounts asked by them respectively.

Claimants Ludwig Svoboda, Frantiska Mikulecka, John Svoboda and Anton Svoboda are the heirs at law of Frank Svoboda to whom compensation in the sum of $267.50 had been allowed by the Service Recognition Board and who died before it was paid. The claims of these persons, as heirs of such deceased soldier, was approved by the Adjutant General, as required by said Section 3, on May 26, 1930. It is therefore ordered that they be allowed the sum of $267.50 to be paid to them jointly.

Claimant Mrs. Nellie G. Halliday is the sole heir at law of Henry Evans Halliday, Jr., to whom compensation in the sum of $106.50 had been allowed by the Service Recognition Board and who died before it was paid. The claim of Mrs. Halliday, as heir of said deceased soldier, was approved by the Adjutant General, as required by said Section 3, on January 13, 1930. It is therefore ordered that she be allowed the sum of $106.50.

Claimant Mrs. Edna Elma Cone is the sole heir at law of Jean Richard Cone to whom compensation in the sum of $235.50 had been allowed by the Service Recognition Board and who died before it was paid. The claim of Mrs. Cone, as heir of said deceased soldier, was approved by the Adjutant General, as required by said Section 3, on December 20, 1929. It is therefore ordered that she be allowed the sum of $235.50.

Claimant Mrs. Mathilda Hieronymus Oglesby is the sole heir at law of Charles Byron Oglesby to whom compensation in the sum of $241.50 had been allowed by the Service Recognition Board and who died before it was paid. The claim of Mrs. Oglesby, as heir of said deceased soldier, was approved by the Adjutant General, as required by said Section 3, on October 24, 1930. It is therefore ordered that she be allowed the sum of $241.50.

Claimant Sherman Scott is the sole heir at law of Robert Scott to whom compensation in the sum of $254.00 had been allowed by the Service Recognition Board and who died before it was paid. The claim of Mr. Scott, as heir at law of said deceased soldier, was approved by the Adjutant General, as required by said Section 3, on January 27, 1930. It is therefore ordered that he be allowed the said sum of $254.00.

(Claims denied.)

JOSEPH KEIG, 1443; JOHN H. GARNSEY, 1444; A. A. OFFERMAN, 1445; WILLIAM C. MOONEY, 1446; FRANCIS J. LOUGHRAN, 1447; Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion filed April 25, 1929.
Rehearing denied April 16, 1931.

LEGAL SERVICES—*when attorneys not entitled to compensation for defending certain prisoners of the Illinois State Penitentiary in a criminal prosecution.* Claimants were appointed by the Circuit Court of Will County to defend certain prisoners of the Illinois State Penitentiary who were under indictment for crime committed while inmates of said penitentiary: *Held*, the appointment by the court to defend is a distinction and a duty that a lawyer must face; that the advantages of such an institution to a community offsets the burdens of the members of the bar; and there being no legal obligation on the part of the State, no award will be made on the ground of equity and good conscience.

REHEARING—*when rehearing will be denied.* Where there is no sufficient reason shown to grant a rehearing the petition for rehearing will be denied.

JOHN L. WALKER, for claimants.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

All the claimants appear to be represented by the same attorney and their causes of action can be considered jointly as their claims are based upon the same principle.

It appears that certain prisoners were confined in the Illinois State Penitentiary and escaped. Afterwards they were caught and indicted by the Circuit Court of Will County. Afterwards they were brought to trial in the Circuit Court of Will County. It appears that claimants were appointed by the court to represent the defendants under said indictment and according to the allegations made spent a large amount of time and professional effort in behalf of the culprits. It is alleged and claimed also that on account of the location of the penitentiary at Joliet and the consequent necessity of trying this line of cases in that county that a burden was placed upon the bar of that county. This court and its members has had like experience in being appointed to defend those charged of crime and of course accepted the

mandates of the court faithfully although perhaps reluctantly, as a member of the bar naturally desires to be compensated. It is a distinction to be designated by the court to defend. It is also a duty that every lawyer must face and this court is of the opinion that the bar of Will County should of course meet the additional requirements of their community. This institution and those of a similar character contribute to the advantage at least in some respects to a community. The business men and tradesmen naturally profit and these advantages should offset to some extent the burdens that might come to members of the bar. It is the further opinion of the court that in view of the above statements that equity and good conscience should not prevail.

Of course it cannot be contended that there is any legal obligation on the part of the defendant The State of Illinois, and it is the opinion of the court that the demurrer filed by the Attorney General in each of the above cases should be sustained and it is therefore considered that the demurrer be sustained in each of the aforementioned cases.

On April 16, 1931, upon petition for rehearing, the following additional opinion was filed:

The above entitled cases being again brought to the attention of this court upon petition for rehearing and the court finds that there is not sufficient reason shown to grant the same.

Therefore the petition for rehearing is denied.

(No. 1535—Claim denied.)

THE OHIO CASUALTY INSURANCE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 11, 1931.

Rehearing denied April 16, 1931.

PRIVILEGE TAX—*when privilege tax paid by an insurance corporation will not be refunded.* Where no objection is made to an assessment of privilege tax against an insurance corporation and payment of such tax is made without protest, and with the belief that the amount was legally due, and that no fraud, deceit or coercion was used to induce the payment, such payment will be deemed to have been made voluntarily, and in the absence of a statute authorizing a recovery, cannot be recovered back.

SAME—*when no recovery can be had on the grounds of equity and good conscience.* Neither law or equity will aid to recover a tax voluntarily paid.

REHEARING—*when rehearing will be denied.* When no question of law or fact is presented by the petition for rehearing that was not before the court at the time the decision was rendered a rehearing will be denied.

DOYLE, SAMPSON & GIFFIN, for claimant.

OSCAR E. CARLSTROM, Attorney General; DAVID J. KADYK, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant is an Ohio corporation organized to write certain kinds of insurance. On July 21, 1921, it was licensed to do business in Illinois. The laws of Ohio require all foreign companies doing an insurance business in that State to pay a tax of 2½ per cent of the premiums received in the State during the preceding calendar year. The law of Illinois provides that foreign corporations doing an insurance business in this State shall pay the same rate of tax as is imposed by the State where such corporation is organized as Illinois corporations doing an insurance business in that State. The effect of this provision of the Illinois law is to impose upon Ohio insurance companies doing business in Illinois the same tax an Illinois insurance company has to pay for doing business in Ohio. On May 24, 1927, the Ohio law was amended to increase the tax from 2½ per cent to 3 per cent of the premiums received during the preceding year. This change in the law of Ohio automatically changed the law of Illinois in so far as it related to Ohio companies doing business in Illinois. On June 16, 1927, the Superintendent of Insurance of Illinois notified claimant that its tax for the year beginning July 1, 1927, was $5,287.34. On May 5, 1928, the Superintendent of Insurance notified claimant that its tax for the year commencing July 1, 1928, was $7,676.70. Each notice stated that the tax was assessed under the provisions of the Illinois law entitled "An Act in relation to the taxation of non-resident corporations, companies, and associations for the privilege of doing an insurance business in this State, approved June 28, 1919, in force July 1, 1919," and that if there were any objections to the assessment they would be heard by the Department of Trade and Commerce, and also stated that the tax had been computed at 3 per cent of the

gross premiums received in Illinois during the preceding year ending December 31st. The tax for 1927 was paid by claimant on July 8th of that year and the tax for 1928 on June 25th of that year. No objections were made to the taxes and they were voluntarily paid without any protest on the part of claimant. On December 12, 1928, the Supreme Court of Ohio held that the law increasing the rate of tax from 2½ to 3 per cent was not retroactive and that the new rate only applied to premiums received after it went into effect. Thereafter claimant filed this action asking that $1,397.58 of the taxes paid for the years 1927 and 1928 be refunded on the ground that it paid $881.22 more than was legally due for the year 1927 and $516.36 more than was due for 1928.

Claimant contends, in its argument, that these alleged overpayments "were paid under a mistake which was mutual between the claimant and the insurance superintendent." There is no charge in the declaration that the payments were paid by mistake, neither are there any allegations in the declaration from which it can be inferred they were paid by mistake. So far as the declaration discloses the payments were voluntarily made, and if they were they cannot be recovered back for it is fundamental that one who pays a tax voluntarily cannot maintain an action for its recovery. If these taxes were in fact paid by mistake that fact should have been set up in the declaration. It is the duty of a litigant to state his cause of action in his pleading and his proof must correspond to his declaration. Proof without a proper declaration will not sustain a judgment. The declaration in this case is fatally defective and we might well sustain the demurrer and dismiss the suit without further discussion. But as evidence has been taken and the cause argued on the facts and law we will decide the case on its merits.

Claimant contends the alleged excess taxes were paid under the misapprehension of the law of Ohio,—that the Superintendent of Insurance and claimant both made a mistake in construing the amendment of the Ohio statute increasing the rate of tax from 2½ to 3 per cent of the gross premiums received the preceding year, and that such mistake was one of fact and not of law. It may be conceded that a foreign law is a fact to be proven, when its proof is necessary, like any other fact. But that question does not enter into this case. The question here is did claimant make a mistake in the con-

struction of the law of Illinois. The taxes which claimant paid were assessed under and in accordance with the statute of this State, and were paid by claimant because it believed the law of Illinois required it to pay them. The Superintendent of Insurance notified claimant each year the amount of tax that had been assessed against it and the rate at which it had been assessed and stated that objections thereto would be heard if claimant desired to make any objections. Claimant made no objections but paid the tax without protest. It is clear that the payment was voluntary. When claimant paid the taxes it believed the amount paid was legally due under the law of Illinois. If claimant was mistaken as to the amount of tax it owed such mistake was a mistake of law and not of fact. There is no pretension that any fraud, deceit or coercion was used to induce claimant to pay the tax. The law is settled in this State that the payment of a tax will be deemed voluntary where it is paid with full knowledge of the facts and in the belief that it is legal. (*Yates* v. *Royal Ins. Co.*, 200 Ill. 202.) Taxes so paid cannot be recovered, even though they are illegal, in the absence of a statute authorizing such recovery. (*Richardson Lubricating Co.* v. *Kinney*, 337 Ill. 122; *Ill. Merchants Trust Co.* v. *Harvey*, 335 Ill. 284.) As there is no statute in Illinois authorizing a recovery of these taxes claimant is not entitled to have them refunded.

Claimant urges that "as a matter of equity and good conscience" it ought to recover these taxes because "the State has received money to which it was never entitled." Whether or not claimant paid more taxes than were legally due is a question which it is not necessary for us to decide. If the Superintendent of Insurance properly construed the law the taxes he assessed against claimant were all legal. If, however, he assessed a greater sum than was due and claimant voluntarily paid it then the State is entitled to retain it and neither law nor equity will aid claimant to recover it.

In no view of the case is claimant entitled to an award and its claim is denied and the case dismissed.

On April 16, 1931, upon petition for rehearing, the following additional opinion was filed:

While the court did say in the opinion in this case that we might well sustain the demurrer and dismiss the suit we did not do so but decided the case on its merits.

The petition for a rehearing in so far as it applies to the decision of the case is but a re-argument of the questions heretofore argued and decided, and no questions of fact or law are presented that were not before the court and considered by it when the decision was rendered. The petition for a rehearing is denied.

(No. 1617—Claimant awarded $37.50.)

I. B. CURRAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1931.

RENTAL—*when award will be made.* **There being no dispute as to the facts and reasonableness of the claim the court recommends an award for the rental of a building used by a State department.**

I. B. CURRAN, pro se.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears from the records and affidavit of claimant that there was an arrangement between claimant and defendant for the rental of the building to be used by the State Biological Laboratory of the Department of Public Health. There appears to be no dispute that the quarters were used by the State of Illinois during the months of April, May and June, 1929, at a rental of $12.50 per month. There is no dispute in the records as to the fact that said amount is reasonable for the use of said quarters. The State of Illinois received the benefit of this property during the months in question and therefore the court recommends that claimant be allowed the sum of Thirty-seven—50/100 ($37.50) Dollars.

(No. 1630—Claimant awarded $1,100.00.)

SHELLY KELLY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* **Where it appears claimant's injury arose out of and in the course**

of his employment while engaged in work declared to be extra hazardous, an award will be made under the provisions of the Workmen's Compensation Act.

FRANK J. AND JAMES T. BURNS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON AND CARL I. DIETZ, Assistants Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

On December 24, 1929, claimant was engaged in clearing State Bond Issue Route No. 49 near Kankakee with a tractor and snow plow. His left foot was caught in the machinery and severely injured. As a result of the injury he was required to expend $98.00 for surgical and medical services and to pay a hospital bill of $10.00. He was totally incapacitated for 13 weeks, and partially incapacitated for 135 weeks. His average weekly earnings were $33.00. His injury arose out and in the course of his employment, and he was engaged in work declared extra hazardous by the provisions of the Workmen's Compensation Act. As that Act applies to the State when it is engaged in work declared to be extra hazardous claimant is entitled to recover. Under the evidence in this case he is entitled to an award of $1,100.00. It is therefore ordered that claimant be and he is allowed an award of $1,100.00.

(No. 1636—Claimant awarded $390.00.)

FRANK MEISTER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where claimant sustains injuries arising out of and in the course of his employment while engaged in an employment declared to be extra hazardous, an award will be made under the provisions of the Workmen's Compensation Act.

JOHN A. MAYHEW, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ AND FRANK R. EAGLETON, Assistants Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed by the State in work declared by the Workmen's Compensation Act to be extra hazardous and,

on December 27, 1929, received an injury to the second finger of his left hand. The injury arose out of and in the course of his employment, and the State is liable to pay him compensation therefor. The injury to the finger is shown to be permanent and to seriously interfere with its use. We think, under the evidence, he should be awarded $390.00. It is therefore ordered that claimant be and he is awarded the sum of $390.00.

(No. 1652—Claimant awarded $810.00.)

ARTHUR BOYD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* **Where claimant sustains personal injuries in course of employment while working for the State in an enterprise declared to be extra hazardous, an award will be made under the provisions of the Workmen's Compensation Act.**

GLENN O. BROWN, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On October 26, 1929, while employed as a workman for the State in repairs being made by the State to the Anna State Hospital claimant received an injury to his left eye. The injury arose out of and in the course of his employment. His physician's charges were paid by the State. The evidence shows he has suffered a loss of three fourths of the sight of the eye. At the time of the injury the State was engaged in an enterprise declared by Clause 1 of Article 3 of the Workmen's Compensation Act to be extra hazardous and is, therefore, liable to pay claimant the compensation provided in that Act to be paid a workman for such injury. The amount due claimant, under the evidence, is $810.00. It is therefore ordered that claimant be and he is allowed an award of $810.00.

(No. 1662—Claimant awarded $149.64.)

WILLIAM W. WHEELOCK AND WILLIAM G. BIERD, RECEIVERS, CHICAGO & ALTON RAILROAD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1931.

FREIGHT CHARGES—*when award will be made.* Where there is no dispute relative to the merits of the claim, an award will be recommended to cover payment of freight charges upon material shipped to the Division of Highways.

WILLIAM L. PATTON, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed to recover for payment of undercharge upon a shipment of one steam shovel and one carload of sand amounting to One Hundred Forty-nine 64/100 ($149.64) Dollars.

The Attorney General comes and offers no dispute relative to the claim here presented and recommends that the award be allowed and therefore this court recommends that the claimant be allowed the amount claimed the sum of One Hundred Forty-nine 64/100 ($149.64) Dollars.

(No. 1666—Claim denied.)

THE PIONEER CREAMERY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1931.

FRANCHISE TAX—*when no award will be made.* Where claimant fails to exercise due diligence in filing certificate of dissolution before the franchise tax is due and payable, no award will be made for such franchise tax previously paid.

GEORGE H. WHITE, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for refund of corporate franchise tax in the sum of Three Hundred Ninety 30/100 ($390.30) Dollars, paid by claimant on June 27th, 1930.

It appears that claimant adopted a resolution to dissolve the said corporation at a special meeting held on July 10th, 1930, and it is alleged that such certificate for dissolution was mailed to the corporation department Secretary of State's office on or about July 15th, 1930. The Attorney General asserts that the records of the Department discloses no communication during the period of June 16th to August 5th, 1930, relative to said certificate for dissolution. The Attorney General further contends that the claimant corporation was not legally dissolved until the 25th day of August, 1930.

This court is of the opinion that corporations are as a rule legally advised in the conduct of their business and it would appear that they should exercise due diligence in all their corporate matters. This court, in view of the fact of the Attorney General's objections, is of the opinion that no redress can be furnished to claimant, in view of all the facts disclosed by the record in this case.

Therefore the claim is disallowed.

(No. 1667—Claimant awarded $49.17.)

HOLLAND BUTTER COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1931.

FRANCHISE TAX—*when award will be made.* **Where it appears that franchise tax has been paid to cover a period subsequent to the date it ceased to do business in this State, an award will be made for such tax erroneously paid.**

GEORGE H. WHITE, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for refund of corporate franchise tax in the sum of Forty-nine 17/100 ($49.17) Dollars, for period commencing July 1st, 1930 and ending June 30th, 1931. It appears by stipulation that said corporation ceased doing

business after July 10th, 1930. It is recommended by the Attorney General that claim for refund as above set forth be allowed.

Therefore it is recommended by this court that claimant be allowed the sum of Forty-nine 17/100 ($49.17) Dollars.

(No. 1673—Claimant awarded $158.59.)

WESTERN INDIANA GRAVEL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1931.

MATERIAL—*when award will be made.* Where it appears that no payment has been made for certain material furnished to and used by the Division of Highways under a written order or contract, an award will be made covering the amount due.

R. R. BOOKWALTER, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim made for shipments of gravel which were ordered under the terms of a written order or contract dated March 22nd, 1929, signed by L. H. Buckley of the Division of Purchases and Supplies. There seems to be no objection made by the Attorney General as to this claim amounting to $158.59. And it further appearing that the gravel was furnished and used by the State under the direction of the highway officials.

Therefore it is recommended that claim be allowed in the sum of One Hundred Fifty-eight 59/100 ($158.59) Dollars.

(No. 1696—Claimant awarded $1,825.00.)

EDMUND JOHN METTS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where it appears claimant received injuries arising out of and in the course of employment while working for the State in an extra hazardous employment, an award will be made under the Workmen's Compensation Act.

MICHEL & BARNES, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed by the State in a business declared by the Workmen's Compensation Act to be extra hazardous. And on August 28, 1930, while so employed was seriously injured. He had a compound fracture of both bones in his left leg, a compound fracture of his left wrist and a multiple fracture of his ribs and was otherwise bruised and lacerated. The injuries arose out of and in the course of his employment, and the State is liable to compensate him for them. His hospital and physician's bills amounted to $697.50. He has recovered from all the injuries except the one to his leg, and we have decided that he should be allowed compensation in the sum of $1,825.00. It is therefore ordered that claimant be and he is awarded the sum of $1,825.00.

(Claims allowed in part and denied in part.)

MAXINE BROWNING, 1023; ALLEN WILLIAMS, BY THE FOREMAN TRUST & SAVINGS BANK, 1038-1713; SAMUEL G. HARRIS, 1071, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

ADDITIONAL COMPENSATION—No further finding of facts, but court permits cases to be reopened and recommends additional compensation in part and denies additional compensation in part.

LEWIS E. JOHNSON FOR MAXINE BROWNING, LYNN & KORN FOR ALLEN WILLIAMS, HENRY H. PROCTOR FOR SAMUEL G. HARRIS.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

In the above entitled matters this court has made allowances therein for the reasons therein given in the opinion.

It has been directed to the attention of this court that the amounts, as heretofore allowed in these causes, have not

been as much as was proper and desired. That being true, the court has permitted the above entitled causes to be reopened and recommends additional amounts in these cases, in the following sums:

Allen Williams, No. 1038, $1,000.00.

Samuel G. Harris, No. 1071, $1,000.00.

No amount is allowed in the Maxine Browning case, No. 1023.

The new cases involving the same person and the same injury, which have recently been filed, are hereby dismissed, being numbered as follows: Maxine Browning, No. 1023; Allen Williams, No. 1713; and Samuel G. Harris, No. 1071.

(No. 1362—Claimant awarded $2,500.00.)

FRANK HARTKORN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 15, 1930.
Rehearing granted May 28, 1930.
Modified opinion filed May 14, 1931.

PROPERTY DAMAGE—*when no award will be made for.* Where it appears from the evidence that no material damage is done to claimant's property by reason of the construction of a hard road, but on the contrary where the increased value of the premises would greatly compensate for any inconvenience occasioned by the improvement no award will be made.

REHEARING—*oral order granting rehearing.* The Court enters an oral order granting a rehearing for the purpose of taking additional evidence to determine the amount of damages.

PROPERTY DAMAGE—*when award will be made.* Where it appears from additional evidence taken that claimant has suffered damages by reason of the construction of a hard road and the respondent stipulates and agrees to such damages an award will be made.

MILLS, RICHARDSON & HELFFRICH, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that the basis of this claim is that the property of the claimant, was damaged on account of the building of a hard road in front of claimant's premises, that on account of such improvement, water was diverted onto the claimant's property.

We are of the opinion from all of the evidence in the case, that there is no material damage to claimant's premises, on account of the construction of this road. On the contrary, the court believes, that hard roads generally add value to property, and that the increased value of the premises in question, would greatly compensate the claimant for any inconvenience that might be occasioned by the improvement in question.

Therefore, the court recommends that the claim be disallowed.

On May 28, 1930, upon motion of claimant an oral order was entered granting a rehearing for the purpose of taking additional testimony to determine the amount of damages.

On May 14, 1931, the following additional modified opinion was filed:

It appears from additional evidence taken that claimant suffered damages by reason of hard road construction on S. B. I. Route No. 7. The Attorney General comes and stipulates and agrees that claimant suffered damages in the sum of $2,500.00.

The court, therefore, recommends that claimant be allowed $2,500.00.

(Nos. 1393-1755—Claimant awarded $1,000.00.)

OZELL BUSH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

ADDITIONAL COMPENSATION—No further finding of fact, but the court permits the case to be reopened and recommends additional compensation.

BENJAMIN G. POLLARD, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

In the above entitled matter this court has made an allowance therein for the amount heretofore set forth and given the reasons therein.

It has been directed to the attention of this court that the amount, as heretofore allowed in this cause, has not been as much as was proper and desired. That being true, the court has permitted the above entitled cause to be reopened and recommends an additional amount in this case in the sum of $1,000.00.

The case involving the same person and the same injury, which has recently been filed, is hereby dismissed, being numbered as follows: Ozell Bush, No. 1755.

(Nos. 1410-1614—Claimant awarded $2,000.00.)

AARON WELLS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made.* The Court finds that claimant was injured in line of duty, in the course of his employment under the Workmen's Compensation Act and makes an award in accordance with the stipulation between claimant and respondent.

HARRIS & HARRIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This court has heretofore, at the January session, A. D. 1929, filed an opinion in this cause.

Since that time a new claim has been filed in this court, between the same parties, for the same injuries, and is numbered 1614.

Following the filing of the second case, motion was made on behalf of the claimant to reopen the old case because of new evidence not considered on the first hearing, which was allowed by the court. On May 12, 1931, the Attorney General filed a stipulation and statement in the old case, after which this court found that this claimant was injured in line of duty, in the course of his employment while an employee in the Division of Highways of the Department of Public Works and Buildings of the State of Illinois, under the Workmen's Compensation Act.

In said stipulation and statement the Attorney General suggests that if this court found this claimant to be working

under the Workmen's Compensation Act, while employed by the State of Illinois, that after proper deductions were made this claimant would be entitled to Two Thousand Dollars ($2,000.00), all of which stipulation and statement was approved by the claimant herein.

We therefore recommend an allowance in this cause, in accordance with said stipulation, in the sum of Two Thousand Dollars ($2,000.00). The new case in this cause, being No. 1614, is hereby dismissed.

(No. 1461—Claim denied.)

J. M. BLACKFORD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

CIVIL SERVICE—*when court has no jurisdiction to award salary of a discharged Civil Service employee.* Where the statute clothes the Civil Service Commission with sole authority to determine whether an employee has been discharged for political, racial or religious causes the Court of Claims has no jurisdiction to pass upon the question, and no award will be made for salary claimed subsequent to such discharge.

EDWARD PREE, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On November 9, 1925, claimant was employed in the capacity of house-father at the St. Charles School for Boys at a salary of $80.00 per month. He was later promoted to the position of night deputy at a salary of $125.00 per month. These positions were and are under the provisions of the State Civil Service Act. On January 9, 1928, claimant was discharged, the statement reciting his discharge was for refusing to obey orders. He contends his discharge was illegal, and is asking this court to award him the amount of his salary from January 9, 1928.

Section 12 of the State Civil Service Act provides that no employee in the classified civil service of the State shall be removed, discharged or reduced in rank or pay by the appointing officer, except for just cause, and that the term "just cause" as used in that section means any cause which is detrimental to the public service other than political, racial or

religious. The section also provides that an employee who has been discharged may file with the Civil Service Commission, within five days after his discharge, a statement in writing alleging that his discharge was made for political, racial or religious causes, and the commission is then required to order a hearing upon the question. If, upon the hearing, the commission shall find the discharge was made for political, racial or religious causes it is required to enter an order reinstating the employee and directing the payment of all back salary due. If the commission shall find the discharge was not made for political, racial or religious causes the discharge shall stand and be final. Under the provisions of this section claimant had a full and adequate remedy to have the legality of his discharge passed upon by the officials appointed by law for that purpose. It will be noted the statute provides an employee may be discharged for "just cause" and that "just cause" means any cause detrimental to the public service other than political, racial or religious. The cause set forth in the statement was for refusing to obey orders. If he did refuse to obey orders such refusal would be detrimental to the public service. Claimant was given a copy of the statement showing the cause of his discharge. If he believed the statement was untrue and that his discharge was either for political, racial or religious reasons he should have filed with the Civil Service Commission a statement in writing alleging such facts and the commission would then have given him a hearing upon the question. He did not do so, and his discharge became final and effective. It is clear from the provisions of the Civil Service Act that the Legislature intended to clothe the Civil Service Commission with the sole authority to determine whether a discharged employee had been discharged for political, racial or religious causes and that the Court of Claims has no jurisdiction to pass upon the question.

The claim is therefore denied and the cause dismissed.

(No. 1486—Claimant awarded $48,496.53.)

C. E. CARSON COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

CONTRACTS—*when award will be made for losses sustained under.* Where it appears that losses are sustained under contract for the construction of a hard road on account of delays caused by litigation over the right of way which the State had not procured before the letting of the contract, the Court allows an award upon the stipulation and agreement between the claimant and the legal representatives of the State.

JUSTUS CHANCELLOR, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The claimant files its claim for $73,319.34 for delays in completing its contract with the State of Illinois for the construction of Sections 16, 17 and 18 of Hard Road Bond Issue Route No. 18 after it had entered upon performance by reason of a change of route made necessary by litigation forcing the State to change the route as originally platted and claimant had the contract to construct a concrete highway.

It is stipulated and agreed between the claimant and the legal representatives of the State of Illinois that the claimant was damaged in the sum of $48,496.53 on account of the delays caused by litigation over the right of way which the State had not procured before the letting of the contract by the State of Illinois to complete the construction of the concrete road over said Sections 16, 17 and 18 of S. B. I. Route No. 18.

On the request of the legal representatives of the State the court allows an award for $48,496.53.

(No. 1490—Claim denied.)

COUNTY OF LEE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

FEES AND SALARIES—*when State not liable for coroner's and juror's fees.* The State is not liable for coroner's and juror's fees for inquests upon bodies of inmates of charitable institutions in the absence of a statute making it so liable.

MARK C. KELLER for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The claimant files its claim for $1,100.00 for coroner's and juror's fees for inquests upon bodies of patients and inmates of the Dixon State Hospital at Dixon, Illinois, from May 28, 1924 to March 16, 1929. There is no statutory provision which obligates the State to reimburse counties where charitable institutions are located for such fees.

Without a statutory provision this court has no power to allow a claim of this kind. The claim is denied and the case dismissed.

(No. 1603—Claim denied.)

MARTHA SCRIVNER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931

PERSONAL INJURY—*when State not liable—governmental function.* In conducting penal, charitable and educational institutions the State is exercising governmental functions and is not liable for injuries received by its employees, in the absence of a statute creating such liability.

WORKMEN'S COMPENSATION ACT—*when applicable to the State—conducting charitable institution not extra hazardous enterprise.* The Workmen's Compensation Act applies to the State only when it is engaged in a business declared to be extra hazardous under Section 3 of that Act, and conducting a hospital is not an extra hazardous enterprise under that section.

SCHOLES, O'CONNOR & DOUGHERTY, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed as an assistant cook at the Peoria State Hospital. On December 7, 1928, while engaged in her work, she lifted a meat table drawer weighing about 25 or 30 pounds. She alleges lifting the drawer caused her to suffer a rupture of the lower portion of her abdomen, and has filed this claim for $5,000.00 damages.

In conducting penal, charitable and educational institutions the State is in the exercise of its governmental functions and is not liable for injuries received by its employees therein, in the absence of a statute creating such liability.

Claimant contends, however, in her brief that her case comes within the provisions of the Workmen's Compensation Act. The Workmen's Compensation Act applies to the State only when the State is engaged in a business declared to be extra hazardous by Section 3 of that Act. (*Village of Chapin* v. *Industrial Com.*, 336 Ill. 461; *Perry* v. *State*, 6 Ct. Cl. No. 1246.) Conducting a hospital does not come within any of the enterprises declared extra hazardous by that section.

The claim is therefore denied and the case dismissed.

(No. 1508—Claimant awarded $2,500.00.)

CLARA HART KENNEDY, EXECUTRIX OF THE LAST WILL AND TESTAMENT OF THOMAS KENNEDY, Deceased, CLARA HART KENNEDY, KAYWIN KENNEDY, AND THOMAS HART KENNEDY, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PROPERTY DAMAGE—*when award will be made.* Where it appears that claimant suffered damage by reason of the construction of a hard road an award will be made upon the stipulation and agreement of the parties to the suit.

KENNEDY & KENNEDY, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears claimant suffered damages by reason of hard road construction on S. B. I. Route No. 8. The Attorney General comes and stipulates and agrees that claimant suffered damages in the sum of $2,500.00.

The court, therefore, recommends that claimant be allowed $2,500.00.

(No. 1524—Claimant awarded $75.00.)

A. R. RANSOM, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PROPERTY DAMAGE—*when award will be made.* Where it appears from the evidence loss of crops resulted by reason of the destruction of a drain line by the Division of Highways, an award will be recommended upon the opinion of the District Engineer and the Attorney General.

FRANK E. HERRICK, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for the loss of crops on one and one-half acres of ground in the year 1929 and inability to plant 4 acres on the same farm land in 1929 as a result of a drain line being destroyed which was under the jurisdiction of the Division of Highways. The files in the case do not disclose very many facts upon which the court can consider the actual damage, but it appears that the District Engineer of Highways and the Attorney General's office are of the opinion that an allowance should be made. The claim is for $180.00 and the Attorney General suggests that $75.00 is a reasonable amount to allow.

Therefore the court recommends that claimant be allowed the sum of Seventy-five ($75.00) Dollars.

(No. 1529—Claimant awarded $123.87.)

COUNTY OF WHITESIDE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

ANIMALS—*when award will be made for losses sustained through the destruction of certain tubercular cattle.* Where there is no contention as to the claim coming within the law an award will be recommended for the State's share for losses sustained through the destruction of certain tubercular cattle under the Bovine Tuberculosis Eradication Acts.

LLOYD H. BROWN, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for relief under the Bovine Tuberculosis Eradication Acts of 1919 and 1925 for loss sustained through the destruction of certain tubercular cattle owned by the County of Whiteside as a part of a dairy herd of the Whiteside County Home. The total claim is made in the sum of $280.93.

There appears to be no contention as to the claim coming within the law, although the State is liable for only one-third and the Attorney General comes and recommends an allowance of $123.87 to claimant, being one-third of the claim and would be the extent of the liability of the State of Illinois.

Therefore, this court recommends that claimant be allowed $123.87.

(No. 1533—Claim denied.)

JOHN SMITH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

STATUTE OF LIMITATIONS—*when claim barred.* Under Section 10 of the Court of Claims Act every claim against the State is barred unless it is filed within five years after it first accrues.

FLAG SMUT—*when no award will be made for the destruction of property to eradicate flag smut under the Plant Inspection Act.* The Plant Inspection Act of 1917 did not provide for the payment of damages for the destruction of property to prevent the spread of plant diseases.

POLICE POWER—*when State may exercise.* Under its police powers the State has the right to destroy plants and animals to prevent the spread of infectious diseases and is not liable to compensate the owner for the loss suffered thereby unless the statute provides for the payment of such loss.

R. F. TUNNELL, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $12,000.00 alleged to be the value of wheat straw which claimant says he burned in the years 1921 to 1926 both inclusive. In 1920 the wheat fields in certain sections of Madison County became infected with a disease known as flag smut and the Department of Agriculture is-

sued an order directing that straw from the infected fields be burned. On July 11, 1921, the infected locality was quarantined by the Department and all wheat straw grown therein (with certain exceptions) ordered burned. On June 26, 1922, the sections affected with this disease were again quarantined by the Department, the quarantine providing that "wheat straw grown in the quarantined area shall not be moved or transported out of the quarantined area." The quarantine regulations issued that year did not require the burning of the straw. On July 18, 1924, the quarantine was lifted and there were no restrictions on the use or disposition of the straw after that date, and if claimant burned his straw that and the subsequent years he did not do it because of any requirement or regulation of the Department of Agriculture.

This claim was not filed until August 21, 1929, more than five years after the destruction of the straw burned in the years 1921, 1922 and 1923. Section 10 of the Act creating the Court of Claims provides every claim against the State shall be forever barred unless it is filed within five years after the claim first accrues. This statute bars the allowance of the claim for those years. As claimant was not required to burn his straw for the years 1924, 1925 and 1926 there is no theory on which the State can be required to pay him the value of that straw.

The quarantines above mentioned were declared under the provisions of the Plant Inspection Act of 1917. That Act did not provide for the payment of damages for the destruction of any property destroyed under its provisions to prevent the spread of plant diseases. Under its police powers the State has the right to destroy plants and animals to prevent the spread of infectious diseases and is not liable to compensate the owner for the loss suffered thereby unless the statute provides for the payment of such loss. (*Durand* v. *Dyson*, 271 Ill. 382; *Mayfield* v. *State*, 5 Ct. Cl. 226.) It follows that claimant is not entitled to any award, and the claim is denied and the case dismissed.

(No. 1543—Claimant awardd $976.10.)

GUY H. CASEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made.* Where it appears from all the facts and circumstances that personal injuries were received in line of duty while employed as a State highway patrolman a fair and reasonable award will be recommended.

STONE & FOWLER, AND S. E. QUINDRY, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that the claimant was employed as a State Highway Patrolman at the time he sustained personal injuries on Route No. 2. It appears that his motorcycle collided with the rear end of a wagon having no lights. There is no objection to the contention that this accident occurred in the line of duty; that claimant suffered a number of minor bruises and lacerations about the body and a fracture of the right knee cap. Claimant contends that injury has resulted in considerable loss in the use of his right leg.

The Attorney General comes and defends and states to the court that in event liability is established, it recommends that an award be made not to exceed the sum of $976.10.

The court is of the opinion that from all the facts and circumstances presented that the award of the claimant should be in the sum of $976.10. The court believes that this is fair and reasonable.

Therefore the court recommends that the claimant be allowed the sum of $976.10.

(No. 1550—Claim denied.)

FRANK RITZ, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

ANIMALS—*when no award will be made for losses sustained by the destruction of tubercular cattle.* Where the statute provides compensation shall not be paid to any person for any animal condemned for tuberculosis if the owner retains the animal more than thirty days, the court has no power to change or disregard it, and no award will be made.

FRANK RITZ, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for payment under the Bovine Tuberculosis Eradication Act of 1925, for the loss of two cows destroyed as tubercular reactors.

On April 11, 1929, claimant's herd was tested by a duly authorized veterinarian of the Division of Animal Industry, Department of Agriculture, and two grade cows found to be tubercular. The cows were appraised at $135.00 each. On May 14, 1929, they were taken by truck to the Union Stock Yards in Chicago and sold for $81.70 at a loss to claimant of $178.30.

Chapter 8, Section 8, of Smith-Hurd Ill. Revised Statute 1929 provides: "No compensation shall be paid to any person for any animal condemned for tuberculosis: (4) If the owner retains the animal more than thirty days after it has been adjudged infected with tuberculosis."

Cattle infected with a disease such as tuberculosis become a public nuisance and the State has the power, if deemed necessary to the public welfare, to order their destruction without compensation to the owner. *Durand* v. *Dyson,* 271 Ill. 382. *Mayfield* v. *State,* 5 Ct. Cl. 226. And if the State sees fit to limit the amount of compensation it will pay to the owner of property destroyed in the exercise of such power or to make payment of compensation contingent upon compliance by the owner with certain imposed conditions no one can question its authority to do so. The statute provides compensation shall not be paid if the owner retains the animal more than thirty days after it has been adjudged infected. That is the law and this court has no power to change it nor to disregard it. The Legislature deemed thirty days ample time for owners of such diseased animals to dispose of them. The claimant in this case kept his cows thirty-two days after they had been tested and tagged as tubercular. The statute in this case is plain and mandatory, and claimant not having complied with the law is not entitled to any award.

The claim is therefore denied and the case dismissed.

(No. 1559—Claimant awarded $2,437.50.)

HARRY E. BLACKWELL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made.* The court recommends an award for personal injuries sustained in course of employment while working as a grain sampler under the Grain Inspection Bureau of the Department of Trade and Commerce.

THOMAS L. FEKETE, JR., for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Claimant was an employee of the State of Illinois and fifty-nine years old. He was employed by the Grain Inspection Bureau, Department of Trade and Commerce. His work consisted of obtaining samples of grain out of cars. While employed at this work on December 22, 1924, he slipped and fell while getting down from the top of a freight car. He fell feet first, striking a brick paved platform and suffered injury to both legs, fracturing bones in his left leg and right foot as a result of the fall. Claimant was confined in the hospital for a time. It is conceded that he has carried a crutch or cane ever since the accident.

The Attorney General comes and recommends in the event of liability of the respondent being established that the claimant be allowed on a basis of 50% disability. We are of the opinion this is correct.

Therefore, the court recommends that claimant be allowed the sum of $2,437.50.

(No. 1560—Claimant awarded $376.54.)

ARMOUR AND COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

SUPPLIES—*when award will be made.* Where there is no doubt that certain supplies were furnished to a State institution that had not been paid for, an award will be made with the consent of the Attorney General.

HARRY B. BOGG, JR., for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for 2,503 pounds of frozen boneless briskets delivered to the Kankakee State Hospital on an order by the Department of Purchases and Construction of the State of Illinois. There seems no doubt as to the delivery of the article in question and the Attorney General comes and consents that an award be allowed in the amount of $376.54.

The court, therefore, recommends that claimant be allowed the sum of $376.54.

(Nos. 1561-1521—Claimant awarded $430.00.)

ARTHUR VAN GORDER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made.* The court recommends an award for personal injuries sustained in course of employment, and damage to automobile resulting by reason of an accident while employed as a State highway patrol officer.

RALPH P. SHERIDAN, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that the two above mentioned claims grew out of one accident which occurred on Feb. 10th, 1926, and in filing the opinion the court believes that said claims be treated jointly.

It appears that claimant was employed by the State of Illinois as a State Highway Patrol Officer and he alleges that while in the performance of his duties as such highway patrol officer under authority from a superior that he was severely injured at a point on State Highway No. 5 a short distance from Elizabeth, JoDaviess county, Illinois. The claimant in No. 1521 asked for the sum of One Hundred and Thirty ($130.00) Dollars for doctor, hospital and ambulance bills. The car driven by claimant which was struck by a truck it is

claimed was almost totally destroyed and the claimant asked Four Hundred and Fifteen ($415.00) Dollars. The court is of the opinion that this is a value greater than the amount sustained but that Three Hundred ($300.00) Dollars would be a fair return for the loss sustained on account of automobile. The Attorney General comes and makes no objections as to the facts set forth by the claimant and after a full consideration in the matter the court recommends that claimant be allowed in full for both claims the sum of Four Hundred and Thirty ($430.00) Dollars.

(No. 1565—Claimant awarded $750.00.)

LETTA EDWARDS, AND LIZZIE SIEPLE, EXECUTRICES OF THE LAST WILL AND TESTAMENT OF HOWARD W. NEWELL, Deceased, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PROPERTY DAMAGE—*when award will be made.* Where it appears that claimant has suffered damage to his property by reason of the construction of a hard road an award will be made pursuant to the stipulation and agreement of counsel for claimant and respondent.

C. W. MIDDLEKAUFF AND FRED S. SMITH, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON and CARL I. DIETZ, Assistant Attorneys General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The claimant files this claim for damages to resident property in Mt. Carroll, Illinois, on account of the construction of a hard road in front of his residence. It is stipulated and agreed by both counsel for claimant and Attorney General for the State that the claimant is damaged to the amount of $750.00.

The court on said agreement of attorneys for claimant and defendant makes an award for claimant of $750.00.

(No. 1566—Claimant awarded $600.00.)

GEORGE KRAMER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PROPERTY DAMAGE—*when award will be made.* Where it appears that claimant has suffered damage to his property by reason of the construction of a hard road an award will be made pursuant to the stipulation and agreement of counsel for claimant and respondent.

C. W. MIDDLEKAUFF AND FRED S. SMITH, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON and CARL I. DIETZ, Assistant Attorneys General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The claimant files this claim for damages to dwelling house on account of the construction of routes No. 40 and No. 78 of the hard road system, in front of his residence. Counsel for claimant and the Attorney General for the State have agreed that the claimant is damaged in the sum of $600.00.

Therefore, an award for the sum of $600.00 is awarded claimant.

(No. 1568—Claimant awarded $900.00.)

ARTHUR DHERMY, SR., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PROPERTY DAMAGE—*when award will be made.* Where it appears that claimant has suffered damage to his property by reason of the construction of a hard road an award will be made pursuant to the stipulation and agreement of counsel for claimant and respondent.

HOGAN AND COALE, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears claimant suffered damages by reason of hard road construction of S. B. I. Route No. 48 in the Village of Stonington.

The Attorney General comes and stipulates and agrees that claimant suffered damages in the sum of $900.00. The court, therefore, recommends that claimant be allowed $900.00.

(No. 1569—Claim denied.)

MINNIE E. KUNTZ, ADMINISTRATRIX OF THE ESTATE OF DANIEL A. KUNTZ, Deceased, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

WORKMEN'S COMPENSATION ACT—*when State not liable under.* **Where it appears that claimant's intestate was not acting in line of duty, and acting beyond instructions from his superior, and received injuries resulting in death, the State is not liable under the Workmen's Compensation Act.**

O. C. SMITH, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON and CARL I. DIETZ, Assistant Attorneys General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed by the administratrix of the estate of claimant to recover damages under the Workmen's Compensation Act. It appears that claimant was employed as a teamster at the Illinois Soldiers' and Sailors' Home at Quincy, Illinois. His duties appeared to be using a team and wagon supplied for the purpose of hauling. He worked under the direction of the Chief Engineer. On Dec. 2nd, 1929, the team used by deceased needed to be shod and he went to the building in which the office of the head gardner was located to secure a proper order for shoeing the horses. At the time there were present in this office the deceased, the head gardner Diker who sat at his desk working, also a farm laborer. In a pigeon hole of Mr. Diker's desk there was a half pint unlabeled bottle containing a reddish brown liquid. There being some conversation as to what the bottle contained, one of the parties smelled and investigated the contents. The deceased picked up the bottle and took a swallow of its contents. The deceased immediately became ill. He was rushed to the hospital and died on the way. It appeared that the bottle contained nicotine solution.

This court is of the opinion that this is a case that would not come under the Workmen's Compensation Act. The deceased was a teamster and his duties did not include tasting liquids and it can be stated as a fact that he was not acting in the line of duty when he tasted and swallowed a portion of this bottle of liquid. He assumed the risk and the injuries sustained was a hazard created by curiosity or otherwise.

It would appear to this court that a private corporation would not be called upon to respond in a case of like nature. The employe went beyond his line of duty and suffered the unhappy consequences. If it were the duty of deceased to sample contents of bottles then of course it would be considered extra hazardous as defined by statute. But he went beyond his line of duty and was not acting under instructions from a superior and therefore the court is unable to find any liability on the State of Illinois and it is recommended that this claim be disallowed.

(No. 1583—Claim denied.)

BETH JANE McWILLIAMS, A MINOR, BY BESSIE McWILLIAMS, HER NEXT FRIEND, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1931.
Rehearing denied May 14, 1931.

PERSONAL INJURY—*when State not liable.* The State is not liable for injuries caused by the negligence of its agents and employees.

REHEARING—*when rehearing will be denied.* When the petition for rehearing points out no reason why one should be granted, a rehearing will be denied.

MICHEL & BARNES, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This is claim for $5,000.00 for injuries which claimant alleges she sustained on account of being struck by an automobile. It is charged that a trailer which was attached to a State truck struck an automobile and caused the automobile to strike claimant and thereby she was severely bruised and injured. The accident occurred March 5, 1930, on North

Adams Street in Peoria. Neither the declaration nor the facts show any liability on the part of the State. If the injury was caused by the negligence of either the driver of the truck or the owner of the automobile claimant has a cause of action against the one whose negligence caused it. But because the truck was being driven by an employee of the State does not make the State liable. The rule that the State is not liable for injuries caused by the negligence of its agents and employees is so well established that a citation of authorities is unnecessary.

The claim is therefore denied and the case dismissed.

On May 14, 1931, upon petition for rehearing, the following additional opinion was filed:

Claimant has filed a petition for rehearing in this case but has pointed out no reason why one should be granted. The petition states there is no direct proof that the employees of the State were negligent. Certainly if its employees were not negligent the State is not legally liable for the injury. The petition for a rehearing is denied.

(No. 1587—Claimant awarded $2,607.05.)

JOSEPH M. KNOWLES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* **Where the evidence shows that claimant sustained injuries in course of employment while working for the University of Illinois, an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.**

BOYER & LEONARD, for claimant.

OSCAR E. CARLSTROM, Attorney General; ROY D. JOHNSON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was working for the University of Illinois through the summer of 1926. It appears further that the claimant was moving large crates from one room to another of the canning factory connected with the university.

It appears that a crate slipped off and struck Mr. Knowles in the abdomen causing quite considerable injury to bladder.

The Attorney General comes and defends and sets up that claimant under the Workmen's Compensation Law in event there was a liability, would be entitled on account of temporary total disability, medical bills and hospital expenses the sum of $2,607.05.

The court is of the opinion that there is a liability as measured by the Workmen's Compensation Act.

Therefore the court recommends that claimant be allowed the sum of $2,607.05.

(No. 1589—Claimant awarded $382.71.)

PATRICK ANSBRO, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where it appears that claimant was employed as a structural iron worker upon the Illinois Waterway and it is stipulated that he received injuries arising out of and in the course of his employment, an award will be made and the amount determined under the Workmen's Compensation Act.

BERNARD L. KELLY, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed by the State as a structural iron worker on Brandon Road Pool, being project No. 6 of the Illinois Waterway. It has been stipulated by the parties that claimant was injured on June 27, 1929, and that his injury arose out of and in the course of his employment, that the State furnished claimant medical, surgical and hospital treatment for three months and paid him compensation at the rate of $19.00 a week for five and one-half weeks. It is conceded that claimant is entitled to be paid $19.00 a week for twenty and one-seventh weeks in addition to payments he has already received. He is therefore awarded the sum of $382.71.

(No. 1590—Claimant awarded $1,680.00.)

C. J. SPENCER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made.* Where it appears claimant received injuries resulting in the loss of the sight of an eye while employed as superintendent of a fish and game preserve under the Department of Conservation, the Court recommends an award.

C. S. MILLER, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant alleges that he was an employe of the State of Illinois holding the position of Superintendent of the Fish and Game Preserve known as the Horseshoe Lake Game Preserve in Alexander county, Illinois. While serving in this capacity on July 23rd, 1927, and following the instruction of his superiors he was cutting brush and clearing away motor boat landings. While doing this his helper pulled some short bushes back to chop and the bushes flew back and one of the broken ends hit the claimant across his left eye bruising and injuring the eyeball and according to claimant he lost the sight of one eye. The claimant requests the allowance of Two Thousand Two Hundred and Fifty ($2,250.00) Dollars. The Attorney comes and defends and states that if there is any liability that the claimant should not be allowed a sum exceeding Sixteen Hundred and Eighty ($1,680.00) Dollars. The court is of the opinion that the recommendation of the Attorney General is correct in this instance and recommends that the claimant be allowed the sum of Sixteen Hundred and Eighty ($1,680.00) Dollars.

(No. 1613—Claim denied.)

HARRY F. HAMLIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

ANIMALS—*when no award will be made.* Where the destruction of animals infected with tuberculosis has not been authorized by the State but by the voluntary act of the owner, no award will be made.

HARRY F. HAMLIN, pro se.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant desires to recover for the loss of cattle known as re-acting cattle. Two animals were disposed of according to claimant. It appears that the tests and the destruction of the animals were not authorized by the State of Illinois and according to the Attorney General a voluntary act and loss on the part of the claimant.

In view of all the facts and circumstances disclosed in this case, the court disallows the claim.

(No. 1615—Claimant awarded $350.00.)

LOUIS M. GIETL, AND HENRY L. GIETL, PARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF GIETL BROS., Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

WORK, LABOR AND MATERIAL—*when award will be made.* Where work, labor and material have been furnished in repairing a State automobile, an award will be made upon the recommendation of the Attorney General.

WALTER T. DAY, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The claimants have filed their claim for $507.65 for repairs and labor upon one of the State automobiles used by the employees of the State of Illinois. The Attorney General comes and enters into a stipulation with the claimants and admits that the State is liable in the sum of $350.00 for labor and repairs on the State automobile and recommends that an award be allowed claimants in the sum of $350.00. On the recommendation of the Attorney General for the State an award is hereby allowed in the sum of $350.00 to claimants.

(No. 1616—Claimant awarded $686.25.)

EMILIO DINON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where it appears that claimant received personal injuries in line of duty while working for the State at an extra hazardous employment, an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.

CLARK, YOUNG & BULL, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for personal injury sustained by claimant while he was employed by the State of Illinois through its Department of Public Works and Buildings, Division of Highways. There is no contention but that the employment was extra hazardous and the Attorney General appearing in open court recommends that there is a liability on the part of the State of Illinois and that under the Workmen's Compensation Act claimant is entitled to an allowance in the sum of $686.25.

Thereupon, the court recommends that the claimant be allowed the sum of $686.25.

(No. 1624—Claimant awarded $130.00.)

HERBIS FARLEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

FEES AND SALARIES—*when award will be made for additional salary except that barred by the Statute of Limitations.* Where the contract of employment provided a certain salary should be paid but a lesser amount was actually received, an award will be made for the difference between the amount received, and the amount paid less the amount barred by the Statute of Limitations.

HERBIS FARLEY, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On April 19, 1924, the claimant was advised that he had been appointed Maintenance Patrolman on Patrol 1008, with headquarters at Leland, Illinois, at a salary of $160.00 per month without expenses effective at once. The claimant worked for 21 months and was paid a salary of $140.00 per month. On July 10, 1930, he filed his claim for $20.00 per month for the 21 months being the difference between the amount he should have received and the amount paid him. There seems to be no question but what the claimant was to draw $160.00 per month.

Paragraph 10 of Section 1 of the Court of Claims Act, reads as follows: "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 accrues, two years from the time the disability is removed."

In this case it appears to the court that more than five years have elapsed before the filing of the claim as to 14 months and 20 days, leaving 6 months and 10 days at $20.00 that is not barred by the Statute of Limitations.

Therefore an award is hereby made for the 6 months and 10 days for $130.00.

(No. 1625—Claimant awarded $425.00.)

JOSEPH NOVAK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made*—*Workmen's Compensation Act.* Where it appears that claimant received personal injuries in line of duty while working for the State at an extra hazardous employment, an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.

CLARK, YOUNG & BULL, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for personal injury sustained by claimant while he was employed by the State of Illinois through its Department of Public Works and Buildings, Division of Highways. There is no contention but that the employment was extra hazardous and the Attorney General appearing in open court recommends that there is a liability on the part of the State of Illinois and that under the Workmen's Compensation Act claimant is entitled to an allowance in the sum of $425.00.

Thereupon, the court recommends that the claimant be allowed the sum of $425.00.

(No. 1626—Claimant awarded $954.00.)

RALPH WINKEL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where it appears that claimant received personal injuries in line of duty while working for the State at an extra hazardous employment, an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.

CLARK, YOUNG & BULL, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for personal injury sustained by claimant while he was employed by the State of Illinois through its Department of Public Works and Buildings, Division of Highways. There is no contention but that the employment was extra hazardous and the Attorney General appearing in open court recommends that there is a liability on the part of the State of Illinois and that under the Workmen's Compensation Act claimant is entitled to an allowance in the sum of $954.00.

Thereupon, the court recommends that the claimant be allowed the sum of $954.00.

(No. 1627—Claimant awarded $433.75.)

EDGAR J. MAYER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where it appears that claimant received personal injuries in line of duty while working for the State at an extra hazardous employment, an award will be made and the amount determined under the provisions of the Workmen's Compensation Act.

CLARK, YOUNG & BULL, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for personal injury sustained by claimant while he was employed by the State of Illinois, through its Department of Public Works and Buildings, Division of Highways.

There is no contention but that the employment was extra hazardous and the Attorney General appearing in open court recommends that there is a liability on the part of the State of Illinois and that under the Workmen's Compensation Act claimant should be allowed the sum of $433.75.

Thereupon, the court recommends that claimant be allowed $433.75.

(No. 1633—Claimant awarded $150.00.)

JAMES F. GRIMES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PROPERTY DAMAGE—*when award will be made.* Where claimant suffers property damage as a result of a fire spreading upon his land from the right of way of a State Bond Issue Route, an award will be recommended for the damages sustained.

HARRY ANDERSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for property damage in the sum of Three Hundred and Twenty-three ($323.00) Dollars, for damage to about 18 acres of hay and timberland as a result of a fire on July 15th, 1930. It is claimed that the fire spread from the right of way of State Bond Issue Route 142.

It appears that some damage was done to the property of claimant through this fire and the Attorney General recommends that claimant be allowed a sum not to exceed One Hundred and Fifty ($150.00) Dollars. The court is of the opinion that this allowance is fair and reasonable and therefore recommends that claimant be allowed the sum of One Hundred and Fifty ($150.00) Dollars.

(No. 1634—Claimant awarded $1,250.00.)

J. B. ANDERSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PROPERTY DAMAGE—*when award will be made.*—Where claimant suffers damages to real property on account of the construction of a hard road, an award will be made upon the stipulation and agreement of the parties as to the amount of the damages.

C. W. MIDDLEKAUFF AND R. M. EATON, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The claimant filed this claim for damages to his residence on account of the construction of a hard road in front of the same for damages to the amount of $1,250.

It is stipulated and agreed between counsel for claimant and Attorney General for the State that the claimant's damages amount to $1,250.00.

The court, on the stipulation of counsel, grants an award for $1,250 to claimant.

(No. 1637—Claim dismissed.)

JOSEPH W. BEAVINS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

DISMISSAL—*when case will be dismissed.* Where claimant consents to have the case dismissed it will be stricken from the docket upon motion of the Attorney General.

FRANK J. BURNS AND JAMES T. BURNS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

By consent of the claimant this cause is dismissed and striken from the docket on motion of the Attorney General.

(No. 1638—Claim denied.)

FRANK RUDOW, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PROPERTY DAMAGE—*when no award will be made.* The court recommends that the claim be disallowed on the ground that action should be brought against the person causing the damage.

ARLEY MUNTS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

According to claimant's statement, he was the owner of a certain brick garage building situated in the City of Morris in the State of Illinois; that said garage was rented to the State of Illinois for the use of the Division of Highways for one motor truck. It appears that the driver of a Reo motor truck drove through the door of said garage damaging the door in the sum of Eighty-eight and 30/100 ($88.30) Dollars, according to claimant.

This court is of the opinion that the owner of the garage should take action if any against the truck driver as there must be some carelessness somewhere, and this court recommends that this claim be disallowed.

(No. 1639—Claimant awarded $98.00.)

GEORGE WINTERS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where claimant receives injuries in course of employment while working upon a hard road, an award will be made under the Workmen's Compensation Act.

WILLIAM J. LONG, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim to recover damages while actually engaged in grading and scraping the roadway in building up shoulders on S. B. I. Route No. 31 about two miles west of Mount Sterling, Illinois. On October 5th, 1929, claimant was engaged in removing a steel road drag from the top of a truck loaded with waste pieces or blocks of cement. In so doing a large piece of cement slipped down claimant's right leg and struck his toe, mashing the same. This piece of cement weighed approximately 100 pounds.

The Attorney General comes and defends and admits that if there is any liability it should be in the sum of $98.00. The court feels that this case comes under the Workmen's Compensation Act and, therefore, recommends that claimant be awarded the sum of $98.00.

(No. 1643—Claimant awarded $465.00.)

WILLIAM KRIZ, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where claimant receives injuries arising out of and in the course of employment while employed by the State in a business declared to be extra hazardous, an award will be made under the Workmen's Compensation Act.

ARLEY MUNTS, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed by the State in the business declared by the Workmen's Compensation Act to be extra hazardous. On the 6th day of September, 1929, while engaged as night electrician in charge of the pumps and while working on a gas engine trying to start it the engine back fired and ignited a can of gasoline which claimant had in his hand. As a result thereof the claimant was severely burned on the abdomen, chest, both wrists and both hands. The medical, surgical and hospital bills were all furnished by the State. His injuries arose out of and in the course of his employment, and the State is liable to compensate him for them.

The Attorney General recommends that the claimant be allowed six weeks temporary total disability at $15.00 per week and twenty-five weeks for disfigurement which makes a total of $465.00.

It is therefore ordered that claimant be and he is awarded the sum of $465.00.

(No. 1646—Claimant awarded $1,300.00.)

CHARLES McDERMOTT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where claimant sustains injuries in course of employment while working for the State, an award will be made under the provisions of the Workmen's Compensation Act.

THOMAS A. MURPHY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This claim was brought to recover compensation for injury to claimant as an employe of the State of Illinois under the Workmen's Compensation Act. The claimant was employed in line of duty on Nov. 8th, 1929, as a brakeman on a gravel train. On said date an axle of a car in the train on which he was riding, broke and the front end of the car came down upon the claimant's left foot. The train being still in

motion he was dragged some distance. He sustained an injury to his left foot about the ankle.

The Attorney General comes and recommends that an allowance of Thirteen Hundred ($1,300.00) Dollars be made, and on said recommendation the court allows the sum of Thirteen Hundred ($1,300.00) Dollars.

(No. 1648—Claimant awarded $1,725.00.)

W. T. McCORMACK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1941.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* **Where claimant receives injuries arising out of and in the course of employment while working as a carpenter for the State, an award will be made under the provisions of the Workmen's Compensation Act.**

JOHN H. SEARING, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant was employed as head carpenter for the Southern Illinois Normal University. On or about the 25th day of February while employed in painting and redecorating and tearing out certain cabinets in the chemical room and working on a scaffold of about ten feet in height, a workman assisting him stepped off of one of the boards permitting the claimant on the other end of the board to fall to the floor and fractured the heel bone of his left foot, wrenched both of his wrists and wrenched his back and caused a contusion of the back part of his head.

The Attorney General comes and defends and recommends that if this court finds the claimant operated under the Workmen's Compensation Act that claimant be allowed a compensation of $1,725.00.

Therefore, it is recommended that claimant be awarded the sum of $1,725.00.

(No. 1649—Claimant awarded $1,100.00.)

WILLIAM CLEVERMANN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 15, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where claimant suffers injuries arising out of and in the course of his employment while working as a wagon maker for the State, an award will be made under the Workmen's Compensation Act.

JOHN A. MAYHEW, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant alleges that he was injured at the Kankakee State Hospital, Kankakee, Illinois, on May 21st, 1929. He was employed as a wagon maker and while he was attempting to straighten a piece of lumber claimant's hand slipped into the knives on the machine cutting off his right thumb and his right index finger.

The Attorney General comes and defends and recommends that if the court believes the claimant comes under the Workmen's Compensation Act that he be allowed $1,100.00.

The court is of the opinion that this case does come under the Workmen's Compensation Act and, therefore, recommends the allowance of $1,100.00.

(No. 1651—Claim denied.)

REEVE B. BOKEMEIER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 15, 1931.

PERSONAL INJURY—*when State not liable.* The State is not liable for injuries caused by the negligence of its officers, agents or employees in the absence of a Statute creating such liability.

DUNWIDDIE & THURBER, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On January 10, 1930, while claimant was driving his automobile on State Highway Number 5 near Pingree Grove he

collided with a truck belonging to the State. The truck was being driven by Theodore Rankin while engaged in work for the State, and it is charged the collision was caused by the careless and negligent manner in which Rankin operated the truck.

It is the settled law of Illinois that the State is not liable for injuries caused by the negligence of its officers, agents or employees in the absence of a statute creating such liability. This rule is so well known and has been so many times announced by this court and the Supreme Court that a citation of authorities is unnecessary.

If the damages to claimant's automobile were caused by the negligence of Rankin claimant is not without a remedy as Rankin is liable to him for all damages caused by his negligence.

As claimant has no cause of action against the State his claim is denied and the case dismissed.

(Claims allowed.)

ERNESTINE STERLING HANSEN, 1655; ERNESTINE STERLING HANSEN, ADMINISTRATRIX OF THE ESTATE OF VIRGINIA STERLING, Deceased, 1656; ERNESTINE STERLING HANSEN, ADMINISTRATRIX OF THE ESTATE OF CATHERINE BROCKMAN, Deceased, 1657, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—equity and good conscience.* **The court finds that there is no legal liability on the part of the State but recommends an award on the grounds of equity and good conscience for personal injuries sustained and death of claimant's intestate by reason of an airplane owned and operated by the Illinois National Guard crashing into claimant's parked automobile in which claimant and claimant's intestate were seated.**

SCHNACKENBERG AND HANSEN, for claimants.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

For the purpose of consideration the above claims have been consolidated on stipulation and agreement of counsel.

All three claims arise out of the same accident which occurred June 15th, 1930, near the Robey race track at 112th St., near the City of Hamomnd, Indiana, and not far distant from the Illinois State Line. There appears to be little dispute as to the facts in these cases. An air corp airplane belonging to the 108th Observation Squadron, 33rd Division, Illinois National Guard, while on an authorized training flight and piloted by Lieut. W. V. Newhall crashed into a parked automobile while attempting to takeoff from an emergency landing field near the race track. This car was parked with others on a highway near the landing field from which the plane took off. The automobile was owned and driven by Peter Brockman who was seated in the front seat with his wife, claimant's mother. Claimant's small daughter Virginia Sterling was being held on the lap of her grandmother. Claimant Virginia Sterling Hansen was sitting alone in the rear seat of the car. The airplane in the endeavor to takeoff crashed into the car of claimant, wrecked both the car and the airplane killing Brockman the driver, the mother of the claimant and the small daughter of the claimant and claimant herself suffered severe lacerations about the right arm, shoulder and head. The occupants of the airplane escaped without serious injury.

The Attorney General comes and defends and sets up that there is no legal liability on the part of the State. The court is of the opinion that this contention is true and there is no reason to go into a discussion of that fact. The State also contends that the pilot used all due precaution. This court is of the opinion that a pilot who undertakes the handling of an airplane should be very cautious in the takeoff or in any other particular for the safety of the people. If there was not sufficient room to make a proper takeoff the pilot or the mechanic should so inform the police in charge so that they might disburse and remove their cars, or wait until the crowd had disbursed before taking off.

This is a very grave injury and in ordinary cases the court would be disposed to deny claimants a remedy but the Illinois National Guard was created for the benefit of the State and the protection of its citizens in times of turmoil. And therefore the court being mindful of the obligation of the State of Illinois in carrying out its military protection and the fact that this accident occurred while the airplane was being used

as a part of such military program this court is of the opinion that in view of equity and good conscience a suitable award should be made. The court wishes to be reasonably fair to those injured in this regretable accident, yet the rights of the People of the State of Illinois should not be overlooked.

In view of all the facts and circumstances the court recommends that Ernestine Sterling Hansen who was very grievously injured be allowed the sum of Fifty-five Hundred ($5,500.00) Dollars, being in full for injuries sustained, hospital and medical attention, and Ernestine Sterling Hansen as administratrix of the estate of Virginia Sterling, deceased, be allowed the sum of Two Thousand ($2,000.00) Dollars, and Ernestine Sterling Hansen as administratrix of the estate of Catherine Brockman, deceased, be allowed the sum of Two Thousand ($2,000.00) Dollars.

(No. 1659—Claimant awarded $245.00.)

SAMUEL WHITMORE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1930.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* **Where it appears that the injuries sustained arose out of and in the course of employment while claimant was working for the State in an extra hazardous enterprise, an award will be made under the provisions of the Workmen's Compensation Act.**

JOHN P. MCDONALD, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed by the State as a carpenter on the Dresden Island Lock and Dam of the Illinois Waterway. On December 1, 1929, while engaged at his work he suffered a inguinal hernia which incapacitated him from work for eight weeks. The injury arose out of and in the course of his employment, and he is entitled to compensation under the Workmen's Compensation Act at the rate of $15.00 per week for the eight weeks he was disabled. The evidence also shows he was required to incur a physician's bill of $125.00 in being cured of the injury. He is therefore awarded the sum of $245.00.

(No. 1665—Claimant awarded $14,212.00.)

W. M. WELCH MANUFACTURING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

CONTRACT—*when award will be made for labor and material furnished to the State.* Where it appears that claimant completed its contract with the State according to plans and specifications and no fund existed out of which claimant could be paid by reason of such fund having lapsed into the State Treasury prior to the time of the completion of the contract, and the failure of the Legislature to provide an appropriation for such purpose, an award will be made to cover the contract price for such labor and material furnished.

CATTELL & WALDRON, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant, on the 28th day of June, 1929, entered into a contract with the State with its legal representatives for the sale of certain labor and materials used in the finishing, erecting and completion of laboratory equipment for a science building at the Illinois State Normal University at Normal, Illinois. Claimant did, on the 20th day of April, 1930, complete said contract according to the plans and specifications. On June 28, 1929, there was an unexpended balance remaining in the revolving fund for State universities for $46,068.62 appropriated by the 55th General Assembly out of which this claim could have been paid if the contract had been completed. The 56th General Assembly failed to reappropriate any fund to take care of claimant's uncompleted contract and the unexpended balance of $18,430.45 lapsed into the State Treasury on September 30th, 1929, and when the claimant's contract was completed in April, 1930, there were no funds out of which this claim could be paid.

It is admitted by the Attorney General for the State that claimant furnished the material and did the work according to the contract and the plans and specifications and that the claim is a just claim against the State and recommends that the same be allowed in the sum of $14,212.00.

On the recommendation of the Attorney General an award is allowed in the sum of $14,212.00.

(No. 1669—Claim denied.)

STANDARD OIL COMPANY, INDIANA, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

MOTOR FUEL TAX—*when no award will be made.* Where a tax has been paid upon motor fuel under the Motor Fuel Tax Act of 1927, and the records show that such tax was voluntarily paid under a mistake of law, no award will be made.

F. E. PACKARD AND WILLIAM E. O'CONNOR, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

This claim is for $56.90 motor fuel tax alleged to have been paid through mistake by claimant under the provisions of the Motor Fuel Act of 1927. Claimant was a licensed distributor of motor fuel and as such sold to the Red, White and Blue Oil Company 2845 gallons of motor fuel in August, 1927. In its September report to the Department of Finance it included this motor fuel and paid the tax thereon. The Red, White and Blue Oil Company, a licensed distributor of motor fuel, also included this same motor fuel in its report to the Department of Finance in September and paid the tax on it. The Red, White and Blue Oil Company refused to reimburse claimant for the tax and it has filed this claim to have the State refund the tax to it. It has been stipulated that the Red, White and Blue Oil Company was primarily liable for the payment of the tax and that the tax was paid by claimant "by mistake and through error," but the stipulation does not state whether the mistake was one of fact or of law. We think from the facts disclosed by the declaration, exhibits and stipulation that the tax was paid by claimant under the view that the provisions of the statute required it to pay the tax. There is no question but what claimant paid the tax voluntarily, and it is well settled that taxes voluntarily paid under a mistake of law cannot be recovered back. This principle of law has been many times announced by our Supreme Court. (*Metropolitan Life Ins. Co.* v. *Boys*, 296 Ill. 166; *Richardson Lubricating Co.* v. *Kinney*, 337 Ill. 122; *Illinois Merchants Trust Co.* v. *Harvey*, 335 Ill. 284.)

The claim is therefore denied and the case dismissed.

(No. 1671—Claim denied.)

HINRICHS & SCHROEDER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PROPERTY DAMAGE—*when State not liable.* The State is not liable for property damages caused by the negligence of its officers, agents, or employees in the absence of a statute creating such liability.

HINRICHS & SCHROEDER, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

On March 25, 1930, while Esmail Gladu was removing snow from State highway on Route No. 49 at the east edge of the Village of Peotone, Illinois, he stopped at the filling station of Hinrichs & Schroeder to get gas. As he was leaving the service station he ran his truck into a large snow drift. He then stopped and backed his truck in order to get a better start to plow through the drift and, in doing so, the back end of the truck hit the south pier of the service station and moved it off of the foundation. The claimants were out $72.98 to repair the building and file this claim for their damages.

It is the settled law of Illinois that the State is not liable for injuries caused by the negligence of its officers, agents or employees, in the absence of a statute creating such liability. This rule is so well known and has been so many times announced by this court and the Supreme Court that a citation of authorities is unnecessary.

As the claimants have no cause of action against the State their claim is denied and the case dismissed.

(No. 1672—Claimant awarded $3,750.00.)

MAY E. McDONALD, ADMINISTRATRIX OF THE ESTATE OF R. J. McDONALD, Deceased, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where claimant's intestate received injuries resulting in death which arose out of and in the course of employment while working for the State in an extra hazardous enterprise, an award will be made under the Workmen's Compensation Act.

PERRY H. HILES, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim under the Workmen's Compensation Act as widow. Claimant's husband died as a result of injuries arising out of and in the course of his employment on July 10, 1930, while a highway police officer under the Department of Public Works and Buildings. It appears the claimant's husband has lost his life in the line of duty and in the performance of his duty.

The Attorney General comes and recommends that claimant be awarded a sum not to exceed $3,750.00, as provided by Section 7 (a) of the Workmen's Compensation Act.

The court is of the opinion that the claimant's husband lost his life in line of duty and that it was extra hazardous employment as defined by the statutes of the State of Illinois. Therefore, this court recommends that the claimant be allowed the sum of $3,750.00.

(No. 1674—Claimant awarded $442.50.)

THOMAS J. CONNELL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where claimant received injuries arising out of and in the course of his employment while working for the State in an extra hazardous business, an award will be made in accordance with the provisions of the Workmen's Compensation Act.

WILLIAM C. MOONEY, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed by the State as a structural iron worker on the Brandon Road Lock and Dam, being project No. 5 of the Illinois Waterway. On December 10, 1929, while engaged at his duties, he received an injury to his right foot.

The injury arose out of and in the course of his employment. We have carefully considered the evidence in the case and find he is entitled to be compensated for his injury in accordance with the provisions of the Workmen's Compensation Act. He is accordingly awarded the sum of $442.50.

(No. 1676—Claimant awarded $3,750.00.)

ELMER J. ASP, ADMINISTRATOR OF THE ESTATE OF KENNETH E. ASP, Deceased, ELMER E. ASP, JOHN E. ASP, AAROLD G. ASP, INDIVIDUALLY AND AS HEIRS AT LAW AND DEPENDENTS OF KENNETH E. ASP, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made for personal injuries resulting in death—Illinois National Guard.* Where claimant suffers injuries in line of duty resulting in death while a member of the Illinois National Guard, an award will be made under the Military and Naval Code of the State.

CHARLES F. FITZGERALD, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought for damages resulting in the accidental death of Kenneth E. Asp under the provision of Section 11, Article 16 of the Military and Naval Code of the State of Illinois. The deceased was a resident of the City of Chicago at the time of the fatal accident. He was attached to the 103rd Motor Transport Corps of the 33rd Division of the State Militia during the 1930 annual summer encampment at Camp Grant, Illinois. A unit convoy in command of the deceased left Camp Grant for Chicago on Aug. 18th, 1930, and in course of their journey it became necessary to wait for another unit ahead to proceed. The deceased was directing traffic during the halt when a civilian's car approached at a high rate of speed and in swerving to the right to avoid hitting a convoy truck he struck the deceased knocking him to the ground. The deceased was carried to the hospital in Elgin where he died about 8 hours later as a result of his injuries.

It appears that deceased lost his life in line of duty and it is recommended by the Attorney General in the event liability is established that claimant be allowed the sum not to exceed Thirty-seven Hundred and Fifty ($3,750.00) Dollars. This court is of the opinion that said amount is reasonable and therefore recommends the claim be allowed in the sum of Thirty-seven Hundred and Fifty ($3,750.00) Dollars.

(No. 1685—Claimant awarded $300.00.)

CLAUDE J. CODDINGTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made.* Where it appears that claimant sustained injuries in course of employment, an award will be recommended for such injuries.

EDWIN HAMILTON, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim filed to recover damages for injuries sustained as a structural iron worker on the Brandon Road, Illinois Waterway.

The defendant through the Attorney General concedes that in the event the court is of the opinion that there is a liability that an award should be made not to exceed Three Hundred ($300.00) Dollars.

The court is of the opinion that the recommendation of the Attorney General in this case is fair and therefore recommends that an award be made in the sum of Three Hundred ($300.00) Dollars.

(No. 1686—Claimant awarded $1,560.00.)

JOHN BARATONA, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURIES—*when award will be made.* Where claimant sustains injuries arising out of and in the course of his employment while working for the State in an extra hazardous employment, an award will be made.

SNAPP, HEISE AND SNAPP, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed by the State as a laborer on Brandon Road Pool, being Project No. 6 of the Illinois Waterway. While engaged in his work, on November 18, 1929, he received an injury to his left eye which arose out of and in the course of his employment. It is conceded by the Attorney General that claimant is entitled to an award, and both parties agree the award should be computed on the basis of $13.00 per week for 120 weeks. The Attorney General insists that claimant has only suffered the loss of 75 per cent of the vision of the eye and that the award should be made on that basis. One who has lost 75 per cent of the vision of an eye has, for all practical purposes, lost the sight of that eye and we think the award should be on that basis. Claimant is, therefore, awarded the sum of $1,560.00.

(No. 1687—Claimant awarded $3,750.00.)

ANNA MARIE SCHWARTZ, ADMINISTRATRIX OF THE ESTATE OF FRANK M. SCHWARTZ, Deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made*—*Workmen's Compensation Act.* Where claimant sustained injuries resulting in death arising out of and in the course of employment while employed by the State as a highway maintenance police officer, an award will be made under the Workmen's Compensation Act.

SNAPP, HEISE AND SNAPP, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Frank M. Schwartz, claimant's intestate, was a member of the State Highway Maintenance Police. On September 7, 1930, while in the performance of his duties, he received an injury from which he died the next day. The injuries causing his death arose out of and in the course of his employment. He left no children, but left claimant, Annie Marie

Schwartz, his widow surviving. His salary was $175.00 per month.

It is conceded by the Attorney General that the employment of claimant's intestate is governed by the provisions of the Workmen's Compensation Act. Under the provisions of paragraph (a) of section 7 of that Act claimant is entitled to an award of $3,750.00. It is therefore ordered that she be and she is awarded the sum of $3,750.00.

(Claims allowed.)

ARTHUR C. UPPER, 1688; L. A. STANSBURY, 1716, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where claimant received injuries in course of employment while working for the State in an extra hazardous employment, an award will be made under the Workmen's Compensation Act.

SNAPP, HEISE AND SNAPP, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought as Nos. 1688 and 1716 relative to the claim of Arthur C. Upper and L. A. Stansbury, a chiropractor. It appears that the said Arthur C. Upper was operating an excavating machine known as dragline. It further appears that while claimant so employed his glove caught pulling his right hand in the machinery. The hand was badly lacerated and mashed.

The Attorney General comes and admits that claimant Upper received a temporary total disability and the State Physician Dr. Frederick, establishes a 90 per cent permanent incapacity in occupational loss of the use of claimant's right hand.

It would appear that there is a liability on the part of defendant under the Workmen's Compensation Act and the Attorney General concedes that in the event of the court finding liability against the State that an award be made in the

sum of Twenty-one Hundred Forty-two ($2,142.00) Dollars, and One Hundred ($100.00) Dollars for medical attention.

Therefore it is recommended that claimant Upper be allowed Twenty-one Hundred Forty-two ($2,142.00) Dollars and claimant Stansbury be allowed $100.00.

(No. 1691—Claimant awarded $100.00.)

BOYD MCCANE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

SERVICES—*when award will be made.* Where it appears that claimant performed patriotic and extraordinary services in closing up the affairs of a National Guard unit, an award will be made for such services.

FRED SMITH, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for additional compensation for services rendered the State of Illinois by the claimant in closing up of a National Guard Unit at Metropolis, Illinois. It appears that claimant performed patriotic and extraordinary services. There is no objection on the part of the Attorney General in the allowance of One Hundred ($100.00) Dollars.

Therefore the court recommends that claimant be allowed the sum of One Hundred ($100.00) Dollars.

(No. 1694—Claimant awarded $150.00.)

EDGAR W. JOSEPHSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PROPERTY DAMAGE—*when award will be made—equity and good conscience.* Where it appears that a State employee permits the destruction of his own property in order to save a large amount of property of the State, an award will be made on the ground of equity and good conscience.

WALTER E. LINDOREN, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim suffered as a result of a fire which occurred on the 5th day of June, 1930, at the State Laboratory of the Department of Agriculture, Springfield, Illinois. The claimant was at the time of the alleged damages and is now, or at the time of the filing of the claim, an employee of the State of Illinois as a chemist in making tests, investigations, etc., relative to the Department of Agriculture experiments. It appears that claimant had clothing and other personal effects in the building at the time of the fire; that claimant was instrumental in assisting in saving property of the State of Illinois valued at around $70,000.00 and that in so doing he disregarded his own property, books and effects.

The claimant shows that he sustained a loss of One Hundred Fifty-nine ($159.00) Dollars. The Attorney General comes and recommends the allowance of this award provided this court is of the opinion that it is a claim that equity and good conscience would sustain. This court is of the opinion that wherein an employee of the State of Illinois unselfishly permits the destruction of his own property in order to save a large amount of property for the People of the State of Illinois, that he should be compensated.

Therefore, this court recommends that claimant be allowed and awarded the sum of One Hundred Fifty ($150.00) Dollars.

(No. 1695—Claimant awarded $642.30.)

FAY WALKER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where it appears that claimant received injuries in course of employment while working for the State under the Division of Highways, an award will be made under the Workmen's Compensation Act.

PREIHS & PREIHS, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant was employed as an assistant to the Maintenance Patrolman in District No. 5, Division of Highways. His duties were to drive a truck, haul cinders, cement and other building materials and to assist with general maintenance work. On or about July 25th, 1930, while so employed claimant attempted to crank a large highway truck when the motor backfired causing the crank to strike claimant's arm breaking his wrist and throwing him to the ground. The bones of his right forearm were fractured and dislocated. The evidence shows that claimant was temporarily disabled for a period of approximately fourteen weeks and that he has suffered permanent disability of approximately 20 per cent.

The Attorney General comes and defends and recommends that if this court finds the claimant operated under the Workmen's Compensation Act that claimant be allowed a compensation of $642.30.

Therefore it is recommended that claimant be awarded the sum of $642.30.

(No. 1698—Claimant awarded $1,250.00.)

EARL J. BARR, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 15, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where it appears claimant received injuries arising out of and in the course of employment while working for the State in an extra hazardous employment, an award will be made under the Workmen's Compensation Act.

PENCE B. ORR, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed by the State as foreman of a concrete construction gang on the Brandon Road Pool, Project No. 6, of the Illinois Waterways. On May 10, 1929, while engaged at his duties he received an injury to his left hand and arm. The injury arose out of and in the course of his employment. We have carefully considered the evidence in the case and find he is entitled to be compensated for his injury in accordance with the provisions of the Workmen's Compensation Act. He is accordingly awarded the sum of $1,250.00.

(No. 1705—Claim denied.)

ERVIN H. HOENIG, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 16, 1931.
Rehearing denied May 14, 1931.

PERSONAL INJURY—*when State not liable—Workmen's Compensation Act.* Where the declaration fails to state a cause of action and the proof shows that the injuries suffered does not come within the provisions of the Workmen's Compensation Act, the State is not liable in the absence of any other statute creating such liability.

REHEARING—*when rehearing will be denied.* When the petition for rehearing points out no facts or principles of law that were not considered in the decision of the case, a rehearing will be denied.

JOHN FRED GILSTER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant is chief cook at the Chester State Hospital for the Insane. He alleges that on July 4, 1930, he lifted a pan of food which caused him to suffer an abdominal rupture on the left side of his abdomen, and asks for an award for such alleged injury. The proof shows the rupture is a small one. The declaration does not state a cause of action and the proof does not show claimant entitled to any award. So far as the record shows he did not lose any time from his work on account of the alleged injury, and the only expense it has caused him to incur is $15.00 for a truss. His injury does not come within the provisions of the Workmen's Compensation Act and there is no other statute making the State liable for injuries suffered by employees. The claim is therefore denied and the case dismissed.

On May 14, 1931, upon petition for rehearing, the following additional opinion was filed:

Claimant has filed a petition for rehearing but it points out no facts or principles of law that were not considered by the court in the decision of the case, and is therefore denied.

(No. 1706—Claimant awarded $273.50.)

JOHN BENNETT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where claimant sustains injuries arising out of and in the course of employment while working for the State, an award will be made under the provisions of the Workmen's Compensation Act.

PENCE B. ORR, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was employed by the State as a laborer on Dresden Island Project No. 3 of the Illinois Waterway. On December 14, 1929, he was injured while at his work, which injury was found to be an inguinal hernia. The injury arose out of and in the course of his employment. He was operated on for the hernia and fully recovered. He was earning $27.00 per week and is entitled to compensation for 11 weeks. His physician's bill was $125.00 which was not paid by the State. He is therefore awarded the sum of $273.50, the amount of those two items.

(No. 1707—Claimant awarded $1,000.00.)

GEORGE SHAW, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made.* Where claimant received injuries in course of employment while working for the State in an extra hazardous employment, an award will be made.

STEELY & STEELY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears that claimant was employed by the State Division of Highways and on or about March 25th, 1930, a blizzard arose which blocked many highways of the State and claim-

ant on the Dixie Highway on Route 1 where a large drift blocked the highway was assisting in clearing up the road, his fingers were caught pinching and tearing and cutting three fingers off the hand and fracturing two other fingers.

There appears to be no contention as to the fact that claimant was injured in line of duty and the Attorney General coming and suggests that if such liability appears to the court that the sum of One Thousand ($1,000.00) Dollars, be a fair and reasonable award.

Therefore the court recommends that the claimant be allowed the sum of One Thousand ($1,000.00) Dollars.

(No. 1708—Claimant awarded $1,075.00.)

JESSE F. McCOY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Illinois National Guard.* **Where claimant receives injuries in line of duty while a member of the Illinois National Guard, an award will be made under the Military and Naval Code of the State.**

CLARENCE B. DAVIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim for disability compensation and allowance of medical bills under the provisions of Article XVI, Section 11 of the State Military and Naval Code. The facts have been stipulated and it appears that in the course of his duties claimant suffered an injury by being thrown from a horse while on active duty in Troop F, 106th Cavalry, Illinois National Guard and suffered an injury to his right wrist.

It appears from the brief and argument of the Attorney General that there is no dispute as to the extent of the injury, if there was one upon which this claim can be based.

The Attorney General recommends that claimant be allowed not less than the sum of $735.00 nor more than the sum of $1,415.00.

The court, after being fully advised in the premises, recommends that claimant be allowed the sum of $1,075. The court assumes that this relieves the State in full of all responsibility of the State, if any existed.

(No. 1709—Claimant awarded $319.95.)

MICHAEL S. PLAUT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

ANIMALS—*when award will be made for losses sustained by the destruction of animals infected with tuberculosis.* Where payment is refused for losses sustained by reason of the destruction of animals infected with tuberculosis because the department records showed the disposition of such animals was not made within the time required by statute, and it is later conceded that the department records were in error, an award will be made for the State's share of the losses sustained.

JOHN E. SEBAT, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

Claimant's cattle were tested for tuberculosis August 8, 1928. Six cows and a bull were found to be infected with the disease and were appraised and sold, the sale being made the 22nd day of August. One-third of the difference between the appraised value of the cattle and what they brought at the sale is $319.95. The Department of Agriculture refused to pay claimant because the record in its office showed the test was made July 22nd and the sale was not made until August 23rd more than 30 days after the test. It is now conceded that an error was made in the department records and that the test was made on August 8th instead of July 22nd. The Attorney General concedes that if that be true claimant is entitled to an award.

Claimant is therefore allowed an award of $319.95.

(No. 1712—Claimant awarded $1,125.00.)

GEORGE W. BROWN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made.* Where claimant received injuries in line of duty while employed by the State in a penal institution, an award will be recommended for such injuries.

JOHN L. WALKER, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

Claimant was employed by the defendant State of Illinois to direct and supervise the shop work of convicts laboring in his department. In April, 1929, while working in the upholstering shop he slipped and fell on a stairway suffering a fracture of the radius bone of his left forearm. Three months later he was again injured in the shop as a result of a stabbing affray. He was attacked by a disgruntled convict and stabbed twice in the chest and back.

The Attorney General comes and defends and recommends that an award be made not to exceed $1,125.00 nor less than $953.50.

The court is of the belief that an award should be allowed and recommends that claimant be awarded $1,125.00.

(No. 1717—Claimant awarded $2,416.94.)

PERCY WOLFF, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made.* Where it appears claimant suffered injuries in line of duty while employed as a State highway maintenance police officer, an award will be made for such injuries.

PERCY WOLFF, pro se.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant was a member of the State Highway Maintenance Police and, on December 1, 1928, while in the per-

formance of his duties, was struck by an automobile. As a result of the collision he suffered the following injuries: fracture of the femur of his left leg, a fracture to his skull, a compound fracture of the fibula and tibia of his left leg, a fracture of his left hand, and other external and internal injuries. These injuries necessitated his being kept in a hospital for 166 days where he received the services of nurses and physicians. Fourteen X-rays of his injuries were taken and he was furnished with a walking appliance before leaving the hospital. His medical, nurse and hospital bills aggregated the sum of $4,024.79, of which the State has paid $1,472.85 leaving $2,551.94 for which he is asking an award. The evidence shows one of the medical bills is $135.00 more than it should be, and the Attorney General concedes that claimant is entitled to an award for the above sum less that amount. Claimant is therefore awarded the sum of $2,416.94.

(No. 1719—Claimant awarded $1,281.41.)

ALEXANDER-DALEY LUMBER CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

MATERIALS—*when award will be made for materials furnished.* Where materials have been furnished to and used by the State which have not been paid for, an award will be made for the amount due.

BARR & BARR, for claimant.

OSCAR E. CARLSTROM; Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The claimant files its claim for $1,281.41 for material furnished the State of Illinois through the Department of Purchases and Construction in connection with the construction of the Illinois Waterway near Joliet, Illinois.

The material was furnished by the claimant and was used by the State and has never been paid for and the claim is now due and unpaid.

The Attorney General comes and admits that the material was furnished by the claimant and was used by the State of Illinois and recommends to the court that the claim be allowed in the sum of $1,281.41.

The court makes an award for the sum of $1,281.41 to the complainant.

(No. 1720—Claimant awarded $1,200.00.)

JOHN REGIS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PROPERTY DAMAGE—*when award will be made.* The court recommends an award for damage to claimant's truck as a result of its sliding off a turntable used by the State, upon the consent of the Attorney General.

BARR & BARR, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover on account of damages to the claimant's truck sustained on Oct. 2nd, 1929, when the truck slid off a certain turn table used by the State in the construction of the west wall of the Illinois Waterway construction program. The damages asked by claimant is in the sum of Three Thousand ($3,000.00) Dollars.

The Attorney General comes in person and consents that claimant be awarded the sum of Twelve Hundred ($1,200.00) Dollars.

Therefore the court recommends that the sum of Twelve Hundred ($1,200.00) Dollars be awarded said claimant.

(No. 1721—Claimant awarded $3,750.00.)

ANN E. COCHRAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where claimant's intestate received injuries in course of employment while working for the State in an extra hazardous employment, an award will be made under the Workmen's Compensation Act.

BARR & BARR, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The claimant is the wife of Fowler I. Cochran, who was employed by the State of Illinois in the capacity of a machine

shop foreman in the State Penitentiary at Joliet and so engaged on the 14th day of February, A. D. 1930, the jacket he was wearing became accidently caught in a set screw on one of the machines in said shop, and he was dragged thereby into such machinery, thereby receiving serious injuries to his face, head and body and as a result of which he afterwards on November 20, A. D. 1930 died.

The work he was so doing is hazardous and comes within the Workmen's Compensation Act. The claimant is entitled under the Workmen's Compensation Act to the sum of $3,750.00.

We therefore award the claimant the sum of Three Thousand Seven Hundred and Fifty ($3,750.00) Dollars.

(No. 1722—Claimant awarded $150.00.)

WILLIAM CORCORAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made.* Where claimant sustained injuries by falling into an excavation of the Illinois Waterway, an award is recommended upon the consent of the Attorney General.

BARR & BARR, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover damages for injuries sustained by claimant on March 4th, 1929, when he fell into a ditch being dug by the State in the construction of the Illinois Waterway. Damages are asked in the sum of Five Hundred ($500.00) Dollars.

There has been showing made that proper signals were not given and proper protection made against this kind of an accident. However the court will not discuss these features because the Attorney General comes and consents to an allowance of One Hundred and Fifty ($150.00) Dollars.

Therefore the court recommends that claimant be allowed the sum of One Hundred Fifty Dollars ($150.00) Dollars.

(No. 1730—Claimant awarded $2,775.00.)

ROBERT E. LEE, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Workmen's Compensation Act.* Where a State employee sustains injuries in course of employment while working in an extra hazardous employment, an award will be recommended under the Workmen's Compensation Act.

HENRY C. WARNER, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The claimant while working on State Highway Route 25 near Flora, Illinois, as an employee of the State of Illinois and while in line of duty as such employee it became necessary to put a spring in a batchmixer of the paving machine and while doing so the claimant slipped and his right hand caught in a bucket operating gears of a revolving drum. As the result his hand was badly crushed and mangled. As a result of the accident it became necessary to remove all four fingers of his right hand and also a part of the hand itself.

The Attorney General comes and defends and admits that claimant is entitled to recover Twenty-seven Hundred Seventy-five ($2,775.00) Dollars, according to the statutes in force at the time of the accident.

The court is of the opinion that this is reasonable, and measured by the Workmen's Compensation Act. Therefore this court recommends that claimant be allowed the sum of Twenty-seven Hundred Seventy-five ($2,775.00) Dollars.

(Claims allowed.)

PAUL B. JOHNSON, 1733; CLYDE I. BACKUS, 1743, Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

FEES AND SALARIES—*when claimant entitled to additional salary.* Where the statute provides that a State officer shall receive a certain salary and the Legislature fails to provide a sufficient appropriation for such salary, an award will be recommended for the difference between the amount appropriated and the amount provided by statute.

Claimants, pro se.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

The above cases appear to arise out of claims for back salary for services rendered by claimant during the past biennium. It appears the Attorney General made investigation in both of the above cases and the investigation appears to this court to be thorough and systematic. The Attorney General recommends that claimant Johnson, No. 1733, be allowed the sum of $300.00 and that claimant Backus, No. 1743, be allowed the sum of $400.00.

The court, therefore, recommends that the claimant Johnson be allowed the sum of $300.00 and that said claimant Backus be allowed the sum of $400.00.

(No. 1735—Claimant awarded $500.81.)

WILLIS RENDLEMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

SERVICES—*when award will be made.* When satisfactory service has been rendered to the State for which no compensation has been paid, an award will be made upon the recommendation of the department head of the department for which the services were rendered.

WILLIAM O. EDWARDS, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover the cost of digging a well on a tract of land in Jackson County, known as Giant City State Park owned by the State of Illinois. It appears from the evidence herein that a letter written by H. H. Cleaveland, Director of the Department of Public Works and Buildings discloses that the well is very satisfactory, giving an abundant supply of good drinking water and is being used continuously by the visitors to Giant City Park. That the bill for this work is based on the price as charged the State in the digging of a second well and that in justice to the claimant the bill should be paid.

The bill is in the sum of $500.81 and on the recommendation of Director Cleaveland and no objections being made by the Attorney General, this court recommends that claimant be allowed the sum of $500.81.

(No. 1736—Claimant awarded $128.00.)

THOMAS R. CRABB, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made for hospital and doctor bills.* Where claimant sustains injuries in line of duty while employed by the State as an automobile investigator, an award will be made for hospital and doctor bills incurred as a result of such injuries.

THOMAS R. CRABB, pro se.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The claimant, an automobile investigator, employed by the Secretary of State, was injured during the month of June, 1929, while riding a motorcycle furnished him by the office of Secretary of State. He was attempting to pass a motor vehicle on Route No. 4 and as he was passing his car caught the fender of the car he was attempting to pass and threw him from the motorcycle on the street car tracks and injured his face, head and mouth and left him permanently scarred and he files this claim for $128.00 for hospital bill and doctor bills paid by him. The court finds the amount paid to be fair and reasonable.

The claimant is allowed an award in the sum of $128.00 for his hopsital bills and doctor bills.

(No. 1741—Claim denied.)

ROBERT G. ULRICH, A MINOR, BY FRED C. ULRICH, HIS FATHER AND NEXT FRIEND, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PROPERTY DAMAGE—*when State not liable.* The State is not liable for damage to property as the result of negligence of its officers, agents or servants.

PLEADINGS—*when demurrer will be sustained.* Where the declaration wholly fails to state a cause of action, the demurrer thereto will be sustained.

JOHN F. PETIT, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant is a minor who brings this action by his father and next friend.

The declaration charges that on May 29, 1930, while claimant was driving his automobile along State Highway No. 6, near the St. Charles School for Boys, a horse owned by said school came on the highway in front of his automobile and that his automobile collided with the horse and by reason of such collision was so badly damaged that it cost $428.55 to repair it. The Attorney General has filed a demurrer to the declaration. The declaration wholly fails to state a cause of action against the State and the demurrer must be sustained.

The rule that the State is not liable for the negligence of its officers, agents and servants has been so often announced by this court that a further discussion of that question is not deemed necessary.

It is therefore ordered that the demurrer be and the same is sustained and the case dismissed.

(No. 1742—Claimant awarded $75.79.)

CARLSON BROTHERS, INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

SUPPLIES—*when award will be made for supplies furnished the State.* When claimant's bill for supplies furnished the State is not presented for payment before the appropriation out of which it could be paid has lapsed, an award will be made for the amount due upon the recommendation of the department receiving such supplies.

MARTIN R. CARLSON, for claimant.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

It appears that claimant furnished the Department of Purchases and Construction, upon order of those in authority,

1 oak revolving chair with pad, $13.05; 1 oak pedestal typewriter desk, $57.05; and 2 Faultless book covers, $5.04, making a total of $75.79. The price was fair and reasonable. And it further appearing that the reason the bill was not paid in the regular course was owing to the fact that claimant failed to present its bill before the lapse of the appropriation out of which it could have been paid. It further appears that the department that got the articles recommend the payment of the same.

Therefore an award is allowed claimant in the sum of $75.79.

(No. 1749—Claimant awarded $191.25.)

PAUL JEFFERS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made—Military and Naval Code.* Where claimant receives injuries in line of duty while a member of the Illinois National Guard, an award will be made for such injuries under the Military and Naval Code of the State.

FRANCIS W. PURVIS, for claimant.

OSCAR E. CARLSTROM, Attorney General; MERRIEL F. WEIMHOFF, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

The evidence in this case clearly shows that the claimant, Paul Jeffers, was injured while in line of duty as a member of the National Guard, on the 15th day of August, A. D. 1930, during encampment at Camp Grant. The claimant while in active service on his way to the railroad station with a truck loaded with military equipment, was struck by a truck driven by another member of the said company and was thrown from said truck and the fibula bone of the left leg was broken, and the left knee seriously wrenched and his right foot crushed. He was taken to St. Anthony Hospital at Rockford, Illinois, where he remained until September 12, 1930, when he was released and returned to his home in Sullivan. He went about on crutches for a month and then used a cane for two months. He was paid $63.75, being one-half of his actual service pay, for the month he was in the hospital.

Prior to his entering camp he was employed as an ice man at a salary of $90.00 per month. There is no claim for doctor or hospital bills.

This case comes within the Military and Naval Code. We believe the claimant is entitled to the sum of sixty-three dollars and seventy-five cents for a period of three months, being the time he was totally disabled in accordance with the provisions of Sections 10 and 11 of Article XVI, Chapter 129, Smith-Hurd Ill. Revised Statute 1929.

We therefore award the claimant the sum of $191.25.

(No. 1754—Claimant awarded $150.00.)

JOHN EDWARD FISCHER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

SOLDIERS' COMPENSATION—*when award will be made to heirs of deceased soldiers—Soldiers' Bonus Act.* Where a warrant has been issued to a soldier for compensation under the Soldiers' Bonus Act and the soldier dies without having collected the amount due on the warrant, and no appropriation existed out of which the amount could be paid to the heirs of such soldier, an award will be made to heirs of such deceased soldier.

JOHN EDWARD FISCHER, pro se.

OSCAR E. CARLSTROM, Attorney General; CARL I. DIETZ, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimant and his brother Frank Fischer were each given warrants for $150.00 in payment of compensation due them under the provisions of the Illinois Bonus Act. Frank died without having collected the amount due on his warrant leaving claimant as his next of kin and only heir. The Adjutant General approved the payment of the warrant of claimant but the appropriation out of which it was payable had lapsed and it could not be paid. Claimant is asking an award for the amount of the warrant, which we think should be allowed. He is therefore awarded the sum of $150.00.

(No. 1764—Claimant awarded $519.51.)

WAGNER PRINTING CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

CONTRACT—*when award will be made for balance due on contract.* Where no fund remained in an appropriation to pay the full contract price of printing furnished by the State, an award will be recommended for the balance due on the contract.

C. R. YOUNG, TREAS., for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. JUSTICE THOMAS delivered the opinion of the court:

This is a claim for a balance due claimant on a contract entered into between claimant and the State of Illinois for printing for the Adjutant General's office. The total amount of the contract was $4,964.46. The State paid the sum of $4,444.95, being all the funds remaining in the appropriation for that purpose, leaving a balance due claimant of $519.51. It appears to the court that the work was satisfactory and the bill is reasonable. Therefore the court recommends to the Legislature that the claim be allowed for $519.51.

(No. 1765—Claimant awarded $3,327.30.)

JOHN E. DALEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

PERSONAL INJURY—*when award will be made.* Where claimant received injuries in line of duty while employed by the State as a State highway police officer, an award will be made for the injuries sustained.

THOMAS A. MURPHY, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

MR. CHIEF JUSTICE CLARITY delivered the opinion of the court:

This is a claim brought to recover for damages sustained while in the employ of the State of Illinois and in the line of duty. It appears that while riding on a motorcycle on duty

assigned to him by a superior on Route 21 of the Illinois hard road system, he was struck by a truck without apparent fault as to him; that he received serious injuries requiring considerable medical attention.

The Attorney General comes and presents his position with the recommendation of the Superintendent of State Police that this claim be allowed in the sum of $3,327.30.

Therefore this court recommends that claimant be allowed the sum of Three Thousand Three Hundred Twenty-seven 30/100 ($3,327.30) Dollars.

(No. 1772—Claimant awarded $151.05.)

NORTH SHORE MATERIAL COMPANY, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

MATERIAL—*when award will be made for materials furnished the Division of Highways.* Where material was sold and delivered to and accepted by the State through the Division of Highways which was not paid for on account of the appropriation having lapsed, an award will be recommended for the amount due.

NORTH SHORE MATERIAL COMPANY, pro se.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. CHIEF JUSTICE CLARITY delivered the opinion of the court:

It appears claimant sold and delivered to the State of Illinois and same was accepted by the Division of Highways of the Department of Public Works and Buildings of the State of Illinois, sand, stone and gravel in the amount of $151.55. There is no objection to this claim but it was not paid on account of the lapse of appropriation for meeting claims of this kind.

Therefore, the court recommends that claimant be awarded the sum of $151.05.

(No. 1699—Claim denied.)

ED PETERSON AND MARTHA PETERSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 14, 1931.

Rehearing denied September 8, 1931.

PROPERTY DAMAGE—*when State not liable—Illinois National Guard.* The State is not liable for damages caused by the conduct of members of the Illinois National Guard while on duty in the absence of a statute creating such liability.

REHEARING—*when rehearing will be denied.* Where the petition for rehearing is not filed within the time prescribed by the rules, a rehearing will be denied.

LARGE & RENO, for claimant.

OSCAR E. CARLSTROM, Attorney General; FRANK R. EAGLETON, Assistant Attorney General, for respondent.

Mr. JUSTICE THOMAS delivered the opinion of the court:

Claimants are asking an award of $1,508.10 for property which they allege was destroyed by members of the Illinois National Guard on August 12, 1930. Claimants leased a tract of ground near Camp Grant to be used by the Illinois National Guard on an over night march, the lease being for one day. Around eight o'clock in the evening of the 12th of August a granary building located some distance from where the soldiers were stationed caught fire and was destroyed with its contents, and this claim is for the alleged value of the property lost. It is contended by claimants that fires built by the soldiers spread to the building and burned it. There is no positive evidence that such is the case; but if it be conceded that the property was destroyed through the negligence of the soldiers it does not follow the State is liable to pay for it, in the absence of a statute providing for such payment. (*Joos* v. *Ill. N. C.*, 257 Ill. 138; *Haye* v. *State*, 5 Ct. Cl. 359.) There is no statute making the State liable for damages caused by the conduct of members of the National Guard while on duty and we cannot allow the claim, and it is therefore denied and the case dismissed.

On September 8, 1931, upon petition for rehearing, the following additional opinion was filed:

Per Curiam: This cause coming on to be heard upon a petition for rehearing received by the clerk on August 24, 1931, and presented by him to this court on this the first day of the September, 1931, term, and the court being fully advised in the premises desires to call attention to Rule 30 of the Rules of the Court of Claims which reads as follows:

A party desiring a rehearing in any cause shall within fifteen days after filing of the opinion, file with the clerk a notice in writing of his intention to ask for a rehearing, and within twenty-five days after the filing of the opinion, he shall file with the clerk five copies of the petition with proof of service on opposite party. The petition shall state briefly the points supposed to have been overlooked, or misapprehended by the court with proper reference to the particular portion of the original abstract and brief relied upon and with authorities and suggestions precisely stated in support of the points. Argument in support of the petition will not be permitted.

In view of the foregoing rule it is the opinion of the court that the petition for rehearing should not be filed and the clerk is hereby ordered and directed to return the petition to the claimant together with a copy of this order.

INDEX

Page

ACTIONS AND DEFENSES
State cannot be sued without its consent..... 20
when allowance of an award does not affect right of action... 231

ADDITIONAL COMPENSATION—See FEES AND SALARIES
when no award will be made..... 43
when award will be made.....514, 516

ADDITIONAL SALARY—See FEES AND SALARIES
when award will be made for additional salary due Assistant Illinois Commerce Commissioner.....113, 150
when award will be made for additional salary..186, 187, 217, 570
when court will not assume the authority to fix and regulate officer's salary 289
when award will be made for additional salary except that barred by the Statute of Limitations..... 538

ANIMALS—See BOVINE TUBERCULOSIS; DEPARTMENT OF AGRICULTURE, DIVISION OF ANIMAL INDUSTRY
when an award will be made to compensate the owner of cattle killed because they reacted to a tuberculosis test..... 106
when award will be made for the loss of a cow destroyed for the purpose of eradicating bovine tuberculosis..... 107
when an award will be made for cattle destroyed for the purpose of eradicating bovine tuberculosis..... 111
when award will be made to compensate the owner of cattle destroyed 178
when award will be made.....197, 237, 242
when award will be made for losses sustained upon the sale of cattle infected with bovine tuberculosis..... 236
when award will be made to reimburse claimant for animals destroyed by order of the State authorities..... 239
when award will be made for the destruction of cattle infected with tuberculosis 274
when award will be made—equity and good conscience..... 368
when award will be made for losses sustained through the destruction of certain tubercular cattle..... 523
when award will be made for losses sustained by the destruction of animals infected with tuberculosis..... 565
when no ward will be made.....197, 536

Page

ANIMALS—Concluded
when no compensation will be allowed for the destruction of animals infected with tuberculosis..... 496
when no award will be made for losses sustained by the destruction of tubercular cattle..... 526
power of the State to destroy animals infected with tuberculosis 496

APPEALS AND ERRORS
failure to pursue remedies provided by law..... 262
when failure to exercise right of appeal will not entitle claimant to recover moneys paid to the Public Utilities Commission 482
when cost of an appeal cannot be considered an element of duress 485

ASSESSMENTS—See SPECIAL ASSESSMENTS; MUNICIPAL CORPORATIONS

ASSUMED RISK
when employee assumes the ordinary perils of the work in which he engages..... 81
when claimant assumes risk of employment..... 375

ATTRACTIVE NUISANCE
when no award will be made on the grounds of attractive nuisance 372

BOVINE TUBERCULOSIS—See ANIMALS; DEPARTMENT OF AGRICULTURE, DIVISION OF ANIMAL INDUSRY.
when award will be made for cattle destroyed for the purpose of eradicating bovine tuberculosis.....
.....106, 107, 111, 178, 197, 242, 274, 524, 565
when award will be made for losses sustained upon the sale of cattle infected with tuberculosis.....236, 237
when award will be made for the death of an animal resulting from a tuberculosis test..... 368
no award will be made where claimant failed to comply with the Statute 197
when no compensation will be allowed for the destruction of animals infected with tuberculosis.....496, 526, 536
power of the State to destroy animals infected with tuberculosis 496

BURDEN OF PROOF—See EVIDENCE
when burden of proof upon claimant..... 397

CIVIL SERVICE
when employee cannot be discharged from civil service employment 393
Section 12—provisions of, mandatory..... 393

Page

CIVIL SERVICE—Concluded
when claimant entitled to salary and expenses..... 393
when court has no jurisdiction to award salary of a discharged Civil Service employee..... 518

COMPENSATION—See WORKMEN'S COMPENSATION ACT; PERSONAL INJURY
what is extra compensation..... 450
when no extra compensation will be allowed..... 450

CONDEMNATION—See EMINENT DOMAIN

CONSTITUTIONAL LAW
when State not liable for extra compensation..... 23
when no award will be made for payment under an unconstitutional act 155
a tax voluntarily paid under an unconstitutional act cannot be recovered back 263
language of Section 19 of Article 4 of the Constitution unambiguous 318
Section 19 of Article 4 of the Constitution is mandatory and binding 326
constitution, the supreme law of the State..... 330

CONSTRUCTION
provisions of Statute should be construed together with reference to purpose..... 1
Section 4, Court of Claims Act..... 27
Court of Claims Act..... 77
legislative intent 200
the legislative intent in creation of the Court of Claims..... 482

CONTRACTS
when no extra compensation will be allowed.....150, 326, 23
when State not liable under.....39, 88, 265
when no award will be made..... 63
when court will not establish a precedent..... 88
when award will be made for supplies furnished to a State Department 119
when award will be made for losses sustained under contract 130, 222, 318, 520
when award will be made for supplies furnished to a State Institution 184, 185
when award will be made.....160, 214, 221, 288, 300, 365
finding of facts without recommending award..... 272
when no extra compensation will be allowed under a contract for the construction of a hard road..... 363
when State not liable for losses sustained by reason of weather conditions 365

Page

CONTRACTS—Concluded
when failure to publish notice of time and place at which proposals shall be received for entering into contracts will not entitle claimant to an award 373
when State Officer prohibited from making contracts 406
when State Officer subject to penalty for contracting indebtedness in excess of the amount of money appropriated 406
when contract void 406, 423
when State not bound for an amount in excess of the money appropriated 423
limitation of powers of Department to enter into contracts ... 423
what is extra compensation 450
when award will be made after deducting necessary cost of repairs 498
when award will be made for labor and material furnished to the State 551
when award will be made for balance due on contract 576

CORPORATIONS—See FRANCHISE TAX; PRIVILEGE TAX; MUNICIPAL CORPORATIONS
when award will be made for franchise tax paid after the expiration of the corporate charter 92
when no award will be made for initial fees 102
when failure to file certificate of dissolution will not entitle claimant to refund of franchise tax 512

COURT OF CLAIMS—See CONSTRUCTION; JURISDICTION
creature of Legislature 20
jurisdiction 20, 81, 95, 262, 313, 346
Court of Claims will not review acts of 47
when Court of Claims has jurisdiction 95
when Court of Claims will not view acts of Secretary of State 95
powers of the Court of Claims—creature of the Legislature .. 95
when Court of Claims has no jurisdiction 115, 200, 330
when Court of Claims will not determine a controversy between State Departments 146
jurisdiction—equity and good conscience 172, 329
Court of Claims has no appellate jurisdiction 308, 414
an advisory body 346
consideration of matters between different Departments of the State—exception 346
province of the Court of Claims 346
when court will not follow precedent 330
the law creating the Court of Claims did not change the rule of *respondeat superior* 399
when Court of Claims has no power to declare the State liable in the absence of a Statute making it so liable 399

Page

COURT OF CLAIMS—Concluded

when court has no jurisdiction to consider a claim for personal injuries sustained by an inmate of the Chicago House of Correction 457
legislative intent in creation of..... 182

DEPARTMENT OF AGRICULTURE

when claimant is entitled to an award for loss of property resulting by reason of an order of the Department of Agriculture for the eradication of certain diseases to plant life 1

DIVISION OF ANIMAL INDUSTRY—See ANIMALS; BOVINE TUBERCULOSIS

when award will be made for animals destroyed for the purpose of eradicating bovine tuberculosis.....
.....106, 107, 111, 178, 236, 237, 242, 274, 368, 524, 565
when award will be made to reimburse claimant for animals destroyed by order of the State authorities..... 239
when award will be made for dental and doctor bills for injuries sustained by a State tuberculosis inspector... 282

DIVISION OF ANIMAL INDUSTRY

when award will be made for personal injuries, hospital and doctor bills of a State tuberculosis inspector..... 283
power of the State to destroy animals infected with tuberculosis 496
when no compensation will be allowed for the destruction of animals infected with tuberculosis....496, 526, 536

ILLINOIS STATE FAIR

when no award will be made for injuries received upon Illinois State Fair Grounds..... 15
when State not liable under contract for moneys derived from the sale of admission tickets to the State Fair..... 265

STATE LABORATORY

when award will be made for loss of property by a State employee 479, 559

DEPARTMENT OF CONSERVATION

DIVISION OF FISH AND GAME

when State not liable for damage caused by wild game —protection and preservation of game under police power 108
when employee cannot be discharged from civil service employment 393
when claimant entitled to salary and expenses..... 393
when award will be made for injuries received by an employee of the Division of Fish and Game..... 536

Page

DEPARTMENT OF PUBLIC HEALTH

when State not liable for medical services rendered to a State employee 455
when award will be made for rent..... 508

DEPARTMENT OF PUBLIC WELFARE

when award will be made for supplies furnished to a State Department 119
when award will be made for personal injuries sustained by an employee..... 270
when State not liable for medical services rendered to a State employee 447
the State exercises governmental functions in conducting penal, charitable and educational institutions..... 521

ANNA STATE HOSPITAL

when State not liable for the death of inmates..... 390
when award will be made for property damage resulting through the acts of employees and inmates of a State Institution 454
when award will be made for injuries sustained by an employee 510

ALTON STATE HOSPITAL

when no award will be made for injuries sustained by an employee 358
maintenance of an insane hospital not an extra hazardous enterprise under the Workmen's Compensation Act 358

CHESTER STATE HOSPITAL

when State not liable for injuries sustained by an employee 562

CHICAGO HOUSE OF CORRECTION

the Chicago House of Correction not under the control of the Department of Public Welfare..... 457

CHICAGO STATE HOSPITAL

when award will be made for loss of property of an employee of the State..... 209

DIXON STATE HOSPITAL

when State not liable for injuries sustained by inmates of charitable institutions..... 247
when State not liable for coroner's and juror's fees for inquests upon bodies of the inmates of charitable institutions 521

ELGIN STATE HOSPITAL

when award will be made for injuries sustained and the amount determined under the Workmen's Compensation Act 216

Page

DEPARTMENT OF PUBLIC WELFARE—Continued

ILLINOIS STATE PENITENTIARY
when award will be made for an expense incurred in the prosecution of convicts for crimes committed in the penitentiary 188
when no award will be made for loss of time and wages 225
when award will be made for personal injuries received while employed as a guard at the Illinois State Penitentiary 225
when award will be made although the State is not legally liable 275
when attorneys not entitled to compensation for defending certain prisoners of the Illinois State Penitentiary in a criminal prosecution..... 503
when award will be made for injuries sustained by an employee 566, 568

ILLINOIS SCHOOL FOR THE DEAF
when award will be made for supplies furnished to a State Institution 185

ILLINOIS STATE FARM
when no award will be made for personal injuries sustained by an inmate of a State Institution..... 259

ILLINOIS STATE REFORMATORY
when State not liable for personal injuries sustained by an inmate of a charitable institution..... 247
when an award will be made for injuries sustained by an inmate of the State Reformatory..... 267
when award will be made for injuries sustained by an inmate of a State Institution..... 286

JACKSONVILLE STATE HOSPITAL
when award will be made for injuries sustained in course of employment at a State Institution.....152, 229
when no award will be made for injuries sustained while working at a State Institution..... 158
when award will be made for damages to automobile by reason of a collision of a State truck..... 208

KANKAKEE STATE HOSPITAL
when award will be made for personal injuries sustained in course of employment while working at a State Institution 59, 60, 517
when claimant entitled to the amount due for material furnished to a State Institution..... 429

LINCOLN STATE SCHOOL AND COLONY
when award will be made for injuries received while employed at a State Institution..... 162
when award will be made for professional services rendered to the State..... 232
when award will be made after deducting necessary cost of repairs..... 198

Page

DEPARTMENT OF PUBLIC WELFARE—Concluded

PEORIA STATE HOSPITAL
when claimant not entitled to salary after discharge..... 51
when award will be made for personal injuries sustained in course of employment while working at a State Institution 62, 241, 405
when claimant assumes risk of employment..... 375
when agreement of attorneys for claimant and respondent does not make the State liable..... 375
when maintenance of an insane hospital is not an extra hazardous enterprise..... 375
conducting a charitable institution is not an extra hazardous enterprise under the Workmen's Compensation Act 521

RESEARCH AND EDUCATIONAL HOSPITAL
when award will be made for losses sustained under contract 130
when no award will be made on the grounds of attractive nuisance 372

SOUTHERN ILLINOIS PENITENTIARY
when award will be made for supplies furnished to the Southern Illinois Penitentiary..... 184

ST. CHARLES SCHOOL FOR BOYS
State is not liable for injuries sustained by an inmate of a State Institution..... 258

DEPARTMENT OF PUBLIC WORKS AND BUILDINGS

when award will be made for damage to automobile by reason of an unavoidable accident on a hardroad..... 124

DIVISION OF HIGHWAYS—See HIGHWAYS
when award will be made for injuries sustained while an employee of the Division of Highways.....
.....38, 114, 127, 128, 141, 189 190, 219, 230, 253, 278, 287, 389, 404, 477, 481, 509, 526, 529, 539, 540, 541, 544, 553, 557, 560, 563, 566, 570, 576
when award will be made for injuries sustained resulting in death—for medical, hospital, and funeral expenses—dependency for support..... 99
when award will be made for damages suffered by reason of the construction of a hardroad.....
.....123, 132, 154, 218, 256, 516, 522, 530, 531, 541
when award will be made for death resulting from injuries sustained in course of employment.....
.....148, 193, 231, 292, 298
when award will be made for losses sustained under contract 160
when State not liable for negligence of officers, agents or employees of the Division of Highways..... 172

Page

DEPARTMENT OF PUBLIC WORKS AND BUILDINGS—
DIVISION OF HIGHWAYS—SEE HIGHWAYS—Continued
when award will be made for extra work not called for under contract 214
when award will be made for damage to claimant's property used in the performance of his duties as a State Highway Patrol Officer 218
when award will be made for extra work not called for by contract in the construction of a hardroad 221
when award will be made for losses sustained under contract for the construction of a hardroad by reason of delay in securing a right-of-way 222
when award will be made for property damage resulting by reason of a collision of a State truck 246, 271
when no award will be made for damage on account of the construction of a hardroad 249, 255, 348, 194
when State not liable for damages by reason of a collision of a State truck 260, 312
when State not liable for damages resulting in the change of the location of a State Highway 268
when court makes a finding of facts without recommending an award 272
when award will be made for loss of property by fire 273
when award will be made to reimburse a State Highway Patrol Officer for hospital and doctor bills 277
when award will be made for doctors bills and loss of time 280
when award will be made for medical and hospital service for injuries sustained by a State Highway Patrol Officer 281
when award will be made for medical, hospital and nurses' services to an injured employee of the Division of Highways 290
when second award will not be made for the same injury 291
when no award will be made for losses sustained under contract for the construction of a hardroad 318
when no extra compensation will be allowed under contract 326
when claimant is barred by condemnation proceedings... 349
when conveyance of right-of-way will be presumed to cover all damage 349
when no extra compensation will be allowed under a contract for the construction of a hardroad 363
when State not liable for losses sustained by reason of weather conditions 365
when no award will be made for injuries sustained by reason of an accident on a state highway 377
when acts of the State in construction State Bond Issue Routes not subject to review 384
when award will be made for material furnished to the Division of Highways 425, 428, 513, 517

Page

DEPARTMENT OF PUBLIC WORKS AND BUILDINGS—
DIVISION OF HIGHWAYS—SEE HIGHWAYS—Concluded
when award will be made for merchandise received and used by the Division of Highways..... 430
when award will be made for land taken for highway purposes 476
when construction of a paved road an enterprise declared to be extra hazardous..... 477
when value to adjacent property owners will be considered by reason of the construction of a hardroad..... 491
when award will be made to cover payment of freight charges 511
when an award will be made for losses sustained under contract for the construction of a hardroad..... 520
when award will be made for loss of crops..... 523
when award will be made for losses sustained by fire spreading from the right-of-way of a State highway.... 541
DIVISION OF STATE PARKS
when reimbursement will be made to the custodian of a State Park for money expended for living quarters.. 240
when award will be made for services rendered..... 571
DEPARTMENT OF PURCHASES AND CONSTRUCTION
when award will be made for supplies furnished the State 573
DIVISION OF WATERWAYS
when award will be made for work performed upon the Illinois and Michigan Canal..... 300
State is not liable for damages to real estate by reason of the overflow of water from the Illinois and Michigan Canal 310
when award will be made for injuries sustained by an employee 325, 535, 551, 556, 561, 563
powers and duties in connection with the Illinois Waterway vested in the Department of Purchases and Construction 330
Canal Comissioners have no power to construct and maintain bridges over the Illinois and Michigan Canal..... 343
when award in aid of Illinois and Michigan Canal prohibited 343
failure to publish notice of time and place at which proposals shall be received for entering into contracts will not entitle claimant to an award..... 373
when award will be made for property damages..... 568
DEPARTMENT OF REGISTRATION AND EDUCATION
DENTAL EXAMINING COMMITTEE
when award will be made for services rendered and expenses incurred by a member..... 456
ILLINOIS STATE NORMAL UNIVERSITY
when award will be made for interest on paving assessment 235

Page

DEPARTMENT OF REGISTRATION AND EDUCATION —Concluded

ILLINOIS STATE NORMAL UNIVERSITY—Concluded

when award will be made for repairs to a spur track connecting the Illinois Normal University with the railroad company 288

when award will be made for goods furnished and services rendered 129

when award will be made for labor and material furnished 551

NORTHERN ILLINOIS TEACHERS COLLEGE

when award will be made for hospital and doctor bills sustained by a physical director..... 233

WESTERN ILLINOIS STATE TEACHERS COLLEGE

when award will be made for injuries sustained by employee 360

SOUTHERN ILLINOIS NORMAL UNIVERSITY

when award will be made for injuries sustained by an employee 516

DEPARTMENT OF TRADE AND COMMERCE

DIVISION OF FIRE PREVENTION

when Court will not take jurisdiction and determine a controversy between State Departments..... 146

DIVISION OF GRAIN INSPECTION

when award will be made for personal injuries sustained in course of employment..... 528

DIVISION OF INSURANCE

when privilege tax paid by an insurance corporation will not be refunded..... 505

DISMISSAL

when case will be dismissed.....50 52, 129, 191, 270, 276, 315, 316, 317, 402, 410, 411, 412, 413, 457, 459, 460, 461, 462, 463, 464, 466, 467, 471, 472, 473, 474, 513

when case will be dismissed for want of prosecution..... .....251, 301, 305, 306

when cause will be dismissed upon stipulation of parties..... 192

upon oral motion of claimant..... 256

when case will be dismissed upon motion of the Attorney General 243, 302, 303, 304, 307

when case will be dismissed on motion of claimant..... .....26, 120, 160, 380, 381

DURESS

when tax voluntarily paid cannot be recovered back..... 16

what constitutes duress and compulsion..... 414

when payment under protest not sufficient—must show payment was made under duress..... 439

payment under duress must be shown to justify recovery.... 465

when cost of an appeal cannot be considered an element of duress 185

Page

ELECTION CONTEST—See LEGAL SERVICES
when court will make no recommendation for compensation for legal services in an election contest.....433, 435

EMINENT DOMAIN
exercise of power by legislative authority..... 21
when claimant is barred by condemnation proceedings..... 349
when service upon title owner of record is sufficient in condemnation proceedings 446

EMPLOYMENT — See WORKMEN'S COMPENSATION ACT.

EQUITY AND GOOD CONSCIENCE
when award will be made for money erroneously paid into the State Treasury contrary to an injunction order of the Circuit Court—equity and good conscience..... 54
when award will be made on the grounds of equity and good conscience.....60, 154, 372, 479, 548, 559
when award will be made for the death of an officer of the Illinois National Guard upon the grounds of equity and good conscience 151
when award will be made for personal injuries sustained on the grounds of equity and good conscience..... 182
when award will be made for property damage by reason of a collision of a State Highway truck on the grounds of equity and good conscience..... 216
when award will be made on the grounds of equity and good conscience for damage to property by reason of a collision of a State Highway truck..... 271
when award will be made for the death of an animal resulting from a tuberculosis test on the grounds of equity and good conscience 368
when rule of equity and good conscience will not be invoked 8, 11, 35, 349, 482
when court has no jurisdiction to obligate the State on the grounds of equity and good conscience..... 329

EVIDENCE—See PLEADING AND PRACTICE.
variance 5
what evidence necessary to recover for personal injury..... 5
contributory negligence by claimant..... 27
when newly discovered evidence not sufficient to claimant.... 167
when award will not be made on grounds of newly discovered evidence 167
when letters written by State Officer not sufficient in evidence. 406

FEES AND SALARIES—See OFFICERS
when award will be made for traveling expenses.....87, 93
when an award will be made for salary provided by Statute.. 101

Page

FEES AND SALARIES—Concluded

when award will be made for additional salary due Assistant Illinois Commerce Commissioner....113, 150
when award will be made for salary as business manager for Normal School Board.... 118
when award will be made for additional salary....186, 187, 217
when award will be made for expense incurred by Will County in the prosecution of convicts for crimes committed in the penitentiary 188
when award will be made for additional salary except that barred by the Statute of Limitations.... 538
when claimant not entitled to salary after discharge.... 51
additional salary of Supreme Court Judge—when an award will be made.... 57
when claim will be denied....289, 298
when State Officer entitled to salary fixed by statute..426, 427, 451
when court has no jurisdiction to award salary of a discharged civil service employee.... 518
when State not liable for coroner's and juror's fees.... 520
when claimant entitled to additional salary.... 570

FLAG SMUT—See DEPARTMENT OF AGRICULTURE; PLANT INSPECTION

when claimant is entitled to an award for loss of property resulting by reason of an order of the Department of Agriculture for the eradication of certain diseases to plant life.. 1
when no award will be made for the destruction of property to eradicate flag smut under the Plant Inspection Act.... 524

FRANCHISE TAX—See CORPORATIONS; PAYMENT

when award will be made....52, 414, 511, 512
when award will be made for money erroneously paid into the State Treasury contrary to an injunction order of the Circuit Court—equity and good conscience.... 51
when award will be made for franchise tax paid after the expiration of the corporate charter.... 92
when award will be made for franchise taxes erroneously paid 176
when award will be made—mistake.... 206
when award will be made by reason of a mistake in the computation of tax.... 206
when award for tax erroneously assessed and paid will be made 311
when award will be made as a result of mutual mistake.... 500
when court will not take jurisdiction....8, 32, 202
failure to pursue remedy in courts of general jurisdiction.... ....33, 41, 49, 61, 308, 341, 436, 485, 495
tax paid voluntarily cannot be recovered back....16, 33, 436, 439
when tax paid under protest cannot be recovered.... 35
when statute of limitations begins to run.... 41

the time, place, amount claimed, the State department or agency in which the cause of action originated and all averments of fact necessary to state a cause of action at law or in equity.

(b) If the claimant bases his complaint upon a contract or other instrument in writing a copy thereof shall be attached thereto for reference.

RULE 5. (a) The claimant shall state whether or not his claim has been presented to any State department or officer thereof, or to any person, corporation or tribunal, and if so presented, he shall 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 and, if so, the amount so received.

(b) The claimant shall also state whether or not any third person or corporation has any interest in his claim, and if any such person or corporation has an interest therein the claimant shall state the name and address of the person or corporation having such interest, the nature thereof, and how and when the same was acquired.

RULE 6. (a) A bill of particulars, stating in detail each item and the amount claimed on account thereof, shall be attached to the complaint in all cases.

(b) Where the claim is based upon the Workmen's Compensation Act the claimant shall set forth in the complaint all payments, both of compensation and salary, which have been received by him or by others on his behalf since the date of said injury; and shall also set forth in separate items the amount incurred, and the amount paid for medical, surgical and hospital attention on account of his injury, and the portion thereof, if any, which was furnished or paid for by the respondent.

RULE 7. No complaint shall be filed by the Clerk unless verified under oath by the claimant, or by some other person having personal knowledge of the facts contained therein.

RULE 8. If the 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 complaint.

RULE 9. If the claimant die pending the suit his death may be suggested on the record, and his legal representative, on filing a duly authenticated copy of the record of his appointment as executor or administrator, may be admitted to prosecute the suit by special leave of the Court. It is the duty of the claimant's attorney to suggest the death of the claimant when that fact first becomes known to him.

RULE 10. Where any claim has been referred to the Court by the Governor or either House of the General Assembly and party interested therein may file a verified complaint at any time prior to the next regular session of the Court. If no such person files a complaint, as aforesaid, the Court may determine the cause upon whatever evidence it shall have before it, and if no evidence has been presented in support of such claim, the cause may be stricken from the docket with or without leave to reinstate, in the discretion of the Court.

RULE 11. If it appears on the face of a complaint that the claim is barred by a statute of limitations, the same shall be dismissed.

Page

HIGHWAYS—Concluded
authority conferred upon local officials..... 71
State is not liable for negligence of its officers..... 77
when no award will be made for negligence of an employee in the maintenance of a State Highway—governmental functions 104
when award will be made for damages to automobile resulting by reason of a collision with a car driven by an employee of the State Highway Department..... 105
when award will be made for damages resulting by reason of the construction of a hard road.....123, 132, 154
when award will not be made for personal injury and property damage sustained on State Highway—contributory negligence 133
non-liability of the State..... 138
governmental function—when State not liable..... 138
when State liable for damages on account of the construction of a viaduct for hard-road purposes..... 141
conveyance of right of way for road purposes..... 172
when State not liable for damages resulting from a change in the location of a State Highway..... 268
when conveyance of right-of-way will be presumed to cover all damages 349
when no award will be made for personal injuries sustained while driving upon a state highway..... 362
when no extra compensation will be allowed under a contract for the construction of a hard-road..... 363
when award will be made for loss of property by fire spreading from a state highway upon claimant's land..... 367
when State not liable for loss of property by reason of a defective highway 371
when State not liable for loss of property resulting by reason of a defective state aid road..... 371
when State not liable for damage sustained by reason of an accident upon a hard road.....377, 421
when no award will be made for personal injuries sustained on a state highway.....395, 491
when service upon title owner of record is sufficient in condemnation proceedings in procuring land for highway purposes 446
when no award will be made for damage to property by reason of the construction of a hard road..... 468
when award will be made for land taken for highway purposes 476
maintenance of highways is an extra hazardous enterprise... 489

ILLINOIS AND MICHIGAN CANAL—See ILLINOIS WATERWAY ACT
when award will be made for work performed under contract upon the Illinois and Michigan Canal..... 300

Page

ILLINOIS AND MICHIGAN CANAL—Concluded
State is not liable for negligence of its officers, servants or employees 310
when State not liable for damages resulting by overflow of the Illinois and Michigan Canal.....310, 382
when State not liable for negligent acts of its agents in the construction of the Illinois and Michigan Canal..... 323
when court has no jurisdiction to hear claims for damages resulting by reason of the construction and operation of the Illinois and Michigan Canal..... 323
when appropriation for damages prohibited.....330, 382
when appropriation would be in aid of..... 330
when claims for loss of crops are payable..... 330
powers and duties vested in Department of Purchases and Construction 330
when award in aid of Illinois and Michigan Canal prohibited 343
canal commissioners have no power to construct and maintain bridges over canal..... 343

ILLINOIS COMMERCE COMMISSION—See PUBLIC UTILITIES COMMISSION
control of railroad crossings..... 71

ILLINOIS COMMERCE COMMISSIONER
when award will be made for additional salary due Assistant Illinois Commerce Commissioner..... 113

ILLINOIS NATIONAL GUARD—See MILITARY SERVICE
when award will be made for injuries sustained while a member of the Illinois National Guard.....
.....112, 121, 196, 198, 205, 210, 269, 276, 449, 564, 574
when award will be made for the death of a member of the Illinois National Guard.....120, 151, 169, 284, 555
when award will be made for damage to automobile by reason of a collision of a motor vehicle operated by a member of the Illinois National Guard..... 170
when award will be made for supplies furnished to the Military and Naval Department of the State..... 195
when State not liable for the torts of an officer of the Illinois National Guard 387
when award will be made for illness contracted in line of duty 409
when claimant not without remedy for injuries sustained resulting by the wrongful acts of members of the Illinois National Guard 431
when State not liable for personal injuries resulting by wrongful acts of members of the Illinois National Guard..... 431
when award will be made for injuries sustained by reason of an Illinois National Guard plane crashing into claimant's parked automobile 548
when award will be made for services rendered..... 559

Page

ILLINOIS NATIONAL GUARD—Concluded
when State not liable for property damages caused by the conduct of members of the Illinois National Guard..... 578

ILLINOIS SOLDIERS' AND SAILORS' HOME
when State not liable for personal injuries resulting in death. 532

ILLINOIS WATERWAY ACT—See ILLINOIS AND MICHIGAN CANAL
provisions of 310
when State liable under..... 330
when failure to publish notice of time and place for which proposals shall be received for entering into contracts will not entitle claimant to an award..... 373
when and how claims for damages may be fixed..... 382

INHERITANCE TAX
when award will be made.....37, 45, 46, 110
when no award will be made.....17, 136, 166, 174
failure to pursue remedies at law..... 136
what court has jurisdiction..... 163
when tax cannot be recovered..... 163
when Court of Claims has no jurisdiction..... 163
Inheritance Tax Act—Sections 8, 10, and 25..... 166
jurisdiction 166
mistake 254
Inheritance Tax Act—Sections 8 and 10..... 313

INJURIES—See PERSONAL INJURY

INSURANCE TAX—See PRIVILEGE TAX

JURISDICTION
when court will not take jurisdiction.....8, 11, 47
when court has no power to make awards..... 23
claimant must avail itself of remedies and protection provided by law 32
Court of Claims has no powers except those given by the act creating it 81
when Court of Claims has jurisdiction..... 95
when Court of Claims will not take jurisdiction where the controversy may be considered in courts created by the Constitution 95
when Court has no jurisdiction to determine a controversy between State Departments..... 116
when Court of Claims has no jurisdiction.....161, 163
Court of Claims will not take jurisdiction where claimant has a remedy in courts of general jurisdiction..... 200
when court will take jurisdiction..... 202
Court of Claims has no appellate jurisdiction..... 262

Page

JURISDICTION—Concluded
when court will not take jurisdiction of a claim for a refund of inheritance tax 313, 475
when court has no jurisdiction to obligate the State for death in a park lagoon under the jurisdiction of a municipal corporation 329
when court has no jurisdiction to pass upon claims for damages to property by reason of an overflow of the Illinois and Michigan Canal 330
Court of Claims will not take jurisdiction in matters wherein the legislature is well informed..... 346
when court has no jurisdiction to consider claims against a municipal corporation 355
when court has no jurisdiction to consider a claim for personal injuries resulting by reason of an accident in a park under the jurisdiction of the West Chicago Park Commission.... 370
when Court without jurisdiction to make an award for the loss of property resulting by reason of a defective state aid road 371
when court has no jurisdiction..... 456
when court has no jurisdiction to award salary of a discharged civil service employee..... 518

LEGAL SERVICES
when no award will be made for legal services rendered for the State 346
when attorneys not entitled to compensation for defending certain prisoners of the Illinois State Penitentiary in a criminal prosecution 503
when court will make no recommendation for compensation for legal services in an election contest.....433, 435

LICENSEE
duty of owner of premises to licensee..... 431

LIMITATIONS—See STATUTE OF LIMITATIONS
when Statute of Limitations begins to run..... 41
when Statute of Limitations applies..... 262
when case will be dismissed.....297, 299
when claim barred.....343, 435, 442, 495, 524
when claim barred—statute is mandatory..... 436
when award will be made for additional salary except that barred by the Statute of Limitations..... 538

MATERIAL
when award will be made for material furnished to the State 425, 428, 429, 513, 551, 567, 577

MEDICAL SERVICES—See ILLINOIS NATIONAL GUARD
when no award will be made.....447, 455
when claimant not entitled to hospital and doctor bills..... 489
when award will be made for hospital and doctor bills..... 572

Page

MERCHANDISE—See SUPPLIES
when award will be made 130
when award will be made for supplies furnished to a State Institution 452, 453, 528

MILITARY SERVICE
when award will be made for personal injuries sustained in line of duty while a member of the Illinois National Guard 112, 121, 196, 198, 210, 269, 276
when award will be made for death of a member of the Illinois National Guard 120, 169
when award will be made for the death of an officer of the Illinois National Guard—equity and good conscience—Workmen's Compensation Act 151
when award will be made—equity and social justice 284
when award will be made for illness contracted in line of duty 109

MISTAKE
when refund of inheritance tax will be made by reason of error in computation 254
when award will be made as a result of a mutual mistake 500

MOTOR FUEL TAX
when no award will be made—voluntary payment 155, 552
payment under mistake of law 155
payment under an unconstitutional act 155
when tax paid under unconstitutional act cannot be recovered back 120

MUNICIPAL CORPORATIONS—See SPECIAL ASSESSMENTS
what public highways include 71
the failure of a municipal corporation to pay for damage to property occasioned by the construction of a public improvement does not cast the burden of such damage upon the State 71
when award will be made for interest upon assessments for paving streets adjacent to State property 235
when State not liable for death by drowning in a park lagoon under the jurisdiction of the West Chicago Park Commission 329
when power to repair bridges rests upon municipal corporation 343
when court has no jurisdiction to consider claims against a municipal corporation 355
when court has no jurisdiction to consider a claim for personal injuries resulting by reason of an accident in a park under the jurisdiction of a municipal corporation 370
when no award will be made for personal injuries sustained by a pupil of a public school 180

Page

NEGLIGENCE
when State not liable for the negligence of its agents.....12, 468
when State not liable for negligence of its officers.....
.....15, 20, 77, 172, 310, 547, 553, 573
contributory negligence by claimant..... 27
when doctrine of *respondeat superior* does not apply under general rule—exceptions 71
when no award will be made for property damage by reason of negligence of a State employee..... 104
contributory negligence—when award will not be made for personal injury and property damage sustained on a State highway 133
when State not liable for negligence of its employees.....347, 533
when no award will be made for damage to property by reason of the construction of a hard road..... 468

NON-LIABILITY OF STATE
State cannot be sued without its consent..... 20
State is not liable for damages caused by the construction of a public road unless such liability is expressly provided by Statute 138
when State is not liable for death of claimant's intestate..... 142
when court will not establish a precedent in holding the State liable for accidents on hard roads..... 142
when State not liable.....329, 349
State is not liable for the death of a pupil resulting from injuries sustained while attending a public school..... 356

NORMAL SCHOOL BOARD
when award will be made for salary as business manager of Normal School Board..... 118

NUISANCE—See ATTRACTIVE NUISANCE
extent of police power of State to abate..... 1
when doctrine of attractive nuisance not applicable..... 15

OFFICERS
when award will be made for salary provided by statute.....
.....57, 101, 426, 427, 451
when award will be made for traveling expenses.....87, 93
when award will be made for additional salary due Assistant Illinois Commerce Commissioner.....113, 150
when award will be made for additional salary due a State Officer 217, 570
when no award will be made to an officer for moneys advanced from his private funds—public policy..... 226
when court will not assume the authority to fix and regulate salaries 289
immunity of the State does not relieve its officers or agents from responsibility 384

Page

OFFICERS—Concluded
when State not liable for misfeasance or malfeasance of its officers 381
when letters written by State Officer not sufficient in evidence. 106
when State Officer subject to penalty for contracting indebtedness in excess of money appropriated 406
when state office prohibited from making contracts 406
when contract void 406
when State not bound for an amount in excess of the money appropriated 423
limitation of powers of department to enter into contracts 423

PAYMENT—See FRANCHISE TAX
when tax voluntarily paid cannot be recovered back .....
.....33, 155, 262, 436, 439, 465, 499
payment under mistake of law 155
payment under an unconstitutional act 155
when award for tax erroneously assessed and paid will be made 341
when payment of tax will be considered as having been made voluntarily 341, 414, 442, 458
when money paid by mistake may be recovered back 378, 379
what constitutes duress and compulsion 414
when tax paid under an unconstitutional act cannot be recovered back 120
when payment under protest not sufficient—must show payment was made under duress 439
when payment under protest gives no right to refund 465
failure to resort to court of equity—voluntary payment 465
payment under duress must be shown to justify recovery 465
when moneys paid to Public Utilities Commission cannot be recovered back 482
when award will be made as a result of a mutual mistake 500

PERSONAL INJURY
what evidence necessary to recover for personal injury 5
doctrine of attractive nuisance not applicable 15, 372
when award will not be made.....
.....15, 30, 43, 158, 193, 219, 358, 362, 377
when award will be made for injuries sustained in course of employment 38
when award will be made for injuries sustained by State employee 58, 81
when award will be made—Workmen's Compensation Act...
.....59, 126, 212, 216, 229, 230, 278, 287, 298, 360, 389, 404, 508, 509, 510, 513, 534, 535, 538, 539, 540, 541, 544, 545, 546, 547, 550, 553, 554, 557, 558, 560, 561, 563, 568, 570
when award will be made—equity and good conscience 60
when award will be made—social justice and equity 62
assumption of risk 81

Page

PERSONAL INJURY—Continued
when State not liable—Workmen's Compensation Act....81, 562
when an award will be made.....
.....94, 127, 128, 141, 190, 225, 241, 270, 391, 405, 477, 481, 517, 526, 528, 529, 536, 556, 563, 566, 569, 576
death—when award will be made—dependency for support.. 99
when award will be made for injuries sustained while an employee of the Division of Highways—Workmen's Compensation Act 114
when award will not be made for personal injury and property damage sustained on State highway..... 133
when court will not establish a precedent holding the State liable for accidents upon hard-roads..... 142
when State is not liable for death resulting from injuries sustained by an accident upon a hard-road..... 142
when amount of award will be determined under the Workmen's Compensation Act..... 148
what is a proper deduction from the total amount claimant would receive under the Workmen's Compensation Act.... 148
when award will be made for the death of a state employee resulting from personal injuries.....148, 181
when award will be made for injury sustained in course of employment at a State institution..... 152
when award will be made—equity and social justice—Workmen's Compensation Act..... 162
when award will be made—equity and good conscience...179, 548
when State not liable for reimbursement for injuries sustained by an employee of a contractor..... 180
when award will be made for injury sustained by a State employee 182, 189, 215
when award will be made for injuries sustained while a member of the Illinois National Guard.....205, 449, 564
when no award will be made for loss of time and wages..... 225
when award will be made for injuries resulting in death—Workmen's Compensation Act..... 231
award will be made for medical and hospital services.....
.....233, 277, 281, 290, 398, 572
State is not liable for injuries to inmates of charitable institutions 247, 258, 259, 267
when award will be made—Workmen's Compensation Act—social justice and equity..... 253
when award will be made although the State is not legally liable 275
when award will be made for doctors bills and loss of time—Workmen's Compensation Act..... 280
when award will be made for dental and doctor bills—Workmen's Compensation Act..... 282
when award will be made for personal injuries and hospital and doctor's bills—Workmen's Compensation Act..... 283
when award will be made to an inmate of a State institution.. 286

Page

PERSONAL INJURY—Concluded

when a second award will not be made for the same injury.... 291
when award will be made for personal injury resulting in death 292
when no award will be made for personal injuries sustained on State highway.....325, 395
State is not liable for the death of a pupil resulting from injuries sustained while attending public school.....356, 480
when State not liable.....355, 102, 431, 533, 547
when court has no jurisdiction..... 370
when burden of proof upon claimant..... 397
when claimant not without remedy..... 431
when full recovery from injury will not entitle claimant to an award 488
when claimant not entitled to hospital and doctor bills..... 488
when no award will be made for injuries sustained on a new hard road 491
when State not liable—governmental function..... 521
when award will be made for personal injuries resulting in death—Illinois National Guard..... 555
when award will be made—Military and Naval Code..... 574

PLANT INSPECTION—See DEPARTMENT OF AGRICULTURE

provisions of Statute should be construed together with reference to purpose..... 1
when no award will be made for the destruction of property to eradicate flag smut under the Plant Inspection Act..... 521

PLEADING AND PRACTICE

variance 5, 63
when court will consider merits of the case although demurrer to declaration might have been sustained..... 12
insufficiency of pleadings..... 77
when demurrer will be sustained.....193, 244, 480, 572
when claim will be denied—Statute of Limitations..... 194
when facts must be alleged and proved..... 244
when declaration fails to state a cause of action..... 356
what allegations and proof necessary to recover..... 431
purpose of providing for general traverse to be considered as filed 436
meaning of plea at common law..... 436
demurrer is not a plea..... 436

POLICE POWER

extent of police power of the State..... 1
protection and preservation of wild game under police power. 108
when State may exercise..... 524

Page

PRIVILEGE TAX

when privilege tax paid by an insurance corporation will not be refunded 504
when no recovery can be had on the grounds of equity and good conscience 505
when privilege tax will be deemed to have been paid voluntarily 505

PROPERTY DAMAGE

lateral support 65
no award will be made for damage to property resulting from natural causes 65, 77
when no award will be made for 67, 249, 252, 255, 322, 347, 515, 543
when State not liable 71, 384, 468, 553, 572
when no award will be made by reason of negligence of a State employee—exception 104
when an award will be made for damages to automobile resulting by reason of a collision with a car driven by an employee of the State 105
when State not liable for damage caused by wild game 108
when award will be made for 123, 213, 218, 273, 367, 430, 454, 515, 522, 523, 530, 531, 541, 568
when award will be made for damage to automobile by reason of an unavoidable accident on a hard road 124
when award will not be made for personal injury and property damage sustained on State highway 133
when State liable for damages on account of the construction of a viaduct for hard road purposes 147
when award will be made—equity and good conscience 154, 246, 271, 559
when award will be made for damage to automobile by reason of a collision with a motor vehicle operated by a member of the Illinois National Guard 170
when conveyance of right-of-way for road purposes releases the State from damages resulting from a change in a water course 172
when an award will be made for damages to automobile 208
when an award will be made for damages resulting by reason of the construction of a hard road 256
when no award will be made for damages to an automobile 260
State is not liable for negligence of its officers, servants or employees 310
when State not liable for damages resulting by overflow of Illinois and Michigan Canal 310, 382
when State not liable for the negligent acts of its agents in the construction of the Illinois and Michigan Canal 323
when court has no jurisdiction to hear claims for damages resulting by reason of the construction and operation of the Illinois and Michigan Canal 323

Page

PROPERTY DAMAGE—Concluded
when no award will be made for damage on account of construction of a hard road....348, 493
when claimant is barred by condemnation proceedings—Eminent Domain Act.... 349
when conveyance of right of way will be presumed to cover all damages.... 349
when acts of the State not subject to review—governmental function 384
immunity of State does not relieve its agents from responsibility 384
what remedy may be invoked.... 384
when State not liable—Illinois National Guard.....387, 578
when court has no power to declare State liable.... 399
when State not liable—governmental function.... 399
when State not liable for damages sustained by reason of an accident upon a hard road—governmental function..... 421
when no award will be made for damage to property by reason of the construction of a hard road—governmental function. 468
when value to adjacent property owners will be considered by reason of the construction of a hard road.... 493

PROPERTY LOSS
when claimant is entitled to an award for loss of property resulting by reason of an order of the Department of Agriculture for the eradication of certain diseases to plant life.... 1
when award will be made.... 56
when an award will be made for loss of property of an employee of the State.... 209
when award will be made—equity and good conscience..... 479

PROTEST—See FRANCHISE TAX
when tax paid under protest cannot be recovered..... 35

PUBLIC IMPROVEMENTS
when no award will be made for damages to property resulting from a public improvement.... 67

PUBLIC POLICY
when no award will be made to an officer for moneys advanced from his provate funds.... 226

PUBLIC UTILITIES ACT
right of appeal.... 482

PUBLIC UTILITIES COMMISSION
when moneys paid to Public Utilities Commission cannot be recovered back 481, 482

RAILROAD CROSSINGS
control of railroad crossings under jurisdiction of the Illinois Commerce Commission.... 71

Page

REHEARING
Rule 30—when rules must be complied with..... 5
when rehearing will be denied.....15, 20, 71, 102, 172, 202, 252, 262, 308, 313, 322, 348, 349, 363, 373, 377, 387, 402, 447, 450, 468, 482, 489, 492, 493, 499, 503, 505, 533, 562, 578
insufficiency of evidence..... 167
when award will be made upon petition for rehearing..... 181
when rehearing will be granted.....341, 365
when agreement of attorneys for claimant and respondent does not make the State liable under the Workmen's Compensation Act..... 375
argument in support of petition for rehearing not permitted—reason for rule..... 489
oral order granting rehearing..... 515

REIMBURSEMENT
when reimbursement will be made to a State employee for money expended for living quarters..... 240

REMEDIES
when court will not review acts of constitutional officer..... 8
when court will not invoke rule of equity and good conscience 8, 11
when court will not take jurisdiction.....11, 32
claimant must avail itself of remedies and protection provided by law..... 32
failure to pursue remedies provided by law.....33, 41, 136, 262, 308, 485, 496
when tax paid under protest cannot be recovered—when rule of equity and good conscience will not be invoked..... 35
court will not take jurisdiction where claimant has a remedy at law 47
when failure to pursue remedies provided by Statute will not allow claimant to recover..... 49
when claim barred by the Statute of Limitations..... 194
what remedy may be invoked where officers attempt to impair the rights of a citizen..... 384
when claimant not without remedy..... 399
failure to pursue remedies in courts of general jurisdiction.....414, 436, 439
when equitable remedies may be invoked..... 439

RENTAL
when award will be made..... 508

RES ADJUDICATA
when claimant is barred by condemnation proceedings..... 349
when plea of former adjudication will be sustained..... 361

RESPONDEAT SUPERIOR
doctrine of 12
when State not liable.....15, 20

Page

RESPONDEAT SUPERIOR—Concluded
rule not applicable to the State....23, 390, 399
when doctrine does not apply under general rule—exceptions. 71
State not liable for torts of officers and agents..... 71

ROADS AND BRIDGES—See HIGHWAYS

RULES
Rule 30—when rules must be complied with..... 5
when rehearing will be denied..... 82
when rehearing will be denied for failure to comply with rules of the Court—Rule 30..... 167
when case will be dismissed for failure to comply with the rules 243
when case will be dismissed upon motion of the Attorney General 243
argument in support of petition for rehearing not permitted under the rules—reason for rule..... 489

SALARIES—See FEES AND SALARIES

SCHOOLS
when award will be made for maintaining schools for delinquent children 109
when award will be made for expenses incurred in educating crippled children 117
when no award will be made for personal injuries sustained by a pupil of a public school..... 480

SECRETARY OF STATE
when Court of Claims will not review acts of the Secretary of State 8, 95

SERVICES—See MEDICAL SERVICES
when award will be made for services rendered to the State.. 232
when award will be made for goods furnished and services rendered 429
when award will be made....455, 559, 571

SERVICE RECOGNITION BOARD
jurisdiction of service recognition board..... 115
when award will be made to heirs of deceased soldiers—Soldiers Bonus Act 501

SOCIAL JUSTICE AND EQUITY
when award will be made upon the grounds of equity and social justice....62, 162, 169, 170, 253, 281, 292

SOLDIERS BONUS
jurisdiction of Service Recognition Board..... 115

Page

SOLDIERS COMPENSATION
when award will be made to heirs of deceased soldiers—Soldiers Bonus Act.....501, 575

SPECIAL ASSESSMENTS—See MUNICIPAL CORPORATIONS
when award will be made for interest on paving assessments. 235

STATE DEPARTMENTS
when Court of Claims will not determine a controversy between State departments—jurisdiction..... 146

STATE ROADS—See HIGHWAYS

STATUTES
provisions of Statute should be construed together with reference to purpose 1
failure to pursue remedies provided by law.....16, 33, 49
Inheritance Tax Act—sections 8 and 10..... 163

STATUTE OF LIMITATIONS—See LIMITATIONS
when claim barred.....343, 524
when claim barred—statute is mandatory..... 436

SUB-CONTRACTOR
when State not liable for losses sustained by sub-contractor.. 39

SUPPLIES
when award will be made for supplies furnished to the State 119, 184, 185, 195, 425, 428, 429, 573
when award will be made.....452, 453, 528

TAXES—See FRANCHISE TAX; INHERITANCE TAX; PRIVILEGE TAX

UNIVERSITY OF ILLINOIS
when award will be made for injuries sustained by an employee of the University of Illinois..... 534

WATERWAYS—See ILLINOIS AND MICHIGAN CANAL

WORDS AND PHRASES
what is "justice" and "equity"..... 82

WORK, LABOR, AND MATERIAL
when State not liable for extra work, labor, and material.... 88
when award will be made..... 537

WORKMEN'S COMPENSATION ACT—See PERSONAL INJURY
when State not liable under.....43, 82, 219, 247, 532, 562
when award will be made for injuries sustained by a State employee 58, 114, 509

Page

WORKMEN'S COMPENSATION ACT—Concluded
when award will be made for personal injury and the amount computed in accordance with the Workmen's Compensation Act 59, 126, 215, 216
when Workmen's Compensation Act will be followed in computing an award for personal injury received by a member of the Illinois National Guard..... 112
when Workmen's Compensation Act will determine the amount of award.....141, 148, 162, 189, 212, 229, 231, 253, 278, 282, 287, 292, 298, 360, 389, 391, 401
what is a proper deduction from the total amount claimant would receive under the Workmen's Compensation Act... 148
when the amount of the award will be determined under the Workmen's Compensation Act for the death of an officer of the Illinois National Guard..... 151
what is "structure"..... 152
when award will be made under.....152, 169, 181, 509, 510, 514, 517, 534, 535, 538, 539, 540, 541, 544, 545, 546, 547, 550, 553, 554, 557, 558, 560, 561, 563, 568, 570
when State not liable for reimbursement for injuries sustained by an employee of a contractor..... 180
when no award will be made for loss of time and wages..... 225
when award will be made for injuries sustained in course of employment 230
when claim for compensation for injuries sustained by an inmate of a State Institution does not come under the provisions of the Workmen's Compensation Act.....259, 267
when amount of award for injuries sustained by a member of the Illinois National Guard will be determined under the Workmen's Compensation Act.....269, 276
when award will be made for medical and hospital service... 281
when award will be made for personal injuries, hospital and doctor bills of a State tuberculosis inspector..... 283
maintenance of insane hospital not extra hazardous enterprise—when no award will be made under..... 358
when agreement of attorneys for claimant and respondent does not make the State liable under the Workmen's Compensation Act 375
when not applicable to the State.....375, 397
when enterprise declared to be extra hazardous..... 477
when provisions apply to the State..... 488
maintenance of highways is an extra hazardous enterprise... 488
when applicable to the State—conducting charitable institution not extra hazardous enterprise..... 521

THE LIBRARY OF THE
7 1932
UNIVERSITY OF ILLINOIS.