

REPORTS
OF
Cases Argued and Determined
IN THE
COURT of CLAIMS
OF THE
STATE OF ILLINOIS

VOLUME 13

Containing cases in which opinions were filed and orders of dismissal entered, without opinion between July 1, 1943 and June 30, 1944.

SPRINGFIELD, ILLINOIS
1944

[Printed by authority of the State of Illinois.]



(69269)

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.

RICHARD YATES ROWE,
*Secretary of State and
Ex-officio Secretary
Court of Claims.*

JUSTICES OF THE COURT OF CLAIMS

WM. WIRT DAMRON, *Chief Justice*,
ROBERT P. ECKERT, JR., *Judge*,
GEORGE M. FISHER, *Judge*.

GEORGE F. BARRETT, *Attorney General*.

RICHARD YATES ROWE, *Secretary of State and*
Ex-officio Secretary of the Court.
MRS. BELLE P. WHITE, *Clerk*.

RULES OF THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

Adopted pursuant to An Act to create the Court of Claims and to prescribe its powers and duties. (Approved June 25, 1917. L. 1917, p. 325.)

TERMS OF COURT

RULE 1. (a) The Court of Claims shall hold a regular session of the Court at the Capital of the State on the second Tuesday of January, March, May, September and November of each year, and such special sessions at such places as it deems necessary or proper to expedite the business of the Court.

(b) No cause will be heard at any session unless the pleadings have been settled and the evidence, abstracts, briefs and argument of both parties have all been filed with the Clerk on or before the first day of said session.

COMPLAINT

RULE 2. (a) Causes shall be commenced by a verified complaint which, together with four copies thereof, shall be filed with the Clerk of the Court. A party filing a claim shall be designated as the claimant and the State of Illinois shall be designated as the respondent. The original complaint and all copies thereof shall be provided with a suitable cover or back having printed or plainly written thereon the title of the Court and cause, together with the name and address of all attorneys representing the claimant. The Clerk will note on the complaint and each copy the date of filing and deliver one of said copies to the Attorney General.

(b) No person who is not a licensed attorney and an attorney of record in said cause 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. All appearances, including substitution of attorneys, shall be in writing and filed in the cause.

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

IN THE COURT OF CLAIMS OF THE
STATE OF ILLINOIS

A. B.,	}	No.
vs.		
STATE OF ILLINOIS, Respondent		
Claimant		

RULE 4. (a) Such complaint shall state concisely the facts upon which the claim is based and shall set forth the address of the claimant, 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 or the Occupational Diseases 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,

VII

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 any 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 the complaint that the claim is barred by a statute of limitations, the same shall be dismissed.

PLEADINGS

RULE 12. Pleadings and practice at common law as modified by the Civil Practice Act of Illinois shall be followed except as herein otherwise provided.

RULE 13. The original and four copies of all pleadings shall be filed with the Clerk and the original shall be provided with a suitable cover, bearing the title of the Court and cause, together with a proper designation of the pleading printed or plainly written thereon.

RULE 14. A claimant desiring to amend his complaint 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 an amended complaint, but any such amendment or the right to introduce new parties shall be subject to the objection of the respondent, made before or at final hearing. Any amendments made subsequent to the time the claimant has closed his testimony must be by leave of court.

RULE 15. The respondent shall answer within sixty days after the filing of the complaint, and the claimant shall reply within thirty days after the filing of said answer, unless the time for pleading be extended; provided, that if the respondent shall fail to so answer, a general traverse or denial of the facts set forth in the complaint shall be considered as filed.

VIII

EVIDENCE

RULE 16. (a) At the next succeeding term of court after the cause is at issue, the Court, upon call of the docket, shall fix the time for the parties to present evidence.

(b) After the cause is at issue the parties shall present evidence either by a stipulation of fact duly entered or by a transcript of evidence taken at such place as is mutually agreeable and convenient to the parties concerned. All witnesses before testifying shall be duly sworn on oath by a notary public or other officer authorized to administer oaths. If the parties are unable to agree upon a place of such hearing, application may be made to any Judge of the Court, who shall thereupon fix a place of such hearing.

RULE 17. All evidence shall be taken in writing in the manner in which depositions in chancery are usually taken. All evidence when taken and completed by either party shall be filed with the Clerk on or before the first day of the next succeeding regular session of the Court.

RULE 18. All costs and expenses of taking evidence on behalf of the claimant shall be borne by the claimant, and the costs and expenses of taking evidence on behalf of the respondent shall be borne by the respondent.

RULE 19. 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 respondent shall be filed.

RULE 20. 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 respondent to file evidence in its behalf in apt time, but a hearing by the Court may be had upon the evidence filed by the claimant unless, for good cause shown, additional time to file evidence be granted to the respondent.

RULE 21. All records and files maintained in the regular course of business by any State department, commission, board or agency of the respondent and all departmental reports made by any officer thereof relating to any matter or cause pending before the Court shall be prima facie evidence of the facts set forth therein; provided, a copy thereof shall have been first duly mailed or delivered by the Attorney General to the claimant or his attorney of record.

ABSTRACTS AND BRIEFS

RULE 22. The claimant in all cases where the transcript of evidence exceeds fifteen pages in number shall furnish a complete typewritten or printed abstract of the evidence, referring to the

pages of the transcript by numerals on the margin of the abstract. The evidence shall be condensed in narrative form in the abstract so as to present clearly and concisely its substance. The abstract must be sufficient to present fully all material facts contained in the transcript and it will be taken to be accurate and sufficient for a full understanding of such facts, unless the respondent shall file a further abstract, making necessary corrections or additions.

RULE 23. When the transcript of evidence does not exceed fifteen pages in number the claimant may file the original and four copies of such transcript in lieu of typewritten or printed abstracts of the evidence, otherwise the original and four copies of an abstract of the evidence shall be filed with the Clerk. The original shall be provided with a suitable cover, bearing the title of the Court, and cause, together with the name and address of the attorney filing same printed or plainly written thereon.

RULE 24. Each party may file with the Clerk the original and four copies of a typewritten or printed brief setting forth the points of law upon which reliance is had, with reference made to the authorities sustaining their contentions. Accompanying such briefs there may be a statement of the facts and an argument in support of such briefs. The original shall be provided with a suitable cover, bearing the title of the Court and cause, together with the name and address of the attorney filing same printed or plainly written thereon. Either party may waive the filing of his brief and argument by filing with the Clerk a written notice in duplicate to that effect.

RULE 25. The abstract, brief and argument of the claimant must be filed with the Clerk on or before thirty days after all evidence has been completed and filed with the Clerk, unless the time for filing the same is extended by the Court or one of the Judges thereof. The respondent shall file its brief and argument not later than thirty days after the filing of the brief and argument of the claimant, unless the time for filing the brief of claimant has been extended, in which cases the respondent shall have a similar extension of time within which to file its brief. Upon good cause shown further time to file abstract, brief and argument or a reply brief of either party may be granted by the Court or by any Judge thereof.

RULE 26. 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 claim 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.

RULE 27. 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 respondent to file abstracts or briefs on time, unless the time for the filing of abstracts or briefs by the respondent be extended.

EXTENSION OF TIME

RULE 28. Where by these rules it is provided the time may be extended for the filing of pleadings, abstracts or briefs, either party, upon notice to the other, may make application for an extension of time to any Judge of this Court, who may enter an order thereon, transmitting such order to the Clerk, and the Clerk shall thereupon place the same of records as an order of the Court.

MOTIONS

RULE 29. Each party shall file with the Clerk the original and four copies of all motions presented. The original shall be provided with a suitable cover, bearing the title of the Court and cause, together with the name and address of the attorney filing same printed or plainly written thereon.

RULE 30. Motions shall be filed with the Clerk at least five days before they are presented to the Court. All motions will be presented by the Clerk immediately after the daily announcement 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.

RULE 31. In case a motion to dismiss is denied, the respondent shall plead within thirty days thereafter, and if a motion to dismiss be sustained the claimant shall have thirty days thereafter within which to file petition for leave to amend his complaint.

ORAL ARGUMENTS

RULE 32. 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.

REHEARINGS

RULE 33. A party desiring a rehearing in any cause shall, within thirty days after the filing of the opinion, file with the Clerk the original and four copies of his petition for rehearing. 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 brief relied upon and with authorities and suggestions concisely stated in support of the points. Any petition violating this rule will be stricken.

RULE 34. When a rehearing is granted the original briefs of the parties and the petition for rehearing, answer and reply thereto shall stand as files in the case on rehearing. The opposite party shall have twenty days from the granting of the rehearing to answer the petition and the petitioner shall have ten days thereafter within which to file his reply. Neither the claimant nor the respondent shall be permitted to file more than one application or petition for a rehearing.

RECORDS AND CALENDAR

RULE 35. 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 number, date of filing, the name of claimants, their attorneys of record and respective addresses. As papers are received by the Clerk, in course, he shall stamp the filing date thereon and forthwith mail to opposing counsel a copy of all orders entered, pleadings, motions, notices and briefs as filed; such mailing shall constitute due notice and service thereof. Within ten days prior to the first day of each session of the Court, the Clerk shall prepare a calendar of the causes to be set for trial and of the causes to be disposed of at such session and deliver a copy thereof to each of the Judges and to the Attorney General.

RULE 36. Whenever on peremptory call of the docket any claim or claims appear in which no positive action has been taken and no attempt made in good faith to obtain a decision or hearing of the same, the Court may, on its own motion, enter an order therein ruling the claimant to show cause on or before the first day of the next succeeding regular session why such claim or claims should not be dismissed for want of prosecution and stricken from the docket. Upon the claimant's failure to take some affirmative action to discharge or comply with said rule, prior to the first day of the next regular session after the entry of such order, such claim or claims may be dismissed and stricken from the docket with or without leave to reinstate on good cause shown. On application and a proper showing made by the claimant the Court may, in its discretion, grant an extension of time under such rule to show cause. The fact that any case has been continued or leave given to amend or that any motion or matter has not been ruled upon will not alone be sufficient to defeat the operation of this rule. And the Court may, during the second day of any regular session, call its docket for the purpose of disposing of cases under this rule.

XII

ORDER OF THE COURT

The above and foregoing rules were adopted as the rules of the Court of Claims of the State of Illinois on the 15th day of September, A. D. 1943, to be in full force and effect from and after the first day of January, A. D. 1944, in lieu of all rules theretofore in force.

COURT OF CLAIMS LAW

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

SECTION 1. *Be it enacted by the People of the Xtate 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 an Act of the Fifty-fourth 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 three thousand two hundred dollars per annum, payable in equal monthly installments. (As amended by Act approved July 8, 1933. L. 1933, p. 452.)

XIV

§ 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
Ade, Mary	1
Advisory Opinions, Illinois Public Aid Commission	207
Albright, Mabel	54
Aldridge, Jeff	108
Alexander, Estelle Landers	5
Anderson, C. H.	139
Angsten, Peter J., Et Al	7
Arendell, Dovie	12
Armstrong, Dor Rennie	210
Armstrong, George Dewey	210
Armstrong, Robert S., Jr.	210
Arnistrong, Walter W., Et Al	210
Arnold, May	170
Arnold, Orville and V. O. Connor, Co-Partners, doing business under the firm name and style of Arnold & Company	211
Arnold, Philip, Sr.	210

B

Barrett, Edward J.	13
Bass, Murry C., Et Al	210
Becker, N. G.	139
Benner, Iva Belle	211
Berger, I.	139
Binzer, Fred	210
Bobbe Co., J.	210
Bordenkecher, Joseph	17
Brackenbush, Fred E.	20
Bradecich, John J.	56
Busekrus, Martin	59

C

Carriel, H. B.	139
Cass, J. L.	139

XVII

	PAGE
Ceiling & Son. H.....	210
Central Illinois Bldg. Loan & Homestead Assn., A Corp.....	193
Chapman. E. A.....	139
Chernus, M. C., d/b/a Chernus Construction Co.....	211
Chicago Cold Storage Warehouse Co.....	111
Clifton, F. L.....	210
Cloudas, Helen G., Admx. of the Estate of Robert C. Cloudas, Deceased	211
Colyer, Earl	211
Connor, V. O.....	211
Conway, Dovie	103
Cook, Harry	211
Costeff, H.....	139
Crawford, John H.....	211
Cross, Elsie	174
Crum, Julia A.....	210
Curd, Marguerite E.....	211
Curtis, Gilbert	211
Czerwinski, Frank	211

D

Davidson. Lottie D.....	193
DeWitt County Federal Savings and Loan Assn., A Corp., Jonah West and George W. Taylor	210
DeWitt County Federal Savings & Loan Assn.....	211
DeWitt County Federal Savings & Loan Assn., A Corp., known as the same Corp. as DeWitt County Bldg. Assn., A Corp., Alfred Girard. James Lyle Kennedy and Mil- dred Bell Kennedy	211
Diel. Alphonsus L.....	210
Diercks Decorating Co.....	210
Dobbelaire. Cyriel	210
Doherty. Edward M.....	210
Domke. E. P.....	139
Doyle. Francis	179
Dunham Company. C. A.....	211

E

Ecker. M. & Co.....	210
Eertmoed. Louis	61
Evans. Mary	65

F

Fako. John. Admx., Estate of Daniel Fako.....	211
Falstein. E. I.....	139

XVIII

	PAGE
Ferguson, Sylvia E.....	210
Filipkowski, Isadore. Etc.....	210
Finkelman, I.....	139
Fitsjerrell, N. B.....	139
Frazee, Joe	24

G

.Gambia Bros.....	210
Girard, Alfred	211
Gleich, T. C., Co.....	210
Goebel, Rudolph G.....	210
Gollmar, A. H.....	139
Gordon, L. Z.....	139
Gott, Henry Clay.....	196
Gottardo, Paul	210
Graff, R. J.....	139
Grebe, Henry C. & Co., Inc.....	210
Greene, B. L.....	139
Griffin, F. S.....	139
Guinto, Eva E.....	68
Gullion, Zepha	211
Gundersen, E. A.....	139
Gustafson, Ruth N., Et Al.....	142

H

Haffron, D.....	139
Hansen, Carl B.....	210
Harbeck, Elsie	70
Harris, Frank	211
Hart, B. D.....	139
Hart, Geo. E., Inc.....	210
Hayes, Merton J. and Alta B., DeWitt County Federal Savings and Loan Association.....	211
Hegeson, Herbert R.....	210
Hemp & Company, Inc.....	183
Hewlett, Mary Ellen, Admx. of the Estate of Roy Fewtrell Hewlett, Deceased	27
Hibbard, Spencer, Bartlett & Co., A Corp.....	114
Hinds, Eugene R. and Florence M.....	210
Hinton, Cora	146
Hosick, Jess	211
Hummert, August J.....	7
Hunter, J. R.....	139
Hur, D. K.....	139
Hyneman, Ida	150

XIX

I

	PAGE
Ingstrup, Walter, Co.	210

J

Jacobson, J. R.	139
Jasinski, Thomas	210
Johannsen, Anton	7
Jones, W. T.	153
Jurek, Harry	210

K

Kasper, Walter J.	211
Keist & Sharer	210
Kennedy, James Lyle & Mildred Bell.	211
Kickels, John T.	211
Kingston, Ruby Stella.	210
Klapman, J. W., Et Al.	139
Knickrehm, Esther Vanderaa.	75

McDonough, Joseph M.	118
McGuire, Emma S.	199

	PAGE
Meyerson, S. B.....	139
Midwest Painting Service.....	210
Milligan, Geo. D., Co.....	210
Minkus, Elizabeth A.....	155
Modler, Charles A.....	211
Monahan, Albert.....	211
Moore Decorating Co.....	210
Morgan, J.....	139
Mullen, J. Bernard.....	210
Musick, Robert H.....	34

N

Neumann, Charles and Louisa, Et Al.....	210
Nichols, Florence M.....	80
Nierenberg, H. H.....	139
Noel, Ellen.....	211
Noelle, J. B., Co.....	210
Nolan, Patrick J.....	211
Nowatzki, W. F.....	210
Nyden and Thunan Decorating.....	210

O

Olson Decorating Co., Hermann.....	210
Olson, Jelmar.....	160
Owens, Moke.....	122

P

Pace Decorating Co.....	210
Pearman, Lester E.....	84
Pedigo, Roy.....	37
Peerless Decorating Co.....	210
Penwell, Elva Jennings.....	165
Phillips, Isadore.....	210
Pickus Engineering & Construction Co..	39
Plamondon Decorating Co.....	210
Polen, Earl and Hazel.....	210
Powell, C. F.....	139

Q

Quinn, Margaret.....	211
----------------------	-----

R

Ranes, J. L.....	139
Rascher, Amanda, Admx. of the Estate of Henry Rascher, Deceased.....	88

XXI

	PAGE
Rask, Jens	210
Reagan, S. W.	139
Remington, Moneta K., Lottie D. Davidson, Harry H. Taylor and Effe A. Taylor.....	193
Rich, L.	139
Richman Decorating Co.	210
Ricketts, J.	139
Riley, W. J.	139
Ritchie, C. F.	139
Röbertson, M. D.	139
Rolle Painting & Decorating Co.	210
Rosemont Decorators	210
Rowley, C. C.	139
Rybaček, J.	210

S

Scheffler, Milton	210
Schiller, M. A.	139
Schroeder, M. G.	139
Scott, Verne E.	163
Shapiro, L. B.	139
Sharp, Charles H. and Jennie S.	211
Simmer Co., H.	210
Simon, A.	139
Skinner, Thomas N.	92
Skorodin, B.	139
Spur Distributing Cot., Inc., A Corp.	94
Staack, Fred C.	210
Steinberg, D. L.	139
Story, Ira M.	46
Strandberg & Son Co., L. B.	49

T

Tanner, Bessie M.	127
Tarnawski, C.	139
Tate, Myrtle	131
Taub, Bernard J.	96
Taylor, George W.	210
Taylor, Harry H. & Effe A.	193
Taylor, Thomas	206
Heichert, Hanns	210
Thompson, A. M.	7
Thompson, Della	204
Thompson, Louis F.	133
Thunan and Nyden Decorating.	210

XXII

	PAGE
Toombs. Clarence H. and Aurora Mae.....	211
Triner <i>Gorp.</i> , Joseph.....	211
Turow, I.....	139
Tutunjian. K. H.....	139
Tuveson Decorating Service, R.....	210

V

Vaillancourt, Gasper	98
Vittallo. Samuel J.....	210

W

Walsh. Thomas J.....	99
Weakley. Carl	167
West. Jonah	210
Western Union Telegraph Co.....	211
Whiting Paper Co.....	136
Wick, S.....	139
Wilson. Goldie G.....	210
Wiltrakis, G. A.....	139

Y

Yazarian. A. Y.....	139
---------------------	-----

Z

Zydron, Jerome	210
----------------------	-----

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

(No. 3429—Claimant awarded, \$578.88.)

MARY ADE, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1948.

EVA L. MINOR, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—when contraction of typhoid fever deemed accidental injury arising out of and in course of employment—death of employee therefrom—when award may be made under. Where an employee of State Institution, engaged in attending a typhoid fever patient, in the performance of his duties, contracts said disease, from which he subsequently dies and it is not contended, and does not appear that he was afflicted therewith prior to his attending such patient, or that his contraction of such disease was due to his negligence or misconduct, such contraction of such disease constitutes receiving accidental injuries, arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act, and an award may be made for compensation for his death to those entitled, in accordance with and subject to provisions of Act, upon compliance with the terms thereof.

SAME—when remarriage of widow of employee extinguishes right to further compensation. Under the provisions of the Workmen's Compensation Act, upon the remarriage of a widow of a deceased employee, her right to receive compensation awarded for his death is extinguished, unless said deceased employee left him surviving any child or children whom he was under legal obligation to support, at the time of the injury causing death, and who are living and entitled to said support at the time of said remarriage.

ECKERT, J.

Claimant, Mary Ade, is the widow of Lester Ade, deceased, who was formerly employed by the Department of Public Welfare of the State of Illinois as an attendant at the Manteno State Hospital. During the month of August, 1939, in the course of his employment, the deceased was required to attend a patient who had contracted typhoid fever; as a result, on August 10, 1939, the deceased also contracted the disease and died on August 29, 1939.

The deceased was confined to the hospital ward of the Manteno State Hospital from August 14, 1939, to August 17, 1939; on August 22, 1939, he was removed to St. Mary's Hospital, Kankakee, Illinois, where he remained until his death; his illness and death necessitated medical services in the amount of \$68.00, nursing services in the amount of \$91.00, hospital services in the amount of \$111.65, and funeral expenses in the amount of \$270.00. The earnings of the deceased during the year preceding his death were \$752.40. The claimant seeks an award in the amount of four times the average annual earnings of the deceased, plus the medical, hospital and nursing services, and funeral expenses, in the total sum of \$3,550.25.

At the time of his illness, the deceased and the respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the illness and claim for compensation were made within the time provided by the Act. It is stipulated that a typhoid fever epidemic existed at the Manteno State Hospital, from July 10, 1939, to December 10, 1939.

Compensation is payable under the provisions of the Workmen's Compensation Act for death from typhoid fever if the disease was accidentally contracted by the

deceased. *Rissman & Son, vs. Industrial Commission*, 323 Ill. 459. Under the decision in that case, it appears that typhoid fever may be said to be accidentally contracted if it is an unforeseen or unexpected event of which a person's own misconduct is not the natural and proximate cause and which does not ordinarily and naturally result from his conduct. The manner in which the disease is contracted is thus material in determining whether or not it was contracted accidentally. The court there held that the contraction of typhoid fever by the deceased from the drinking of water furnished by the defendant was unexpected and not foreseen by her, and might therefore be said to be accidental. The deceased in this case, in pursuance of his duties as an attendant at the Manteno State Hospital, was placed in charge of a patient who subsequently died of typhoid fever. The contraction of the disease by the deceased from the pursuance of his duties was as unexpected and as unforeseen by him as was the contraction of the disease by the deceased employee in the *Rissman* case. There is no suggestion in the record that it was a result of his own misconduct. The contraction of typhoid fever by the deceased, Lester Ade, may therefore be said to have been accidental.

The question then arises whether the typhoid fever contracted by the deceased arose out of his employment as provided by the terms of the Workmen's Compensation Act. An injury arises out of the employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. If the injury can be seen to have followed as a natural incident to the work and as a result of the exposure occasioned by the nature

of the employment, then it arises out of the employment. *Permanerzt Construction Co. vs. Industrial Commission*, 380 Ill. 47. The hazard to which the deceased employee in this case was exposed was peculiar to his work and was not common to the neighborhood; it was a hazard to which he would not have been equally exposed apart from his employment; it was a hazard incidental to the character of his employment and not independent of the relation of master and servant. It had its origin in a risk connected with the employment and flowed from that source as a rational consequence. The deceased employee, by reason of his employment, was exposed to the risk to a greater degree than other persons, and the injury arising therefrom is compensable. *Permanent Construction Co. vs. Industrial Commission*, supra.

The court is of the opinion that Lester Ade, in attending a typhoid fever patient in pursuance of his duties as an attendant at the Manteno State Hospital, received accidental injuries which arose out of and in the course of his employment within the meaning of the Workmen's Compensation Act of this State. Claimant, as the widow of the deceased employee, is entitled to an award under Section 7 (a) of that Act.

It appears from the record, however, that the claimant was remarried on January 27, 1941. Under the provisions of the Workmen's Compensation Act any right to receive compensation is extinguished by the remarriage of a widow if the deceased did not leave him surviving any child or children whom he was under legal obligations to support at the time of the injury. Claimant is therefore entitled to an award of \$8.25 per week for a period of seventy-three and five-sevenths weeks from August 29, 1939, to January 27, 1941, or an amount of \$608.14. The employee having received the sum of \$29.26

for unproductive time during his illness, that amount must be deducted, leaving a balance of \$578.88. Claimant is also entitled to payment of the doctor, hospital and nursing services incurred because of the illness of the deceased employee, which amount-in the aggregate to \$270.65.

Award is therefore made in favor of the claimant, Mary Ade, in the total sum of \$849.53 to be paid to her as follows :

1. \$111.65 for the use of St. Mary's-Hospital, Kankakee, Illinois; \$45.00 for the use of Dr. Perrodin, of Kankakee, Illinois; \$23.00 for the use of Dr. Daniel K. Hur of Manteno, Illinois; and \$91.00 for reimbursement of claimant for money expended for nursing services.

2. \$578.88 which has accrued and is payable forth-with.

(No. 3197—Claim denied.)

ESTELLE LANDERS ALEXANDER, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1943.

C. VICTOR CARDOSE, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of Department of Public Health—claim for compensation for death of, alleged to have resulted from contracting typhoid fever—when evidence insufficient to show disease contracted from condition of, or as a result of employment—when award must be denied.* Where the evidence in a claim for compensation for death of employee of Department of Public Health, alleged to have resulted from having contracted typhoid fever by reason of having become infected therewith while carrying containers of typhoid bacteria, alleged to have been broken or defective, consists of the testimony of persons with whom decedent had spoken, or those who had seen decedent handling containers, and there is no evidence which

sustains the allegation that the decedent had handled defective or broken containers, it cannot be reasonably assumed that the decedent contracted typhoid fever from condition of, or as a result of, his employment and an award must be denied.

SAME—burden of proof on claimant in claims under — award cannot be based upon speculation or conjecture. The general rule of law that the burden is upon the plaintiff to prove his case by a preponderance or greater weight of the evidence is applicable to claims under the Workmen's Compensation Act and an award for compensation thereunder cannot be based upon speculation or conjecture, but must be based upon facts established by a preponderance of the evidence.

FISHER, J.

This claim was filed February 2, 1938, and the record of the claim completed on June 4, 1943.

The claim is for benefits under the Workmen's Compensation Act for the death of claimant's husband and for medical and funeral expenses as a result thereof.

It is alleged that Louis C. Alexander, deceased, was employed by the Department of Public Health of the State of Illinois, as a messenger to carry specimen and infectious test tubes and containers from and to the offices of the Department of Public Health.

It is further alleged that on or about, October 6, 1937, the said Louis C. Alexander, while in the performance of his duties and while carrying containers of typhoid bacteria was infected with typhoid caused by breakage or defective containers, which he was transporting; that the Department of Public Health did not provide for inoculation against said disease and that as a result of having contracted typhoid fever, deceased died on October 15, 1937, leaving claimant Estelle Landers Alexander as his sole dependent. Claimant seeks an award in the sum of \$5,000.00 for the death of her husband and the sum of \$500.00 for medical and funeral expenses.

The record consists of the complaint, report of the Department of Public Health, transcript of claimant's

testimony, and statement, brief and argument on behalf of claimant and respondent.

The evidence presented is that of persons with whom the deceased spoke, or those who had seen the deceased handling containers. There is no evidence which sustains the allegation that the deceased handled and transported defective or broken containers. There is no evidence from which it could reasonably be assumed that the deceased contracted typhoid fever from condition of, or as a result of, his employment.

An award may not be based upon speculation or conjecture, but must be based upon facts established by a preponderance of the evidence.

Libby, McNeil & Libby vs. Industrial Commission, 320 Illinois 293.

The report of the Department of Public Health, stipulated herein, states that the deceased was employed as a messenger, his duties being to receive and store freight shipments; preparing and mailing literature and occasionally helping to set up exhibits. His work did not bring him in contact with infectious material in the laboratory.

The material allegations of the complaint are not sustained by the evidence and an award must therefore be denied.

Award denied.

(No. 3748—Claim denied.)

PETER J. ANGSTEN, ET AL., Claimants, vs. STATE OF ILLINOIS.
Respondent.

Opinion filed September 14, 1943.

PHILLIP R. DAVIS AND OWEN V. JOHANNSEN, for claimants.

. GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

INDUSTRIAL COMMISSION OF ILLINOIS—Section 9 of the Civil Administrative Code controls and fixes salaries of Chairman and members of, and not Section 14 of the Workmen's Compensation Act—receipt of payment of salary in amount fixed by said code is full payment of salary—claim for difference between amount fixed by said Code and that fixed in Workmen's Compensation Act must be denied—Act in relation to State Finance—when applicable to claims for salary. The facts in this case and the issues involved are the same as those in *Mills vs. State*, 9 Court of Claims Reports, page 69 and *Novak vs. State*, 10 Court of Claims Reports, page 258 and the opinions in those cases are controlling herein.

Per Curiam:

This is a joint claim of Peter J. Angsten, August J. Hummert, Anton Johannson, Joseph Lisack, and A. M. Thompson for various sums of money allegedly due them for services rendered respondent as members of the Industrial Commission of the State of Illinois. Claimant Peter J. Angsten seeks an award of \$14,208.60; August J. Hummert, of \$9,858.90; Anton Johannsen, of \$9,614.41; Joseph L. Lisack, of \$9,619.05; and A. M. Thompson, of \$7,994.54; making a total of \$51,295.50.

The complaint alleges that the claimant, Peter J. Angsten, served as chairman of the Industrial Commission from January 27, 1933 to June 30, 1941; that his salary during this period was fixed by statute at \$7,500.00 per year; that the Legislature, during this period, appropriated only \$6,000.00 per year for payment of such salary.

The complaint also alleges that the claimant, August J. Hummert, served as a member of the Industrial Commission from January 27, 1933 to August 20, 1941; that the claimant, Anton Johannsen, served as a member of the Industrial Commission from May 10, 1933 to October

31, 1941; that the claimant, Joseph Lisack, served as a member of the Industrial Commission from February 21, 1941 to June 30, 1941; and that the claimant, A. M. Thompson, served as a member of the Industrial Commission from March 23, 1933 to December 31, 1940. It is alleged that the salary of each member of the Industrial Commission, during the respective periods, was fixed by statute at \$6,000.00 per year; that during the respective periods, the Legislature appropriated only \$5,000.00 per year for payment of each of such salaries. The appropriations were in the amounts fixed by the Civil Administrative Code for the salaries in question, but were not in the amounts provided for such salaries by the Workmen's Compensation Act.

The respondent has filed two motions to dismiss. The first motion is directed to that portion of the claim which is for services rendered prior to September 5, 1937. Section 10 of the Court of Claims Act 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, 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."

The complaint in this case was filed on September 5, 1942. That portion of the claim which is for services rendered prior to September 5, 1937, comes within this provision of the Statute; the motion must therefore be granted.

"Where it appears from the face of a claim that the same is barred by Statute of Limitations, a plea thereof will be sustained." *Miller vs. State*, 11 C. C. R., 490, *Ragains vs. State*, 8 C. C. R., 21, *Wiskirchen vs. State*, 7 C. C. R. 17.

The second motion, with supporting affidavits, is directed to that portion of the claim arising out of serv-

ices rendered subsequent to September 5, 1937. From the affidavits, it appears that each claimant, during his term of office, was paid his salary by warrants drawn on the State Treasurer, upon vouchers submitted; that the warrants specified they were for salary for stated periods of time and amounts; and that each warrant, upon proper endorsement, was subsequently paid by the State Treasurer. Respondent contends that the complaint should be dismissed because of claimants' acceptance of these monthly warrants.

Section 9, Sub-section 3, of "An Act in relation to State Finance," (Chap. 127, Ill. Rev. Stat., Sec. 145) provides :

"Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations, which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made."

Under this provision of the statute, it was held in *Mills vs. State*, 9 C. C. R., 69, that a claimant cannot accept salary warrants, purporting to cover the full amount due him for services during stated periods, and thereafter, when his active service has ended, obtain an award from the State for an additional amount for those periods for which he had apparently been paid for services in full. In that case the claimant sought to recover the difference between the salary he had received as a member of the Industrial Commission under Section 5 of the Civil Administrative Code (\$5,000.00 per year), and that fixed by Section 14 of the Workmen's Compensation Act, (\$6,000.00 per year). The court there also held that the Civil Administrative Code, which became

effective July 1, 1917, and not the Workmen's Compensation Act, controlled and fixed the amount of the salaries of members of the Industrial Commission. .

In the case of *Broderic, et al. vs. State*, 9 C. C. R., 461, similar claims were made by former arbitrators of the Industrial Commission. The court said :

“Claimants herein in each instance throughout their terms of service received regular monthly salary warrants from the State of Illinois, and accepted same from month to month as received. Regardless of any rights which they may have had to have demanded and received salary in any other amounts, claimants accepted said monthly warrants regularly through their term of service.”

The Court held that the claimants, having accepted the monthly warrants, were barred by the Statute from obtaining any further payments of salary. The claims were denied.

In the case of *Novak vs. Xtate*, 10 C. C. R., 258, it was held that the Civil Administrative Code, and not the Workmen's Compensation Act, controls and fixes the salaries of the Chairman and members of the Industrial Commission. The claimant, having received the salary fixed by the Civil Administrative Code for his services, an award was denied.

Counsel for claimants have filed full and persuasive briefs, but under the statute and the prior decisions of this court, the respondent's contention must be sustained. Whether the Civil Administrative Code or the Workmen's Compensation Act controls and fixes salaries of members of the Illinois Industrial Commission, claimants, by accepting salary warrants purporting to cover the full amount due them for their services during the stated periods, cannot now claim additional compensation for such services. Under the provision of “An Act in relation to State Finance,” supra, awards must be denied.

The respondent's motion to dismiss is therefore granted. Case dismissed.

(No. 3784—Claim denied.)

DOVIE ARENDELL, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1943.

EDWARD J. FLYNN, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

LIMITATIONS—*plea of Statute of—when must be sustained:* Where it appears on face of claim that **same** was filed more than five years after it accrued, it is forever barred under the provisions of Section 10 of the Court of Claims Act, the Court is absolutely without jurisdiction to make award and a plea of the Statute of Limitations must be sustained.

FISHER, J.

This claim was filed on March 27, 1943.

Complaint alleges that on April 4, 1933, claimant was employed by the State of Illinois as an attendant and assigned to work at the Illinois State School for the Deaf at Jacksonville, Illinois.

It is further alleged that the claimant began work on or about said date and worked continuously for a period of sixteen months.

It is further alleged that claimant was entitled to be paid the sum of \$45.00 per month, but that through error or oversight claimant was only paid \$36.00 per month, and that therefore there is due and owing to claimant the sum of \$131.00 for services rendered.

Chapter 37, paragraph 436, Illinois Revised Statutes, provides 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 accrued two years from the time the disability is removed.”

The complaint herein shows on its face that the claim of the claimant herein is for money alleged to be due for services rendered during the year 1933 and for the next sixteen months.

Paragraph 10 of the Court of Claims Act, being Paragraph 436 Illinois Revised Statutes, provides that unless a claim is filed with the secretary of the Court of Claims within five years after the claim first accrues it shall be forever barred.

This court has repeatedly held that in accordance with such statute unless a claim is filed within five years after the same first accrued, this court is without the jurisdiction to make an award, and a plea of the statute of limitation will be sustained.

The motion to dismiss is sustained and the claim dismissed.

(No. 3804—Claim denied.)

EDWARD J. BARRETT, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1943.

NASH, AHEBN, McDERMOTT & McNALLY, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

COURT OF GENERAL JURISDICTION—*pendency of action in to determine personal liability of former officer of State, alleged to have been incurred while acting as its agent—precludes Court of Claims from consideration of claim of former officer until determination of liability.* The Court of Claims is without jurisdiction to entertain a claim filed by a former Officer of the State, for payment by it of liabilities asserted

against him, alleged to have been incurred, for and on behalf of the State and while he was acting as its agent therein, where a suit to determine such liability, or the extent thereof is pending in a Court of General jurisdiction and is undetermined.

COURT OF CLAIMS—*jurisdiction*. The legislature in creating the Court of Claims clearly defined its powers and limitations, and did not intend that it should usurp the powers of, contradict or compete with courts of general jurisdiction.

ECKERT, J.

On November 4, 1930, claimant, Edward J. Barrett, was elected Treasurer of the State of Illinois for a term of two years, from January 1, 1931. On December 9, 1930, and on December 24, 1930, he applied to the Great American Indemnity Company of New York, a New York corporation, for a public official's bond in the penal sum of \$500,000.00. Each application contained an indemnifying agreement which provided that the applicant "indemnify the Company against any losses, damages, costs, charges and expenses it may sustain, incur, or become liable for in consequence of said bond or any renewal thereof, or any new bond issued in continuance thereof or as a substitute therefor." The Company subsequently issued two bonds each in the penal sum of \$500,000.00 with the Fidelity & Casualty Company of New York as co-surety; premiums in the amount of \$4,000.00 were paid by the State of Illinois; the bonds were filed in the Office of the Secretary of State, and were duly approved by the Governor and two justices of the Supreme Court, all in accordance with statutory requirements. The bonds remained in full force and effect from the date of their filing until the expiration of the term of office of the claimant on January 9, 1933.

On December 10, 1937, a suit was started in the Circuit Court of Sangamon County, Illinois, by American Legion Post No. 279, against the claimant, the Great

American Indemnity Company of New York, and others, as defendants. On December 14, 1937, a suit was also started in the United States District Court, Southern Division, in and for the Southern District of Illinois, by Gordon L. Seeger, naming the claimant, the Great American Indemnity Company of New York, and others, as defendants. In each suit it was alleged that claimant and the Great American Indemnity Company of New York were liable on the official bonds of the claimant to the creditors of the Ayers National Bank of Jacksonville, Illinois, which had become insolvent in November, 1932, for the proceeds of certain securities of that bank. These securities were alleged to have been wrongfully deposited by the bank as a pledge to secure moneys of the State deposited with the bank prior to its insolvency in an amount of approximately \$1,800,000.00. The complaints charged that the claimant had converted these funds when he liquidated the securities as State Treasurer.

Subsequent to the service of summons upon the Great American Indemnity Company of New York, the company notified claimant of the pendency of the suits and of its expectancy of reimbursement for any loss or expense incurred by reason of the litigation. Although claimant was properly represented by the Attorney General of the State of Illinois, the company, by its own counsel, moved to strike the complaints and dismiss the suits. These motions were granted by the Circuit Court of Sangamon County, and upon appeal to the Supreme Court of Illinois, the action of the trial court was affirmed. The suits were subsequently dismissed.

Claimant now alleges that the interests of the several defendants differed in the litigation; that it was necessary for the Great American Indemnity Company of New York to employ its own counsel for its defense; that be-

cause of these suits, the company sustained losses, damages, costs, charges and expenses amounting to \$20,919.92; that claimant became liable to indemnify the Great American Indemnity Company of New York on account of such losses, costs, charges and expenses; that the company had demanded payment by the claimant, and commenced an action at law in the Superior Court of Cook County to recover this amount from the claimant. He also alleges, that although morally and legally liable for the payment of this money, he is financially unable to pay it; that because the liability was incurred by claimant in his official capacity as Treasurer of the State of Illinois, because the bonds were given to satisfy a statutory requirement, and because the premiums for the bonds were paid by the State, the liability is the liability of the State. Claimant further alleges, that in incurring this liability, he was acting as an agent for the State; that such liability should be absorbed by the principal; and that an award should be made to the Great American Indemnity Company of New York to discharge the liability which it has asserted against the claimant. The case is before the court on the respondent's motion to dismiss.

From the allegations of the complaint, it appears that the liability of the claimant under the indemnifying provisions of the applications for the bonds is the subject of litigation in the Superior Court of Cook County, and has not been determined. That litigation entails a consideration of the need for separate counsel on the part of the Great American Indemnity Company of New York, the reasonableness and necessity of the various items of the costs and charges incurred by the company, and the meaning and intention of the indemnifying provision. The Superior Court of Cook County may find

that the company was wholly unjustified in employing its own counsel;—may find, that although justified, the costs and charges are excessive; or may find that the provisions of the indemnifying agreement are not sufficiently broad to render claimant liable to the company for the expenditure of these moneys.

The extent, if any, of claimant's liability being properly before a court of general jurisdiction, it will not be passed upon by this court. The Legislature in creating the Court of Claims did not intend that it should usurp the powers of, contradict, or compete with courts of general jurisdiction. *Moline Plow Company vs. Xtate*, 5 C. R. 277. Without passing upon the question of the responsibility of the respondent, it is obvious that the claim against the State is prematurely made at this time.

The respondent's motion to dismiss is therefore granted.

(No. 3238—Claimant awarded \$269.10.)

JOSEPH BORDENRECHER, Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed September 14, 1943.

GEORGE B. MARVEL, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*claim by special laundry laborer at Manteno State Hospital—when award under may be made.* Where it clearly appears that employee of State sustains accidental injuries, arising out of and in the course of his employment, while engaged in extra-hazardous employment, resulting in partial loss of use of his arm, an award for compensation therefor may be made, in accordance with the provisions of the Act, upon compliance by employee with the requirements thereof.

FISHER, J.

This claim was filed on March 31, 1938 pro se and the record completed June 14, 1943.

Claimant alleges ; that he was employed as a special laundry laborer at the Manteno State Hospital, Manteno, Illinois on February 7, 1935; that on the 30th day of April, 1937, while assisting in the installation of ,a new unit on a switchboard, claimant's left hand came in contact with the switch carrying 220 volts and the current passed through his body, hurling claimant against a brick wall, fracturing the ulna of the right arm.

Claimant further alleges that in reducing.the fracture, his fore-arm was placed on a board made from an orange box and that two weeks later his fore-arm was placed in a plaster cast.

Claimant alleges that his arm was improperly reduced and is now crooked.

Claimant seeks an award for the partial loss.of the use of his right hand and arm.

The claim in this case was filed pro se and on October 16, 1942, appearance of George B. Marvel was filed as Attorney for claimant.

The record consists of the complaint, stipulation of facts, waiver of statement, brief and argument on behalf of claimant and statement, brief and argument on behalf of respondent.

All jurisdictional requirements have been met and claimant is entitled ,to the benefits of the Workmen's Compensation Act.

It is conceded and admitted by respondent that the accident in this claim arose out of and in the course of his employment, while claimant was properly engaged in the performance of his duties. The only question for determination here is the amount of compensation to which claimant is entitled.

By stipulation of facts filed herein it is shown that three physicians of the Department of Public Welfare examined the claimant on January 21, 1943, and reported.

“It is our opinion after a thorough physical examination and roentgenographic study of Joseph Bordenkecher, who was examined under date of January 21, 1943 at the Manteno State Hospital, that ten per cent of the present permanent disability could be attributed to a service connected injury sustained while employed by the Manteno State Hospital on the last day of April, 1937. Moreover, it is our opinion that the bowing effect of the arm is not the result of the accident.”

No other evidence is submitted of the extent of the injury. Claimant is, therefore, entitled to compensation for 10% loss of the use of his right arm.

Claimant earnings amounted to \$1,244.00 per year. His average weekly salary was \$23.92 per week. Section 8, paragraph e(13) of the Workmen's Compensation Act provides for 50% of the average weekly wage during 225 weeks for the total loss of the use of an arm. 50% of claimant's average weekly wage equals \$11.96. If claimant had sustained a total loss of the use of his arm he would be entitled to receive 225 times \$11.96 or \$2,691.00. His loss, however, being 10% of the use of his arm he is entitled to receive 10 per cent of \$2,691.00 or the sum of \$269.10.

An award is therefore entered in favor of claimant, Joseph Bordenkecher, in the sum of \$269.10 all of which is accrued and payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of “an Act concerning the payment of compensation awards to State employees.”

(No. 3535—Claim denied.)

FRED E. BRACKENBUSH, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed September 14, 1943.

SAMUEL H. SHAPIRO, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L.
MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*claim* under for alleged accidental contraction of typhoid fever—*medical* evidence failing to show claimant afflicted with disease—*only* evidence of contraction testimony of claimant—*insufficient* to justify award. Where the medical evidence in claim for compensation for alleged accidental contraction of typhoid fever fails to show that claimant was afflicted with said disease at or about the time of such alleged contraction and for sometime thereafter, and the only evidence in support of claimant's contention as to said contraction of said disease is his testimony that he so contracted disease, he has failed to sustain the burden of proof imposed on him and no award for compensation can be made.

CHIEF JUSTICE DAMRON delivered the opinion of the court :

The complaint in this case charges that Fred E. Brackenbush, claimant, while employed as a senior Stenographer at Manteno State Hospital, Manteno, Illinois, on the 28th day of August, 1939, was injured by reason of contracting typhoid fever from drinking water at said hospital; that medical, surgical and hospital treatment were partially furnished by the respondent and claimant's earnings during the year preceding the alleged injury amounted to \$1,008; that his salary was paid to him during the time of his temporary disability. Claimant asks an award in the following amounts :

To doctor bills, estimated.. .. .	\$150.00
To special diet, estimated.. .. .	300.00
To medicine, etc., estimated.. .. .	50.00

and the further sum of \$5,000 alleged to be due him under

the Workmen's Compensation Act of the State of Illinois.

The record consists of the complaint, stipulation, waiver of statement, brief and argument on behalf of claimant and respondent, report of Walter H. Baer, Managing Officer of said institution, dated September 13, 1940, hospital records and testimony of the claimant and Dr. O. H. Phipps for claimant taken on the 23rd day of April, 1943, at Kankakee, Illinois. No evidence was taken in behalf of respondent.

The stipulation discloses that the claimant was first employed at Manteno on January 5, 1931, as a senior stenographer, having resided at said institution continuously until on August 8, 1939, when he became ill and was confined to his apartment in said institution. That during the time he was ill wages in the sum of \$441.67 were paid to him and on March 18, 1940, claimant returned to his work. The evidence shows that prior to August, 1939, the claimant had been complaining of not feeling well and was taking days off at his own discretion. He did not ask for any medical attention. Finally he went to bed in his apartment in the Administration Building and was seen by Dr. L. H. Cohen, Clinical Director, and Dr. Steinberg, of the medical staff. They recommended that he be hospitalized but claimant refused to go to the hospital but received treatment in his apartment by some of the staff members of the institution, among them Dr. C. L. Perkins, whose report is a part of this record.

Dr. Perkins reports that on or about September 14, he called on claimant and upon examination found that his symptoms were mild abdominal cramps and constipation, the abdomen was negative except that he had slight general tenderness. The patient perspired freely, was

not toxic but was definitely weak. He was exhausted. Patient had had two stool and urine specimens sent to the laboratory for typhoid culturing. Patient was put on general management, more stools were ordered, and in the following two weeks patient ran temperature. This ranged from 100-101 the first week. After that it was 100 at night (by mouth). After about two weeks patient gradually began to get out of bed under the doctor's direction. By this time two more stools had been taken. All stools had proven negative for typhoid bacillus. A blood count taken during this period showed white count of 15,000, red blood count was normal. Urinalysis was negative. Dr. Perkins further reports "Patient also complained of sticking pains in left chest along lower border about this time. Careful check of the lungs showed nothing (the patient had had a lung ray just prior to his illness which was essentially negative). On October 20 patient left his room for first time. After that I did not see patient." And further:

"The exact diagnosis of this illness is in some doubt. Typhoid fever seems to have been ruled out by a negative blood culture and four negative stools for typhoid cultures."

In connection with this report the laboratory examination of the claimant is as follows :

- Card No. 288, 8-31-39, result negative.
- Card No. 462, 9-5-39, result negative.
- Card No. 633, 9-7-39, result negative.
- Card No. 1144, 9-22-39, result negative.
- Card No. 8681, 11-13-39, result negative.
- Card No. 9530, 11-17-39, result negative.
- Card No. 9831, 11-20-39, result negative.

We have searched this record diligently and failed to find any evidence supporting the claim that Brackenbush contracted typhoid fever from drinking water fur-

nished him by respondent during the course of his employment as alleged in said complaint. It is true claimant testified that he contracted typhoid fever in August, 1939, but that must be treated as a self-serving statement and conclusion of the witness. Dr. O. A. Phipps, called on behalf of claimant, testified that he treated the claimant on February 28, 1940. In response to a question he gave the following answer: "All physical findings are essentially negative except chest finding referable to heart. Chest, well developed, well nourished. Respiratory excretions slightly increased above average normal. Breath and voice sound normal, outlines of heart show an increase in dimensions as compared with dimensions of chest. Valvular sounds muffled, not sharp and distinct."

Counsel for claimant attempted to establish a basis for this claim by asking Dr. Phipps the following question :

"Q. From your examination of Fred Brackenbush on February 28, 1940, what are his permanent disabilities as a result of his having this typhoid fever, if you know?"

"A. At that time he had an impaired heart."

There was no legal basis for such a question for the reason that the witness had not testified that claimant had suffered from typhoid fever. Dr. Phipps was not the treating physician.

Under the facts in this case, we are of the opinion that the respondent is not liable to the claimant.

The general rule of law that the burden of proof is upon the plaintiff to prove his case by a preponderance or a greater weight of the evidence is applicable to claims under the Workmen's Compensation Act, and where claimant has not proven his claim no award can be made.

Award denied.

(No. 3693—Claimant awarded \$1,716.53.)

JOE FRAZEE, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1943.

ERNEST J. GALBRAITH AND CARROLL BAYMILLER, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for. respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made under.* Where employee of State sustains accidental injuries, arising out of, and in the course of his employment, while engaged in extra-hazardous enterprise, resulting in temporary total disability, an award may be made for compensation therefor, in accordance with the provisions of the Workmen's Compensation Act, upon compliance by said employee with the requirements thereof.

CHIEF JUSTICE DAMBON delivered the opinion of the court.

On June 24, 1941, Joe Frazee, claimant, was employed as a common laborer by the Department of Public Works and Buildings, Division of Highways, to assist in unloading material from railroad cars to motor trucks in the Peoria & Pekin Railroad freight yards in East Peoria, Illinois, at 87% cents per hour for an eight hour day.

On June 30, 1941, a moving tractor used for switching purposes by the respondent threw the claimant to the roadbed at his place of employment and injured him. Claimant was immediately placed under the care of a physician, hospitalized and treated for his injuries until August 22, 1941, on which day he was discharged by the physician with the advice that he be given light work.

Claimant was paid compensation for total temporary disability during this period amounting to the sum of \$112.20. Respondent also paid the physician, Dr. Major,

\$31.00 and the John C. Proctor Hospital \$60.60. Since his discharge on August 22, 1941, the claimant has received nothing from the respondent. Claimant seeks an award for \$150.00 which he alleges he expended for additional medical services; \$11.13 for underpayment on his temporary compensation; \$162.80 for additional temporary total disability from August 22, 1941, to November 1, 1941; and \$1,960.00 for permanent partial disability.

A careful consideration of the evidence offered on behalf of claimant, together with the report of the Division of Highways filed on behalf of respondent, shows that claimant was sixty-two years of age and had one child under the age of sixteen years dependent upon him for support at the time of the accident.

The medical testimony shows that claimant suffered injuries consisting of a contused and lacerated wound on the right hip and fracture of the 9th and 10th ribs on his right side. That when discharged on August 22, 1941, he had spasticity of the lumbar-sacro muscles on the right side and 30% limitation flexion of the lumbar-sacro spine; that he was unable to sit for any length of time without extreme pain and discomfort and was unable to flex his back without pain.; that he suffered from a partial incontinence or loss of control of his bowels, which conditions still exist. The injuries above described are permanent.

The evidence further discloses that on the date of the injury and prior thereto claimant was capable of and was earning an average of \$26.92 per week. That due to the injuries sustained by him as aforesaid he now is able to earn only \$20.00 per week.

Upon consideration of the record the court finds:

1. That claimant and respondent were on the 30th

day of June, 1941, operating under the provisions of the Workmen's Compensation Act.

2. That on said date the claimant sustained accidental injuries which arose out of and in the course of his employment.

3. That notice of the accident was given to said respondent and claim for compensation made within the required time by the provisions of said Act.

4. That claimant was in the employ of respondent for less than one year; that the annual earnings of persons of the same class and in the same employment and in the same location during the year preceding the accident were \$1,400.00; and the average weekly wage was \$26.92.

5. That claimant at the time of the accident was sixty-two years of age and had one child under the age of sixteen years dependent upon him for support.

6. That necessary first aid, medical, surgical and hospital services were provided by the respondent.

7. That claimant was temporarily totally disabled from the date of his injury as aforesaid, to August 22, 1941, but has not been paid in full for such temporary total disability.

8. That the injuries sustained by claimant have resulted in permanent partial disability.

9. That claimant was entitled to have and receive from the respondent the sum of \$120.93 for total temporary compensation for a period of 7 $\frac{3}{7}$ weeks to August 22, 1941, but was only paid \$112.20 by respondent, which leaves a balance of \$8.73 due and unpaid to claimant.

10. That claimant is entitled to have and receive from respondent by virtue of Subsections (d), (j) and (k) of Section 8 of the Workmen's Compensation Act

the sum of \$4.18 per week for a period of 408 $\frac{4}{7}$ weeks for permanent partial disability commencing on August 22, 1941, and amounting to the sum of \$1,707.80. That of that amount \$449.62 has accrued and is payable in a lump sum. Claimant is also awarded the further sum of \$8.73 representing balance due him for temporary total compensation which was miscalculated by the respondent.

An award is therefore entered in favor of claimant and against the respondent in the sum of \$1,716.53, payable as follows: The sum of \$458.35 forthwith, and the further sum of \$1,258.17 for 301 weeks in installments of \$4.18 commencing on September 14, 1943.

(No. 3428—Claim denied.)

MARY ELLEN HEWLETT, Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed May 12, 1943.

Rehearing denied September 14, 1943.

PENCE B. ORR, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

NEGLIGENCE—staff physicians of State Institution in allegedly providing defective anti-typhoid serum and negligently administering same — death of employee of State to whom administered alleged to have resulted therefrom—State not liable for — award for damages, on grounds of equity and good conscience cannot be made. In the conduct of the Northern Illinois Penitentiary at Joliet, Illinois the State exercises a governmental function and is not liable to respond in damages for the negligence of its officers, agents or employees in the conduct thereof. An award for damages for the death of an employee of the State, alleged to have resulted from the negligence of other employees of the State, staff physicians of said institution, in providing defective anti-typhoid serum and negligently administering same, cannot be made under any theory of law or on the grounds of equity and good conscience.

CHIEF JUSTICE DAMRON delivered the opinion of the court: .

This claim was filed on December 14, 1939, and is for an award in the sum of \$10,000.00 for damages sustained by claimant by the death of her husband alleged to have been caused by the injection of defective anti-typhoid serum, or the negligent injection of anti-typhoid serum.

Claimant was appointed administratrix of the estate of her husband, Roy Fewtrell Hewlett, by the Probate Court of Will County, Illinois, on December 4, 1939. She files as such administratrix.

The complaint alleges that deceased was employed for more than twenty years continuously prior to his death as a guard at the Northern Illinois Penitentiary at Joliet, Illinois; that deceased was in good health and not suffering from coronary thrombosis or any other disease of the heart, prior to the injection of said anti-typhoid serum; that during the months of October and November the respondent, by its officers, agents or employees, acting with authority, directed and compelled the deceased, without his consent, to be inoculated with a defective anti-typhoid serum; that shortly after the injection and as a direct result thereof, deceased became ill and was disabled from performing his duties. That as a result of said illness deceased was compelled to call upon the services of a physician, but notwithstanding the illness caused by the first injection, a second and third injection were forced into deceased's system, body and blood stream causing deceased to become progressively more ill and disabled. That after the third injection deceased became violently ill and shortly thereafter died on the 10th day of November, 1939, all from the ill

effects of said defective serum or the manner in which it was administered; that deceased's death did not arise from his occupation except that injections of serum were forced upon him because he was employed by respondent and that his death was not brought about by any other contributing cause except injection of defective serum or such other contributing cause as was into deceased's body, system or blood stream by said serum; that the death of deceased was brought about by the negligence of respondent in providing defective serum which was negligently administered to deceased.

The record consists of the complaint, transcript of testimony of claimant, and respondent's motion to dismiss. The evidence in the case shows that deceased was inoculated with anti-typhoid serum on October 19, October 26 and November 2, 1939, and that he died November 10, 1939. The complaint having been filed within six months after the date of the alleged accident and the evidence disclosing that deceased was an actual employee of the respondent during October and November, 1939, the requirements of Section 24 of the Compensation Act of Illinois have been complied with and the court will take jurisdiction of the claim.

The evidence further shows that all guards, employees and inmates of said state penitentiary were requested by the proper authorities to submit to inoculation with anti-typhoid serum. This order was issued during the typhoid epidemic at the Manteno State Institution, at Manteno, Illinois, although there is no evidence that an epidemic had arisen within the confines of the Joliet Penitentiary, yet it seems that this order for inoculation was necessary as a health protective measure.

While it is true that the complaint charges that the deceased was inoculated with defective serum or that the

inoculation was performed in a negligent manner, there is no evidence in the record to support such allegations. The evidence does show that no other employee or inmate, all of whom were inoculated, suffered any untoward reactions, except one person who suffered from asthma. Smaller doses were administered to him, which tends to prove that the staff physicians used care and caution in administering the serum.

The evidence further discloses that deceased's own private physician advised him to cease working during the period of inoculation. This he failed to do and the record further discloses that during that period deceased made no complaint to any person in authority at the penal institution. The evidence further discloses from medical witnesses that during the period of inoculation deceased did not have an anaphylactic reaction and the evidence shows that had that occurred death would have occurred within a short time after the injection of the serum and before the patient left the room in which he was inoculated. The deceased had three injections spaced about seven days apart and lived eight days after the last injection. Certainly it cannot be seriously contended that deceased had an anaphylactic reaction.

Dr. Paul E. Landmann, deceased's own physician was called the night of deceased's death but arrived some time after death had occurred. He issued the death certificate and gave the cause of death as coronary thrombosis, with chronic myocarditis as a contributing factor. Dr. Landmann testified that if defective serum was used, it could cause a thrombosis. There is nothing in the evidence supporting the charge that the serum used was defective. Dr. Landmann further testified that there was no way of determining what the obstruction

was and that it was just as likely that the serum inoculation had nothing whatever to do with the thrombosis.

Dr. Wayne S. McSweeney, called as a witness, testified that the injections did not cause chronic myocarditis and that chronic myocarditis would have to come on over a period of months after an acute infection of some kind. He corroborated Dr. Landmann in stating it was likely the injection had had nothing to do with the thrombosis.

Under the Workmen's Compensation Act of the State of Illinois, the burden of proof is upon the applicant to establish by a preponderance of the evidence every disputed question of fact as to his right to compensation. An award may not be based upon imagination, speculation or conjecture, but must be based upon facts established clearly by a preponderance of the evidence. This petitioner has failed to show that the coronary thrombosis from which it is admitted claimant's husband died was the result of an injury sustained in the course of his employment by the respondent or that it arose out of said employment.

. And further, petitioner has failed to prove that the serum used by the staff physicians of the respondent was defective or that the inoculations were injected negligently by said staff physicians. Even though such proof were present in the record, the State, in the exercise of a governmental function, is not liable for injuries to persons resulting from the negligence of its officers, agents or employees and an award as a matter of social justice and equity cannot be allowed when the State would not be liable in law or in equity if it were suable. This has been the holding of this court in so many cases, citations are deemed unnecessary.

It is regrettable that petitioner's deceased husband died while employed by the State, but following the

precedents of this court and the many decisions of the Supreme Court of this State, we cannot grant an award.

The Attorney General representing the respondent files a motion to dismiss the complaint. This motion must be sustained. Complaint dismissed.

(No. 3779—Claim denied.)

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

Opinion filed September 14, 1943.

LEWIS L. ROOT, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of State within provisions of injured as result of negligence of third party—electing to sue said third party—recovery of amount in excess of that provided in Act—employee bound by election—award for compensation under Act must be denied.* An employee of the State, within the provisions of the Workmen's Compensation Act, who sustains accidental injuries, as the result of the negligence of a third party may elect to seek compensation from his employer under said Act or institute suit for recovery of damages from such third party, and where he makes such election by instituting suit and recovers an amount in excess of what could be awarded him as compensation for such injuries under the provisions of said Act, he is bound by such election and no award can be made for compensation under said Act.

CHIEF JUSTICE DAMRON delivered the opinion of the court :

The facts in this case are not in controversy. Charles Landis was on the 18th day of July, 1941, employed by the State of Illinois, and while driving a State highway truck westerly on Franklin Avenue about two blocks west of the Mannheim Road in the village of Franklin Park, County of Cook, State of Illinois, collided with a vehicle

driven by an employee of the City Ice & Fuel Company, suffering injuries.

Being an employee of the State, the State of Illinois expended for medical, surgical, hospital care and compensation the sum of **\$1,638.83**.

On October 7, **1941**, the claimant through his attorney notified the respondent that the claimant had instituted suit for personal injuries in the Superior Court of Cook County against the City Ice & Fuel Company, a corporation, case No. **41S-14981**. On November **12, 1941**, the claimant created and acknowledged a lien in favor of the State for all monies paid and to be paid by the respondent for medical, hospital care and compensation.

Relying on the above lien, the Attorney General did not file an intervening petition.

. At the request of the claimant, **W. A. Rosenfield**, Director of the Department of Public Works and Buildings, State of Illinois, on October **27, 1942**, executed a waiver on behalf of his department waiving any claim which the State had under the provisions of the Workmen's Compensation Act for subrogation to the amount paid on behalf of said claimant, following which claimant made a settlement in court of his claim against the said Ice & Fuel Company without resorting to trial, for **\$7,-500.00**, out of which claimant refunded to the respondent the sum of **\$1,638.83**, as agreed.

The Attorney General files a motion to dismiss this complaint and to the motion is attached the affidavit of **Earl McK. Guy**, Acting Engineer of Claims, Department of Public Works and Buildings, Division of Highways. It corroborates the above facts.

It cannot be questioned that the claimant in the first instance could have filed a claim in this court for injuries received in the course of his employment, or he could

have elected to sue the negligent third party in a court of general jurisdiction. This latter course he followed and obtained a settlement far in excess of any amount which could have been awarded to him by this court following the provisions of the Workmen's Compensation Act. Having elected to sue the negligent third party he is bound thereby. He is not entitled to two recoveries as was said in *People ex rel Barrett vs. Tull*, 311 Illinois App. 636:

"Where both parties elect to abide by the provisions of such law they must be held to be bound thereby. To apply any other rule would be to give the appellant in this case the right to recover twice for the same item of damage . . ."

The Court of Claims cannot take jurisdiction of this claim. The motion of the Attorney General will be sustained and the case is dismissed.

(No. 3793—Claim denied.)

ROBERT H. MUSICK, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1943.

SAMUEL G. HERROD, JR., for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*claim for partial loss of use of leg subjective symptoms only not sufficient to sustain—proof of past or existing objective symptoms necessary to justify award.* Where compensation is sought under Workmen's Compensation Act, for injuries alleged to have caused a partial loss of use of knee joint, claimant cannot sustain his claim by proof of subjective symptoms only, as an award is justified only for injuries, as are proven by competent evidence, of which there are or have been objective symptoms proven, not within the physical or mental control of the injured employee himself, and where the only symptoms are those disclosed by such employee, no award for compensation can be made.

ECKER, J.

On October 21, 1942, claimant, Robert H. Musick, an employee of the Department of Public Works and Buildings, Division of Highways, of the State of Illinois, while serving as rodman for a State highway engineer, was struck by an automobile driven by F. L. Shafer of New Hampton, Iowa. The accident occurred when claimant crossed U. S. Highway No. 24, one-half mile south of the village of Secor.

He was struck on the right leg by the front bumper and fender of the automobile and thrown to the pavement, causing a fracture of the tibia and fibula of the right leg at the ankle, and a transverse fracture of the fibula in the middle of the shaft. He also alleges that he suffered a dislocated internal miniscus, or other loose body, in the knee joint. Immediately after the accident, claimant at his request was treated by Dr. F. W. Nickel at Eureka, Illinois, under whose care he remained until March 10, 1943.

Claimant, a man seventy-three years of age, with no children under sixteen years of age dependent upon him for support, had been employed by the respondent since September 2, 1942, at the rate of fifty-five cents an hour. Employees of the Division engaged in the same capacity and at the same rate as claimant are employed less than two hundred days a year; eight hours constitute a normal working day.

At the time of the accident, the claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of the employment.

No claim is made for medical or surgical services or for temporary total disability, the respondent having

paid all medical and hospital bills in the amount of \$106.50, and having paid claimant compensation for temporary total disability from the date of the accident to March 10, 1943, in the total sum of \$199.61. Likewise, no claim is made for compensation for the fractures claimant suffered as a result of the accident, because he now has perfect function of the right ankle. Claimant, however, seeks compensation for the alleged dislocation of the internal miniscus, or other loose body in the knee joint, which he states was not discovered until after the cast was removed from his leg and he had started to walk. He alleges that he suffers a catching and locking of the right knee joint with pain lasting a short time, but recurring on any normal use of the knee ; that he has suffered, as a result of the accident, a twenty-five per cent loss of use of the right knee joint.

Dr. Nickel first reported to the Division claimant's complaint of pain and disability in the right knee on March 3, 1943, but stated that there was no visible evidence of injury, and no evidence of any recent injury to the bones making up the knee joint. A further report by Dr. Nickel, under date of April 15, 1943, appears in claimant's statement and waiver of brief and argument. If this report were properly a part of the record, it would not substantiate claimant's present claim. This later report states that no injury to the knee was apparent in x-rays taken on October 21, 1942, and no evidence of any fracture or other abnormality of the knee joint or adjacent structures, except an old fracture line above the condyles of the femur, was apparent in x-rays taken on February 25, 1943. There is no further proof of the alleged injury.

Any finding of a dislocated miniscus or other loose body in claimant's right knee joint would be based en-

tirely upon the subjective complaint of the claimant. Under Section 8 (i) 3 of the Workmen's Compensation Act of this State, compensation in cases of this kind is payable only for injuries proven by competent evidence, of which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the injured employee himself. The record in this case is wholly insufficient to satisfy this statutory requirement.

An award is therefore denied.

(No. 3652—Claimant awarded \$90.55.)

ROY PEDIGO, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1943.

SAMUEL H. SHAPIRO, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made under.* Where employee of State sustains accidental injuries, arising out of, and in the course of his employment, while engaged in extra-hazardous-employment, an award may be made for compensation therefor, in accordance with the provisions of the Workmen's Compensation Act, upon compliance by said employee with the requirements thereof.

CHIEF JUSTICE DAMRON delivered the opinion of the court:

On April 29, 1941, claimant, Roy Pedigo; received an accidental injury while working at Manteno State Hospital, Manteno, Illinois, under the direction of the Department of Public Welfare of the State of Illinois which arose out of and in the course of his employment with the respondent. While engaged in his employment in laying a sewer, when lowering the top of a manhole

the lid fell crashing the distal phalanx of the middle finger of his right hand.

All medical, surgical and hospital bills were furnished by the respondent and no claim is made for these items.

The claimant and respondent filed a stipulation of facts in this case which shows that the accident arose out of and in the course of claimant's employment; that the annual earnings of claimant immediately prior to the date of injury amounted to \$2,971.00; that he did not work from the date of the injury to June 1, 1941, but received the sum of \$276.00 during the month of May for unproductive work; that the respondent had notice of the accident on the date on which it occurred and that claim for compensation was duly made as provided by Section 24 of the Workmen's Compensation Act.

The only question to decide in this case therefore is the amount of loss suffered by this claimant by reason of said injury, both temporary and specific.

That portion of the Statute involved (Workmen's Compensation Act, Sec. 8; Ill. Rev. Stat. 1941, Chap. 48, Par. 145) is as follows:

"(e) For injuries in the following schedule, the employee shall receive compensation for the period of temporary total incapacity for work resulting from such injury, in accordance with the provisions of Pars. (a) and (b) of this Section for a period not to exceed 64 weeks, and shall receive in addition thereto compensation for a further period subject to limitations as to amounts as in this section provided . . . but shall not receive any compensation for such injuries under any other provision of this Act."

"3. For the loss of a second finger, or for permanent and complete loss of its use, 50 per centum of the average weekly wage during 35 weeks."

"6. The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be one-half the amount above specified."

Claimant's average weekly salary was \$57.13. His weekly compensation rate therefore on the date of said injury was \$16.50. He was 54 years of age and had no dependents under the age of 16 years.

Claimant sustained the loss of the distal phalange of the second finger of the right hand. By virtue of the above quoted statute claimant is entitled to one-half of the compensation payable for the loss of the second finger or $17\frac{1}{2}$ weeks at the rate of \$16.50, amounting to the sum of \$288.75, representing his specific loss.

'This claimant having been injured on the 29th day of April, 1941, did not return to his employment until the 1st day of June, 1941, making a total of $4\frac{5}{7}$ weeks for which he is entitled to receive temporary compensation amounting to the sum of \$77.80. The record shows, however, that claimant was paid the sum of \$276.00 by the respondent for unproductive work during the month of May, 1941. This amount represents an overpayment to claimant of \$198.20 on his temporary compensation payments which must be deducted from his award.

An award is, therefore, entered in favor of the claimant and against the respondent in the sum of Ninety Dollars and Fifty-five Cents (\$90.55), all of which has accrued and is now payable.

(No. 3669—Claim denied.)

PICKUS ENGINEERING & CONSTRUCTION. COMPANY, Claimant, vs.
STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1949.

DENT, WEICHELDT & HAMPTON, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

CONTRACT—bid 'made and accepted constitutes. Where claimant made a proposal to the State to perform certain construction work for it, at a designated price and the State accepts such proposal, a binding contract is created between the parties, and upon the completion of the work, in accordance therewith and the issuance of the final voucher for the price bid and acceptance of same by claimant, the contract is completely executed and no claim will lie for an amount in excess of the price bid.

SAME—attempt of party to change terms of—specifications forming part of—affording party opportunity to withdraw proposal—party must 'mail self of or perform—cannot change terms of. Where specifications forming a part of contract provide offering party opportunity to withdraw his proposal, he must withdraw same in the manner and within the time provided therein, and if he does not see fit to do so, he is bound to the performance of the contract as proposed by him, and he cannot impose any change in the terms thereof.

Same—when claim for loss alleged to have been sustained in performance of must be denied. A claim for the recovery of moneys alleged to have been lost by claimant in the performance of a contract with the State must be denied where there is no competent proof that the State violated any of the terms thereof, and the evidence shows that the loss, if any, sustained was due to claimant's own acts.

CHIEF JUSTICE DAMRON delivered the opinion of the court:

The record discloses that the claimant, the Pickus Engineering and Construction Company, Inc., is an Illinois corporation with offices in Winnetka, Illinois. During the year 1937 and for a long time prior to May 28, 1937, and subsequent thereto claimant was engaged as a general building contractor, including the construction of highways and work incidental thereto.

On May 28, 1937, the respondent, through the Department of Public Works and Buildings, mailed copies of a notice to claimant and other contractors that a letting was to be had on June 11, 1937, for a highway improvement designated as State Bond Issue Route 118A, Federal Aid Project 229B, Section 108A, Livingston County, Illinois.

This notice, among other provisions and instructions contained the following:

"Sealed proposals for the improvement of the road described herein will be received by the Department of Public Works and Buildings at the office of the Division of Highways, Springfield, Illinois, until 10:00 o'clock A. M., June 11, 1937, and at that time publicly opened and read."

On June 10, 1937, in response to said notice and **6** conformity with section 3a of it, claimant submitted its proposal to do and perform the designated work as described in said notice, and attached to the proposal a bank cashier's check or bank draft in the sum of Fifty Four Hundred and Sixty Dollars (\$5,460.00) as a proposal guaranty.

On the following day claimant sent the following telegram to the Department from Chicago, Illinois :

"Please change our bid Section Five G One Christian County to read fifteen thousand one sixty four cubic yards gravel or stone to Three Dollars Sixty Five cents per cubic yard and Section Ten Eight A Livingston County one hundred thirty six thousand five eighteen cubic yards excavation to thirty one cents leaving rest unit bid as is. PICKUS ENG. AND CONSTR. INC., JOSEPH PICKUS."

At 10:00 A. M., on June 11, 1937, the Department publicly opened, read and tabulated all proposals received. Claimant's proposal for work in Livingston County was found to be the lowest. On June 14, 1937, the Department wired the claimant as follows:

"Articles two point eleven A page seven of Standard Specifications prevent consideration of your telegram concerning Livingston County bid Stop Will consider bid as originally submitted or reject Stop Please advise immediately. Ernst Lieberman."

Sections 2.9 and 2.11(a) referred to in the foregoing telegram read as follows :

2.9 WITHDRAWAL OF PROPOSALS. Permission will be given a bidder to withdraw a proposal if he makes his request in writing before the time for opening proposals. If a proposal is withdrawn, the bidder will not be permitted to submit another proposal for the same section at the same letting.

2.11 DISQUALIFICATIONS OF BIDDERS. Any one or more of the following causes may be considered as sufficient for the disqualification of a bidder and the rejection of his proposal.

(a) More than one proposal for the same work from an individual, firm, or corporation under the same or different names.”

The receipt of this telegram was acknowledged by claimant and on June 17 the claimant company sent the following telegram in response thereto :

“Ernest Lieberman—Highway Dept. •Springfield, Illinois, Original figures were based on non-union labor as highway files show no union schedule upon investigation Friday morning Chicago found job was union therefore wired in corrected price Stop Please reject as per your telegram as we cannot accept original figures without heavy loss. PICKUS ENGINEERING & CONST. CO.”

On June 21, 1937, in reply to the above telegram C. M. Hathaway, then Engineer of Construction for the Division, wrote claimant the following letter :

“I wish to advise you that the telegram which you sent on the morning of the letting, requesting that the unit prices be changed, had no bearing upon your bid as the Engineers of this Department are without authority in the specifications to change a contractor's bid after it is submitted. Your bid, therefore, must stand as a regular bid.”

On July 24, 1937, this claimant signed the contract to do the work as per his original bid of June 10, posted bond and sent the Department the following letter:

“Gentlemen:

Herein, you will find Bond and Contract, signed.

In signing this contract, we reserve whatever rights to which we are entitled with reference to our wire changing the unit price from 27c to 31c per cubic yard.”

Thereupon the claimant proceeded upon the work according to the standard specifications, completing said job on the 24th day of August, 1938, and receiving a formal acceptance thereof on December 28, 1938. On December 29 the Department issued final voucher in the sum of Seven Thousand Five Hundred Six Dollars and Ninety-six Cents (\$7,506.96) to the claimant which was received by claimant, endorsed and cashed by it. On December 31, 1938, claimant sent the following letter to the Department:

“ . . . We are accepting the above payment with the understanding that we do not waive our regular rights on our claim for increased unit bid as shown by our telegram on June 11, 1937.”

The above are the pertinent facts in chronological order upon which this claim is based. Claimant seeks an award of Five Thousand Four Hundred Sixty Dollars and Seventy-two Cents (\$5,460.72), representing the difference in labor costs for excavating work between 27c per cubic yard as provided in claimant's proposal and 31c per cubic yard claimant alleges it was required to pay for this work.

Claimant urges four reasons why it should recover here. First, that its acceptance of the final payment was not a release. Second, that the State is bound by its contracts the same as an individual. Third, that the State is bound by estoppel. And finally, that all acts of public officers are presumed to be regular, in the absence of convincing contrary evidence.

The respondent opposes this award and takes the position (1) Claimant had no right to additional compensation which arose before the contract was signed; (2) Claimant had no right to additional compensation arising out of the contract itself; (3) No right to extra compensation arose after the contract was signed; (4) Since no right to extra pay arose in claimant before or after the contract was executed the complaint should be dismissed.

Ernest A. Monson, Secretary of claimant corporation, was the only witness called to support the allegations of the complaint. During the course of his examination he identified each telegram and letter as set forth above. Most of his testimony was based on hearsay evidence, was incompetent and that portion will not be considered by this court.

The claimant in its voluminous brief cites many cases in support of this claim. All of the cases cited, including a recent opinion of this court, *Hartmann-Clark Brothers Company vs. State*, #3290, deal with alleged claims which arose after the execution of the contract and are not in point.

The evidence and exhibits in this case show that claimant was an experienced contractor, was acquainted with the standard specifications as contained in the proposals and was familiar with section 2.9 and 2.11(a), referred to in the telegram of June 14, 11937, to claimant signed by Ernst Lieberman. Yet in the face of this knowledge, claimant continued to permit his bid to stand as filed on June 10, accepted the job after it was awarded to him. Claimant completed the work, cashed the final voucher without reservation, other than the informal conversations held with some of the personnel of the Department and its letter of December 31, 1938. This was an attempt to reserve some purported right although paragraph 9.8 of the specifications specifically stated that "Acceptance by the contractor of the last payment shall operate as and shall be a release to the Department for all claims or liability under this contract."

Claimant contends that it was induced to enter into this contract by two representations which the Department allegedly made. First, that if it did not sign the contract its certified check would be forfeited. The burden of proof was on the claimant to prove this contention. There is no proper proof in the record that any such threat had been made by the respondent. Second, that after completing the contract it would be able to recover an additional sum by an action in the Court of Claims. This too the claimant has failed to establish by a preponderance of the evidence. Certain conversa-

tions were presumably held between Mr. Pickus, the president of the corporation, and some of the personnel of the Highway Department prior to and subsequent to the awarding of the job to the claimant. These conversations were referred to by witness Monson, but he was not present at any of them and presumably his testimony was heresay.

Claimant points however to a letter it received from Mr. C. M. Hathaway, dated November 9, 1938, which was long after the claimant had started construction under its contract. It shows conclusively that there was no understanding between the respondent and the claimant that it should be paid an additional sum of money. It specifically informs claimant that "although there may be a possibility of reopening this proposition, it would appear to me that it might be one of those instances which would have to be taken up with the Court of Claims. *Due to the fact that the Btate has no legal jurisdiction to act other than it did.*"

It shows conclusively that there was no understanding or that there was any argument that would justify this claimant in accepting this work and proceeding with it with any expectation that the State had the power legally to pay it an additional sum over and above the contract price as submitted in its bid. This letter was admitted in evidence without objection being interposed by either side.

It is noteworthy that under article 2.9 of the standard specifications, as contained in the proposal, this claimant could have withdrawn its bid at any time between June 10 and August 24 if it had submitted its request in writing to the respondent. If it had done so there would have been no question before this court. Claimant, however, elected not to withdraw the bid, but

attempted to substitute a higher figure for its original bid. If this claimant suffered a loss it invited it and is now in no position to complain relative to its own conduct.

After a careful reading and analysis of the record in this case we must come to the conclusion that the claimant has no right of recovery.

Award denied.

(No. 3756—Claimant awarded \$58626.)

IRA M. STORY, Claimant, *vs.* **STATE OF ILLINOIS**, Respondent.

Opinion filed September 14, 1943.

J. MAX MITCHELL, for claimant.

GEORGE F. BARRETT, Attorney General; **ROBERT V. OSTROM**, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—when *award may be made* under. Where employee of State sustains accidental injuries, arising out of and in the course of his employment, while engaged in extra-hazardous employment, an award for compensation therefor may be made, in accordance with the provisions of the Workmen's Compensation Act, upon compliance by employee with the requirements thereof.

FISHER, J.

This claim was filed October 14, 1942. It is for benefits under the Workmen's Compensation Act for temporary total and partial permanent disability to claimant's left leg. The claim is based on injuries sustained by claimant while employed as a laborer by the Division of Highways, State of Illinois.

The record consists of the complaint, report of the Division of Highways, transcript of claimant's evidence, stipulation of facts, abstract, statement, brief and argument on behalf of claimant, and statement, brief and argument by respondent.

The complaint alleges in part; that the claimant was employed by respondent, Department of Public Works and Buildings, Division of Highways, and while so employed on Route 37 near West Frankfort, Illinois, in the capacity of a flagman claimant slipped and fell under a road grader, which passed over his left leg causing permanent injuries thereto.

The report of the Division of Highways, stipulated herein that "December 11, 1941, on S. B. I. Route 37 about three miles south of West Frankfort, the claimant was engaged in flagging traffic as a protection for grading operations being conducted at the time on shoulders and ditches of the highway. At about 9:30 A. M. the claimant walked along the pavement edge near an operating motor patrol grader for the purpose of warning traffic, while the grader was being turned around. The claimant slipped and fell in front of the grader; a wheel of the grader ran across the foot of the claimant and injured him. The Division had knowledge of the accident and injury on the same day on which they occurred."

The claim was filed in apt time. The material allegations of the complaint are sustained by the evidence and claimant is entitled to the benefits of the Workmen's Compensation Act.

Claimant seeks compensation for 30 per cent permanent loss of the use of his left leg and respondent contends that as there was no injury to the hip or knee and only a partial loss of function to the ankle, this estimate of loss is too great and suggests that the Court observe the claimant in order to reach a fair estimate of the actual amount of disability suffered by claimant.

The claimant was attended by Doctor C. O. Lane of West Frankfort, Illinois, who on December 12, 1941, re-

ported the injury to the Division of Highways as follows :

“Severe bruising of the soft tissue of the left foot and ankle, also a crushing fracture of the 4th and left meta-tarsal bone; skin scrape of calf of leg. Treatment—a plaster paris cast applied to left foot.”

Doctor Lane testified that in his opinion claimant had suffered a 25 per cent permanent loss of the use of his left leg, and when asked to detail his consideration of the loss said:

“I consider the damage done to the meta-tarsal bone, and to the tissue forming the joint about the ankle, and the damage done to the tissue above the ankle. All of these result in a partial immobility of the ankle joint, disabling the patient, in my judgment, to the extent of about twenty-five (25) per cent.”

Claimant appeared before the court for observation and from such observation we do not feel justified in reducing the degree of permanent disability as estimated by the attending physician. Claimant is therefore entitled to compensation for twenty-five per cent permanent loss of the use of his left leg.

Claimant was employed as a laborer at a wage rate of fifty cents an hour. He worked less than two hundred days a year and eight hours constituted a working day. He had one child under the age of 16 years at the time of the injury. His compensation rate is therefore \$12.10 per week.

Claimant was injured on December 11, 1941. He returned to work on March 1, 1942. He is entitled to receive compensation for temporary total disability of 11 and 2/7 weeks at \$12.10 per week or a total of \$136.56. He was paid temporary total compensation the sum of \$125.05 leaving a balance due him of \$11.51.

Claimant is entitled to receive for permanent partial

disability the sum of \$12.10 per week for 47½ weeks or a total of \$574.75.

An award is therefore entered in favor of claimant, Ira M. Story, in the sum of \$586.26, all of which is accrued and payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3611—Claim denied.)

L. B. STRANDBERG & SON Co., AN ILLINOIS CORPORATION,
Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1943.

RATHJE, HINCHLEY, BARNARD & CULP, JOHN J. DOWDLE AND WALTER W. DUFT, of Counsel) for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

CONTRACTS—*provision in that acceptance of last payment dice under bars all claims for damages is valid—acceptance of last payment due thereunder precludes award for damages for any act of neglect of the State.* Where contract for construction of a public improvement contains provision that acceptance of last payment for work done thereunder shall operate as, and be a release of all claims or liabilities under contract, for anything done or relating to work under same, or for any act or neglect of the Department of State, relating to or connected with said contract, such provision is valid and binding, and if said last payment is made and accepted, an award for damages alleged to have been sustained as the result of acts of the State must be denied.

DEPARTMENT OF PUBLIC WORKS AND BUILDINGS — *a Governmental agency created by Legislature — law provides shall have officer at head known as its director — powers of—no provision, for delegation of.* The Department of Public Works and Buildings is a governmental agency created by the Legislature, which has, *inter alia*, the power to contract for the construction and maintenance of State highways and the statutes further provide that such department shall have an officer at its head, who shall be known as its director, who shall, subject to the

provisions of the Act execute the powers and discharge the duties vested by law in said department and fixes the duties of all persons employed therein, but makes no provision for the delegation to minor officials of the powers and duties vested by law in the director of the department.

SAME—construction engineer employed by in construction of public improvement employee of—not authorized to exercise powers of Director of—wholly without power to waive provision in contract that acceptance of last payment due under contract bars all claims for damages. A construction engineer employed by the Department of Public Works and Buildings in the construction of a public improvement for said department, is an employee of said department, whose duties are fixed by law and he is without authority to exercise the powers of the Director of said Department, and same cannot be delegated to him, and he has no authority to waive provision in contract that acceptance of last payment due under contract bars all claims for damages.

ECKERT, J.

On April 4, 1936, claimant and respondent entered into a contract for the construction of State Bond Issue Route 55, Project #NRM-377A, Section #55SD NRM 1, Cook County, Illinois. Claimant was then known as "The, Strandberg Brothers Company." On May 27, 1937, its charter was amended, and its corporate name changed to "L. B. Strandberg & Son Co." Claimant subsequently completed performance of the contract to the satisfaction of the respondent and respondent paid claimant, under the terms of contract, the sum of Fifty-eight Thousand One Hundred Fifty-seven and 47/100 Dollars (\$58,157.47).

Claimant alleges, however, that respondent failed and refused to compute the item designated in the contract, "Class X Concrete" in accordance with the method of measurement provided for in the contract and that because of such failure and refusal, claimant suffered damages in the amount of One Thousand Nine Hundred Fifty Dollars (\$1,950.00). Claimant also alleges that it was delayed in starting work by the acts of the respond-

ent and its engineer, was delayed in the progress of the work upon the order and at the direction of the respondent's engineer, and that because of such delays it suffered damages in the amount of One Thousand Seventy-seven and 46/100 Dollars (\$1,077.46). The claimant further alleges that because of the delay caused by the respondent, and the rules and regulations of the Department of Public Works and Buildings, it was prevented from bidding on additional work of the respondent, and thereby suffered damages in the amount of Six Thousand Nine Hundred Sixty-seven and 26/100 Dollars (\$6,967.26), or a total sum of Nine Thousand Nine Hundred Ninety-four and 72/100 Dollars (\$9,994.72).

The respondent has moved to dismiss the claim on the ground that claimant's acceptance of final payment under the contract was a complete release to the respondent. In support of the motion, respondent filed affidavit of M. K. Lingle, Engineer of Claims, Division of Highways, Department of Public Works and Buildings. From the affidavit it appears that Division 1, Section 9, Article 9.7 of the Standard Specifications for Road and Bridge Construction, adopted by the Department of Public Works and Buildings of the State of Illinois on January 2, 1932, formed part of the contract in question. This section provides in part as follows:

"Whenever the improvement provided for by the contract shall have been completely performed on the part of the Contractor, and all parts of the work have been approved by the Engineer and accepted by the Department, a final estimate showing the value of the work will be prepared by the Engineer as soon as the necessary measurements and computations can be made, all prior estimates upon which payments have been made being approximate only and subject to the correction in the final payment. The amount of this estimate, less any sums that have been deducted or retained under the provisions of the contract, will be paid to the Contractor as soon as practicable after the final acceptance, provided the Contractor has furnished to the Department satisfactory evidence that all sums of money due for any labor,

materials, apparatus, fixtures, or machinery furnished for the purpose of such improvement have been paid or that the person or persons to whom the same may respectively be due have consented to such final payment.

“The acceptance by the Contractor of the last payment as aforesaid shall operate as and shall be a release to the Department from all claims or liability under this contract for anything done or furnished or relating to the work under this contract, or for any act or neglect of said Department relating to or connected with this contract.”

It also appears from this affidavit that a final estimate was prepared by the Department of Public Works and Buildings, State of Illinois, pursuant to this provision; that such final payment estimate for Ninety Thousand Three Hundred Fifty-five and $72/100$ Dollars (\$90,355.72) was scheduled by the Department of Public Works and Buildings to the Auditor of Public Accounts for payment to claimant; that the Auditor issued his warrant, countersigned and registered by the Treasurer of the State of Illinois, in the amount of Ninety Thousand Three Hundred Fifty-five and $72/100$ Dollars (\$90,355.72); and that this warrant was sent to claimant by the Auditor, was received, accepted, and deposited for payment by claimant, and was paid by the Auditor of Public Accounts. A photostatic copy of final payment, warrant is attached to the motion.

Prior to acceptance of this warrant, however, at a meeting held in the district highway office in Chicago on November 10, 1937, C. M. Hathaway, Engineer of Construction of the Department of Public Works and Buildings, Division of Highways, advised claimant that acceptance of such final payment would not be considered a release. On November 16th, claimant confirmed this conversation by letter, receipt of which was promptly acknowledged by Mr. Hathaway. Claimant contends that the respondent thereby waived the release provision of the contract, and that the motion to dismiss should therefore be denied.

Claimant concedes that where public officers derive their powers from statute, all persons dealing with them are bound to take notice of the statutory limitations, and are bound to see that such officers are acting within the scope of their authority. But claimant contends that the alleged waiver of the release provision was purely an administrative act provided for by the contract itself, citing Section 5 of the Standard Specifications, which formed part of the contract, and which provides as follows :

“Authority of Engineer. All work shall be done under the supervision of the Engineer and to his satisfaction. He shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, manner of performance, rate of progress of work, interpretation of plans and specifications, acceptable fulfillment of the contract, compensations and disputes and mutual rights between contractors under these specifications.”

Claimant contends that this provision was in accordance with the right and duty of the Director of the Department of Public Works and Buildings to prescribe rules and regulations fixing the duties of all persons employed by the Department; that a dispute arose under the provisions of the contract, and the engineer, exercising the power properly delegated to him, resolved the dispute in favor of the claimant except as to a determination of the amounts due.

The Department of Public Works and Buildings is a governmental agency created by the General Assembly. Section 4 of the Civil Administrative Code (Chap. 127, Ill. Rev. Stat.), provides that each department of the State Government shall have an officer at its head who shall be known as a director, and who shall, subject to the provisions of the act, execute the powers, and discharge the duties vested by law in his respective department. It creates the office of Director of Public Works

and Buildings for the Department of Public Works and Buildings. The Road and Bridge Act (Chap. 121, Ill. Rev. Stat.) provides for the powers and duties of the department. Section 3, Subsection 2, provides that the department shall prescribe rules and regulations, not inconsistent with law, fixing the *duties* of all persons employed in the department. It does not provide for the delegation to minor officials of the power and duties vested by law in the director of the department. Section 6 of an "Act in Relation to State Highways" (Sec. 296, Chap. 121, Ill. Rev. Stat.) provides that the Department shall have power to contract for the construction and maintenance of State highways.

The court is of the opinion that the duties of C. M. Hathaway, the construction engineer, were purely administrative; that his attempt to waive the release provision of the contract was not an administrative act, but was an attempt to exercise the power of the director of the department to contract on behalf of the State of Illinois. To conclude otherwise, would enable an employee of a department to contract an indebtedness against the State wholly without authority. The Engineer of Construction, being without authority to waive the release provision of this contract, acceptance of final payment by the claimant constituted a full release to the respondent.

Motion to dismiss is granted; claim dismissed.

(No. 3369—Claimant awarded \$625.21.)

MABEL ALBRIGHT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1943.

WILLIAM S. ELLIS, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*claim under by employee of Lincoln State School and Colony — when award for compensation under Act may be made.* Where it is undisputed that employee of State sustained accidental injuries, arising out of, and in the course of her employment, while engaged in extra-hazardous employment, resulting in temporary total disability, an award may be made for compensation therefor, upon her compliance with the terms of the Act, in the amount, and as provided therein.

ECHERT, J.

On April 9, 1938, the claimant, Mabel Albright, an employee of the respondent at the Lincoln State School and Colony, slipped and fell upon a patch of ice on the grounds of the institution, sustaining a fracture of the left hip. She was hospitalized from the date of the accident until October 15, 1938, and all medical services were furnished by the respondent.

Upon her discharge from the hospital, claimant returned to her home in Lincoln. She walked with crutches until January 15, 1939, and with a cane until the middle of May, 1939. She returned to work on June 1, 1939, at a salary of \$90.75 per month, the same salary she received for the year immediately preceding the injury. Claimant received one month's salary while she was incapacitated. She is a widow with no children under sixteen years of age at the time of the injury.

Claimant and respondent, at the time of the accident, were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of the employment.

The record discloses that claimant suffered a fracture to her left hip about five years prior to the injury

of April 9, 1938. The record also contains a statement of the comparative degrees of functions of the various component parts of each inferior extremity of claimant as determined by two physicians on August 4, 1941. It is not possible, however, for the court to determine from the record what disability, if any, claimant may have as a result of the injury of April 9, 1938, and what disability, if any, she may have as a result of the earlier injury. Furthermore, claimant testified that since she has returned to work, her leg is improving, and that she is able to be on her feet as much as three-fourths of her working day. The record is insufficient to sustain an award for any permanent loss of use of claimant's left leg.

Claimant, however, was totally disabled from April 9, 1938, to June 1, 1939. She is therefore entitled to receive the sum of \$10.47 per week for a period of fifty-nine and five-sevenths weeks, or the sum of \$625.21.

An award is therefore entered in favor of the claimant in the amount of \$625.21, all of which has accrued and is payable forthwith.

(No. 3537—Claim denied.)

JOHN J. BRADECICH, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed November 9, 1943.

SHAPIRO & LAURIDSEN, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L.
MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—burden of proof in claims under is on claimant—failure to sustain bars award. The general rule of law that the burden of proof is upon plaintiff to prove his case by a preponderance or greater weight of the evidence is applicable to claims

under the Workmen's Compensation Act, and failure to so prove a claim thereunder bars right to an award.

SAME—no specific provision therein for injury to throat and voice. The Workmen's Compensation Act contains no specific provision for compensation for injury to throat and voice, resulting from accidental injuries sustained by employee, within the protection thereof, and in the absence of such provision no award for compensation for such injury can be made under 'Act.

Sam — claim for compensatzon for permanent partial disability—claimant earning as much in suitable employment at tame of hearing as at time of injury—no award can be made for. No award is justified for permanent partial disability where the evidence clearly shows that claimant therefor is able to, and is earning as much in suitable employment at the time of the hearing on said claim, as he did at the time of the accident upon which claim is based.

ECKERT, J.

The claimant, John J. Bradecich, contracted typhoid fever on August 13, 1939, while in the employ of the respondent as an attendant at the Manteno State Hospital. He had worked for respondent continuously for more than one year prior to his illness at a salary of \$87.00 per month.

Claimant was hospitalized at the institution. During his illness, through an error of an employee of the hospital, he was given West Pine Disinfectant instead of West Pine Cough Medicine. As a result, claimant's left larynx is sealed, there are adhesions and scar tissue in the throat, and he is able to speak only in a whisper. Claim is made that, as a result of his illness, claimant also suffered a partial loss of use of his left leg.

Claimant was totally disabled from August 13, 1939, to March 22, 1940, during which period of time he was paid compensation in the amount of \$460.58. He was subsequently disabled from April 9, 1940, to June 12, 1940, during which time he was paid compensation in the amount of \$132.30, making total payments on account of temporary disability in the amount of \$592.88. Upon

his return to work, claimant received the same salary which he had received prior to his illness. He is now working at the Elwood Ordnance Plant at a salary of \$52.00 per week.

No claim is made for temporary total disability, and there is no proof of any medical, surgical or hospital services rendered claimant other than those furnished by the respondent. Claimant seeks an award for \$5,000.00 and pension for life.

At the time of his illness, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the illness and claim for compensation were made within the time provided by the Act. Claimant had no children under sixteen years of age. It is stipulated that a typhoid fever epidemic existed at the Manteno State Hospital from July 10, 1939, to December 10, 1939. The typhoid fever contracted by the claimant was accidental, arose out of and in the course of his employment as an attendant at the Manteno State Hospital, and any injury arising therefrom is compensable under the provisions of the Workmen's Compensation Act. (*Ade vs. State*, No. 3429, decided at the September, 1943, term, of this court.)

The claim for a partial loss of use of claimant's left leg, however, is not sustained by the evidence. Proof as to that portion of the claim is wholly inadequate. Claimant has sustained an injury to his throat and voice, but the Workmen's Compensation Act contains no specific provision for compensation of that type of injury. The only applicable provision of the Act is Section 8(d), which provides that an employee partially incapacitated from pursuing his usual and customary 'line of employment may receive compensation, subject to certain limitations, equal to fifty per cent 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 proof in this case shows that the claimant immediately subsequent to his illness was employed with no change in salary, and that claimant more recently was employed at a salary in excess of that which he earned at the time of his illness. He is therefore not entitled to an award.

Award denied.

(No. 2632—Claim denied.)

MARTIN BUSEKRUS, Claimant, *vs.* **STATE OF ILLINOIS**, Respondent.

Opinion filed November 9, 1943.

GEORGE DARMSTATTER AND **PAUL H. REIS**, for claimant.

GEORGE F. BARRETT, Attorney General; **GLENN A. TREVOR**, Assistant Attorney General, for respondent.

PRINCIPAL AND AGENT—authority of agent of State—extent of—one dealing with bound to know—when State not bound by contract of Superintendent of Highways. One entering into an agreement with the Superintendent of Highways, purporting to bind State to improve his land, in consideration for a conveyance of other land to State for use in construction of a public highway is bound to ascertain the extent of the authority of such person to bind the State, and if he has no authority so to do, the State cannot be bound by such agreement.

CONTRACTS—purporting to bind State—entered into with one having no authority so to do—void, and no recovery can be had thereon. A contract entered into with an officer, agent or employee of the State, purporting to bind State is void and no recovery can be had thereon where such officer, agent or employee had no power or authority to act for State therein or bind it by such contract.

ECHERT, J. .

Claimant, Martin Busekrus, a resident of the City of Belleville, Illinois, is the owner of a lot adjoining Free-

burg Avenue in the City of Belleville, on Route 13, on the "Southern Belt Line." The lot is located on the northwest corner of the intersection. Claimant alleges that after the respondent had constructed this cement highway, but before it was completed, he opened a garage on the premises, and installed gasoline pumps; that subsequently S. F. Wilson, Superintendent of Highways in charge of the office of the Division of Highways at East St. Louis, agreed to make certain improvements on the property; that the improvements were in consideration of the conveyance by claimant to the respondent of a strip of land adjoining the highway and lying between it and the property occupied by claimant. Claimant further alleges that, relying upon this agreement, he thereafter conveyed the strip of ground in question to the respondent; that after the execution and delivery of the deed, the respondent refused to carry out the agreement; and that claimant has therefore suffered damages in the sum of \$2,500.00.

Claimant testified that his lot is approximately 50 x 127 feet, fronting 50 feet on Freeburg Road and 127 feet on the Belt Line; that Mr. Wilson requested he, deed to the respondent a strip of ground along the Belt Line so as to make a round corner at the intersection; that in return for this strip, the respondent would lay concrete from the lot line to claimant's lunch room and garage; that the improvement agreed upon was never made; that as a result of the failure of the respondent to perform the agreement, and as a result of the improper construction of the Belt Line, the drainage at the intersection is inadequate; that rains carry away the ground in front of claimant's place of business, and at times water stands nine inches deep on his garage floor. There is also considerable testimony as to various items of damage to

fixtures in the garage as well as to the garage itself, damage resulting from inadequate drainage.

From the record it appears that the agreement of the Superintendent of Highways to improve claimant's land was made without authority, and is therefore void. (*Strandberg & Son, Co. vs. State*, No. 3611, decided at the September, 1943, term of this court; *Harbeck vs. State*, No. 3502, decided at the November, 1943, term of this court.) It remains undisputed, however, that the claimant has received nothing for the land conveyed, and nothing for any damage to that portion of his property not taken for public use. Section 13, Article 2 of the Constitution provides that "private property shall not be taken or damaged for public use without just compensation." To permit the respondent to acquire private property through unauthorized promises of its agents and employees and without compensation would be in direct derogation of the constitutional provision.

Claimant, however, is not entitled to compensation on the basis of the alleged agreement, so that there is no evidence in the record from which the court can determine claimant's damages. There is no proof of the value of the land taken, and no proof of the difference, if any, between the fair cash market value of the adjoining land just prior to the construction of the highway and just subsequent to its completion.

An award is therefore denied.

(No. 3594—Claimant awarded \$3,218.81 and a pension.)

LOUIS EERTMOED, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1943.

LOUIS F. KNOBLOCK, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award, including a pension, may be made under for total permanent disability.* Where it is undisputed that an employee of the State sustained accidental injuries, arising out of and in the course of his employment, while engaged in extra hazardous employment, resulting in total permanent disability, an award for compensation therefor will be made, in accordance with the provisions of the Workmen's Compensation Act, including a pension, as provided therein, where such employee complied with the requirements of said Act.

FISEER, J.

This claim was filed on March 13, 1941, and the record completed on October 1, 1943.

The claim is for injuries sustained by claimant while employed by the State of Illinois in the Department of Public Works and Buildings, Division of Highways.

Claimant seeks temporary total and total permanent compensation until such time as said payments reach the equivalent of a death award, and thereafter a compensation for life as prescribed by law.

The record consists of the complaint, amendment to complaint, transcript of testimony, claimants' abstract of evidence, report of the Division of Highways, statement, brief and argument of claimant, and the statement and argument on behalf of respondent.

The record shows that claimant, Louis Eertmoed, on March 13, 1940, while employed by respondent in the Division of Highways was engaged in maintenance work spreading cinders upon the icy pavement upon the easterly part of the Cedar Street Bridge over the Illinois River in the City of East Peoria, Tazewell County, Illinois.

The record further shows that claimant was performing duties for which he was employed and that while

doing so the truck upon which claimant was working was involved in an accident with another automobile truck owned by the Derges Bottling Company of the City of Peoria, which truck was being driven by an employee of the said Derges Bottling Company, by the name of William Henry Dozard. As a result of said collision claimant was thrown from the truck upon which he was working to the pavement of the said Cedar Street Bridge and received severe injuries from which he has not recovered and from which he has become wholly and completely incapacitated and unable to perform any labor or work for remuneration or profits.

All medical and surgical costs and charges incurred have been paid by respondent.

No jurisdictional questions are involved and there is no dispute as to the facts in this claim or the law applicable thereto. There is ample proof to sustain claimant's allegation that he is permanently incapacitated and respondent by the Attorney General admits that

"it is the opinion of the respondent in this claim that the claimant has sustained a permanent disability and that he is permanently disabled from carrying on his usual occupation. It is further the opinion of the respondent that claimant at the present time is totally disabled and is entitled to complete and total disability compensation under the Workmen's Compensation Act * * * and therefore recommends wholeheartedly the payment of complete and total disability compensation in this claim."

The admissions and recommendations of the Attorney General are wholly warranted and justified by the facts of this case and the testimony of eminent physicians and surgeons as to the injury.

We therefore find that the claimant at this time is totally disabled and is entitled to the benefits provided in the Workmen's Compensation Act for such cases. Claimant had one child under the age of 16 years at the time of the injury.

Employees in the same class of work as claimant work less than 200 days per year. His regular daily wage was \$4.00. This when multiplied by 200, as required by Section 10 of the Workmen's Compensation Act would make his annual earnings \$800.00. Divided by 52 his average weekly wage would be \$15.38. One-half of this would be less than the minimum under Section 8(j) making this a minimum case. Under Section 8(j) the minimum for an employee with one child under 16 years of age is \$11.00. Increasing this 10% makes the weekly compensation rate \$12.10. Section 8(f) provides for payments of this amount per week until the amount of a death benefit has been reached and thereafter a pension of 8% annually of the death benefit payable in monthly installments. The amount of the death benefit, four times the annual earnings of \$800.00 is \$3,200.00. This is increased under Section 7(h) by \$350.00 for one child under 16 to \$3,550.00. Claimant was paid \$331.19 for unproductive time which must now be deducted leaving a balance of \$3,218.81 to be paid in weekly installments of \$12.10 each. After this amount is fully paid claimant will be entitled to a pension of 8% of \$3,550.00 or \$284.00 per year payable at the rate of \$23.67 per month.

An award is therefore entered in favor of claimant, Louis Eertmoed, in the sum of \$3,218.81, payable \$1,508.01 which has accrued and is payable forthwith, and the balance of \$1,710.80 payable in weekly installments of \$12.10 per week for 141 weeks beginning November 16, 1943, and a final payment of \$4.70 and thereafter a pension during the lifetime of claimant of \$23.67 per month.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3555—Claimant awarded \$422.50.)

MARY EVANS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1943.

SHAPIRO & LAURIDSEN, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General., for respondent.

WORKMEN'S COMPENSATION ACT—*attendant at Manteno State Hospital within protection of—contraction of typhoid fever while so employed—when deemed accidental injury arising out of and in course of employment—compensable tender.* Where attendant at Manteno State Hospital contracted typhoid fever, while engaged in the performance of her duties at said institution, during an epidemic of such disease therein, resulting in temporary total disability and necessitating expenditures for medicines, medical and nursing care, which it appears State was unable to furnish, and which were reasonably necessary to cure or relieve the effects of such disease, an award may be made for reimbursement for such expenditures where charges therefor are reasonable and just, in accordance with provisions of the Workmen's Compensation Act, upon compliance by employee with requirements thereof, as such contraction of said disease is deemed to be an accidental injury arising out of and in the course of employment.

SAME—*permanent total disability—unsupported testimony of claimant as to is insufficient to justify award for under.* The general rule of law that the burden of proof is upon the plaintiff to prove his case by a preponderance or greater weight of the evidence, is applicable to claims under the Workmen's Compensation Act, and where the only evidence in support of claim for permanent total disability is the unsupported testimony of claimant the evidence is insufficient to justify award therefor.

SAME—*partial disability—failure to show earnings or ability to earn after accident—no basis on which to compute award.* Where claimant fails to produce any evidence of amount of earnings, or as to her ability to earn in suitable employment after accident, there is nothing from which Court could compute amount of award, for partial disability, if claimant were entitled thereto.

ECKERT, J.

Claimant, Mary Evans, contracted typhoid fever on August 20, 1939, while in the employ of the respondent as an attendant at the Manteno State Hospital. Because

of the crowded conditions and lack of medical facilities at the hospital during the time of her illness, claimant, at the request of the hospital officials, secured her own physician and her own nurses. She returned to work on August 13, 1940. On December 30, 1940, she left the institution "on account of my health." During the period of her illness, she was paid by respondent the total sum of \$617.39.

Claimant testified that since December, 1940, she has been unemployed because of ill health resulting from typhoid fever; that she has arthritis, colitis, and hemorrhoids; that she is in a very nervous state; that she has severe pain in her legs; and that none of these conditions existed prior to her illness of August 20, 1939.

Dr. O. A. Phipps of Manteno, Illinois, testified that he was claimant's physician from the time that she became ill with typhoid fever to January, 1940. He stated that in January, 1940, she was still suffering from chronic colitis, a complication from the typhoid fever; that as a result of her illness she suffered from a weakness in the lower extremities, a nerve involvement, arthritis, and chronic inflammation of the intestines.

At the time of her illness, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the illness and claim for compensation were made within the time provided by the Act. Claimant had no children under sixteen years of age. It is stipulated that a typhoid fever epidemic existed at the Manteno State Hospital from July 10, 1939, to December 10, 1939. The typhoid fever contracted by the claimant was accidental, arose out of and in the course of her employment as an attendant at the Manteno State Hospital, and any injury arising therefrom is compensable under the provisions of the

Workmen's Compensation Act. (*Ade vs. State*, No. ,

however, is wholly insufficient to sustain an award for total permanent disability. Claimant may be partially incapacitated, but under Section 8' (d) of the Workmen's Compensation Act, an employee partially incapacitated from 'pursuing his usual and customary line of employment must prove 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 record in this case shows that the claimant returned to work after her illness; that she subsequently quit because of a physical condition existing in December, 1939, and January, 1940. (Other than her own statement that she is unable to work, there is no showing as to what she is able to earn in suitable employment. She is obviously a person who has allowed her fears to overcome her better judgment, and for whom proper employment would be a restorative. No award can be made for partial incapacity.

Claimant, however, is entitled to be reimbursed for the following medical expenses :

For the services of Dr. O. A. Phipps, Manteno, Illinois, \$113.25.

For the services of nurses in hospital and at home, \$190.70.

For miscellaneous items, \$118.56.

Award is therefore entered as follows :

For the use of Dr. O. A. Phipps, the sum of \$113.25;

For reimbursement of claimant for nursing services, \$190.70;

For reimbursement of claimant for miscellaneous medical items, \$118156; being a total award of \$422.50, which is payable forthwith.

(No. 3808—Claimant awarded \$4,700.00.)

EVA E. GUINTO, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1943.

Claimant, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*When award may be made for death of employee thereunder.* Where an employee of the State sustains accidental injuries, arising out of and in the course of his employment, while within the protection of the Workmen's Compensation Act, resulting in his death, an award may be made for compensation therefor to those legally entitled thereto, in accordance with the provisions of the Act, upon compliance with the requirements thereof.

ECKERT, J.

Claimant, Eva E. Guinto, is the widow of Philip Guinto, deceased, a former Sergeant of the Illinois State Police. On August 5, 1943, while riding a motorcycle on Illinois Highway No. 120 near the Village of Hainesville, Lake County, Illinois, to supervise a State Police traffic detail in the City of Waukegan, the deceased apparently lost control of his motorcycle and was thrown to the pavement. He died immediately thereafter. A coroner's jury returned a verdict of accidental death while on active duty. Claimant, as widow of the deceased officer, seeks an award under the provisions of the Workmen's Compensation Act in the amount of \$4,700.00.

At the time of the accident which resulted in the death of Philip Guinto, the employer and employee were

operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. Although the evidence is circumstantial, the court is of the opinion that the accident arose out of and in the course of decedent's employment.

Decedent had been employed by the respondent continuously for more than one year prior to his death at a salary of \$195.00 per month. Under Section 10 (a) of the Workmen's Compensation Act, compensation must be computed on the basis of an annual wage of \$2,340.00, making decedent's average weekly wage \$45.00, and his compensation rate the maximum of \$15.00 per week. The record does not show that the decedent had any children under sixteen years of age dependent upon him for Support at the time of his death.

Claimant is therefore entitled to an award under Section 7 (a) of the Workmen's Compensation Act in the amount of \$4,000.00. The death having occurred as a result of an injury sustained after July 1, 1943, this amount must be increased seventeen and one-half per cent, or \$700.00.

Award is therefore made in favor of the claimant, Eva E. Guinto, in the amount of \$4,700.00 to be paid to her as follows:

\$205.72 which has accrued and is payable forthwith;
\$4,494.28 is payable in weekly installments of \$15.00 per week beginning November 9th, 1943, for a period of 299 weeks with an additional final payment of \$9.28.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

(No. 3502—Claimant awarded \$1,000.00.)

ELSIE HARBECK, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1943.

STANTON & STANTON, for claimant.

GEORGE F. BARRETT, Attorney General; ALEC P. BARNES, JR., AND WILLIAM L. MORGAN, Assistants Attorney General, for respondent.

DAMAGE TO PROPERTY—not taken for public use—caused by construction of public improvement — award may be made for. Under Section 13 of Article 2 of the Constitution of Illinois, private property shall not be taken or damaged for public use without payment of just compensation, and where it is damaged by reason of the construction of a public improvement an award may be made for such damage.

PRINCIPAL AND AGENT—authority of agent to bind State — extent of— one dealing with bound to know — when State not bound by contract of Assistant Attorney General purporting to act for Department of Public Works and Buildings. One entering into an agreement with an officer, agent or employee of the State, purporting to bind State to improve her land, contiguous to that conveyed to State for use in construction of public improvement, in consideration of her release, discharge and satisfaction for all damages thereto, caused by such construction, is bound to ascertain the extent of the authority of such officer, agent or employee to so bind the State, and if he has no authority to do so, the State cannot be bound thereby; neither the Attorney General, or any of his assistants, have any right, power or authority to enter into such contracts, for and on behalf of the State and it is not and cannot be bound thereby.

CONTRACTS—purporting to bind State—entered into with Assistant Attorney General having no authority to so bind—void, and no recovery can be had thereon, or for breach thereof. A contract entered into with an Assistant Attorney General of the State, purporting to bind State is void and no recovery can be had thereon, nor for any breach thereof, where he had no power or authority to act for State therein, or bind it by such contract.

FISHER, J.

This claim is for damages to claimant's property caused by the construction of State Bond Issue Route No. 63.

Claimant alleges in substance; that she was the owner of all of

“that part of the Northwest quarter of, the Southwest quarter of Section 14, Township. 41, Range 10, East of the Third Principal Meridian, lying north of Higgins Road, situated in the town of Schaumburg, in the County of Cook, in the State of Illinois.”

That in the construction of State Bond Issue No. 63 the Department of Public Works and Buildings required a portion of the said land and in order to acquire the needed portion instituted condemnation proceedings on June 27, 1939, in Cook County, Illinois, Case No. 93060.

That in the course of the said proceedings claimant reached an agreement with the Department of Public Works and Buildings whereby claimant was paid \$450.00 for the portion of her land actually taken and the Department of Public Works and Buildings agreed to fill the remaining part of claimant's land to a grade one foot above the center of the proposed State Bond Issue Route No. 63.

That the said agreement was as follows :

AGREEMENT

“As an inducement to **ELSIE HARBECK** to execute and deliver her general warranty deed conveying the real estate described in Chicago Title & Trust Company opinion of Title No. 2328837, to-wit:

That part of the West half of the Southwest quarter of Section 14, Township: 41 North, Range 10 East of the 3rd P. M. lying North of Higgins Road, bounded on the North by a line 94 feet Northeasterly of and parallel to the following described line: Beginning at a stone in the West line of said Section 14. 146.53 feet North of the Northwest corner of the Southwest quarter of said Section 14, thence Easterly 1384.45 feet along a curve convex to the Southwest, having a radius of 21, 485.94 feet to a point on the East line of the West half of the Southwest quarter of said Section 14, said point being 293.4 feet South of the Northeast Corner of the West half of the Southwest quarter of said Section 14, situated in the County of Cook, in the State of Illinois. to the Department of Public Works and Buildings of the State of Illinois and

In consideration of her full release, discharge and satisfaction for any and all damages to the real estate owned and retained by her adjoining the aforesaid real estate, which retained real estate is described as:

That part of the Northwest quarter of the Southwest quarter of Section 14, Township 41 North, Range 10, East of the Third Principal Meridian, lying North of Higgins Road, in the County of Cook, Illinois, except that part of the West half of the Southwest quarter of Section 14, Township 41 North, Range 10 East of the 3rd P. M., lying North of Higgins Road, bounded on the North by a line 94 feet Northeasterly of and parallel to the following described line:

Beginning at a stone in the West line of said Section 14, 146.53 feet North of the Northwest corner of the Southwest quarter of said Section 14, thence Easterly 1,384.45 feet along a curve convex to the Southwest, having a radius of 21,485.94 feet to a point on the East line of the West half of the Southwest quarter of said Section 14, said point being 293.4 feet South of the Northeast corner of the West half of the Southwest quarter of said Section 14.

Said Department of Public Works and Buildings of the State of Illinois, does hereby agree to natural dirt fill, without charge to said ELSIE HARBECK, said retained land to a grade of one foot above the center of the road under construction or to be constructed, relocated, improved and widened, abutting, adjoining, or over any of the aforesaid real estate, within six months from the date, hereof;

And in consideration of the foregoing, ELSIE HARBECK, does hereby release and discharge said Department of Public Works and Buildings of the State of Illinois, from any and all damages to the aforesaid real estate owned and retained by her.

Department of Public Works and Buildings
of the State of Illinois by BEN SCHWARTZ
(Seal), Assistant Attorney General and
authorized agent of J. E. CASSIDY, At-
torney General and authorized agent and
attorney for the Department of Public
Works and Buildings of the State of Illi-
nois.

ELSIE HARBECK.

Dated, September 29, 1939."

Claimant further alleges that she subsequently requested the Department of Public Works and Buildings to comply with the said agreement but was informed that it had been discovered that to do so would require 8,000 cubic yards of dirt and that the cost of the same would amount to the sum of \$11,328.75. Claimant prays for an award for \$11,328.75 as and for her damages accruing

through the breach of the aforesaid agreement by the Department of Public Works and Buildings.

The record in this case consists of complaint, amended complaint, stipulation, transcript of evidence, abstract of evidence, motion to dismiss by respondent, claimant's and respondent's statement, brief and argument and numerous exhibits.

Respondent, through the Attorney General, moved to dismiss the complaint on the grounds that respondent is not liable for damages occasioned by the misfeasance, nonfeasance, or malfeasance of its servants or employees.

Respondent contends that the Assistant Attorney General or the Attorney General himself had no authority to enter into a contract such as the contract entered into with claimant herein. Respondent admits that the contract was entered into on the 29th day of September, 1939, the same being signed by one Ben Schwartz, an Assistant Attorney General, the alleged agent of the then Attorney General of the State of Illinois, John E. Cassidy, who had no personal knowledge of the said contract that was signed by his assistant and if he had would have no legal power to authorize the execution of such contract for the Department of Public Works and Buildings of the State of Illinois.

The position of the Attorney General in this respect is sound and with it we must agree. We can find no authority for such an act by an Assistant Attorney General or by a subordinate in the Department of Public Works and Buildings. The alleged agreement is without authority and is void.

Claimant in conveying to Department of Public Works and Buildings of the State of Illinois that portion of the land required by respondent specifically released respondent from all-damages to the land taken but did

not release respondent from damages to the adjoining land owned by claimant. The form of release usually taken by respondent contains a release to adjoining land owned by a grantor but in this case this provision of the release was specifically eliminated for the reason that an agreement had been entered into to fill in the adjoining land owned by claimant to grade level.

The facts of this case are not disputed. It is merely a question of what damages, if any, claimant has sustained and is entitled to recover. Claimant conveyed a certain portion of her land to respondent in consideration of what she thought was a fair agreement to secure her from damages to her adjoining property. The fact that this agreement was entered into by the Department of Public Works and Buildings without authority and by one who had no authority to make such an agreement does not relieve respondent from the liability to pay claimant for any damages which she may have sustained. Section 13, Article 2 of the Constitution provides that "private property shall not be taken or damaged for public use without just compensation."

Respondent acquired from claimant a portion of land and paid for the portion acquired. It did not pay for the damages sustained to the remaining portion. For this damage claimant is entitled to compensation.

The land in question is a triangular piece of property well above grade on the east side thereof and very low and below grade on the westerly side thereof. The portion taken by respondent was all from the east side of the property leaving to claimant the westerly portion which is low and under water in wet seasons. The balance of the land remaining to claimant, is, because of said improvement, now without practical value.

While claimant is not entitled to compensation on the basis of the alleged agreement, she is entitled to compensation on the basis of the depreciation in value her remaining land has sustained by reason of the said improvement. In an effort to determine claimant's damages this court has investigated and viewed the property and after much consideration concludes that claimant has sustained additional damages in the sum of \$1,000.00 for which sum she is entitled to an award.

An award is therefore entered in favor of claimant, Elsie Harbeck, in the sum of \$1,000.00.

(No. 3536—Claimant awarded \$76.36.)

ESTHER VANDERAA KNICKREHM, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1943.

SAMUEL H. SHAPIRO, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN AND GLENN A. TREVOR, Assistants Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when* contraction of typhoid fever deemed accidental injury arising out of and in course of employment—*when* award may be made for compensation for. Where attendant at State institution contracted typhoid fever, while so employed at said institution, during an epidemic of such disease therein, resulting in total temporary disability and necessary expenditures for nursing care, which it appears employer was unable to furnish, an award for compensation for such period of disability and reasonable value of such nursing care may be made in accordance with the provisions, of the Workmen's Compensation Act, where employee complied with requirements of Act, as such contraction of said disease is deemed to be an accidental injury arising out of and in the course of employment.

FISHER, J.

This claim was filed October 24, 1940, and the record of the case completed June 10, 1943.

Claimant alleges that she was employed by respondent at the Manteno State Hospital, Manteno, Illinois, in a clerical capacity and that during the course and out of her employment on the 8th day of September, 1939, she contracted typhoid fever and as a result of such illness claimant became incapacitated and incurred various obligations for medical services for which she asks to be reimbursed and also for compensation under the Workmen's Compensation Act. Claimant was 22 years of age, married and had no children under the age of 16 years at the time of her illness.

The record consists of complaint, stipulation, transcript of testimony on behalf of claimant, waiver of statement, brief and argument by claimant and respondent.

It has heretofore been stipulated in this court that a typhoid fever epidemic existed at the Manteno State Hospital during the month of August, 1939, and after discussing this subject in detail, at the September, 1943, term of this court, in the case of *Mary Ade, Claimant, vs. Respondent*, No. 3429, we decided that typhoid fever contracted under such circumstances as existed at the Manteno State Hospital was compensable under the Workmen's Compensation Act.

It is stipulated herein that claimant became ill from typhoid fever on the 8th day of September, 1939, and returned to work on the 3rd day of January, 1940. She was paid \$209.18 during the period of her illness which was for unproductive time. Her salary was \$60.60 per month. Claimant is entitled to compensation during the period of her illness of 16 $\frac{3}{7}$ weeks at \$8.25 per week or \$135.54. She was paid during her illness for unproductive time the sum of \$209.18 which must be deducted from any amount found to be due claimant. She was

overpaid for temporary total disability the sum of \$73.64.

Claimant seeks reimbursement for doctor bills in the sum of \$201.50, nursing services in the sum of \$150.00, food in the sum of \$24.00 and medicines in the sum of \$18.00.

The record shows that claimant elected to obtain the services of her own physician and having so elected she cannot be reimbursed for his charges (Section 8, Workmen's Compensation Act). Respondent furnished hospitalization, food and necessary medical supplies. There is no showing in the record that claimant was compelled to obtain additional food and medicines. The claim for charges therefore cannot be allowed.

Claimant alleges that she expended the sum of \$150.00 for nursing services and while the proof of the necessity of such services is meager claimant's husband testified that there were 40 employees that had typhoid fever at that time; that there was no nurse available to care for claimant; and that there was a shortage of help at the institution. Under such circumstances we believe claimant is entitled to reimbursement for the charges incurred for nursing services.

Claimant is therefore entitled to an award for \$150.00 for charges incurred for nursing services less the sum of \$73.64 which claimant was overpaid for temporary disability leaving a balance due claimant in the sum of \$76.36.

An award is therefore entered in favor of claimant, Esther Vanderaa Knickrehm, in the sum of \$76.36.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3745—Claim denied.)

WILLIAM V. LAIRD, Claimant, *vs.* **STATE OF ILLINOIS**, Respondent.

Opinion filed November 9, 1948.

Claimant, pro se.

GEORGE F. BARRETT, Attorney General; **ROBERT V. OSTROM**, Assistant Attorney General, for respondent.

CIVIL SERVICE EMPLOYEE — *claim for salary during period when no services were rendered and de facto officer performed duties and received salary therefor—when claim for must be denied.* The payment in good faith of the salary of an employee, classified under the Civil Service Act who is deemed to be a de jure officer, to another who performs the duties of such office and is deemed a de facto officer, constitutes a bar to an action by the de jure officer for the salary of said officeso paid to such de facto officer for performing the duties thereof.

ECKERT, J.

The claimant, William V. Laird, a civil service employee of the Department of Public Welfare of the State of Illinois, was appointed a Kousefather on November 28, 1940, at the Illinois State Training School for Boys at St. Charles. He worked in that capacity until February 10, 1941, at a salary of \$84.00 per month, plus maintenance. Claimant was absent from work from February 10, 1941, to February 13, 1941. On February 13, 1941, claimant was suspended pending a civil service hearing of charges which had been preferred against him. Claimant subsequently resigned.

Claimant alleges that he is entitled to payment of his salary from February 13, 1941, to August 15, 1941, in a total sum of \$504.00. From the report of the Director of the Department of Public Welfare, which is a part of the record, it appears that claimant rendered no service to the respondent after February 10, 1941, and resigned as of May 15, 1941. Correspondence between

the claimant and the Department relative to the payment of salary for the period of March 15, 1941, to May 15, 1941, corroborates this statement. There is nothing in the record to sustain the claimant's allegation that he resigned on August 19, 1941.

It also appears from the report of the Department of Public Welfare that claimant was in charge of Pierce Cottage at the Illinois State Training School for Boys at the time of his suspension; that because of the nature of his duties, and because of the necessity of filling the vacancy at once, claimant was immediately replaced and his salary paid to his successor.

It is true that the right to the salary is attached to and follows the legal title to the office, (*People vs. Bradford*, 267 Ill. 486; *City of Chicago vs. Luthart*, 191 Ill. 516), and the rule applies irrespective of the question by whom the services were in fact actually rendered, and is applied in cases involving the rights of civil service employees as well as in cases involving the rights of elected public officials. (*Wilson vs. State*, No. 3685, decided at the March, 1943, term of this court.)

Claimant, however, has not established his legal title to the office. It does not appear from the record whether claimant was legally or illegally discharged, or whether he was rightfully or wrongfully prevented from performing the duties of his position. The record does not show whether or not he was ever subsequently reinstated by the Civil Service Commission. The record shows only that claimant was absent from work after February 10, 1941, and that on February 13, 1941, charges were preferred against him. During the period of time for which claimant seeks payment of salary, a de facto employee discharged his duties and received his salary. Payment of the salary or compensation of a

public office or employment to a de facto incumbent during the time that he performed its duties prior to the reinstatement of the de jure officer or employee is a defense to an action by the de jure officer seeking payment of the same salary or compensation (*Hittell vs. City of Chicago*, 327 Ill. 443; *O'Conner vs. City of Chicago*, 327 Ill. 586).

An award is therefore, denied.

(No. 3534—Claim denied.)

FLORENCE M. NICHOLS, Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed November 9, 1943.

SHAPIRO & LAURIDSEN, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT — *medical services—other than furnished' by State—procured at instance of employee—when State not liable for.* Where it appears that the State was ready, able and willing, and tendered all proper and necessary medical services to employee sustaining accidental injuries that were reasonably necessary to cure or relieve her from the effect thereof, but that she refused to accept same and elected to furnish same herself, no award can be made for the value thereof.

SAME—claim for permanent total disability—burden of proof on claimant—proof of material facts—must be by test obtainable competent evidence. In claims for compensation under the Workmen's Compensation Act the burden of proof is upon claimant to prove her case by a preponderance or greater weight of the competent evidence, and proof of all material facts and allegations must be by the best, competent evidence obtainable thereof.

Same—same—proof of past or existing objective symptoms—necessary to, justify award. An award for compensation under the provisions of the Workmen's Compensation Act, can only be made for injuries; and only such injuries, as are proven by competent evidence, of which there are, or have been objective, conditions or symptoms proven, not within the physical or mental control of the injured employee herself, and unless there are or have been such objective conditions or symptoms, no award for compensation can be made.

CHIEF JUSTICE DAMRON delivered the opinion of the court :

On August 24, 1940, the above claimant filed her complaint in this court seeking an award under the Compensation Act in the sum of Five Thousand Five Hundred Five Dollars (\$5,505.00), itemized as follows :

To doctor bills, estimated	\$. 365.00
To nurses bills, estimated	140.00
To claimant as provided under the Workmen's Compensation Act of the State of Illinois for total disability.	5,000.00

The record consists of the complaint, testimony of claimant and Dr. Daniel K. Hur, called on behalf of claimant ; Manteno State Hospital records, including laboratory reports of the Department of Public Welfare; stipulation and waivers of statement, brief and argument on behalf of claimant and respondent.

The evidence shows that claimant was employed by respondent at the above named hospital as a postal clerk, and that her duties as such were confined to said post-office. That her salary was \$63.00 per month and maintenance, estimated at \$24.00 per month.

That on the 12th day of August, 1939, she became ill, was hospitalized in said institution, her illness being diagnosed as typhoid fever. She testified that she left the hospital on November 30, 1939, was home one week, returned to the hospital where she remained for two weeks and returned to her home. She testified that during the time she was hospitalized in said institution all medical, hospital and other necessary facilities were furnished her by the respondent. Claimant testified that she did not have confidence in the respondent's doctors who were treating her, and therefore employed one Dr. Daniel K. Hur, of Manteno, Illinois, to attend her.

There is a stipulation on file in this case as follows:

“It is hereby stipulated and agreed by all parties in the above entitled cause through their respective counsel that notice of injury was given to respondent; respondent had knowledge of injury; claim for compensation was made by claimant, and claim was filed with the Court of Claims all within statutory period; that a typhoid fever epidemic existed at the Manteno State Hospital, Manteno, Illinois from July 10, 1939 to December 10, 1939.”

Since the stipulation conforms in every respect with all requirements of Section 24 of the Workmen’s Compensation Act, this court will take jurisdiction of this claim.

Claimant asks this court to allow the following bills incurred by her after she dispensed with the respondent’s services :

Nurse hire	\$ 80.00
Dr. Daniel K. Hur.....	388.00
Household help	612.00
Medicines	110.00

making a total of One Thousand One Hundred Ninety Dollars (\$1,190).

Under the law the respondent must furnish all medical, hospital and other facilities to an employee while injured, and if the respondent fails or refuses, the claimant has the right to employ competent physicians to treat and restore her health. The evidence shows that respondent willingly furnished competent medical services and hospitalization. Claimant was given a private room in the hospital and was treated by Dr. Spika and Dr. Frank of the hospital staff, until she elected to discharge them and employ Dr. Hur to treat her. The remarkable record of recovery of employees and patients during this time, under the direct care of Dr. Spika and Dr. Frank, shows that these men were competent to combat this disease and the claimant was not justified in her opinion of no confidence in the hospital doctors. These bills incurred by claimant cannot be allowed.

Claimant does not make claim for temporary compensation. The record discloses that the respondent paid her regular salary during her illness amounting to the sum of \$650.29 for unproductive work. Claimant was only entitled to temporary compensation. She was not entitled to full salary during this period. She has been overpaid.

The sole remaining question, therefore, for this court to decide is whether or not claimant is a typhoid carrier, as claimed, which has resulted in permanent total disability.

Claimant testified that she took a leave of absence, as she says at the request of the institution because she had been typed as a typhoid carrier. She testified that she sent specimens to the State Health Department from which it was ascertained that she was a typhoid carrier. She now claims that her actions are restricted, that she is not permitted to work in a place where she comes in contact with other people; that she is barred from swimming or bathing in public places and claims that she signed a typhoid agreement with the State of Illinois designating her as a typhoid carrier, although such agreement is not in evidence.

On examination of all the testimony, including that of Dr. Hur, and the hospital and laboratory reports, it is difficult for the court to understand the testimony of the said Dr. Hur pronouncing her a typhoid carrier. As far as the record is concerned he must have based his findings on the laboratory tests which are in evidence. This evidence is not the best evidence and is not conclusive.

There are certain standard tests to ascertain if one is a typhoid carrier which are recognized by the medical profession.

There is no showing in this record that any of the recognized tests were used.

The general rule of law that the burden of proof is upon the claimant to prove his claim by preponderance or greater weight of the evidence is applicable to claims under the Workmen's Compensation Act. And an award for compensation under the provisions of said Act, can only be made, for injuries, and only such injuries as are proven by competent evidence, of which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the injured employee himself, and unless there are or have been such objective conditions or symptoms, no award for compensation can be made. *Peck vs. State*, 10 C. C. R., 56. *Wasson vs. State*, 10 C. C. R., 497.

The evidence in this record does not support her claim of permanent total disability.

An award, therefore, is denied.

(No. 3722—Claim denied.)

LESTER E. PEARMAN, Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed November 9, 1948.

DONALD A. MILLER, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*claim for total permanent disability—evidence insufficient to support where claimant admits he is not totally disabled and medical testimony fails to show total or permanent disability.* Where medical testimony fails to support allegation that claimant is totally and permanently disabled, and claimant himself, at time of hearing, admits that he is not totally disabled, there is no evidence upon which the Court could base an award for total disability.

SAME—burden of proof in claims under is on claimant. The general rule of law that the burden of proof is upon the plaintiff to prove his case by a preponderance or greater weight of the evidence is applicable to claims under the Workmen's Compensation Act.

FISHER, J.

This claim was filed June 3, 1942, and the record completed September 30, 1943.

The claim is for benefits under the Illinois Workmen's Compensation Act for total permanent disability as a result of injuries sustained by claimant during the course of his employment as an auto control operator while employed by the Department of Public Works and Buildings, Division of Highways, State of Illinois.

Claimant alleges that on October 20, 1941, while engaged in his employment and while operating a bulldozer in spreading and leveling of dirt he slipped and fell striking his back against the said tractor and thereby sustained a fracture from which he has become totally and permanently disabled.

Claimant seeks total permanent disability compensation and a pension for life.

The record consists of the complaint, report of the Division of Highways, transcript of testimony on behalf of claimant, statement, brief and argument of claimant, statement, brief and argument for respondent and reply to argument of respondent by counsel for claimant.

It is admitted that respondent had notice of the accident; that the claim was filed in apt time; that claimant and respondent were operating under the Workmen's Compensation Act and that all jurisdictional requirements have been complied with.

Claimant had one child under the age of 16 years at the time of the injury.

Claimant was paid compensation at the rate of \$16.15 per week from the time of the injury to May 23, 1942, amounting to \$506.79. Medical, hospital and transportation expenses and charges in the sum of \$583.38 were paid by respondent.

Claimant now seeks total permanent disability and contends that he has become totally and permanently disabled. There appears to be no evidence to support this contention. Dr. R. J. Rendelman testifying in behalf of respondent (page 17 Transcript of Evidence) testified as follows:

“Q. Would you make a statement as to your opinion of the percentage of disability which will be permanent in this case?

A. Well, that is a pretty hard question, I think. Well, I would answer that this way. It depends all together what Mr. Pearson expects to do in the future. If he expects to continue along the lines he was in when this accident happened, I would say that his disability would be 100%. I don't think he would be able to continue. Of course, if he wants to take up lighter occupation, he would probably get by with lesser degree of disability.

Q. Do **you think** he would be able to do lighter work?

A. Yes, I think so, clerical work, work that wouldn't cause any physical exertion. When you have a spinal-injury, you have a pretty hard proposition to content with. That has been my observation.”

Claimant testifying in his own behalf said on cross examination (pages 11 and 12 Transcript, of Testimony) :

“Q. The State offered you a job did it not?

A. Well, no, what you call a job. Wanted to give me \$12.50, \$18.00 or \$20.00 a week, couldn't live on that. I tell you the way I look at it.

Q. Did you ever refuse to take a job for the State?

A. That one I did. I didn't feel like going to work for \$18.00 crippled, when I had made \$75.00. I could make more well. The Doctor advised me to go to work, light, right work.

Q. Any light work pay \$75.00?

A. I spent 16 years on bulldozers and auto control work.

Q. Did the State at any time tell you they wouldn't give you a better job until your condition was improved?

A. It was only a short job at West Vienna building a road there.

Q. It was light work?

A. It wouldn't last very long.

Q. You don't know what the State would have offered you after that job?

A. I was on the wrong side of the fence. Not anything. I had worked in political job you mention. Knew I was on the wrong side of the fence."

The report of the Division of Highways shows that on May 19, 1942, claimant was transported in an automobile of the Division from his home to Barnes Hospital in St. Louis, Missouri, where he was examined by Dr. J. Robert Key, Professor of Clinical Orthopedic Surgery, Washington University School of Medicine. He was returned to his home the same day. On May 20th Dr. Key reported to the Division in part as follows:

"X-Rays—X-Ray examination reveals no evidence of fracture or dislocation. There is some evidence of hypertrophic, large spurs being present between the vertebrae shown in the upper lumbar region, and there is a suggestion of hypertrophic which is around the margins of the vertebrae in the dorsal region.

Opinion—This man apparently has had a contusion of his back and I believe that his symptoms follow more those which are usually classified as arthritis rather than being purely traumatic in region. I am not able to connect his headaches with the injury.

For this man I would suggest excess vitamins, a low fat diet, postural exercises, increasing activity and calcium and vitamins by mouth in addition to his low fat diet. I think that he would be much better off and recover more quickly and be able to return to his original occupation sooner if he would begin working and gradually increase his activities."

The proof submitted tends to support claimant's allegation that at the present time he is unable to engage in his usual and customary occupation but it is not clear that such disability as he suffers is a result of the injury which he sustained. The burden is upon claimant to prove that he is disabled and that his disability is a direct result of the alleged injury. This he has not done. Claimant himself admits that he is not totally disabled. There is no evidence in the record of this case upon which we could base an award for total disability.

An award must therefore be and is denied.

(No. 3463—Claimant awarded \$3,888.00.)

AMANDA RASCHER, ADMINISTRATRIX OF THE ESTATE OF HENRY RASCHER, DECEASED, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1943.

MILLER & SHAPIRO, for claimant.

GEORGE F. BARRETT; Attorney General; GLENN A. TREVOR, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made for death of employee under Section 7(a) of.* Where it appears that employee of State accidentally contracts typhoid fever, while engaged in the performance of his duties, resulting in his death and at the time he and the State were operating under the provisions of the Workmen's Compensation Act and notice of the accident given and claim for compensation was made within the time provided therein, said accident arose out of and in the course of the employment of said employee and an award for compensation for said death may be made to one entitled thereto in accordance with the provisions of Section 7 (a) thereof.

SAME—*when award for funeral expenses cannot be made.* When an award for compensation is made for death of employee, to one entitled under Act, no award can be made for funeral expenses of employee, an award for such expenses only being justified when employee leaves no one surviving him entitled to compensation under Act.

SAME—*when award for necessary medical and hospital care not justified.* Under the Workmen's Compensation Act the employer is required to furnish all necessary medical and hospital care for an employee sustaining accidental injuries, arising out of and in the course of his employment, but where there is no proof that a request was made of employer to furnish same, and that it failed and refused to furnish same, no award for value thereof is justified 'where same were procured at instance of employee or others acting for him.

SAME—*death of employee — compensation for not payable to administrator.* Under the provisions of the Workmen's Compensation Act compensation for death of employee resulting from accidental injuries thereunder, are not payable to his administrator, but must be paid directly to the beneficiary, if any specified therein.

CHIEF JUSTICE DAMRON delivered the opinion of the court :

This complaint was filed on the 23rd day of February, 1940, seeking an award for the death of Henry Rascher.

It states that the said Henry Rascher was an employee of the respondent as superintendent of the sewage disposal plant at Manteno State Hospital, Manteno, Illinois. That in performing his duties as such superintendent he received the sum of Eighty-one (\$81.00) Dollars per month, amounting to the sum of Nine Hundred Seventy-two (\$972.00) Dollars per annum. That during the course of his employment he contracted typhoid fever at said institution and as a result thereof died on August 30, 1939, leaving surviving him his widow, Amanda Rascher, who was wholly dependent upon him during his lifetime.

The complaint further avers that no medical services were furnished said deceased during his illness but that he was treated by Dr. O. A. Phipps, of Manteno, Illinois, until his death as aforesaid. That bills were incurred by the said deceased and his widow as follows:

For necessary items of medicine, blood tests, etc.....	\$ 15.00
For funeral expenses.....	516.00
Now due and owing to the said Dr. O. A. Phipps for services rendered to deceased.....	53.00

That the respondent has not reimbursed the widow for these expenditures.

The complaint further avers that the respondent had notice of said injury on the 9th day of August, 1939, and that claim for compensation was made in the month of September, 1939, on the Managing Officer of the Manteno State Hospital, as provided by the Workmen's Compensation Act. Claim is made for the above expenditures plus the sum of Four Thousand (\$4,000.00) Dollars as provided under the Workmen's Compensation Act for the death of this former State employee.

Evidence was taken on behalf of the claimant on the 23rd day of April, 1943. The evidence shows that the

averments in the complaint are substantially true. A stipulation has been filed in this case by the claimant, her attorney and the Attorney General by his assistant, which shows that the deceased was first employed by the respondent in August, 1930; that deceased's illness began August 14, 1939; that his rate of pay was Sixty-three (\$63.00) Dollars per month plus maintenance estimated to be Eighteen (\$18.00) Dollars; that he was classified as a laborer; that the sum of Thirty-four Dollars and Fifty-five Cents (**\$34.55**) was paid deceased during the period of his illness for unproductive time, and that he died on August 30, 1939.

There is another stipulation filed herein that a typhoid epidemic existed at Manteno State Hospital, Manteno, Illinois, on July 10, 1939, to December 10, 1939. This court will take judicial notice and give full weight to each stipulation. This record lacks proof of marriage of Amanda Rascher to the deceased and documentary proof must be furnished the respondent within thirty days from the rendition of this opinion.

Under the evidence before it, the court makes the following finding of fact:

That at the time of the accident which resulted in the death of Henry Rascher the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State and notice of the accident and claim for compensation were made within the time provided by the Act and the court is of the opinion that the accident arose out of and in the course of his employment.

That the claimant seeks an award for medicines, blood tests, funeral expenses and doctors' services during the illness of the deceased.

Under the Workmen's Compensation Act the re-

spondent is required to furnish all necessary medical and hospital care for an injured employee but is not chargeable with the funeral expenses in a case such as this one. There is no proof in this record that the respondent failed or refused or that a request was made to the respondent to furnish medical or hospitalization for this deceased employee. Therefore, these items cannot be allowed.

Decedent had been employed by the respondent for more than one year' prior to his death at a salary of Eighty-one (\$81.00) Dollars per month, making his annual salary amount to the sum of Nine Hundred Seventy-two (\$972.00) Dollars. His average weekly wage therefore was Eighteen Dollars and Sixty-nine Cents (\$18.69) and his compensation rate Ten Dollars and Twenty-eight Cents (\$10.28). At the time of his death, claimant, Amanda Rascher, his wife, was his sole dependent, and he had no children under the age of sixteen (16) years dependent upon him for support.

Claimant, therefore, is entitled to an award under Section 7(a) of the Workmen's Compensation Act in the sum of Three Thousand Eight Hundred Eighty-eight (\$3,888.00) Dollars. An award is therefore made in favor of claimant, Amanda Rascher, in the sum of Three Thousand Eight Hundred Eighty-eight (\$3,888.00) Dollars.

The evidence shows that deceased had been paid the sum of Thirty-four Dollars and Fifty-five cents (\$34.55) prior to his death for unproductive work, which must be deducted from the award, leaving a balance due claimant of Three Thousand Eight Hundred Fifty-three Dollars and Forty-five Cents (\$3,853.45) to be paid by respondent in weekly installments for the use of the claimant. Two Thousand Two Hundred Ninety-two Dol-

lars and Forty-four Cents (\$2,292.44), representing 223 weeks at the rate of Ten Dollars and Twenty-eight Cents (\$10.28) per week has accrued as of November 9, 1943, and is payable forthwith in a lump sum. The remainder of said award, amounting to the sum of One Thousand, Five Hundred Ninety-five Dollars and Fifty-six Cents (\$1,595.56) is payable in weekly installments of Ten Dollars and Twenty-eight Cents (\$10.28) for 154 weeks and an additional final payment of Twelve Dollars and Forty-four Cents (\$12.44).

This claim was filed by Amanda Rascher as administratrix of the estate of Henry Rascher, deceased. Under the provisions of the Workmen's Compensation Act, compensation for the death of an employee resulting from accidental death is payable to his beneficiaries, if any, as specified therein. This award therefore is made payable to Amanda Rascher, as the widow and sole dependent of Henry Rascher, deceased.

This court retains jurisdiction of this cause for the purpose of entering any further orders from time to time which may be necessary in this case.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3798—Claim denied.)

THOMAS N. SKINNER, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed November 9, 1943.

MARK O. ROBERTS, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

COURTS OF GENERAL JURISDICTION—*remedy in — failure of claimant to avail self of — bars award.* The Court of Claims was created to provide a remedy to persons where no other adequate remedy existed, and where a full remedy exists, or existed, in a Court of general jurisdiction and claimant failed to avail himself thereof, the Court of Claims is without jurisdiction to make award on claim filed therein.

FISHER, J.

This claim was filed May 17, 1943.

Claimant alleges that he was employed by the State of Illinois as custodian at Camp Lincoln, Springfield, Illinois, from July 1, 1939, to October, 1940. That he was entitled to receive as compensation for such services the sum of \$150.00 per month in accordance with an appropriation for said office, by virtue of House Bill No. 254 approved July 1, 1939. Claimant further alleges that he received only the sum of \$125.00 per month which payment was protested and that claimant made demand upon the respondent for additional payment but received no payment on account of such claim. Claimant seeks an award in the sum of \$400.00 being the difference between the amount appropriated for this position and the amount received by claimant.

The record consists of the complaint, motion to dismiss by respondent and statement, brief and argument on behalf of claimant and respondent.

Respondent contends that the claim should be dismissed for the reason that if claimant was legally entitled to recover he had a remedy in the courts of general jurisdiction.

Claimant had a right to receive the full sum appropriated for the position which he held. Adequate remedies existed in courts of general jurisdiction for the enforcement of this right. Claimant chose to remain in the position, accept and cash the vouchers issued to him and took no action for the enforcement of his rights.

We have consistently held that the Court of Claims does not have jurisdiction to entertain a claim where a full remedy exists or existed in a court of general jurisdiction. The Court of Claims was created to provide a remedy to persons where no other adequate remedy existed. Claimant having failed to pursue his proper remedy he cannot now maintain his claim here. The motion of the Attorney General to dismiss this claim must be allowed.

Having concluded that we are without jurisdiction in this claim it becomes unnecessary to discuss other points raised by respective counsel.

The motion to dismiss is allowed and the claim dismissed.

(No. 3485—Claim denied.)

SPUR DISTRIBUTING CO., INC., A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion on rehearing filed November 9, 1943.

POPE & DRIEMEYER, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

DAMAGE TO PRIVATE PROPERTY—not taken for public use—caused by construction of public improvement—when speculative and not proven by competent evidence award not justified. Where after recognizing the continued operation of claimant's lease subsequent to completion of construction of public improvement, it appears that the items of claimant's loss are speculative and that the alleged damages to its leasehold interest, in property alleged to have been damaged as the result of the construction of a public improvement have not been proven by competent evidence no award can be made.

SAME—same—same—measure of. Where private property is not taken for public use, but it is alleged that same has been damaged by reason of the construction of a public improvement, the proper measure of such damage, if any, is the difference between the fair, cash market value of the property, unaffected by the improvement and its fair,

cash market value, as affected by it, and proof of such difference must be made to justify award for damages.

~~SAME—same—same—loss~~ of or inconvenience to business—not damage to property—not proper element of damages. Inconvenience to, or loss of business suffered by owners or lessees of abutting, or other private property, not taken for public use, during the progress of work in the construction of a public improvement, do not constitute damage to property, within the meaning of the Constitution, but constitute a burden incidentally imposed upon private property adjacent to public work, and no cause of action therefor lies against the State.

ECKERT, J.

On May 15, 1937, the respondent began the construction of two underpasses on that part of St. Clair Avenue in East St. Louis, Illinois, which forms a part of U. S. Highway No. 66. The construction was completed on December 15, 1938. The claimant had previously built and operated a gasoline filling station on property on the south side of St. Clair Avenue leased from the Wiggins Ferry Company. Because of the construction of the underpasses, the station was closed from June 27, 1937, to December 18, 1938. When it reopened, its business was materially less than it had been prior to the construction of the subway.

Claim for damages allegedly suffered by reason of the construction of the two underpasses, in the amount of \$19,915.26, was filed by claimant on April 23, 1940. The claim was denied, the court holding that no award could be made to claimant because no Leasehold existed during a time when a compensable loss could have been suffered, and because the alleged damages were speculative. (*Nauyoks, et al, vs. State, 11 C. C. R. 542.*) On petition, a rehearing was granted.

In the order granting the rehearing, this court found that confusion existed in the record as to the period, if any, during which the leasehold rights of claimant continued after the construction of the subways in question.

The court stated, that although it was not in accord with claimant's theory as to the measure of damages, the petition for rehearing should be granted because the court had failed to recognize the continued operation of claimant's lease following the completion of the subway construction.

After a consideration of the record upon rehearing, and after recognizing the continued operation of claimant's lease subsequent to completion of the subway construction, the court is still of the opinion that the items of claimant's loss are speculative and that the alleged damages to its leasehold interest have not been proved by competent evidence.

An award is therefore denied.

(No. 3491—Claimant awarded \$478.33.)

BERNARD J. TAUB, Claimant, vs. **STATE OF ILLINOIS**, Respondent.

Opinion filed November 9, 1943.

MAX J. BECKER, (LEO SEGALL, of Counsel), for claimant.

GEORGE F. BARRETT, Attorney General; **WILLIAM L. MORGAN**, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*employee of Department of Labor within provisions of—when award may be made under.* Where employee of the Department of Labor, Division of Unemployment Compensation, whose employment necessitates his travel about the State by automobile, sustains accidental injuries, as the result of an automobile accident while in the performance of his duties, an award for compensation therefor may be made, in accordance with the provisions of the Act, upon compliance with the requirements thereof.

ECKERT, J.

The claimant, **Bernard J. Taub**, is an employee of the Department of Labor, Division of Unemployment

Compensation of the State of Illinois. His employment necessitates his travel about the State by automobile. On February 10, 1940, while returning to his Chicago office from a field investigation in Southern Illinois, he was in an automobile accident and sustained a fracture of transverse processes of the third and fourth lumber vertebrae.

He was first attended by Dr. John Horowitz at St. Mary's Hospital in Kankakee, where he remained for twelve days. He was also attended by Dr. George Mueller of Chicago, and subsequently was moved by ambulance to the Edgewater Hospital at Chicago, where he remained for two weeks. He returned to work on April 25, 1940. He received no compensation while he was incapacitated, and respondent, although requested to do so, failed to furnish necessary medical services.

At the time of the accident, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of the employment.

Claimant has paid Dr. Horowitz for his services the sum of \$30.00, Dr. George Mueller, the sum of \$65.00, St. Mary's Hospital, Kankakee, Illinois, the sum of **\$55.45**, and the Edgewater Hospital of Chicago, Illinois, the sum of \$86.10. He also paid the sum of \$65.00 for ambulance transportation from St. Mary's Hospital in Kankakee to the Edgewater Hospital in Chicago.

Claim is made for compensation for the period claimant was totally incapacitated, and for medical and hospital services. No claim is made for permanent disability.

Claimant is entitled to an award for temporary total disability, resulting from the injury, for a period of ten and five-sevenths weeks, at a compensation rate of \$16.50 per week, or a total sum of \$176.78. Claimant is also entitled to be reimbursed for his hospital and medical expenses in the sum of \$301.55.

Award is therefore entered in the total sum of \$478.33, all of which has accrued and is payable forthwith.

(No. 3554—Claim denied.)

GASPER VAILLANCOURT, Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed November 9, 1943.

SAMUEL H. SHAPIRO, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—when payment of amount of compensation provided in Act for injury sustained precludes further award. When it clearly appears that an employee of the State has already been paid compensation, in an amount in excess of that provided by the Workmen's Compensation Act for the injuries sustained, no further award can be made.

FISHER, J.

This claim was filed on November 6, 1940, and the record of the case completed June 9, 1943.

The record consists of complaint, transcript of testimony on behalf of claimant, stipulation and waiver of statement, brief and argument by claimant and respondent.

The claim is for benefits under the Workmen's Compensation Act. Claimant alleges that he was employed as a Night Supervisor of Attendants at the Manteno

State Hospital and that while so acting on the 24th day of August, 1939, he contracted Typhoid Fever as a direct result of his employment and seeks compensation therefor in the sum of \$5,000.00, medicine and hospital expenses in the sum of \$150.00 and doctor bills, etc., in the sum of \$294.00.

It is shown by stipulation that claimant became ill on the 23rd day of August, 1939, that he returned to work on the 28th day of November, 1939, that his wages were paid during period of illness amounting to \$251.24, claimant was confined to Manteno State Hospital during his illness and it appears that hospitalization and all medical services were furnished by respondent. Claimant testified that he paid \$251.24 for medicine and nursing services, but there is no showing that it was necessary to obtain nursing service in addition to that furnished by respondent.

Claimant's salary was \$78.75 per month plus maintenance of \$24.00 per month, or a total of \$102.75 per month. Claimant's compensation rate is \$13.04 per week.

Claimant is entitled under the Workmen's Compensation Act to receive the sum of \$13.04 per week for 13 5/7 weeks or a total of \$178.72. He was paid for unproductive time the sum of \$251.24 which must be deducted from the compensation due claimant. He is therefore overpaid.

Claimant not being entitled to any further payment the claim for an award is denied.

(No. 3167—Claim denied.)

THOMAS J. WALSH, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1943.

Claimant, pro se.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—claim for compensation under must comply with rules of Court—failure to so comply may render claim insufficient. A claim for compensation under the Workmen's Compensation Act must comply with Rules 4(a) and 5(a) of the Court of Claims, and a failure to so comply with said rules renders claim insufficient for consideration by the Court.

PLEADING—rules of Court—when failure to comply with justifies dismissal of claim. Complaint must substantially comply with Rules 4(a) and 5(a) of the Court of Claims, and where there is no compliance **with** said rules, a dismissal of the claim is justified.

CHIEF JUSTICE DAMRON delivered the opinion of the court:

The complaint in this case was filed on the 17th day of December, 1937. It alleges that claimant, on the 6th day of April, 1934, was employed as District Engineer of Materials, Public Works and Buildings, Division of Highways, and on said date while driving on U. S. Route No. 45, from Mattoon to Champaign, Illinois, on business of his employment, an automobile driven by Joe Groff of Olney, Illinois, ran into and collided with the automobile in which claimant was riding, striking the same with great force and violence and severely injuring the claimant.

The claimant further avers that at the time of the injury his salary amounted to the sum of Two Hundred Fifty (\$250.00) Dollars per month. That as a result of said collision the claimant sustained a broken left femur, concussion of the brain, cuts, bruises and a severe puncture wound of the left ischis, when a splinter of wood was driven into the flesh, muscles, tendons and other parts of claimant's body.

The claimant further avers that after said accident he was taken from the scene thereof to the Methodist

Memorial Hospital at Mattoon, Illinois, where he was attended by Dr. B. H. Hardinger ; that thereafter claimant was removed to the Paris Hospital, Paris, Illinois, where he was attended by Doctors F. M. Link and H. D. Junkin; that claimant remained there for approximately three months, after which he was removed to his home. Claimant returned to work on the 5th day of August, 1934, and remained so employed by respondent until October 1, 1933, when on account of his alleged aforesaid injuries he was compelled to enter the Paris Hospital where he was again operated upon. Claimant avers he became totally disabled thereafter for a period of one month.

The complaint further avers that on the 22nd day of November, 1936, he again became incapacitated because of said injuries and was compelled to and did enter the Presbyterian Hospital at Chicago, Illinois, where he was again operated upon by Dr. Vernon C. David, from which he claims total disability to January, 1937. He claims that as a result of said injury a fistulous tract developed which constantly drained and caused a running sore which necessitated claimant to receive medical attention from time to time and that he has been advised by various doctors and physicians that it may again become necessary for him to undergo further operations and that the said fistulous tract may gradually result in the total permanent disability of claimant and may even result in claimant's death.

It is admitted in the complaint that the following bills have been paid by the respondent on account of the said injury :

Dr. R. Vernon David.	\$160.00
Dr. B. H. Hardinger	48.50
Dr. Mary Lyons	10.00
Dr. H. Junkin.....	275.00

Dr. F. M. Link.....	269.50
B. Thiel, Nurse.....	385.00
Meth. Memorial Hospital..	32.00
Paris Hospital	818.65
Presbyterian Hospital	172.50
J. H. Reed & Sons.....	1.50
Wm. A. Zieren.....	17.50
Rowe Drug Co.	8.10
Total	\$2,198.25

The claimant's salary was paid by respondent during all the time he was absent from his employment on account of said injury sustained according to the complaint.

Claimant seeks an award for all compensation which may hereafter become due him in accordance with the Workmen's Compensation Act, because of any partial or total disability which he may suffer at any time in the future as a result of an aggravation or "flare up" of his disability. He further seeks an award for all medical, surgical and hospital treatment which may become essential to relieve or cure an aggravation or "flare up" of his disability.

The complaint further shows that at the time of the injury claimant had two children under 36 years of age dependent upon him for support.

The record consists of the complaint and the report of R. T. Cash, District Engineer, Division of Highways.

On October 9, 1943, in response to a rule heretofore entered by this court in the above entitled cause, the respondent files a motion to strike for the reason that the complaint does not comply with Rule 4(a) and Rule 5(a) of this court.

From a reading of the complaint it is evident that this claimant suffered a severe injury the extent of which is undetermined by the record in this case.

Evidence must be taken on this claim to inform this court if this accident arose out of and in the course of the employment of claimant; if Section 24 of the Workmen's Compensation Act has been complied with; the nature and extent of claimant's injuries; the present physical condition of said claimant, and the earnings by claimant since this injury.

The complaint states that three operations were performed on claimant and that he was hospitalized in three different hospitals. The attending physician should file reports and the hospital record should be incorporated in this record.

The complaint above referred to does not comply with the two rules mentioned in said motion. And for that reason the motion must be sustained.

The claimant is given thirty days within which to amend his complaint, and if he declines or fails to so amend within this period this order of dismissal will become final as provided under Rule 31 of this court.

(No. 3558—Claim denied.)

DOVIE CONWAY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 14, 1943.

Rehearing denied November 10, 1943.

HARRIS B. GAINES, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

ILLINOIS NATIONAL GUARD—claim for compensation for death of member of—alleged to have resulted from disease contracted while in performance of &&ties—proof necessary to sustain under Section 11 of Article XVI of Military and Naval Code. In claim for compensation under provisions of Section 11 of Article XVI of Military and Naval Code, for death of member of Illinois National Guard, alleged to have

resulted from disease contracted by such member while in the performance of his duties, it must be clearly proven that such alleged disease was contracted by such member while he was performing his duties as an officer or enlisted man in pursuance of orders from the Commander-in-Chief.

SAME—same—same—when evidence insufficient to sustain claim. Evidence in support of claim for compensation, under Military and Naval Code, for death of member of Illinois National Guard, consisting of affidavits of three officers thereof, two of which are based upon conclusions, rather than facts, expressing belief that death of said member resulted from disease contracted while in the performance of his duties as such, is insufficient to sustain claim where a Military Board convened for the purpose of inquiring into the cause of said death finds that same was due to an affliction that existed prior to the time said member entered upon his field training, and was not contracted while in the performance of his duties, in pursuance of orders from the Commander-in-Chief.

ECKERT, J.

The claimant, Dovie Conway, is the widow of Hezekiah N. Conway, deceased, a corporal, 8th Infantry Regiment, Illinois National Guard. From August 9, 1940, to the date of his death, the deceased was on active duty with his regiment at Camp McCoy, Wisconsin. In civilian life, he was a skilled laundry worker, earning approximately \$1,800.00 a year.

The complaint alleges that the deceased was a man of regular habits, sober and industrious and prior to August 9, 1940, in good health except for a slight diabetic condition. The complaint also alleges that between August 9, 1940, and August 24, 1940, while serving with his regiment, the deceased became ill from exposure to severe cold and damp weather conditions; that he contracted pneumonia as a result of his military service, and while performing his military duties; that he became acutely ill on August 23, 1940, was taken to the base hospital at Camp McCoy, and died two days later. Claim is made for compensation on the ground that the death occurred while the deceased was engaged in the line of

duty with the 'military forces of the State of Illinois.

On August 25, 1940, a military board, called to inquire into the death of the deceased, found that Corporal Conway became ill during field maneuvers as a consequence of an affliction which existed prior to his entry on field training, and made a diagnosis of diabetes mellitus and cardio-vascular syphilis. The report shows the first diagnosis to have been made by Major Homer Cooper on August 24, 1940. The board found that the cause of death was not incurred in line of duty, but existed prior to deceased's entry on field training.

The case is submitted to the court upon the verified complaint, the report of The Adjutant General, Leo M. Boyle, the report of the military board, and three affidavits. Fleetwood M. McCoy, one of the affiants, and a Second Lieutenant, 8th Infantry, Illinois National Guard, stated that the regiment encountered unusually cold and severe weather conditions during the period of August 9th to August 24th, 1940; that Corporal Conway's assignment to supply service necessitated long and continuous hours of work; that his principal duties confined him to a tent, the entrance of which was exposed to the elements continuously; and that Corporal Conway was apparently well and in good health at the beginning of the period of field training. Lieutenant McCoy further stated that it was his belief the illness contracted by Corporal Conway was in line of duty and was a result of exposure.

Roosevelt Brooks, a Junior Officer in the same regiment, stated that he made a preliminary examination and diagnosis of Corporal Conway on August 23, 1940, and directed that he be taken to the Base Hospital; that Corporal Conway, during the period of August 9, 1940, to August 23, 1940, was exposed to unusually rainy, damp, and chilly weather; that the diabetic condition of

the deceased was under control and inactive during the time he was at Camp McCoy. He was of the opinion, based upon his knowledge and experience as a physician, and upon reasonable medical certainty, that the secondary cause of Corporal Conway's death was diabetes, but that the primary and immediate cause was pneumonia due to unusual exposure.

William O. R. Bourne, Captain, 8th Regiment, Illinois National Guard, and Personnel Adjutant, stated that the diabetic ailment of Corporal Conway during the period in question was apparently under control, and that he appeared fit and hardy. In the light of his experience as a soldier and officer, and the previous state of health of Corporal Conway, the Captain stated he was convinced Corporal Conway died as a result of exposure, aggravating the diabetic condition, occasioned in the line of duty while participating in regimental field training.

The claim arises under Section 11 of Article XVI of the Military and Naval Code of this State, which provides that in every case where an officer or enlisted man shall be injured, wounded, or killed while performing his duty in pursuance of orders from the Commander-in-Chief, he or his heirs or dependents, shall have a claim against the State for financial help or assistance, and the State Court of Claims shall act on and adjust the same as the merits of each case may demand. Pending action of the Court of Claims, the Commander-in-Chief is authorized to relieve emergency needs upon recommendation of a board of three officers, one of whom shall be an officer of the medical department.

Under the statute, it is incumbent upon the claimant to prove that the injury or death occurred while the officer or enlisted man was performing his duty in pursuance of orders from the Commander-in-Chief. In other

words, the injury or death must occur in the line of duty. The military board, which was convened immediately upon the death of Corporal Conway, found that the injury or death was not so incurred, but was due to an affliction which existed prior to the time the deceased entered upon his field training. The board found that the death was caused, not by exposure or pneumonia, but by diabetes mellitus and cardio-vascular syphilis. The report of the Adjutant General indicates that the deceased entered the hospital in a very emaciated condition.

The affidavits which have been submitted in behalf of the claimant are in substance the conclusions of three members of deceased's regiment who believe the deceased died as a result of exposure rather than as a result of the physical disability found to exist by the military board. The inference which Lieutenant McCoy draws from the facts stated in his affidavit is not justified by the facts themselves. The same is true of the affidavit of Captain Bourne. The affidavit of Roosevelt Brooks, although of greater value because of his examination of the Corporal when he was first taken acutely ill, is less persuasive than the report of the military board.

Upon consideration of the entire record, the court is of the opinion that the findings of the military board are correct; that Corporal Conway's death was caused by diabetes mellitus and cardio-vascular syphilis, and was not caused by any injury or disease suffered or contracted in the line of duty, or while performing his duty in pursuance of orders from the Commander-in-Chief.

An award is therefore denied.

(No. 3759—Claimant awarded \$477.50.)

JEFF ALDRIDGE, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed January 12, 1944.

LLOYD H. MELTON, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM AND C. ARTHUR NEBEL, Assistants Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—when award justified under. Where employee of State sustains accidental injuries arising out of and in the course of his employment, while engaged in an extra-hazardous enterprise, an award may be made for compensation therefor, in accordance with the provisions of the Workmen's Compensation Act, upon compliance by said employee with the requirements thereof.

FISHER, J.

The complaint in this case was filed on September 28, 1942, asking for benefits under the Illinois Workmen's Compensation Act. It is alleged that claimant was employed by the Department of Public Works and Buildings, Division of Highways, of the State of Illinois, and that claimant was injured while in the performance of his duties. The complaint alleges that while engaged in the act of mowing meeds and grass along Highway Route No. 34 about two miles south of the city of Harrisburg, Illinois, claimant was struck by a trailer which came loose from a passing car, with the result that the bone of his right leg was fractured above the ankle.

The complaint further alleges that the injury arose out of and in the course of his employment.

The complaint further alleges that claimant received medical treatment at the Lightner Hospital in Harrisburg, Illinois, and that respondent paid the medical and hospital expenses and compensation to claimant for tem-

porary total disability from September 30, 1941, to February 28, 1942, in the sum of \$310.70.

The complaint further alleges that respondent had notice of the injury on the date the accident occurred; that at the time of the injury claimant had two children under the age of 16 years; that claimant's average weekly earnings were \$24.00; that no corporation or third party has any interest in the claim; and that claimant is entitled to compensation for the partial loss of the use of his right leg.

The record in this case consists of the complaint, report of the Division of Highways, testimony presented on behalf of the claimant, a stipulation between the claimant and respondent that the report of the Division of Highways shall constitute the evidence of the respondent and have the affect as being introduced on direct testimony, a waiver of statement, brief and argument on behalf of the claimant, and statement, brief and argument on behalf of respondent.

The facts as alleged by the claimant, are sustained substantially by the report of the Division of Highways. All jurisdictional requirements have been met, and this Court has jurisdiction of the claim. The claimant is entitled to the benefits provided in the Workmen's Compensation Act.

Claimant was an employee of the State of Illinois, Division of Highways, and engaged in the performance of his duties at the time of the accident. It appears from the record that the injury on September 29, 1941, arose out of and in the course of his employment. As the claimant is asking solely for compensation for a permanent disability, the only question before this Court appears to be whether or not a permanent disability does exist, and if so, to what extent.

The report of the Division of Highways, stipulated as part of the record in this case, shows that compensation was paid to the claimant for total temporary incapacity for the period from September 30, 1941, to February 28, 1942, in the amount of \$310.73, and this is admitted in the complaint. Compensation for total temporary incapacity was paid for 152 days or 21 5/7 weeks. The report further shows that the claimant was first employed on May 21, 1941, and had not been engaged in the employment of the respondent for one year at the time of the injury. Therefore, the basis for computing his compensation must be in accord with paragraphs (c) and (e) of Section 10 of the Workmen's Compensation Act.

The report shows that claimant was employed at the rate of 50c an hour; that eight hours constituted a normal working day; and that employees engaged in the same capacity at the time of the accident worked for the Division less than 200 days per year. By paragraph (e), Section 10, claimant's compensation is computed on the basis of \$4.00 a day for 200 days, giving him an annual wage of \$800.00, or an average weekly wage of \$15.38. Paragraph (b), Section 8, Workmen's Compensation Act, provides that compensation for temporary total incapacity shall be 50% of the weekly wage, but not less than \$7.50 nor more than \$15.00 per week. Paragraph (j) subparagraph 2 of Section 8, provides that where a weekly minimum of \$7.50 is provided, and the employee has children under the age of 16 years, the minimum shall be increased according to the number of children. The claimant in this case had two children under the age of 16 years, and is therefore entitled to the minimum rate of \$12.00 per week, which amount is further increased by 10% by paragraph (i). Therefore.,

claimant is entitled to \$13.20 per week for 21 $\frac{5}{7}$ weeks, or \$286.63, as compensation for his temporary total incapacity.

As the claimant has been paid \$310.73, there has been an overpayment in the amount of \$24.10, which must be deducted from any award found due him.

It is not disputed that claimant has suffered a permanent partial loss of the use of his right leg, but there is some disagreement as to the degree of the loss. From all the evidence, we are of the opinion that claimant, as a result of the injury, has permanently lost 20% of the use of his right leg. He is, therefore, entitled to receive the sum of \$13.20 per week for a period of 38 weeks, or \$501.60. This amount must be reduced by \$24.10, the amount which he was overpaid for his temporary total incapacity.

An award is therefore entered in favor of claimant, Jeff Aldridge, in the sum of \$477.50, all of which is accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees.)"

(No. 3810—Claim denied.)

CHICAGO COLD STORAGE WAREHOUSE CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 12, 1944.

ROBERT W. MORE, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

FRANCHISE TAX—paid before due — corporation dissolved after payment but before commencement of period for which paid—is voluntary

payment and cannot be recovered. Where corporation paid franchise tax, without any compulsion or duress on May 19, 1943, although the same was not due until July 1, 1943, such payment is a voluntary one and no award for a refund of such payment can be made, where corporation voluntarily surrendered its charter on June 3, 1943, before the commencement of the period for which said tax was paid and was issued a certificate of dissolution.

CHIEF JUSTICE DAMRON delivered the opinion of the court:

The Chicago Cold Storage Warehouse Company, claimant herein, seeks a refund in the sum of \$689.19 representing a franchise tax paid by said claimant to the Secretary of State.

The facts, about which there is no dispute, show that the claimant on February 6, 1903, was incorporated in the State of Illinois to carry on a cold storage and general warehouse business in this State. On May 15, 1943, the claimant received a statement from the Secretary of State in pursuance to his duties as provided in the Business Corporation Act demanding a franchise tax from the claimant in the sum of \$689.19 based upon a paid-in surplus of \$1,378,373.54 for its tax from July 1, 1943, to June 30, 1944. On the 19th day of May the claimant, by its assistant treasurer, remitted to the Secretary of State said tax. On the 24th day of May the claimant, held a meeting of the Board of Directors of the corporation at which a resolution was presented and adopted authorizing the officers of said corporation to dissolve, and pursuant to said resolution claimant was legally dissolved by the Secretary of State of Illinois on the 3rd day of June, 1943. On the 18th day of August, 1943, the claimant made demand upon the Secretary of State for a refund of the aforesaid franchise tax due to the fact that it had dissolved and surrendered its charter, which demand was refused by said secretary in

a letter dated August 20, 1943, giving as a reason the fact that payment had already been made by his office to the Illinois State Treasurer. Upon receipt of this letter the complaint in this case was filed in this court on the 25th day of September, 1943, seeking a refund as aforesaid.

The question involved in this claim has been passed upon by this court in *Russell Johnson, Assignee of the Bud's Shoe Store, Inc. vs. State*, 12 C. C. R. 157. The facts in that case show that this corporation paid a franchise tax, without any compulsion or duress to the Secretary of State on May 23, 1940, although same was not due until July 1, 1940, as in this case. On June 29, 1940, before the commencement of the period for which said tax was paid, the corporation voluntarily surrendered its charter and was issued a certificate of dissolution. It sought a refund based on the belief that the franchise tax paid to the State on May 23, 1940, was due from it to the respondent for the preceding year instead of the year commencing after date of payment. We held that this was a mistake of law, as a payor must be held to have full knowledge of the law providing for the assessment of said tax and we further held that where a franchise tax is paid voluntarily, under mistake of law, there is no legal basis for an award for a refund thereof and none can be made on the grounds of equity and good conscience.

To the same effect is the ruling in *Orchard Theatre Corporation vs. State*, 11 C. C. R. 271.

These cases are controlling here.

The Attorney General, representing the respondent, has filed a motion to dismiss this complaint. The motion must be sustained, and the claim is therefore dismissed.

(No. 3801—Claimant awarded \$15.50.)

HIBBARD, SPENCER BARTLETT & Co., A CORPORATION, Claimant,
vs. STATE OF ILLINOIS, Respondent.

Opinion filed January 12, 1944.

Claimant, pro se.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

SUPPLIES—lapse of appropriation before payment—sufficient unexpended balance in—when award may be made for value of. Where merchandise is sold to the State, on its order, and received by it and claimant submits a bill in the correct amount therefor within a reasonable time, and due to no fault or negligence on his part, same is not approved and vouchered for payment before lapse of appropriation from which it is payable, an award may be made for the value thereof, where at the time same was furnished there was sufficient funds remaining therein to pay same.

CHIEF JUSTICE DAMRON delivered the opinion of the court:

Hibbard Spencer Bartlett & Company is a corporation doing business in the State of Illinois and as such it is engaged in a wholesale hardware business in Chicago.

On July 24, 1940, it received from the Jacksonville State Hospital of Jacksonville, Illinois, an order designated by said hospital as Purchase Order No. C-63468 for eighteen packages of clinching nails and for two kegs of one-hundred pounds each of galvanized fence staples; on July 26 said shipment went forward to said hospital as per order. On July 29 two orders for exactly the same merchandise were received by claimant from the said Jacksonville State Hospital on Purchase Orders No. C-67285—C-67286, containing the following statement "This cancels the above item of P. O. C-63468." All purchase orders were filled. Orders No. C-67285 and

C-67286 were paid by the hospital. The hospital returned no merchandise shipped on these orders by claimant.

The Attorney General admits that this claim should be paid. The goods were as represented, the price was reasonable and there was an existing appropriation from which said goods could have been paid had they been vouchered before the lapse of the biennium appropriation. There is no contention on the part of the respondent that the goods were not received or that they were not as represented.

We have repeatedly held that an award may be made for supplies for a State institution after the lapse of an appropriation out of which payment should be made where there was sufficient unexpended balance therein at the time of purchase and where a bill therefor in correct amounts was presented within a reasonable time and due to no fault of claimant before such lapse.

This claim was presented for payment in apt time.

We find the bill therefor had been submitted within a reasonable time but that the appropriation had lapsed without any fault or neglect on the part of the claimant, and we further find that at the time the bills were incurred there remained a sufficient unexpended balance in the appropriation to pay for same. This claim comes within the requirements as set out in *City of Kankakee vs. State*, 12 C. C. R. 393.

The invoice and bill of particulars shows the fair and reasonable charges on Purchase Order No. C-63468 amounted to the sum of \$15.80.

An award is therefore made in favor of claimant in the sum of Fifteen Dollars and Eighty Cents (\$15.80).

(No. 3805—Claim denied.)

JOHN LEWSON, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1943.

Rehearing denied January 12, 1944.

CLARENCE B. DAVIS, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

LIMITATIONS—*plea of Statute of—when must be sustained.* Where it appears on face of claim that it was filed more than five years after it accrued, the claim is forever barred under the provisions of Section 10 of the Court of Claims Act, the court is without jurisdiction to make award and a plea of the Statute of Limitations must be sustained.

RES ADJUDICATA—*when plea of must be sustained.* Where it clearly appears that claim has been fully and finally considered and an award denied, it will not again be considered by the court and a plea of res adjudicata must be sustained.

ECKERT, J.

The claimant, John Lewson, on June 30, 1943, filed his claim in this court for \$4,000.00 and interest from September 1, 1923. He alleges that from 1916 to 1922 he was employed by the Attorney General of the State of Illinois to edit and compile the opinions and to prepare the biennial report of the Attorney General at an annual salary of \$3,600.00; that in July, 1922, at the request of the Attorney General, he agreed to continue these services at a reasonable compensation to be determined thereafter; that in accordance with the agreement, he compiled the opinions and prepared the report of the Attorney General for the biennium 1921-1922; and that the sum of \$4,000.00 was and is the usual, customary, and reasonable sum to be paid for such services.

Claimant also alleges that on November 10, 1923, he filed claim in this court for the sum of \$4,000.00 for said

services; that the matter was heard by the court, and "for purely technical reasons and not upon the merits" the court dismissed the claim; that such dismissal was 'contrary to the evidence and unfounded both as to the facts and as to the law applicable thereto. The claimant alleges that subsequently appropriation bills were prepared and introduced at several sessions of the Illinois General Assembly for an appropriation to pay this claim; that these various bills remained in committee and were not reported out; that because of Section 13 of the Court of Claims Act, which provides that no appropriation shall be made by the General Assembly to pay any claim or demand over which the Court of Claims' has jurisdiction unless an award therefor has been made by the Court of Claims, he is unable to secure an appropriation from the Legislature for the payment of his claim; that said Section 13 is unconstitutional.

The respondent has filed its motion to dismiss the claim on the ground that it is barred by the statute of limitations, and by the application of the rule of res adjudicata. Claimant has filed his motion to strike the motion of the respondent on the ground that the claim as now filed is based upon a quantum meruit for services rendered to the State of Illinois and not upon a breach of contract, as was the claim filed on November 10, 1923, and on the ground that the rule of res adjudicata is not applicable to an order of dismissal by this court.

The motion of the claimant to strike the motion of the respondent must be denied, and the motion of the respondent must be granted. It is immaterial whether or not the present and the original claim are the same. If the claim as filed on June 30, 1943, differs from the claim filed on November 10, 1923, the present claim is barred by Section 10 of the Court of Claims Act. This

'section provides that every claim against the State, cognizable by this court, shall be forever barred unless it is filed within five years after it first accrues. From the face of the complaint it appears that this claim was not filed within such five-year period. The court would therefore be without jurisdiction to make an award, and a plea of the statutory limitation would be sustained. *Miller vs. State*, 11 C. C. R. 490; *Chicago Park District vs. State*, 11 C. C. R. 499.

On the other hand, if the claim now filed is the same as the claim filed on November 10, 1923, it has already been heard and determined by this court. *Lewson vs. State*, 5 C. C. R. 80. That claim, having been heard by this court and denied, cannot now be reopened.

It is unnecessary to pass upon the constitutionality of Section 13 of the Court of Claims Act. If this section were unconstitutional, it would afford no ground for an award in this case.

Claimant's motion to strike motion of the respondent is denied, and respondent's motion to dismiss the claim is granted. Claim dismissed.

(No. 3809—Claimant awarded \$1,589.50.)

JOSEPH M. McDONOUGH, Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed January 12, 1944.

WILLIAM G. JUERGENS, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR
NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—when award may be made under for partal loss of use of hand. An employee of the State who sustains accidental injuries arising out of and in the course of his employment,

while within the protection of the Workmen's Compensation Act, resulting in a partial loss of use of his hand is entitled to compensation therefor, in accordance with the provisions of said Act, upon compliance with the requirements thereof.

FISHER, J.

Claimant filed his complaint on August 31, 1943, alleging therein that on the 14th day of December, 1942, he was employed by the State Highway Division, engaged in working on and maintaining hard roads; that about 9:45 A. M. on said date, while working on S. B. I. Route No. 3 near Ruma, Illinois, claimant was handling a barrel of liquid asphalt when it exploded, the head of the barrel blowing out and striking him on the left hand, whereby he suffered a permanent partial loss of the use of his left hand.

The record consists of the complaint, report of the Division of Highways, stipulation, statement, brief and argument on behalf of claimant, and also of respondent. The facts as contained in the report of the Division of Highways, were agreed to by stipulation entered into by and between claimant and the Attorney General, and constitute the evidence in this case.

From the report of the Division of Highways, it appears that during the year preceding his injury claimant was regularly employed and earned a total of \$1,360.20; that at approximately 10:00 A. M. on December 14, 1942, the group to which claimant had been assigned was preparing asphalt material with which to patch-holes in the pavement of the highway in the village of Ruma in Randolph County, Illinois. Claimant was tending a fire built under a drum of RC-3 asphalt at a storage lot leased by the Division of Highways. The fire had been built to heat the asphalt so that it would flow from the drum. While stooping in front of the drum placing

fuel on the fire, the drum exploded, blowing the top of the drum out and splashing hot asphalt on claimant's face and hands. The top of the drum struck claimant on his left hand, causing fractures of the first, second, third and fourth fingers. The Division had notice of the injury immediately following the accident.

Claimant was taken immediately to Dr. E. A. Pautler of Red Bud, Illinois, who placed him in St. Clement's Hospital of that village, where he remained until the next day, December 15, 1942.

Claimant received the sum of \$93.50 for compensation for temporary total disability, which was for the period from December 15, 1942, to January 18, 1943, at the rate of \$18.70 per week. The medical and hospital bills, amounting to \$69.65, were paid by the Division of Highways. Accordingly, there is no claim for temporary total disability or medical and hospital bills.

Inasmuch as the Division of Highways had immediate notice of the accident and claim was filed within one year from the date of the accident, this court has jurisdiction.

From the evidence, the injury occurred in the course of and out of claimant's employment, so the only question for the court to determine is the amount of the award.

On May 10, 1943, claimant was sent to Dr. J. Albert Key, Professor of Orthopedics and Head of the Department of Orthopedics, Washington University, St. Louis, Missouri, for an examination and such treatment as he should advise.

On May 11, 1943, Dr. Key reported as follows:

"I examined Mr. Joseph McDonough yesterday on account of pain and disability in the left hand and wish to submit the following report: According to the history this man was injured December 14, 1942, when an asphalt barrel exploded, the lid of the barrel striking the left

hand and causing fractures and abrasions, as well as burns of the hands and face. The burns have healed. The fractures are now united, but the patient is unable to close his fingers and complains of pain and weakness and limitation of motion in the hand.

Physical Examination—There is moderate irregularity of the knuckles, that of the middle finger being moderately enlarged, and there is a shortening of the 5th metacarpal bone with a bone prominence on the back of the hand over this bone. Movements of all joints of the middle, ring and little fingers are limited about 75 per cent, as are movements of the metacarpophalangeal joints of these fingers. There is slight pain when the movements are forced. Movements of all joints and of the metacarpophalangeal joint of the index finger are limited approximately 50 per cent. Over the dorsal surfaces of the first interphalangeal joints of the three outer fingers are scars from lacerations which have healed. The grip of the hand is very weak and the patient is unable to extend fully his fingers or to close them to make a fist or to grip anything except a relatively large object. Extension is limited about 15 per cent and flexion is limited about 60 per cent in the three outer fingers and the limitation in the index finger is slightly less.

X-rays—X-rays which the patient brought with him and new x-rays taken yesterday show the following fractures: (1) Fracture of the 5th metacarpal at the junction of the distal and middle thirds which has united with considerable posterior bowing and about one-third of an inch of shortening; (2) fracture of the base of the 1st phalanx of the middle finger which has healed with rather marked compression and broadening at the base of this bone (this accounts for the swelling of this knuckle; (3) fracture of the distal portion of the 1st and of the head of the 1st phalanx of the ring finger; and (4) fracture of the base of the 1st phalanx of the little finger.

Conclusion—This man will have rather marked permanent disability of all four fingers of this hand. I believe that with continued use there will be some increase in movement and power in the hand. I do not think that any specific treatment other than exercises and the heat which he is using at home are indicated at this time."

Claimant seeks an award based on 50 per cent loss of the use of his left hand. This appears justified by the evidence and the Court will make its award on this basis. Claimant earned the sum of \$1,360.20 during the year preceding his injury, or an average weekly wage of \$26.16. As claimant has suffered a 50 per cent loss of the use of his left hand, he is entitled to receive under Section 8, paragraph (e), sub-paragraph (12) and also sub-paragraph (17) of the Workmen's Compensation

Act, 50 per cent of his average weekly wage for a period of eighty-five (85) weeks. Fifty per cent of his average weekly wage is \$13.08. As claimant had four children under 16 years of age, under paragraph (j) of Section 8, he would be entitled to an increase of 15 per cent, or a total of 65 per cent of his average weekly wage, which would entitle him to a weekly compensation in the sum of \$17.00. This is further increased 10 per cent by paragraph (1) of Section 8 of the Act, so claimant would be entitled to the sum of \$18.70 per week for eighty-five (85) weeks, or a total award of \$1,589.50.

An award is therefore entered in favor of claimant for the sum of \$1,589.50, payable as follows:

(1) The sum of \$1,047.20, compensation for a period of 56 weeks accrued from December 14, 1942, to January 10, 1944, is payable forthwith;

(2) The balance of said award, being the sum of \$542.30, is payable in 29 weekly installments of \$18.70 each, commencing January 17, 1944.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3795—Claimant awarded \$2,351.69 and \$100.00 awarded to State Treasurer of State of Illinois, as ex-officio custodian of the Workmen's Compensation Special Fund.)

MOKE OWENS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 8, 1943.

Supplemental opinion filed January 12, 1944.

LAWRENCE B. MOORE, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—when award may be made under for temporary total disability, medical expenses and supplies, and complete loss of eye. Where employee of State sustains accidental injuries, arising out of and in the course of his employment while engaged in extra-hazardous employment, resulting in temporary total disability and complete loss of his right eye, an award may be made for compensation therefor, in accordance with the provisions of the Workmen's Compensation Act, upon compliance by employee with the requirements thereof.

SAME—liability of State not limited to payment of compensation to injured employee under—liability includes payments into Workmen's Compensation Special Fund. The jurisdiction given to the Court of Claims is to hear and determine the liability of the State for accidental injuries or death sustained or suffered by its employees, arising out of and in the course of their employment, while within the provisions of the Workmen's Compensation Act and the liability of the State is not limited solely to the payment of compensation to the injured employees but also includes payments which should be made into the Workmen's Compensation Special Fund, as set forth in Section 7, Paragraph 2 of said Act.

FISHER. J.

This claim was filed May 10, 1943, for benefits under the Workmen's Compensation Act for the loss, by claimant, of the sight of his right eye and for temporary total disability alleged to be the result of an injury sustained by claimant in the course of and out of his employment.

Claimant alleges that he was employed as a garage and automobile mechanic at the State Highway Garage, operated by the Division of Highways of the State of Illinois at the City of Paris, Illinois, and while being engaged as such mechanic on February 15, 1943, while attempting to straighten a metal brace of a snow-plow a piece of metal struck claimant in the right eye causing the complete loss thereof.

The record consists of the complaint, amended complaint, supplemental complaint, stipulation of facts, waiver of statement, brief and argument on behalf of claimant and statement, brief and argument on behalf of respondent.

All jurisdictional requirements have been complied with and claimant is entitled to benefits claimed. The allegations of claimant are admitted by a report of the Division of Highways and made a part of the stipulation filed herein.

While in the course of his employment, as an employee of respondent, Division of Highways, claimant was struck in the right eye by fragments of steel, which became deeply embedded in the eyeball and the report of the attending physicians, which is also a part of the stipulation, shows the complete loss of the sight of claimant's right eye.

Subsequently, on or about August 6, 1943, as a result of said injury it became necessary for claimant to have his right eye removed and claimant thereby incurred medical and surgical expenses in the sum of \$202.60 for which he is entitled to be reimbursed.

Claimant is entitled to receive for temporary total disability 7 weeks at \$17.87 per week or \$1125.09. He was paid for unproductive time the sum of \$120.40 which must be deducted leaving a balance due claimant for temporary total disability the sum of \$4.69.

Claimant's average weekly wage was \$36.39. He had one child under the age of 16 years at the time of the injury and under the Workmen's Compensation Act claimant is entitled to have and receive from respondent for the loss of his eye the sum of \$2,144.40, being \$17.87 per week for 120 weeks—

Reimbursement for medical expenses and supplies.	\$ 202.60
For temporary total disability.. ..	4.69
For the complete loss of his right eye	2,144.40
	<hr/>
Total	\$2,351.69

An award is therefore entered in favor of claimant, Moke Owens, in the sum of \$2,351.69 payable as follows:

\$886.35 which is accrued and payable forthwith, and the balance of \$1,465.34 in 82 weekly installments of \$17.87 each commencing November 15, 1943.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

SUPPLEMENTAL OPINION

FISHER, J.

On May 10, 1943, claimant filed his claim seeking an award for the total loss of the sight of his right eye and for temporary disability in accordance with the provisions of the Workmen's Compensation Act. An Amended Complaint was later filed, alleging that it had become necessary for claimant to have his right eye removed, and prayed for the necessary medical and surgical expenses incurred thereby.

We found from the record that while in the course of his employment, as an employee of respondent, Division of Highways, claimant was struck in the right eye

the eyeball, causing the complete loss of the sight of claimant's right eye and necessitating the enucleation thereof.

An award was entered at the November term, 1943, in favor of claimant in accordance with the provisions of the Workmen's Compensation Act.

At the time the award was entered herein, the Attorney General presented to the court the following statement :

"The Attorney General as a duly authorized representative of the State Treasurer has received the notices in the case now before the court and hereby suggests to the court that an award to the Special Fund of which the State Treasurer is the ex-officio custodian should

be made in the amount of \$100 as is provided by Election 8, Paragraph e, Subparagraph 20."

It was suggested by the Attorney General that

"The Special Fund is not a State Fund, but is a fund held in trust for the workmen of the State. The Special Fund was created by the Act of the Legislature along with the Workmen's Compensation Act but the monies therein which are the subject of the trust have been paid as required by the Act and are held in trust for the benefit of employees who may suffer a total and complete disability as defined in the Act. There is no exception of State employees or of the State of Illinois from the operation of the provisions of the Workmen's Compensation Act, providing for the Special Fund."

Section 7, Paragraph 2 of the Workmen's Compensation Act reads in part as follows:

"* * * The State Treasurer, or his duly authorized representative, shall be named as a party to all proceedings and receive the usual and customary notices of hearing in all cases involving claim for the loss of, or the permanent and complete loss of the use of one eye, one foot, one leg, one arm or one hand. In case of settlement contract or award involving the loss of, or the permanent and complete loss of the use of any one of the said members, it shall be the duty of the Industrial Commission, or a Commissioner or Arbitrator thereof, to award to the said Special Fund provided for in paragraph (2) of this section, the sum now payable under sub-paragraph (20) of paragraph (2) of Section 8 to be paid by the employer or the insurance carrier if such employer is insured."

The jurisdiction given to the Court of Claims is to hear and determine the liability of the State for accidental injuries or death arising in the course of and out of the employment by an employee of the State. The liability of the State is not limited to the payments to the injured employee, but also includes payments which should be made into the special fund. *Leech et al. vs. State*, 11 C. C. R. 394.

Claimant herein suffered the complete loss of an eye, which, under Section 8, paragraph (e), subparagraph 20, requires that payment be made into the Special Fund in the amount of One Hundred Dollars (\$100.00).

Award is therefore hereby made as follows :

To the State Treasurer of the State of Illinois, as ex-officio custodian of the Workmen's Compensation Special Fund, the sum of One Hundred Dollars (\$100.-00); said sum to be held and disbursed by the said State Treasurer in accordance with the provisions of the Workmen's Compensation Act of this State.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3789—Claimant awarded \$1,083.47.)

BESSIE M. TANNER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 12, 1944.

THOMPSON, CHAMBERS & THOMPSON, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made under for temporary total disability and partial loss of use of arm.* An employee of the State sustaining accidental injuries, arising out of, and in the course of her employment, while within the provisions of the Workmen's Compensation Act, is entitled to compensation therefor, in accordance with the provisions of said Act, upon compliance with the requirements thereof.

CHIEF JUSTICE DAMRON delivered the opinion of the court:

This complaint was filed on April 2, 1943. It is for benefits under the Workmen's Compensation Act for the permanent partial loss of the use of the claimant's right arm and for temporary total disability suffered as a result of an accident received in the course of her employment at the Chicago State Hospital, 6500 West Irving Park Road, Chicago, Illinois.

The record consists of the complaint, testimony, abstract of same, brief on behalf of claimant and brief and argument on behalf of respondent, report, of the Acting Managing Officer of said hospital and stipulation.

By virtue of the stipulation entered into by counsel it was agreed that the plaintiff was injured on January 23, 1943, while in the course of her employment and that her wages were \$1,062.00 per year and that at the time of said injury both the respondent and the employee were under the Workmen's Compensation Act of this State.

The testimony consists of that of the claimant and Dr. Albert C. Field, orthopedic surgeon of Chicago, called on her behalf; the report of the Managing Officer of the Chicago State Hospital, and the evidence of Dr. Catherine L. McCorry, who testified for the respondent,

The evidence shows that while claimant was walking on the sidewalk on the grounds of said institution she slipped on the ice on the sidewalk and fell fracturing the lower end of the radius, and causing a bony injury to the styloid process of the ulna, and there is evidence of a bony injury to the trapezius. All of these injuries were to her right arm.

Dr. Field's testimony as to the limitation of motion in the arm and hand is as follows :

"Flexion is limited to about 20 degrees out of a normal 85 degrees; a loss of about 75 per cent; eversion is normal; inversion is about 50% of the normal range; an inability on the part of the patient to bring the tip of the thumb to the 5th metacarpal phalangeal joint; difficulty in bringing the tip of her hand to the wing of the scapula; loss of one-half of claimant's normal range on supination; pronation normal."

Dr. Field further testified that the injuries in question were permanent and that claimant had lost between 40% and 50% of the use of her right arm. Dr. Field also testified to an inward bowing of the claimant's right forearm at the lower third ; and that the hand is deviated

toward the radial side, causing a prominence of the lower end of the ulna.

Dr. McCorry testified on behalf of respondent that she gave claimant first aid. She diagnosed the injury as a "silver forked deformity" of the right wrist. She was not an orthopedic surgeon and was basing her testimony on the report of the Department of Public Welfare. This report in paragraph 6 diagnosed the injury as a Colles fracture, and states "she will have a 95% function of her injured wrist."

Claimant testified that she was immediately taken to the hospital where Dr. Brocopie set her arm two days after the accident in a plaster of Paris cast. This cast she wore for five weeks which was then removed and a solid aluminum one applied, which she wore for two weeks. This doctor did not testify and neither did Dr. Cohen of the hospital staff, who at the time examined the claimant's arm.

X-rays were made by the respondent but they were not introduced in this case.

There is considerable disagreement between the respondent and claimant as to the extent of the permanent injury to her arm. The claimant contends that there is between a 40% and 50% loss of the use of her right arm. The respondent has no record of loss of percentage except the departmental report which states there will be a 95% recovery although this is not supported by medical testimony. The testimony shows that claimant has certain definite restrictions in the use of this arm and this necessarily must impair the efficient use of her arm. Claimant will have a permanent impairment from many physical exercises that the use of the arm requires, and she will be incapacitated in the performance of her duties.

From a consideration of all the evidence it would appear to this court that a reasonable conclusion would be that claimant has been permanently injured to the extent of 40% of the use of her right arm, and the court so finds.

The court further finds from the evidence that the claimant at the time of the injury was 58 years of age and had no children under the age of sixteen years dependent upon her and that all necessary medical, surgical and hospital services were provided by the respondent.

From the record the court finds that the annual wages of the claimant for more than one year prior to her injury was \$1,062.00; her average weekly wage therefore amounted to the sum of \$20.42; that under Section 8, paragraph (e) and (1) her compensation rate would be \$11.23. The court further finds that this claimant was incapacitated for eleven weeks and six days for which she is entitled to temporary compensation at the above rate, amounting to the sum of \$133.13. The court further finds that under the above section and paragraphs of the Workmen's Compensation Act claimant has suffered a 40% loss of the use of her right arm which entitled her to receive the sum of \$1,010.70, together with her temporary compensation which amounts to the total sum of \$1,143.83. The court finds, however, that claimant was paid during January and February, 1943, the sum of \$60.36 salary for unproductive work, which must be deducted from the last mentioned sum, leaving a balance now due her of \$1,083.47.

The court further finds that fifty weeks have elapsed since the date of her injury, and therefore the sum of \$561.50 has accrued as of January 8, 1944, and is now payable in a lump sum, leaving a balance due her of \$521.97. This last amount to be paid to her at the rate of

\$11.23 per week for a period of forty-six weeks with a final payment of \$5.39.

An award is therefore entered in favor of claimant as above indicated.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3604—Claimant awarded \$655.30.)

MYRTLE TATE, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed January 12, 1944.

DANIEL D. CARMELL AND LEO SEGALL, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—When award may be made under.
An employee of the State who sustains accidental injuries, arising out of and in the course of her employment, necessitating expenditures in order to cure her of the effects of such injuries, which were made with permission of her superior, is entitled to reimbursement thereof in accordance with the provisions of the Workmen's Compensation Act, upon compliance with the requirements thereof.

CHIEF JUSTICE DAMRON delivered the opinion of the court :

The claimant, Myrtle Tate, was employed by the respondent in the State Department of Labor as an assistant supervisor in the Division of Women's and Children's Employment. Her employment first began according to the record in May, 1935.

The record shows that on the 31st day of July, 1940, it was necessary that she visit the courthouse in Galesburg, Illinois, in order to examine certain records in said courthouse in order to prosecute a violator of the eight

hour law. After entering the courthouse and attending to her business, and as she attempted to descend the outside steps of said courthouse, she slipped and fell head-long down the steps striking her head on the edge of one of them. After she was able to walk, she reentered the courthouse and asked for the services of a doctor. Dr. Charles A. Ross, Galesburg, came at her request and rendered first aid. He then took her to his office and later to St. Mary's Hospital in Galesburg. She remained there for some time.

On August 2, 1940, the claimant notified her department, and more particularly Kate O'Connor, its superintendent, who instructed her to secure whatever medical services were necessary in order to aid in her recovery.

As a result of this permission she incurred the following bills which she testified she paid:

Dr. Charles A. Ross, medical attention..	\$ 73.00
Dr. Paul Harr, medical attention.	75.00
St. Mary's Hospital, hospitalization..	78.60
Passavant Memorial Hospital.	35.20
Jeane Mosley, massages.	336.00
Chicago Burlington & Quincy Railroad, travel for medical attention	23.90
LaSalle Hotel and Morrison Hotel.	11.60
Winkler Optical Shop, glasses	7.00
Riggs Optical Co.	7.00
Dr. Sanford R. Gifford, medical care.	8.00
	<hr/>
	\$655.30

This claim is for the above items only. The State having paid her regular salary to her during the period of her recuperation. She has now fully recovered from the effects of her injuries.

It appears from the record that at the time of this injury, claimant was actually in and about the business of the respondent and that her injury therefore arose out of and in the course of her employment. Under Sec-

tion 8, paragraph a of the Workmen's Compensation Act, claimant is entitled to such care as is reasonably required to relieve her of the effects of the injury. It appears from the record that the services that were rendered to her were necessary and that the charges were reasonable and just.

An award is therefore entered in favor of claimant in the sum of \$655.30 to reimburse her for the necessary expenditures as set out in the above items.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3579—Claimant awarded \$511.03.)

LOUIS F. THOMPSON, Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed January 12, 1944.

SIDNEY H. DILKS, for claimant.

GEORGE F. BARRETT, Attorney General; GLENN A. TREVOR AND ROBERT V. OSTROM, Assistants Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award for compensation under may be made.* Where employee sustains accidental injuries, arising out of, and in the course of his employment, while engaged in extra-hazardous employment, an award for compensation therefor may be made, in accordance with the provisions of the Act, upon compliance by employee with the requirements thereof.

ECKERT, J.

On January 18, 1940, the claimant, Louis F. Thompson, an employee of the State of Illinois, Department of Public Works and Buildings, while unloading cinders from a State truck, slipped and fell to the ground. He

sustained an oblique fracture of the upper, outer edge of the left tibia, and a fracture of the upper end of the left fibula.

Immediately following the accident, claimant was taken to the office of Dr. H. L. Shinall in Gibson City, and from there was taken by ambulance to St. Joseph's Hospital in Bloomington and placed under the care of Dr. H. W. Wellmerling. Claimant was hospitalized until February 9th, when he returned to his home. He was treated by Dr. Shinall until April 1st, when he was placed, under the care of Dr. H. B. Thomas, Professor of Orthopedics, University of Illinois, College of Medicine, at Chicago. He was discharged by Dr. Thomas on November 16, 1940.

At the time of the accident, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course' of the employment.

During the year immediately preceding the injury, claimant was employed by the respondent in the capacity of maintenance patrolman at a salary of \$135.00 per month. He was incapacitated from January 19th to September 22nd, and from November 11th to November 16th, 1940, a total period of 36 $\frac{2}{7}$ weeks. At the time of the accident, he had two children under the age of sixteen years dependent upon him for support, so that his rate of compensation is \$16.00 per week, plus ten per cent, or \$17.60, making total of \$638.62 due him for temporary total disability. Claimant, however, has received on account of temporary total disability the sum of \$796.39, or an overpayment of \$157.77. The respondent has also paid \$465.60 for medical services.

Dr. Harold L. Shinall, of Gibson City, the treating physician, testifying on behalf of claimant, stated that claimant has a lateral deviation of the left leg below the knee, and is unable to flex completely the knee joint; that this condition *is* a result of the injury suffered on January 18, 1940; that claimant has sustained a twenty-five to thirty-five per cent loss of use of his left leg; that the lateral deviation below the knee tends to throw claimant's knees together and somewhat impairs his walking; that the deviation also makes claimant unable to place his heels together. On cross-examination, Dr. Shinall, testified that the injury was confined to the knee; that in the knee there are normally only two motions, flexion and extension; that claimant has complete extension; that claimant has about ninety degrees of flexion in his left knee instead of the normal of one hundred and twenty degrees; that of the two motions of the knee, it is more important to an individual to have complete extension than to have complete' flexion; and that the degrees of flexion of the knee lessen in importance as the maximum number is approached.

The claimant testifying on his own behalf stated that his left leg aches and swells whenever he lifts anything very heavy or stands for any considerable period of time; that the injury has resulted in his knees rubbing together when he walks; that lie is unable to place his heels together; that he is unable to do any kind of work necessitating considerable weight being placed upon his left leg, and that at times his leg becomes numb because of poor circulation.

From the evidence and from personal observation of the claimant by the court, it appears that claimant has sustained a 20 per cent permanent partial loss of use of his left leg. He is therefore entitled to an award of

\$668.80, from which must be deducted the over-payment of \$157.77.

Award is therefore made to claimant in the sum of \$511.03, all of which has accrued and is payable forthwith.

(No. 3812—Claim denied.)

WHITING PAPER COMPANY, Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed January 12, 1944.

Claimant, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

FRANCHISE TAX—*payment of amount an excess of that lawfully due through error or inadvertence of payor— not payment made under mistake of fact—is voluntary payment—amount in excess of that lawfully due cannot be recovered.* Where amount of franchise tax of corporation is computed by Secretary of State, in accordance with law, based on information furnished by payor, and it pays such amount without compulsion, duress or protest, such payment is a voluntary one and not made under mistake of fact, and no award can be made for refund of part in excess of that lawfully due, because of error in information furnished by payor.

SAME—*claim for refund of amount paid, claimed to be in excess of that lawfully due—remedy available to payor to have correct amount determined—failure to avail self of—ham award for refund.* Where statutes afford remedy to person claiming to having been assessed franchise tax in amount in excess of that lawfully due, for correction of such assessment, and it fails to avail itself of such remedy, but voluntarily pays tax, without protest no award can be made for refund of such excess amount.

ECKERT, J.

On September 27, 1943, claimant, a Massachusetts corporation, with offices in Chicago, Illinois, filed its claim in this court for refund of annual franchise taxes allegedly overpaid to the State of Illinois for the years

1934 to 1943, inclusive, or for such over-payments, the recovery of which has not been barred by statutory limitation.

The complaint alleges that the claimant, in the years 1934 to 1943, inclusive, filed the annual reports required under the provisions of the Business Corporation Act of the State of Illinois; that it erroneously reported its earned surplus as "paid-in surplus" in the reports filed in each of the years 1934 to 1942, inclusive; that on the basis of the information so reported by claimant, the Secretary of State, of the State of Illinois, assessed annual franchise taxes for the years 1934 to 1943, inclusive, in amounts in excess of the taxes properly assessable against the claimant for such years; that the taxes assessed were paid by the claimant within the time allotted for payment, and none was delinquent.

The complaint further alleges that during the entire period of 1933-42, inclusive, the claimant's stated capital and paid-in surplus was \$300,000.00; that at no time during this period did the claimant have any "paid-in surplus" as defined by the Business Corporation Act of the State of Illinois; that its "stated capital and paid-in surplus" consisted solely of its stated capital represented by three thousand shares of common stock at a par value of \$100.00 per share; that as a result of its error, an over-assessment during this period was made in the total sum of \$1,184.40.

The respondent has filed its motion to dismiss the claim, contending that it fails to state a cause of action and shows on its face: (1) that claimant seeks a refund for a franchise tax not paid under protest, without a request for hearing; and (2) that claimant seeks a refund for a voluntary payment of a franchise tax properly assessed.

The rule is well established in this State that where an illegal or excessive tax is paid voluntarily, with full knowledge of all the facts, the same can not be recovered in the absence of a statute authorizing such recovery. *Alton Light & Traction Company vs. Rose*, 117 Ill. App. 83; *Yates vs. Royal Insurance Company*, 200 Ill. 202; *Cooper Kanaley and Company vs. Gill*, 363 Ill. 418; *American Can Company vs. Gill*, 364 Ill. 254. The rule is the same where such tax is paid under a mistake of law, but where it is paid under a mistake of fact, it is not considered as having been voluntarily paid, and may therefore be recovered.

Payment of a franchise tax which is illegal or is in excess of amount due, however, has been held to be payment not under a mistake of fact and voluntarily paid. *Chicago Foundation Company vs. State*, 8 C. C. R. 22; *Mohawk Carpet Mills Inc. vs. State*, 8 C. C. R. 37; *Arundel Corporation vs. State*, 8 C. C. R. 506; *Western Dairy Company vs. State*, 9 C. C. R. 498; *Butler Company vs. State*, 9 C. C. R. 503; *Stotlar-Herrin Lumber Company vs. State*, 9 C. C. R. 517; *Handy Button Machine Company vs. State*, 10 C. C. R. 22; *Orchard Theatre Corporation vs. State*, 11 C. C. R. 271. Where a corporation pays an excessive franchise tax as a result of its own mistake or error, the tax is considered to have been voluntarily paid, and such payment, resulting from the negligence or inadvertance of the taxpayer, is not made under a mistake of fact. *Western Dairy Company vs. State*, *supra*. Likewise, where the statutes provide a remedy for a taxpayer of which he fails to avail himself, any payment made is considered voluntary. *Butler Company vs. State*, *supra*.

The payment of the excessive franchise tax alleged by the claimant, is a result of its own mistake or error;

it filed no objection with the Secretary of State; it made no inquiry in regard to the tax assessed; and it made no request for hearing as provided by the statutes. The mistake was one of law, and the payments must be held to have been voluntarily made. *Johnson vs. State*, 12 C. R. 157.

The motion of the respondent to dismiss is therefore granted. Claim dismissed.

(No. 3210—Claim denied.)

J. W. KLAPMAN, J. MARCOVITCH, J. L. RANES, C. F. RITCHIE, D. E. HUR, B. SKORODIN, K. H. TUTUNJIAN, N. G. BECKER, I. BERGER, J. L. CASS, J. R. HUNTER, A. LEARNER, S. W. REAGAN, A. H. GOLLMAR, LEAH LURIE, S. B. MEYERSON, N. B. FITSJRERRELL, R. J. GRAFF, B. D. HART, C. F. POWELL, C. C. ROWLEY, C. TARNAWSKI, H. COSTEFF, E. P. DOMKE, L. Z. GORDON, L. RICH, M. D. ROBERTSON, L. E. SHAPIRO, I. TUROW, A. Y. YAZARIAN, C. H. ANDERSON, H. B. CARRIEL, E. A. CHAPMAN, E. I. FALSTEIN, I. FINKELMAN, B. L. GREENE, F. J. GRIFFIN, E. A. GUNDERSON, D. HAFFRON, J. R. JACOBSON, C. E. LENGYEL, J. MORGAN, H. H. NIERENBERG, J. RICKETTS, W. J. RILEY, M. A. SCHILLER, M. G. SCHROEDER, A. SIMON, D. L. STEINBERG, S. WICK AND G. A. WILTRAKIS, Claimants, vs. STATE OF ILLINOIS, Respondent.

Opanion filed September 14, 1943.

Rehearing denied January 12, 1944.

Petition to vacate order denying rehearing denied March 14, 1944.

COLLINS, MCKENNA & McCULLOUGH, for claimants.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

SALARY—*when claim for will be denied.* Where claimants, throughout their terms of service as employees of the State receive their regular monthly salary warrants, for such services, in amounts appropriated by Legislature therefor, and accepted same, they will be deemed to have been paid in full for such services for the times for which said warrants were issued, regardless of any right which they may have had to de-

mand or receive salary in any other amount, and an award for any additional amount of salary will be denied. (*Mills vs. State*, 9 Court of Claims Reports, page 69 and *Broderic et al vs. State*, 9 Court of Claims Reports, page 461, adhered to.)

SAME—Act in relation to State Finance—when applicable to. The Statute on State Finance providing, among other things, that amounts paid from appropriations for personal services of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates specified in the payroll or other voucher and that no additional sum shall be paid to such officer or employee from any lump sum or other appropriation, is a direct limitation on the right of a claimant to further salary, where such claimant received and accepted regular salary warrants for such services, during term of employment, in amounts appropriated therefor. (*Mills vs. State*, 9 Court of Claims Reports, page 69 and *Broderic vs. State*, 9 Court. of Claims Reports, page 461, adhered to.)

CHIEF JUSTICE DAMRON delivered the opinion of the court :

The fifty-two above named claimants join in this claim seeking awards totalling \$33,974.62, alleged to be due them for professional services rendered the respondent at various State institutions as senior physicians, junior physicians and assistant physicians during the years 1933, 1934, 1935, 1936 and the first half of 1937.

The complaint was filed on February 19, 1938, and alleges that the Illinois State Civil Service Commission had, prior to such periods, fixed the salaries of physicians and senior physicians at a minimum of \$170.00 per month with an automatic increase of \$5.00 per month on and after one year of service, and the salaries of junior physicians and assistant physicians at a minimum of \$150.00 per month.

That during their respective employments, claimants were paid 10% less than their respective alleged minimum salaries.

That this reduction was made possible because the claimants and each of them executed to the respondent a

personal service compensation adjustment in 1933. This document, marked claimants' Exhibit 1 is in words and figures as follows :

"In consideration of the necessity of reducing governmental costs to correspond with the shrinkage in the general income, and in view of the decrease in the cost of living and the reduction in the pay of employees and workers in industry, I hereby voluntarily agree to accept the sum _____ monthly, in full compensation for personal services to the State of Illinois, effective February 1, 1933.

Date....., 1933

From the record it appears that claimants were paid approximately 10% less on salaries after the execution of the aforesaid compensation adjustment (Claimants' Exhibit 1). The complaint and bill of particulars attached thereto show that each claimant accepted the reduced salary paid him during the period involved. The claimants, through their counsel, take the position that they were Civil Service employees although the complaint does not establish that fact and say that their salaries, as fixed by the Civil Service Commission, are controlled by the said commission until action is taken to reduce or modify the employment status of an employee in the classified service and cite *Sec. 12 of Chap. 24½ Ill. Rev. Stat. 1937* to support this view.

The respondent takes the position that when the claimants signed waivers and accepted compensation for a less amount than that which they are alleged to have been entitled, it estopped them from prosecuting this claim and precludes them from an award for the alleged difference, relying on *Sub-par. 3 of Par. 145, Chap. 127, Ill. Rev. Stat. 1937* (State Finance Act) which provides :

"Amounts paid from appropriations for personal services of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated bal-

ances in specific appropriations, which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made.”

This Statute was in full force and effect during the term of the employment of the claimants and is controlling. If they were Civil Service employees as claimed by counsel, they still would be “employees of the State.” They voluntarily entered into an agreement with the respondent reducing their salaries 10% and it was binding upon each claimant who signed said document. The claimants herein in each instance throughout the terms for which they seek an award received regular monthly salary warrants from the State of Illinois and accepted same from month to month as received, as shown by respondent’s Exhibit 1-6, inclusive, and as was said in *Broderick et al, vs. State*, (9 C. C. R. 461), “Regardless of any rights which they may have had to have demanded and received salaries in any other amounts, claimants accepted said monthly warrants regularly through their term of service”

We hold that the decisions of this court in *Broderick vs. State, supra*, and *Mills vs. State*, (9 C. C. R. 69) are controlling in the instant claim, and that claimants are, and each of them is barred from securing an award.

The complaint is dismissed. .

(No. 3827—Claimant awarded \$5,228.75.)

RUTH N. GUSTAFSON, WIDOW AND CAROL LOUISE GUSTAFSON,
MINOR CHILD OF LESLIE L. GUSTAFSON, DECEASED, Claimants,
vs. STATE OF ILLINOIS, Respondent.

Opinion filed March 15, 19/14.

PHILIP NYE, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made for compensation for death of employee under.* Where an employee of the State sustains accidental injuries, arising out of, and in the course of his employment, while within the protection of the Workmen's Compensation Act, resulting in his death, an award for compensation therefor may be made to those legally entitled thereto, in accordance with the provisions of said Act, upon their compliance with the requirements thereof.

CHIEF JUSTICE DAMRON delivered the opinion of the court :

The record in this case consists of the complaint, copy of letters of administration, departmental report and stipulation attached thereto, and waiver of brief, statement and argument on behalf of claimant and respondent.

Under rule 21 of the Court of Claims the report of the Division of Highways filed herein is prima facie evidence of the facts set forth therein. Said report recites that Leslie L. Gustafson resided in Monroe Center, Illinois, and was first employed by the Division of Highways on March 1, 1941, as a supervising foreman in the Maintenance Department at a salary of \$160.00 per month. His rate of salary was increased to \$170.00 per month on July 1, 1943, and remained at that level until Saturday, October 30, 1943. That he received \$1,960.00 as salary during the year next preceding his death on November 1, 1943. That deceased was 45 years of age and had a daughter, Carol Louise, age ten, and his wife, Ruth N. Gustafson, dependent upon him for support.

That the area supervised by Mr. Gustafson as an employee of the division embraced the major part of Ogle County and a small section of an adjoining county. That he was required as supervising foreman to secure

time cards from maintenance foremen at different points in Ogle County, which he delivered in person or sent to the district highway office at Dixon. That October 30, being the last working day of the month, it was his duty to secure and deliver to the district highway office these cards as soon as practicable. That deceased secured time cards at the Division of Highways garage at Polo, Ogle County, at approximately 11:20 A. M. on October 30, and additional time cards at the division garage at Forreston at 12:00 noon on said day. That at approximately 6:35 P. M. the deceased was found in his car on the Leaf River Bridge on State Bond Issue Route 72, approximately one-half mile east of the Village of Leaf River. He had been badly injured. His car was facing east against the south bridge handrail and the entire right side of the car was totally demolished.

A passing motorist took Mr. Gustafson to the office of Dr. M. S. DuMont at Mt. Morris where first aid was administered. He was then removed by ambulance to the Warmoltz Clinic at Oregon, where he remained until he died at 11:15 on Monday, November 1, 1943. Dr. DuMont made the following report to the Division of Highways on November 2, 1943:

“Extreme shock—internal injuries consisting of crushed chest—several ribs broken—medio-sternum crushed—hemoperitoneum—rupture of liver—four rents in right superior dome from costal margin to esophagus—hemorrhage.”

The Division of Highways paid the following bills incident to the injury:

Dr. M. S. DuMont, Mt. Morris.....	\$45.00
Warmoltz Clinic, Oregon.....	36.50
Farrell Funeral Home, Oregon.....	7.50
	<hr/>
Total	\$89.00

From a consideration of the evidence before it, the court finds that the deceased, Leslie L. Gustafson, and

the respondent, were at the time of the accident and death, operating under the terms of the Workmen's Compensation Act; that the injury and death of claimant's intestate was caused by an accident which arose out of and in the course of his employment by the State of Illinois; that respondent had actual knowledge of the accident and that notice of claim and application for compensation were made within the statutory limits of said Act; that the deceased's annual earnings for the year preceding his death in the employment in which he was then engaged were \$1,960.00, or an average weekly wage of \$37.69. That he left surviving him the widow, the claimant herein, who was dependent upon him for support, and Carol Louise Gustafson, age ten, his daughter, who was dependent upon him for support.

The court further finds that the respondent has paid Dr. DuMont the sum of \$45.00; Warmoltz Clinic the sum of \$36.50; and the Farrell Funeral Home \$7.50.

An award is hereby entered in the sum of \$5,228.75 for the use of Ruth N. Gustafson, as widow, and Carol Louise Gustafson, as minor dependent child of Leslie L. Gustafson, deceased, as provided in Section 7 (a) and (k) of the Workmen's Compensation Act.

Documentary proof of the marriage of claimant and deceased on January 11, 1918, is filed herein.

The court further finds that the claimant is now entitled to have and receive from the respondent the sum of \$334.97, being the amount of compensation that has accrued to the 11th day of March, 1944. The remainder of said award is to be paid to said claimant in weekly payments of \$17.63, commencing one week from the date last above mentioned until the award has been fully paid.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning

the payment of compensation awards to State employees. »

(No. 3781—Claimant awarded \$798.36.)

CORA HINTON, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed March 15, 1944.

ROY A. PTACIN AND J. W. KOUCKY, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made under for injury resulting in permanent partial loss of use of hand—employee of Chicago State Hospital wztan protection of.* Where an employee of the Chicago State Hospital sustains accidental injuries, arising out of and in the course of her employment, being at the time within the protection of the Workmen's Compensation Act, an award for compensation may be made therefor, in accordance with the provisions of the Act, upon her compliance with the requirements thereof.

SAME—*medical services procured at instance of employee—when State not liable for value of.* Where all medical, surgical and hospital services reasonably necessary to cure or relieve the effects of an accidental injury are tendered employee of the State, sustaining same, but she refuses to accept same and elects to be treated by physician of her own choosing, the State is not liable for the value of such medical service.

CHIEF JUSTICE DAMRON delivered the opinion of the court:

The complaint in this case was filed on March 11, 1943. It alleges that the claimant resides at 2204 West Irving Park Road, Chicago, Illinois, and that prior to and on or about December 30, 1942, and January 23, 1943, claimant was in the employ of the respondent at the Chicago State Hospital under the jurisdiction of the Department of Public Welfare, Cook County, State of Illinois. The claimant was employed by respondent in the dining room of said institution and as such on the

days and dates aforesaid, she was engaged in her employment in said hospital, and on the 30th day of December, 1942, was injured by reason of an accident arising out of and in the course of her employment when she was struck by a steam table door upon her right foot on the large toe, and that as a result thereof she suffered a fracture of her right foot which has caused her great loss of use of same.

It further alleges she was unable to perform her duties for a period of three weeks following injury. Thereafter she returned to her employment and was again injured on the 23rd day of January, 1943, during the course of her employment by the respondent at said hospital when she stepped on some object lying on the floor which caused her to slip and fall suddenly and with great force down and upon and against the floor, as a result of which she suffered a fracture of her left arm, and thereby has suffered great loss of use of same.

It is alleged that she has been totally incapacitated from the 23rd day of January, 1943. At the time of taking the testimony in this case on the 3rd day of November, 1943, claimant dismissed her claim against the respondent with prejudice for the injury as of December 30, 1942. She makes claim only for the injury sustained by her on the 23rd day of January, 1943, for the loss of use of the left hand and the sum of \$50.00 paid by claimant to Dr. C. L. Crean.

The only question to be decided therefore is the nature and amount of the disability arising from the accident of January 23, 1943, and the question of medical expenses in connection with said accident.

Dr. Albert C. Field, orthopedic surgeon, was called on behalf of claimant, who testified that he examined claimant and took x-rays. He testified that an examina-

tion of her left forearm, including her hand, discloses a shortening of the radius with an inward bowing, causing a prominence of the lower end of the radius; that there was a swelling of the left wrist amounting to a half inch or an inch; that on passive manipulation, extension is limited to about 25 degrees and that flexion was limited to about 25 degrees out of a possible 85 degrees; that eversion and inversion was about half the normal range. He testified that she had suffered a permanent injury and that the loss of motion and swelling and the other conditions about which he testified would interfere with the use of her hand, and that in his opinion the disability amounted to 40% permanent loss of use of her hand.

Dr. Catherine M. McCorry was called on behalf of the respondent. She testified that she agreed with the diagnosis and findings of Dr. Field and that in her opinion this claimant had suffered a 40% permanent loss of the use of her left hand.

Dr. McCorry also testified that she was the treating physician at the time of the last injury. She ordered the claimant to bed, put on a temporary splint and ordered her wrist packed in ice and extended, and informed the claimant she would put on a plaster of Paris cast on Wednesday after the arm had been reduced. But notwithstanding her orders to remain in bed, claimant left the hospital and employed the aforesaid Dr. Crean.

The court finds from the evidence and from the stipulation on file that the claimant, Cora Hinton, at the time of the alleged injury, was an employee of the respondent at the Chicago State Hospital, Chicago, Illinois, which operated under the provisions of the Workmen's Compensation Act; that notice of said accident was given and claim for compensation was made in accordance with **the** provisions of said Act; that the petition was filed

within the time allowed; that claimant was away from her employment three months; that claimant's earnings during the year next preceding the injury were \$972.00 and that the average weekly wage was \$18.69. That claimant at the time of the injury was 49 years of age and had no children under sixteen years of age. That necessary first aid, medical and hospital services had been provided by the respondent herein. That her claim for medical services in the sum of \$50.00 to Dr. C. L. Crean must be denied for the reason all medical, surgical and hospital services were offered claimant. She elected to employ her own physician. The respondent is not liable under the Workmen's Compensation Act for this claim.

An award is therefore entered as follows: That the claimant is entitled to have and receive from the respondent the sum of \$10.27 per week for a period of 68 weeks, as provided in paragraph e of Section 8 of the Workmen's Compensation Act, as amended, for the reason that the injury sustained caused a 40% permanent loss of use of the left hand of the claimant; that the sum of \$605.93, representing 59 weeks has accrued to the 12th day of March, 1944, and is payable in a lump sum forthwith, the remainder of said award in the sum of \$92.43 to be paid to said claimant by said respondent in weekly payments, commencing one week from the date last above mentioned.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3790—Claimant awarded \$447.60.)

IDA HYNEMAN, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed March 15, 1944.

WERNER H. SOMERS AND FRANK R. EAGLETON, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*infection resulting from vaccination of employee, required by employer—accidental injury within meaning of Act—permanent partial loss of use of arm resulting therefrom compensable thereunder.* Where employee of State was required to submit to being vaccinated and as the result thereof, an infection developed, due to no negligence on the part of said employee, but solely from such vaccination, causing a permanent partial loss of use of her arm, such infection can be deemed to be an accidental injury, within the meaning of the Workmen's Compensation Act; though the act of vaccination was expected and not of itself an accident, the resulting infection and effects therefrom not being expected, and being traceable to the act of vaccination, an award may be made for compensation for such loss of use of member in accordance with the provision of the Act, where such employee complied with the requirements thereof.

CHIEF JUSTICE DAMRON delivered the opinion of the court :

This complaint was filed on the 15th day of April, 1943, for benefits under the Workmen's Compensation Act for an alleged injury to the above named claimant, while employed in the Elgin State Hospital, Elgin, Illinois.

The complaint alleges that on the 16th day of April, 1942, the claimant was employed as a domestic in the dining rooms at said State Hospital and that on that day she was inoculated against diphtheria by injection, as required by the authorities of the hospital. It further alleges that as a result of the aforesaid inoculation a lump developed on the upper muscle of her left arm and

that the arm has become paralyzed and the use thereof has become permanently lost.

The claimant and respondent have entered into a stipulation that claimant's annual earnings for the year next preceding the injury was \$1,044.00, making her average weekly wage \$20.08. It is further stipulated all requirements of Section 24 of the Workmen's Compensation Act were complied with.

The only question remaining for the court to determine is the nature and extent of claimant's injury. The record in this case is not very satisfactory to the court. No evidence was taken and the only thing to guide the court is a short, concise departmental report signed by the managing officer of the Elgin State Hospital and a short report signed by Dr. Edward T. Driscoll, to whom the claimant was sent by the respondent for treatment. This report is dated February 28, 1943, which apparently was the last time claimant was treated or examined.

This report states:

"Our examination at this time reveals that there is considerable atrophy of the left deltoid muscle. She also has a limitation of motion in the shoulder joint. She is able to abduct her arm about 40° and forward flexion to about 85° and extension 15°. She has made some improvement with physio-therapy and thiamine chloride. However, there seems to be a residual permanent impairment of function. I would estimate that since there is such a loss of motion that her impairment of function could be rated as from fifteen to twenty per cent."

The departmental report above referred to contains the following statement made at the request of the institution by M. C. Benford, M. D., Assistant Medical Superintendent of the University of Illinois College of Medicines :

"Mrs. Hynemsn was seen in our dispensary on July 5, 1942, at which time she was complaining of a pain in the shoulder which was radiating down to the middle third of the arm. Our examination revealed atrophy of the left deltoid muscle, limitation of motion in all

directions in the left shoulder. The **most** likely cause for this condition is probably a toxic neuritis resulting from the diphtheria toxoid injection."

An accidental injury, within the meaning of the Workmen's Compensation Act, is one which occurs in the course of the employment unexpectedly and without the affirmative act or design of the employee. The word "accident" is not to be technically construed. It may comprehend any event which is unforeseen and not expected by the person to whom it happens. The act of vaccination of the claimant was expected and was in itself not an accident. The infection was not expected and is traceable to the act of vaccination and is compensable.

After a full consideration of this record, the court finds that the claimant and respondent were, on the 16th day of April, 1942, operating under the provisions of the Workmen's Compensation Act; that on the date last above mentioned said claimant sustained accidental injuries which did arise out of and in the course of the employment; and that notice of said accident was given said respondent and claim for compensation on account thereof was made on said respondent within the time required under the provisions of said Act. That the earnings of claimant next preceding the injury were \$1,044.00, and that the average weekly wage was \$20.08. That the claimant at the time of the injury had no children under sixteen years of age. That necessary first aid, medical and hospital services were provided by the respondent herein excepting an expenditure by claimant for travelling expenses and medicines amounting to the sum of \$75.00.

That claimant is entitled to have and receive from the respondent the sum of \$11.04 per week for a period

of 33¾ weeks, as provided in Section 8, paragraph e of said Act, as amended, for the reason that the injury sustained caused a 15% permanent loss of use of the left arm of the claimant.

An award is hereby entered against the respondent and in favor of claimant, Ida Hyneman, in the sum of \$447.60, all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees.)'

(No. 3821—Claimant awarded \$176.55.)

W. T. JONES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 15, 1944.

Claimant, pro se. ' .

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*When award may be made under.* Where an employee of the State sustains accidental injuries, arising out of and in the course of his employment, while within the protection of the Workmen's Compensation Act, an award may be made for compensation therefor, in accordance with the provisions of said Act upon compliance with the requirements thereof.

ECHERT, J.

The claimant, W. T. Jones, is employed by William G. Stratton, Treasurer of the State of Illinois. Part of the duties assigned to him are to guard automobiles belonging to employees of the Treasurer's Office while parked near the north entrance to the State Capitol Building, to keep the traffic lane open for free entrance

to and departure from this entrance, and to assist and serve the employees of the Treasurer's Office in approaching or leaving the space provided for the parking of automobiles. On April 2, 1943, while assisting in the separation of two automobiles in the parking space, claimant received a right inguinal hernia.

After notification to the State Treasurer of the injury and the diagnosis made by Dr. M. O. Otten of Springfield, claimant submitted to an operation at St. John's Hospital, Springfield, on October 4, 1943. He remained in the hospital for sixteen days and was thereafter confined to his home for a period of eleven days. As a result of the accident, claimant incurred necessary expenses for hospital services in the amount of \$91.55, and expenses for necessary medical services in the amount of \$85.00.

At the time of the injury, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State. It appears from the record that the hernia was of recent origin; that its appearance was accompanied by pain; that it was immediately preceded by trauma arising out of and in the course of the employment; and that the hernia did not exist prior to the injury. Notice of the injury was given to the State Treasurer within fifteen days after its occurrence.

Award is therefore made in favor of the claimant in the total sum of \$176.55, payable as follows:

The sum of \$85.00 for the use of Dr. Harry Otten, of Springfield, Illinois.

The sum of \$91.55 for the use of St. John's Hospital, Springfield, Illinois.

(No. 3772—Claimant awarded \$401.91.)

ELIZABETH A. MINKUS, Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed March 15, 1944.

BOWE & BOWE AND DAVID LARSON, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L.
MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made tinder for permanent partial loss of use of finger and medical services.* An employee of the State who sustains accidental injuries, arising out of and in the course of her employment, while within the protection of the Workmen's Compensation Act, resulting in permanent partial loss of use of one of her fingers and necessitating medical care which was reasonably required to cure or relieve from the effects of such injuries is entitled to compensation therefor in accordance with the provisions of the Act upon compliance with the requirements thereof.

SAME—*rules of court—Rule 6, paragraph b—effect of failure to comply with.* Where claim fails to comply with that part of Rule 6, paragraph b, of the Court of Claims, requiring claimant to set forth an itemized account of amounts incurred and expended for medical, surgical and hospital attention on account of injury for which compensation is sought, the court will not consider same and no award will be made for any such amounts incurred or expended.

CHIEF JUSTICE DAMRON delivered the opinion of the court:

This complaint seeks an award under the Workmen's Compensation Act for permanent partial loss of the use of the second finger of claimant's right hand and for reimbursement for expenses incurred for hospital, medical, surgical and nursing services which she claims were necessary by reason of said accidental injuries sustained while in the employ of the State in the Division of Unemployment Compensation of the Department of Labor.

Two questions are to be decided by this court. First, the nature and extent of the injury sustained by claim-

ant, and second, the liability of the respondent to reimburse the claimant for \$1,058.00, alleged to have been expended by her in order to restore her health after the injury.

The record consists of the complaint, report of the Division of Placement and Unemployment Compensation, testimony of Dr. Albert C. Field and the claimant, Elizabeth A. Minkus, abstract of said evidence, brief and argument on behalf of claimant, brief and argument on behalf of respondent and reply brief and argument of claimant.

The evidence shows this claimant was a certified civil service employee, classified as a junior clerk in said Division. That while so employed on the 24th day of July, 1942, she accidentally cut her right second finger on a clasp attached to an envelope which she was attempting to open.

Claimant testified she immediately reported the accident to her supervisor, Steven Kish. On the following day she reported the injury to Mr. Corrigan, head of the Division, who instructed her to go to a doctor and advised her to go home.

Claimant further testified that this division had made no arrangements to furnish necessary medical services to an injured employee but permitted the employee to select a physician of her own choosing. In compliance with the orders given to her by Mr. Corrigan she employed Dr. J. A. Gubler. She testified that she was hospitalized in Wesley Memorial Hospital and there remained from July 30 to the 8th day of August under the care of Dr. Gubler and after leaving the hospital she was treated by her family physician, Dr. Foley, who took x-rays and rendered medical aid.

From the evidence it is evident this claimant's finger

became infected and it was necessary to perform several operations to remove this infection. During the time of the convalescence of this claimant the Division paid her salary. She makes no claim for temporary compensation.

Dr. Albert C. Field, called on behalf of claimant, testified that as a result of his examination of claimant, for the purpose of testifying, he found that the right middle finger disclosed some deformity at the distal phalanx. On active motion, there was a marked restriction of flexion in the mid and distal phalangeal joint, but on passive manipulation the finger could be brought to within about one inch of the palm. On the dorsum of the finger at the matrix of the nail on the index finger side and on the ring finger side, extending from the distal phalangeal joint, were well healed scars. In his opinion these scars were caused from operations for drainage. On the palmar surface there was also a well healed scar extending over the distal tip. He testified there were seven operations performed on this finger. How he knew this is not clear from the testimony. He testified she also had a scar in the left orbital region and also a scar beneath the right arm in the axillary region. She also had a scar over the right knee and about an inch or an inch and a half long over the knee. There is no causive connection between these latter scars and the injury to claimant's finger. He testified that she had a tremor of her extended finger. He took an x-ray film of her right hand. He stated it showed the joint space was lessened in the distal phalangeal joint. In reply to a question, he testified she had about 75% loss of the use of her right middle finger. This doctor was not cross examined by the respondent and no further medical testimony was introduced either on behalf of claimant or respondent.

Under Section 8, paragraph a of the Workmen's Compensation Act, it is provided that the employer provide the necessary first aid, medical and surgical and hospital 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. It is further provided in said paragraph that the employee may elect to secure his own physician, surgeon and hospital services at his own expense. There is on file in this case a departmental report in reference to this claim which, under rule 21 is prima facie evidence of the facts set forth therein. Among other things it states,

"According to statements submitted to this agency, the claimant has incurred the following expenses as a result of her injury:

Dr. J. A. Gubler	\$50.00
Central X-ray and Clinical Lab.	2.00

Claimant stated that there were other expenses incurred by reason of this injury for which she did not secure statements and that these would be submitted to the Personnel Office at an early date. However, to date we have received no statements other than those indicated above."

Rule 6, paragraph b of this court provides as follows :

"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."

The complaint in this case, fails to comply with the above quoted rule in reference to separate items and no documents of expenditures were introduced in evidence at the hearing showing that the claimant had expended the various amounts claimed by her or that they were reasonable or necessary in order to relieve her from the effects of said injury.

After a full consideration of the record the court finds that the claimant and the respondent were on the 24th day of July, 1942, operating under the provisions of the Workmen's Compensation Act; that on the date last above mentioned said claimant sustained accidental injuries which did arise out of and in the course of the employment; and that notice of said accident was given said respondent and claim for compensation on account thereof was made on said respondent within the time required under Section 24 of said Act.

That the earnings of the claimant for the year next preceding the injury were \$1,260.00, and that the average weekly wage was \$24.23; that the claimant at the time of the injury had no children under sixteen years of age. That no claim for temporary total compensation is due and that the respondent paid full salary to claimant during her convalescing period. That proper proof has been made by claimant for necessary first aid, medical and surgical services as follows: Dr. J. A. Gubler, \$50.00, and the sum of \$2.00, representing the amount expended for x-rays for which she is entitled to reimbursement, and that all other expenses which she claims to have incurred are denied for the lack of proper proof.

That claimant is entitled to have and receive from the respondent the sum of \$13.33 for a period of $26\frac{1}{4}$ weeks, as provided in paragraph e of Section 8 of the Workmen's Compensation Act, as amended, for the reason that the injury sustained caused a 75% permanent loss of the use of the second finger of the right hand of the claimant. All of which has accrued.

An award is therefore hereby entered in favor of the claimant and against the respondent as follows: The sum of \$349.91 specific award for 75% of the permanent loss of the use of the second finger; the further sum of

\$50.00 and the sum of \$2.00 for necessary first aid and medical services rendered to claimant, making a total award in the sum of \$401.91, payable in a lump sum forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3716—Claim denied.)

JELMAR OLSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 15, 1944.

WILLIAM G. THON, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*award for partial disability—when lump sum payment of not justified.* Where an award is made for compensation, under the Workmen's Compensation Act, for partial disability, the duration of which is found by the court at the time of said award to be indefinite, and providing that payments thereon shall cease when, and if claimant is able to resume his former occupation, or is able to engage in some other occupation or business whereby his income is equal to his earnings before the injury occurred, or when the maximum payment has been reached, whichever first occurs, a lump sum settlement of the compensation awarded is not justified in the absence of competent proof that such disability has become permanent, and that payment in a lump sum is for the best interest of the parties.

SAME—*same—when petition for payment in lump sum must be denied.* Where there has been an award for compensation made under the Workmen's Compensation Act, payable in weekly installments, same are intended, so far as possible to supply the loss of periodical wages resulting from the disability. Before commutation of the award to a lump sum is authorized under Section 9 of the Act, the injured employee must support his application therefor by competent evidence showing that it is for the best interest of the parties that the compensation be so paid in a **lump** sum, and where it is not clearly shown that the money will be properly safeguarded and that it will increase the disabled employee's means of support, award for payment in lump sum must be denied.

FISHER, J.

An award was heretofore entered in favor of the claimant herein, in the sum of \$4,400.00—(12 C. C. R. 468).

On September 29, 1943, claimant filed a petition herein for a lump sum settlement and payment of the balance due under the said award. On November 30, 1943, an amended petition for a lump sum settlement was filed, alleging that as a result of the injury sustained by claimant on August 4, 1941, he is no longer able to work or follow his occupation of painter and that he is unable to do any manual labor and that he has now retired to his farm in the State of Indiana consisting of 100 acres. That in order to secure any income out of the said farm it is necessary that he employ someone to work and operate the farm, and that in order for this to be accomplished it is necessary that he purchase the necessary farm machinery as he has no farm machinery of any kind with which to operate the said farm. That it is necessary to purchase the following farm machinery— one tractor to cost about \$950.00; one two-gang plow to cost about \$190.00; one double disc plow to cost about \$250.00; and in addition thereto a seeder, cultivator and corn planter to cost about the sum of \$300.00, making a total required for farm machinery of the sum of approximately \$1,700.00.

Respondent, on December 8, 1943, filed an answer to the said petition, and suggests that there is no proof other than the allegation of the claimant that he is no longer able to do normal and manual labor, and further suggests “The physical’ condition of claimant was fully set out in the original proceedings in *Olson vs. State*, 12 C. C. R. 468, in the testimony of Dr. Bailey and Dr. Spie-

gel. The respondent is not further informed as to claimant's present physical condition."

In our original opinion, we said, "The record indicates that the duration of claimant's disability is indefinite and, therefore, the payments herein awarded claimant shall cease when and if claimant is able to resume his former occupation or is able to engage in some other occupation or business whereby his income is equal to his earnings before the injury occurred, or when the maximum payment has been reached, whichever first occurs."

As suggested by respondent, there is no showing in the record of claimant's present physical condition, other than the petition for a lump sum settlement.

"An award under the Compensation Act is intended, so far as possible, to supply the loss of periodical wages resulting from the disability, and lump sum awards are the exception and not the rule; and before commutation of the award to a lump sum is authorized under Section 9 the injured employee must support his application therefor by competent evidence showing that it is for his best interest that the compensation be so paid, and unless it clearly appears that the money will be properly safeguarded and that it will increase the disabled workman's means of support the prayer of his petition for a lump sum settlement should be denied.

The Lincoln Water and Light Company, vs. The Industrial Commission, 332 Ill. 64.

"Before the Industrial Commission is authorized to commute the compensation and order it paid in a lump sum the petitioner must support the application by competent evidence showing that it is for the best interests of the petitioner that the compensation be so paid."

The Sangamon County Mining Company, vs. Industrial Commission, 315 Ill. 532.

Under the present state of the record, we have no authority to authorize the payment of the balance of this award in a lump sum.

Petition is therefore denied..

(No. 3822—Claim denied.)

VERNE E. SCOTT, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed March 15, 1944.

C. E. TATE, for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—making claim for compensation and filing application therefor within time fixed by Section 24 of Act as a condition precedent to jurisdiction of court. Where the record discloses that no application for compensation was filed by employee within one year after date of injury, no compensation having been paid therefor, the court is without jurisdiction to proceed with hearing on claim filed thereafter.

SAME—limitations—Section 10 of Court of Claims Act inapplicable in claims under—Section 24 of Workmen's Compensation Act controlling. In claims by employees of State for compensation for accidental injuries, arising out of and in the course of their employment, Section 24 of said Act is controlling as to time within which same must be filed and Section 10 of the Court of Claims Act, allowing claims against State to be filed within five years after accrual is wholly inapplicable.

ECKERT, J.

In his complaint filed in this case on November 22, 1943, the claimant, Verne E. Scott, alleges that he is employed as a janitor in the Chemistry Annex at the University of Illinois; that on April 6, 1942, while carrying steel lockers from the Chemistry Annex to the Huff Gymnasium, he slipped and fell, sustaining permanent injury in the lower region of his back and spinal column; that despite his injury he continued his work, and on the 16th of April, 1942, while lifting paper towels onto shelves in the janitor's room in the Chemistry Annex, he felt his back "let loose"; that as a result thereof he was hospitalized both in Urbana, Illinois, and at Chicago, Illinois; that he is permanently and totally disabled from pursuing his usual occupation.

Respondent has filed a motion to dismiss the complaint on the ground that it was not filed within one year after the date of the accident, in accordance with the provisions of Section 24 of the Illinois Workmen's Compensation Act. That section of the Act provides that the right to file application for compensation shall be barred unless such application is filed within one year after the date of the accident, where no compensation has been paid, or within one year after the date of the last payment of compensation, where any has been paid. It has been repeatedly held by the Illinois Supreme Court that compliance with this section is a condition precedent to the right to maintain proceedings under the Compensation Act. *City of Rochelle vs. Industrial Commission*, 332 Ill. 386; *Inland Rubber Co. vs. Industrial Commission*, 309 Ill. 43. The decisions of this court are to like effect. *Simpson vs. State*, 10 C. C. R. 394; *Baker vs. State*, 10 C. C. R. 111. Furthermore, in claims by State employees for compensation for accidental injuries, arising out of, and in the course of their employment, Section 24 of the Workmen's Compensation Act is controlling as to time within which such claims must be filed, and Section 10 of the Court of Claims Act allowing claims against the State to be filed within five years after their accrual is wholly inapplicable. *Boismenue vs. State*, 12 C. C. R. 36. Claimant having failed to comply with Section 24 of the Act, the court is without jurisdiction to make an award.

The motion of the respondent is therefore granted. Case dismissed.

awarded \$853.07.)

nant, vs. STATE OF ILLINOIS,
ent.

rch 15, 1944.

imant.

orney General; C. ARTHUR
eneral, for respondent.

when award for further medical
Under Section 8, paragraph (a) of
e employer is obligated to provide
njured employee as is reasonably
of an accidental injury sustained
Act, and further awards for the
ere compensation was awarded to
ity, and the evidence shows that
such care is reasonably necessary
ch injuries resulting in such dis-
h are reasonable and just.

Claimant was injured on February 2, 1936, in an accident arising out of and in the course of her employment as a Supervisor at the Illinois Soldiers' and Sailors' Children's School at Normal, Illinois. The injury was serious, causing temporary blindness and general paralysis. The facts are fully detailed in the case of *Penwell vs. State*, 11 C. C. R. 365, in which an award was made to the claimant of \$5,500.00 for total permanent disability, \$8,215.95 for necessary medical, surgical and hospital services expended or incurred to and including October 22, 1940, and an annual pension of \$660.00. On February 10, 1942, a further award was made to claimant for medical and hospital expenses incurred from October 22, 1940, to January 1, 1942. On March 10, 1943, a further award was made to claimant for medical and hos-

pital expenses from January 1, 1942, to December 31, 1942. Claim is now made for an additional award of \$980.86 for medical, hospital and nursing: expenses from January 1, 1943, to and including September 30, 1943.

Claimant remains totally paralyzed from the waist down, the paralysis being of a spastic type; her physical condition has not improved. She has no control over her lower limbs, nor over urine and faeces. From January 1, 1943, up to and including September 30, 1943, she has been required, to relieve her of her injury and to prevent deformity and to stimulate circulation and for relief of bedsores, to employ and receive medical services and nursing attention. She remains helpless, requiring the services of nurses or attendants to move her to and from her bed, to change her bed clothing at least three or four times a day, to administer light treatment to the affected parts of her paralyzed body, and to rub her body with ointments prescribed by her physician. During the period in question, she expended, on account of nursing expenses \$490.50; for drugs, \$97.79; for medical services, \$173.00; for hospital expenses, \$123.57; for ambulance services to and from hospital, \$84.00; and for supplies, \$12.00, totalling, \$980.86. Claimant has submitted to the court, with her verified petition, the original receipts and vouchers showing payment of these respective items.

This court has heretofore held that under Section 8, paragraph a of the Workmen's Compensation Act, claimant is entitled to such care as is reasonably required to relieve her of the effects of the injury. (*Pennwell vs. State, supra.*) There has been no change in claimant's physical condition to justify the denial of an award at this time. The award, however, must be confined to such items as are reasonably required. The drugs listed in claimant's itemized statement, including such items as

Vicks Vatronol, aspirins, Lysol, soap, and unexplained drugs, do not appear to have been so required. Furthermore, Item C of claimant's itemized statement of expenses includes a charge of \$30.00 for examination of claimant by the Milton H. Berry School. This is not an authorized medical expense, nor is it shown to have been necessary to relieve claimant of the effects of her injury. The other services claimed appear to have been reasonably required, and the charges to be reasonable and just.

An award is therefore made to the claimant for medical and hospital expenses from January 1, 1943, to September 30, 1943, in the sum of \$853.07, all of which is accrued and is payable forthwith. The court reserves for future determination claimant's need for further medical, surgical and hospital services.

(No. 3796—Claimant awarded \$1,909.51.)

CARL WEAKLEY, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed March 15, 1944.

FRANCIS W. PURVIS, (FRANK EAGLETON, of Counsel)
for claimant.

GEORGE F. BARRETT, Attorney General; C. ARTHUR
NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made under for temporary total disability and partial loss of use of hand.* Employee of State sustaining accidental injuries, arising out of and in the course of his employment, while engaged in extra-hazardous enterprise, resulting in total temporary disability and partial loss of use of his hand, is entitled to compensation therefor; in accordance with the provisions of the Workmen's Compensation Act, upon his compliance with the requirements thereof.

PER CURIAM:

On the 30th day of June, **1942**, the claimant, Carl Weakley, was employed as a mechanic in the Illinois State Highway Garage, State Fair Grounds, near Springfield, Illinois. While repairing a motor under the direction of his superiors, a can of gasoline which was being used to clean parts of the motor exploded, burning various parts of his body, and more particularly his left arm. He was taken to the Springfield Memorial Hospital in Springfield where he received first aid, and later was transferred to Chicago, Illinois, for further treatment. The record consists of the complaint, report of the Division of Highways, report of Dr. H. B. Thomas, orthopedic surgeon, Chicago, Illinois, and stipulation between the attorneys for claimant and the Attorney General. Claimant seeks an award under the terms of the Workmen's Compensation Act for a partial loss of use of his left arm due to this injury.

Upon a full consideration of the record, and from a personal examination of claimant, the court makes the following findings :

That on the 30th day of June, **1942**, the claimant and respondent were operating under the provisions of the Workmen's Compensation Act; that on said date claimant sustained accidental injuries which arose out of and in the course of his employment ; that notice of said accident was given to respondent and claim for compensation for this injury was made within the time required by the provisions of said Act; that all necessary medical, surgical and hospital bills were provided by the respondent except the sum of \$19.40 paid by the claimant for hospital services; that at the time of the accident in question claimant was twenty-eight years of age, and had one child dependent upon him; that the earnings of the claimant during the year next preceding his injury were

One Thousand, Nine Hundred and Twenty Dollars (\$1,920.00), making his average weekly wage Thirty-Six Dollars and Ninety-two Cents (\$36.92), and his compensation rate Sixteen Dollars and Fifty Cents (\$16.50) as provided under Section 8 of said Act; that claimant's salary was paid regularly to him during the period of his convalescence, resulting in an over-payment of One Hundred Ninety-four Dollars and Twenty-four Cents (\$194.24).

The court further finds that the claimant has suffered a 75% loss of use of his left hand.

Claimant has also filed claim for three items, which he claims to have expended for railroad transportation, meals and private hospital while in Chicago. No proper proof has been made of these items, and the respondent is not liable therefor. An award on these items must be denied.

An award is entered in favor of claimant as follows : 127½ weeks at Sixteen Dollars and Fifty Cents (\$16.50) per week for a 75% loss of functional use of claimant's left hand totalling the sum of Two Thousand, One Hundred and Three Dollars and Seventy-five Cents (\$2,103.75), as provided by Section 8, Paragraph (E) of the Workmen's Compensation Act. From this amount must be deducted the sum of One Hundred, Ninety-four Dollars and Twenty-four Cents (\$194.24), representing the difference between the temporary compensation due claimant and the salary which was paid to him for unproductive work, leaving the total of One Thousand, Nine Hundred and Nine Dollars and Fifty-one Cents (\$1,909.51), of which One Thousand, Four Hundred Sixty-eight Dollars and Fifty Cents (\$1,468.50) has accrued to March 14, 1944, and is payable forthwith; the balance is payable to claimant in weekly installments of

Sixteen Dollars and Fifty Cents (\$16.50) per week until fully paid.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3799—Claim denied.)

MAY ARNOLD, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1944.

J. W. KOUCKY, for claimant.

GEORGE F. BARRETT, Attorney General ; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*claim for permanent partial loss of use of foot—failure of medical testimony to show loss due to injury—bars award.* Where the evidence shows that claimant was afflicted with an arthritic condition, which existed prior to alleged injury for which compensation is sought, alleged to have resulted in permanent partial loss of use of foot, and the medical testimony shows that alleged disability was the result of such previous arthritic condition, and that said condition was not caused, or aggravated by the alleged accidental injury, no award for compensation is justified.

SAME—burden of proof in claims under—is on claimant. The burden of proof is on claimant, in claims under the Workmen's Compensation Act to prove by a preponderance or greater weight of the evidence the causal connection between the accident and the condition or incapacity which constitutes claim for compensation under Act, and to establish every disputed question of fact as to the right to such compensation, and no award can be based upon speculation, surmise, conjecture, or on a choice between two views, equally compatible with the evidence.

ECKERT, J.

On August 29, 1942, the claimant, May Arnold, was employed by the respondent as an attendant at the Chicago State Hospital. She alleges that while in the discharge of her duties as such attendant, she was struck on

the left foot by a falling stretcher, and that as a result, she sustained a specific loss of the use of her left foot, big toe, and little toe.

On the hearing, claimant testified that at the time of the alleged accident, she was taking a patient to the hospital on a stretcher carried by four other patients; that one of the patients let the stretcher drop, and the wooden end of one handle struck her left foot; that she reported the accident to her supervisor who sent her to Dr. Olsman, an employee of the hospital; that Dr. Olsman examined her foot, found no break, but advised that she bathe the foot with hot applications to keep the swelling down. Claimant then returned to her home, reporting for work on the next day.

Claimant also testified that in December, 1942, her foot hurt her too badly to continue her work; that she was advised to see Dr. McCorry, who was employed at the hospital; that Dr. McCorry advised her to see "a good outside chiropodist." During January or February, 1943, claimant consulted Dr. Cohen and Dr. Barnai, both employed at the hospital. An x-ray was taken on April 9, 1943. Claimant also consulted other doctors, including a Dr. Rose, and a Dr. Vaughn, neither of whom was connected with the hospital. She testified that Dr. Vaughn advised her that "vitamin D was the only thing that would help." She complains of constant pain in her foot; that because of the pain she walks sideways on her foot; and that she cannot put any weight on her foot.

From the report of the Department of Public Welfare, it appears that claimant worked regularly from August 30, 1942, until January 23, 1943, when she took a vacation. She returned to work on February 18, 1943, worked for 4 days, reported that she was sick on February 22, 1943, remained away from work for 4 days,

and thereafter returned to duty. She 'has continued to work since that time with the exception of the period from July 1, 1943, to July 12, 1943, when she was confined to her home with influenza.

Dr. Albert C. Field, called as a witness on behalf of the claimant, testified that he first examined claimant on August 27, 1943; that he examined the x-rays which had previously been taken of claimant's foot and also took x-ray picture at that time; that in his examination, her left foot disclosed a marked relaxation of the transverse arch, a hyperextension of the toes with painful and palpable metatarsal heads, little movement, if any, in the distal phalangeal joint of the first toe, crepitation and pain on manipulation, and calosity beneath the first metatarsal phalangeal joint, which is enlarged and somewhat deformed. He testified that the x-ray taken on August 27, 1943, showed some evidence of interference with the circulation in the distal ends of the first and second toes, decalcification, some evidence of bony changes present, especially in the condyles of the first toe, distal phalangeal, the joint space somewhat narrowed due to depression of the joint, and the cartilage making up the space. He stated that the bony changes also appeared in the second toe in the distal phalanx. Dr. Field was then asked, "Doctor, in your opinion can those changes be caused by trauma, such as a dropping of an object upon the toe?" Dr. Field answered, "Yes, that could be."

Dr. Benjamin Cohen, called as a witness for the respondent, testified that x-rays taken of claimant's foot on April 9, 1943, on May 22, on July 31, and on August 27, 1943, all showed no break, but showed atrophic arthritis. The doctor also testified that the records of the Chicago State Hospital contain no report of an injury to the claimant other than her complaint made in

January, 1943, five months after the alleged injury. On cross-examination, Dr. Cohen stated that the causative factor of a condition such as claimant's is not a trauma, but an infection somewhere in the body which a trauma might aggravate.

Dr. George Procopie, called as a witness for respondent, testified that the x-ray of claimant's foot taken on April 9, 1943, showed no fracture, but showed a slight bone hypertrophy, a kind of arthritis, in some places atrophic. He testified that the x-ray taken on May 22, 1943, also showed no fracture, but a slight decalcification.

The claimant has the burden of proving the causal connection between the accident and the condition or incapacity which constitutes her claim for compensation. *Sanitary District vs. Industrial Commission*, 343 Ill. 236; *Sears Roebuck & Co. vs. Industrial Commission*, 334 Ill. 246. Liability can not rest upon imagination, speculation or conjecture, but must be based upon facts established by a preponderance of the evidence. *Springfield District Coal Company vs. Industrial Commission*, 303 Ill. 528. It can not rest upon a choice between two views equally compatible with the evidence. *Rittler vs. Industrial Commission*, 351 Ill. 338; *Carson-Payson Company vs. Industrial Commission*, 340 Ill. 632; *Mandell vs. State*, 12 C. C. R. 49.

From the record it is clear that claimant is suffering from atrophic arthritis in her left foot. It is undisputed that the x-rays show no fracture. It is not established, however, by the medical testimony that the arthritis was either caused or aggravated by the alleged injury. It appears 'rather that the present condition of claimant's foot is a result of the atrophic arthritis and not a result of the alleged injury.

Claimant has, therefore, not sustained her burden of proving the causal connection between the accident and her alleged incapacity. Any liability in this case would be based not upon facts, but upon conjecture. There are two views equally compatible with the evidence: (1) that claimant's disability is a result of the alleged injury; (2) that claimant's disability is the result of an arthritic condition.

An award must therefore be denied.

(No. 3591—Claim denied.)

ELSIE CROSS, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed March 15, 1944.

Rehearing denied May 9, 1944.

MAX J. BECKER AND LEO SEGALL, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*burden of proof in claims tender—on claimant.* The burden of proof is on claimant in claims under Workmen's Compensation Act to establish every disputed question of fact as to the right to compensation, by a preponderance or greater weight of the competent evidence, and no award can be based upon speculation, surmise, conjecture, or upon a choice between two views, equally compatible with the evidence.

SAME—*when evidence insufficient to sustain claim for permanent and total disability.* Where after giving full credence to the competent medical and other testimony adduced, the record fails to show that claimant had suffered permanent and total disability, claim for compensation cannot be sustained and an award must be denied.

SAME—*physician not treating employee—examination by for purpose of testifying—what evidence not admissible.* The opinion of a physician who had not treated the injured employee but who examined her for the purpose of testifying as to the cause of her physical condition, is not admissible where it is based wholly upon the history and observation of the patient and what was told him by her relative to her physical condition.

SAME—medical and surgical services—other than furnished by State—procured at instance of employee—when State not liable for. Where it appears that the State was ready, able and willing and tendered all proper and necessary medical and surgical services to employee, sustaining accidental injuries, that were reasonably necessary to cure or relieve her from the effects thereof, but that she refused to accept said services and elected to furnish same herself, no award can be made for the value thereof.

CHIEF JUSTICE DAMRON delivered the opinion of the court:

This complaint was filed in this court on March 4, 1941. The record was not completed until the 23rd day of December, 1943, on which date it was assigned for opinion. The record consists of the complaint, deposition of claimant and Dr. Frederick C. Test, called on her behalf, abstract of same, brief and argument on behalf of claimant, brief and argument on behalf of respondent, reply brief and argument on behalf of claimant, and departmental report of the Assistant Superintendent of Charities, W. C. Couch, of the Chicago State Hospital, Chicago, Illinois.

The complaint seeks an award under the Workmen's Compensation Act for permanent and total disability as provided in paragraph (a), Section 7, and the sum of \$486.80 for medical, surgical and hospital services.

The evidence of the claimant discloses that on the 3rd day of July, 1940, while employed as an attendant at the Chicago State Hospital, a mental institution, under the supervision of the Department of Public Welfare, she was attacked by a patient who beat, struck, kicked and otherwise abused her about her back, head, shoulders and abdomen. That during the attack the patient turned the claimant over and kicked her in the face, chest and abdomen. Three attendants came and loosened the patient from the claimant.

She testified she immediately reported to the night doctor of the institution, who, after an examination, pronounced the injury as mild.

An x-ray was taken of the chest July 6, 1940, which revealed a healthy chest with no evidence of fracture or injury. On the morning of the injury claimant was directed to go to Dr. Olsman, an employee of the staff of said institution, and from there to the employees' hospital. This she failed to do. Instead, she elected to select her own medical treatment, and from the date of the injury, or thereabouts, until the 30th day of November, 1942, she was examined and claims to have been treated by at least four doctors, namely, Drs. Orth, Vaughan, Mock and Lally, all of Chicago. She testified that she incurred bills for examination and treatment from the above named doctors, which were introduced in evidence as claimant's exhibits 1-12 inclusive, showing the amount she claimed to have expended to be \$486.80.

The departmental report, which is prima facie evidence, states that this claimant was in the hospital between February 2, 1940, and March 16, 1940, under the care of Dr. Vaughan for a chest condition which was supposed to have been influenzial pneumonia with pleurisy; that the claimant was off duty two weeks in February, 1939, for influenza and that she was in the hospital in August, 1938, for an infection of the right axillary region.

It is noteworthy that none of the above named doctors were called to support the allegations in the complaint. However, Dr. Frederick C. Test, of Chicago, was called as a supporting witness. He testified that he made examination of this claimant on November 30, 1942, at his office. He stated that she was complaining of her left chest and the right abdomen. On examination he ob-

served that she held her head a little strained. He testified she moved her head about 75" to the right and about 60" to the left, which is about normal amount of movement. But when he tried to move it farther in either direction, particularly to the left, there was a cracking, a rubbing. He stated he could feel the tissues rubbing-over each other, as though they were thickened. He described it as a fibrosis condition indicative of an earlier injury to the neck and a consequent inflammation, which when subsided left scar tissue between the muscles and tendons. He was not able to palpate anything abnormal on the left side where she complained of tenderness. But on the third and fourth ribs from the sternum to the axillary lines, he stated there was flinching and rigid muscles on the right abdomen when he palpated it. This condition was not present on the left side. He stated she told him she had her appendix removed some years earlier, and had a second operation for removal of adhesions some years later.

He testified the chief objective findings developed by this examination was fibrositis in the neck. In response to a question by the attorney for claimant, he described the word "fibrositis" as a condition of fine fibrous hair line scar tissue resulting from a previous inflammation, generally following a trauma, although it may follow an arthritic inflammation.

On cross examination he testified he was not the treating physician and had been guided by what the claimant told him in reference to an attack by a patient on the 3rd day of July, 1940. The testimony of this physician being based wholly on the history and observation of the patient, and the examination having been made thirty months after the alleged injury and the examination having been made for the sole purpose of testifying

in the case, under the law it cannot be taken into consideration considering the rule laid down in the case of *National Steel Castings Co. vs. Ind. Corn.*, 377 Ill. 169, wherein the Supreme Court said, on page 176—

“It is competent to have experts read the x-ray films. However, in this connection it should be noted that in so far as the introduction of such matters is related to the rules of evidence, the opinion of a medical expert who has not treated the employee but has examined him for the purpose of testifying as to the cause of his physical condition, is not admissible where it is based wholly upon the physician’s observations of outward manifestations within the employee’s control, or where it rests partly upon the statement of the case made by the employee. *Sanitary District vs. Ind. Corn.*, 343 Ill. 266; *Lehigh Stone Ca. vs. Ind. Corn.*, 315 Ill. 431; *Wells Bros. Co. vs. Ind. Corn.*, 306 Ill. 191.”

But taking Dr. Test’s testimony as we find it, and giving it full weight, it is at best speculative.

On cross examination the following questions were propounded:

- Q. Dr. Test, all you know about her injury or accident at the hospital is what she told you?
 A. Is what she told me, yes.
 Q. You just testified that she could move her arm seventy-five per cent one way and sixty per cent the other?
 A. She can. She did.
 Q. And that might be caused by trauma or it might be caused by arthritis, is that right? You would not be able to say today which that was caused by?
 A. I don’t think so.
 Q. And you claim that her main injury is the neck injury?
 A. I do, yes.
 Q. Yes, and you don’t know the cause of that?
 A. I don’t know the cause of it, no.

Liability under the Workmen’s Compensation Act cannot rest upon imagination, speculation or conjecture or upon a choice between two views equally compatible with the evidence but such liability must arise out of the facts established by a preponderance of the evidence. *Inland Rubber Co. vs. Ind. Corn.*, 309 Ill. 43; *Cryder vs. State*, 12 C. C. R. 291.

The burden of proof is on the claimant to show a causal connection between the injury and her alleged condition of ill-being. Her medical witness, Dr. Test, was unable to determine whether or not the claimant's alleged disability as he found it, was a result of the injury or was caused by an arthritic condition which existed prior to the injury.

In *Mandell vs. State*, 12 C. C. R., page 49, we said:

"It appears from the evidence that claimant has not sustained her burden of proving the causal connection between the accident and her alleged incapacity; that any liability in this case would be based not upon the facts, but upon conjecture; that there are two views equally compatible: (1) that claimant's disability is a result of the injury; (2) that claimant's disability is a result of a prior arthritic condition."

This claim for permanent and total disability must be denied. Likewise, the claim for \$486.80 alleged to have been expended by claimant for medical services must be denied, the respondent having tendered the necessary first aid, medical and surgical services, necessary or required to cure or relieve her from the effects of the injury as provided under Section 8 (a) of the Act. These services were refused by the claimant and she elected to secure her own physician, surgeon and hospital services at her own expense.

(No. 3541 — Claimant awarded \$184.80.)

FRANCIS DOYLE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1944.

MARSHAL I. McMAHON, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made for compensation under.* Where it appears that employee of State sustained

accidental injuries, arising out of, and in the course of his employment, while within the protection of the Workmen's Compensation Act, an award may be made for compensation therefor, in accordance with the provisions thereof, upon compliance by employee with the requirements of same.

SAME—claim for partzal permanent disability, under paragraph (d) of Section 8 thereof—proof necessary to sustain. To obtain an award for partial permanent disability under paragraph (d) of Section 8 of the Workmen's Compensation Act, there must be proof of a difference between the average amount which claimant 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, and where the record fails to show proof of any such difference no award can be made.

CHIEF JUSTICE DAMBON delivered the opinion of the court:

This claimant was injured on May 9, 1940, while employed by the Division of Highways on S. B. I. Route 41, Cook County, Illinois. The injury occurred while lifting a tar barrel so as to place it on a patrol truck of the Division. He complained of an acute pain in the middle of his back, was taken to his home and was there attended by Dr. E. W. Luessman. Thereafter on the same day he was sent to Chicago to be under the care of Dr. H. B. Thomas. He continued under the treatment of Dr. Thomas until June 5, 1940, when he was discharged for work.

Claimant seeks an award for partial permanent disability.

The record consists of the complaint, report of the Division of Highways, evidence of claimant and James Schoos, a fellow worker, abstract of same, brief, statement and argument on behalf of claimant and respondent.

This claimant testified that he was totally incapacitated for work for six weeks and partially incapacitated for about two months. Dr. Thomas, during the course

of his treatment of claimant filed a series of reports with the Division of Highways:

"On May 11, examination shows tenderness of spinous processes of 8th to 12th dorsal vertebrae. Complains of pain through back into his lower abdomen but there is no rigidity to the abdominal muscles. Slight amount of muscle spasm though. Patient does not relax enough to try his reflexes. Patrick test negative. Other tests unsatisfactory. Sensation in back and lower extremities normal."

On May 15; Dr. Thomas reported: "He states he feels fine. Has been in bed until yesterday. When he moves about quickly his right lower back catches him. Is to have physiotherapy. He ought to get along nicely. Warn, however, that he has great deal of old osteoarthritis and disc trouble which makes him a bad risk for employer."

On May 27, Dr. Thomas reported: "No previous injuries elicited. Back has felt sore on previous occasions especially when he has a cold. Has tenderness over spinous processes from 8th to 12th dorsal. Sensation in back and lower O. K. Reflexes in lowers O. K. X-rays of spine show slight lipping here and there throughout the spine. A few Schmorl's nodes are visible in dorsal spine. Impression: Moderate arthritis of spine, pain due to strain of dorsal region. I gave him a medical, fearing there was some pleurisy. Findings, however, were negative. There are no objective orthopedic findings. He, however, continues to complain of pain in back where he states he was injured and tells of relief given by treatment."

On June 5, Dr. Thomas reported: "Mr. Francis Doyle continues to complain of his back. He has considerable arthritis as shown by X-ray and also has evidence of injury to the discs of the 4th, 5th, 6th, 7th, 8th and 9th dorsal vertebrae. Both these conditions are old. However, he does not complain of pain. He says all he has is a 'stitch in his right middle 'back over the ribs and a peculiar feeling in the low back when attempting to turn from a lying position.' He is a lather by trade and I am sure could do that type of work successfully if he did not lift anything heavy."

The above and foregoing represents all the medical testimony that was introduced in the case. Claimant testified at the hearing that he was now employed as a special delivery messenger for the post office, in Cook County and earns about \$130.00 per month. He testified that he was a lather by trade prior to his employment by the respondent, but due to the injury to the region of his back he was unable to follow that occupation for the

reason that it required heavy lifting which he claimed he was unable to do.

Upon a consideration of the full record, we make the following finding :

That claimant and respondent on the date of the injury were operating under the terms of the compensation Act of this State; that on said date claimant sustained accidental injuries which arose out of and in the course of his employment; that notice of said accident was given to the respondent and claim for compensation on account thereof was made within the time required by the provisions of Section 24 of said Act.

That necessary medical and hospital services were provided by the respondent. That at the time of the accident in question claimant was forty-two years of age, was married and had two children under the age of sixteen dependent upon him for support.

This record does not justify an award for partial permanent disability. Injuries, to be compensable under the provisions of the compensation act must be proven by competent evidence, of which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the injured employee. From such evidence in this record, it appears only that the claimant suffered an injury to his back which subsequently healed which was insufficient to account for his alleged disability. To obtain an award for partial permanent disability under Section 8, subsection (d) of the Act, there must be proof of a difference between the average amount which he is earning or is able to earn in some suitable employment or business after the accident, and that which he earned before the accident. *Sefried vs. State*, 12 C. C. R., 241; *Weiner vs. State*, 12 C.

C. R., 244. Therefore, the claim for partial permanent disability must be denied.

However, the claimant is entitled to an award for temporary total disability from May 9, 1940, for fourteen weeks. The testimony shows that claimant was earning Fifty Cents (50c) per hour for eight hours per day for a period not to exceed 200 days per year, making his total yearly income amount to the sum of \$800.00. His weekly wage would be \$15.38. His compensation rate, under Section 8, paragraph (j) would be \$13.20, inasmuch as this claimant had two children under the age of sixteen years dependent upon him for support.

An award is therefore hereby entered in favor of claimant in the sum of One Hundred Eighty-four Dollars and Eighty Cents (\$184.80), representing temporary total compensation for fourteen (14) weeks. Respondent, having paid the claimant the sum of Forty-one Dollars and Forty-nine Cents (\$41.49) temporary total compensation, must deduct this sum from the award, leaving the sum of One Hundred Forty-three Dollars and Thirty-one Cents (\$143.31) due claimant, all of which has accrued and is now payable in a lump sum.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3780—Claimant awarded \$709.04.)

HEMP AND COMPANY, INCORPORATED, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1944.

Claimant, pro se.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

CONTRACTS—*damages resulting from change of plans and specifications—when award may be made for.* Where claimant sustains damages under contract for manufacturing license plates for State, through no fault of his own, but occasioned solely by State through a change of plans and specifications, an award may be made therefor, upon proper proof of same.

ECKERT, J.

On May 12, 1941, Hemp and Company, Inc., an Illinois corporation, entered into two contracts with the State of Illinois, by the Secretary of State, for the manufacture of the 1942 and 1943 Illinois motor vehicle and motor bicycle license plates.

Subsequent to the execution of the contracts, the size of the 1942 passenger automobile and truck plates was increased one-eighth of an inch in length and width; such increase in plate size necessitated the use of 60,450 pounds of additional steel at a cost of \$2,220.32. Also subsequent to the execution of the contracts, the size of the 1942 truck plates was increased three-fourths of an inch in length; such increase necessitated the use of 19,320 pounds of additional steel at a cost of \$709.04.

At the time of the execution of the contracts, it was impossible to obtain all of the materials specified in the paint formula for the license plates, and it became necessary to use substitutes. A zinc chromate primer, then approved and adopted for use by the Army and Navy, was substituted for the black enamel primer called for in the contracts. The cost of this primer was \$2.55 a gallon, as compared to \$1.30 a gallon for the ordinary black enamel primer, making an additional cost of \$7,500.00 for 6,000 gallons.

The changes in size in the license plates necessitated an over-all die cost of \$3,304.00 which claimant intended to absorb in producing the entire order of 1942 and 1943 plates. Because of its inability to obtain steel, it was able to manufacture only a small part of the 1943 plates, and so had no opportunity to utilize the dies fully in producing plates under the 1943 contract. Claimant offers to write-off one-half of the die cost against the 1942 production, provided it is reimbursed for the remaining one-half of the cost, or \$1,652.00 not utilized in manufacturing the 1943 plates.

Of the 2,001,000 pairs of plates ordered for 1943, only 155,000 were manufactured. For this 155,000 claimant incurred an additional cost of steel and zinc chromate primer in an amount of \$522.23. Claim is made for the total sum of \$12,603.59.

From the record it appears that the changes in the license plates were made after discussions between claimant and the Chief Clerk of the Automobile Department of the Secretary of State, subsequent to the execution of the contracts, but prior to November 13, 1941. No written memorandum of any kind was signed by either claimant or the Chief Clerk in relation to these changes. On November 13, 1941, claimant wrote to the Chief Clerk, pointing out certain higher costs "we are running into due to several changes made since the contract for plates was let." Claimant stated that it felt the items were extra costs not called for by the contracts, and hoped the Chief Clerk would give the matter favorable consideration, apparently meaning that the Chief Clerk should find some means of paying a part or the whole of such increased cost. Claimant received no reply to the letter. On March 17, 1942, when the contract was completed, formal invoice was rendered by claimant covering these

changes. No action was taken by the office of the Secretary of State on this invoice. On direct examination, Mr. Joseph L. Hemp, president of the claimant corporation, testified that from time to time claimant brought the matter of the additional charges to the attention of the Chief Clerk, and "we were assured that it would be taken care of, because Mr. Nash agreed on a number of occasions that the changes occurred and the charges were fair."

Mr. John J. Nash, called as a witness for the claimant, testified that he is the Chief Clerk of the Automobile Department of the Secretary of State, of the State of Illinois; that as such Chief Clerk he has supervision of the contracts entered into by the State of Illinois with reference to the manufacture of motor vehicle license plates; that the change in primer for the 1942 plates was made at the suggestion of the claimant. He stated: "The suggestion came from Hemp and Company that if they used the primer they used for the Navy, it would be a better primer for the plates. I O.K.'d it. It cost more than the other and I approved it. All verbally, of course."

The specifications which form part of claimant's contract provide :

"The enamel used on all license plates shall be submitted to, and withstand a salt spray test of 20% solution for a period of 350 hours. The quality and manufacture of the steel and enamel used must be such that the finished plates shall stand bending in the same place six times without cracking or breaking."

.....

"ENAMELS— in general. These specifications cover enamel for use as the background on license plates and for use as the rolling ink or lettering enamel shall be of the best quality of what is commercially known as pure chrome, prepared, applied and thoroughly baked on the plates and must be applied thick enough to be thoroughly opaque, and must be of such hardness as to resist incision by the finger nail. In short, the workmanship, quality and application of the enamel to the

plates must be such that under ordinary usage there will be no deterioration in its appearance during the period of one year from January 1, 1942. The coloring combination is to be directed by the Secretary of State. The background enamel shall receive two separate coats, each applied separately and each coat baked separately. The back of the tag shall also receive two coats of the same enamel, each baked separately. These applications shall be such that all edges, including the outer edge and the edges of the slots, shall withstand the same tests without a breakdown of the enamel covering these exposed edges. The enamel must stand exposure in a weatherometer (National Carbon Company Weatherometer or equal) for fourteen days without any discoloration or fading."

.....
 "The right is reserved to retest all enamel which has been tested and accepted at the source of manufacture, after the same has been delivered at the destination specified, and to reject all enamel which when retested does not meet the requirements of the specification."

.....
 "All material herein specified must be finished in a thorough workmanlike manner and the right is reserved to reject any and all material that does not conform to these specifications; also, any and all material herein specified that fails under ordinary usage. Manufacturers will be required to replace such material free of charges."

Claimant's obligation under these specifications was clearly to furnish a first-class, high grade, all weather surface for the 1942 license plates. Because of war conditions, the exact paint formula could not be followed. At claimant's suggestion, a substitute primer was used. The respondent made no requirements for the substitute other than those already a part of the contract. The fact that the substitute chosen by the claimant was costlier than that originally intended, of itself creates no obligation on the part of the respondent to pay this additional cost. The substitution could not deprive the respondent of its obvious right under the contract to test and either approve or disapprove the finished product. In the absence of any agreement of the respondent to assume the additional cost, the approval of the substitution can be considered only the exercise of its contract rights.

The increase in the size of the passenger car plates likewise was not the result of any instruction from the respondent. Claimant, in its complaint, alleged that this increase in size was made, in part at least, “to avoid a patent infringement.” Mr. Nash testified that the only change made in these plates was a change in the embossing dies; that he did not order the new embossing dies; that this change was made “because in 1939 when Hemp and Company made our plates a man in California had a patent right and he wanted to collect a royalty and in order to get around that it was changed.”

The record contains the following testimony of Mr. Nash, on direct examination, and as a witness for claimant:

- “Q. Was there any change in the size of the plates or rather increase in the size of the passenger plates which called for additional steel?
- A. Yes, there ~~was~~ with the new embossing dies, but I didn’t order that.
- Q. And that was made necessary by reason of the facts which you have just related?
- A. That’s right. I didn’t order the dies, I just simply told them if they didn’t want to pay that royalty they’d have to do that.”

The court, therefore, must deny that portion of the claim in the amount of \$2,220.32 for increasing the size of the 1942 passenger plates and truck plates; must deny that portion of the claim in the amount of \$7,500.00 necessitated by the use of zinc chromate primer on the 1942 plates; and must deny that portion of the claim in the amount of \$522.23 for increased size and for use of zinc chromate primer in the manufacture of 155,000 1943 license plates.

It is undisputed, however, that subsequent to the execution of the contracts, respondent instructed claimant to insert the word “Truck” vertically on the 1942 truck plates after the letter prefix. A portion of the

claim, in the amount of \$709.04, is the result of claimant's increasing the length of these plates to comply with this instruction. The charge is reasonable and proper ; it was incurred through no fault of claimant, but solely by reason of respondent's change of plans and specifications ; and it will therefore be allowed. *Willadsen, et al vs. State*, 8 C. C. R. 604; *Goelitz Company vs. State*, 10 C. C. R. 572.

It is not clear from the record what portion of the claim for 50% of the additional die cost of \$3,304.00 is attributable to the increase in size of the 1942 truck plates, and what portion is attributable to the increase in size of the passenger car plates. No award can therefore be made for such additional die cost.

Award is made in favor of the claimant, Hemp and Company, Inc., in the amount of \$709.04. The balance of the claim is denied.

(No. 3769—Claim denied.)

THE LORD AND BUSHNELL COMPANY, AN ILLINOIS CORPORATION,
Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1944.

MARSHALL, MURTAUGH AND BURGESSON, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

AFRA-AMERICAN EMANCIPATION EXPOSITION—*provisions of Section 3 of, mandatory—contract made in violation of void.* Principal and agent—authority of agent of State—one dealing with bound to know extent of—persons exercising special statutory power—one dealing with does so with notice of limitation of power. Estoppel—State not estopped from denying liability on contract made in violation of law. The facts in this case and the issues involved are almost identical with those in *Root vs. State*: 12 Court of Claims Reports, page 144 and what was said by the Court in that case applies with equal force herein.

ECKERT, J.

On January 8, 1943, claimant filed its complaint in this court alleging that from December 30, 1937, to July 15, 1940, upon orders of the respondent through its Department of World Fair Exhibits, claimant supplied respondent with various items of lumber; that claimant has not received payment for those items furnished from May 23, 1940, to July 15, 1940; that the orders were signed by Eric Lindgren, Director, World Fair Exhibits; that the orders of May 23, 1940, and following were of the same tenor and form, and upon the same authority as the prior orders; that claimant is entitled to payment for materials furnished in the total sum of \$9,141.18 with interest at five per cent per annum from July 31, 1940.

On motion of respondent, the complaint was dismissed on the ground that claimant had failed to allege that the expenditures were approved by the Speaker of the House of Representatives and the President of the Senate of the State of Illinois, or by any person or persons designated by them to act in their stead, as required by Section 3 of "An Act to Create the Afro-Merican Emancipation Exposition Commission, to define its powers and duties, and to make an appropriation therefor," enacted by the Sixty-first General Assembly.

On May 15, 1943, claimant filed its amended complaint, adopting the allegations of the original complaint, and further alleging that Eric Lindgren was a member of the technical staff of the Afro-Merican Emancipation Exposition Commission, and of the Diamond Jubilee Exposition Authority, Inc., the fiscal agency of the American Negro Exposition; that said fiscal agency was the person designated within the provisions of Section 3 of the Act creating the Afro-Merican Emancipation

Exposition- Commission, and that Truman K. Gibson, Executive Director of the fiscal agency and of the Exposition, and Eric Lindgren as member of the technical staff, were also duly designated within the provisions of that Act, and that Eric Lindgren, Truman K. Gibson, Diamond Jubilee Exposition Authority, Inc., and Afro-American Emancipation Exposition Commission duly and properly approved the purchase 'of material as required by the Act; that all the duly authorized officers of the government of the State of Illinois, including the then Governor, the Secretary to the Governor, the Director of the Department of Finance, the State Auditor, the State Treasurer, the Speaker of the House, and the President of the Senate, the members of the Afro-American Emancipation Exposition Commission, the Director of the Commission, the fiscal agency, and the job supervisors were advised and knew of over fifty separate orders and deliveries made by the claimant over a period of more than two months and approved the same; that if each of these persons did not order the material, such knowledge warranted the continued delivery of goods and cured any deficiency in the authority of Eric Lindgren.

The amended complaint also alleged that the Exposition was scheduled to open on July 4, 1940; that completion of the project was delayed until May 20, 1940, and thereafter, until the opening of the Exposition, an emergency existed whereby unless the material was ordered and delivered immediately, the Exposition could not have commenced and the prestige of the State and the large investments of the State and Federal Governments would have been seriously prejudiced; that this emergency justified the deviation or failure to comply with the statutory requirements for approval, if any such deviation occurred; that at the time the orders were

placed and material delivered there were funds appropriated and not expended in excess of the amount due claimant.

The case is now before the court on respondent's motion to dismiss the amended complaint. The motion is substantially the same as the motion filed to the original complaint.

The Sixty-first General Assembly of the State of Illinois, by an Act approved July 17, 1939, created an Afro-Merican Emancipation Exposition Commission, and made an appropriation for its use. It was from this appropriation that claimant expected payment of the orders in question. Section 3 of the Act, however, provided :

"The exposition authorities shall prepare an estimate prior to the first day of each month of the expenditures to be made during the succeeding month and shall submit the same for the approval of the Speaker of the House of Representatives, and the President of the Senate or such persons as they may designate to act in their stead, and no expenditure shall be made from the sums appropriated by this Act unless the same are approved as hereinabove provided for."

This provision was mandatory and an express limitation on the power conferred. (*Martin Root, et al, vs. State*, No. 3673.) Whoever deals with persons exercising a special statutory power does so with notice of the limitation of that power, (*Illinois Central Railroad Compy vs. State*, 10 C. C. R. 493), and the State cannot be charged on any theory of estoppel. (*Dement, et al vs. Rokker, et al*, 126 Ill. 174; *Klimczak et al vs. State*, 11 C. C. R. 110; *Schoenig vs. State*, 11 C. C. R. 634.) The case of *Volland vs. State*, 10 C. C. R. 715, cited by claimant, has been directly overruled by the decision of this court in the *Klimczak* case. In the case of *King vs. State*, 11 C. C. R. 577, also cited by claimant, the question presented was the effect of a departmental ruling, not of a

statutory provision, and is not controlling in this case.

Claimant was bound to know the extent of the powers of the Afra-Merican Emancipation Exposition Commission, and was bound at its peril to know whether or not the expenditures in question had been properly approve'd. The amended complaint, failing to show compliance with Section 3 of the Act creating the commission, is insufficient to support an award by this court. Respondent's motion to dismiss is therefore sustained.

Claim dismissed.

(Nos. 3517-3619, consolidated—Claims denied.)

RUBY SEFTON MATTHEWS AND CENTRAL ILLINOIS BUILDING, LOAN AND HOMESTEAD ASSOCIATION, No. 3517 AND MONETA E. REMINGTON, LOTTIE D. DAVIDSON, HARRY H. TAYLOR AND EFFE A. TAYLOR, No. 3519, Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1944.

WILLIAM F. SMITH, for claimant.

GEORGE F. BARRETT, Attorney General; ROBERT V. OSTROM, Assistant Attorney General, for respondent.

DEDICATION OF PROPERTY FOR PUBLIC USE—*construction of public improvement thereon—damage to contiguous land of grantor not acquired by deed of dedication alleged to have resulted therefrom—effect of deed of dedication as to release.* Where private property is acquired by deed of dedication, for purpose of construction of public improvement, instead of by condemnation proceeding, the payment of the consideration agreed upon has the same effect as the assessment of damages in condemnation proceeding, and includes damages to contiguous property of grantor, not conveyed under deed, which may result from proper construction of said improvement, and all past, present and future damages which the improvement may thereafter reasonably produce.

ECKERT, J.

The claimant, Central Illinois Building Loan and Homestead Association, is the owner of the following real estate:

Lot 12 in Block 2 in Crang's Addition to Clinton, situated in the County of DeWitt, and State of Illinois,

subject to contract for sale to the claimant, Ruby Sefton Matthews. On June 5, 1940, claimants filed their complaint in this court alleging that the real estate had been damaged for public use within the meaning of Section 13, Article 2 of the Constitution of the State of Illinois. The complaint alleged that the construction of a subway by the State, on North Giant Avenue, in the City of Clinton, changed the grade at the intersecting point of the subway line and the property line of claimants' property; that the construction of the subway cut off claimants' natural, most useful, and efficient means of access, and ingress and egress to and from their property; that the construction of the subway damaged the house located on the premises, damaged the foundation of the house, and damaged its interior furnishings; that the fair cash market value of the property before the construction was \$1,500.00 to \$2,000.00; that after the completion of the subway, the fair cash market value of the property was \$600.00 to \$750.00; and that claimants suffered damages in the amount of \$1,000.00.

The claimant, Moneta K. Remington, is the owner of the following real estate :

Lot 8 in Block 2 in Crang's Addition to the City of Clinton, situated in the County of DeWitt and State of Illinois.

subject to the rights of the claimant, Lottie D. Davidson as tenant in possession. The claimants, Harry H. Taylor and Effe A. Taylor were the owners of the property at the time the alleged injury occurred. All damages to which they might be entitled as against the respondent have been assigned to the claimant, Moneta K. Remington. On June 5, 1940, claimants filed their complaint in this court alleging that the real estate had been damaged

for public use within the meaning of Section 13, Article 2 of the Constitution of the State of Illinois. The complaint alleged that the construction of the North Grant Avenue subway, and road improvement in connection therewith, lowered the level of North Grant Avenue adjacent to their property; that the subway prevents the owners from entering or leaving the property by Grant Avenue, and compels them to enter and leave their property by a back entrance; that the construction of the subway substantially damaged the paint inside and outside of the dwelling house on the premises, and damaged the furnishings within the house; that the fair cash market value of the property before the construction was \$3,500.00; that the fair cash market value of the property subsequent to the construction of the subway is \$2,000.00; and that claimants suffered damages in the amount of \$1,500.00.

On November -14, 1942, respondent filed answer to the complaint of Ruby Sefton Matthews, alleging that before the construction of the subway, she executed and delivered a deed to the State of Illinois dedicating a right of way for public road purposes in, over, and upon the identical property for which she seeks damages, and alleging that by this deed of dedication claimant is barred as a matter of law from maintaining her claim. Substantially the same answer was filed to the complaint of Moneta K. Remington. Evidence was taken in both cases, and filed in this court on October 15, 1942. On December 9, 1942, respondent filed its motion to dismiss the consolidated cases, reserving its right to introduce testimony on the merits in the event the motion should be denied.

The evidence discloses that a part of the properties in question were dedicated by claimants for public use in

connection with the identical public improvements which they allege to have been the cause of the damages they subsequently sustained. The evidence discloses no deviation from the plans and specifications for the improvement and construction of the subway, and discloses no misrepresentation by the respondent with reference to the deeds of dedication. Where an owner dedicates property for public use in connection with public improvements, the law conclusively presumes that the consideration for the dedication is based, not only on the value of the land dedicated, but any damages sustained to contiguous land of the owners by reason of the improvement. *Longden vs. State*, 12 C. C. R. 129; *Holtman, et al, vs. State*, 12 C. C. R. 212; *Lepski, et al, vs. State*, 10 C. C. R. 170; *Siekmann vs. State*, 10 C. C. R. 286.

The motion of the respondent must therefore be granted. Cases dismissed.

(No. 3811—Claimant awarded, \$35.00.)

HENRY CLAY GOTT, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 15, 1944.

Claimant, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made for expense of medical and hospital care under.* Where an employee of the State sustains accidental injuries arising out of and in the course of his employment, while within the protection of the Workmen's Compensation Act, necessitating expenditures for medical and hospital care to relieve from the effects of such injuries, an award may be made for such expenditures, where the amount therefor is just and reasonable, in accordance with the provisions of the Act upon compliance with the requirements thereof.

CHIEF JUSTICE DAMRON delivered the opinion of the court:

This claim was filed on the 25th day of September, 1943, for an award under the provisions of the Workmen's Compensation Act.

The record consists of the complaint, departmental report, claimant's waiver of brief, statement and argument, stipulation that the departmental report constitutes the full record and waiver of brief, statement and argument on behalf of respondent. The departmental report states that the claimant was first employed in the office of the Secretary of State on the 14th day of February, 1938. That on August 23, 1943, while in the employment of the respondent, and while going from one part of the room to another in the Capitol Building, at Springfield, Illinois, claimant tripped and fell, which resulted in an injury to his back and body, especially his spine and pelvis. That by reason of the injuries caused by his fall, he was absent from duty approximately ten days, but was paid regular wages during that time, and has been paid in full at the regular monthly rate for such services rendered by him from the date of his employment until the present time.

The report further states that at the time of his injuries he was drawing a monthly salary of \$150.00.

Immediate notice was given to the respondent on the day of the injury. He was sent to St. John's Hospital in Springfield, Illinois, where x-rays were made at the suggestion of Dr. H. H. Southwick, the treating physician.

The complaint seeks an award as follows:

St. John's Hospital, Springfield, Illinois.	\$25.00
Dr. H. H. Southwick, Springfield, Illinois.	10.00

and such other sums as may be provided by the Workmen's Compensation Act.

Upon a full consideration of this record, the court finds that respondent had notice of the accident on the date it occurred, that claim for compensation was made within six months, and that the claim was filed within one year after the date of the accident, meeting the jurisdictional requirements of Section 24 of the Workmen's Compensation Act.

Under Section 8, paragraph a of the Act, claimant is entitled to have such medical care as is reasonably required to relieve him of the effects of his injury. It appears from the record that the services claimed were necessary and that the charges therefor were reasonable and just. The record further discloses he was not able to work for a period of ten days after said injury and ordinarily would be entitled to three days temporary compensation, but inasmuch as the record discloses claimant was paid full salary during the period of temporary disability, this cannot be allowed.

There being no evidence in this record to sustain an award for temporary or permanent disability, any claim for such must be denied.

An award is therefore made in favor of the claimant in the total sum of \$35.00, payable as follows:

1. The sum of \$25.00 for the use of St. John's Hospital.
2. The sum of \$10.00 for the use of Dr. H. 'H. Southwick.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 3500—Claimant awarded \$1,521.95.)

EMMA S. MCGUIRE, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 18, 1944.

M. D. MORAHN, for claimant.

GEORGE F. BARRETT, Attorney General; WILLIAM L. MORGAN, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—attendant at Manteno State Hospital within provisions of—contraction of typhoid while so employed—when deemed accidental injury arising out of and in the course of employment—compensable under. Where attendant at Manteno State Hospital contracted typhoid fever, while engaged in the performance of her duties at said institution, during an epidemic of such disease therein, resulting in temporary total disability, an award may be made for compensation therefor, in accordance with the provisions of the Workmen's Compensation Act, upon compliance by employee with the requirements thereof, as such contraction of such disease is deemed to be an accidental injury, arising out of and in the course of employment.

SAME—permanent total disability—claim for not proven where claimant able to engage in useful and lucrative occupation. Where the court finds in a claim for permanent total disability, under the Workmen's Compensation Act, that claimant, at the time of hearing was able to engage in many useful and lucrative occupations, if she would make an attempt to do so, no award is justified for such alleged disability.

CHIEF JUSTICE DAMRON delivered the opinion of the court :

This claimant was first employed at the Manteno State Hospital about October 1, 1935, as an attendant. She claims she became ill with typhoid fever on August 27 and 28, 1939, while on the premises of said hospital and went off duty at seven o'clock on the 28th. The record shows she had worked steadily prior thereto and was never ill before. She was treated by Dr. Ralph J. Major, of Grant Park, Illinois, until the 20th day of September, 1939, when he had her removed to the hospital on the grounds of said institution for the reason she had developed pneumonia. She remained in the hospital

until the 27th day of November of that year. She claims she has never been able to **work** since the attack.

She 'seeks an award for total permanent disability and a pension for life, and seeks payment in the sum of \$301.29 expended by her for doctors, nursing bills, drugs, etc.

The record consists of the complaint, testimony, abstract of same, stipulation dated January **14**, 1941, report of Dr. Allyn, Waverly, Illinois, brief, statement and argument on behalf of claimant and respondent.

Evidence, both oral and written, was taken in support of the complaint.

Dr. Ralph J. Major, called as a witness on behalf of claimant, testified that he was the attending physician, that she came to his office during August, 1939, complaining of a cough and that he took a blood examination of claimant, which proved positive as to typhoid. He stated that the first time he saw her, her condition was good. He saw her the following week and her temperature had risen. He prescribed sulfanilamide tablets and on his next visit she was getting worse. This condition extended over a period of three or four weeks, then she developed pneumonia. He testified he saw her in his office twice and afterwards at her home, then he had her transferred to the Manteno State Hospital for treatments. He stated she had a severe case of pneumonia, that it was a complication of typhoid. He further testified that her system was weakened by the typhoid and that she was suffering from myocarditis or nephritis and that the typhoid fever so weakened her system that pneumonia followed.

By stipulation this claimant was examined by Dr. Paul Allyn, licensed physician and surgeon at Waverly, Morgan County, Illinois, to ascertain the present physical

condition of claimant. This was for the purpose of having said physician prepare a detailed report to be presented to this court as evidence in said cause. This examination of claimant was made on the 12th day of November, 1943. A portion of this report follows:

“Physical examination. She has the appearance of an old lady. Throat negative, teeth in bad state of decay, nose chronic rhinitis of the left nostril. Blood pressure 120-80, pulse sitting 100, after walking 30 feet pulse 120. Heart, some arrhythmia and very irregular at this time. Under fluroscope heart appears to be enlarged at least $\frac{1}{3}$ in size.

Lungs—numerous rales heard in both chests. Urine negative excepting a ring of albumen and strongly acid. She has arthritis of feet, (walks with difficulty) knees and spine. Urine and faeces specimen sent to Illinois State Laboratory were found to be negative for typhoid bacilli.

Diagnosis—Endocarditis, chronic, Nephritis and Arthritis of spine and limbs. Prognosis: Bad. In my opinion patient is totally and permanently disabled.”

This court on its own motion had this claimant before it for the purpose of personal observation and interrogation.

We found on interrogation that as a result of her illness she was typed by the State of Illinois as a typhoid or para-typhoid fever carrier and under it she was restricted in her activities. She produced this agreement for the court. By this agreement she was permitted to mingle with the public at large and resume her usual occupation as hospital attendant but ordered not to handle food. In compliance with the request of the respondent she entered into an agreement that she would handle no food for persons other than members of her immediate family and to use the utmost care in her personal hygiene. She also agreed to submit specimens at the request of the local health department until she had been properly released according to the rules for the control of typhoid and para-typhoid fever. This court questioned her specifically in reference to this typhoid

carrier agreement and found that it depressed her. She was constantly conscious of it, and in the opinion of the court it accounted, in part for her present subjective symptoms. She stated she had not performed any work since August, 1939, and did not pretend to do even her housework. She was morbid and felt that she was a useless member of society.

Compensation is payable under the provisions of the Workmen's Compensation Act for disability or death from typhoid fever if the disease was accidentally contracted by claimant during the course of the employment.

The record in this case leaves no doubt in the minds of this court that claimant contracted typhoid fever during the course of her employment by the State. Any disability suffered by her as a consequence of this extra hazard and risk to which she was exposed, and the injury arising therefrom, is compensable. The question then to be decided by this court is the nature and extent of her disability.

From a consideration of all the record and our personal observation of this claimant, we cannot agree that she is totally and permanently disabled. We do feel, however, that she has suffered disability by reason of her illness and we further find that there are many useful and lucrative occupations in which she could engage if she would make an attempt to do so. Her condition has aroused the sympathy of this court.

We find that this claimant is entitled to have and receive temporary total compensation from August 27, 1939, to the 12th day of May, 1944, being a period of 245 weeks, as provided in Section 8, paragraph b of the Workmen's Compensation Act, as amended. It is our considered opinion, and we so rule, that this claimant is

now able to pursue some gainful occupation and earn as much as she was able to earn prior to her illness.

We further find that the claimant and respondent were, on the 27th day of August, 1939, operating under the provisions of the Workmen's Compensation Act; that on the date last above mentioned said claimant sustained accidental injuries which did arise out of and in the course of the employment; and that notice of said accident was given said respondent and claim for compensation was made on said respondent within the time required under the provisions of said Act.

That the earnings of the claimant during the year next preceding the injury were \$828.00, and that the average weekly wage was \$15.92; that claimant had no children under sixteen years of age dependent upon her for support; that the necessary first aid, medical, surgical and hospital services have been provided by the respondent herein, and that her claim for additional medical services in the sum of \$301.29, procured without the consent of the respondent, must be denied.

We further find that claimant is entitled to have and receive from the respondent for temporary total disability, the sum of \$8.75 per week for a period of 245 weeks, totalling the sum of \$2,143.75, and thereafter nothing. We find from the record that the claimant had been paid by the respondent subsequent to her injury the sum of \$621.80 as salary for unproductive work, which must be deducted from the above award, leaving the sum of \$1,521.95, all of which has accrued and is payable in a lump sum.

An award is therefore entered in favor of claimant and against the respondent in the sum of One Thousand Five Hundred Twenty-one Dollars and Ninety-five Cents (\$1321.95).

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

Dated at Springfield, Illinois, this 12th day of May, A. D. 1944.

(No. 3851 — Claimant awarded \$4,726.50.)

DELLA THOMPSON, WIDOW OF HENRY MONROE THOMPSON, DECEASED, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 18, 1944.

Claimant, pro se.

GEORGE F. BARRETT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for respondent.

WORKMEN'S COMPENSATION ACT—*when award may be made under for death of employee.* Where an employee of the State sustains accidental injuries, resulting in his death, arising out of and in the course of his employment, while within the protection of the Workmen's Compensation Act, an award may be made for compensation therefor, to one entitled thereto, in accordance with the provisions of said Act, upon her compliance with the requirements thereof.

CHIEF JUSTICE DAMRON delivered the opinion of the court :

This complaint was filed in this court on the 13th day of May, 1944, by claimant, Della Thompson, on her own behalf as widow of Henry Monroe Thompson, deceased.

The complaint alleges that Henry Monroe Thompson was first employed by the respondent on the 23rd day of March, 1927, as a farm hand at the Dixon State Hospital, Lee County, Illinois, an institution operated by the respondent through its Department of Public Welfare. That said employment was continuous until the 28th day of February, 1944. That on the last mentioned date,

while in the course of his employment, he was injured by being struck and crushed by a falling tree on the premises of said Dixon State Hospital, and the injuries thus sustained caused his death on the following day; that he was survived by his widow, the claimant, who was his sole dependent.

The record under consideration consists of the complaint, stipulation between the parties hereto, including the report of the Department of Public Welfare, testimony taken before the Coroner of Lee County, and waiver of right to file statement, brief and argument of claimant and respondent.

Under Rule 21 of this court the report of the Department of Public Welfare is prima facie evidence of the facts set forth therein. This report confirms the manner in which the accident occurred, as alleged in the said complaint, and states that at the time of the fatal accident, the deceased was in the course of his employment.

From a consideration of all the evidence, the court finds that the deceased, Henry Monroe Thompson, and respondent, were, at the time of the accident and death of the former, operating within the terms of the Workmen's Compensation Act; that the injury and death of Henry Monroe Thompson was caused by an accident which arose out of and in the course of his employment by the State of Illinois; that respondent had actual knowledge of the accident, and notice of claim and application for compensation were made within the statutory limits as provided by said Act; that the deceased's annual earnings for the year preceding his death in the employment in which he was then engaged, were **\$1,431.50**, making, his average weekly wage amount to the sum of \$27.53. That he left surviving him his widow, the claimant herein, who was wholly dependent upon him for support.

That the sum of \$26.50 was incurred for medical and surgical attention given to said employee, which the respondent should pay and discharge.

An award is hereby entered in favor of claimant, Della Thompson, in the sum of \$4,700.00, as provided in Section 7, paragraphs (a) and (1) of the Workmen's Compensation Act, as amended. This award is payable to claimant in monthly installments by the respondent at a weekly compensation rate of \$16.17. On May 23, 1944, there will be accrued the sum of \$194.04, which is payable to claimant forthwith in a lump sum.

A further award is entered in favor of claimant in the sum of \$26.50 for the use of Dr. W. G. Murray, Dixon, Illinois, representing necessary first aid, medical and hospitalization rendered said deceased employee, as provided in Section 8, paragraph (a) of the Act.

The future payments above referred to, being subject to the terms of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is hereby retained for the purpose of making such further orders as may from time to time be necessary herein.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

TAYLOR VS. ILLINOIS PUBLIC AID COMMISSION.

The Illinois Public Aid Commission having asked the Court of Claims for advice concerning the following claim made against it by an employee, for compensation for accidental injuries, the court in compliance with said request furnished the following advisory opinion, based upon the facts submitted and set forth in the matter hereinafter set forth.

ILLINOIS PUBLIC AID COMMISSION No. 1

(Payment of \$268.90 advised.)

THOMAS TAYLOR, Claimant, vs. ILLINOIS PUBLIC AID COMMISSION, Respondent.

Opinion filed September 14, 1943.

A request for an advisory opinion has been submitted by the above respondent based upon the following facts :

STATEMENT OF FACTS

Thomas Taylor of Canton, Illinois, on the 27th day of April, 1943, was employed by the Illinois Public Aid Commission as County Director of Commodity Distribution, Tazewell County. Taylor's duties consisted of receiving, storing and distributing agricultural commodities and the reloading of said commodities from railroad cars or trucks to the warehouse in accordance with storage instructions as outlined by the State Director of Commodity Distribution.

On said date, the claimant was assisting employees at the County Commodity Depot in loading cases of pork and beans from the basement window of the depot onto trucks parked alongside of said building. In order to slide these cases, weighing from forty to fifty pounds each, out the basement window it was necessary for the workers to lift them straight up over their heads. While engaged in this work, claimant began having severe pains on the right side of his abdomen. He complained at the time of this to other employees of the depot whom he was assisting in this work, namely, Oral White and John Crane.

On May 5, 1943, the claimant notified Harold O. Swank, District Representative of the Illinois Public Aid

Commission, that he had become injured while loading out cases as aforesaid, who instructed claimant to have a doctor examine him and to send a report to the Chicago office.

On May 9, 1943, claimant was examined by Dr. J. C. Simmons, of Canton, Illinois, who informed him that he had a right inguinal hernia of recent origin and advised an immediate operation.

On June 23 an operation for hernia was performed on Mr. Taylor by Dr. Simmons in the Graham Hospital, Canton, Illinois. Claimant was confined in said hospital from the date of the operation to July 11, 1943. Following his discharge from the hospital Mr. Taylor was treated by Dr. Simmons at his office. The above facts are supported by affidavits of claimant, Oral White and John Crane.

Claimant requests payment by the Illinois Public Aid Commission to Dr. J. C. Simmons in the sum of One Hundred Fifty Dollars (\$150.00). Said sum includes operation, treatment, anaesthetic, and post-operative care, and to the Graham Hospital Association the sum of \$118.90. Said sum includes board and room from June 21 to July 11, inclusive, and use of the operating room and drugs. Said bills have been examined by the Illinois Public Aid Commission and have been found to be reasonable.

Claimant contends that the accident was in the course of and arose out of his employment by the Illinois Public Aid Commission, and that the Illinois Public Aid Commission had notice of this accident and demand was made to his employer within six months after the accident.

Claimant does not seek temporary, total, or permanent total disability.

ADVISORY OPINION BY MR. CHIEF JUSTICE DAMRON

From the above statement of facts we find that on the date of injury, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State; that on such date claimant sustained accidental injuries which arose out of and in the course of his employment; that notice of the accident was given to respondent, and claim for compensation on account thereof was made within the time required by the provisions of Section 8 (d-1) of said Act.

Section 8, sub-section (a) of said 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 * * *."

The proof here shows that the following bills were incurred and are unpaid:

Graham Hospital, Canton, Illinois	\$118.90
Dr. J. C. Simmons	150.00

The record further discloses that said bills are reasonable.

We therefore find that claimant is entitled to payment of said items under the provisions of the Workmen's Compensation Act, and we are of the opinion that the Commission is properly justified in recognizing and paying said claim in the sum of Two Hundred Sixty-eight Dollars and Ninety Cents (\$268.90). No question of compensation is raised for temporary or permanent disability. Payment of the claim in the sum of Two Hundred Sixty-eight Dollars and Ninety Cents (\$268.90) is recommended, same to be made by the Illinois Public Aid Commission out of **my** funds held by it and allocated for such purposes.

CASES IN WHICH ORDERS OF DISMISSAL WERE ENTERED WITHOUT OPINION

- No. 2993 Isadore Filipkowski, also known as Isadore Phillips vs. State
 No. 3060 Eugene R. Hinds and Florence M. Hinds vs. State
 No. 3152 Charles Neumann, Louisa Neumann and Cyril Dobbelaire vs. State
- No. 3271 Alphonsus L. Diel vs. State
 No. 3336 Keist & Sharer vs. State
 No. 3346 Murry C. Bass, H. Ceiling & Son, Edward M. Doherty, M. Ecker & Co., Gambia Bros., T. G. Gleich Co., Rudolph G. Goebel, Paul Gottardo, Carl B. Hansen, Geo. E. Hart, Inc., Herbert R. Hegeson, Walter Ingstrup Company, Thomas Jasinski, A. Ladegard, R. H. Langston, Russell A. Larson, B. Levitzky, Midwest Painting Service, Geo. D. Milligan Co., Moore Decorating Co., J. Bernard Mullen, J. B. Noelle Co., W. F. Nowatzki, Hermann Olson Decorating Co., Pace Decorating Co., Plamondon Decorating Co., Jens Rask, Richman Decorating Company, Rolle Painting & Decorating Company, Rosemont Decorators, H. Simmer Company, Fred C. Staack, Hanns Teichert, R. Tuveson Decorating Service, Philip Arnold, Sr., J. Bobbe Co., F. L. Clifton, Diercks Decorating Company, Nyden and Thunan Decorating, Peerless Decorating Co., J. Rybacek vs. State
- No. 3368 Fred Binzer vs. State
 No. 3391 Jerome Zydron vs. State
 No. 3397 Harry Jurek vs. State
 No. 3407 Henry C. Grebe & Co., Inc. vs. State
 No. 3430 Samuel J. Vittallo vs. State
 No. 3434 Milton Scheffler vs. State
 No. 3487 Walter W. Armstrong, Dor Rennie Armstrong, Sylvia E. Ferguson, Ruby Stella Kingston, Goldie G. Wilson, George Dewey Armstrong and Robert S. Armstrong, Jr. vs. State
- No. 3511 Julia A. Crum vs. State
 No. 3512 J. R. McAboy and Eva McAboy, Individually and as Husband and Wife vs. State
 No. 3513 DeWitt County Federal Savings and Loan Association, a Corp., Jonah West and George W. Taylor vs. State
 Ne. 3514 Earl Polen and Hazel Polen, Individually and as Husband and Wife vs. State

- No. 3515 Charles H. Sharp and Jennie S. Sharp, Husband and Wife vs. State
- No. 3516 Merton J. Hayes and Alta B. Hayes, Individually and as Husband and Wife, DeWitt County Federal Savings and Loan Association vs. State
- No. 3518 Clarence H. Toombs and Aurora Mae Toombs, Individually and as Husband and Wife vs. State
- No. 3520 DeWitt County Federal Savings and Loan Association, a Corp., known as the Same Corporation as DeWitt County Building Association, a Corp., Alfred Girard, James Lyle Kennedy and Mildred Bell Kennedy vs. State
- No. 3547 Patrick J. Nolan vs. State
- No. 3559 Marguerite E. Curd vs. State.
- No. 3572 Walter J. Kasper vs. State
- No. 3585 Earl Colyer vs. State
- No. 3586 Margaret Quinn vs. State
- No. 3592 Albert Monahan vs. State
- No. 3595 Charles A. Modler vs. State
- No. 3623 Jess Hosick vs. State
- No. 3641 Frank Harris vs. State
- No. 3653 The Western Union Telegraph Co. vs. State
- No. 3656 Orville Arnold and V. O. Connor, Co-Partners, doing business under the firm name and style of Arnold & Company vs. State
- No. 3680 C. A. Dunham Co., an Illinois Corp. vs. State
- No. 3681 Harry Cook vs. State
- No. 3687 John T. Kickels vs. State
- No. 3690 Iva Belle Benner vs. State
- No. 3692 Merchandise Warehouses, Inc. vs. State
- No. 3707 Ellen Noel vs. State
- No. 3711 Frank Czerwinski vs. State
- No. 3712 M. C. Chernus, Doing Business as Chernus Construction Co. vs. State
- No. 3720 Joseph Triner Corporation vs. State
- No. 3753 John Fako, Administrator of the Estate of Daniel Fako vs. State
- No. 3777 Zepha Gullion vs. State
- No. 3814 Gilbert Curtis vs. State

CASES IN WHICH ORDERS WERE ENTERED CONTINUING PAYMENTS OR COMPENSATION AWARDED TO EMPLOYEES UNDER WORKMEN'S COMPENSATION ACT, WHERE SAID EMPLOYEES DIED: TO WIDOW OF EMPLOYEE; TO WIDOW OF EMPLOYEE, UPON HER REMARRIAGE, AS MOTHER OF, AND NATURAL GUARDIAN OF HIS MINOR CHILDREN AND FOR THEIR USE AND BENEFIT.

- No. 3771 John H. Crawford vs. State
- No. 3783 Helen G. Cloudas, Admx. of the Estate of Robert C. Cloudas, Deceased vs. State

INDEX

	PAGE
ABUTTING OWNERS—See DAMAGES	
ADVISORY OPINIONS	
to Illinois Public Aid Commission.	207
AFRA-MERICAN EMANCIPATION EXPOSITION— See CONTRACTS	
APPROPRIATIONS —LAPSE OF — See SUPPLIES — SERVICES	
expenditure of, or contracts for must be in strict accord- ance with, and authorized by Act making.	189
BURDEN OF PROOF—See EQIDENCE	
CIVIL ADMINISTRATIVE CODE	
Section 9 of controls and fixes salaries of Chairman and members of Industrial Commission of Illinois and not Section 14 of the Workmen's Compensation Act.	8
CIVIL SERVICE—See FEES AND SALARIES	
CONSTITUTION	
only liability of State for damaging private property not taken for public use, alleged to have resulted from con- struction of public improvement, is under Section 13 of Article 2 of the Constitution of Illinois.	70
CONTRACTS	
bid made, and accepted as made constitute; binding con- tract	40

	PAGE
where specifications forming part of contract afford offering party an opportunity to withdraw his proposal, he must withdraw same in the manner and within the time provided therein, and failing so to do he is bound to the performance of the contract as proposed by him and accepted by other party, and he cannot impose any change in the terms thereof.	40
claim for loss, alleged to have been sustained in performance of contract for State must be denied, where there is no competent proof that it violated any of the terms thereof, and where the evidence shows that the loss, if any was due to claimant's own acts.	40
provision in that acceptance of last payment due under bars all claims for damages is valid, and acceptance of same precludes any and all claims for damages for any act or neglect of the State.	49
construction engineer employed in the Department of Public Works and Buildings is without power or authority to waive provision in contract, that acceptance of last payment due thereunder bars all claims for damages.	49
when State not bound by contract of Superintendent of Highways purporting to obligate State to improve land of private party.	59
A contract entered into with an officer, agent or employee of the State purporting to bind State is void and no recovery can be had thereon, where such officer, agent or employee had no power or authority to act for State or bind it by such contract.	49, 59, 70
when State not bound by contract of Assistant Attorney General, purporting to act for Department of Public Works and Buildings and purporting to obligate State to improve land of private party, in consideration of release for damages to same alleged to have been caused by construction of public improvement.	70
where extra work is required in performance of contract due to changes in plans and specifications by State, award may be made for reasonable value thereof.	184
made without compliance with Section 3 of the Act creating the Afro-Merican Emancipation Exposition, are void.	189

CORPORATIONS—See FRANCHISE TAX

COURT OF CLAIMS—See JURISDICTION

PAGE

COURTS OF GENERAL JURISDICTION—See REMEDIES
IN COURTS OF GENERAL JURISDICTION

DAMAGES

to private property not taken for public use, alleged to have resulted from construction of public improvement — Section 13 of Article 2 of Constitution, provides only liability of State for.. .. .	70
measure of, is difference if any, between fair, cash market value of property, at completion of improvement, and just before construction thereof.	94
where no such difference in value is shown by the evidence, no damage is proven and no award is justified.. .. .	94
when alleged damage to claimant's leasehold interest is shown to be speculative and not clearly pi-oven by competent evidence, no award is justified.. .. .	94
loss of, or inconvenience <i>to</i> business, during progress of work in construction of public improvement, not damage to property, or proper element of damages.	94
damage to land of grantor, contiguous to that conveyed by him by deed of dedication, upon which public improvement has been constructed, alleged to have resulted from such construction is released by such deed and no award can be made therefor.. .. .	193

DEPARTMENT OF PUBLIC WORKS AND BUILDINGS
—See CONTRACTS also

the Department of Public Works and Buildings is a governmental agency, created by the legislature and the execution of the powers and discharge of the duties thereof, are vested by law in the Director thereof and he is without authority to delegate same.	49
construction engineer employed by Department of Public Works and Buildings in construction of public improvement not authorized to exercise powers of the Director thereof, by assuming to contract for said Department, and Director thereof cannot delegate such powers to him	49
Assistant Attorney General not authorized to exercise powers of by assuming to contract for said Department	70

DEDICATION, DEED OF—See DEEDS

DEEDS

deed of dedication of property, for public use, for construction of public improvement, effect of.. .. .	193
--	-----

	PAGE
payment of the consideration for property, conveyed by deed of dedication has same effect as assessment of damages in condemnation proceeding.	193
all damages to property of grantor, contiguous to that conveyed by deed of dedication, either past, present or future are released, that might or could result from the proper construction, or use and occupation of public improvement on land conveyed.	193
 ELECTION OF REMEDIES—See WORKMEN'S COMPENSATION ACT, also	
employee of State within protection of Workmen's Compensation Act, mho is injured as result of negligence of third party and who elects to sue said party is bound by such election, where amount is recovered in excess of that provided in Act for injuries sustained..	32
 EMINENT DOMAIN	
deed of dedication of property for public use has the same effect as proceedings in.	193
 EQUITY AND GOOD CONSCIENCE	
no award can be made on grounds of equity and good conscience, where claim is based on the negligence of officers, agents, or employees of the State, in any of its departments	27
the doctrine of respondeat superior not being applicable to the State, in the exercise of its governmental functions, there is no legal basis for a claim against it for damages resulting from the negligence of its officers, agents or employees, consequently there is no basis for an award for damages for same, under any theory of law or doctrine of equity..	27
 ESTOPPEL	
State not estopped from denying liability on contract made in clear violation of law..	189
 EVIDENCE	
in claims for compensation, under Workmen's Compensation Act, the burden of proof is upon claimant to prove his claim by a preponderance or greater weight of the evidence	5, 56, 84

	PAGE
when insufficient to show that typhoid fever was contracted from condition of, or as a result of employment	5
insufficient to show claimant afflicted with typhoid fever, alleged to have been contracted accidentally, where medical testimony fails to show that he was so afflicted, and only evidence of his being afflicted, being unsupported testimony of claimant.	20
proof of subjective symptoms only is insufficient to show accidental injuries, in claims for compensation under Workmen's Compensation Act.	34, 80
objective symptoms or conditions, past or existing, of an injury, not within the mental or physical control of employee himself, must be proven by competent evidence, in claims for compensation under the Workmen's Compensation Act.	34, 80
unsupported testimony of claimant, as to being totally and permanently disabled, insufficient to sustain claim for such disability, in claim for compensation for same under Workmen's Compensation Act.	80, 84
absence of evidence showing earnings, or ability to earn after accident, leaves court without basis upon which to compute award, if one justified, for partial disability, in claim for compensation for same under Workmen's Compensation Act.	65, 180
damage to private property, not taken for public use, alleged to have resulted from construction of public improvement must be proven by competent evidence. ..	94
proof necessary to sustain claim for compensation for death of member of Illinois National Guard, under Section 11 of Article XVI of Military and Naval Code. ..	103
when evidence insufficient to sustain claim for compensation for death of member of Illinois National Guard, under Section 11 of Article XVI of Military and Naval Code	103
when insufficient to sustain petition for payment in lump sum of compensation awarded under Workmen's Compensation Act.	160
the evidence is insufficient to sustain claim for compensation for permanent and total disability, under Workmen's Compensation Act, where the record, after giving full credence to the competent medical and other testimony adduced fails to show such disability.	174
when opinion of physician who did not treat (employee, but only examined her for purpose of testifying, is not admissible in claim for compensation under Workmen's Compensation Act.	174

FEES AND SALARIES

	PAGE
the salaries of the Chairman and members of Industrial Commission of Illinois are controlled and fixed by Section 9 of the Civil Administrative Code, upon its enactment	8
Section 14 of the Workmen's Compensation Act is inapplicable to salaries of the Chairman and members of the Industrial Commission of Illinois, after enactment of Civil Administrative Code.	8
chairman and members of Industrial Commission of Illinois, appointed after enactment of Civil Administrative Code, not entitled to difference between salary fixed in 'Workmen's Compensation Act and said Code..	8
employees of State accepting regular monthly salary warrants for services, in amounts appropriated by Legislature therefor are paid in full for same.	8, 139
Act in relation to State Finance, direct limitation on right of claimant to additional salary, where regular salary warrants accepted during term of employment.	8, 139
Civil Service employee not entitled to salary, for period during which he rendered no services, where de facto officer performed the duties of his office, and State in good faith paid him the salary therefor.	78

FORMER CASES

Mills vs. State, 9 Court of Claims Reports, page 69, Broderic et al. vs. State, 9 Court of Claims Reports, page 458 and Novak vs. State, 10 Court of Claims Reports, page 255, holding that employees of State accepting regular monthly salary warrants for services in amounts appropriated by Legislature therefor are paid in full for same and that no award can be made for additional salary, adhered to and reaffirmed.	8, 139
--	--------

FRANCHISE TAX

voluntarily paid, cannot be recovered.	111
paid before due, and corporation by which paid dissolved thereafter. but before commencement of period for which paid, is voluntary payment and cannot be recovered	111
payment of amount in excess of that lawfully due, through error or inadvertence of payor, not payment made under mistake of fact, but is a voluntary payment and amount in excess of. that lawfully due cannot be recovered	136

	PAGE
where remedy is afforded for determination of amount of franchise tax and correction of amount of assessment therefor, failure to avail of bars recovery of amount voluntarily paid, in excess of that lawfully due.	136
 GOVERNMENTAL FUNCTION	
Northern Illinois Penitentiary, conduct of, is.	27
State not liable for negligence of its officers, agents or employees, while in exercise of, under any theory of law or doctrine of equity.. . . .	27
 ILLINOIS NATIONAL GUARD	
when award for compensation for death of member of must be denied.	103
in claim for compensation for death of member of Illinois National Guard, under Section 11 of Article XVI of Military and Naval Code, alleged to have resulted from contraction of disease, while on field training, it must be clearly proven that such disease was contracted while he was performing his duties as such member in pursuance of orders from the Commander-in-Chief	103
when evidence insufficient to sustain claim for compensation for death of member of, alleged to have resulted from contraction of disease, while in the performance of his duties as such member.. . . .	103
 INDUSTRIAL COMMISSION OF ILLINOIS— See CIVIL ADMINISTRATIVE CODE—FEES AND SALARIES	
 JURISDICTION	
pendency of action in court of general jurisdiction to determine liability of former officer of State, precludes Court of Claims from consideration of claim of such officer, for amount of liability, alleged to have been incurred while acting as agent of the State, until determination of such liability, if any, in such action.	13
in the creation of the Court of Claims the Legislature clearly defined its powers and limitations, and did not intend that it should, or could, usurp the powers of, contradict or compete with courts of general jurisdiction	13
where claimant has remedy in courts of general jurisdiction and fails to avail himself thereof, Court of Claims is without jurisdiction to make award.	93

PLEADING

	PAGE
complaint failing to comply with rules of Court is insufficient	100
when complaint fails to comply With rules of Court it may be dismissed..	100

PRINCIPAL AND AGENT

one dealing with an officer, agent or employee of the State is bound to ascertain the extent of his authority to bind State.49, 59, 70
where it is shown that officer, agent or employee of State had no authority to bind it, State is not bound by, or responsible for the acts of such officer, agent or employee49, 59, 70
when State not bound by acts of construction engineer employed in construction of public improvement by Department of Public Works and Buildings, in waiving provision of contract.	49
when State not bound by contract of Superintendent of Highways to improve land of private party..	59
when State not bound by contract of Assistant Attorney General, purporting to act for Department of Public Works and Buildings, obligating State to improve land of private party..	70

PROPERTY DAMAGE—See CONSTITUTION—
DAMAGES

PUBLIC IMPROVEMENT—See DAMAGES

REMEDIES IN COURTS OF GENERAL JURISDICTION

failure to pursue remedies provided by law in courts of general jurisdiction will bar award by Court of Claims where liability of former officer of State, alleged to have been incurred, as agent of the State is being determined in a court of general jurisdiction, same must be determined therein before Court of Claims can consider claim of such officer for amount of such liability, if any, or liability of State therefor..	93
	13

RES ADJUDICATA

where identical claim has been fully and finally adjudicated, it will not again be considered and plea of res adjudicata must be sustained..	116
--	-----

RESPONDEAT SUPERIOR— See NEGLIGENCE

RULES OF COURT

	PAGE
claim for compensation under Workmen's Compensation Act must comply with rules of Court and failure so to do may render claim insufficient.	100
when failure to comply with rules of Court justifies dismissal of claim.	100
failure to comply with Rule 6, paragraph b, requiring claimant to set forth itemized claim for medical, surgical and hospital attention, in claim under Workmen's Compensation Act, prevents Court from any consideration of amounts expended for same.	155

STATE FINANCE

Act in relation to, prohibits payment of additional salary, where regular salary warrants for services were paid and accepted during term of employment.	8, 139
---	--------

SUPPLIES — SERVICES

furnished State and bill not presented before lapse of appropriation, out of which could be paid—when award may be made for value of.	114
--	-----

TYPHOID FEVER — See EVIDENCE — WORKMEN'S COMPENSATION ACT

WORKMEN'S COMPENSATION ACT

typhoid fever—when contraction of by employee of State institution, deemed accidental injury, arising out of and in the course of employment.	1, 65, 75, 199
death of employee therefrom—when award may be made thereunder	1
remarriage of widow of employee of State, receiving compensation under Act for death of husband, who left no child or children whom he was under legal obligation to support, extinguishes her right to continue to receive further compensation	1
typhoid fever—when evidence insufficient to show that disease was contracted by employee of State, from condition of, or as result of employment.	5
when claim for compensation for death of employee of Department of Public Health, alleged to have resulted from accidental contraction of, must be denied. .: .	5

	PAGE
burden of proof in claims under Act is on claimant. .5,	56, 84
award for compensation under Act cannot lie based upon speculation, surmise, conjecture, or upon a choice between two views, equally compatible with the evidence	5
Section 14 of Act, not controlling as to salaries of Chairman and members of Industrial Commission of Illinois, after enactment of Civil Administrative Code.	8
employee sustaining accidental injuries, arising out of and in the course of his employment, while within the protection of the Act, entitled to compensation therefor, provided therein, on compliance with requirements thereof	8, 24, 55, 108
typhoid fever—claim for compensation under Act, for accidental contraction cannot be sustained where medical testimony fails to show that claimant was afflicted with disease, and the only evidence of such contraction is testimony of claimant.	20
negligence of third party resulting in accidental injuries to employee of State, while within protection of Act—election by employee to sue third party therefor is binding upon him, and where recovery is had in amount in excess of that provided in Act for compensation for same, no claim will lie for compensation thereunder. . .	32
subjective symptoms only, no proof of injuries under. . .	34, 80
objective symptoms of injury, past or existing, not within mental or physical control of employee must be proven by competent evidence to justify award under Act. . .	34, 80
throat and voice—no specific provision in Act for injuries to, and in the absence thereof no award can be made for such injuries.	56
permanent partial disability not proven, where earnings of claimant for Compensation, are the same in suitable employment, at the time of hearing thereof, as prior to accident and injury.	56
pension—employee sustaining accidental injuries, arising out of, and in the course of employment, while within provisions of Act, resulting in total permanent disability, entitled to compensation therefor, as provided therein, including pension, upon compliance with requirements of Act.	62
medicines, medical and nursing care, procured by employee—when State may be liable for expense of.	65
permanent total disability is not proven where the only evidence in support of claim for compensation for same is the unsupported testimony of claimant.	65, 180

	PAGE
permanent partial disability—no basis exists upon which to compute award for permanent partial disability, where claimant fails to produce evidence of amount of earnings, or ability to earn in suitable employment after accident, alleged to have caused disability.	65, 180
death of employee, resulting from accidental injuries, arising out of, and in the course of his employment, while within protection of Act, justifies award for compensation to dependents defined therein, upon compliance with requirements thereof and proper proof of claim therefor	68, 88, 143, 204
medical services, procured at instance of employee of State—State not liable for expense of where it tendered employee all such proper and necessary services, which were refused and employee elected to furnish same himself	80, 146, 175
permanent total disability—evidence insufficient to sustain claim for compensation for, where claimant admits he is not totally disabled and medical testimony fails to show such disability.	84
funeral expenses—no provision in Act for award for amount of funeral expenses of employee of State, where compensation for death of employee is awarded to dependent thereof under Act.	88
administrator or executor of estate of deceased employee not entitled to payment of compensation awarded for accidental death of said employee, under Act, as same provides that payment thereof be made to beneficiary defined therein	88
Department of Labor, Division of Unemployment Compensation—when employee within protection of.	96
payment of amount of compensation provided in Act, for injuries sustained, precludes further award.	98
Rules of Court—claims under Act must comply with rules of Court, and failure to so comply may render claim insufficient	100
hand—partial loss of use of—when award for compensation justified	118, 146, 167
eye—loss of—when award for compensation and medical expenses and supplies justified under.	123
liability of State under Act not limited to payment of compensation to injured employees only, but includes liability for payments into Workmen's Compensation Special Fund, provided in Section 7, Paragraph 2 thereof	123

	PAGE
arm—partial loss of use of—when award for compensation for justified under.	127, 150
vaccination of employee required by State—infection therefrom, causing permanent partial loss of use of arm, deemed accidental injury, arising out of and in the course of employment, where employee was within the provisions of the Act at the time and compensable thereunder	150
finger—permanent partial loss of use of—when award for compensation for is justified under.	155
lump sum settlement of compensation awarded for partial disability, the duration of which was found by the Court at the time of award to be indefinite is not justified in the absence of competent proof that such disability has become permanent, preventing claimant from earning income equal to that earned before occurrence of injury	160
settlement in lump sum of compensation awarded under Act only authorized when evidence clearly shows that same is for the best interest of the parties.	160
notice to employer of accident, causing injury, making claim for compensation, and filing claim therefor within time fixed in Section 24 of Act is a condition precedent to jurisdiction of Court to hear claims under.	163
Section 10 of Court of Claims Act has no application whatsoever to claims for compensation by employees of State for accidental injuries sustained by them, under Workmen's Compensation Act.	163
expense of further medical and hospital care after award made for permanent total disability, which still exists—when necessary and proper and cost thereof reasonable and just, award justified under Section 8, paragraph (a) of Act.....	165
where the evidence shows that claimant was afflicted with an arthritic condition which existed prior to injury for which compensation is sought and the medical testimony shows that disability alleged to have resulted therefrom was the result of such condition, and that same was not caused or aggravated by said injury, no award is justified.	170
the evidence is insufficient to sustain claim for permanent total disability, where after giving full credence to the competent medical and other testimony adduced, the record fails to show proof of such disability	174, 199

