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Quarterly Synopsis of Florida Cases

QUARTERLY SYNOPSIS OF FLORIDA CASES*

ACCOUNT. *Cause of action.* A person who fails to produce cancelled checks of alleged mortgage payments and sells the mortgaged property while foreclosure suit is in progress fails to state a cause of action in a suit for accounting for moneys mortgagees allegedly wrongfully demand and for additional damages suffered by the mortgagor by reason of the quick sale supposedly necessitated by the foreclosure suit.[1]

APPEAL AND ERROR. *United States Supreme Court.* In a memorandum decision[2] the Supreme Court of the United States denied certiorari to the Florida Supreme Court.

CERTIORARI. *Proceedings from an administrative body.* An interpretation of previous decisions,[3] which allowed a circuit judge in certiorari proceedings from an administrative body to reweigh evidence presented below, was held to be erroneous. While the court may look into the jurisdiction of the administrative body, examine the record of the proceedings, or determine whether the evidence supported the verdict, it may not substitute its judgment as to credibility of witnesses and other evidentiary matters for that of the administrative body.[4]

CONSTITUTIONAL LAW. *Libel.* A statute[5] requiring that the plaintiff serve notice on the defendant before bringing an action for the publication of a libel in a newspaper or periodical, and that plaintiff be limited to actual damages if it appears that the article was published in good faith and a retraction thereof printed, is not unconstitutional.[6] The right to have an

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*This issue reviews the cases reported from 48 So.2d 369 (48 So.2d No. 4, Dec. 7, 1950) through 49 So.2d 584 (49 So.2d No. 3, Jan. 25, 1951). It comprises eight weekly Southern Reporter advance sheets, containing over forty Florida cases, excluding memorandum decisions and a few other decisions not of sufficient importance for discussion here. Also included in this issue are federal cases dealing with interpretation of Florida law. Those reviewed appeared from 93 F. Supp. 393 (93 F. Supp. No. 3, Dec. 4, 1950) through 94 F. Supp. 368 (94 F. Supp. No. 3, Jan. 29, 1951) and from 184 F.2d 577 (184 F.2d No. 7, Dec. 4, 1950) through 185 F.2d 712 (185 F.2d No. 4, Jan. 29, 1951). Memorandum denials of certiorari to the Florida Supreme Court by the Supreme Court of the Untied States reported in 71 Sup. Ct. 93 (71 Sup. Ct. No. 2, Dec. 1, 1950) through 71 Sup. Ct. 294 (71 Sup. Ct. No. 5, Jan. 15, 1951), are footnoted under *Appeal and Error. United States Supreme Court, infra.*

*This issue of the *Quarterly Synopsis* was written by Allan S. Kushen, Howard A. Meyers and George Nathanson.

1. Clark v. Giddings, 48 So.2d 523 (Fla. 1950).
2. Canaveral Port Authority v. 1329.25 Acres of Land, 71 Sup. Ct. 195 (1950).
3. Lorenzo v. Murphy, 159 Fla. 639, 32 So.2d 421 (1947); Hammond v. Curry, 153 Fla. 245, 14 So.2d 390 (1943).
4. Pensacola v. Maxwell, 49 So.2d 527 (Fla. 1950).
5. FLA. STAT. §§ 770.01, 770.02 (1949).
6. U.S. CONST. AMEND. XIV; FLA. CONST. *Declaration of Rights* §§ 4, 13.

assessment of punitive damages is not a property right nor is the provision affecting procedure against a newspaper an unreasonable classification.[7]

Special acts. A special act of the legislature,[8] involving the duties of the tax assessor of Volusia County, which provided that it should take effect only upon approval at a referendum by the voters of the county affected by the act contravened the constitutional amendment[9] which required the legislature to pass the act in question.[10]

Statutes embracing more than one subject. A special act[11] which in its body permits the borrowing of money to build, repair or furnish public school buildings, or to pay any existing outstanding indebtedness, is not unconstitutional as embracing more than one subject or matters not properly connected therewith.[12] Nor is the provision therein, authorizing the issuance of time warrants for the purpose of borrowing money to liquidate outstanding indebtedness or any other indebtedness, and to pay the time warrants upon maturity from the Common School Fund repugnant to constitutional limitations[13] on school tax millage and provisions[14] for determination of what the school tax shall consist.[15]

CONTRACTS. *Champerty and maintenance.* The assignment of a contract for the sale of land by a client to an attorney is not champertous, notwithstanding that the contract was the subject of litigation in which the assignee represented the assignor.[16]

CRIMINAL LAW. *Character witnesses.* It is not prejudicial error for the prosecution to cross examine a witness as to specific acts of violence committed by the accused where the witness has testified to the good general reputation of the defendant.[17]

DAMAGES. *Future loss of earnings.* In reducing future loss of earnings to present money value, a rate of three per cent is a reasonable rate of discount, in view of the present day inability to secure a safe investment at a greater rate of interest.[18]

EXECUTORS AND ADMINISTRATORS. *Attorney's fees.* Executors were denied fees for themselves and for attorneys representing them in federal court in a suit brought against them in their individual capacities and in

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7. Ross v. Gore, 48 So.2d 412 (Fla. 1950).
8. Fla. Laws 1949, c. 26473.
9. FLA. CONST. Art. VIII, §§ 16, 17.
10. Daytona Beach v. Harvey, 48 So.2d 924 (Fla. 1950).
11. Special Acts 1913, c. 6654.
12. FLA. CONST. Art. III, § 16.
13. FLA. CONST. Art. XII, § 8.
14. FLA. CONST. Art. XII, § 9.
15. Wright v. Board of Public Instructions of Sumter County, 48 So.2d 912 (Fla. 1950).
16. Savage v. Horn, 49 So.2d 328 (Fla. 1950).
17. Cornelius v. State, 49 So.2d 332 (Fla. 1950).
18. Renuart Lumber Yards v. Levine, 49 So.2d 97 (Fla. 1950). (The court pointed out that the evidence could not support an award of over $30,000 for pain and suffering.)

which they were awarded summary judgment. The suit was brought against them by the beneficiaries for alleged breach of contract with the deceased.[19]

Bank's liability for negligent payments of funds to heir. Where a bank disbursed funds to an alleged sole heir on the strength of an order of no administration the bank was suable for funds so disbursed upon a showing that the order was invalid. Because the bank had knowledge that its depositor was dead it was charged with notice of applicable statutes[20] providing that the administrator is the proper custodian of the deceased's property and, further, that since the amount on deposit exceeded $2,000.00 the estate was not of that class which could be disposed of without proper proceedings governing administration of estates.[21]

HABEAS CORPUS. *From indictment of a de facto grand jury.* Petitioner sought habeas corpus on the grounds that the grand jury which handed down his indictment was illegally empaneled. The basis for his contention was that the original grand jury had been dismissed without authority by the Circuit Court, for lack of sufficient members, and that therefore a second grand jury empaneled to complete the term was illegally constituted and any indictment handed down by it was void. The court expressed no opinion as to the legality of the second grand jury since it was not subject to collateral attack but decided that if it was not a de jure grand jury it was, at least, de facto[22] and accordingly any indictment executed by it was valid.[23]

INDICTMENT AND INFORMATION. *Notice of charge in information.* An information setting forth the time and place of issuance of a worthless check together with a copy of the check was sufficient to advise the defendant of the nature of the accusation. Since the information substantially followed the nature of the statute charging the offense,[24] it was held legally sufficient.[25]

Requirement of State Attorney's signature on indictment. An indictment charging official misconduct of a public officer must affirmatively show willful or corrupt acts on the part of such officer. The failure of the State Attorney or acting State Attorney to sign an indictment renders such indictment totally invalid since prior to the placement of the signature of such officer upon the instrument it has no legal status.[26]

JOINT TENANCY. *Tax deeds.* A joint tenant who purchased property at a tax sale did not thereby revive the interest of his defaulting former co-

19. Florida Bank & Trust Co. at West Palm Beach v. Warner, 48 So.2d 917 (Fla. 1950). (The dissent contended that the expenditures were reasonable, just and necessary for the lawful administration of the estate.)
20. FLA. STAT. § 733.01 *et seq.* (1949).
21. Laramore v. Laramore, 49 So.2d 517 (Fla. 1950).
22. FLA. STAT. § 40.43 (1949).
23. State *ex rel.* Mattson v. Hall, 48 So.2d 753 (Fla. 1950).
24. FLA. STAT. § 832.01 (1949).
25. State v. Pound, 49 So.2d 521 (Fla. 1950).
26. Sullivan v. Leatherman, 48 So.2d 836 (Fla. 1950).

tenant.[27] The court decided that regardless of the general principle that the purchase of land by a joint tenant at a tax sale revives the interest of the co-tenants, certain provisions[28] of the Florida law provide for the creation of a new, and original title in the county which terminates the right, claim or title of any former owner, and that a co-tenant in default of taxes has no latent rights in the property which may be revived upon the purchase of land by the other co-tenant.

JUDGES. *Disqualification.* In a suit to annul a non-profit corporate charter on the ground that the corporate device was merely a scheme to avoid payment of taxes, a showing that the presiding judge had in previous litigation expressed a strong opinion that the institution was in fact not a non-profit corporation, but the alter ego of its director, was sufficient to cause the disqualification of the judge because of prejudice.[29]

JUDGMENTS. *Vacation.* When through inadvertence or mistake, a variance exists between an oral order and a subsequent written one of the court, the court may vacate and set aside such written order regardless of the fact that the term of the Circuit Court has expired.[30]

LANDLORD AND TENANT. *Computation of rental.* In reversing a decision of the lower court the supreme court decided that the computation of gross annual sales of a store, which has been sublet during the year, for the purposes of paying a percentage thereof as part of the rental on the lease, should be based on the actual sales made.[31]

MUNICIPAL CORPORATIONS. *Bond service tax.* In accordance with a long line of authority,[32] the supreme court held that lands which have been removed from the jurisdiction of a municipality are none the less liable for debt service tax of bonds issued while the lands were situated within the municipality.[33]

Mortgage recreation bonds. An issuance of first mortgage recreation

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27. Logan v. Ward, 48 So.2d 525 (Fla. 1950).
28. Fla. Laws 1943, c. 22079.
29. Miami Retreat Foundation v. Holt, 48 So.2d 833 (Fla. 1950).
30. Wheeler Fertilizer Co. v. Rogers, 49 So.2d 83 (Fla. 1950). (The Circuit Judge relied on counsel to prepare a written order in accordance with a verbal order rendered at time of hearing. The order prepared by counsel was not in accord with the ruling of the court, but was not detected until expiration of the term of the Circuit Court.).
31. G. R. Kinney, Inc. v. White, 48 So.2d 733 (Fla. 1950) (Since the lessee held the store for eleven months the percentage rental for that period was based upon his actual sales, but for the twelfth month the percentage rental was computed on the actual sales of the sublessee who was in possession during that month. The lower court attempted to assess the rental for the twelfth month by taking the total sales of the lessee for the eleven months, dividing by eleven, and using the quotient as the basis of the rent for the last month on the theory that the lessee was always primarily liable on the lease and should pay rental commensurate to his sales and not to the sublessee's.).
32. Richmond v. Town of Largo, 155 Fla. 226, 19 So.2d 791 (1944); Leesburg v. Certain Lands, 154 Fla. 550, 18 So.2d 676 (1944); Henderson v. Town of Lake Placid, 132 Fla. 190, 181 So. 177 (1938).
33. Certain Lands v. Town of Lake Placid, 49 So.2d 542 (Fla. 1950). (The court affirmed a chancellor's finding that the equities of the case more than outweighed the appellant's contention that since the lands received little or no benefit from the issuance of the bonds the lands should not be encumbered by the tax lien).

bonds, second mortgage recreation revenue notes, and a lease with option to purchase the recreational facilities provided by the first mortgage bonds, with the approval of the freeholders in accordance with the Constitution[34] is a lawful obligation of the city of Treasure Island,[35] but the bonds and notes must be serviced by income from rental of the recreational facilities, since the ad valorem tax structure of the city is in no way obligated to service them.[36]

Surcharges. A surcharge upon the present users of a sewer system for the purpose of raising funds in furtherance of a general sewerage disposal system is valid even though the cost at present is to be borne by a small percentage of the city's population.[37]

Utilities Tax Bonds. A city has the power to issue Utilities Tax Bonds for the purpose of financing the construction and improvement of streets, storm sewers, sidewalks and appurtenances.[38] The court decided that such issuance need not be approved by the freeholders when it is to be serviced exclusively from the city utilities service tax.[39] No discussion was presented as to the contention that the city was devoid of power to issue such bonds since on the one hand it had created an irrevocable contract to pay off the bonds from the utilities tax, while on the other the same tax law could be repealed at any time by the legislature. The court merely held that according to law[40] there was no merit in the contention.

Validation of Municipal Transit Terminal Certificates. The question recently arose as to whether the City of Coral Gables could authorize an issuance of certificates for the purpose of building a new bus terminal without an approving vote of the freeholders as required by the Constitution.[41] It was decided that no approving vote was needed since the certificates were to be paid with profits from the operation of the city owned transit system, and from rental paid by the city for the use of the new terminal.[42]

NEGLIGENCE. *Contributory negligence.* The rights of motorists and trains at railroad crossings are reciprocal, therefore motorists must use a standard of care equal to that imposed on the railroad or be considered contributorily negligent.[43]

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34. FLA. CONST. Art. IX, § 6.
35. Peeler v. Smith, 48 So.2d 749 (Fla. 1950).
36. Schmeller v. Ft. Lauderdale, 38 So.2d 36 (Fla. 1948).
37. Buchanan v. Miami, 49 So.2d 336 (Fla. 1950).
38. FLA. STAT. § 167.43(1) (1949); State v. Bartow, 45 So.2d 886 (Fla. 1950); State v. Bartow, 147 Fla. 67, 2 So.2d 125 (1941); Wilson v. Bartow, 124 Fla. 356, 168 So. 545 (1936).
39. State v. Bartow, 48 So.2d 747 (Fla. 1950).
40. Murray v. Charleston, 96 U.S. 432 (1877).
41. FLA. CONST. Art. IX, § 6.
42. State v. Coral Gables, 48 So.2d 741 (Fla. 1950). (Important factors in the decision were that the rental would be paid out of available corporate funds and not from ad valorem taxes; that the trustees of the certificates and/or holders of five per cent of the certificates had no power to fix rates on terminal facilities; and that the trustees and holders could not direct the action of the city with reference to servicing the certificates.).
43. St. Louis-San Francisco Ry. v. Earl, 49 So.2d 324 (Fla. 1950).

Innkeepers. Although an innkeeper is not an insurer of the safety of his guests he must exercise reasonable care to keep the building safe for their use. The court, therefore, held that a complaint, which declares that an innkeeper had negligently left a mattress over which the plaintiff tripped, is good.[44] The fact that specific acts of negligence were not alleged did not affect the validity of the complaint since declaration based on simple negligence need only allege an act or omission causing injury and that such act was negligently done or omitted to be done.[45]

Standard of care. One who fails to examine the condition of a bathtub before entering it fails to exercise that degree of care for his own safety required of a reasonably prudent person.[46]

PLEADING AND PROCEDURE. *Service of process of nonresident owner of auto.* A nonresident owner of an automobile was involved in an accident while a passenger in his own car which was driven by a person unknown to him. Service was made upon the Secretary of State in accordance with the statutes[47] which allow such service when the automobile is operated by the nonresident owner, his servant, employee, or agent, but the court decided that since the statute was in derogation of the common law it had to be strictly construed[48] and that the driver in this case did not come within the strict construction of the statute.[49] It was also pointed out that a 1949 amendment[50] to the applicable statutes, which broadened the scope so as to make them apply to cases where a nonresident owner permits, acquiesces or consents to the operation of any motor vehicle owned, leased or controlled by him in the State of Florida, did not apply in this case because such laws cannot be made retroactive.[51]

Tolling of period allowed for answer. Where the defendant moves to dismiss a complaint within the time fixed by law, and the plaintiff moves for and is granted a default judgment for failure of the defendant to answer, final judgment based thereon being issued without notice to the defendant, entry of such judgment is unauthorized by the rules of practice[52] and contrary to due process of law since the motion to dismiss tolls the period set by rule for filing the answer to the complaint.[53]

RAILROADS. *Rulings of Public Service Commission.* The supreme court

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44. Goldkin v. Lipkind, 49 So.2d 539 (Fla. 1950).
45. Jackson v. Edwards, 144 Fla. 187, 197 So. 833 (1940); Dunn Bus Service, Inc. v. Wise, 140 Fla. 341, 191 So. 509 (1939).
46. Miller v. Shull, 48 So.2d 521 (Fla. 1950) (Hotel guest injured while stepping into a bathtub containing a slippery substance.).
47. FLA. STAT. §§ 47.29, 47.30 (1949).
48. Red Top Cab & Baggage Co. v. Holt, 154 Fla. 77, 16 So.2d 649 (1944).
49. Fidler v. Victory Lumber Co., 93 F. Supp. 656 (N.D. Fla. 1950).
50. Fla. Laws 1949, c. 25003.
51. Red Top Baggage Co. v. Holt, *supra* note 48.
52. FLA. COMMON LAW RULES 13(a), (13(b) (1949).
53. Atlantic Coast Line R.R. v. Lake County Citrus Sales, Inc., 48 So.2d 922 (Fla. 1950).

will quash a ruling of the Public Utilities Commission where evidence clearly shows that such ruling was unreasonable.[54]

TAXATION. *Cancellation of Tax Deed.* Where non payment of real estate taxes for the year 1941 was caused by mistake of tax officer and a tax certificate issued, a tax deed based on such certificate was cancelled notwithstanding that a check for the payment of back taxes was not received until one day subsequent to the date of the tax sale.[55]

Capital gains tax on fruit involved in the sale of a citrus grove. Relying on *Adams v. Adams*[56] the district court has finally found a means of applying capital gains tax to the fruit involved in the sale of a citrus grove rather than subjecting it to ordinary income tax.[57] The major portion of the capital gains law under discussion was the six months holding period. The court decided that since the grove itself was held for longer than six months the fruit, too, must be considered as having been held for the same period since it is an integral part of the tree and, as such, is realty.[58]

Classification. Construing a provision of the sales tax legislation[59] the court held that an order of the comptroller exempting newspapers from the operation of such tax while making magazines and other periodicals taxable was a reasonable classification not offensive to either state or federal constitutions.[60]

Conveyancing of homestead. Where portions of homestead property held as an estate by the entireties were deeded to children of the owners, the conveyances could not be attacked on grounds of lack of consideration by a subsequent vendee as he was not of that class who may question the validity of a deed to homestead property. Since the property was held as an estate by the entireties, becoming upon the death of one spouse the sole property of the other, the homestead provisions adopted for the benefit of heirs of the head of a family do not apply.[61]

Estoppel of state in quiet title suit. Applying applicable rules to the State that generally apply to individuals[62] it was decided that in a suit to

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54. Atlantic Coast Line R.R. v. King, 49 So.2d 89 (Fla. 1950) (Petitioner appealed an order denying permission to cancel Cross City as a scheduled stop for two of its interstate trains. Evidence showed that such trains failed to handle a single passenger sixty-five per cent of the time they stopped at Cross City and that petitioner offered scheduled passenger service to Cross City on other trains.).

55. Helseth v. Cleveland Trust Co., 49 So.2d 91 (Fla. 1950) (It was shown that the owner at all times made diligent effort to pay taxes; that a check for back taxes was mailed in time to reach the clerk of the court prior to the time of sale, but since the sale was held on Labor Day the check was not received until the next day.).

56. 158 Fla. 173, 28 So.2d 254 (1948) (It was decided that fruit not plucked from the tree was realty and inheritable in the same manner as other real estate.).

57. See James P. Hill, *Ordinary Income or Capital Gain on the Sale of an Orange Grove*, 4 MIAMI L. Q. 145 (1950).

58. Irrgang v. Fahs, 4 F. Supp. 206 (S.D. Fla. 1950).

59. Fla. Laws 1949, c. 26319; FLA. STAT. § 212.01 *et. seq.* (1949).

60. Gasson v. Gay, 49 So.2d 525 (Fla. 1950).

61. Denham v. Sexton, 48 So.2d 416 (Fla. 1950).

62. Reid v. Barry, 93 Fla. 849, 112 So. 846 (1927); Campbell v. Carruth, 32 Fla.

quiet title[63] the state is estopped from attacking any claim of title which arises upon a tax deed granted by the state.[64] It was also determined that ordinarily title acquired by a grantor subsequent to conveyance inures to the benefit of his grantee by operation of law without the payment of further consideration[65] but that in this case the state should not be out of pocket in the transaction and that therefore all persons who have claims to the land purchased from the United States government by the state should return a proportionate amount of the money expended in the purchase.

Land owned by a Public Service Commission. A county has no authority to impose general operating taxes on lands held by the state in the name of the Game and Fresh Water Fish Commission[66] as such lands are expressly exempt from taxation by statute.[67] The dissenting opinion points up the distinction between state owned land used by the Commission and land acquired by the Commission. While the former is expressly exempt from taxation,[68] the latter is not.[69]

Notice of tax sale. Although a landowner's failure to *receive* notice of tax sale is not fatal,[70] a statute[71] requires that notice be *sent* to him, and where the clerk of the circuit court fails to mail a copy of the notice printed in the newspaper it is a sufficient defect to invalidate the tax deed.[72]

VENDOR AND PURCHASER. *Forfeiture.* Part payment made upon an executory contract for the sale of land may not be recovered by defaulting purchaser. The entire sum so paid may be retained by the vendor as liquidated damages irrespective of actual loss.[73]

VENUE. *Suits against comptroller.* Disregarding a Florida law[74] which gives a taxpayer the right to have an adverse ruling of the comptroller reviewed in any of the circuit courts of Florida, the supreme court recently decided that unless there is an attempt to seize property, suits against the comptroller to determine the validity of tax collections must be brought in the county wherein the comptroller resides.[75]

WILLS. *Burden of proof.* Following previous decisions[76] on the subject,

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264, 13 So. 432 (1893).

63. FLA. STAT. §§ 66.16–66.24 (1949).
64. Daniell v. Sherrill, 48 So.2d 736 (1949).
65. Tucker v. Cole, 148 Fla. 214, 3 So.2d 875 (1941).
66. State v. Webb, 49 So.2d 93 (Fla. 1950).
67. FLA. STAT. §§ 192.06, 192.08 (1949).
68. FLA. STAT. § 192.08 (1949).
69. FLA. STAT. §§ 372.12, 372.19 (1949).
70. FLA. STAT. § 194.15 *et seq.* (1949); Jernigan v. Harrison, 136 Fla. 320, 186 So. 511 (1939); Ozard Corp. v. Pattishall, 135 Fla. 610, 185 So. 333 (1938).
71. FLA. STAT. § 194.18 (1949).
72. Thacker v. Biggers, 48 So.2d 750 (Fla. 1950).
73. Batty v. Flannery, 49 So.2d 81 (Fla. 1950).
74. Fla. Laws 1949, c. 26319, § 15.
75. Henderson v. Gay, 49 So.2d 325 (Fla. 1950).
76. *In re* Peter's Estate, 155 Fla. 453, 20 So.2d 487 (1945); Watts v. Newport, 149 Fla. 181, 6 So.2d 829 (1941); Wartmann v. Burleson, 139 Fla. 458, 190 So. 789 (1939).

it has again been determined by the supreme court that the burden of proof rests upon the beneficiary of a will to prove the absence of undue influence on his part, when the brother of the testatrix attacks the will as being the result of such undue influence.[77]

Construction. Where a testamentary trust is capable of several interpretations, a construction which results in a partial intestacy of the settlor will be avoided if at all possible.[78]

Renunciation necessary to attack gift. Ordinarily one may not attack the validity of an instrument through which he receives a gift,[79] but where he receives a bequest and it is shown that he is only entitled to one-fifth of the bequest because of a trust created prior to the will the principle of estoppel does not apply when he attacks the trust provided there is a renunciation of the gift at the time of the institution of the suit. The fact that legal title to the trust corpus is not in the plaintiff, but in the trustee, does not alter the rule since the equitable interest of the beneficiary is still property which can be renounced.[80]

WORKMEN'S COMPENSATION. *Action against fellow servant.* The employee of a painting contractor injured as a result of the negligence of an employee of a roofing contractor employed on the same project could not bring an action for personal damages against the roofing contractor.[81] Under statute[82] employees of subcontractors working for the same general contractor are considered fellow servants, having an exclusive remedy under Workmen's Compensation Law.

Compensation for pneumonia. A night watchman who is continuously required to remain outside in cold and rainy weather can collect compensation under the Workmen's Compensation Law[83] for pneumonia which is shown to have resulted from such work.[84]

77. *In re* Palmer's Estate, 48 So.2d 732 (Fla. 1950).

78. *In re* Smith, 49 So.2d 337 (Fla. 1950) (The testatrix bequeathed a portion of her residuary estate in trust to her husband's daughter to be added to a trust fund previously established by her husband. The trust established by the husband provided for a remainderman; but the wife's gift failed to mention any. As the remainderman under the trust executed by the husband died prior to the time the trust created by the wife came into existence the gift would have failed and a partial intestacy could have been the result. The court held that the two trusts should be considerd separately, thereby avoiding a lapse of the bequest.)

79. Pournelle v. Baxter, 151 Fla. 32, 9 So.2d 162 (1942).

80. Barnett Natl. Bank of Jacksonville v. Murrey, 49 So.2d 535 (Fla. 1950).

81. Miami Roofing & Sheet Metal Co. v. Kindt, 48 So.2d 840 (Fla. 1950).

82. FLA. STAT. § 440.10 (1949).

83. FLA. STAT. § 440.02(19) (1949).

84. Cook v. Henry C. Beck Co., 49 So.2d 743 (Fla. 1950).