NOTES

THE WORKMEN'S COMPENSATION CASES

The constitutionality of compulsory accident compensation laws has been upheld in two decisions of the U. S. Supreme Court.[1] In *New York Central Railroad Co. v. White*,[2] the court upheld a law requiring employers to pay compensation to employees in enumerated hazardous occupations for injuries by accident arising out of and in course of employment, regardless of fault, and requiring them to insure payment of same. In *Mountain Timber Co. v. Washington*,[3] the court went a step further and pronounced valid a law requiring employers to pay into a state fund such sums for insurance as should be assessed by the insurance department upon their class or occupation. The court draws the distinction that while the New York law says, "Pay your employees when they are injured and insure such payment," the Washington law says, "Whether your employees are injured or not, pay insurance into our state fund and we will pay compensation in case of injury." Although the effect of the laws is the same, the burden is more direct under the New York law.

The New York case settles once for all, the proposition, questioned by the Ives decision[4] that liability without fault is constitutional. The argument is the well accepted one, that no one has a vested interest in the rules of the common law, and that liability without fault is not new to that law. The court cites the rule of ***respondant superior***, the liability of innkeepers, and the rule as to dangerous things as common law examples of liability without fault, and also its own decisions in *Mondou v. Ry.*[5] and *C., B. Q. v. McGuire*[6] on limitation of freedom of contract.

The Washington case considers whether the requirement of payments under the law constitutes a taking in excess of the police power, and interprets that power in the most liberal terms. It holds that the taking of private property is justified in this case "by the public nature of the object." "Special burdens are often necessary for general benefits," says the court. "The idea of special excise taxes for regula-

[1] For discussion of this question, see 2 St. Louis Law Rev. 29.
[2] 37 Sup. Ct. Rep. 297.
[3] 37 Sup. Ct. Rep. 260.
[4] Ives v. S. Buffalo Ry. 201 N. Y. 271.
[5] 223 U. S. 1, 52.
[6] 219 U. S. 549, 571.

tion and revenue proportioned to the special injury attributable to the activities of the taxed is not novel."[7]

Besides upholding these beneficial laws, the cases make history in the law of master and servant, and add a new chapter to the liberal interpretation of the police power. In the New York case, the court labels the fellow-servant rule and assumption of risk as "the product of a judicial conception," and argues the validity of the present law fairly on the facts, after the most approved method of "sociological jurisprudence." "In excluding the question of fault as a cause of injury, the act in effect disregards the proximate cause and looks to one more remote—the primary cause, as it may be deemed—and that is the employment itself." The loss by injury is "a loss arising out of the business, and, however, it may be charged up, is an expense of the operation, as truly as the cost of repairing broken machinery, or any other expense that ordinarily is paid by the employer."

The greatest significance of the cases is the recognition of the *public* nature of all employments. "Certainly the operation of industrial establishments that, in the ordinary course of things, frequently and inevitably produce disabling or mortal injuries to the human beings employed, is not a matter of wholly private concern. . . . A familiar exercise of state power is the grant of pensions to disabled soldiers and to the widows and dependents of those killed in war. . . . But is the state powerless to compensate with pensions or otherwise, those who are disabled, or the dependents of those whose lives are lost, in the industrial occupations that are so necessary to develop the resources and add to the wealth and prosperity of the nation?" The court therefore concludes that the state "may regulate the carrying on of industrial occupations that frequently and inevitably produce personal injuries and disability. . . . and require that these human losses shall be charged against the industry either directly as is done in the case of the New York act. . . . or by publicly administering the compensation and distributing the cost among the industries affected by a reasonable system of occupation taxes." R. W. C.

[7] The Court here cites Noble State Bank v. Haskell, 219 U. S. 104; Hendrick v. Md. 235, U. S. 610; Kane v. N. J. 242 U. S. 160; Morey v. Brown, 42 N. H. 373.