

wear and decay and damages by the elements only excepted.)" The defendant immediately took possession and began remodeling the interior and exterior of the building. It did not appear from the record whether the alterations were beneficial or prejudicial "to the inheritance." The bill was for an injunction to prevent further alterations and the defendant appealed from a temporary restraining order. *Held*, that it was waste even if the alterations were a benefit, and the restraining order was *affirmed*. *Stephenson v. National Bank of Winterhaven*, et al, (Fla., 1926), 109 So., 424.

The rule of the common law, and in a majority of the jurisdictions in the United States, is that any material alterations of the buildings on leased premises by a tenant for years, without the consent of the landlord, is waste regardless of whether the alterations are beneficial to the owner of the reversion. *London v. Greyme*, (1607) Cro. Jac., 181, 79 Eng. Reprint, 158; *United States v. Bostwick*, (1876) 94 U. S., 53, 24 L. Ed., 65; *Maddox v. White*, (1853) 4 Md., 72, 59 Am. Dec., 67; *Woolworth Co. v. Nelson*, (1920) 204 Ala., 172, 85 So., 449, 13 A. L. R., 820. The reasons assigned for this rule are: (1) that the evidence of title is affected by diminution of the means of identifying the premises, *Cole v. Green*, (1672) 1 Lev., 309, 83 Eng. Reprint, 422; *Brock v. Dole*, (1886) 66 Wis., 142, 28 N. W., 334; and (2) that by a lease the lessee is given only a right of user in the building and the landlord is entitled to receive back, at the end of the term, the very thing which he has leased, *Agate v. Lowenbeim*, (1874) 57 N. Y., 604; *Hamburger and Dreyling v. Settegast*, (1910) 62 Tex. Civ. App., 446, 131 S. W., 639. The former reason seems to have been properly discredited in view of the fact that in modern conveyancing property is described by metes and bounds, or courses and distances, or with reference to a plat or survey. *Pynchon v. Stearns*, (1846) 11 Metc., 304, 45 Am. Dec., 207; see also the opinion of Lord Blackburn in *Doherty v. Allman*, (1878) 3 App. Cas., 709. Though the doctrine of the principal case is in support of a rule of long standing the modern trend of authorities seems to require that, in order to entitle the landlord to injunctive relief or compensation for waste, it must be shown that the alterations were of a prejudicial nature or that it will be impossible to restore the premises at the end of the term substantially as the tenant received them. In *Fred v. Moseley*, (1912) (Tex. Civ. App.), 146 S. W., 343, a case very similar on its facts to the principal case, the court refused to issue an injunction against a tenant for years who contemplated changing the leased store building into a moving picture theater. *Doherty v. Allman*, (1878) 3 App. Cas., 709 was a case in which the House of Lords and the Privy Council refused to grant an injunction to restrain a tenant for years from converting store buildings into dwelling houses, on the ground that the neighborhood had changed so as to do away with any demand for store buildings. But in that case the lease was for a period of 999 years and the length of the term was a governing factor.

T. S. '27.

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT*.—Claimant newspaper boy was struck and injured by an automobile after he had completed his delivery route, and was riding his bicycle on his way home, but was still within the bounds of his district. He was not unnecessarily loitering, nor was negligence imputed to him, and the question is whether his status at the time of the injury and the place of the accident were such that he might come within the provisions of the act allowing compensation to employes for injuries "in courses of employment." *Held*, that claimant was injured on his master's premises "in course of employment," since he was within the area prescribed as his working district; that injury was not inflicted outside district because he was riding on opposite side of bounding street, in accordance with traffic laws. *Makins v. Industrial Accident Commission*, (Cal.) 247 Pac., 202.

This brings us to the consideration of what constitutes "in course of em-

ployment," and what is the extent of the employer's liability under what is termed the "going and coming rule." While many jurisdictions state the general rule to be that injuries suffered by employes when going to or coming from work are not compensable, they qualify this doctrine in many instances by adding, "in absence of special circumstances." *Comstock v. Bivens*, (Colo.) 239 Pac., 869. Some consider that in order to recover there must be a causal connection between the employment and the injury. *Larsan v. Industrial Accident Commission*, (Cal.) 224 Pac., 744, for instance, where a ranchman was injured by an explosion in a bunkhouse after hours, and as the house was the only place provided by the employer, there was deemed to be a causal connection between employment and injury. *Traynor v. City of Buffalo*, 203 N. Y. S., 590, holds according to the general rule that injuries inflicted while going and coming are not within the scope of employment, and hence not compensable. The California court, too, lays down as the general rule the same doctrine, in *California Casualty Indemnity Exchange v. Ind. Acc. Com.*, 190 Cal., 433, 213 Pac. 257, where a truck driver was injured coming from lunch, and held not "in course of employment"; and *London Guaranty and Accident Co. v. Ind. Acc. Com.*, 190 Cal., 587, 213 Pac. 977, where an employe was not allowed to recover for an injury which occurred while he was doing extra work at home after his evening meal. The theory in many of these cases is that the employe is not indemnified against a risk to which the general public is exposed.

As it has been suggested above, there are many exceptions to the general rule. The employe is generally protected when he is going, coming, or is on the premises of his employer. *Starr Piano Co. v. Ind. Acc. Com.*, 181 Cal., 433, 184 Pac., 860. Especially is this true when the employe is not unduly loitering. *Wabash R. Co. v. Ind. Com.*, 294 Ill., 119, 128 N. E., 290, where it was the custom of a roundhouse switchman to leave by a certain way; and *Lienau v. Northwestern Telephone Exchange Co.*, 151 Minn., 258, 186 N. W., 945, where an employe recovered from an injury sustained while leaving the premises on an elevator.

But a large number of courts, however, go still farther, and say that it is not necessary for the employe to be on the premises in order for him to recover. A few of these are, *Lake v. City of Bridgeport*, 102 Conn., 337, 128 A., 782, where a special policeman was injured by an automobile on his way to report at headquarters, and was held to be "in course of employment"; *Bendry v. Watkins et al* (Mich.) 158 N. W. 16, where a boy who was riding home on his bicycle for lunch and caught on to a truck was injured, and held to be within scope of employment; *Stratton v. Interstate Fruit Co.*, (S. D.) 199 N. W., 117, where a truck driver went out of his usual route on his way home to lunch, had an accident, and was allowed to recover on the same principle. See also, *State ex rel McCarthy Bros. v. District Court of Hennepin County*, (Minn.) 169 N. W., 274, where a salesman who was returning home from his sales territory on Sunday was drowned, and was allowed to recover. As a flood prevented the deceased from using the train, he came by skiff, and the court held that since he used his home as headquarters, he naturally desired to get home on the Sabbath, so any means he might employ were reasonable, and hence he came within the provisions of the act.

Thus it seems that while the general rule is laid down with great stress in most cases, the courts are very liberal in applying the exceptions. There is apparently no working rule to decide just when the employe was acting within the scope of his employment. As was pointed out in the Makins case, *supra*, the only way to decide is to consider carefully the facts of each particular case.

C. H. L. '28.

*This comment and the following one seem to cover the same subject, but as the comments were written by different students, and as the treatment is different, we feel justified in printing both comments.