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REVIEW OF RECENT DECISIONS

COURTS—DEMURRER TO EVIDENCE—DECISION OF COURT OF APPEALS HELD NOT IN CONFLICT WITH PRIOR RULINGS OF SUPREME COURT.

State ex rel. Snyder v. Trimble et al., (Mo.) 262 S. W. 697:

Writ of certiorari to Kansas City Court of Appeals, to review the judgment of the trial court, for the plaintiff, in the case of *Snyder v. Kansas City and the Central Coal & Coke Company*. The petition for the writ was based upon an alleged conflict between the opinion of the Court of Appeals and prior rulings of the Supreme Court on the question as to the use by the public of a sidewalk as affecting the plaintiff's contributory negligence. The error alleged to have been committed by the trial court on which the judgment of reversal of the Court of Appeals was based was the refusal of the former to sustain a demurrer to the plaintiff's evidence.

The evidence of the plaintiff, a woman of about sixty years of age, was to the effect that on March 5, 1919, at about three-thirty o'clock in the afternoon, while she was en route to her home in Kansas City, she crossed Thirty-sixth Street and ascended a concrete driveway from the street to the sidewalk. As she reached the outer edge of the sidewalk, she stepped into a hole in the same, fell and was injured. The driveway had been constructed a number of years before the accident to enable coal wagons to drive near a coal hole in the wall of an adjacent apartment building. A truck of the coal company had broken the hole in the sidewalk. The hole was about eighteen or twenty inches in diameter and about four inches in depth. It was a clear day. Plaintiff testified her eyesight was good, and as she approached she saw the sidewalk was broken; she did not see the hole until she stepped upon the driveway, and when she saw it did not realize that it was a dangerous place. When she neared it she paused, deeming it a dangerous place, but thought she could cross it in safety, made the effort, and fell. She testified that she was usually sure-footed and careful in walking, but that in trying to step over the hole she made a misstep in some way and stumbled and fell. She did not realize that the walk was so badly broken until she got there, when she found it was in worse condition than she had anticipated. She further stated that there was nothing deceptive about the appearance of the hole; that by taking a few steps she could have gone around it; that she had been over the sidewalk many times before she was hurt, and had probably noticed the hole, but had paid no particular attention to it.

The Court held that in order to sustain the contention that the evidence adduced did not authorize the Court of Appeals' ruling that the plaintiff was guilty of contributory negligence as a matter of law, a case involving a parallel state of facts in which it had ruled to that effect was a requisite.

The Court then pointed out that in the cases relied on by the relator, plaintiff below, there were facts which distinguished them from the case at bar,

such as the deceptive appearance of the sidewalk; the degree of visibility at the time of the accident; and the use of the sidewalk by others without any apparent danger.

The Court then held that a comparison of the testimony in the case of *Buesching v. St. Louis Gas Light Co.*, 73 Mo. 219, relied on by relator, and the case at bar did not disclose an analogy of facts. That in the absence of such analogy it could not be contended that the Court of Appeals' ruling contravened the rule as clearly defined in the *Buesching* case, and ordered that the writ be quashed.

INTERNAL REVENUE—VALIDITY OF INCOME TAX ON CITIZEN ABROAD ON INCOME DERIVED FROM PROPERTY ABROAD.

Cook v. Tait, Adv. Opinions, Supreme Court, June, page 507:

This was an action to recover an income tax alleged to have been illegally exacted. The tax was imposed under the Revenue Act of November 23, 1921.

Plaintiff is a native citizen of the United States, and was such when he took up his residence and became domiciled in the City of Mexico. The income upon which the tax was levied was derived from property situated in the City of Mexico. Plaintiff paid the tax under protest.

Plaintiff contends that Congress has no power to impose a tax upon the income of a citizen of the United States, derived from property situated outside the United States, when the citizen is at the time permanently resident and domiciled in a foreign country. Or, to put the contention another way, to the existence of the power and its exercise, the person receiving the income and the property from which he receives it must both be within the territorial limits of the United States to be within the taxing power of the United States.

The Court held that the contention is erroneous. The taxing power of the United States does not depend upon the situs of the property or the domicile of the citizen taxed. In this respect its power is greater than that of a state whose power to tax is limited by the corresponding rights of other states. A citizen and his property derive a benefit from the United States even though they be without its territorial limits, and this benefit creates an obligation to support the government by the payment of taxes.

The Court said: " * * * In other words, the principle was declared that the government, by its very nature, benefits the citizen and his property, wherever found, and therefore has the power to make the benefit complete. Or, to express it another way, the basis of the power to tax was not and cannot be made dependent upon the situs of the property in all cases, it being in or out of the United States, nor was not and cannot be made dependent upon the domicile of the citizen, that being in or out of the United States, but upon his relation as citizen to the United States, and the relation of the latter to him as citizen. The consequence of the relations is that the native citizen who is taxed may have domicile, and the property from which his income is derived may have situs, in a foreign country, and the tax be legal,—the government having power to impose the tax."