CITY OF LAREDO v. LOONEY, Atty. Gen.
(No. 2800.)

(Supreme Court of Texas. May 3, 1916.)

MUNICIPAL CORPORATIONS ⊂=913—BONDS—INVALIDITY—RIGHTS OF HOLDERS—REFUNDING.

Where the individual bonds of an original issue for street improvement purposes were sold and delivered at the same time, and the issue was void to the extent that it was in excess of the amount permitted by Const. art. 8, § 9, as amended, then in force, a proposed issue of bonds to refund the amount of the bonds still outstanding could not be made, though within the constitutional limit, since each bond, to the extent of its proportionate excess above the amount for which the debt could be lawfully created, was invalid from its inception, and the amount of the valid debt should be distributed equally between them, though for such part of the outstanding debt as was valid refunding bonds might be issued.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 1905; Dec. Dig. ⊂= 913.]

Mandamus by the City of Laredo against B. F. Looney, Attorney General of Texas. Writ refused.

A. Winslow, City Atty., of Laredo, for appellant. B. F. Looney, Atty. Gen., and C. M. Cureton and W. M. Harris, Asst. Attys. Gen., for appellee.

PHILLIPS, C. J. In this action a mandamus is sought against the Attorney General to compel his approval of a proposed issue of bonds of the City of Laredo in the amount of $31,000.00 for the purpose of refunding in like amount bonds of an original issue, in 1883, of $75,000.00, for street improvement, city hall, and market house purposes.

The individual bonds of the original issue, so far as is disclosed by the record, were all sold and delivered at the same time. The issue was void to the extent of approximately $39,000.00, being that much in excess of the amount for which the city could at the time have lawfully issued its bonds for the purposes named under the amendment of Section 9, Article 8 of the Constitution then in force. The city has paid off and retired forty-two bonds of the original issue, aggregating $42,000.00, and has available funds sufficient to retire two other bonds of the issue. This would leave $31,000.00 of the original issue outstanding, for which amount the refunding issue is proposed.

The contention of the relator is that although the original issue was partly void, under the Constitution, and the city could have then validly issued its bonds for the stated purpose only in the amount of approximately $36,000.00, it is lawful for the city to refund the issue in the amount of $31,000.00, since the bonds could, originally, have been lawfully issued in that amount.

The power to issue refunding bonds can be exercised only where the original debt was valid. If it was partly invalid, it may be refunded only to the extent that it was valid. If bonds of a partly invalid issue are shown to have been delivered at different times, those first delivered, up to the amount of the debt that could have been lawfully created, should be paid, and the remainder be treated as nullities. The bonds of such an issue thus representing the valid part of the debt could be lawfully refunded. But if all of the bonds of the partly invalid issue were delivered at the same time, as appears to have been the case here, none of them could have any right of priority over the others, and the amount of the valid debt should be distributed equally between them. Citizens Bank v. City of Terrell, 78 Tex. 460, 14 S. W. 1003. Each bond now outstanding of this original issue, to the extent of its proportionate excess above the amount for which the debt could be lawfully created, was therefore invalid in its inception, and is still so invalid. Each of them being but a part of the whole debt created, partakes alike of its validity and invalidity. If they may be refunded for their full amount, the result is a clear evasion of the Constitution. It would simply mean the maintenance of the whole debt against the city through an attempted validation of the outstanding balance. The property within the city has already been taxed for the payment of those bonds of the issue which have been retired, and if the remainder may be lawfully refunded it will be further taxed for their payment. It would thus be subjected to taxation for the admittedly invalid part of the debt. The purpose of the constitutional provision is to prevent such taxation. For such part of the outstanding debt as is valid, refunding bonds may be issued; but not for its full amount.

The writ of mandamus is refused.

MIDDLETON v. TEXAS POWER & LIGHT CO. (No. 2744.)

(Supreme Court of Texas. April 26, 1916.)

1. CONSTITUTIONAL LAW ⊂=105 — VESTED RIGHTS—WHAT ARE:

While vested rights are protected from destruction, except by due process of law, no one has a vested right in the common-law rules affecting the remedy in a servant's action or the defenses of fellow servant, assumed risk, and contributory negligence.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 228–235; Dec. Dig. ⊂= 105.]

2. CONSTITUTIONAL LAW ⊂=105 — MASTER AND SERVANT ⊂=347 — INJURIES TO SERVANT—EMPLOYER'S LIABILITY ACT.

Acts 33d Leg. c. 179, relating to the liability of employers and compensation to workmen for personal injuries, provides that employers may, at their election, become subscribers under the act or remain without the act, that if they become subscribers and give required notice to that effect to their employés, they are exempt from all common law or other statutory liability for personal injury suffered

by such employés, except for exemplary damages where an employé is killed through an employer's willful act or gross negligence and that if they do not become subscribers they are amenable to suits for damages recoverable at common law or by statute on account of personal injury, and cannot urge the defenses of fellow servant, assumed risk, or contributory negligence. *Held* that, as the employers were given an option and as an employer has no vested right to the defenses of assumed risk and contributory negligence, the act was constitutional as to them.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 228–235; Dec. Dig. ⟸105; Master and Servant, Dec. Dig. ⟸347.]

3. CONSTITUTIONAL LAW ⟸106—WORKMEN'S COMPENSATION ACT—VESTED RIGHTS.

Acts 33d Leg. c. 179, provides that employés remaining in the service of an employer after he shall have given notice that he will be bound by the provisions of the act shall have no common-law right of action for injuries which may be sustained, but shall receive a stated compensation based upon their average weekly wages which shall be paid to them or their representatives in event of death without regard to whether the employer is liable at common law and without the necessity of proving negligence. The purpose of the act was to benefit employés, though it was made obligatory to employés remaining in the service of an employer who had elected to be bound by the act. *Held* that, notwithstanding Bill of Rights, § 13, declaring that every person for any injury done him in his lands, goods, reputation, or person shall have his remedy by due course of law, the act was valid as to employés, for they have no vested right to the common-law actions for negligence, the constitutional provision relating to intentional wrongs, so the Legislature might deprive them of such rights.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 186, 212, 238–245, 252–257, 259; Dec. Dig. ⟸106.]

4. CONSTITUTIONAL LAW ⟸106 — VESTED RIGHTS—WHAT ARE.

While a servant has a vested right in a cause of action for the master's negligence, which has already accrued, he has no vested right to the common-law remedies provided for recovery for injury from the master's negligence.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 186, 212, 238–245, 252–257, 259; Dec. Dig. ⟸106.]

5. STATUTES ⟸114(2)—CONSTRUCTION—TITLE OF ACT.

Acts 33d Leg. c. 179, entitled "An act relating to employer's liability and providing for the compensation of certain employés and their representatives and beneficiaries, for personal injuries sustained in the course of employment, etc.," which provides an exhaustive scheme for workmen's compensation is valid, the title expressing the single general subject of the act.

[Ed. Note.—For other cases, see Statutes, Dec. Dig. ⟸114(2).]

6. CONSTITUTIONAL LAW ⟸80(2) — LEGISLATIVE AUTHORITY—DELEGATION.

Acts 33d Leg. c. 179, providing a system for compensation of injured workmen which creates an industrial accident board to determine disputed claims arising under the act, but provides for appeal to a court of competent jurisdiction from the decisions of the board, is not invalid as delegating judicial authority to the board.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 144; Dec. Dig. ⟸80(2).]

7. CONSTITUTIONAL LAW ⟸208(1) — CLASS LEGISLATION—CLASSIFICATION.

Classification for the purpose of a law is a legislative function, and the classification will be sustained, unless without any reasonable basis.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 665, 666, 669–674; Dec. Dig. ⟸208(1).]

8. CONSTITUTIONAL LAW ⟸208(7) — CLASS LEGISLATION — REASONABLE CLASSIFICATION.

Acts 33d Leg. c. 179, relating to liability of employers and compensation for injuries to workmen which excepted railroads, employés of gin houses, domestic servants, and farm hands and employés of masters not employing more than five servants, is not invalid as prescribing an unreasonable classification, there being many laws for the protection of railroad employés, and the other employés falling in a different class from those included within the act.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 654–656; Dec. Dig. ⟸208(7).]

9. JURY ⟸31(1)—JURY TRIAL—IMPAIRMENT.

Acts 33d Leg. c. 179, relating to the liability of the employers and compensation of workmen which provided for determination of contested claims by an industrial accident board, is not invalid as depriving employers and employés of jury trial, an appeal being provided for on which jury trial might be had.

[Ed. Note.—For other cases, see Jury, Cent. Dig. §§ 204, 214; Dec. Dig. ⟸31(1).]

10. CORPORATIONS ⟸6 — CREATION—PRIVATE CORPORATION.

Acts 33d Leg. c. 179, relating to the liability of employers and compensation of workmen for injuries which created an insurance association is not invalid as creating a private corporation by special law contrary to the Constitution; the association, though denominated a corporation, being a mere arm of the state provided for carrying out the compensatory provisions of the law.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 30–34; Dec. Dig. ⟸6.]

Certified Questions from Court of Civil Appeals of Third Supreme Judicial District.

Action by Charlie Middleton against the Texas Power & Light Company. From judgment for defendant, plaintiff appealed to the Court of Civil Appeals (178 S. W. 956), which reversed and remanded the case and certified questions to the Supreme Court. Questions answered.

Witt & Saunders and Chas. A. Braun, all of Waco, for plaintiff. Lawther, Pope & Mays and Homer R. Mitchell, all of Dallas, Spell & Sanford, of Waco, Batts & Brooks, of Austin, and Jas. Harrington Boyd, of Toledo, Ohio, for defendant.

PHILLIPS, C. J. In this case we are called upon to answer seventeen questions certified by the honorable Court of Civil Appeals for the Third District as to the constitutionality of the Act of the Thirty-third Legislature (Acts 33d Leg. c. 179) relating to the liability of employers and compensation of workmen for personal injuries. Apparently every possible constitutional question suggested by the act has been embraced in the

certificate, including some which the appellant was in no position to raise.

The Act contains many provisions and is therefore of considerable length. Instead of setting out its different sections, its evident purpose, operation and effect, will be stated to such extent as is necessary.

Its general purpose is to work an important change in the law in regard to the liability of employers for personal injuries to their employees, or for death resulting from such injuries, and the compensation afforded therefor to employees or their beneficiaries. It creates an employers' insurance association to which any employer of labor in the State, with certain exceptions, may become a subscriber. Out of the funds of this association, derived from the premiums upon policies of liability insurance by it issued to subscribing members and assessments authorized against them, if necessary, the compensation provided by the Act as due on account of personal injuries sustained by their employees, or on account of death resulting from personal injury, is to be paid. This compensation, fixed by the Act on the basis of the employee's average weekly wages, accrues to him absolutely upon his suffering any personal injury in the course of his employment which incapacitates him from earning full wages for as long a period as one week, or to his representatives or beneficiaries in the event of his death from the injury, whether or not due to the negligence of the employer or any of his servants or agents; and is protected from all process or claims to the same extent as current wages under existing laws. It is the substitute intended and provided by the Act for damages ordinarily recoverable at common law or by statute on account of injuries suffered by an employee or because of his death, when due to the negligence of the employer or his servants; it being declared by the Act that the employee of a subscribing employer shall have no cause of action against him for damages for personal injuries, nor shall his representatives or beneficiaries in case of his death, except that exemplary damages may be recovered in an ordinary suit by the surviving husband, wife and heirs of any deceased employee whose death is caused by homicide through the wilful act or omission or gross negligence of his employer.

While any employer of labor within the State, with the exceptions provided, may become a subscriber and by complying with the Act be, except as to exemplary damages just noted, exempt from all common law or statutory liability on account of injuries suffered in his service by his employees, by the Act all employers who do not become subscribers, in a suit for damages on account of such injuries, or for death resulting therefrom, are deprived of the common law defenses of the negligence of a fellow servant and assumed risk, and, as an absolute defense, of contributory negligence on the part of the employee, as well; it being provided that the damages in such suits shall be diminished in proportion to the amount of any negligence attributable to the employee, and that no employee shall be deemed guilty of contributory negligence where the violation by the employer of any statute enacted for the safety of employees contributed to his injury or death. It is declared however that in all such actions against a non-subscribing employer, it shall be proved, as necessary to a recovery, that the injury to or death of the employee was due to the negligence of the employer, or some agent or servant acting for him within the general scope of his employment: and that where the injury was caused by the wilful intention of the employee to bring it about, the employer may defend upon that ground.

Wholly excepted from the operation of the Act are employers,—and their employees as well,—operating railways as common carriers, cotton gins, and those engaged in any class of business having in their employ not more than five employees. The Act likewise does not apply to employees who are domestic servants or farm laborers.

Every employer becoming a subscriber to the insurance association is required to give written or printed notice to all employees under contract of employment with him that he has provided for payment by the association of compensation for injuries received by them in the course of their employment.

Under certain conditions an employer holding a policy insuring against his liability, issued by any insurance company lawfully transacting a liability or accident insurance business within the State, shall be deemed a subscriber within the meaning of the Act.

There is also created by the Act and charged with its administration, a board of three members whose duties are defined. In general, its province is the determination of disputed claims arising under the Act. If its decision is not accepted, suit may be brought upon the claim, or be required to be brought, against the association if the employer of the injured or deceased employee was a subscriber at the time of his injury or death, in a court of competent jurisdiction, which, however, shall adjudicate the questions of liability and compensation according to the provisions of the Act.

In brief, the operation of the Act, as to all employers of labor within the State not excepted by its terms, is this:

1. They may, at their election, become subscribers under the Act, or what may be termed consenting members to its general scheme of liability and compensation, or remain without its pale.

2. If they become subscribers and give the required notice to that effect to their employees, they are exempt from all common law or other statutory liability for personal injury suffered by such employees in their

service, except that for exemplary damages where an employee is killed through an employer's wilful act or omission or gross negligence, which may be defended against as under existing law.

3. If they do not become subscribers, they are amenable to suits for damages recoverable at common law or by statute on account of personal injuries suffered by their employees in the course of their employment, and are denied the right of making what constitute the common law defenses thereto. In such a suit, however, no recovery may be had against an employer except upon proof of his negligence, or negligence on the part of some agent or servant acting within the general scope of his employment; or where the employee wilfully caused his own injury.

As to employees, this is the effect of the Act:

1. They are at liberty to work or not to work for employers who are, or who may become, subscribers under the Act.

2. If they enter the service of a subscribing employer, or remain in his service after written or printed notice given by him that he is such an employer, and are injured in the course of their employment, a stated compensation, based upon their average wages, is paid them therefor, or to their representatives or beneficiaries in the event of death from the injury, without regard to whether the employer is liable therefor as at common law and therefore without the necessity of proving negligence, through an agency provided by the Act as the means of insuring such payment.

3. Such employees as are injured in the service of subscribing employers who comply with the Act, are denied all right of action therefor against such employers, as are the representatives and beneficiaries of deceased employees for injuries resulting in death, except that the surviving husband, wife and heirs of any such deceased employee killed through the wilful act or omission or gross negligence of such employer may maintain an action for exemplary damages on account of his death.

[1, 2] This being the operation of the Act upon employers and employees, the question that commands first attention in the consideration of its constitutionality is, Does it violate any of their fundamental rights? This will be determined in the light of the several questions certified, without setting them out or attempting to answer them separately. As to employers, it is clear that no fundamental right is invaded. The Act leaves them free to adopt its plan of compensation, or remain ungoverned by it. The consequence attached to their not consenting to it, is the denial of the right, existing in common law actions, to interpose the common law defenses of fellow servant, assumed risk, and contributory negligence in suits for the recovery of damages for personal injuries suffered by their employees in the course of their employment. But that is not a vested right or a right of property. Those defenses are but doctrines or rules of the common law. Rights of property which have been created by the common law cannot be taken away by the Legislature. They are protected from destruction by any process except the due process of the law, that is, law in its regular course of administration through courts of justice. But no one has a vested interest in the rules, themselves, of the common law; and it is within the power of the Legislature to change them or entirely repeal them. Munn v. Illinois, 94 U. S. 113, 24 L. Ed. 77; Second Employers Liability Cases, 223 U. S. 1, 32 Sup. Ct. 169, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44.

A legislature may in proper instances prescribe duties and penalize their breach through an authorization for the recovery of consequent damages. But it is wholly without any power to deny the citizen the right of making any defense when sued in the courts. There is no such thing in this country as taking one man's property without his consent and giving it to another by legislative edict. That is nothing less than confiscation by legislative decree. If this Act, therefore, had declared an employer not consenting to its provisions absolutely liable in damages at the suit of an employee for any injuries sustained by the latter in the employment, without reference to any wrong or breach of duty committed by the employer, it would have been void. Such a law would have amounted to a legislature forfeiture of property rights, regardless of the holding of any court upon the question. The Act in its effect would have been the same if it had sought to deprive the employer of all defenses to such a suit. The true rule is that while technical defenses may be abrogated by statute those which affect a party's substantial equities may not be. Cooley Const. Lim. 456; Maguiar v. Henry, 84 Ky. 1, 4 Am. St. Rep. 182; First School District v. Ufford, 52 Conn. 44. The defenses formerly available to an employer and abrogated by the Act are not of the latter character. Their operation in the common law action for damages is not to acquit the employer because of his having breached no duty and being without fault, but they deny recovery to the employee because of his conduct, or, under the fellow servant doctrine, because the act is that of a co-employee, and the consequences imputed to the employee for that reason as a rule of law. It was within the power of the Legislature to change the rule.

Employers who become subscribers under the Act voluntarily waive the right to have their liability determined in the courts. As to employers who remain without the Act, negligence on their part, or of some servant

or agent acting in the scope of his employment, must be established to render them liable in a suit for injuries suffered by the employee. This is not the creation of an absolute liability against them. They may still defend and defeat the suit by disproving any negligence. The substantial defense to such actions is therefore not taken away. The Act, accordingly, deprives neither class of employers of any fundamental right. The State v. Creamer, 85 Ohio St. 349, 97 N. E. 602, 39 L. R. A. (N. S.) 694; Opinion of Justices, 209 Mass. 607, 96 N. E. 308; Borgnis v. Falk Company, 147 Wis. 327, 133 N. W. 209, 37 L. R. A. (N. S.) 489; Jeffrey Manufacturing Company v. Blagg, 235 U. S. 571, 35 Sup. Ct. 167, 59 L. Ed. 364.

[3, 4] The effect of the Act upon the rights of employees cannot be properly weighed or determined without a due consideration of its aim and policy in their interest. Its theory, as it concerns them, is that the plan of compensation it provides for their injuries suffered in the course of their employment is more advantageous than a suit for damages. In the latter, the employee is compelled to assume the burden of establishing that his injury was caused by the employer's negligence or the negligence of a servant for which the employer is responsible. His suit fails if it is subject to any of the common law defenses, that is, if his own negligence was the proximate cause of the injury, or if the injury was due to a risk he assumed, or the negligence of a fellow servant. By the Act a fixed compensation is payable to him upon the mere happening of any injury in the course of the employment, or to his beneficiaries in the event of his death from the injury, without reference to any negligence on the part of the employer or his servants, and without regard to defenses available to the employer at common law.

With this as the evident spirit and design of the Act in the employee's interest, his entering the service of an employer who in his business pursuit is governed by the Act, or his remaining, after notice duly given, in the service of an employer who has adopted its plan of compensation and become subject to it, is made to operate as a waiver of any cause of action against the employer on account of any injury suffered in the course of the employment, except for exemplary damages in behalf of a surviving husband, wife, or heirs, as already noted.

Does this deprive the employee of any vested right or property right? It is clear that it takes from him no property right. A *vested* right of action given by the principles of the common law is a property right, and is protected by the Constitution as is other property. The Act, however, does not profess to deal with rights of action accruing before its passage. That which is withdrawn from the employee is merely his right of action against the employer, as determined by the rules of the common law, in the event of his future injury. This is nothing more or less than a denial to him by the Legislature of certain rules of the common law for the future determination of the employer's liability to him for personal injuries incurred in the latter's service, and, in the plan of compensation provided, the substitution by the Legislature of another law governing such liability and providing a different remedy. The question is: Was the Legislature without the power to thus completely change the law upon the subject? This inquiry has no concern in the wisdom of the change; it takes no account of the reason for it; it is limited to the naked question of the Legislature's power.

That the Legislature possessed the power, must be conceded, unless it be true that the employee is protected by the Constitution in the continuance of the rules of the common law for his benefit in the determination of the employer's liability for such injuries as those with which the Act deals. That no one has a vested right in the continuance of present laws in relation to a particular subject, is a fundamental proposition; it is not open to challenge. The laws may be changed by the Legislature so long as they do not destroy or prevent an adequate enforcement of vested rights. There cannot be a vested right, or a property right, in a mere rule of law.

Here the character of injuries, or wrongs, dealt with by the Act becomes important. Notwithstanding the breadth of some of its terms, its evident purpose was to confine its operation to only accidental injuries, and its scope is to be so limited. Its emergency clause declares its aim to be the protection by an adequate law of the rights of employees injured in "industrial accidents," and the beneficiaries of such employees as may be killed "in such accidents." The Bill of Rights, Section 13, Article I of the Constitution provides that "every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law"; that is, the right of redress in the courts of the land in accordance with the law's administration. It is therefore not to be doubted that the Legislature is without the power to deny the citizen the right to resort to the courts for the redress of any intentional injury to his person by another. Such a cause of action may be said to be protected by the Constitution and could not be taken away; nor could the use of the courts for its enforcement be destroyed. This Act does not affect the right of redress for that class of wrongs. The injuries, or wrongs, with which it deals are accidental injuries or wrongs. What we know and denominate as the cause of action arising from an accidental injury is purely the creation of the common law. It is a common law liability

founded upon the common law doctrine of negligence; and but for the rule of the common law,—sometimes also expressed in statutes,—there would be no liability for such an injury, and hence no cause of action for it.

Therefore in denying the employee of a subscribing employer, or his beneficiaries, any cause of action for accidental injuries, this Act simply changes the common law rule of liability upon the subject. It in effect declares that such employers shall no longer be liable as under that rule, but shall be liable according to the rule prescribed by the Act. If the Legislature in the performance of its function of declaring what the law shall be, is authorized to change and repeal the rules of the common law upon other subjects, as is undoubted and has been done in numerous and notable instances, wherein is its power to change this common law rule to be denied? If it may entirely abrogate the common law rule of contributory negligence, thus relieving the employee of all consequence of his negligence, and transferring it, in effect, to the employer, what is there, as a matter of purely legislative authority, to prevent its relieving the employer of the consequence of his negligence and, in particular, the negligence of his servants, and determining that he shall compensate his employee for accidental injuries received in his service according to a different rule, through another remedy, and in its judgment by a better plan? If, in a word, it may declare that contributory negligence shall no longer be a defense, may it not also declare, as to purely accidental injuries, that negligence shall no longer be actionable? If it may change defensive common law rules, may it not also change a common law rule of liability? The power of the Legislature cannot exist in the one instance and not in the other. In virtue of its authority to enact laws, and, in doing so, to supersede common law rules where it deems such action wise, it exists in both; and it was in our opinion therefore competent for the Legislature, by this Act, to change both the common law rule of defenses and the common law rule of liability with respect to accidental injuries sustained by an employee in the course of his employment, requiring the employer, if he elects to come under the Act, to provide, according to its plan, a fixed compensation to be paid the employee, or his beneficiaries if his injury results in death, and denying to the employee of an employer subject to the Act, or his beneficiaries, the right of recovery therefore according to common law rules. We rest the decision of this question upon what seems to us is the evident proposition that no one has any vested or property interest in the rules of the common law, and therefore no one is deprived of a constitutional right by their change through legislative enactment. Jensen v. Railway Company, 215 N. Y. 514, 109 N. E. 600, L. R. A. 1916A, 403. The alteration in the law worked by this Act may be marked, but that does not of itself affect the power of the Legislature to so write the law; and it is only with the question of its power that we are concerned. The bearing of the Act upon the rights of employees, in its denial to those engaged in the service of a subscribing employer of a common law action for injuries so suffered, presents the vital constitutional question of the legislation. It is its abrogation of a familiar rule of liability that affords the chief challenge of its validity and not unnaturally prompts the test of the Constitution. But that instrument has not undertaken to preserve inviolate the rules of the common law. That system of rules to the extent that we are governed by it was adopted by the Legislature, and the same authority may alter it. The right to have the liability of an employer for an accidental injury to an employee determined by a common law doctrine is not a constitutional immunity, and this Act in changing that rule of liability therefore invades no constitutional right.

[6-8] We do not regard the Act in other respects as violative of any of the other constitutional provisions referred to in the certificate. The Act contains but one general subject; its purpose is one general object; and its title sufficiently expresses it. It vests no judicial power in the Industrial Accident Board which it creates. That Board is but an administrative agency provided for the proper execution of the Act. The classification adopted by the Act is not to be held by a court as an arbitrary and unreasonable one. In the enactment of such a law the Legislature was privileged to make a classification in respect to employees subject to the law. Classification for the purpose of a law is a legislative function. It will be sustained by the courts unless it is wholly without any reasonable basis. Employees of railroads, those of employers having less than five employees, domestic servants, farm laborers and gin laborers are excluded from the operation of the Act, but this was doubtless for reasons that the Legislature deemed sufficient. The nature of these several employments, the existence of other laws governing liability for injuries to railroad employees, known experience as to the hazards and extent of accidental injuries to farm hands, gin hands and domestic servants, were all matters no doubt considered by the Legislature in exempting them from the operation of the Act. Distinctions in these and other respects between them and employees engaged in other industrial pursuits may, we think, be readily suggested. We are not justified in saying that the classification was purely arbitrary.

[9] Nor does the Act impair the right of trial by jury. Trial by jury cannot be claimed in an inquiry that is non-judicial in its character, or with respect to proceedings be-

fore an administrative board. The Accident Board charged with the administration of the Act is, as we have said, not a court. In its determination of disputed claims there could be no right to a jury trial. The Act authorizes appeals from the decisions of the Board to the courts, where a jury trial of the matters in dispute, under the law as embodied in the Act, may be had.

[10] The insurance association created by the Act is not a private corporation, and this part of the Act is not violative of the Constitution in its provision that no private corporation shall be formed except by general laws. Some such agency as the insurance association may be deemed as essential to the efficient execution of the Act. It was a way of giving effect to the plan as a dependable method of providing the funds necessary for the payment to employees of the compensation the Act is designed to afford. The association is very clearly only an agency for the proper administration of this law. It has no functions or powers which it may exercise for any other purpose. It is denominated in the Act as a corporation, but that may be regarded as a term of convenience. Calling it a corporation does not make it a private corporation. Its character is to be determined by what it is, and not by its name. Railway v. Board of Directors, 103 Ark. 127, 145 S. W. 892; Beach v. Leahy, 11 Kan. 23.

The Act, in our opinion, is in its several provisions a constitutional law. The respective certified questions are so answered.

YANTIS, J., was disqualified in this case and took no part in the decision.

BRANNIN et al. v. RICHARDSON et al.
(No. 2457.)

(Supreme Court of Texas. May 3, 1916.)

1. BILLS AND NOTES ⇐342 — FAILURE OF CONSIDERATION—NOTICE TO PURCHASER.

Where the recitals of purchase-money notes merely advised their purchaser that they were secured by vendor's liens retained in the deed conveying the land, containing no facts to arouse the suspicion of a prudent person that a defect in title existed, such notes were insufficient to put their purchaser upon inquiry.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 830-841; Dec. Dig. ⇐ 342.]

2. VENDOR AND PURCHASER ⇐265(3)—VENDOR'S LIEN NOTES — ASSUMPTION OF PAYMENT.

When a purchaser of land contracted with the sellers to assume the payment of vendor's lien notes executed by them to their vendor, such purchaser became legally bound for their payment, becoming principal, and the sellers sureties, though there was no privity of contract between him and the original seller of the land to his vendors, since the payee of a note has an interest in any collateral security given by the principal on such note to his surety, and is allowed to resort to such additional security to enforce payment of the note.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 709; Dec. Dig. ⇐ 265(3).]

3. BILLS AND NOTES ⇐370—VENDOR'S LIEN NOTES—ASSUMPTION—STATUTE.

Under Rev. St. 1895, art. 307, providing that the assignee of a negotiable instrument may sue in his own name, and that, if he obtained the instrument before maturity and gave valuable consideration without notice of defense, he shall be compelled to allow only just discounts against himself, the purchaser of land, who assumed payment of vendor's lien notes executed by his sellers to their original vendor, when sued by an innocent purchaser of the notes before maturity from the original vendor, could not set up failure of consideration in defense, since the sellers could not have done so against a holder in due course, while the buyer stood in their shoes as primary obligor.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. § 963; Dec. Dig. ⇐ 370.]

4. VENDOR AND PURCHASER ⇐265(3)—REMEDIES OF VENDEE—DEFENSES—FAILURE OF CONSIDERATION.

The purchaser of land, who assumed payment of vendor's lien notes given by his sellers to their original vendor, could plead failure of consideration as defense when sued for the price by the sellers to him.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 709; Dec. Dig. ⇐ 265(3).]

5. BILLS AND NOTES ⇐383—HOLDER IN DUE COURSE—DEFENSE OF PAYMENT—STATUTE.

Under Rev. St. 1895, art. 307, providing that the assignee of a negotiable instrument obtained before maturity for valuable consideration and without notice of any discount or defense against it shall be compelled to allow only just discounts against himself, payment is no defense against a holder in due course of a negotiable instrument.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. § 956; Dec. Dig. ⇐ 383.]

6. BILLS AND NOTES ⇐534 — ATTORNEY'S FEES — REASONABLENESS — PROOF — NECESSITY.

Where notes provided for 10 per cent. attorney's fees, if the notes were placed with an attorney for collection, or if collected by suit, a holder in due course of such notes, suing the buyer thereon, could recover attorney's fees without proving the reasonable value of the services rendered, in the absence of proof that the amount was unreasonable.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1946, 1947; Dec. Dig. ⇐ 534.]

Error to Court of Civil Appeals of Second Supreme Judicial District.

Suit by L. E. Brannin and another against Barton M. Richardson and others. To review a judgment of the Court of Civil Appeals (148 S. W. 348) affirming judgment for plaintiffs for a limited amount, plaintiffs bring error. Judgments of the Court of Civil Appeals and the trial court reversed, and judgment rendered for plaintiffs.

J. J. Butts, of Cisco, and Batts & Brooks, of Austin, for plaintiffs in error. J. L. Alford and Spann & Alford, all of Rising Star, for defendants in error.