ABSTRACTS OF RECENT DECISIONS

BANKRUPTCY—DEBTS PROVABLE—BREACH OF PLEDGE.—The plaintiff gave a note with collateral security to the defendants who repledged the collateral in violation of the agreement, and were adjudged bankrupts before the note came due. The collateral was sold by the subpledgees and the plaintiff tendered the amount of the debt to the holders of the note, demanding the collateral. The defendants were discharged in bankruptcy and the plaintiff then sued them, relying on the demand and refusal as a cause of action arising subsequent to the time of bankruptcy. *Held*, that the cause of action did not grow out of the rejected tender but out of the breach of the pledge and so was a claim on contract provable under the bankruptcy act and barred by the discharge. *Wood v. Fisk, 109 N. E. 177 (N. Y.).*

CARRIERS—ASSOCIATION WITH COMMODITY CARRIED.—Mere ownership by railway stockholders of stock in a coal company does not constitute a violation of the commodities clause of the Hepburn Act, making it unlawful for any railroad to have an interest, direct or indirect, in any article which it carries in interstate commerce. However, a contract between a railroad and a coal company whereby the coal company is constituted a mere agent of the railroad is in violation of that act. *U. S. v. D. L. and W. R. R. Co. and the D. L. and W. Coal Co., 35 Sup. Ct. 873.* For a discussion of the Hepburn Act in relation to this case see note on p. 59 of this issue.

COMMERCE—POWER OF CONGRESS TO REGULATE INTRASTATE RATES.—The plaintiff transportation company, a common carrier of passengers between a point on the shore of California and the Island of Santa Catalina, both of which places are within the same county of the state, though separated by a stretch of open sea, challenged the right of the state railroad commission to fix their rates, claiming that the business was subject exclusively to the regulating power of Congress. *Held*, that although the route led over open sea, in the absence of Federal interposition, the transportation was a subject of local action. *Wilmington Transp. Co. v. Railroad Com., 35 Sup. Ct. 276.* This case overrules *Pac. S. S. Co. v. R. R. Comrs., 9 Sawy. 253, 18 Fed. 10.*

COMMERCE — STATE REGULATION — TRANSPORTING INTOXICATING LIQUORS — WEBB-KENYON ACT.—The defendant express company was indicted for bringing into the state and delivering certain intoxicating liquors in local option territory. Section 2569a of the statutes of Kentucky provides that it shall be unlawful for any public or private carrier to bring into, deliver or distribute in any county, district, precinct, town or city where the sale of intoxicating liquors has been prohibited, any spiritous, vinous, malt, or other intoxicating liquor. *Held*, that the shipments into the state were not subject to the Kentucky statute above stated, because as applied to interstate shipments the statute was void as an attempt by the state to regulate commerce among the states; and that the Webb-Kenyon law, which provides that shipments into a state, territory, etc., of intoxicating liquor which is intended by any person interested therein to be received, possessed, sold or in any manner used, either in the original package or otherwise, in violation of any law of such state, etc., does not apply where the liquor is intended for the personal use of the recipient and his family; the highest court in Kentucky having held that such use was not prohibited by the laws of Kentucky. *Adams Express Co. v. Kentucky,*

35 Sup. Ct. 824. For a similar case see Ex parte Peede (Texas 1914), 170 S. W. 749. The question of the constitutionality and scope of the Webb-Kenyon law is discussed in a note on page 55 of this issue.

CONSTITUTIONAL LAW—RIGHTS OF ALIENS—CONFINEMENT AWAITING TRANSPORTATION.—The question as to the legal rights of an alien, guilty of acts making his deportation expedient, but held because the present European conflict made his deportation impossible, came recently before the U. S. District Court for the Southern District of New York. The relator was held under a warrant for his removal to Germany, but there being no regular ocean passenger service between America and Germany, he sought release by habeas corpus proceedings. The court *held* that his detention was not illegal and that his only relief lay through action of the executive branch of the government. *United States ex rel v. Schlimm, 222 Fed. 96.* Where a Chinese woman after final hearing on *habeas corpus* had been remanded to a marshal for deportation on the vessel on which she arrived and the vessel had departed, she was not entitled to bail pending the time of departure of the next vessel. *In re Ah Moy on Habeas Corpus, 21 Fed. 808.* Reviewed in *113 U. S. 216.*

CONSTITUTIONAL LAW—CIVIL RIGHTS—RACE SEGREGATION.—On appeal from a conviction for violation of a race segregation ordinance equally operative on black and white races and providing that it shall not abridge any constitutional rights to use or possess property, subject to reasonable police regulations, it was *held* that such an ordinance was a reasonable exercise of the police power, on the ground of maintenance of public health and public peace. Further, that such an exercise of police power as provided for did not destroy vested property rights, but was a reasonable restriction of use. *Harris v. City of Louisville, 177 S. W. 472 (Ky.).* For discussion of constitutionality of such ordinances see page 70 of this issue.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—WORKMEN'S COMPENSATION ACTS.—A workmen's compensation law requiring employers to take out insurance or furnish proof of ability to pay, or suffer penalty, and further taking from the employer defenses of assumed risk, contributory negligence, and negligence of fellow servant, but making recovery under the act full satisfaction to the employee, is not invalid as depriving the employer of property without due process of law contrary to Cons. U. S., Amend. 14, the act being justifiable under the state's police power. *Jensen v. Southern Pac. Co., 109 N. E. 600 (N. Y.).* For a discussion of these acts in relation to the police power see page 86 of this issue.

COMMERCE—INTERSTATE COMMERCE—FEDERAL EMPLOYERS' LIABILITY ACT.—In a suit under the New York act for compensation for death of a workman employed in unloading a steamship owned by a railroad but not connecting with its line, it was objected that the employee was engaged in interstate commerce within the scope of the Federal Employers' Act. *Held*, that the Federal act did not apply to such unconnected lines. *Id.*

CONSTITUTIONAL LAW—POLICE POWER—EARLY CLOSING LAWS.—A law requiring all mercantile and commercial houses in cities of over 10,000 in the State of Utah, to close at six p. m. every business day except during the week preceding Christmas, but exempting drug stores and provision houses, was *held* unconstitutional in that while it purported to regulate the working hours of employees in mercantile establishments, it applied to businesses conducted without help. Further that as it applied to cities of a population of 10,000 only, it amounted to class legislation, and also was objectionable in that it affected the right to alienate property. *Sayville v. Corless, 151 Pac. 51.*

CONSTITUTIONAL LAW—RIGHT OF SUFFRAGE—"GRANDFATHER CLAUSE".—An amendment to the Oklahoma constitution prescribing a literacy test for suffrage, but exempting those, among others, whose ancestors were on June 1st, 1866, entitled to vote under any form of government, *held* unconstitutional in that it set up an unjust standard which would perpetuate the conditions sought to be destroyed by the 15th Amendment to the Federal Constitution. *Guinn v. U. S., 35 Sup. Ct. 926.* A Maryland statute prescribing a certain literacy test, but exempting from its operation those whose ancestors were on January 1st, 1868, entitled to vote at any state election, was *held* unconstitutional on the same grounds. *Myers v. Anderson, 35 Sup. Ct. 923.* The intention to discriminate between the black and white races was drawn from the date fixed.

CONSTITUTIONAL LAW—WORKMEN'S COMPENSATION ACTS—FEDERAL ACT—EMPLOYEES ENGAGED IN INTERSTATE COMMERCE.—In a suit under the Illinois statute for compensation for death of a workman sustained while employed in repairing an engine used in interstate commerce, *held*, that the deceased was at the time of the accident engaged in interstate commerce and therefore the state statute did not apply. *Staley v. Illinois Cent. R. R. Co., 109 N. E. 342.* See note on page 52 of this issue.

CONSTITUTIONAL LAW—WORKMEN'S COMPENSATION ACTS—EQUAL PROTECTION OF LAWS.—The claimant, suing under the state compensation act, was injured while working on a steamship at her pier. The case was therefore one under admiralty and maritime jurisdiction. The defendant objected that if the state act applied it was unconstitutional in that it denied the equal protection of the laws. *Held*, that the state act was in no sense a proceeding *in rem* to enforce a maritime lien, but was a substitute for the common law remedy and therefore might exist concurrently with the remedy in admiralty. That the employer was subject to two remedies after the passage of the act precisely as he was before its passage, the law amounting to a mere substitution. *In re Walker, 109 N. E. 604 (N. Y.).* A recent Washington case contains an apparently conflicting opinion. The relator was injured while in the employ of a steamship company. The Industrial Commission rejected his demand on jurisdictional grounds and in the Federal Court judgment was given for the defendant because the Commission had made no demand on the ship company. In mandamus proceedings to force the Industrial Commission to collect premiums from the ship company so as to obtain jurisdiction and authorize payment of compensation, the Supreme Court held that the Industrial Insurance Act did not cover cases in admiralty, and that the employee's sole remedy was by suit in the Federal Court. *State ex rel. Jarvis v. Daggett, 151 Pac. 648 (Wash.).*

CONTRACTS—CONFLICT OF LAWS—EFFECT OF WAR MEASURES.—A French corporation made a loan to a German corporation. The defendants were sureties. In a suit for repayment by the French corporation the defendants pleaded that by the laws of Germany the debtor was forbidden to pay any money to the plaintiff, and second, that by the laws of France the time of payment of the indebtedness had been extended to a time subsequent to the commencement of the action. The court *held* the first defense bad in that the obligation might have become binding before the passage of the German law, but sustained the second defense on the ground that because of the moratorium no cause of action had arisen, and as the question was not one of proceedure, the French law governed. *Compagnie General F. & P. v. Herzig & Sons, 153 N. Y. Sup. 717.*

DIVORCE—ALIMONY—SURVIVAL.—During an action for alimony due and unpaid the plaintiff died. On a motion to substitute in her place the executor of her last will and testament, it was objected that the cause

of action did not survive. *Held*, that the right to collect alimony due and unpaid at the time of the wife's death might be enforced by her personal representatives. *Van Ness v. Ransom, 109 N. E. 593 (N. Y.)*. This point has not been passed on under Sec. 105, R. S. Mo. 1909. It has been held that a decree awarding alimony *pendente lite* is a final judgment so as to be a preferred claim against the estate of the deceased husband. *Estate of Wm. F. Smith, 122 Cal. 462.* A writ of *scire facias* was held maintainable against husband's personal representatives for alimony due. Knapp v. Knapp, 134 Mass. 353. Sloan v. Cox, 4 Hayw. (Tenn.) 75.

ELECTION OF REMEDIES—FEDERAL EMPLOYERS' LIABILITY ACT.—Bringing an action under a state employers' liability act with subsequent discontinuance does not bar an action in the Federal Court under the Federal employers' liability act. *Hogan v. New York Central & H. R. R. R. Co., 223 Federal 890.*

EXECUTORS AND ADMINISTRATORS—SALES—PROPER SUBJECTS—DONATION CERTIFICATES.—In the absence of circumstances creating an estoppel on the part of heirs, an administrator can pass no title to a donation certificate from the state to the heirs, since such certificate is not a part of the estate, being a mere gratuity, and, therefore, not subject to administration. *Moody v. Bonham, 178 S. W. 1020 (Texas).*

FRAUD—MEASURE OF DAMAGES.—In an action for fraud in the sale of stock; *held*, the measure of damages is the difference at the time of purchase between its actual value and what its value would have been had the representations been true. *Whitney v. Lynch, 109 N. E. 826 (Mass.)*. Contra:—plaintiff may only recover the money invested and interest. *Smith v. Bolles, 132 U. S. 125;* so in *Bank v. Byers, 139 Mo. 627.*

INJUNCTION—INTERFERENCE WITH EMPLOYMENT—BLACK LIST.—On bill in equity by workman against a manufacturers' association to restrain them from interfering with plaintiff's right to earn livelihood, by means of a black list, *held*, that the plaintiff's participation in the strike, carried on in an unlawful manner by the union to which he belonged, precluded him from obtaining active aid in a court of equity. *Cornellier v. Haverhill Shoe Mfrs. Ass'n, 109 N. E. 643 (Mass.)*.

INTOXICATING LIQUORS—NUISANCE—"LOCKER SYSTEM".—In an action of debt for violations of a municipal ordinance making the distribution of liquors among members of a club, by any means whatsoever, an illegal sale, *held* that charges for service of liquors in a former saloon to persons informally associated, amounted to unlawful selling, though the persons serving such liquor were not shown to have had any interest in the liquor served. *City of Decatur v. Schlick, 109 N. E. 737 (Ill.)*.

MANDAMUS—COMPELLING PUBLICATION OF STATUTES—EVIDENCE.—Plaintiffs having a special interest in the publication of an act alleged to have become law instituted mandamus proceedings to compel publication by the Secretary of State. Parol evidence was offered to show that the chief executive had first approved the bill before he vetoed it, as shown by the record, but the court *held* that parol evidence contradicting the legislative record provided for in the constitution was inadmissible and that the mandamus proceedings must fail. *Arkansas State Fair Ass'n v. Hodges, 178 S. W. 936 (Ark.)*.

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACTS—ASSUMPTION OF RISK BY CONTRACT OF EMPLOYMENT.—In a tort action for death of employee paid to repair defective apparatus, *held* that contractual assump-

tion of risk is not matter of defense taken from the employer by a Compensation Act providing that it shall be no defense that an employee voluntarily assumed the risk of the injury. *Ashton v. Boston and M. R. Co. (Mass.), 109 N. E. 820.*

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT—FORCE OF DECISION OF INDUSTRIAL ACCIDENT BOARD.—On an appeal from the finding of the Industrial Accident Board, *held* that the finding stood on the same footing as a verdict of a jury or finding of a court and would not be set aside unless wholly unsupported by the evidence. *In re McPhee, 109 N. E. 633 (Mass.).*

PURE FOOD—CHEWING TOBACCO—LIABILITY OF MANUFACTURER.—In an action for injury resulting from impurities in chewing tobacco, brought on the theory that tobacco was foodstuff, within the meaning of the exception to the rule that manufacturers are not liable for injuries caused by impurities of which they were ignorant, *held*, that tobacco was not a foodstuff within the meaning of this exception. *Liggett and Meyers Tobacco Co. v. Cannon, 178 S. W. 1009 (Tenn.).*

REMOVAL OF CAUSES—AGREEMENT NOT TO REMOVE SUITS—FOREIGN CORPORATIONS—DOING BUSINESS WITHIN STATE.—In a suit under Wisconsin Statutes, 1898, authorizing foreign corporations to do business within the state, declaring as a condition that such corporations shall state in applications and annual reports that they will comply with all laws of the state relative to foreign corporations, the particular section in controversy being 1770f, added By-Laws 1905, c. 506, which declares that whenever any foreign corporation doing business in the state shall remove or make application to remove into any district of the United States, any action or proceeding commenced against it by any citizen of the state on a claim or cause of action arising within the state, it shall be the duty of the Secretary of the State, on such fact being made known to him, to revoke the right of the corporation to do business in the state, *held*, that such a provision requiring of a foreign corporation, as a condition of being permitted to or remain in the state, that it stipulate not to exercise its constitutional right to remove suits to the Federal courts or prosecute suits therein is unconstitutional and void, and that the revocation of the license of the corporation for violation of such a statute may be restrained. *Western Union Tel. Co. v. Frear, 216 Fed. 199.* For a discussion of the principles involved in this case see note on page 79 of this issue.

RESTRAINT OF TRADE—PRICE FIXING—PATENTED ARTICLES.

Great Atlantic and Pacific Tea Co. v. Cream of Wheat Co., 224 Fed. 566. (Sustained by Judge Lacombe for the Federal Circuit Court of Appeals, November 10th.)

1. For the manufacturer of an unpatented food product, not a necessity or a staple article of trade, whose monopoly extends only to the name under which the product is distributed, to refuse to supply a retailer who will not comply with a request to maintain a certain reasonable fixed price, is not such a substantial restraint of trade as to violate the Clayton Act (Act Oct. 15, 1914, c. 321, 2, 38 Stat. 730), and as to authorize the court to grant the retailer relief by injunction under Section 16 of said act.

2. The last exception in Section 2 of the Clayton Act authorizes vendors in interstate commerce to select their bona fide customers, where the effect is not to substantially and unreasonably restrain trade.

3. Congress has no constitutional power to authorize the courts to

compel a purely private concern to deal with a particular person by injunction.

4. A producer may send circulars to its customers asking them not to supply a certain retailer who is cutting prices.

Ford Motor Car Co. v. Union Motor Sales Company, 225 Fed. 373.

Where a patentee sells an article made under his patent and receives the full consideration therefor, he has exhausted his exclusive right to sell and an agreement between him and the purchaser to re-sell at a fixed price is in restraint of trade and void, though there is a provision that title shall revert to the patentee if the article is sold below said price.

United States v. Motion Picture Patent Co., 225 Fed. 800.

1. The motion picture business may be such a trade as comes under the laws relating to interstate commerce.

2. If the subject matter of a contract which otherwise would be illegal because of restraint of trade, is a patented article, this takes away the illegality only to the extent which the field of the trade affected by the contract is co-extensive with the field within which exclusive control has been granted by the law.

3. Owners of patents may combine for their own protection or one owner may acquire other patents, unless the direct effect of such combination is to unreasonably restrain trade beyond the protection of the patents. That their motives are partially to benefit the public is immaterial.

4. Where owners of patents combine their patents, establish exchanges and theatres, and refuse to supply other exchanges and theatres with the goods produced under their patents, it is a combination in restraint of trade beyond what is necessary for the protection of the patents and is illegal.

American Graphophone Co. v. Boston Store of Chicago, 225 Fed. 785.

1. A patentee upon a sale of the patented article can by contract require of his immediate vendee the observance of price restriction upon re-sale.

2. He cannot claim that by a notice he has burdened the article with such restrictions.

Bauer v. O'Donnell, 229 U. S., 1 Distinguished.

SALES—IMPLIED WARRANTY OF FITNESS FOR INTENDED USE—EFFECT OF EXPRESS WARRANTY IN SAME CONTRACT.—A contract of sale of motor cars between a manufacturer and dealer contained express warranties against defective materials and inherent defects. Suit on implied warranty that the machines be reasonably fit for use for which they were purchased. It was contended by the defendant that the express warranty contained in the written guaranty excluded any implied warranty. *Held*, that the implied warranty of fitness was not excluded. *Hart-Kraft Motor Co. v. Indianapolis Motor Car Co., 109 N. E. 39 (Ind.)*. There is a growing tendency among the courts of this country to hold that where the warranty of fitness is independent of the matter contemplated in the express one, both may exist. 33 L. R. A. (N. S.) 501, *Aultman v. Hunter, 82 Mo. App. 632*. The doctrine that an express warranty does not exclude an implied warranty of title is better established. Benj. on Sales, '99, p. 672.

TAXATION—PROPERTY SUBJECT TO TAXES.—Contract obligations as indebtedness. In an executory contract for the sale of land, the title remaining in the vendor until payment. *Held*, that the unpaid purchase price was a debt owing to him which might be assessed under statute providing

for taxation of indebtedness due. *Martin v. Wise, 109 N. E. 745.* Contract for purchase of land where purchaser obtained an equitable title, *held* to be taxable. *J. F. Harris v. W. E. Fravel, 89 Kas. 661.* The statutory liability of a city to pay damages for taking land for a highway, pending assessment by a jury, is not a debt which is taxable. *Powers v. City of Worcester, 210 Mass. 471.* Where a loan is made, the property transferred to the borrower and the debt accruing to the lender are distinct and separate interests, each subject to taxation. *State v. Clement Natl. Bk., 78 Vermont 944.*

TAXATION — SUCCESSION TAXES — EXERCISE OF POWER — EXTRA-TERRITORIAL EFFECT.—Exercise of a power by a legatee under a will covering property located in another state, title to which was in a trustee residing in such state, *held*, not subject to a succession tax under statute providing that an exercise of a power should be deemed a disposition of the property as by the absolute owner thereof. *Walker v. Mansfield, 109 N. E. 647 (Mass.).* This is not a direct tax, but a tax on the commodity of the passing of title. 26 L. R. A. 259. The privilege taxed is that of passing title under the sanction and protection of the state law. Keeney v. New York. 222 U. S. 525, 38 L. R. A. (N. S.) 1139. The state here extended no privilege and so might not tax. The Massachusetts court held that a note made and payable in that state by a partnership having offices in New York was not subject to the succession tax, but that a registered bond of the commonwealth likewise owned and kept outside the state, was subject to the tax in that resort must be had to the aid of the courts of Massachusetts to compel a transfer of the bond. *Bliss v. Bliss, 109 N. E. 148.*

WILLS—CONSTRUCTION—SIMULTANEOUS DEATH.—A husband and wife made their wills each naming the other as primary beneficiary, but in the event of prior death of the other, making their foster-son sole beneficiary. There was no evidence as to which died first. *Held*, that the son should take, there being no presumption as to survivorship or simultaneous death, and it being the evident intention of both that he should take, the wills should stand as though they contained only one bequest to the son. *Fitzgerald v. Ayres, 179 S. W. 289.*

WILLS—ESTATES CREATED—CONDITION SUBSEQUENT—DISPOSITION OF REVERSIONARY INTEREST.—A, sole heir of B, filed a bill in chancery against the trustees of a home to declare a forfeiture of certain bequests. The bequests were to the trustees for certain purposes on failure to carry out which the bequests were to be void and cancelled, and the same to be held and disposed of as lapsed legacies. *Held*, that the estate created was on condition subsequent and though there be a rule that lapsed legacies should be disposed of as part of the residuary estate, this rule is founded on the presumption that the intention of the testator in taking the property away from the residuary legatee was only for the purpose of the particular legatee, and that upon the failure of such purpose he intended that the residuary legatee should have it, therefore, since the forfeiture clause of the will applied equally to other bequests in the will on condition subsequent, including the bequest of the residuum, and the application of the rule would render nugatory the condition as to the residuary legatees, the lapsed legacies should go to the heir at law of the testator as intestate property. *Green v. Old People's Home of Chicago, 109 N. E. 701.*

GRAND AVENUE STATIONERY CO.

212-214 North Grand Avenue

Stationery Laboratory Supplies Pennants
Photo Materials Drawing Outfits Pillow Cases
School Supplies Fountain Pens Sporting Goods

We Sell, Buy or Exchange all Law, Medical, Dental and College Text Books used in St. Louis Schools

---

BELL, LINDELL 1873

College Pennants and Jewelry