modern American life with its "necessity" for speedy transportation, its low cost of automobile operation, and its consequent traffic congestion with the ever present possibility, and too often probability, of serious accidents, some definite codified rule became essential. Such a rule has been settled upon, and the ordinance, the construction of which is here under consideration, is an example of such rule. Previously, the main points of dispute have been as to whether or not the fact that a man has the right of way will excuse what ordinarily would be actionable negligence, whether relative position only and not distance from the intersection were to be considered, etc. *White v. Pupillo,* 263 S. W. 1011 Mo.; *Bollinger v. Greenaway,* 83 Pa. Sup. Ct. 217; *Shirley v. Larkin Co.,* 239 N. Y. 94, 145 N. E. 751. The present question had not previously been decided, and it would seem that the right construction is entirely dependent upon the intent of the legislature as expressed in the wording of the statute. Of course, when statutes provide rights of way for those traveling on streets running in certain directions, in preference to those traveling on streets running in other directions, as the early statutes did, it is obvious that such statutes require strict construction; even the majority of the modern statutes, when outlining this rule, refer to vehicles traveling on intersecting highways, and under them it is apparent that the construction given in the instant case would be faulty. Laws Mo. 1921 (Extra Session), p. 95, section 21, L. Assuming, however, that the Denver ordinance in question was the same as the Colorado statute on this subject, this construction might be justified. Comp. Laws of Colorado (1921), section 1270, provides that a driver shall yield the right of way at the intersection of their paths to a vehicle approaching from the right at the same time; a logical construction of such an unusually general statute might possibly go as far as that of the Colorado court did.

Thus, it can be seen that the construction of this statute by the Colorado court may be justified in view of the unusual wording of the statute, but it also seems as if such construction transcends the limits laid down by legislative intent however carelessly such intent was expressed. E. L. W., '28.

COMMERCE—POWER TO REGULATE ADVERTISING IN PERIODICALS.—Statute prohibiting advertising of cigarettes in any paper, magazine or pamphlet published within the state of Kansas *held* unconstitutional as being repugnant to the commerce clause of the Federal Constitution. *Little et al v. Smith,* 124 Kan. 237, 257 Pac. 959.

The present action was brought in behalf of the Kansas Press Association who alleged, in substance, that their publications were interstate in character and the statute in question limiting the field of advertising was a direct burden on interstate commerce. See *State v. Salt Lake Pub. Co.,* 249 Pac. 474. The contention for its validity was based on a legitimate exercise of the police power. Prior to the present action the Kansas anti-cigarette statute was repealed and by the laws of 1927, chapter 121, cigarettes were made fit subjects of barter and sale subject only to stringent revenue laws; the constitutionality of this statute was upheld in *State v. Nossaman,* 107 Kan. 715, 193 Pac. 347, 20 A. L. R. 921.

The competency of state legislatures to regulate, and even prohibit, the sale of cigarettes within their respective states is well settled. *Gundling v. Chicago,* 177 U. S. 183, 20 Sup. Ct. 633, 44 L. Ed. 725; *Austin v. Tennessee,* 179 U. S. 343, 21 Sup. Ct. 132, 45 L. Ed. 255. Iowa, Nebraska, and possibly New York, Oklahoma, and Wisconsin are in accord. The nature of cigarettes as articles of commerce clothed with federal protection has long presented a mooted situation. It was held in *Blaufield v. State,* 103 Tenn. 593, 53 S. W. 1090, that cigarettes were not legitimate articles of commerce and that a sale in an original package would not

come within the purview of the commerce clause. Directly contrary to this holding is *State v. Goetz,* 43 W. Va. 495, 27 S. E. 225, wherein the court denies the legislature the right of taxing cigarettes in packages of 20, imported from foreign states; however, such a right is now universally upheld; *Lloyd et al. v. Richardson,* 158 Ga. 633, 134 S. E. 37; *Phillips v. Raynes,* 120 N. Y. S. 1053; *City of Newport v. Wagner,* 168 Ky. 641, 182 S. W. 834; Cooley on Taxation (4th ed.) 818 *et seq.* An ordinance enacted in furtherance of municipal police power prohibiting the smoking of cigarettes anywhere within the corporate limits was held void for unreasonableness, *Hershberg v. Barbourville,* 142 Ky. 60, 133 S. W. 958. A similar ordinance restraining the smoking of tobacco was held invalid, *Zion v. Behrens,* 262 Ill. 510, 104 N. E. 836. However, in *Commonwealth v. Thompson,* 12 Met. (Mass.) 231, the court assumed the validity of a statute prohibiting smoking in any "lane or passageway." *Zion v. Behrens, supra,* seems to present the modern view of the subject.

Prior to the passage of the 18th amendment it was generally conceded that the various states, in the exercise of their police power, had the authority to prohibit the advertising for sale of intoxicating liquors, *State v. J. P. Bass Pub. Co.,* 104 Me. 288, 71 Atl. 894, declaring R. S. 1903, chap. 29, sec. 45, valid, and *State ex rel. West v. State Capitol Co.,* 24 Okla. 252, 103 Pac. 1021, upholding a similar constitutional provision, (Bunn's Edition sec. 499) as a legitimate exercise of the police power. These decisions cannot be considered as being in conflict with the case under discussion because by the Williamson Act Congress, to a large extent, withdrew intoxicating liquors from the protection of the commerce clause of the federal constitution. In these cases the ultimate aim of the advertiser, from an intrastate standpoint, was unlawful, while in the Kansas case the sale of cigarettes was legal. The resulting interference with interstate commerce in publications hence was justifiable in the absence of Congressional legislation covering the same field.

Newspapers are subjects of commerce within the meaning of the constitution of the United States relating to commerce between the states, *Preston v. Finley,* 72 F. 850; *Post Printing Co. v. Brewster,* 246 F. 321.

Mining coal has been held not to be interstate commerce, *i. e.,* the production of the commodity, *per se,* preparatory to shipment is but a means or a step to the ultimate end, and is not, therefore, subject to the power of Congress to regulate it. *United Mine Workers v. Coronado Coal Co. et al.,* 259 U. S. 344, 42 Sup. Ct. 570. The above case does not seem repugnant to the case here discussed because there is a vast difference between production and advertising—the latter is more in the nature of an appeal to the public upon the merits of a product and a means by which sales and consumption can be increased. As it reaches beyond the borders of the state of publication it is interstate in character.

W. G. S., '28.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—CLASSIFICATION OF RACES.—A Chinese citizen was refused admittance to a school for white children. He was classed among the "colored" races and given the right to enter a school for "colored" children furnishing an education equal to that offered in the school for white children. *Held,* that he was not denied equal protection of the laws, since the facilities furnished were equal to that offered to all, whether white, brown, yellow or black. *Ging Lum v. Rice,* 48 Sup. Ct. 91, 72 L. ed. 79 (1927).

The right to a common school education is conferred solely by the state, and does not exist in the absence of state laws. *Lehew v. Brummel,* 103 Mo. 546, 15 S. W. 765, 23 Am. St. Rep. 895, 11 L. R. A. 828. When provisions for schools have once been made, however, the state cannot discriminate between persons