ST. LOUIS LAW REVIEW

Published Quarterly During the University Year by the Undergraduates of Washington University Law School.

ABSTRACTS OF RECENT DECISIONS

ALIENS—NATURAL-BORN BRITISH SUBJECT—AUSTRIAN SUBJECT.

A natural-born British subject, who is also a subject of an enemy State, cannot in time of war make a declaration of alienage under section 14 of the British Nationality and Status of Aliens Act, 1914, and cease to be a British subject so as to become solely a subject of the enemy state. *Rex. v. Commanding Officer, 30th Battalion Middlesex Regiment,* (1917), 2 K. B. 129.

ARMY AND NAVY.

The power of Congress under Const., Art. 1, Par. 8, l. 12, to raise and support armies is plenary so that as it may summon to the army every citizen it may summon such as it desires. *Story v. Perkins,* 243 Fed. Rep. 997.

BILLS AND NOTES.

In action against an indorsee under plea of no consideration, defendant could explain nature of indorsement. *Wheelock v. Mayfield,* 197 S. W. 475.

CARRIERS.

Where railroad company negligently caused a passenger to alight before she reached her destination, recovery for injury sustained from exposure in riding horseback to destination can be sustained only where it was reasonable under circumstances for passenger to voluntarily undergo exposure. *Gulf C. and S. F. Ry. Co. v. Gentry,* 197 S. W. 482.

COMMERCE.

Switchman employed in switching car containing interstate shipments for purpose of its transportation to destination in state, *held* injured in interstate commerce though shipment had been changed from car in which it was brought in state. *Louisville & N. R. Co. v. Meador's Adm'r,* 197 S. W. 440.

CONSTITUTIONAL LAW.

Traction company's first mortgage on its property, *held* contract, obligation of which, including right to foreclosure, could not be impaired by decree refusing foreclosure on ground of prejudice to bondholders of a company with which it had merged. *Philadelphia Trust Co. v. Northumberland County Traction Co.,* 101 A. 970.

CARRIERS.

Stipulations in baggage checks and recitals in carrier's schedules, limiting the value of baggage to be checked for free transportation on a whole passenger ticket to $100, *held* not to limit passenger's right to recover when jury found that carrier wrongfully appropriated to its own use property valued at $182.50 which passenger had intrusted to it for carriage. *Goldstein v. Northern Pac. Ry. Co.,* 164 N. W. 143.

CHAMPERTY AND MAINTENANCE.

Merely stating that at execution of deed another was in possession of the land attempted to be conveyed and had paid taxes thereon, etc., did not tend to prove that such deed was void for champerty. *Hutchison v. Brown*, 167 P. 624.

CONSTITUTIONAL LAW.

Laws 1915, p. 166, par. 33, providing that indictment need not state names by whom or to whom liquor was sold, does not violate Fourteenth Amendment to United States Constitution. *State v. Wilbur*, 167 P. 659.

CARRIER—NEGLIGENCE OF PASSENGER—USING UNMARKED DOOR.

A railroad passenger is *held* negligent in *Illinois C. R. Co. v. Sanderson*, 175 Ky. 11, 192 S. W. 869, annotated in L. R. A. 1917, D. 890, in hurrying through an unmarked door in the waiting room into a dark passage without attempting to learn what was there, under the belief that it led to the toilet, although the door to the toilet room was plainly marked, so as to preclude his holding the carrier liable for injuries caused by falling down steps in the passageway.

CORPORATIONS — STOCKHOLDERS' MEETING — ADJOURNMENT—PROXY SUBSEQUENTLY GIVEN.

"There is no inherent or equitable right in any shareholder to vote by proxy; such right, if it exists, must be found in the contract binding the shareholders generally, that is, in the company's regulations or constitution, and it then exists only in the form and subject to the limitations therein appearing." Where, therefore, the articles of association or by-laws of a corporation provide that a proxy must be lodged at the office of the company before the day or time for holding a meeting, a proxy lodged between the dates of original meeting and the adjournment thereof is invalid, the adjourned meeting being in law merely a continuation of the original meeting. *McLaren v. Thompson* (1917), 2 Ch. 41.

COMMON CARRIER—TAXICAB COMPANY NOT.

Where person held insurance policy in accident insurance company, which provided for double indemnity for accident if sustained by insured while in or on a public conveyance, provided by a common carrier for passenger service, *held* that where a person makes a special

contract to have the exclusive right to the use of a taxicab to carry him to his destination, the taxicab company cannot be regarded as a common carrier. *Anderson v. Fidelity & Casualty Co. of New York*, 166 N. Y. Supplement 640.

EMINENT DOMAIN.

Vacation of road or street is not an injury to abutting owners within constitutional requirements of compensation for private property taken in exercise of rights of eminent domain. *Saeger v. Commonwealth*, 101 A. 999.

EMINENT DOMAIN.

Under the laws of Washington a city cannot acquire by condemnation a lighting system in another city. *City of Bremerton v. North Pacific Public Service Co.*, 243 Fed. Rep. 980.

ELECTION—BY WIDOW—EFFECT.

That a widow who elects to take under her husband's will thereby bars herself and her heirs from inheriting property of the husband undisposed of by the will is *held* in *Compton v. Akers*, 96 Kan. 229, 150 Pac. 219, annotated in L. R. A. 1917D, 758.

GIFT—BY BANK DEPOSIT.

That a present gift is effected by a man's depositing in bank a fund to the account of himself and his daughter jointly, with power to either draw on his or her individual order during their joint lives, and the balance upon the death of either to belong to the other, is *held* in the Michigan case of *Negaunee Nat. Bank v. Le Beau*, 161 N. W. 974, L. R. A. 1917D, 852.

HIGHWAY—TRAFFIC REGULATIONS—RIGHTS UNDER.

A traffic regulation, giving an automobile driver the right of way at a street intersection against a vehicle approaching the crossing at the same time from his left, is *held* not to relieve him of the legal duty to use reasonable care to avoid colliding with such vehicle should its driver disregard such right, in the New Jersey case of *Erwin v. Traud*, 100 A. 184, L. R. A. 1917D, 690. In case of injury to a passenger on the latter vehicle resulting from such a collision under circumstances indicating a disregard of that legal duty, it becomes a jury question whether under all the circumstances, including the traffic regulation, there was negligence on the part of the driver having the right of way.

INSURANCE—FIRE—FIRE CAUSED BY ENEMY AIRSHIP.

Damage by fire caused by a bomb from an enemy Zeppelin is within the exception in a policy of fire insurance of damage "resulting from insurrection, riot, civil commotion, or military or usurped power." *Rogers v. Whittaker* (1917), 1 K. B. 942.

INTERNATIONAL LAW.

When an independent sovereignty voluntarily becomes a party to suit involving its interest by commencement of action, it waives immunity from suit and cannot complain that its adversary in such litigation seeks to protect itself by exercising right to interplead another. *Kingdom of Roumania v. Guaranty Trust Co. of New York,* 244 Fed. Rep. 195.

INSURANCE—POCKET PICKING—ROBBERY.

In the Minnesota case of *Duluth Street R. Co. v. Fidelity & D. Co.*, 161 N. W. 595, L. R. A. 1917D, 684, a "blanket holdup" policy insuring against loss of money by robbery by force and violence was held to cover a loss of money sustained by reason of the taking of money from the inside coat pocket of the insured's employee by thieves in an elevator, the taking being accomplished by some of the thieves diverting his attention by crowding him while another picked his pocket, the court taking the view that the use of excess force was sufficient to constitute the taking robbery within the meaning of the policy.

MANDAMUS—SUCCEEDING OFFICER.

When sheriff wrongfully redelivered property to defendant in claim and delivery and then went out of office, his successor is not a necessary party to mandamus to compel delivery of the property by such defendant to plaintiff in such action. *Bailey v. Security Trust Co.,* (Cal. App.) 167 Pac. 409.

MASTER AND SERVANT—CONTRACT OF EMPLOYMENT—EFFECT OF DRAFT OR ENLISTMENT IN ARMY.

That a contract of employment is subject to the implied term that it shall cease to be binding if future performance becomes unlawful, and therefore that it becomes finally determined, and not merely suspended, where the employee is drafted into or enlisted in the army, is *held* in *Marshall v. Glanvill* (1917), 2 K. B. 87, 116 L. T. N. S. 560.

MONOPOLY AND COMPETITION—AUTOBUS COMPETITION WITH ELECTRIC RAILWAY—INADEQUATE SERVICE.

That the operation of an autobus for hire parallel to an electric railway between municipalities will not be allowed merely because of inadequate railway service is *held* in the Pennsylvania case of *Southern Penn. Traction Co. v. Hartel,* P. U. R. 1917C, 627, since, if complaint is made against the service the Commission can order it remedied.

NUISANCE—LANDLORD AND TENANT.

A landlord let a farm to a tenant, retaining in his own possession adjoining land on which was a shrubbery containing yew trees so near the farm as to overhang the boundary and during the tenancy to come within reach of the tenant's cattle and horses. The tenant's mare ate of the yew trees and died.

Held that the landlord was liable within the principle of *Rylands v. Fletcher* (L. R. 3 H. L. 330); *Cheater v. Cater* (1917), 2 K. B. 516.

NEUTRALITY LAWS.

To violate U. S. A. Code, Par. 13, prohibiting preparation, etc., of military expedition against dominions of foreign prince with whom United States is at peace, it is not necessary that expedition should actually set out or that any specific number of men be engaged therein. *United States v. Charkaberty,* 224 Fed. Rep. 287.

SALE OF GOODS—SOLD NOTE—CONDITION.

Where a seller of goods hands to the buyer a sold note which the buyer accepts as being the contractual document, it is no part of the seller's duty to call the buyer's attention to the terms of the note, and the buyer is bound by any conditions contained in the note, although he may not have read them, or have known that the note contained any conditions, unless the conditions are printed in such a manner or are in such a position in the note as to mislead a reasonably careful business man, in which case the note must be read as if it did not contain the conditions. *Roe v. R. A. Naylor, Ltd.* (1917), 1 K. B. 712.

SALES.

Where on buying stock of goods in January, left it in seller's hands in June, fact that damages cannot be fixed to mathematical certainty does not preclude recovery. *Balcom v. Tubbett,* 164 N. W. 261.

SLANDER—LIABILITY OF CORPORATION.

A corporation is *held* liable for slander uttered by its local managing agent while acting within the scope of his employment and in the performance and furtherance of his principal's business touching the matter in which he was empowered to act, in the Ohio case of *Citizens' Gas & E. Co. v. Black,* 115 N. E. 495, L. R. A. 1917D, 559.

TRADING WITH THE ENEMY—POWER TO SUE FOR DEBTS IN NAME OF FIRM.

Where under section 1 of the Trading with the Enemy (Amendment) Act, 1916, the Board of Trade makes an order requiring that the business carried on in the United Kingdom by a firm of enemy nationality shall be wound up and appointing a controller the Board may by that order confer on the controller power to sue in the name and on behalf of the firm for debts which became due before the outbreak of war, without being liable to be met by the defense that the plaintiffs are an alien enemy. *Continho Caro & Co. v. Vermont & Co.* (1917), 2 K. B. 587.

TORTS.

Right to employ labor and right to be employed are inherent and organization of laborers intended merely to regulate their own conduct with respect to legitimate competition is legal. *Puget Sound Traction Light & Power Co. v. Whitley,* 243 Fed. Rep. 945.

WORKMEN'S COMPENSATION—INJURY BY ACCIDENT—REGARD TO BE HAD TO PAYMENT, ALLOWANCE, OR BENEFIT RECEIVED FROM EMPLOYER.

A fireman in the service of the Manchester Corporation Fire Brigade met with an accident by which he was permanently incapacitated. The corporation admitted their liability to pay compensation under the Workmen's Compensation Act, but contended that in fixing the amount of the weekly payment regard ought to be had to a pension to which the applicant was entitled under the corporation superannuation scheme out of the fire brigade fund. In an arbitration under the act:

Held that insofar as the pension was provided for by payments made by the corporation, it was "payment, allowance, or benefit" received from the employers which ought to be regarded in fixing the amount of the weekly payment of compensation under Sched. I., Clause 3. *Watts v. Manchester Corporation* (1917), 1 K. B. 791.

WILLS.

Under a provision for forfeiture in case of a contest a beneficiary under a will does not forfeit his rights by bringing a contest for which there is reasonable ground. *South Norwalk Trust Co. v. St. John,* 101 A. 961.

WILL—SUBSCRIPTION—WRITING FICTITIOUS NAME.

That the inadvertent writing by a witness to a will, of a name other than his own, does not prevent the signature from complying with a statutory requirement that the will must be attested and subscribed, is *held* in the Massachusetts case of *Smith v. Buffum,* 115 N. E. 669, L. R. A. 1917D, 894.

WILL—CONTRACT TO PROVIDE COMPENSATION BY—DEATH OF SERVANT—EFFECT.

The death before that of his master of a servant who had agreed to continue to serve the master until the latter's death, in consideration of an agreement by the master to pay him his wages and leave him by will a sum sufficient to repay him for his services and provide him a comfortable home during life, is *held* to terminate the contract obligation to make the extra compensation, in *Leahy v. Cheney,* 90 Conn. 611, 98 Atl. 132, annotated in L. R. A. 1917D, 809.

ALIEN ENEMIES—NATURALIZATION.

A., acting under the impression that he was an American citizen and exercising the privileges of a citizen, discovered that he was not a citizen and filed his application to become such before declaration of war with Germany. Hearing on his application did not take place until 90 days after filing of said petition and after the declaration of war. The court *held,* that the application is complete upon filing of petition, so that a German subject filing his petition in January, 1917, was entitled to naturalization although hearing was not had until April 6, 1917. *United States v. Mayer,* 241 Fed. Rep. 305.

SALES—BREACH OF WARRANTY—VENDOR'S DUTY TO HONESTY AND FAIRNESS.

Plaintiff purchased certain mules from defendant and defendant warranted the mules to be able to do the work of plaintiff. The plaintiff was a widow and dependent on the crops from her farm for support and defendant knew these facts. The court *held* that in view

of these facts the defendant was required to use a high degree of care and was liable for the full value of mules and the expense plaintiff was put to in attempting to cure said mules. *Hudgins v. Burge*, 194 S. W. 886 (Mo.).

TENANCY IN COMMON—CREATION BY POWER OF ATTORNEY.

A power of attorney giving the grantee the power to litigate the title to the land in question and giving him a one-half interest in the land. *Held*, to create a tenancy in common and any purchase made by the grantee of the power would inure to the benefit of his cotenants. *Rogers v. White*, 194 S. W. 1001 (Tex.).

DOING BUSINESS—WHAT AMOUNTS TO DOING BUSINESS.

A foreign railway company whose properties lie wholly without the State, but which carries freight that originates within the State and also carries passengers upon coupon tickets and whose name appears on signs of local carrier, *held* not to be doing business within the State. *Philadelphia & Reading Railway Co. v. Robert J. McKibbin*, U. S. Adv. Ops., 1916, page 280.