ABSTRACTS OF RECENT DECISIONS

APPEAL AND ERROR—DECISIONS APPEALABLE—"FINAL JUDGMENT."

In an action for the division of land where the parties submitted to the Court the question of the construction of a deed, reserving all other questions for future adjudication, the decision of the Court being only incidental to the final relief sought and not necessarily conclusive of the rights of the parties, was not a "final judgment," and hence was not appealable under Ky. St. Sec. 950, providing for appeals from final judgments. *Elkhorn Land & Improvements Co. et al. v. Ratliffe,* 205 S. W. (Kentucky) 687.

ARMY AND NAVY—ESPIONAGE ACT—INTENT—EVIDENCE—I. W. W. CERTIFICATE—"MILITARY OR NAVAL FORCES."

Mere possession of an I. W. W. certificate by one using abusive language against the United States and the President, without testimony of the real aims and purposes of that organization, has no tendency to prove a charge against him, under Espionage Act, Section 3, for willfully causing, or attempting to cause insubordination, etc., in military or naval forces.

Men, merely because between the ages of 18 and 45 years, are not in the military or naval forces of the United States, within Espionage Act, Section 3, denouncing lawfully, causing or attempting to cause insubordination, etc., in such forces. *United States v. Mayer,* 252 Fed. (Kentucky) 868.

ATTORNEY AND CLIENT—DISBARMENT.

While an attorney is not ordinarily pledged to accept employment, and should not do so when press of other matters will prevent immediate action, his acceptance of employment under such conditions is not a ground for disbarment. *People v. Wing,* 120 N. E. (Illinois) 451.

BANKS AND BANKING—ULTRA VIRES CONTRACTS—WHO MAY QUESTION—TITLE TO PROPERTY—RIGHTS OF CREDITORS.

Where creditor bank agreed with debtor, insolvent coal company, to purchase and pay for sufficient coal to supply company's trade and pay operating expenses, president of company to act as bank's agent for sale and delivery, and net proceeds from business to be applied to company's debt to bank, title to coal purchased pursuant to such an agreement, and turned over to the president of the company, remained

in the bank as between it and the company, although agreement was ultra vires as to the bank.

Creditor of insolvent coal company would have no greater right to levy upon and sell coal purchased by bank, another creditor, pursuant to agreement with company to supply its trade, than the coal company would have to claim ownership therein, although agreement was ultra vires as to the bank.

Ultra vires of a bank cannot be the basis of an action against, or a defense by, the bank; but the government alone may complain, in a proceeding to forfeit bank's charter, that bank exceeded its charter powers. *Spadra-Clarksville Coal Co. v. Security Nat. Bank of Dallas,* 206 S. W. (Texas) 200.

BILLS AND NOTES—IRREGULAR INDORSER—PAROL EVIDENCE NOT ADMISSIBLE UNDER N. I. L.

A negotiable promissory note was signed by a church corporation as maker and payable to the order of the plaintiff. Before delivery it was signed in blank by the defendants. The note was not paid at maturity and was duly protested. Evidence was offered by the defendant to show that at the time the note was delivered it was agreed between the plaintiff and the defendants that they were not to be liable to him. Held, that under the Negotiable Instrument Law, the liability of the defendants was absolutely fixed as that of indorsers. *Cramer v. West Bay Sugar Co.,* 167 N. W. (Michigan) 843.

CARRIERS—DUTY TO PAY FARE—TENDER CONDITIONAL ON ISSUANCE OF TRANSFER—RIGHT TO TRANSFER.

Where plaintiff boarded one of defendant's street cars on its Union avenue line and demanded a transfer entitling him to ride over the Bellefontaine and Grand Avenue lines, refusing to pay his fare until such transfer had been issued to him, held, that plaintiff had no cause of action as for a wrongful ejection from the car, provided no more force than necessary was used in ejecting him. The Court said, page 238: "This is for the reason that the plaintiff did not, on his part, accept the contract of carriage tendered him by defendant, and perform the obligation resting upon him as the other party thereto. Though entitled to receive the transfer demanded, when that was refused he was not entitled to remain upon the car and continue to use defendant's transportation facilities without paying his fare. He refused to make such payment, his conditional offer to pay not being a good tender. He had no right to ride at all upon defendant's car without paying fare

therefor. Had he paid his fare, and had defendant's conductor then refused to issue the transfer in question, plaintiff would have had his remedy. But if he chose not to pay his fare, under the circumstances, then it was his duty to leave the car at the first opportunity, *i. e.*, when the car had been stopped at a safe place for him to alight, and seek other means of redress if he so desired. He was not entitled to continue to ride upon the Union avenue line without paying any fare." *Green v. United Railways Co. of St. Louis,* 206 S. W. (Missouri) 237.

CARRIER'S LIABILITY—INTERSTATE COMMERCE ACT.

Under the Cummins amendment of March 4, 1915, to the Interstate Commerce Act, which declared that carriers should be liable for the full actual loss, a common carrier, where wheat was lost in transit, is liable for the value of the grain at the point of destination, notwithstanding the shipment was made under a contract known as a "uniform bill of lading," which was part of the public tariffs filed with the Interstate Commerce Commission, and which provided that the loss should be computed on the property at the time and place of shipment. *McCaull-Dinsmore Co. v. Chicago, M. & St. P. Ry. Co.* (Minn.), 252 Fed. 664.

COMMERCE—"INTERSTATE COMMERCE"—PERSON ENGAGED IN.

In an action for death under Federal Employers' Liability Act, U. S. Comp. St. 1916, Sections 8657-8665, the time-keeper of a gang of workmen repairing a track used in interstate commerce, who was killed while crossing the tracks on his way to telegraph a report to road-master, was engaged in interstate commerce at the time of the accident, although it occurred after men had ceased work; the sending of the telegram being a part of the work, and the necessary duty which could not be performed while men were working. *Crecelius v. Chicago, M. & St. P. Ry.,* 205 S. W. (Missouri) 181.

COMPENSATION—MASTER AND SERVANT.

Where a servant, striking a match to light a cigarette, ignited a bandage soaked in turpentine that he had wrapped around the palm of his hand, burning the hand severely, held, entitled to award of compensation. *Whiting Mead Commercial Co. v. Industrial Accident Commission,* 173 Pac. (California) 1105.

CONSPIRACY—EXPLOSIVES—INDICTMENT.

A conspiracy is a crime of itself and is complete without the commission of the act for which the conspiracy was formed.

Where a person steals explosives on his own initiative and makes agreement with others to carry explosives into the city and destroy property therewith, those who enter into such agreement are guilty of conspiracy to procure explosives with intend to destroy property.

Where an indictment charged conspiracy to procure explosives with intent to injure and destroy property, and the evidence showed that the defendants had procured explosives and by the use thereof had destroyed posts, manholes, and cables in streets and alleys, there was no variance between the indictment and the evidence. *People v. Robertson,* 120 N. E. (Illinois) 539.

CONSTITUTIONAL LAW—CLASS LEGISLATION—STERILIZATION OF THE MENTALLY DEFECTIVE IN STATE INSTITUTIONS.

A Michigan statute authorized the management of any publicly maintained institution for the insane and feeble-minded to render incapable of procreation any individual confined there who had been adjudicated by the proper court to be a proper subject for such treatment. The superintendent of an institution applied for a writ of mandamus to compel such adjudication in respect to an inmate of his institution. Held, that the statute was unconstitutional as denying equal protection of the laws, and that no writ should issue. *Haynes v. Lapeer Circuit Judge,* 166 N. W. (Michigan) 938.

CONTRACTS—DEFENSES—EPIDEMIC OF INFANTILE PARALYSIS EXCUSING NON-PERFORMANCE.

The plaintiffs agreed to manage and provide prizes for a baby show at Charter Oak Park in Hartford on September 6, 1916. The defendant promised to supply a room for the show and to pay the plaintiffs $600. About the middle of August the defendant notified the plaintiffs that it wished to cancel the contract because of an epidemic of infantile paralysis which would make it dangerous to health to hold the baby show at the time proposed. To an answer setting up these facts the plaintiffs demurred. Held, that the defense was good, since the holding of the proposed show under the circumstances would, as a matter of law, be contrary to public policy, and therefore the abandonment of it upon such contingency was an implied term of the contract. (Two judges dissenting.) *Hanford et al v. Connecticut Fair Ass'n,* 103 Atl. (Connecticut) 838.

CONTRACTS — BUILDING CONTRACTS — DESTRUCTION — "WORKING DAYS."

When the building contractor agrees to complete work within fifty-five (55) working days from date of contract, the term "working days" includes not only Sundays and holidays, but also days upon which no work could be done because of weather conditions, but includes Saturday as one working day, although labour rules required suspension of work on Saturday afternoon. *Christopher & Simpson A. I. & F. Co. v. E. A. Steininger C. Co.,* 205 S. W. (Missouri) 278.

CORPORATIONS — SUBSCRIPTION — RESCISSION — ASSIGNMENT —. BOARD OF DIRECTORS.

If a person, purchaser of corporate stock, ever had the right to rescind for failure to deliver, he cannot exercise that right after the stock has been delivered and he has secured full physical possession thereof.

Assignment of stock delivered by seller to defendant, buyer, *Held,* to show a consent on the part of defendant to a continuation of the pledge of the stock for an indebetedness, so that she could not claim right to rescind because stock was not delivered immediately.

The Board of Directors of a corporation cannot make a valid contract to advance money and merchandies of the corporation upon a stockholder's share of anticipated net earnings of the corporate business, where a majority of the board was interested in the contract adversely to the corporation.

One who receives assets of a corporation with full knowledge that they have been diverted is liable for their restoration to the corporation. *Miley v. Heaney,* 169 N. W. (Wisconsin) 64.

CRIMINAL LAW—CONTINUANCE—LOCAL PREJUDICE—TIME TO PREPARE DEFENSE.

In prosecution for murder, compelling accused to go to trial on the day the indictment was returned against him, *held,* error, in view of general public hatred and passion. The constitutional right of accused to be represented by counsel necessarily carries with it the right of counsel to have reasonable time and opportunity to prepare the case. *McDaniel v. Commonwealth,* 205 S. W. (Kentucky) 915.

DEEDS—CONDITIONS IN DEED—RESTRAINT OF ALIENATION—PUBLIC POLICY.

A condition in a deed, proving for forfeiture in case the premises were sold, leased, or rented to any negro or negroes within twenty-five

(25) years, does not constitute an unlawful restraint on the power of alienation, and is not void as against public policy, nor as violating the rule against "perpetuities" providing that an estate which is granted must necessarily vest within a time limited by the lives of the persons then in being and 21 years and 10 months thereafter. *Koehler v. Rowland,* 205 S. W. (Missouri) 217.

DISBARMENT OF ATTORNEY—VIOLATION OF THE CONSCRIPTION ACT AS CRIME INVOLVING MORAL TURPITUDE.

A State statute of Idaho authorizes the Supreme and District Courts of that State to disbar attorneys on the ground of conviction of a felony or misdemeanor involving moral turpitude. Hofstede was convicted of advising men of registration age not to register. *Held,* that an effort to interfere with the work raising an army was an act of disloyalty and one involving moral turpitude. In *re Hofstede,* 173 Pac. (Idaho) 1087.

DOMICILE—CHANGE OF—RESIDENCE IN DIFFERENT LOCALITIES.

One may not have a legal residence in two or more jurisdictions at the same time, although one may have a number of actual places of residence coexisting in different localities.

A domicile once acquired cannot be changed without the acquisition of another domicile. *Semple v. Commonwealth,* 205 S. W. (Kentucky) 789.

ELECTIONS—STATE REGULATIONS AS TO CANDIDATES FOR FEDERAL OFFICES.

Under the Constitution of Minnesota a man convicted of a felony is disqualified from holding office. The State attempted to enjoin the Secretary of State from placing on the primary election ballot the name of a man, who, since filing his affidavit as a candidate, had been convicted of a felony in a U. S. court. The Supreme Court of Minnesota refused to grant the relief sought on the ground that the office of U. S. Senator and the qualifications for holding it that are fixed by the State will not apply. *State v. Schmahl,* 167 N. W. (Minnesota) 481.

ESTOPPEL—CONDEMNATION PROCEEDINGS.

A railroad company, after having condemned land for a right-of-way and paid damages, cannot assert, in action against owner for breach of agreement to convey land for right-of-way in consideration of location thereof, that the money voluntarily paid into court for

owner's benefit as result of condemnation proceedings was wrongfully received by owner. *Waterloo, C. F. & N. Ry. Co. v. Burrell,* 169 N. W. (Iowa) 53.

ESTOPPEL—PERMITTING SALE OF PROPERTY.

Where property was conveyed to husband and wife, who gave notes for the balance due thereon, and the husband, after separation from the wife, induced a third person to take over the land and assume his obligation, the wife's name being erased from the deed, the husband was estopped to deny the third person's title, and the latter would be entitled to the husband's interest in the land. *Gill v. McKinney et al.,* 205 S. W. (Tennessee) 416.

EXECUTORS AND ADMINISTRATORS—DISPOSITION AND PURCHASE OF PROPERTY BY ADMINISTRATOR.

Where an administrator organized a corporation to take over decedent's business, there was a direct conflict between his trust relation and his interest in the corporation.

The administrator may not make an individual profit for himself either by dealing with or settling claims against the estate or in dealing with any property of the estate.

Where an administrator disposes of property of the estate to a corporation in which he is interested, the purchase is a purchase by the administrator, the value of the property and any profits made by corporation accrue to the estate, and the administrator is accountable. *MacFadden v. Jenkins,* 169 N. W. (North Dakota) 151.

FOOD—LIABILITY OF RESTAURANT KEEPER TO GUEST—CONTRACTS—IMPLIED WARRANTY OF FITNESS.

Plaintiff introduced evidence tending to show that the defendant kept a restaurant in Boston, that she entered the restaurant and ordered of a waiter "New York baked beans" for immediate consumption, that the food given her contained stones, causing her to become ill, *held,* that plaintiff's right to recover is based upon the contractual relation between her and the defendant, and that she may recover upon an implied warranty of fitness for consumption, irrespective of negligence of defendant. Whether plaintiff was or was not in the exercise of due care was immaterial; the term being one of the law of torts not of the law of contracts. Crosby, J., dissenting. *Friend v. Childs Dining Hall Co.* (120 N. E. (Massachusetts) 407.

FORGERY—UTTERING—INTENT.

Although defendant had no authority from his father to sign checks, if, the fund belonging to the family, he honestly believed he had such authority, and signed his father's name to a check, and later uttered it without fraudulent intent, he was guilty neither of forgery nor of uttering a forged instrument. *Rickman v. State,* 205 S. W. (Arkansas) 711.

FRAUDULENT CONVEYANCES—REMEDIES.

One who has recovered judgment against an insolvent for money borrowed and used to pay corporate debts, to the betterment of stock belonging to the insolvent's wife as well as to the insolvent, is entitled to subject her shares to the payment of a proportionate part of the judgment. *Starr v. Penfield,* 205 S. W. (Missouri) 541.

GUARDIAN AND WARD—PURCHASE BY A GUARDIAN FOR HIMSELF—RIGHT OF WARD TO ACCEPT BENEFIT.

Minor children owned real property in fee, subject to an unadmeasured dower interest of their mother. The plaintiff, who was the guardian of the children, purchased for himself the dower interest of the mother, receiving a quitclaim deed. Later the mother executed a quitclaim deed purporting to release the dower interest to the children. The latter, through a new guardian, brought ejectment against the plaintiff, who was in possession; whereupon he filed a bill in equity to restrain the ejectment suit, to have the dower admeasured, and the widow compelled to convey to him the lands so set off, and to have the deed to the children declared void. *Held,* that the children were entitled in equity, through their present guardian, to elect to accept the benefits of the purchase by the first guardian, but that if they so elected, their estate must account to the plaintiff for the purchase price paid the mother. *Johnston v. Loose,* 167 N. W. (Michigan) 1021.

HIGHWAYS—PRESCRIPTION.

Where a road has been used by public for more than 60 years, owner, who has recognized such use and makes no claim that it was originally permissive, will be enjoined from erecting fences across the road, although gates could be readily opened and would not be locked, where use of road was convenience to persons applying for injunction. *Strong v. Sperling,* 205 S. W. (Missouri) 266.

INDEMNITY—JOINT WRONGDOERS—DEGREES OF BLAME.

Employer, against whom recovery was had for injury to employe operator of elevator through structural defect therein, may, notwithstanding his negligence in not inspecting same, enforce indemnity against manufacturer and seller of elevator; it being the original active perpetrator of the wrong, and the negligence of the employer being only passive. *Otis Elevator Co. v. Cameron et al.*, 205 S. W. (Texas) 852.

INJUNCTIONS—BOYCOTT.

A boycott by a labor union invades the constitutional right of the employer to conduct his business on terms of equality with others, and is illegal, even though the ultimate object is the welfare of the members rather than injury to the employer. *Webb v. Cooks, Waiters' and Waitresses' Union No. 748.*, 205 S. W. (Texas) 465.

INTOXICATING LIQUORS—LIQUOR SELLING BY CLUBS.

Where members of local Order of Moose in no-license territory desiring liquor, notified steward who ordered from wholesaler, liquor being shipped to and charged to club, and upon arrival distributed among members and kept either in locker used in common or in refrigerator indiscriminately until served by steward, the club, and its chairman of house committee and steward as its agents, were acting in violation of Wylie Local Option Act, Section 14, prohibiting keeping, etc., of place within no-license territory where alcoholic liquor is sold, served, or distributed. *People v. Tinney*, 175 Pac. (California) 17.

JUDGMENT — VACATION OF DEFAULT JUDGMENT — EXCUSES FOR DEFAULT.

Where defendant's attorney filed answer with clerk of court within the required time, its loss, enabling the plaintiff to procure a default judgment, is a "casualty or misfortune," within Kirby's Dig. Sec. 4431, authorizing court to vacate judgment "for unavoidable casualty or misfortune preventing the party from appearing or defending." *Cady v. Packs*, 205 S. W. (Arkansas) 819.

LIBEL AND SLANDER—LIBEL PER SE.

Act of seller of clothes on installment in placing yellow cards, headed "Please take notice," in front door and in windows of buyer's residence, and on a stick driven near a sidewalk, stating that their collector had called and would not further annoy buyer, if she would

pay the balance, tended to disgrace her in public estimation, and was libelous *per se*. *Thompson v. Adelberg & Berman*, 205 S. W. (Kentucky) 558.

LIFE ESTATES—RIGHT TO INCOME—WHAT CONSTITUTES INCOME—STOCK DIVIDENDS.

Where residuary estate was devised for life to complainant, with remainder to others, and consisted principally of stock, and the corporation, after the decree of distribution, by resolution increased its capital stock, "in order to represent the capitalization of the company," the life tenant was not entitled to the shares to which the possession of the before issued shares entitled their owner, since such new shares were not "income."

Where by such distribution of additional stock the value of each original was lessened, complainant was not entitled to receive the additional shares.

Where only one-third of the amount of the additional stock was taken from the surplus earnings after the decree which fixed the value of the respective estates, plaintiff, as life tenant, was not entitled to even the proportional amount of one-third of the stock. *Palmer v. Pullman Co. et al.*, 252 Fed. (N. Y.) 286.

MASTER AND SERVANT—FELLOW SERVANTS—SEPARATE EMPLOYERS.

An employe of a transfer company under contract to transport goods for defendant and defendant's employe engaged in loading goods upon the transfer wagons are not fellow servants. *Sidenour v. International Harvester Co. of America*, 205 S. W. (Missouri) 881.

MINES AND MINERALS—CONSTRUCTION OF GRANTS OF MINING RIGHTS—INJUNCTION—REMEDY AT LAW—BALANCING OF INJURY.

A provision in a conveyance of coal mining rights excepting coal under that portion of the surface occupied by buildings of the grantor did not, by implication, permit mining in such manner as to cause subsidence of the surface or overlying strata on other parts of the tract.

Where the mining of coal by the defendant causes subsidence which seriously interferes with complainant's mining in a higher stratum of limestone, causing damage, and will continue to do so to an extent which cannot be measured, the remedy at law is not adequate and does not exclude jurisdiction in equity.

The rule as to balancing of injuries, to be considered in some cases upon application for a preliminary injunction, does not apply where the right and its breach are clear. *Marquette Cement Mining Co. v. Oglesby Coal Co.*, 253 Fed. (Ill.) 107.

MOTOR VEHICLES—APPLICABILITY OF LOCAL SPEED REGULATIONS TO ARMY AND NAVY.

Defendant, an enlisted man in the naval reserve forces of the U. S., was charged with a violation of a speed ordinance of the City of Newport. At the time he was arrested for the violation of the said ordinance he was engaged in carrying out the lawful orders of his superior officers. It is *held* in this case that the exigencies of the military and naval service of the National Government must override the ordinary rules regulating the use of highways. *State v. Burton*, 103 Atl. (Rhode Island) 962.

NEGLIGENCE—INTOXICATION.

If deceased, with others, had engaged in a drinking bout, and all had become intoxicated, each was as much responsible for the driving of the car by a drunken person as was the driver, and none could recover for injuries caused by negligent driving, under Highway Law, Section 290, as amended by Laws 1910, c. 374; it being a misdemeanor for an intoxicated person to drive an automobile on a public highway. *Kinnie v. Town of Morristown*, 172 N. Y. S. (New York) 21.

PROXIMATE CAUSE—INJURIES FROM CONCUSSION NOT PROXIMATE RESULT OF FIRE.

On the night of July 30, 1916, a fire broke out beneath some freight cars in the freight yards at Black Tom, New York Harbor. After burning a short time the fire caused the explosion of the contents of the cars. This explosion caused another fire, which, in turn, caused another much greater explosion, and the last explosion caused a concussion of air which damaged a vessel about one thousand feet distant in the harbor. This vessel was insured against injuries from fire, but there was no express exception of damage from explosion. A suit was brought on the policy, plaintiff claiming that the injury to the vessel should be considered as being proximately caused by the fire. This contention was upheld by the Appellate Division in the Supreme Court (New York). The insurance company then appealed to the New York Court of Appeals.

The following are extracts from the opinion of Judge Cardozo:

"There is no doubt that when fire spreads to insured buildings and there causes an explosion the insurer is liable for all the damages, but the question here is whether space is a factor in the solution of the problem. The Appellate Division says that it is not; no matter how great the distance, the insurer remains liable. Other courts have held otherwise."

The Court then discusses certain English cases involving similar questions, in reference to which it says:

"This view of the problem of causation shows how impossible it is to set aside as immaterial the element of proximity in space. The law solves these problems pragmatically. There is no use in arguing that distance ought not to count if life and experience tell us that it does. The question is not what men ought to think of as a cause. The question is what they do think of as a cause. We must put ourselves in the place of the average owner whose boat or building is damaged by the concussion of a distant explosion, let us say, a mile away. Some glassware in his pantry is thrown down and broken. It would probably never occur to him that, within the meaning of his policy of insurance, he had suffered loss by fire. A philosopher or a lawyer might persuade him that he had, but he would not believe it until they told him. He would expect indemnity, of course, if fire reached the thing insured. He would expect indemnity, very likely, if the fire was near at hand, if his boat or his building was within the danger zone of ordinary experience, if damage of some sort, whether from ignition or from the indirect consequences of fire, might fairly be said to be within the range of normal apprehension. But a different case presents itself when the fire is at all times so remote that there is never exposure to its direct perils, and that exposure to its indirect perils comes only through the presence of extraordinary conditions, the release and intervention of tremendous forces of destruction."

The Court concluded that in this instance the boat was so far away from the scene of the fire that the injuries to it were not such as would reasonably have been anticipated to result therefrom, and that, consequently, the insurer should not be held liable. *Bird v. St. Paul Fire & Marine Insurance Company,* 120 N. E. (New York) 86.

RAILROADS—MORTGAGE FORECLOSURES—SALE TO REORGANIZED COMPANY—RIGHTS OF UNSECURED CREDITORS.

There is no moral turpitude or illegality in an agreement between bondholders, secured by mortgages, stockholders, and the unsecured

creditors of an insolvent railroad company that there shall be a foreclosure and sale of the mortgaged property to a new corporation, in which all the members of the three classes shall be permitted, at the option of each, to receive bonds or stocks in substantial proportion to the respective ranks and equities of the classes. *St. Louis-San Francisco Ry. Co. v. McElvain* 253 Fed. (Mo.) 123.

TAXATION—INHERITANCE TAXES—DEDUCTION OF FEDERAL ESTATE TAX BEFORE ASSESSING STATE INHERITANCE TAX.

A resident of New Jersey died testate leaving an estate upon which the Federal estate tax was more than $1,000,000. The question arose whether this sum should be deducted from the appraisement of the estate in computing the State inheritance tax. *Held,* that the Federal tax was to be deducted from the value of the estate in ascertaining for the purposes of State taxation "the clear market value of the property transferred." *In re Roebling's Estate,* 104 Alt. (New Jersey) 295.

TAXATION—LIBERTY BONDS—BANK STOCK—STATE STATUTES.

Liberty Bonds, declared exempt from taxation by the statute under which they are issued, are indirectly taxed, in violation thereof and its underlying principles, when owned by a bank, by tax under Code Supp. Iowa 1913, Section 1322, providing that its shares shall be assessed to its stockholders, the value thereof to be based on its capital, surplus, and undivided earnings, and its property not to be otherwise assessed; the bonds being considered in determining the value of the stock, and the bank's property being in truth assessed. *Iowa Loan & Trust Co. v. Fairweather et al.,* 252 Fed. (Iowa) 605.

TORTS—THREATENED PHYSICAL INJURY TO LANDS—NO RECOVERY FOR DEPRECIATION IN MARKET VALUE.

The defendant corporation placed upon its own land a large pile of "strippings" (soft earth, quicksand and gravel) from a mine. The ground upon which the pile was placed sloped toward neighboring houses, one of which was that of the plaintiff. A portion of the material suddenly gushed out from the bottom of the pile, crossed the highway and carried away several of the houses for a distance of about fifty feet, but the plaintiff's property was not touched. The plaintiff claimed damages because the existence of the pile near his premises, with the danger of a recurrence of the slide, had substantially diminished their market value. He recovered a judgment in the court

below. *Held,* that the judgment was erroneous, since the plaintiff has no cause of action until physical injury to his property occurs. *Johnson v. Rouchleau-Ray Iron Land Co.,* 168 N. W. (Minnesota) 1.

WAR—INTERFERENCE WITH PROSECUTION OF WAR—MOTION PICTURE CALCULATING TO WORK DISSENSION AMONG ALLIES.

Where a motion picture film relating to Revolutionary subjects portrayed false and exaggerated scenes of British cruelty in such a manner as was calculated to cause dissension between the United States and Great Britain, who are allies in the present war, *held,* that the motion for the return of the film, which had been seized by the United States should be detained and the original seized; it appearing that, when the film was exhibited before governmental representatives, the objectionable scenes were deleted and then reinstated. *United State v. Motion Picture Firm, "The Spirit of '76,"* 252 Fed. 946.