

instrument." However, it seems that the clause in the trade acceptances in the principal case does nothing more than give a "statement of the transaction which gives rise to the instrument." Liability here is on the instrument itself; the instrument needs no support from the transaction, as in the other case, where the very maturity of the instrument depended upon the "terms of the purchase."

In *Trader's Securities Co. v. Green* (Tex., 1927), 4 S. W. (2d) 182, overruled in the principal case, a trade acceptance containing a clause identical with the one found in the trade acceptance in principal case, was held to be a negotiable instrument and the holder was held entitled to recover as a holder in due course, under Art. 5935, Rev. Civ. Stat. Tex. 1925 (section 52, N. I. L.) to which the court made reference. The principal case seems to stand alone in holding that a trade acceptance is not a negotiable instrument. S. H., '30.

CONFLICT OF LAW—LAW GOVERNING THE CONSTRUCTION AND INTERPRETATION OF CONTRACTS.—The defendant railroad and another, later bankrupt, entered into a joint contract for the purchase of coal. Their common purchasing agent located at St. Louis, Missouri, sent the purchase contract, unsigned, to the plaintiff coal company in Illinois for execution on the latter's part, and requested that the contract be returned to St. Louis "for final handling" and execution. In Missouri joint contracts are treated as joint and several; in Illinois the common law rule prevails. Suit was brought against the defendant alone. *Held*, that the law of the place where the contract is made governs its construction, "absent proof of a contrary intention of the parties," and that, since a contract is made where the last act is done towards its completion, Missouri law governs the situation, and the defendant railroad is liable. *Illinois Fuel Co. v. Mobile & O. R. Co.* (Mo., 1928), 8 S. W. (2d) 834.

The case is the most recent pronouncement of the Missouri Supreme Court on the problem of what law should govern the obligations under contracts made in one state, performable in another. The decision reaffirms the position of other recent Missouri cases, treated hereinafter. There is considerable conflict as to what law should govern contracts made in one state to be performed in another. Three views are prominent: (1) The view that the law of place of contracting (*lex celebrationis*) should govern; (2) the view that the law of the place of performance (*lex solutionis*) should govern; and (3) the view that the law of the place intended by the parties (the autonomy doctrine) should govern.

The Restatement of the Conflict of Laws by the American Law Institute takes the first view, that is, that the law of the place of making the contract should govern. The great advantage of this rule is the convenience of application and facility with which lawyers may advise clients. The case under consideration quotes from Sections 333 and 335 of the Restatement. The former declares that a contract is made in the state where the last act is done towards its completion. Section 335, briefly, declares that

the law of the place of contracting determines the nature, validity, and obligations of a contract. Missouri does not, however, accept Section 335 whole-heartedly, for the principal case qualifies it with a clause "absent proof of a contrary intention of the parties." This may indicate that Missouri is inclined toward the autonomy doctrine—that is, it may be that the law of the place of contracting is presumed to be the one intended in the absence of a contrary intention; but the intent, if expressed, is to govern. However, no case expressly so declares.

An examination of the prior Missouri cases dealing with the question reveals that in the past the Supreme Court has shifted ground, but of recent years more or less uniformly has followed the rule established in the *Illinois Fuel Company* case. In 1910 Professor Beale of Harvard examined the Missouri cases up to that time; his results and the Missouri citations are collated in 23 HARV. L. REV. 196. He found that in many cases the *lex celebrationis* was applied. Some cases called it the rule "ordinarily" or "unless the parties have in view some other law." Other cases, however, adopted it as an absolute rule. Three cases even went so far as to hold that although the parties in their agreement provided the contract should be governed by another law, this could not be done. *Cravens v. N. Y. Life Insurance Co.* (1899), 148 Mo. 583, 50 S. W. 519, Aff'd 178 U. S. 389; *Horton v. Insurance Co.* (1899), 151 Mo. 604, 52 S. W. 356; and *Summers v. Fidelity, etc., Assn.* (1900), 84 Mo. A. 605. These three cases involve insurance policies admittedly made in Missouri, but containing provisions that any disputes thereunder be referred to the law of some other specified state. It should be noted, however, that an amendment was made to the Missouri insurance laws (Laws of 1895, p. 197) giving the insured and a foreign insurance company the power to contract that the insurance policy should be governed by the laws of some other state. This amendment is a milestone marking a definite shift in Missouri's position in regard to this problem. *Nichols v. Mutual Life Insurance Co.* (1903), 176 Mo. 355, 75 S. W. 664, allows New York law to govern a contract made in Missouri. The case is identical in facts with the three cited above, and mentions that the statute "may be regarded as repealing legislatively" the former decisions.

Since Professor Beale's review, the Missouri decisions show a tendency to adopt the qualified rule which savors of the autonomy doctrine as set forth in the *Illinois Fuel Co.* case. In *Liebing v. Insurance Co.* (1918), 276 Mo. 118, 134, 207 S. W. 230, the Court said: "The question, therefore, to be ruled is whether the loan agreement and pledge of the policy in the instant case are governed by the laws of New York. . . . Absent any contrary intention, the validity, obligation, and interpretation of a contract relating to personal property, are governed by the law of the place where it is made."

Fidelity Loan Securities Co. v. Moore (1919), 280 Mo. 315, 217 S. W. 286, held that parties by their written contract concerning the purchase and transfer of lands in Texas may lawfully agree therein that their obligations and agreements are to be construed and governed according to the laws of said foreign state, even though they may not at the time be domiciled there.

"The intention . . . is a vital part of the contract." And *Brotherhood of Railroad Trainment v. Adams* (Mo., 1928), 5 S. W. (2d) 96, 98, sets out the rule that parties may agree that their contract be governed by the laws of a certain state or country, and that such contracts will be recognized and enforced in other states, notwithstanding the fact that contrary rules of law may prevail in the state asked to enforce the obligation.

In conclusion, if any prediction may be made as to Missouri's position on what law should govern contracts made in one state, performable elsewhere, it is that the law of the place of making will govern, unless we find an expression of a contrary intent. Missouri does not purport to adopt the autonomy doctrine, although the results of its decisions tend in that direction. In fact, the principal case quotes from the Restatement, which decidedly rejects the autonomy doctrine and rather follows the view that the law of the place of making (*lex celebrationis*) should govern. But as noted before, it ties a string to the Restatement rule, in adding "absent proof of a contrary intention of the parties," which virtually has the effect of repudiating the very rule set forth.

D. A. M., '29.

CONSTITUTIONAL LAW—DELEGATION OF LEGISLATIVE POWER—PERMITTING PRESIDENT TO INCREASE OR DECREASE RATES OF DUTY.—Plaintiff company made an importation of barium dioxide which the collector of customs assessed at a rate higher than that fixed by statute, the rate having been raised by proclamation of the President issued by virtue of Sec. 315 of Title III of the Tariff Act of September 21, 1922, 42 Stat. 858, 19 U. S. C. 154-156. *Held*, Congress did not unconstitutionally delegate its legislative power by imposing upon the President the duty of determining with the aid of advisers, differences in cost of production here and abroad and making such increases and decreases in rates of duty as were found necessary to equalize costs of production. *Hampton & Co. v. U. S.* (1928), 72 L. Ed. (Adv.) 448, 48 S. Ct. 448.

A legislative body may not delegate its powers, but may authorize an executive officer to carry out legislation which it has adopted. *The Aurora v. U. S.* (1813), 7 Cranch 382, 3 L. Ed. 378; *State of Minnesota ex rel. Railroad and Warehouse Commission v. Chicago, M. & St. P. Ry. Co.* (1888), 38 Minn. 281, 37 N. W. 782. In the latter case the court states: "The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and the conferring an authority or discretion to be exercised under and in pursuance of the law."

In *United States v. Grimaud* (1911), 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480 the legislative power was held not to be unconstitutionally delegated to the Secretary of Agriculture by the Forest Reserve Acts making criminal the violation of the rules and regulations covering forest reservations, made and promulgated by him under authority of those statutes. In *U. S. v. Stephens* (1918), 247 U. S. 504, 62 L. Ed. 1239, 38 S. Ct. 579 it was held that the Selective Draft Act of May 18, 1917, declaring the President authorized to raise an army was not a delegation of the power vested in Con-