REVIEW OF RECENT DECISIONS

CONSTITUTIONAL LAW—FORBIDDING SUIT FOR DAMAGES RESULTING FROM SALE OF DEFICIENT FERTILIZER UNTIL AFTER CHEMICAL ANALYSIS THEREOF, NOT A DENIAL OF EQUAL PROTECTION OR DUE PROCESS.

Jones v. Union Guano Co., U. S. Adv. Ops., page 267:

The legislature of North Carolina in 1917 enacted a statute regulating the business of selling fertilizers, providing among other things that no suit for damages from results of use of fertilizer should be brought except after chemical analysis showing deficiency of ingredients. Plaintiff sued in the State court to recover damages alleged to have resulted to his tobacco crop from the use of fertilizer manufactured and sold by the defendant. He failed to prove a chemical analysis had been made before he brought the action, and, notwithstanding he introduced evidence tending to show inferior quality of and deleterious ingredients in the fertilizer, and injury to his crop resulting from its use, the court dismissed the case and entered judgment of nonsuit. The Supreme Court of the State affirmed the judgment. On writ of error to the U. S. Supreme Court, held:

That merely prohibiting actions for damages for sale of deficient fertilizer except after chemical analysis, showing the deficiency, does not substitute the determination of the official for a trial in court, so as to constitute a deprivation of due process of law.

The 14th Amendment of the Federal Constitution does not prevent a State from prescribing a reasonable and appropriate condition to the bringing of a suit of a specified kind or class, so long as the basis of the distinction is real, and the condition imposed has reasonable relation to a legitimate object; and that actions for damages for loss of crops through deficient fertilizer are sufficiently distinguishable from other damage suits to uphold legislation requiring chemical analysis of the fertilizer sold before bringing suit.

CONSTITUTIONAL LAW—REQUIRING PUBLIC TAXICABS TO CARRY INSURANCE OR GIVE BOND FOR PROTECTION OF PERSONS INJURED BY THEM, AS A DENIAL OF EQUAL PROTECTION AND DUE PROCESS.

Packard v. Banton, U. S. Adv. Ops., page 279:

This was a suit to enjoin enforcement of a statute of New York requiring every person, etc., engaged in the business of carrying passengers for hire in

any motor vehicle, except street cars and motor vehicles subject to the Public Service Commission Law, upon any street in a city of the first class, to file with the state tax commission, either a personal bond with sureties, a corporate surety bond, or a policy of insurance in a responsible company in the sum of $2500, conditioned for payment of any judgment recovered against such person, for death or injury caused in the operation or by the defective construction of such motor vehicle.

The lower court dismissed the bill for want of equity and its judgment was affirmed, the court holding that the statute was not unconstitutional, as depriving of equal protection of the laws, because confined to operators in cities of the first class, inasmuch as the use of the streets by great numbers of persons and the density and continuity of traffic thereon in cities of the first class, justify measures to safeguard the public from dangers incident to operation of motor vehicles in them, which do not obtain in the case of smaller communities.

Nor would the fact that the rate for such insurance amount to $18.50 per week, while the net profit of a cab is only $35 per week, make a statute requiring such insurance as a condition of operation of the cab a deprivation of property without due process of law; certainly not where there is a possibility of giving bond protection at less cost.

The court stresses the distinction between regulation of an activity which may be engaged in as a matter of right, and one carried on by government sufferance or permission, as the use of streets and highways by common carriers. In the latter case the power to exclude altogether generally includes the lesser power to condition, and may justify a degree of regulation not admissible in the former.

CONSTITUTIONAL LAW—SEVERANCE TAX UPON SKINS OF WILD FUR-BEARING ANIMALS, ETC.—EQUAL PROTECTION—DELEGATION OF LEGISLATIVE AUTHORITY.

Lacoste v. Louisiana Department of Conservation, U. S. Adv. Ops., page 178:

Bill for an injunction against enforcement of an act declaring the wild fur-bearing animals and alligators within the State to be the property of the State, and the skins thereof to be the property of the State until a so-called severance tax was paid thereon to the Department of Conservation. The act levied an annual license tax on persons engaged in buying such furs and hides, levied a severance tax of two cents on the dollar of the value of such hides and furs, and gave to said department authority to ascertain the price paid for such hides and furs, to determine the value thereof, and determine the time when and manner in which the tax should be paid; and prohibited all persons from shipping such hides or skins out of the State unless such tax was paid thereon.