

Standing in the way, however, of the success of the Uniform Commissioners in their efforts to preserve this established common law doctrine is the fact that the present Bank Collection Code has already been adopted by 18 states, and it is not likely that these states will readily consent to another such radical change in their banking laws. So looking to the future, and assuming the completion of the Uniform Act now pending, it seems likely that the American states will again be divided into two groups on this question, such as they were when the present common law rule was being developed. Those having adopted the Bank Collection Code sponsored by the American Bankers Ass'n will no doubt follow the principal Missouri case and recognize the agency relationship; and those which choose to adopt the act proposed by the members of the Uniform State Laws Commission, along with those which do not adopt either code, will retain the present common law view, which treats the bank as a purchaser of the paper. Thus these attempts at uniformity will probably not only result in a failure of their ultimate purpose, but will on the contrary create an even greater conflict than existed prior to the enactment of this legislation. I. J. W., '35.

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CONSTITUTIONAL LAW—EMINENT DOMAIN—GOLD REQUISITIONING.—The recovery legislation gradually begins to reap a judicial harvest. A recent case continues the already notable tendency to furnish old legal implements in support of the present labor. On an indictment in two counts for failure to comply with executive order of August 28, 1933, demanding returns to be made regarding gold held in possession, and that of April 5, 1933, requisitioning such supplies, held, the first order is a valid exercise of the currency powers of the national government. The requisitioning order was pronounced invalid because promulgated by the President and not by the Secretary of the Treasury, as provided by the statute. The court, however, seized the opportunity to elaborate a lengthy dictum justifying the requisition on the basis of eminent domain. *United States v. Campbell* (D. C. S. D. N. Y. 1933) 5 Fed. Supp. 156.

The power of Congress to regulate gold is a corollary of its generously defined currency control. Const. art. 1, sec. 8, clauses 2, 5, 18: *Veazie Bank v. Fenno* (1869) 8 Wall. 533; *Legal Tender Cases* (1870) 12 Wall. 457; *Juilliard v. Greenman* (1884) 110 U. S. 421. In a somewhat analogous case the Phillipine legislature, acting under authority delegated by Congress, was held validly to have prohibited the export of Phillipine silver coin. *Ling Su Fan v. United States* (1910) 218 U. S. 302.

In applying the doctrine of eminent domain to the requisitioning of gold certain superficial difficulties are entailed. In time of war the sphere of governmental requisition is practically unlimited. *The Lever Act for Food Control* (1917) 40 Stat. 276. The court in the instant case, however, bases its justification rather on the essential nature of eminent domain than on any attempted analogy between the present predicament and a state of war. The cases are permeated with dicta extending the rule to all forms of property whether personal or real. *United States v. Lynch* (1903) 188 U. S. 445, at p. 465. Actually, however, the occasions on which property other than real has been appropriated are relatively few; although, when such have presented themselves the courts have not been loath to apply the doctrine. Patent

rights have been taken by eminent domain, *James v. Campbell* (1881) 104 U. S. 356; *Brady v. Atlantic Works* (C. C. Mass. 1876) 3 Fed. Cas. 1190; franchises, *Monongahela Navigation Co. v. United States* (1892) 148 U. S. 312; and even minority shares of stock in a railway corporation, *Offield v. N. Y. Ry. Co.* (1906) 203 U. S. 372. Gold, as a commodity, would appear to be well within the scope of the rule. Several cases, however, contain the somewhat forbidding dictum that money cannot be made the subject of governmental appropriation. *Cary Library v. Bliss* (1890) 151 Mass. 364, 25 N. E. 92; *Burnett v. City of Sacramento* (1859) 12 Cal. 76, at 84; I Nichols on Eminent Domain (2d ed. 1917) p. 69. The rationale advanced is, that since compensation itself must be made in money, usually payable in advance, any attempt to confiscate money must end in a logical impasse; also that the requisitioning of money is the function of taxation. *People v. Mayor of Brooklyn* (1851) 4 N. Y. 419, at 424. The first objection is rendered purely academical, for one thing, by the fact that Congress need not compensate at the time of the taking. *Campbell v. United States* (1924) 266 U. S. 368. In the light of the purpose of the present taking the second argument has little pertinency.

The question of compensation is slightly more difficult. The measure is the fair market value at time of taking. *Boom Co. v. Patterson* (1878) 98 U. S. 403. The owner is entitled to a "full and perfect equivalent of the property taken." *Seaboard Air Line Ry. v. United States* (1923) 261 U. S. 299. The instant case presents an anomalous situation; for, if we assume the power of the government to regulate gold as an adjunct of its control over the currency, compensation is dictated entirely by the government, since the value of gold is obviously confined to what the government declares it to be. Thus compensation under the theory of eminent domain is largely shorn of its essential effect. The requisition might more logically be based purely upon the police power. C. B. P., '35.

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CONSTITUTIONAL LAW—IMPAIRMENT OF THE OBLIGATION OF CONTRACT—EMERGENCY LEGISLATION.—Chapter 339 of the Laws of Minnesota of 1933, p. 514, called the Minnesota Mortgage Moratorium Law, provides that, during the emergency declared to exist, relief may be had with respect to foreclosures of mortgages; that sales may be postponed and periods of redemption may be extended. Pursuant to the statute the plaintiff applied to the court for an order extending the period of redemption from a foreclosure sale. A judgment in favor of the plaintiff was sustained by the state supreme court (249 N. W. 893). The constitutionality of the statute was upheld on the ground of emergency although it was conceded that the obligations of the mortgage contract were impaired. *Held*: The statute does not impair the obligation of contract nor violate the due process or equal protection clauses. *Home Building & Loan Ass'n v. Blaisdell* (1934) 54 S. Ct. 231.

Innumerable cases have arisen under the contract clause of the United States Constitution. They cannot be said definitely and clearly to have stated the principle expressed in that clause. It is rather true that they have restricted its application to a considerable degree. The fact that a state is a party to the contract does not prevent the application of the clause. *Fletcher v. Peck* (1810) 6 Cranch 87. Limitations have, however, been imposed. One of the most important is that grants by states are to be construed strictly.