on the net or gross income of an independent contractor has been held valid although the income is derived from a contract with the government.[15] A tax on bank deposits by the federal government was held valid, although included therein were deposits of the state.[16] A tax on the income derived by a state from liquor business into which it entered was held valid.[17] Inheritance taxes have been upheld on bequests to both the federal and state governments.[18] A tax on income derived by a person carrying freight, passengers, and mail by automobile was held valid even though the bulk of the income was derived from carrying the United States mail.[19]

The tendency in recent years has clearly been to restrict the doctrine that the power to tax involves the power to destroy[20] and to extend the competing doctrine that a nondiscriminatory tax which has only a remote and indirect influence upon the operations of the government should not be objectionable.[21] This would seem to be particularly desirable where the taxes are levied upon the income of private enterprises and only remotely, if at all, affect the interests and operations of government.

In the light of this recent tendency in the law as well as sound tax doctrine, the holdings in the instant cases would seem to be as correct as they were inevitable. Where they will lead it is not necessary to determine, for "the doctrine of implied immunity must be practical and should have regard to the circumstances disclosed."[22] Experience has shown that there is no formula by which *a fortiori* a line of distinction between immune and taxable governmental agencies may be plotted. L. H. B.

CRIMINAL LAW—CONSTITUTIONALITY OF STATUTE PERMITTING APPEAL BY STATE—[United States].—In a recent case the accused, indicted for first degree murder, was found guilty of second degree murder. The state, acting pursuant to a statute[1] giving it a right of appeal similar to that exercised

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Educational Films Corp. of America v. Ward (1931) 282 U. S. 379, 51 S. Ct. 170, 75 L. ed. 400.

15. Metcalf & Eddy v. Mitchell (1926) 269 U. S. 514, 46 S. Ct. 172, 70 L. ed. 384 (net income); James v. Dravo Contracting Co. (1937) 58 S. Ct. 208 (gross income); Comment (1938) 23 WASHINGTON U. LAW QUARTERLY 280.

16. Manhatten Co. v. Blake (1893) 148 U. S. 412, 13 S. Ct. 640, 37 L. ed. 504.

17. South Carolina v. United States (1905) 199 U. S. 437, 26 S. Ct. 110, 50 L. ed. 261.

18. United States v. Perkins (1896) 163 U. S. 625, 16 S. Ct. 1073, 41 L. ed. 287; Snyder v. Bettman (1903) 190 U. S. 249, 23 S. Ct. 803, 47 L. ed. 1035.

19. Alward v. Johnson (1931) 282 U. S. 509, 51 S. Ct. 273, 75 L. ed. 496.

20. McCulloch v. Maryland (1817) 17 U. S. 316, 4 L. ed. 579.

21. Metcalf & Eddy v. Mitchell (1926) 269 U. S. 514, 46 S. Ct. 172, 70 L. ed. 384.

22. Ibid.

1. Conn. Gen. Stat. (1930) sec. 6494: "Appeals from the rulings and decisions of the Superior Court or of any criminal court of common pleas, upon all questions of law arising on trial of criminal cases may be taken by the state with the permission of the presiding judge to the Supreme Court of Errors in same manner and to same effect as if made by the accused."

by the accused, appealed on the issue of the admissibility of certain evidence. The upper court finding reversible error granted a new trial, upon which the defendant was convicted of first degree murder. The statute involved was challenged as a violation of the "due process" clause[2] but was upheld by the United States Supreme Court.[3]

The defendant maintained that retrial, even though under the original indictment, would have amounted to double jeopardy if the federal government had been prosecuting the case and that retrial by a state violated the "due process" clause of the Fourteenth Amendment. In denying this contention the Supreme Court held that the guaranty against double jeopardy was not transplanted from the Bill of Rights into the "due process" clause of the Fourteenth Amendment. The Court suggested the following as the proper test to ascertain whether or not such transplanting had taken place: Is the guaranty the very essence of a scheme of ordered liberty?—does its abolition violate a principle of justice fundamentally rooted in the traditions and conscience of our people? It is submitted that this is in reality a restatement of the results of the cases rather than a test. As previously mentioned, the Court decided that such "double jeopardy" as here involved did not transgress such a principle.[4] The Court, moreover, pointed out the existence of respectable authority for the proposition that a retrial upon appeal by the state under the original indictment does not amount to double jeopardy.[5]

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2. U. S. Const., Amend. XIV.

3. Palko v. State of Connecticut (1937) 58 S. Ct. 149, 82 L. ed. (adv. op.) 220.

4. The guaranties in Amendments I-VIII which have or have not been absorbed into Amendment XIV may be briefly summarized as follows: (a) As to the constitutional requirement for jury trials (Amendments VI and VII) the Supreme Court has held that states may modify, abridge, or abolish jury trials. New York Central R. Co. v. White (1917) 243 U. S. 188, 37 S. Ct. 247, 61 L. ed. 667, L. R. A. 1917D 1, Ann. Cas. 1917D 629; Wagner Electric Co. v. Lyndon (1923) 262 U. S. 226, 43 S. Ct. 589, 67 L. ed. 961, and cases cited therein. (b) It has been held that an information at the instance of a public officer may properly be substituted by the state for indictment by a grand jury. Hurtado v. California (1884) 110 U. S. 516, 48 S. Ct. 111, 28 L. ed. 232. (c) However, freedom of speech, the free exercise of religion, the right to be represented by counsel, and the right of peaceable assembly are protected against state action by the Fourteenth Amendment. See DeJonge v. Oregon (1937) 299 U. S. 353, 57 S. Ct. 255, 81 L. ed. 278, commented upon in (1937) 22 WASHINGTON U. LAW QUARTERLY 427; Herndon v. Lowry (1937) 301 U. S. 242, 57 S. Ct. 732, 81 L. ed. 1066; Hamilton v. Regents of University (1934) 293 U. S. 245, 55 S. Ct. 197, 79 L. ed. 343; Powell v. Alabama (1932) 287 U. S. 45, 53 S. Ct. 55, 77 L. ed. 158, 84 A. L. R. 527. (d) The guaranty that no person shall be compelled to be a witness againt himself in a criminal case has been held to be terminable at the option of the state. Twining v. New Jersey (1908) 211 U. S. 78, 29 S. Ct. 14, 53 L. ed. 97; Snyder v. Massachusetts (1933) 291 U. S. 97, 54 S. Ct. 330, 78 L. ed. 674, 90 A. L. R. 575. (e) The immunity from unreasonable searches and seizures as afforded by the Federal Constitution extends only to the Federal government and its agencies. Weeks v. United States (1914) 232 U. S. 383, 34 S. Ct. 341, 58 L. ed. 652, L. R. A. 1915B 834, Ann. Cas. 1915C 1177.

5. See the vigorous dissent in Kepner v. United States (1904) U. S. 100, 24 S. Ct. 797, 49 L. ed. 114, 1 Ann. Cas. 655; see also Torno v. United

In England, the common law absolutely barred appeals in criminal cases.[6] Subsequently the right of the defendant to appeal after conviction was established.[7] A similar rule prevails throughout the United States. The subject of appeals by the state in this country is greatly confused, and the cases are interspersed with a variety of doctrines. Some jurisdictions prohibit any form of appeal or review at the instance of the state;[8] others, such as Connecticut, accord the state the same right of appeal as the defendant.[9] There is a wide diversity of viewpoint between these two extremes. In some states the prosecution is allowed to appeal only in the case of major offenses;[10] whereas, in others the prosecution may appeal only where minor offenses are involved.[11] Many statutes authorize the state to appeal specific issues of law.[12] Conflicts as to the time at which the state is entitled to its appeal, if any, are quite as extensive. Under some statutes, an appeal by the state may be taken only after final judgment;[13] under other statutes, the state may only appeal before final judgment;[14] while still others prohibit an appeal after the prisoner has been discharged.[15] In several states the prosecution is permitted to conduct moot appeals, in order to secure a determination of a question of law for future guidance without affecting the fate of the defendant in the particular case.[16]

The Connecticut statute seems to offer certain advantages. It will clearly restrict the number of individual miscarriages of justice by allowing ap-

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States (1905) 199 U. S. 521, 26 S. Ct. 121, 50 L. ed. 292, 4 Ann. Cas. 773, involving a Federal statute which provided that no person accused of crime in the Philippine Islands shall be put twice in jeopardy of punishment for the same offense.

6. Rex v. Wilkes (K. B. 1770) 98 Eng. Rep. 328; 1 Stephen, *History of the Criminal Law* (1883) 308; Stephen, *General View of the Criminal Law* (2d ed. 1890) 171; Miller, *Criminal Law* (1934) 536.

7. English Criminal Appeal Act (1907) 7 Edw. VII, ch. 23, sec. 3.

8. State v. Wellman (1919) 143 Minn. 488, 173 N. W. 574; State v. Johnson (1920) 146 Minn. 468, 177 N. W. 657.

9. State v. Lee (1894) 65 Conn. 265, 30 Atl. 1110, 27 L. R. A. 498, 48 Am. St. Rep. 202. A comparable Vermont statute was upheld in State v. Felch (1918) 92 Vt. 477, 105 Atl. 23.

10. State v. Adams (1920) 142 Ark. 411, 218 S. W. 845; State v. Harrison (1923) 154 La. 1011, 98 So. 622; City of Sheridan v. Cadle (1916) 24 Wyo. 293, 157 Pac. 892.

11. Baldwin v. Chicago (1873) 68 Ill. 418; Commonwealth v. Prall (1912) 146 Ky. 109, 142 S. W. 202; Commonwealth v. Gutten (1918) 180 Ky. 446, 202 S. W. 884.

12. For an excellent and exhaustive survey of such statutes see Miller, Appeals by the State in Criminal Cases (1926) 36 Yale L. J. 486, 488, fn. 11; A. L. I., *Code of Criminal Procedure* (1930) 1203-1211.

13. State v. Sherman (1918) 144 La. 77, 80 So. 205; State v. Dickerson (1905) 730 Ohio St. 193, 76 N. E. 864.

14. District of Columbia v. Horning (1918) 47 App. D. C. 413; State v. Hart (1917) 90 N. J. L. 261, 101 Atl. 278.

15. State v. Aurell (1923) 112 Kan. 821, 212 Pac. 899; State v. Adams (1920) 123 Miss. 514, 86 So. 337; State v. Kelsey (1922) 49 N. D. 148, 190 N. W. 817; State v. Mun (1920) 71 Wis. 36, 176 N. W. 70.

16. For a discussion elaborating and opposing this view see Hicks, Moot Appeals by the State in Criminal Cases (1927) 7 Ore. L. Rev. 218.

peals from improperly procured acquittals.[17] It will further tend to foster a symmetrical and uniform development of criminal law, at least within each state, by subjecting rulings of every trial court, in favor of the accused as well as against him, to appellate review.[18] It has also been suggested that such a statute will have a wholesome effect on the character of criminal trials and agencies of law administration and enforcement by subjecting the conduct of the defense of an accused to the scrutiny of an appellate court.[19] C. J. D.

LABOR — TRADE UNIONS — LIABILITY FOR VIOLENCE — [Federal]. — The United Electric Coal Companies secured an injunction in 1935 which compelled the defendant Progressive Mine Workers of America to discontinue its campaign of violence arising out of the jurisdictional dispute between the Progressives and the United Mine Workers in the Illinois Coal Fields.[1] After establishing its right to an injunction,[2] the plaintiff company filed a motion for assessment of damages caused by the destructive methods of the Progressives. *Held*, that all damages suffered by the plaintiff employer as a result of illegal activities of the Progressives be assessed against the defendant union.[3]

It is settled that a union may be held liable in damages for unlawful boycotts and picketing,[4] for causing breach of contract,[5] and for causing a

17. Miller, Appeals by State in Criminal Cases (1926) 36 Yale L. J. 486, 504.

18. See People v. Ah Leo (1915) 28 Cal. App. 164, 151 Pac. 749; State v. Johnson (1918) 139 Minn. 500, 166 N. W. 123; Alt v. State (1911) 88 Neb. 259, 129 N. W. 432; State v. Lee (1873) 10 R. I. 494; State v. Elder (1924) 130 Wash. 612, 228 Pac. 1016.

19. Miller, Appeals by State in Criminal Cases (1926) 36 Yale L. J. 486, 506-512. Thus even though a defense attorney may be in contempt and subject himself to discipline personally, an acquittal of the accused can not be challenged in absence of collusion on the part of the defendant. Goodhart v. State (1911) 84 Conn. 60, 78 Atl. 853; In re Cary (Minn. 1925) 206 N. W. 402.

1. An indication of the methods employed in the dispute may be found in People v. Beacham (1934) 358 Ill. 373, 193 N. E. 205.

2. Electric Coal Companies v. George Rice et al. (C. C. A. 7, 1937) 80 F. (2d) 1, reversing (D. C. E. D. Ill. 1934) 9 F. Supp. 635.

3. Unreported. The original decree awarded $117,000 damages. A motion for rehearing, to re-assess damages, is now pending.

4. Shinsky v. Tracy (1916) 226 Mass. 21, 114 N. E. 957, L. R. A. 1917C, 1053; St. Germain v. Bakery & Confectionery Workers' Union (1917) 97 Wash. 282, 166 Pac. 665.

5. O'Neil v. Behanna (1897) 182 Pa. 236, 37 Atl. 843; R and W Hat Shop, Inc. v. Sculley (1922) 98 Conn. 1, 118 Atl. 55, 29 A. L. R. 551. However, certain decisions, notably in New York, permit unions to carry on activities which in other jurisdictions would be regarded as inducing breach of contract. The decisions may be distinguished on the ground that the courts refused to find any contract between employer and employee which could be broken. See Exchange Bakery & Restaurant v. Rifkin (1926) 216 App. Div. 663, 215 N. Y. S. 753; Interborough Transit Co. v. Green (1928) 131 Misc. 682, 227 N. Y. S. 258. Cf. Diamond Block Coal Co. v. United Mine Workers (1920) 188 Ky. 477, 222 S. W. 1079.