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Constitutional Law—Witnesses—Compulsion over Absent Nationals

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but what in *equity* and *conscience* he ought, he cannot recover it back in an action for money had and received. But where money is paid under a mistake of fact which there is no ground to claim in conscience, the party may recover it back again by this kind of action." *Bize v. Dickason* (1786) 1 T. R. 285, 99 Eng. Repr. 1097. Thus it would seem to be *inequitable* to allow the defendant (the cashing bank in the principal case) to retain the money that it had received by virtue of the confidence that one bank places in another, and to permit the defendant to take undue advantage of a situation brought about by this confidence. "It is a matter of general information that in dealings between banks and especially with reference to clearings, banks will adjust and pay differences between each other or between themselves and the clearing house *upon the faith of the indorsements by the other banks* of checks involved in such settlement, *relying on such indorsements as protecting them in such payment* should the subsequent and more careful scrutiny of the signatures disclose forgeries in the making and indorsing of the checks so paid." (Writer's italics) 3 R. C. L. 527.

To allow the doctrine of *Price v. Neal* to be brought in for the purpose of barring a recovery in a case of this kind, would upset this established banking practice and thus tend to destroy the celerity and facility with which checks are cleared. The doctrine as laid down by Lord Mansfield could hardly be applied here where the intervening considerations of present day banking practice figure so largely in the case. For cases in accord with the instant decision see, *Farmers' Nat. Bank of Augusta v. Farmers' and Traders' Bank of Maysville* (1914) 159 Ky. 141, 166 S. W. 986, L. R. A. 1915 A. 77; *Ellis and Morton v. Ohio Life Ins. and Trust Co.* (1855) 4 Ohio St. 628; cases *contra*: *Commercial and Farmers' Nat. Bank v. First Nat. Bank* (1868) 30 Md. 11; *Howard and Preston v. Miss. Valley Bank of Vicksburg* (1876) 28 La. Ann. 727, 26 Am. Rep. 105.

D. P., '33.

CONSTITUTIONAL LAW—WITNESSES—COMPULSION OVER ABSENT NATIONALS.—In *Blackmer v. United States* (1932) 52 Sup. Ct. 252, the Supreme Court affirmed the decision of the Circuit Court of Appeals of the District of Columbia holding constitutional the Walsh Act which provides for a method of compelling attendance in Federal Courts of witnesses absent in foreign countries. *Blackmer v. United States* (1931) 49 F. (2d) 523. For a comment on the decision of the Appeals Court see (1931) 17 ST. LOUIS L. REV. 85.

As did the Appeals Court, the Supreme Court held that by virtue of the obligations of citizenship, the citizen is bound by laws made applicable to him in a foreign country. *Cook v. Tail* (1924) 265 U. S. 47; *United States v. Bowman* (1922) 260 U. S. 94. Legislation of Congress is usually construed to apply only within the territorial limits of the United States, but the question of its application so far as citizens are concerned is one of construction and not of legislative power. *American Banana Co. v. United States* (1909) 213 U. S. 347; *Robertson v. Railroad Labor Board* (1925) 268 U. S. 619. The Court entertained no doubt as to the sovereign power of

the United States to compel a citizen, absent abroad, to return to this country. Compare *Bartue and Duchess of Suffolk's Case* (1559) 72 Eng. Repr. 388; *Knowles v. Luce* (1579) 72 Eng. Repr. 473. Rather in contrast to the Appeals Court, the Supreme Court regarded as the important question the method of enforcing the obligation. It held that since Congress can define the obligation, it can prescribe the penalty and method of enforcing it. The proceeding of a seizure of property to secure payment of a penalty is a familiar practice where absence of the recalcitrant or other circumstances make it necessary. *Cooper v. Reynolds* (1870) 77 U. S. 308.

A contention that the offence was criminal in its nature and that it was unconstitutional to proceed to judgment in the absence of the defendant was held untenable in nature. Contempt proceedings are said to be *sui generis* and not criminal by nature. *Myers v. United States* (1923) 264 U. S. 95. The novel defense that the act was discriminatory since it would be ineffective against contumacious witnesses who owned no property to seize was also overridden. Liability under the act is placed on the disobedience of the witness and not ownership of property.

The decisions of the two courts emphasize the paramount duty of every citizen to aid in the administration of justice by appearing and testifying in court when wanted. *Blair v. United States* (1919) 250 U. S. 273. If a like conception were entertained by citizens greater efficacy would be given to our criminal administration. The Walsh Act should prove an invaluable aid to enforcement of Federal laws.

Similar state statutes have not as yet been tested.

V. P. K., '33.

INTERSTATE COMMERCE—LIMITATION OF RIGHT OF FOREIGN CORPORATIONS TO SUE—CONTRACTS CONTEMPLATING IMPORTATION.—Plaintiffs, doing business as partners in Illinois, contracted with a citizen of Arkansas to sell goods as ordered by him, to be delivered on board cars at Freeport, Illinois, or at their nearest branch warehouse. The contract referred to defendant as "the salesman" and specified that payment was to be made according to defendant's sales and collections, defendant having the right to return goods unsold upon the termination of the contract. Defendant placed an order, which was received by plaintiffs in Illinois, shipment being made from the Memphis, Tennessee, warehouse. The goods in question were manufactured and owned by an Illinois corporation for which plaintiffs were not only selling agents, but also in which they were officers and principal stockholders. The corporation was not qualified in Arkansas as required by statutes of that state providing that foreign corporations, as a prerequisite to doing business in the state, comply with certain conditions, failure to do so resulting in an incapacity to sue. Ark. Dig. Stat. (Crawford and Moses, 1921) secs. 1829, 1832. In an action on the contract in the Arkansas courts recovery was denied the plaintiffs on the ground that they were acting as agents of the corporation, and that the defendant was in turn acting as their agent, and hence the corporation through its agents, was doing business in Arkansas. But the Supreme Court of the United States *held*, that