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ABSTRACTS OF RECENT DECISIONS

ALIENS NATURALIZATION—SETTING ASIDE CERTIFICATE OF CITIZENSHIP.

In suit to cancel certificate of naturalization issued to defendant on ground that, at time defendant was naturalized and during the five-year period immediately preceding, he was not attached to the principles of the Constitution of the United States or well disposed to the order and happiness of the same, and that he had been and was a member of an organization commonly called the I. W. W., evidence *held* to show that the I. W. W. advocated anarchy and the overthrow of established order, and to warrant the annulment of the certificate of naturalization; defendant admitting his adherence to such principles. *United States v. Swelgin,* 254 Fed. 884.

ARMY AND NAVY—ESPIONAGE ACT—OBSTRUCTING DRAFT—CONSPIRACY—FREE SPEECH.

A circular, the tendency of which is to influence persons subject to the draft to obstruct the carrying of it out, is not protected by the First Amendment, against Espionage Act June 15, 1917, because unsuccessful; title 1, Sec. 4 (Comp. St. 1918, Sec. 10212d), punishing conspiracy, accompanied by act to effect its object, the character of every act depending on the circumstances in which it is done, and the question of right of protection against abridging freedom of speech in every case being whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent, a question of proximity and degree. *Schenck v. United States.* 39 Sup. Ct. Rep. 247.

ARMY AND NAVY ESPIONAGE ACT—OBSTRUCTING RECRUITING.

If a purpose of defendant's speech, even though incidental, was, as the jury were warranted in finding, to oppose, not only war in general, but the existing war, and the opposition was so expressed that its natural effect would be to obstruct recruiting, and that was intended, and in all the circumstances would be its probable effect, it would not be protected by reason of it being a part of a general program and expressions of a general and conscientious belief. *Debs v. United States,* 39 Sup. Ct. Rep. 252.

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BANKROUPTCY—CONTEMPT.

A creditor of a bankrupt, though having a dischargeable claim, does not become guilty of contempt of the bankruptcy court merely by taking proceedings in another court to enforce his claim, where no order forbidding such action has been made, and especially where the creditor had no knowledge of the bankruptcy proceedings. *In re Weisburg,* 253 Fed. 833.

CARRIERS—CARRIAGE OF LIVE STOCK—PROVISION IN BILL OF LADING —NECCESITY FOR COMPLIANCE.

A shipper of live stock must comply with provision in a bill of lading, issued as required by Act of Congress, that no claim for damages shall be allowed or paid, or sued for, unless claim shall be made in writing, verified by affidavit of shipper or his agent, and delivered to general freight agent of carrier at his office in given city within five days from time live stock is removed from cars. *Baltimore & O. I. R. Co. et a., v. Leach,* 39 Sup. Ct. Rep. 254.

CARRIERS—RATES—ORDER OF PUBLIC SERVICE COMMISSION—REASONABLENESS.

A street railway company is entitled to charge for its services such rates as will yield a reasonable return on the capital it has actually invested in good faith in its plant, subject to the inevitable loss if its business cannot reasonably be so conducted as to render it profitable.

Rates authorized by Public Service Commission to be charged by Receiver of Bay State Street Railway, somewhat less than those asked by receiver, Commission's rates being put into effect for experimental period of two or four months, without prejudice to receiver's right to petition for another increase at end of time if they had not yielded sufficient revenue, *held* not unreasonable to extent of affording less revenue to receiver than rates proposed by him in his schedule. *Donham v. Public Service Commission,* 122 N. E. (Mass.) 397.

CARRIERS—RATES—REASONABLENESS.

If a carrier receives in aggregate a fair remuneration notwithstanding rates on part of its business are not remunerative, it has no basis for complaint, and a hearing involving fairness of rates on a part of its line is not properly confined to particular rates and actual cost and outlay in carrying classes specified on such part of the line. *Vandalia R. Co. v. Schnull et al.,* 122 N. E. (Ind.) 225.

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COMMERCE—INTERSTATE—NATURAL GAS—NONEXERCISE OF POWER OF REGULATION BY CONGRESS.

There being no break in the continuity of the transmission of natural gas through a pipe line from seller's pumping station in Pennsylvania to consumer's home, office and factory in New York interstate commerce does not end until the gas has reached its goal, and it is immaterial that consumers signify in advance the proximate but not the exact quantity needed.

Since Act of Congress to regulate commerce, as amended June 29, 1906 (chapter 3591), and June 18, 1910 (chapter 309), expressly excepts gas companies, there is no implied exclusion of the police power of the states to regulate the sale of gas within their borders, although in interstate commerce, if they do not impose new rather than remote and incidental burdens theron, or discriminate against foreign products, or introduce diversity and conflict where there is need of uniformity and harmony. *In re Pennsylvania Gas Company*, 122 N. E. (N. Y.) 260.

CONSTITUTIONAL LAW—DUE PROCESS—"LEGISLATIVE ACT."

The charter of the city of St. Louis, adopted by vote of the people under authority of the Constitution of Missouri, is in effect a "legislative act," within the principle that, when an assessment is made in accordance with a fixed rule adopted by a legislative act, opportunity to be heard in advance on question of amount and extent of assessment and benefits is not essential to due process.

Attack on the system authorized by St. Louis City Charter of assessing three-fourths of cost of street improvement on abutting property according to area ascertained by prescribed method, as denying the protection afforded by the Fourteenth Amendment, can only succeed if it has produced results as to the complaining party's property palpably arbitrary or grossly unequal. *Withnell v. Ruecking Const. Co.*, 39 Sup. Ct. Rep. 200.

CONSTITUTIONAL LAW—IMPAIRMENT OF OBLIGATION OF CONTRACTS—FRANCHISES—RATE REGULATION.

Regulation regarding rates for gas which municipalities may impose in granting licenses or permission to use its streets by public service corporations do not form contracts beyond the inherent police power of the Legislature to modify.

Rate regulation being a matter of police power, the terms and conditions upon which a gas and electric company is allowed to use

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the streets of a municipality may be modified without impairing the obligation of a contract within the constitutional provision. *People ex rel. Village of South Glens Falls v. Public Service Commission of State of New York for Second Dist. et al.*, 121 N. E. (N. Y.) 777.

CONTRACTS—ALTERNATIVE PROVISION.

Where there is a provision in the alternative to do one or the other of certain things, and the promisor, by his own act, disables himself from performing one alternative, the other becomes a fixed obligation. *Westfall v. Ellis*, 170 N. W. (Minn.) 339.

COURTS—CONFLICT BETWEEN COURT OF APPEALS AND SUPREME COURT —INQUIRY ON CERTIORARI.

The extent of inquiry on ceritorari to quash decision of Court of Appeals, as in conflict with decisions of the Supreme Court, is limited to contents of the opinion and decision. *State ex rel. Metropolitan St. Ry. Co. v. Ellison et al.*, 208 S. W. (Mo.) 443.

COURTS—FEDERAL AND STATE COURTS—PRIORITY OF JURISDICTION.

By an equity suit in a state court of West Virginia by a judgment creditor to subject property of the debtor to the judgment and such other liens as may proved as provided by statute, although no receiver is appointed, the court acquires exclusive possession or control of the property necessary to effectuate its decree as against a federal court in which a suit for a receiver is subsequently brought by a bondholder of defendant who is a party to the state suit or represented therein by the mortgage trustee. *Central Dist. P. & N. T. Co. v. F. & P. Nat. Bk. of Sistersville, W. Va. Same v. Jackson. Jackson v. Parkersburg & O. V. Elec. Ry. Co. et al.*, 255 Fed. 59.

CORPORATIONS—ESTOPPEL.

Where a corporation was organized to take over the business of a partnership, which by contract acknowledged patent infringement and agreed to cease, held, that any estoppel arising from the contract was effective against the corporation, and as it continued the old-method manufacture it was estopped to deny infringement. *Dudlo Mfg. Co. v. Varley Duplex Magnet Co.*, 253 Fed. 745.

DAMAGES—PROOF—LOSS OF PROFITS.

In an action against a film company to recover damages for breach of contract to furnish "feature" pictures one day in every week, the court erred in refusing to strike out testimony of plaintiff as to receipts from other pictures, supplied by other producers, before the breach

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and after, where the differences were not even approximately constant and were subject to the widest fluctuation. *Broadway Photoplay Co. v. World Film Corporation*, 121 N. E. (N. Y.) 756.

ESTOPPEL—RECISSION.

Sellers of farm, who, in purchaser's prior action for deceit against them, set up recission of contract as defense, held not precluded, in purchaser's action of assumpsit, by an estoppel in pais from changing their position and claiming contract was not rescinded; essential element of ignorance of true fact on part of purchaser being wanting. *Gordon v. Hutchins*, 105 Atl. (Me.) 356.

HUSBAND AND WIFE—INJURIES TO HUSBAND—PARTIES PLAINTIFF —DOUBLE DAMAGES.

Rev. St. 1909. Sec. 8309, giving wife the right to sue for the alienation of husband's affections, does not give her the right to sue her husband's employer for physical injuries which deprived her of his society, since an action by him for the same damages would lie, and if he died, damages for death is authorized by sections 5425 and 5426, and the defendant cannot be compelled to pay double damages. *Bernhardt et al. v. Perry*, 208 S. W. (Mo.) 462.

INJUNCTION—MULTIPLICITY OF PARTIES.

A court of equity will not entertain a bill by complainant against a large number of parties, to whom he had sold corporate stock, and who had begun separate actions to recover for fraud, on the theory that equity will restrain a multiplicity of suits, where proof as to the non-reliance on the misrepresentations, etc., would not be binding upon all the various parties. *Robinson v. Wemmer*, 253 Fed. 790.

INSURANCE—AGENTS—TERMINATION OF RELATION—GROUNDS FOR.

Where insurance agent contracted to act exclusively for principal and to devote his entire time to agency, principal was justified in terminating contract, where agent entered into employment of a rival. *Loucher v. New York Life Ins. Co.* 208 S. W. 862.

INSURANCE—MONOPOLIES—ACQUISITION IN VIOLATION OF LAW.

If transaction, whereby one life insurance company acquired assets and liabilities, including premium notes, of another, illegal as in violation of the anti-trust statutes (Rev. St. Tex. 1911, arts. 7797, 7807), was executed, title to premium note passed, so that acquiring company

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could enforce it against maker. *California State Life Ins. Co. v. Kring,* 208 S. W. (Tex.) 372.

MASTER AND SERVANT—MINOR CHILD.

Where a father bought an automobile for his minor son, who was practically emancipated and who operated the car for hire, held, it not appearing that the son was a negligent driver when the car was given to him, the father was not liable for the torts of the son in operation of the car, as no relationship of master and servant existed. *Dempsey v. Frazier,* 80 So. (Miss.) 341.

MASTER AND SERVANT—RELATION.

The relation of master and servant *held* not to exist as to an employe who, contrary to custom was upon master's premises 15 or 20 minutes before the time of going to work, at which time he was injured. *Flanigan v. Kansas City Southern Ry. Co.,* 208 S. W. 441.

MASTER AND SERVANT WORKMEN'S COMPENSATION ACT—DEATH IN "COURSE OF EMPLOYMENT."

Where head waiter of hotel was killed, while in hotel eating lunch under his contract of employment, by waiter whom he had discharged in interests of hotel company, and acting under its authority, death was in "course of employment,' 'entitling dependent widow to compensation. *Cranney's Case,* 122 N. E. (Mass.) 266.

MUNICIPAL CORPORATIONS VIOLATION OF ORDINANCE—SURETY ON APPEAL BOND.

Where surety on appeal bond of one convicted of violation of city ordinance after his principal's plea of guilty voluntarily paid judgment for fine and costs, and thereafter prosecuted to final judgment suit against his principal to recover amount paid, in so doing he waived remedy by appeal or writ of error to review judgment of conviction. *City of Versailles v. Ross et al.,* 208 S. W. (Mo.) 454.

POISONS—HARRISON NARCOTIC DRUG ACT—VALIDITY.

Harrison Narcotic Drug Act, Sec. 2 (Comp. St. Sec. 6287h), aiming to confine, by imposition of penalties, sales of narcotic drugs to registered dealers, to those dispensing them as physician and those coming to dealers with legitimate prescriptions of physicians, inserted in an act specifically providing for the raising of revenue by excise tax on such dealers and others named in section 1 (section 6287g), has such relation to the facilitating the collection of the revenue as to be

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within the power of Congress under the authority given it by Const. art. 1, Sec. 8, to impose excise taxes, and is not a mere attempt to exercise a power not delegated, the reserved police power of the states. *United States v. Doremus*, 39 Sup. Ct. Rep. 214.

PROHIBITION—INSURANCE—REVOCATION OF LICENSE.

The Superintendent of Insurance cannot, under Rev. St. 1909, Sec. 7078, revoke the license of a foreign insurance corporation unless it is unsound financially and where an insurance company possesses financial ability to transact its business as authorized by law, prohibition will lie to prevent insurance commissioner from revoking its license for refusal to pay specific claims until adjudicated by the courts. *State ex rel U. S. F. & G. Co., v. Harty*, 208 S. W. 835.

RAILROADS—INJURIES TO TRESPASSERS—DUTY OF RAILROAD COMPANY IMPLIED NOTICE.

Where children and other persons have continuously used railroad switching yards as playgrounds and for passage across the tracks, for such a time as to impute implied notice to the railroad company it is the duty of the railroad to be on the lookout for such persons, and to avoid injuring them if their presence can be discovered by the exercise of ordinary care. *Dalton v. Missouri, K. & T. Ry. Co. et al.*, 208 S. W. 828.

TELEGRAPHS AND TELEPHONES—PROXIMATE CAUSE.

Negligence of telegraph company in delaying death mesasge was not proximate cause of injuries to plaintiff in traveling toward home on freight train after he had missed first passenger train or injuries from attempting to walk from station to his home because he did not wish to pay automobile fare and had not been met by conveyance ordered. *Johnson v. Western Union Telegraph Co.*, 97 S. E. (N. C.) 757.

WAR—ASSUMPTION OF CONTROL OF CABLES BY GOVERNMENT—LEGALITY.

Under Joint Resolution July 16, 1918 (Comp. St. 1918, Append. Sec. 3115¾x), and authorizing the President during the continuance of the war, "whenever he shall deem it necessary for the national security or defense," to take possession and control of marine cables, the determination by the President that such necessity exists is not subject to judicial review.

The above resolution, authorizing the President during the con-

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tinuance of the war to take possession and control of telegraphs and marine cables, is within the constitutional powers of Congress, is not unconstitutional because compensation for their use is deferred and to be fixed initially by the President, and was an appropriate war measure, as placing in the President's control as chief executive and head of the army and navy an essential instrument both for military and naval operations and in negotiations of a peace treaty.

An "armistice" is merely a suspension of military operations, and has no effect to terminate the war. *Commercial Cable Co. v. Burleson et al., Commercial Pacific Cable Co. v. Same,* 255 Fed. 99.

WILLS—INSANITY.

Where due execution of paper offered for probate as will is proved, and paper is not irrational in its provisions, or inconsistent in its structure, language, or details, with sanity of testator, burden of showing his insanity shifts to contestants. *Spradlin v. Adams,* 207 S. W. (Ky.) 471.

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