DECISIONS OF AMERICAN COURTS ON POINTS OF PUBLIC LAW

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Aliens and Nonresidents—License Tax to Fish. Ex parte Gilletti. (Florida, December 8, 1915. 70 S. 446.) The State may by the imposition of a license tax upon aliens and nonresidents, without denying to any person within its jurisdiction the equal protection of the laws, justly discriminate in favor of its citizens in regulating the taking for private use of the common property any fish found in the public waters of the State, where such regulations have a fair relation to and are suited to conserve the common rights which the citizens of the State have in such fish as against aliens and nonresidents. The equal right of all persons residing within a State, whether citizens or aliens, to labor therein, does not include an equal right of an alien to participate in the common property and privileges that are peculiar to citizens.

Blue Sky Law—Constitutionality. N. W. Halsey & Co. vs. Merrick. (United States, December 30, 1915. 228 Fed. 805.) The Michigan Blue Sky Law which prohibits the sale in the State of the stock or securities of any investment company until it shall have obtained the approval of the state securities commission, which is authorized to make any examination it may see fit of the business and property of the company at the company's expense and to withhold its approval if in its opinion a fraud would be worked upon the purchasers of such stock or securities, is unconstitutional as imposing a direct restriction upon interstate commerce in such securities. The fees to be paid, the delays imposed, and the large, often very large, expense in furnishing information and conducting examinations, amount to a practical prohibition of all small dealings in securities.

Charities—Regulation by Municipalities. Ex parte Dart. (California, February 3, 1916. 155 P. 63.) The occupation of soliciting contributious for charitable purposes may be regulated by municipal ordinance providing for reasonable supervision of the persons engaged, and for the application or use of the contributions received for the purposes intended; but a city ordinance creating a municipal charities commission which gives the commission arbitrary power to forbid any person from soliciting for charity regardless of his worth or fitness, is unconstitutional so far as giving such arbitrary power.

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Convict Labor—Right of Remuneration—Slavery. Anderson vs. Salant. (Rhode Island, January 25, 1916. 96 A. 425.) The provision for the leasing of convict labor is not in violation of the constitutional inhibition against slavery. The term "slavery" as used in the Constitution and the earlier statutes implies African slavery, and denotes that civil relation in which one man has absolute power over the life, fortune, and liberty of another, a slave being a person wholly subject to the will of another. This is particularly true in view of the long continued legislative acquiescence in the sentencing of convicts to hard labor. The employment of a convict upon the materials of the contractor does not change his condition as a convict into that of a slave either of the State or of the contractor and such a convict is not entitled to remuneration for his services from the contractor where he is legally serving a sentence under a proper commitment.

Courts—Jurisdiction—Comity. United States vs. Marrin. (United States, October 22, 1915. 227 Fed. 314.) Comity arises out of necessity. If a person be answerable to two different jurisdictions for offenses against the laws of each, it is a physical fact that he cannot be, at the same time, in the separate control of each. It is therefore necessary that one jurisdiction give way to the other for the time being. It is convenient and desirable that there be a rule by which it can be determined which authority shall make way for the other. This rule is that known as the rule of comity. It answers with courts and cabinets, in law and in diplomacy, substantially the same purpose which personal courtesies serve in the social relations of life. One of the principles is that the court which first asserts jurisdiction may continue its assertion without interference from the other.

Crimes—Committed Partly Within and Partly Without State. People vs. Zayas. (New York, January 25, 1916. 111 N. E. 465.) Under a provision of the penal law that a person who commits within the State any crime, in whole or in part, is liable to punishment within the State, it is not necessary that the transaction should constitute a crime under the law of the foreign State where parts of the acts are committed; it is sufficient that the transaction would be a crime under the laws of the State where the statutory provision is in effect.

Eminent Domain—Condemnation of Public Utility Property—Judicial Power. Marin Water Power Co. vs. Railroad Commission. (Cali-

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fornia, January 17, 1916. 154 P. 864.) Where the provisions of a state constitution declare the legislative power to confer jurisdiction upon the railroad commission plenary, and declare the commission to have such power to fix the compensation to be paid for property of any public utility acquired by public corporations as the legislature may confer upon it, an act empowering the commission on petition of any water district intending to take by eminent domain the property of any existing public utility to fix the compensation, is valid. The power given the commission is judicial; judicial power being the power to determine what shall be adjudged or decreed between the parties and with whom is the right of the case; determination of the rights of the individual under the existing laws; the ascertainment of existing rights; the determination of controversies between parties; the power to investigate, declare, and enforce liabilities as they stand on present or past facts and under the laws supposed already to exist.

European War—Judicial Notice of. United States vs. Hamburg American Co. (United States, January 10, 1916. 239 U. S. 466.) The United States supreme court takes judicial notice of the European war. Where a question has become moot because of the inevitable legal consequences of that war, the court will not pass upon such question. So, an action brought to dissolve a combination of steamship lines will not be decided at present where, because of the war, the steamship business between the United States and Europe has been interrupted and the renewal or re-creation of the combination in the future is merely problematical.

Extradition—Good Faith of Demanding Country. In re Lincoln. (United States, November 19, 1915. 228 Fed. 70.) It is not part of the proceedings nor of the hearing in the federal courts, upon a demand for the extradition of one charged with crime in a foreign country, to exercise discretion as to whether the criminal charge is a cloak for political action, or whether the request is made in good faith. Such matters are questions for the Secretary of State to determine, and it is for him to decide whether the foreign government may be trusted to live up to its treaty obligation and whether one extradited will not be tried or punished for a political offense.

Foreign Commerce—Power of Congress to Prohibit Importation of Foreign Articles. Weber vs. Freed. (United States, December 13, 1915.

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239 U. S. 325.) Congress has power to prohibit the importation of foreign articles including pictorial representations of prize fights designed for public exhibition. The fact that exhibitions of pictures are under state, and not federal, control does not affect this power of congress.

Indians—Control Over. Williams vs. Johnson. (United States, December 20, 1915. 239 U. S. 414.) Indians are wards of the nation and congress has plenary control over tribal relations and property. This power continues after Indians have been made citizens, and may be exercised as to restrictions upon alienation of real property allotments.

Municipal Corporations—Donation of Municipal Funds to State. City of Sacramento vs. Adams. (California, December 14, 1915. 153 P. 908.) The expenditure of municipal funds for other than strictly municipal purposes, even though for some other public purpose, is not authorized unless the power is clearly and unmistakably conferred on the municipality, but the State may confer such power as to any purpose which is fairly a public purpose, of benefit to the municipality. Under an act of the legislature authorizing a municipality to incur an indebtedness for the purchase of a site suitable for state buildings within the municipality to be donated to the State, the municipality may incur such indebtedness.

Municipal Corporations—Forest Preserve Districts. Perkins vs. Board of Commissioners. (Illinois, February 16, 1916. 111 N. E. 580.) The power of the legislature to create municipal corporations is practically unlimited. It may create any conceivable kind of a corporation it sees fit for the more efficient administration of public affairs and endow such corporation and its officers with such powers and functions as it deems necessary. For this purpose it may provide for the organization of corporations which embrace territory situated wholly within or partly within and partly without the boundaries of another municipal corporation. The formation of forest preserve districts whose boundaries may be coextensive with those of another municipality or which may embrace two or more municipalities for the acquisition, preservation and scientific care of forests, is entirely within the legislative power.

Municipal Corporations—Optional Charters. Cunningham vs. Rockwood. (Massachusetts, February 10, 1916. 111 N. E. 409.) The

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plenary power given by the Constitution to the general court to constitute city governments is not violated by a statute establishing four different types of city charters, one type of which cities may select for themselves as its voters decide to be best adapted to its needs, in place of the enactment of a special act whenever the city's government is to be changed. The constitutional provision does not apply after the change from town to city has once been made.

Mattresses—Use of Secondhand Material. People vs. Weiner. (Illinois, December 22, 1915. 110 N. E. 870.) An act prohibiting the use of secondhand material in making mattresses, quilts, or bed comforters, is void as depriving citizens of the lawful use of their property in a manner not injurious to others, since, while it would be proper to require that material be free from germs, and possible danger to health, the absolute prohibition of a useful industry where the danger can be dealt with by regulation is not justified.

Primary Elections—Political Party—Second Choice—Fees. Kelso vs. Cook. (Indiana, January 5, 1916. 110 N.E. 987.) The requirement of an oath of party allegiance from a challenged voter by the primary election law is not violative of the constitutional provision for a secret ballot, since the statute does not require the challenged voter to state specifically for whom he previously voted, but merely that he voted for a majority of the party's candidates. A political party is an association of voters believing in certain principles of government, formed to urge the adoption and execution of such principles in governmental affairs through officers of like beliefs. Provision for second choice voting in the primary election law does not violate a constitutional contemplation of a single vote by each elector, since primary elections are not contemplated by the constitutional provisions. A provision in such law requiring candidates to pay a fee equal to one per cent of the annual salary of the offices sought, is violative of the constitutional provision that the general assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens.

Public Utility—Public Use. State Public Utilities Commission vs. Bethany Mutual Telephone Association. (Illinois, October 27, 1915. 110 N.E. 334.) Aside from the statutory definition, the term public utility implies a public use, carrying with it the duty to serve the public and treat all persons alike, without discrimination, and it precludes the idea of service which is private in its nature, whether for the benefit

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and advantage of a few or of many. The words public use mean of or belonging to the people at large open to all the people to the extent that its capacity may admit of the public use. The public utilities commission has no jurisdiction over a mutual telephone association which under its charter has no authority to engage in public telephone service, or to devote its property to public use, but is organized for the private use of its members only, and not for profit. The number of members of such an association is immaterial.

Pure Food—Misbranding. Ex parte De Klotz. (Nebraska, December 3, 1915. 155 N.W. 240.) The prohibition against the misbranding of food packages, does not prohibit placing in a food package advertising matter in the form of a coupon exchangeable for certain articles and which has no appreciable weight and does not affect the healthfulness of the food.

Religious Liberty—Religious Instruction in Schools. State vs. District Board of Joint School Dist. No. 6. (Wisconsin, February 22, 1916. 156 N.W. 477.) Where a school board held graduating exercises in churches, and allowed various clergymen to deliver nonsectarian prayers at such exercises, but no compensation was paid for the use of the churches, or for the prayers, parents of school children, though violently opposed to the churches in the which exercises were held, were not deprived of their constitutional religious liberty. Nor did such action by the school board violate the constitutional inhibition against sectarian instruction in public schools.

Shipping—Release from Charter. The Athanasios. (United States, February 15, 1915. 228 Fed. 558.) A Greek vessel, chartered in a port of the United States by a charter party containing the usual exemption from liability for loss or damage occasioned by arrest and restraint of princes, rulers, or people, is released from the obligations of her charter, where before proceeding she is requisitioned by the kingdom of Greece for government service. It would seem that a court of admiralty of the United States should for political reasons refuse to entertain a suit by a Canadian corporation against a Greek vessel requisitioned for use by the Greek government.

Statutes—Construction. People vs. Chicago Railways Company. (Illinois, October 27, 1915. 110 N.E. 386.) The rule that in the interpretation and construction of a statute the intention of the legisla-

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ture is to be ascertained and given effect, does not permit the courts to consider statements made by the author of a bill or by those interested in its passage, or by the members of the legislature adopting the bill, showing the meaning or effect of the language used in the bill as understood by the person or persons making such statements.

Taxation—Exemption from. State vs. Baltimore and Ohio Railroad Company. (Maryland, January 13, 1916. 96 A. 636.) A charter granted to a railroad company prior to the constitutional provision of 1851 prohibiting the granting of irrepealable and unamendable charters and which exempted the railroad from taxation, is a contract between the State and the railroad company within the protection of the United States Constitution, Art 1, §10, and the immunity from taxation can only be modified by the State with the assent of the company.

Trial by Jury—Necessity for Presiding Judge. Freeman vs. United States. (United States, August 25, 1915. 227 Fed. 732.) Trial by jury in the primary and usual sense of the term at the common law and in the American constitutions, is not merely a trial by a jury of twelve men before an officer vested with authority to cause them to be summoned and impaneled, but it is a trial by a jury of twelve men, in the presence and under the superintendence of a judge empowered to instruct them on the law and to advise them on the facts, and to set aside their verdict if in his opinion it is against the law or the evidence. The continuous presence of the judge is essential, and another judge cannot lawfully be substituted for the one before whom the trial was commenced, during its progress.

Workmen's Compensation—Municipalities as Employers. Wood vs. City of Detroit. (Michigan, December 21, 1915. 155 N.W. 592.) The provisions of the workmen's compensation act, providing that certain municipal corporations shall constitute employers subject to the provisions of the act, does not violate the home rule provisions of the constitution, since the compensation act in its application to municipalities involves no right of local self-government, but declares a new public purpose for which taxes may be levied by the municipality. The provision giving private employers an election whether or not to accept the act while imposing it upon municipal employers does not deny equal protection of the laws, since the imposition upon municipalities works no invasion of private rights, as the burden assumed by such corporations is distributed on the community subject to be taxed.

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