CURRENT DECISIONS

ADMIRALTY—WORKMEN'S COMPENSATION ACTS—EXTENSION OF JURISDICTION TO STEVEDORES UNCONSTITUTIONAL.—Congress sought by statute to enable longshoremen to maintain suits under their state Workmen's Compensation Acts by amending the Judiciary Act to except from the state law the master and crew of vessels. Act of June 10, 1922 (42 Stat. at L. 634). The State of Washington sued to compel the defendant, an employer of stevedores working exclusively on board ships in navigable waters, to contribute to the accident fund established by the state Workmen's Compensation law. *Held,* (two judges *dissenting*) that the Amendment was unconstitutional. *State v. W. C. Dawson & Co.* (1924, U. S.) 44 Sup. Ct. 302.

The statute in the instant case was passed to avoid the result of the decision of *Knickerbocker Ice Co. v. Stewart* (1919) 253 U. S. 149, 40 Sup. Ct. 438. Again the majority adhere to the much criticised doctrine of the *Jensen* case and the immutable concept of "admiralty jurisdiction." See *Southern Pacific Co. v. Jensen* (1917) 244 U. S. 205, 37 Sup. Ct. 6; COMMENTS (1917) 27 YALE LAW JOURNAL, 255, 924; NOTES (1924) 37 HARV. L. REV. 478; COMMENTS (1924) 33 YALE LAW JOURNAL, 646, note 18.

AGENCY—INFANTS—CAPACITY TO APPOINT AN AGENT—DISAFFIRMANCE.—The plaintiff, an infant, entrusted stock with the defendant K, her agent. K, through the defendant brokers, sold the stock, the plaintiff ratifying the act and taking K's note. K later became bankrupt. The infant, on becoming of age, without notice of disaffirmance, sued K and the defendants for conversion of the stock. The lower court held the transaction void. *Held,* that it was merely voidable, and notice of disaffirmance was unnecessary, since there was nothing to pay or tender the defendants. *Casey v. Kastel* (1924) 237 N. Y. 305, 142 N. E. 671.

By the orthodox view an infant's appointment of an agent is void. *Trueblood v. Trueblood* (1856) 8 Ind. 195. However, the trend of modern authority is in accord with the instant case. *Benson v. Tucker* (1912) 212 Mass. 60, 98 N. E. 589; *Coursolle v. Weyerhauser* (1897) 69 Minn. 328, 72 N. W. 697. But few of these modern cases expressly hold notice of disaffirmance unnecessary. See *Briggs v. McCabe* (1866) 27 Ind. 327.

BILLS AND NOTES—UNAUTHORIZED INDORSEMENT—COLLECTING BANK'S LIABILITY TO PAYEE.—The defendant bank cashed checks payable to plaintiff corporation and collected the money from the drawee banks. The secretary of the corporation, to whom the money had been paid, had no authority to indorse checks. The corporation sued the collecting bank for money had and received to its use and recovered. *Held,* that the judgment be affirmed. *Independent Oil Men's Association v. Ft. Dearborn National Bank* (1924, Ill.) 311 Ill. 278, 142 N. E. 458.

The payee of a check may maintain trover against an intermediary bank for the conversion of the check which it has cashed upon a forged or unauthorized endorsement. *Buckley v. Second National Bank* (1872) 35 N. J. L. 400; *Crisp v. State Bank of Rolla* (1915) 32 N. D. 263, 155 N. W. 78. The instant case is in accord with the recognized privilege of the payee to waive the tort and sue the collecting bank in *assumpsit* for money had and received. *Rauch v. Ft. Dearborn National Bank* (1906) 223 Ill. 507, 79 N .E. 273; *Schaap v. State National Bank* (1918) 137 Ark. 251, 208 S. W. 309; *contra: Tibby Bros. Glass Co. v. Farmers' Bank* (1908) 220 Pa. 1, 69 Atl. 280. See (1923) 36 HARV. L. REV. 879.

CARRIERS—LIMITATION OF ACTION IN BILL OF LADING.—The defendant, a common carrier, agreed to deliver bags of sugar to the plaintiff from a foreign port. The defendant mixed these bags with others and a misdelivery resulted. The bill of lading provided that notice of a claim be given within sixty days, and

that an action, if any, be commenced within sixty days thereafter. The defendant negotiated for an amicable adjustment and the plaintiff failed to bring suit within the specified period. *Held,* that the defendant, not engaging in interstate commerce, was not subject to the Interstate Commerce Act or its amendments, which provide for a two year limitation period, but that a period of sixty days was unreasonable. *South & Central American Commercial Co. v. Panama R. R.* (1923) 237 N. Y. 287, 142 N. E. 666.

In the absence of statutes, parties may agree on a reasonable limitation of time within which action for breach of contract shall be brought. *Missouri, K. & T. Ry. v. Harriman* (1912) 227 U. S. 657, 33 Sup. Ct. 397; *cf.* (1923) 32 YALE LAW JOURNAL, 289. And ordinarily mere negotiations as to settlement or compromise of the claims do not waive the contract limitation. *Ray v. Missouri, K. & T. Ry* (1915) 90 Kan. 244, 149 Pac. 397. But the instant case is sound in regarding the specified period as unreasonable. Compare, however, *Gooch v. Oregon Short Line Ry.* (1922) 258 U. S. 22, 42 Sup. Ct. 192; (1922) 31 YALE LAW JOURNAL, 887.

CONSTITUTIONAL LAW—EX POST FACTO LAWS—DEPORTATION.—The plaintiffs were convicted of violating the Selective Draft Act. Thereafter, Congress passed the Act of May 10, 1920 (41 Stat. at L. 593), making the violation of the draft law a ground for deportation. The plaintiffs having been ordered deported under this act, sued out writs of *habeas corpus* claiming that the act was an *ex post facto* law. *Held,* that the act was not an *ex post facto* law. *Mahler v. Eby* (1924, U. S.) 44 Sup. Ct. 283.

Ex post facto laws relate solely to criminal punishments. *Calder v. Bull* (1798, U. S.) 3 Dallas, 386; Cooley, *Principles of Constitutional Law* (3d ed. 1898) 312; but see Field, *Ex Post Facto in The Constitution* (1922) 20 MICH. L. REV. 315. The result in the instant case is in accord with previous decisions, deportation not being considered a criminal punishment. *Bugajewitz v. Adams* (1912) 228 U. S. 585, 33 Sup. Ct. 607; *Skeffington v. Katzeff* (1922, C. C. A. 1st) 277 Fed. 129; *Choy Gum v. Backus* (1915, C. C. A. 9th) 223 Fed. 487.

CONSTITUTIONAL LAW—IMPEACHMENT—SUSPENSION FROM OFFICE DURING TRIAL.—The Legislature acting under the Oklahoma state constitution, art. 8, suspended the governor during his impeachment trial. A state statute defined an impeachment as a "prosecution" for improper conduct while in office. Okla. Comp. Sts. 1921, sec. 152. The lieutenant governor who by art. 6, sec. 16, of the constitution took the impeached governor's place brought action to prohibit the district court from restraining his official acts. *Held,* that the relator was properly in office and that the writ should issue. *State, ex rel. Trapp, v. Chambers* (1923, Okla.) 220 Pac. 890.

Impeachment, though a judicial proceeding in so far as it is conferred exclusively upon the legislature, cannot be interfered with by the judiciary. *State v. O'Driscoll* (1815, S. C. Law) 3 Brev. 526; *cf.* Simpson, *Federal Impeachments* (1916) 64 U. PA. L. REV. 651, 803; Dougherty, *Limitations upon Impeachment* (1913) 23 YALE LAW JOURNAL, 60; Brown, *Impeachment of the Federal Judiciary* (1913) 26 HARV. L. REV. 684. A number of states have expressly provided that the governor shall be suspended upon the initiation of impeachment proceedings. This follows from the conception of impeachment as an accusation to be tried, and justifies the automatic assumption of duties by the lieutenant governor. *Opinion of the Court* (1872) 14 Fla. 289; Stimpson, *Federal and State Constitutions of the United States* (1908) sec. 263. The instant case reaches the same result without a constitutional provision.

CONTEMPT—"EMPLOYEES" WITHIN SECTION 22 OF THE CLAYTON ACT—CONSTITUTIONALITY OF PROVISION FOR JURY TRIAL.—Section 20 of the Clayton Act, Act of Oct. 15, 1914, (38 Stat. at L. 738) restricts the use of the injunction to cases involving irreparable damage to property in disputes between an employer

or employers and employees, between employees or between employees and persons seeking employment. Section 21 provides that the disobedience of any writ, rule, or decree of the United States Courts where the act forbidden is a violation of the federal law or the law of the state in which it is committed, is contempt of court. Section 22 provides for a trial by jury in such contempt cases at the option of the defendant. The defendants were members of a railroad shopcraft union who struck in disobedience to the orders of the Railroad Labor Board and were adjudged in contempt for failing to observe an injunction obtained by their employers. They had been refused a jury trial in the lower court under section 22 of the Clayton Act. *Held,* that by their participation in an unlawful strike against a railroad, they ceased to be "employees" within the meaning of section 20 of the Act and were not entitled to its benefits; and further, that the provision for a jury trial in section 22 of the Act was unconstitutional. *Michaelson v. United States, ex rel. Chicago Ry.* (1923, C. C. A. 7th) 291 Fed. 940.

The fact that defendants joined an "outlaw" strike against a railroad and the lack of power in the Railroad Labor Board to punish them for it apparently induces this strict interpretation of the Clayton Act. To make the Act at all effective, the term "employee" must generally include strikers. See *Duplex Co. v. Deering* (1921) 254 U. S. 443, 41 Sup. Ct. 172; *American Steel Foundries v. Tri-City Trades Council* (1921) 257 U. S. 184, 42 Sup. Ct. 72. If "property" includes business a strong argument might be presented on the phase of irreparable damage. See *American Steel Foundries v. Tri-City Trades Council, supra.* The ruling on the constitutionality of section 22 of the Act, though unnecessary to the decision, is based upon the reasoning that this section deprives the plaintiff in the injunction suit of his remedy and the court of its constitutionally conferred equitable jurisdiction. U. S. Const. Art. III, sec. 2. For a discussion of this phase of the case see *In re Atchison* (1922, S. D. Fla.) 284 Fed. 604; (1923) 32 YALE LAW JOURNAL, 843; NOTES (1923) 23 COL. L. REV. 375; NOTES (1923) 36 HARV. L. REV. 1012. But it seems that section 20 of the Clayton Act limiting the jurisdiction of the courts to issue injunctions is not expressly connected with sections 21 and 22 which define and punish contempts.

CONTRACTS—HIRING OF MACHINE FOR PARTICULAR USE—IMPLIED WARRANTY OF FITNESS.—The defendant hired from the plaintiff a traveler and hoist to be used in performing a contract which the defendant had with a third party. The traveler and hoist broke down completely and was returned by the defendant. In an action to recover the rental reserved under the lease, the defendant counterclaimed by setting up a breach of warranty. *Held,* that a judgment for the defendant be affirmed. *Hoisting Engine Sales Co. v. Hart* (1923) 237 N. Y. 30, 142 N. E. 342.

The instant case is an illustration of the principle that if one furnishes to another for hire an article for a certain purpose, there is an implied warranty that it shall be reasonably fit for that purpose. *Famous Players v. Salomon* (1918) 79 N. H. 120, 106 Atl. 282; *Fowler v. Lock* (1872) L. R. 7 C. P. 272. These cases apply to the hiring of goods the same principle that is applied to a sale of goods. 2 Williston, *Contracts* (1920) sec. 1041.

CRIMINAL LAW—ROBBERY—FORCIBLE RETAKING OF MONEY LOST IN GAMBLING.—In a prosecution for robbery, the court instructed the jury that if a person losing at cards voluntarily delivers the money lost to the winner's actual possession, the winner becomes owner of the money, so that a forcible taking from his possession may constitute robbery. The accused excepted. *Held,* (one judge *dissenting*) that the instruction was reversible error. *State v. Price* (1923, Idaho) 219 Pac. 1049.

It has been held that where an article has been delivered to the possession of

the buyer, pursuant to an illegal contract, a recapture by the seller constitutes a trespass, though the buyer has given no consideration. *Kinney v. McDermott* (1881) 55 Iowa, 674, 8 N. W. 656; *Thompson v. Williams* (1878) 58 N. H. 248. And a forcible retaking of money lost in gambling may constitute robbery. *Coker v. State* (1913) 71 Tex. Cr. 504, 160 S. W. 366. But where the winner has cheated or committed a fraud, he has no right to possession, and a forcible retaking does not constitute robbery. *Temple v. State* (1919) 86 Tex. Cr. 219, 215 S. W. 965; (1920) 6 VA. L. REV. 541. A similar result has been reached under statutes allowing recovery of money lost in gambling. *Gant v. State* (1902) 115 Ga. 205, 41 S. E. 698; *Sikes v. Commonwealth* (1896) 17 Ky. L. 1353, 34 S. W. 902. In the instant case the court, apparently without the aid of a statute, holds that no one can acquire title to property by gambling, though there has been a physical transfer. The decision has been criticized seemingly on the ground that it is inconsistent with cases in other jurisdictions. (1924) 37 HARV. L. REV. 768. This view appears to be unwarranted. In the absence of Idaho precedent its court may well shape its common law in a way calculated to discourage gaming. That the instant holding was desirable from the social view is indicated by the frequency of legislative enactments to analogous effect. The question of criminal assault upon the facts is of course still open.

MARRIAGE AND DIVORCE—ANNULMENT FOR MISREPRESENTATION OF CITIZENSHIP.—Prior to marriage to the plaintiff, the defendant falsely represented that he was a citizen. Because of losing her citizenship under the federal statute, Act of Mar. 2, 1907 (34 Stat. at L. 1228) she was disqualified from further teaching by N. Y. Laws, 1918, ch. 158, amended by Laws, 1919, ch. 120 and Laws, 1922, ch. 315. Immediately upon discovery of the misrepresentation, the plaintiff ceased to live and cohabit with defendant and brought action for annulment of the marriage. *Held,* that the annulment should be granted. *Truiano v. Truiano* (1923, Sup. Ct. Spec. T.) 201 N. Y. Supp. 573.

The instant case presents a further development of the tendency, particularly in New York, to allow a greater freedom of annulment in accordance with usual contract principles. *Di Lorenzo v. Di Lorenzo* (1903) 174 N. Y. 467, 67 N. E. 63; *Libman v. Libman* (1918, Sup. Ct. Spec. T.) 102 Misc. 443, 169 N. Y. Supp. 900; *Kwabata v. Kwabata* (1922, N. D.) 189 N. W. 237; Crouch, *Annulment of Marriage for Fraud in New York* (1921) 6 CORN. L. QUART. 401; COMMENTS (1919) 28 YALE LAW JOURNAL, 272; (1923) 33 *ibid.* 209; (1922) 71 U. PA. L. REV. 85.

WILLS—LOOSE SHEETS—RHETORICAL UNITY.—An envelope was found in the deceased's pocket containing seven unnumbered sheets of paper of varied size, each of which made a separate and unrelated testamentary gift. There was evidence that all the writing had been done on the same typewriter, but the spacing and number of lines differed from page to page. Neither of the attesting witnesses examined any of the sheets but the top one on which they signed, but had seen several other sheets loosely fastened to it. From a decree directing probate of all the sheets, the contestants appealed. *Held,* that the decree should be reversed, since loose sheets to be sustained as a will must, in the absence of other evidence of proper execution, be connected by their internal coherence and continuity of sense. *In re Maginn's Estate* (1923, Pa.) 122 Atl. 264.

The requirement of rhetorical unity is a sound limitation on the settled rule that separate sheets of paper having no physical connection may be admitted to probate upon proof that they were intended as part of the testator's will. *Matter of Snell* (1900, Surro. Ct.) 32 Misc. 611, 67 N. Y. Supp. 581; *In re Swaim's Will* (1913) 162 N. C. 213, 78 S. E. 72; (1920) 33 HARV. L. REV. 989; 1 Schouler, *Wills* (6th ed. 1923) sec. 391. This is analogous to incorporation by reference. See (1924) 33 YALE LAW JOURNAL, 335.