CURRENT DECISIONS

CONFLICT OF LAWS—JURISDICTION FOR DIVORCE—DOMICIL—NATIONALITY.—A husband and wife, having been married and continuously domiciled in France, brought cross-actions for divorce. The husband was a citizen of Argentina, the wife a native of France. Argentine law does not permit divorce, but only legal separation. Article 7 of the Argentine Civil Code provides that the capacity of Argentinians for acts performed abroad is governed by the law of their domicil. By French law divorce was obtainable. According to Argentine law the marriage of an Argentinian to an alien woman does not confer his nationality upon her, in which event under French law she retains her French citizenship. *Held,* on the question of jurisdiction, that divorce would be granted; and on the question of citizenship, that the wife was French. *Rocholl v. Rocholl,* Tribunal civil de la Seine (4th Chamber) December 8, 1915, reported in (1917) 44 Clunet, 1020.

Here the provision of the law of the husband's nationality to the effect that capacity for legal acts of Argentinians abroad was to be governed by the *lex domicilii* was deemed to qualify the absolute prohibition of divorce, the husband being domiciled in France, where divorce was permitted. Moreover, the court held the wife to have retained her French nationality on marriage, in accordance with the French law, because by the law of her husband's country, marriage did not confer his nationality upon her. Under the United States Act of March 2, 1907, section 3, providing that "any American woman who marries a foreigner shall take the nationality of her husband," a wife similarly situated would have lost American citizenship without acquiring Argentinian citizenship. Our law has overlooked the wise precaution of France safeguarding native women against statelessness. See (1918) *27* YALE LAW JOURNAL, 840.

CONSTITUTIONAL LAW—WAR POWERS—KEEPING BROTHEL IN VIOLATION OF SELECTIVE DRAFT ACT.—The defendant was indicted for a conspiracy to violate section 13 of the Selective Draft Act, and the regulations of the Secretary of War promulgated in pursuance thereof, by keeping a house of ill fame within five miles of the Columbus Barracks. A demurrer was interposed. *Held,* that the Act was a valid exercise of the war powers of Congress. *United States v. Casey* (1918, S. D. Oh.) 247 Fed. 362. *Accord, United States v. Scott* (1918, D. R. I.) 248 Fed. 361.

While in time of peace regulations of the character here involved would fall within the police power reserved to the states, there seems no reason to doubt the correctness of the court's decision that, as incidental to its war powers, Congress may prohibit acts which militate against the health, morals and efficiency of its military and naval forces. It is expressly authorized "to make all laws which shall be necessary and proper for carrying into execution" the war powers. Constitution, Art. 1, sec. 8, cl. 18.

CONSTITUTIONAL LAW—WAR POWERS—REGULATION OF FOOD PRICES.—The defendant was convicted of selling bread at a price higher than that permitted by the regulations made pursuant to the War Precautions Act of Australia. He contended that the Act was unconstitutional. *Held,* that under the constitutional power "to make laws . . . with respect to the naval and military defense of the Commonwealth" the Act was constitutional. Duffy and Rich, JJ., *dissenting. Farey v. Burvett* (1916, Australia) 21 C. L. R. 433, reported in 7 Brit. R. C. 628.

The case is of interest to American readers because the provisions in the Australian Constitution are sufficiently similar to those on which the war powers of our Congress depend, so that the case may be thought a persuasive authority upon the question of the validity of our Food Control Act of August 10, 1917. Indeed, the words of the Australian provision seem rather less broad than the language in our own Constitution. *Cf. United States v. Casey*, noted *supra*.

CONTRACTS—CONSTRUCTION—AMERICAN WATERS AS "WAR REGION."—A ship was chartered under an agreement providing that if the charterers should order her to trade "in the war region," war risk insurance premiums paid by the owners should be refunded to them by the charterers. The ship was trading between Sydney (C. B.), Halifax and Boston when a number of vessels were sunk in one day by a German submarine near Nantucket Lightship. There were no further sinkings in American waters and the submarine was not again reported, but premiums on insurance in these waters were for a time greatly increased. Two days after the sinkings the owners effected war risk insurance at the increased premium, and suit was brought against the charterers to recover the premium so paid. *Held* (the Lord Chancellor dissenting), that the "war region," for the purposes of the agreement in question, must be held to include any waters where for the time being warlike operations were being conducted or were reasonably to be apprehended, or (*per* Lord Dunedin) where the war affected the risk that ships would run; that the plaintiffs had acted reasonably; and that they were entitled to recover the premiums paid. *Dominion Coal Co. v. Maskinonge S. S. Co.* (1918, H. of L.) 118 L. T. Rep. N. S. 115.

The case has, perhaps, more news interest than legal importance. Considering all the circumstances and the apparent object of the provision in question, the construction adopted seems a reasonable one.

CONTRACTS—TRUSTS—THIRD PARTY BENEFICIARY—SUIT BY DONEE-BENEFICIARY.—Land was conveyed by A. to her mother, E., on the latter's promise to A. that she would pay to A.'s daughter, the plaintiff, a certain sum of money that had been invested in the land by A.'s husband, in case E. should ever sell the land or should die without selling it. E. died without having performed her promise. *Held*, that the plaintiff has a valid claim against E.'s executor for the promised amount. *In re Edmundson's Estate* (1918, Pa.) 103 Atl. 277.

In this case the plaintiff was the sole beneficiary of the contract and was a mere donee. She was the daughter of the promisee, but the court rightly makes no reference to this fact. *Cf. Seaver v. Ransom* (1917, App. Div.) 168 N. Y. Supp. 454, discussed in 27 YALE LAW JOURNAL, 563. In the present case the promisor received property, but not as a trustee. The contract created an ordinary conditional debt in favor of a third person.

COURTS-MARTIAL—PERSONS SUBJECT TO MILITARY LAW—PASSENGER ON ARMY TRANSPORT.—A passenger on an army transport returning from France volunteered to stand watch and did so for several days, but finally refused to continue, although ordered so to do by the army officer in charge of the vessel. For disobedience of this order he was sentenced by a court-martial to five years' imprisonment. He applied for a writ of *habeas corpus* to obtain his release from imprisonment. *Held*, that the petitioner was not entitled to be released, since he was subject to the jurisdiction of the court-martial as a person "accompanying or serving with the armies of the United States in the field." *Ex parte Gerlach* (1917, S. D. N. Y.) 247 Fed. 616.

Prior to the enactment of the present Articles of War two classes of civilians were subject to military discipline in time of war: (a) "retainers to the camp"

and (b) "persons serving with the armies of the United States in the field." See 1 Winthrop, *Mil. Law*, 117 *et seq.* Article 2 of the present Articles of War (Act of Aug. 29, 1916, Comp. St. 1916, sec. 2308a) has added a third class, namely, "persons accompanying the armies of the United States." The principal case is the first, so far as discovered, to place a judicial construction upon this language. Judge A. N. Hand states in the opinion: "The captain in charge of the vessel had, in my opinion, the right to call upon all persons on board to protect the transport in any way that seemed best in view of the danger. The section of the Articles of War subjecting persons accompanying armies to military authority not only enables military officers to preserve order on the part of such persons, but also in the cases that it covers to call on them for assistance and direct their action while they are properly in the field of military operations."

CRIMINAL PROCEDURE—AMENDMENTS—EFFECT OF CLERICAL ERROR IN INDICTMENT.—An indictment found on February 8, 1915, charged the defendant with having committed the criminal acts in question on October 17, 1915, i. e. subsequent to the finding of the indictment. The trial court permitted the prosecution to amend the indictment so as to change 1915 to 1914. From a decision of the New York Appellate Division affirming this decision, the defendant appealed. *Held* (two justices dissenting), that the defect in the indictment was one of substance which could not be cured by amendment. *People v. Van Every* (1917, N. Y.) 118 N. E. 244.

The decision is put on the ground that, although the precise time at which the crime was committed need not be stated in an indictment and the New York statute permits indictments to be amended on just terms at the trial in order to correct variances between proof and allegations, nevertheless the indictment in question was invalid from the beginning and to allow an amendment would be to permit the trial court to usurp the functions of the grand jury. In taking this view the court seems clearly to be following the precedents in New York and other states. It seems equally clear that in some way our system of criminal procedure ought to be so amended as to permit of the correction without re-indictment of what was obviously a mere clerical error. Probably that could best be done in connection with a general reform and simplification of the forms of indictments.

INSURANCE (MARINE)—WHETHER INSURANCE AGAINST "MEN-OF-WAR" COVERS ABANDONMENT OF VOYAGE FROM REASONABLE FEAR OF CAPTURE.—Goods in transit by a German ship from Calcutta to Hamburg were insured by English owners in June, 1914, against various perils, including "men-of-war . . . enemies . . . takings at sea, arrests, restraints, and detainments of all kings, princes, and people of what nation, condition and quality soever." War broke out between Great Britain and France on one side and Germany on the other while the vessel was at sea, and the captain put into Messina, then a neutral port, to avoid the risk of capture by British or French cruisers then in the Mediterranean. He later moved the ship to Syracuse, and declared the voyage abandoned. The owners of the cargo sued the insurer, claiming a constructive total loss by a peril insured against. The ship was at no time pursued by any hostile cruiser, nor was any actually sighted. It appeared by a statement from the British Admiralty that a German steamer proceeding through the Mediterranean at the time in question would have been "in peril of capture by British or allied warships." *Held*, that the frustation of the adventure was due, not to the peril insured against, but to something done to avoid that peril, and that the insurer was not liable. *Becker, Gray & Co. v. London Assurance Corp.* (1917, H. of L.) 117 L. T. Rep. N. S. 609.

The case does not go to the length of holding that nothing but actual capture by men-of-war would be within the policy, but seems to require at least such imminent peril of capture as to force the ship to take refuge in a neutral port in order to escape. The English courts have apparently adopted a stricter rule of construction for such cases than the American courts. For discussion of similar questions, see (1917) 26 YALE LAW JOURNAL, 247, 791; 28 *ibid.* 130.

INTERNATIONAL LAW—NATIONALITY—EFFECT OF MOTHER'S NATURALIZATION BY MARRIAGE ON NATIONALITY OF HER CHILDREN.—A and B, the children of a Belgian widow, who had married C, a Frenchman, were adopted by C and applied for registration in France as his adopted children. On refusal to register them on the ground that according to French law foreigners could not be adopted in France, it was *held,* that they were French and should be registered. *In re Hollaender and Donnet,* Court of Rouen, Sept. 8, 1916, reported in (1917) 44 CLUNET, 1009.

For an American case to the same effect see *Brown v. Shilling* (1856) 9 Md. 74. In most countries citizenship is conferred on minor children by the naturalization of the father or the widowed mother. Marriage of an alien woman to a citizen is a method of naturalization. *Mackenzie v. Hare* (1915) 239 U. S. 299. Adoption is not like marriage in this respect, and citizenship is not conferred on an alien child by his adoption by an American citizen. 3 Moore, *Digest of International Law,* sec. 415.

RULE AGAINST PERPETUITIES—REVERSIONARY LEASE TO BEGIN MORE THAN TWENTY-ONE YEARS IN FUTURE.—A lessee was in possession under a lease having nearly fifty years to run. The owner in fee of the reversion made a second lease of the premises to the same lessee for a term of thirty years, to begin immediately on the expiration of the existing lease. *Held,* that the second lease did not violate the rule against perpetuities. *Mann, Crossman & Paulin, Ltd. v. Registrar* (1917, Ch. D.) 117 L. T. Rep. N. S. 705.

This seems to be the first direct decision on the point involved. The question is discussed by Mr. Edwin H. Abbot, Jr., in his article in this number on *Leases and the Rule against Perpetuities* (page 880, *supra*). The above decision is in accord with the views there expressed.

SALES—RESCISSION FOR FRAUD—EFFECT OF VENDOR'S REFUSAL TO ACCEPT TENDER OF GOODS.—The defendant induced the plaintiff to buy goods by fraudulent representations that he owned them. On discovering the fraud, the plaintiff promply offered to return the goods and demanded that the purchase price be refunded. The defendant refused to do so. The plaintiff sued to recover the purchase price. *Held,* (Smith, J., dissenting) that the plaintiff was not entitled to recover the purchase price. *Kennedy v. Hasselstrom* (1918, S. D.) 166 N. W. 231.

The view of the dissenting judge seems obviously correct. In the case of sales of chattels induced by fradulent misrepresentations, the law is well settled that the misrepresentee has a legal power by appropriate notice and tender to the misrepresentor to bring about a rescission. *Tilley v. Bowman, Ltd.* [1910] 1 K. B. 745.

WILLS—CONSTRUCTION—POWERS OF LIFE TENANT.—A codicil to a will gave one to whom the will gave only a life estate the power "to execute and deliver deeds of conveyance and absolute title" to the property whenever the devisee of the life estate "believed it to be of advantage to sell the same." The life tenant filed a bill in equity asking the court to construe the will, making the

remaindermen defendants. *Held,* that the codicil did not enlarge the estate of the life tenant but merely conferred a legal power to convey the property in fee, and that the life tenant would upon a sale be entitled merely to the income of the proceeds, the principal to be distributed among the remaindermen on the death of the life tenant. *Barton v. Barton* (1918, Ill.) 119 N. E. 320.

The decision turns, of course, purely upon the fair construction of the language of the testator. It is interesting chiefly for the reason that it furnishes an excellent illustration of a legal power vested in one person to transfer rights and other jural relations which are vested in others. The conveyance of the life tenant would divest not only the rights, etc., of the life tenant but also those of the remaindermen. It would also invest the grantee with an aggregate of jural relations—a fee simple—differing in many ways from those divested by the conveyance.

WORKMEN'S COMPENSATION ACT—INJURY DUE TO THIRD PERSON'S FAULT—SUBROGATION OF THE EMPLOYER TO THE RIGHTS OF THE EMPLOYEE.—The plaintiff was an Illinois employer who had elected to be bound by the Workmen's Compensation Act of that state. One of his employees was injured by the negligence of the defendant and applied for compensation under the Act, which was paid by the plaintiff's insurer. Under the Illinois Act such an employer, having once become obligated to pay compensation, is subrogated to the rights of the injured employee against third persons not subject to the Act, in order to indemnify himself, any surplus collected being held for the employee. The plaintiff brought action against the defendant. The defendant claimed that the plaintiff employer was not the proper plaintiff, since the insurance company had paid the compensation. *Held,* that the plaintiff was the proper party to sue. *Marshall-Jackson Co. v. Jeffery* (1918, Wis.) 166 N. W. 647.

In absence of a provision in the statute to that effect, an employer obligated to pay under a Workmen's Compensation Act has no right of action against the wrongdoer. *Inter-State Tel. Co. v. Public Service Elec. Co.* (1914, Sup. Ct.) 86 N. J. L. 26, 90 Atl. 1062. When he is given such a right, therefore, the nature of the right depends on the statute creating it. In construing the Illinois statute, the Wisconsin court in the principal case held that the right thus created is not one that the employer can assign to the insurer, and hence not one to which the insurer can be subrogated. In construing their own statute, the same court had held otherwise. *McGarvey v. Independent Oil & Grease Co.* (1914) 156 Wis. 580, 146 N. W. 895. For other peculiarities of the Illinois statute, see (1918) 27 YALE LAW JOURNAL, 708.