COMMENT.

A recent decision of the Supreme Court of Indiana adds one more to the restrictions and penalties attending the sale of intoxicating liquors. A business block was built in a street previously used for private residences, and a saloon licensed by the County Commissioners opened in it, against the protest of the owners and occupants of the houses in the vicinity. The owner of an adjoining residence brought suit to recover damages for the injury caused by the proximity of the saloon, and produced testimony proving that her property had suffered damage on its account. The plaintiff's attorney took the ground that carrying on such a business is a nuisance of itself, tending to depreciate the value of property situated near it, and that damages must be given for such depreciation. The counsel for the defendant maintained that his license from the County Commissioners, in accordance with an act of the legislature of the State, was a sufficient answer and justification; if he violated his license, the law could punish him, but the incidental injury to property in the vicinity, resulting from the presence of a licensed saloon, was not sufficient ground for a suit to recover damages—otherwise the law must treat as an injury what it expressly authorized and sanctioned. After a trial and rehearing in both the lower and the Supreme Court, judgment for damages was given in favor of the property owner. In its final decision the court holds that "the liquor business is immoral, licensed on that account by the State so that the community may have legal safeguards against the damages of the unrestricted sale of liquor. The rights of the citizen are not to be sacrificed because the liquor traffic is regulated by act of the legislature, and though the law licenses the saloon, it does not thereby confer the right to injure adjacent property. The law cannot authorize the creation or maintenance of what is confessedly injurious to any man's property unless a public benefit transcending the particular injury is thereby received. A saloon is a nuisance at law and the person whose property is injured thereby is entitled to recover from the keeper damages equal to the injury sustained."

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In the case of *Wright* v. *Abbot*, the full bench of the Massachusetts Supreme Court, on January 11th, rendered a decision that where a verdict is arrived at by casting lots, the verdict is unlawful, and that the sheriff who had charge of the jury might testify

to what he had heard said in the jury-room. The jurors trying the case decided that eleven ballots should be put into a hat, eight for the defendant and three for the plaintiff; that one juror having been blindfolded, should draw out a ballot and all would agree that this ballot should be the verdict. The sheriff testified that he had heard these deliberations; and the plaintiff excepted to the action of the court in allowing this testimony. The court in overruling these exceptions said that it certainly was not the duty of an officer who has charge of a jury to listen to their deliberations, yet if he does so, his testimony in regard to the affair cannot be excluded. And that since the affidavits of jurors or their testimony or subsequent declarations in regard to misconduct in the jury-room are excluded, independent evidence should be admitted, and that the evil consequences to be apprehended from admitting such evidence are less than the consequences of forbidding all inquiry into the matter.

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State ownership of railroads, telegraphs, grain elevators and like socialistic schemes receive a set back from a recent decision of the Supreme Court of Minnesota. The last legislature appropriated $200,000 to erect a warehouse for public storage of grain and to publish regular market reports. The act provided more explicitly that the State board of railroad and warehouse commissioners should purchase a site on the water front at Duluth and should erect thereon a grain elevator, with a capacity of 1,500,000 bushels, having facilities for weighing, unloading, cleaning and storing the grain. Henry Rippe, a citizen of Minnesota, objected to this act, as a step toward paternalism, and went into court for an order restraining the commissioners from carrying out the provisions of the act, on the ground that it violated the constitution. The lower court refused to interfere and the matter was carried up to the Supreme Court, which declared that the act was unconstitutional and granted a permanent injunction restraining the building of the warehouse. The opinion, by Mitchell, Judge, distinguishes between a State regulating business of a public nature and engaging in that business on its own account. The State may regulate any business, affected with a public interest, under its police power, but it is forbidden to engage in any business by the clause of the constitution which says that the "State shall never contract any debt for work of internal improvement or be a party to the carrying on of such work." The defense contended that the erection of this elevator was merely auxiliary to the more effectual exercise of the State's police power in regulating grain

elevators. The opinion states to what lengths this doctrine could be carried if this act was declared constitutional. "The position of defendant's counsel really amounts to this: that whenever those engaged in any business which is affected by a public interest and hence the subject of governmental regulation, do not furnish the public proper and reasonable service, the State may, as a means of regulating the business, itself engage in it and furnish the public better service at reasonable rates, or by means of such State competition, compel others to do so. The very statement of the proposition is sufficient to show to what startling results it necessarily leads. It needs no argument to prove that if, in the exercise of the police power to regulate this business, the State itself has a right to erect and operate one elevator at Duluth it has the power to erect and operate twenty if necessary, at the same point, and also to erect and operate elevators at every point in the State where there is grain to be stored and handled. Railways are also, under this same police power, the subjects of State regulation; and if it should be deemed that they were not furnishing the public with proper service, or charging unreasonable rates, it could with equal propriety be claimed that it would be a proper means of exercising the police power of regulating the business, for the State itself to construct and operate competing railways. The hack business, the pawnbroker's business, the manufacture and sale of intoxicating liquors, and numerous other kinds of business that might be named, are also the subjects of State regulation; and, if counsel's contention is correct, we do not see why as a means of "regulating" these kinds of business, the State itself might not engage in running hacks and pawnbroker's shops, building and operating distilleries and breweries, or even running saloons." It is to be hoped that this decision will end the attempts to enact any more legislative novelties of the populist type. The constitutions of all the States contain clauses similar to the one on which this decision rests. Not being framed on socialistic lines, they effectually prevent the State from undertaking business of a non-political nature.

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Decisions of the courts carry with them an understanding that subsequent judgments will be framed in accordance with them, and justice certainly requires that doctrines once asserted be adhered to in the future. For instance, if the courts hold that an attorney has a right to rely on the accuracy and completeness of abstracts of titles furnished by companies organized for that purpose, and need not examine the original records, it would be

manifestly unjust to fasten on him, by a later decision, the liability for damages which resulted from his opinion as to a title when it is based on a faulty abstract. A question, relating to this subject in some points, as to whether a decision of a state court, on the construction of a statute, overruling a prior decision of its own, in which it had construed a very similar statute, has the effect of impairing the obligation of contracts, was raised in the case of *Wood* v. *Brady*, 14 Sup. Ct. Rep. 6. The prior statute had set a limit of time within which certain classes of contracts for public works should be completed; this limit was exceeded in one instance, by permission of the officials supervising the work, and the Supreme Court of the State held the extension of time valid. A subsequent statute was passed substantially embracing the provisions of the prior one as to the limit of time. Acting on the faith of the former construction, extensions were granted under the new statute, but when again considered by the court, the previous decision was overruled, and such extensions held to be illegal. Appeal was taken to the Supreme Court of the United States, but it was held that no federal question was involved in the case; the two decisions being constructions of different acts, the court was not bound to put the same construction on both. "Assuming that there may be a vested right under an erroneous decision, it is carrying the doctrine to an unwarrantable extent to say that the construction placed by the court on one statute implies an obligation on its part to put the same construction upon a different statute, though the language of the two may be the similar."