CURRENT DECISIONS

CONSTITUTIONAL LAW—DUE PROCESS—ALIENS—DEPORTATION WITHOUT A HEARING.—By the Aliens Restriction Act of 1914 the Secretary of State for Home Affairs was empowered to order the deportation of aliens if he should deem it to be conducive to the public good. The Secretary made such an order respecting one Venicoff, acting on a report of the Criminal Investigation Department that he was living on the immoral earnings of women. Venicoff obtained rules *nisi* for *habeas corpus* and *certiorari*. *Held,* that the rules should be discharged, because the Secretary was not bound to hear the party against whom the order was made, as he was not acting as a judicial tribunal but as an executive officer. *Rex v. The Home Secretary; Ex Parte Venicoff* [1920] 3 K. B. 72.

The contrary result would be reached in the United States because of the due process clause of the Constitution, which, of course, applies to proceedings for the deportation of aliens by the Department of Labor. Due process includes the right to be heard. But the courts, in reviewing such a proceeding, will sustain the action of the Secretary of Labor unless the proceeding was unfair, or unless there was no evidence to support the findings of fact, or unless the findings are insufficient in law to warrant deportation. *Gegiow v. Uhl* (1915) 239 U. S. 3, 36 Sup. Ct. 2; *Ex Parte Mitchell* (1919, N. D. N. Y.) 256 Fed. 229; *Colyer v. Skeffington* (1920, D. Mass.) 265 Fed. 17.

CONSTITUTIONAL LAW—DUE PROCESS—PAYMENT OF FINE TO PRIVATE CORPORATION.—The plaintiff owned two dogs which she kept in New York City without having obtained a license. She was found guilty and required to pay a fine. The act providing for the license impowered the American Society for the Prevention of Cruelty to Animals to enforce its provisions and to collect the fees for issuing such licenses and use them to carry out the Act and to maintain a shelter for lost and homeless animals. The plaintiff contested the act as unconstitutional. *Held,* that the act was valid. *Nicchia v. People* (1920, U. S.) 41 Sup. Ct. 103.

Dogs are placed in a class with monkeys, cats, parrots, canaries and other similar animals which man keeps to please his fancy. This class stands midway between *ferae naturae* in which there is no property and domestic animals in which the right of property is complete. *Sentell v. N. O. & C. R. R.* (1897) 166 U. S. 698, 17 Sup. Ct. 693; see note, 40 L. R. A. 503. They are proper subjects for the exercise of the police power. 2 Dillon, *Municipal Corporations* (5th ed. 1911) sec. 724. The instant case raised the question of whether the payment of the fees to a private corporation was valid. For a discussion of this point see *Fox v. Mohawk and H. R. Humane Society* (1901) 165 N. Y. 517, 522, 59 N. E. 353, 354; *People ex rel. State Board of Charities v. New York S. P. C. C.* (1900) 161 N. Y. 233, 239, 250, 55 N. E. 1063.

CONSTITUTIONAL LAW—NO POWER IN STATE TO INTERFERE WITH THE EXECUTION OF A FEDERAL DUTY.—An employee of the Post Office Department of the United States while driving a government motor truck over a post road in the transportation of mail to Washington was arrested, tried, convicted, and fined for so driving without having obtained a license from the state. *Held,* that the conviction should be reversed. *Johnson v. Maryland* (1920, U. S.) 41 Sup. Ct. 16.

The court said that the state has no power to require such an employee to obtain a license by submitting to an examination concerning his competence and paying three dollars before performing his official duty in obedience to superior

command. If the employee acts under and within his federal authority, the state has no power to interfere. See *Ohio v. Thomas* (1899) 173 U. S. 276, 284, 19 Sup. Ct. 453, 455; see COMMENTS (1918) 28 YALE LAW JOURNAL, 61. But a state has the power to prescribe regulations for one engaged in interstate commerce. *Smith v. Alabama* (1888) 124 U. S. 465, 8 Sup. Ct. 564. As to who is an officer of the United States so as to be free from interference by the state, see Ann. Cas. 1914 B, 105, note.

CONSTITUTIONAL LAW—POLICE POWER—STATUTE IMPOSING LIABILITY UPON AUTOMOBILE OWNER FOR NEGLIGENCE OF HIS IMMEDIATE FAMILY.—The defendant's son negligently operated the defendant's automobile and injured the plaintiff. A statute provided that if the motor vehicle was being driven by an immediate member of the owner's family, it should be conclusively presumed that it was with the owner's consent and knowledge. The defendant offered evidence that his son took and was driving the automobile against his express wishes. *Held,* (by a divided court) that such evidence was inadmissible. *Hawkins v. Eomatinger* (1920, Mich.) 179 N. W. 249.

The court was divided on the question whether this statute was a reasonable exercise of the police power of the legislature. For a discussion of the owner's liability in the absence of statute, see (1920) 29 YALE LAW JOURNAL, 467; (1920) 20 COL. L. REV. 213.

CONSTITUTIONAL LAW—REPEAL OF TAX EXEMPTION NOT AN IMPAIRMENT OF OBLIGATION OF CONTRACTS.—The defendant and city of Troy, in 1852, agreed on a plan to construct a terminal, by which agreement, among other things, the city covenanted to join in an application to the legislature of New York that the defendant should be exempt from taxation upon an amount exceeding its capital stock, which was $30,000. In 1853, the desired act was passed. In 1858, a new agreement with practically the same provisions was made, to replace that of 1852. In 1909, the act of 1853 was repealed and the assessors of Troy assessed the defendant for $783,984. The defendant claimed that the act of 1909 violated the contract clause of the federal Constitution. *Held,* that the act was constitutional. *People ex rel. Troy Union Ry. v. Mealy* (1920, U. S.) 41 Sup. Ct. 17.

This decision illustrates the adverse attitude of the courts toward claims of exemptions from taxation. As to the power of a municipality to exempt property from taxation see *Tarver v. City of Dalton* (1910) 134 Ga. 462, 67 S. E. 929, 29 L. R. A. (N. S.) 183, note. For a discussion of the repeal of exemption laws and absence of consideration for same, see *Wisconsin & Michigan Ry. v. Powers* (1903) 191 U. S. 379, 385, 24 Sup. Ct. 107, 108. See also (1921) 5 IOWA L. BULL. 265.

CONTRACTS—MUTUALITY—INTERPRETATION OF "REQUIREMENT CONTRACT."—The plaintiff sued for the breach of a written contract whereby the defendant was to sell to him the entire supply of newspaper necessary for his business for one year, estimated at a certain tonnage. The plaintiff resold part of the paper at a profit instead of using it in his business. The question was whether this contract only included the amount of paper actually used in the business, or whether the plaintiff had the privilege of ordering the amount of the estimated tonnage. *Held,* (Ward, J., *dissenting*) that the defendant was under a duty to deliver only as much paper as the plaintiff used in his business. *National Publishing Co. v. International Paper Co.* (Nov. 12, 1920) U. S. C. C. A. 2d Oct. Term 1920, No. 11.

It has been held that the quantity contracted for must be reasonably certain or capable of being approximately ascertained. See (1921) 30 YALE LAW

JOURNAL, 297. The insertion of the estimated tonnage in the instant case serves, therefore, only to make the terms of the contract more certain. The lack of mutuality is also negatived by the fact that the plaintiff is under a duty to order the amount actually required in his business. *Jenkins & Co. v. Anaheim Sugar Co.* (1918, C. C. A. 9th) 247 Fed. 958. Hence, the interpretation of the intention of the parties seems sound. See *Lima Locomotive & Machine Co. v. Nat'l Steel Castings Co.* (1907, C. C. A. 6th) 155 Fed. 77.

CRIMINAL LAW—SUICIDE—"ADMINISTERING" POISON TO ANOTHER.—The wife of the accused was incurably ill and had tried to end her suffering by drinking poison. Having once failed, she requested her husband to mix Paris Green and water in a cup and place it within her reach. He did so, but in no other way encouraged her purpose. A statute made "murder by means of poison," murder in the first degree. *Held,* that accused was guilty of murder in the first degree. *People v. Roberts* (1920, Mich.) 178 N. W. 690.

See COMMENTS, *supra,* p. 408.

INSURANCE—SUICIDE OF INSURED NOT AN IMPLIED EXCEPTED RISK.—One Johnson, who was insured by the defendant companies, committed suicide, while sane, more than two years after the policies were issued. One policy, payable to his wife, contained a provision that it should be void if the insured should die by his own hand within two years. The other policy, payable to his administrator, contained a provision that it should be incontestable after one year, except for non-payment of premiums. *Held,* that the companies were liable on the policies. *Northwestern Mutual Life Ins. Co. v. Johnson* and *National Life Ins. Co. v. Miller* (1920, U. S.), 41 Sup. Ct. 47.

See COMMENTS, *supra,* p. 401.

SALES—IMPLIED WARRANTIES OF WHOLESOMENESS—STOCK SOLD FOR FOOD.—The plaintiffs purchased 22 hogs from the defendant, a stock dealer. Within thirty-six hours thereafter the hogs became sick and commenced dying from cholera. The plaintiffs brought an action to recover the purchase price. An instruction was given that, if the defendant sold these hogs to the plaintiffs knowing that they intended to use them for food, then the defendant impliedly warranted them to be fit for that purpose. *Held,* that the instruction was erroneous, as this was a case of *caveat emptor. Wells v. Welch* (1920, Mo. App.) 224 S. W. 120.

The instruction held to be erroneous suggests what would seem to be the better rule. It is impossible to justify on any grounds such a rigid application of the doctrine of *caveat emptor.* See (1920) 6 VA. L. REG. (N. S.) 389. The doctrine has been recently so restricted as to be almost abrogated. *Foote v. Wilson* (1919) 104 Kan. 191, 178 Pac. 430. For a thorough analysis of the subject see COMMENTS (1920) 29 YALE LAW JOURNAL, 782.

TAXATION—FEDERAL INCOME TAX—GAINS REALIZED ON SALE OF SECURITIES NOT INCOME.—The plaintiff paid under protest a federal income tax for the year 1916, assessed on the basis of gain derived from the sale of bonds. The bonds had been purchased before March 1, 1913, and on that date their market value was much lower than the purchase price. In 1916 they were sold by the plaintiff, certain of them at their original cost to him, others at a slight advance over cost price, but all at a great advance over their market value on March 1, 1913. In each case the difference between the sale price and the market value on that date was taxed as income. The plaintiff was not engaged as a trader in stocks or bonds, but had purchased the bonds for investment. He brought suit to recover the tax. *Held,* that the tax was illegally imposed and that the

plaintiff was entitled to judgment. *Brewster v. Walsh, Collector* (Dec. 16, 1920, U. S. D. C., D. Conn.) No. 2133 (not yet officially reported).

See COMMENTS, *supra*, p. 396.

TAXATION—STATE ENTERPRISES AS LEGITIMATE PURPOSE.—The legislature of North Dakota created a state bank, an industrial commission with unprecedented powers, and a home building association; it issued bonds to furnish capital for the bank, and provided for state manufacturing, marketing, and operation of grain elevators and flour mills, declaring that the state would furnish homes to its residents and that bonds would issue to replace the funds its bank might employ in making loans on private real estate. Taxpayers sought to enjoin the enforcement of this legislation. *Held,* that when the people, the legislature, and the highest court of a state declare a purpose of public nature, the Supreme Court will not interfere unless beyond reasonable controversy the federal Constitution has been violated. *Green v. Frazier* (1920, U. S.) 40 Sup. Ct. 499.

The decision settles the much-questioned constitutionality of the Non-Partisan League's Legislative program. Except for its extreme application as illustrated in the instant case, the doctrine has often been tested before. See COMMENTS (1918) 27 YALE LAW JOURNAL, 824.

WILLS—PERPETUITIES—TRUST OF PERSONAL PROPERTY NOT VIOLATION OF STATUTE.—A testator bequeathed his residuary estate to a trustee to be held as follows: The income was to be divided among all the testator's children living at the time of the testator's death. When the youngest child reached the age of thirty years, the trustee was directed to divide one half of the corpus of the estate among the same beneficiaries, and when the youngest child reached the age of forty, the remainder was to be similarly divided. The Minnesota statute against perpetuities did not specifically exempt personal property. Minn. Gen. St. 1913, sec. 6710. *Held,* that the trust was valid even though it suspended the power of alienation beyond the statutory period, since personal property only was the subject of the trust. *In re Bell's Will* (1920, Minn.) 179 N. W. 650.

The decision is in accord with the rule laid down in an earlier case. *Y. M. C. A. v. Horn* (1913) 120 Minn. 404, 139 N. W. 805. But as has been pointed out, that decision could be defended only on the ground that the court was justified in making a strained statutory interpretation in order to validate a bequest to charity which would otherwise have failed, since charitable trusts are not permitted in Minnesota. See Thurston, *Charitable Gifts and the Minnesota Statute of Uses and Trusts* (1917) 1 MINN. L. REV. 226-229. Although the court recognized the force of the criticism of the former decision, and although there was not the same justification for it in the instant case, yet it felt itself bound by it, with the anomalous result of having a private trust of personal property not affected by the rule against perpetuities.