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ADVERSE POSSESSION—TITLE BY INNOCENT MISTAKEN OCCUPATION.—The plaintiff and defendant were adjoining landowners. The plaintiff mistakenly occupied a strip of the defendant's land for more than the statutory period under the belief that it was part of his tract. He disclaimed the intention of wanting any land that did not belong to him. The plaintiff sued to quiet title. The court instructed the jury that if the plaintiff had occupied the disputed strip by mistake, but without intending to claim beyond the true line, such occupation woud not be adverse possession. *Held,* that the instruction was erroneous. *Dawson v. Abbott* (1922, N. C.) 114 S. E. 15.

The case is in accord with the better rule, that possession for more than the statutory period under a claim of title is sufficient to make the holding adverse, regardless of the intention of the claimant. See COMMENTS (1921) 31 YALE LAW JOURNAL, 195; (1922) 31 *ibid.* 450; Ballantine, *Claim of Title in Adverse Possession* (1918) 28 *ibid.* 219, 223.

BILLS AND NOTES—FRAUD—REACQUISITION BY HOLDER WITH NOTICE AFTER INDORSEMENT TO AN INNOCENT INDORSEE.—The plaintiff purchased notes of the defendant with knowledge of the fact that they had been procured by fraud. He then transferred them to a purchaser for value without notice. Subsequently he repurchased them and brought this action to recover the balance due. *Held,* that the plaintiff could not recover against the maker. *Pierce v. Carlton* (1922, N. C.) 114 S. E. 13.

The court wisely construed the words, "and who is not himself a party to any fraud or illegality affecting the instrument," as applicable to the plaintiff. Negotiable Instruments Law, sec. 58; Brannan, *The Negotiable Instruments Law Annotated* (3d ed. 1919) 207; Brannan, *Some Necessary Amendments of the Negotiable Instruments Law* (1913) 26 HARV. L. REV. 493, 503; Chafee, *The Reacquisition of a Negotiable Instrument by a Prior Party* (1921) 21 COL. L. REV. 538; *contra, Horan v. Mason* (1910) 141 App. Div. 89, 125 N. Y. Supp. 668.

CONSTITUTIONAL LAW—NATURALIZATION—JAPANESE EXCLUDED FROM CITIZENSHIP.—The plaintiff, a Japanese, having the necessary residential and educational qualifications, sought citizenship. The questions were whether section 2169 of the Revised Statutes, restricting naturalization to aliens who were free white persons, was incorporated into the Act of June 29, 1906 (34 Stat. at L. 596), and, if so, whether a Japanese was eligible to citizenship. *Held,* that section 2169 was a part of the Act of June 29, 1906, and that consequently a Japanese was not eligible to citizenship. *Ozawa v. United States* (1922, U. S.) 43 Sup. Ct. 65.

The plaintiffs, two Japanese, were issued certificates of naturalization prior to 1906 by the Superior Court of Washington. They sought a mandamus to compel the Secretary of State of Washington to permit them to incorporate, his refusal being on the ground that not being eligible to citizenship they were not qualified under the laws of Washington to be incorporators. *Held,* that since, on the authority of the preceding case, the plaintiff were not entitled to naturalization, the judgment of the Superior Court was void. *Yamashita v. Hincle* (1922, U. S.) 43 Sup. Ct. 69.

Although the two instant cases are legally sound, yet there has been much discussion as to the wisdom of the policy involved. One view is that either

Japanese immigration should be definitely prohibited, or permission to settle here should be accompanied by the privilege of becoming a citizen. According to the other opinion, the law which prevents the naturalization of Japanese is intended to exclude them because they are racially unassimilable and their presence creates economic difficulties. "Free white persons" has been construed to mean and include people of the Caucasian race. *In re Charr* (1921, W. D. Mo.) 273 Fed. 207; *In re Singh* (1919, S. D. Calif.) 257 Fed. 209 (high caste Hindoo); *United States v. Balsara* (1910, C. C. A. 2d) 180 Fed. 694 (Parsee); *Dow v. United States* (1915, C. C. A. 4th) 226 Fed. 145 (Syrian); *In re Halladjian* (1909, Mass.) 174 Fed. 834 (Armenian); *In re Rodriguez* (1897, W. D. Tex.) 81 Fed. 337 (Mexican).

CONSTITUTIONAL LAW—POLICE POWER—UNJUSTIFIABLE EXTENSION.—The defendant anthracite coal company conveyed the surface of land to the plaintiffs in 1878, reserving the right to remove the coal under it. The plaintiffs agreed to take all risks and waive any claims for damages from such mining. The Kohler Act (Pa. Laws, 1921, No. 445) forbade the mining of anthracite coal in such a way as to cause subsidence. In a bill for an injunction the defendant claimed that the obligation of contract was impaired, and that his property was being taken for an insufficient public interest without compensation. *Held*, (one Justice *dissenting*) that the injunction should not be issued. *Pennsylvania Coal Co. v. Mahon* (1922, U. S.) 43 Sup. Ct. 158.

Again the articulate social policy of a legislature is defeated by the "inarticulate major premise" of the courts. See Holmes *Path of the Law* (1897) 10 HARV. L. REV. 457, 467; COMMENTS (1922) 31 YALE LAW JOURNAL, 310, 314. In view of the minority opinion in the instant case and the majority opinion in the state court, there would seem to be ample precedent to support this statute. *Pennsylvania Coal Co. v. Mahon* (1922, Pa.) 118 Atl. 491; (1922) 71 U. PA. L. REV. 77. The decision may be another indication of a recent tendency to narrow the scope of legislative power, which is perhaps to be expected after the extended emergency limits of war time.

CONTRACTS—SILENCE AS ACCEPTANCE—USAGE OF TRADE.—The defendant's traveling salesman solicited and obtained two orders from the plaintiff. The defendant filled the first but refused to ship the goods in the second order on the ground that he had never accepted it. In an action for breach of contract, the trial court refused to admit evidence to show a usage of the trade which required the rejection of offers within ten days if they were not accepted. *Held*, that the evidence should have been admitted. *May Co. v. Menzies Shoe Co.* (1922, N. C.) 113 S. E. 593.

The rule that silence is never acceptance is true only when unaccompanied by peculiar circumstances which may create a duty in the offeree to speak. Such peculiar circumstances may be the course of dealing; express agreement to so construe silence; or, as in the instant case, usage of trade. *Hobbs v. Massasoit Whip Co.* (1893) 158 Mass. 194, 33 N. E. 495; *House v. Beak* (1892) 141 Ill. 290, 30 N. E. 1065; see (1918) 27 YALE LAW JOURNAL, 561.

CRIMINAL LAW—CONSPIRACY—SUBSTITUTION OF PRISONER.—The defendant, pursuant to an agreement with a prisoner on bail, presented himself at the workhouse and served the latter's term. *Held*, that this was a conspiracy. *Biskind v. United States* (1922, C. C. A. 6th) 281 Fed. 47.

The instant case is novel on its facts, but is justified by analogies. *Davis v. United States* (1901, C. C. A. 6th) 107 Fed. 753 (resisting expected arrest); *Drew v. Thaw* (1914) 235 U. S. 432, 35 Sup. Ct. 137 (withdrawing inmate from asylum); *Ex parte Lyman* (1913, D. C.) 202 Fed. 303 (bribing guard to permit escape from prison).

EVIDENCE—PRIVILEGE AGAINST SELF-INCRIMINATION IN BANKRUPTCY PROCEEDINGS.—The defendant, an involuntary bankrupt, refused to file schedules of his property on the ground that it might tend to incriminate him. *Held,* that since there was no reasonable ground to apprehend self-incrimination the bankrupt should file the schedule. *Matter of Arend* (1922, C. C. A. 2d) 68 N. Y. L. JOUR. 1.

The privilege against self-incrimination may be claimed in bankruptcy as well as in any other action. *Podolin v. Dry Goods Co.* (1914, C. C. A. 3d) 210 Fed. 97. Originally the witness himself was the sole judge in determining whether his answer would incriminate him. *Fisher v. Ronalds* (1852) 12 C. B. 761; *Ex parte Gauss* (1909) 223 Mo. 277, 122 S. W. 741. But the general rule, now, is that for a witness to claim his privilege it must appear that there is some possibility of self-incrimination as a result of his answer. *Regina v. Boyes* (1861, Q. B.) 1 Best & S. 311; *Mason v. United States* (1917) 244 U. S. 362, 37 Sup. Ct. 621. The question is thus resolved into one of burden of proof. *State v. Thaden* (1890) 43 Minn. 253, 45 N. W. 447; 4 Wigmore, *Evidence* (1905) 3137.

HUSBAND AND WIFE—ALIMONY WITHOUT SEPARATE MAINTENANCE OR DIVORCE.—The plaintiff was drawing a pension as widow of a Civil War veteran during a period of six years while she and the defendant were holding themselves out as man and wife. She then filed a bill to have this common-law marriage affirmed under Mich. Comp. Laws, 1915, ch. 217, sec. 11395, and in the same action asked for alimony. *Held,* that the evidence did not establish a common-law marriage, and hence the bill must be dismissed. *Lockwood v. Lockwood* (1922, Mich.) 189 N. W. 871.

By statute in Michigan, a wife may sue for alimony without also suing for divorce or separate maintenance. Mich. Comp. Laws, 1915, ch. 218, sec. 11479; *Meyerl v. Meyerl* (1901) 125 Mich. 607, 84 N. W. 1109. A valid marriage is necessary, however, before such relief can be given. *Clancy v. Clancy* (1887) 66 Mich. 202, 33 N. W. 889. As to her right to sue in other jurisdictions there is a sharp conflict. See *Hagert v. Hagert* (1911) 22 N. D. 290, 133 N. W. 1035; NOTES AND COMMENT (1912) 10 MICH. L. REV. 403.

INTOXICATING LIQUORS—STATE COURTS MAY ENFORCE NATIONAL PROHIBITION ACT.—The plaintiff brought a civil action in a state court to recover damages under the National Prohibition Act because intoxicating liquor was unlawfully sold to her husband. *Held,* that she could recover. *Smithers v. Brunkhorst* (1922, Wis.) 190 N. W. 349.

This decision seems to be the first directly on the point. It rests upon the accepted rule that where an Act of Congress creates a right which is not exclusively confined to the jurisdiction of federal courts, such right may be enforced in a state court. See *Chicago M. & St. P. Ry. v. McGinley* (1921) 175 Wis. 565, 185 N. W. 218.

LEGAL ETHICS—PRACTICE OF LAW BY CORPORATION.—The defendant corporation, for a stipulated yearly fee, agreed, *inter alia,* to furnish its patrons with all necessary legal advice to assist in the collection of their accounts, and to defend them in all actions brought against them in police and justice courts. It employed duly licensed attorneys to render these legal services. *Held,* that the contract was illegal. Calif. Const. art. 6, sec. 22; Calif. Code Civ. Procedure, 1915, secs. 171, 281, 1209. *People, ex rel. Lawyers' Institute of San Diego, v. Merchants' Protective Corp.* (1922, Calif.) 209 Pac. 363.

In spite of incontrovertible authority corporations will doubtless further persist in trying to practice law. The practice of law is not confined to the prosecution

of suits in court, but includes the drafting of all legal papers. *State v. Merchants' Protective Corp.* (1919) 105 Wash. 12, 177 Pac. 694; *Midland Credit Adjustment Co. v. Donnelly* (1920) 219 Ill. App. 271; *People v. People's Trust Co.* (1917) 180 App. Div. 494, 167 N. Y. Supp. 767; (1918) 18 COL. L. REV. 276; (1918) 2 MINN. L. REV. 461; CURRENT LEGISLATION (1917) 17 COL. L. REV. 78. Some legal or quasi-legal services a corporation is undoubtedly privileged to render its customers; but the cases tend increasingly to limit such activity, as one or another attempted evasion of the previous decisions comes before the courts.

PLEADING—INTERPLEADER—NOT GRANTED UNLESS SUITS WOULD BE MUTUALLY EXCLUSIVE.—The plaintiff deposited with the defendant bank a check drawn upon the X Bank. Upon notification from the X Bank that it had been credited with the amount of the check, the defendant notified the plaintiff that the deposit was subject to his order. Upon subsequent notification that the check was not good, the defendant charged it back to the plaintiff's account and, in clearing with the X Bank, refused to give credit to the latter. The plaintiff sued for the amount of the check, and the defendant sought to interplead the plaintiff and the X Bank. *Held,* that the interpleader should not be granted, since a suit by the X Bank would not be upon the same debt or duty as the present suit. *Graham v. Nat. Bank of Smyrna* (1922, Del. Super. Ct.) 118 Atl. 325.

Notice by a bank upon which a check is drawn, to a bank with which it is deposited, that the amount of the check is credited to the latter's account generally amounts to payment thereof and the establishment of an irrevocable book credit. *Cohen v. First Nat. Bank of Nogales* (1921, Ariz.) 198 Pac. 122; NOTES (1921) 21 COL. L. REV. 805; (1921) 31 YALE LAW JOURNAL, 95; *Security Nat. Bank v. Old Nat. Bank* (1917, C. C. A. 8th) 241 Fed. 1. This is not so when there is merely notice of receipt. However, even in that case undue delay in giving notice of dishonor discharges the indorser-depositor and prevents either cancellation of the original credit entry or set-off of the amount of the dishonored check against the original credit. *Swift & Co. v. Miller* (1916) 62 Ind. App. 312, 113 N. E. 447. Since the plaintiff and the X Bank each had a cause of action against the defendant in the instant case, the interpleader was properly denied. Chafee, *Modernizing Interpleader* (1921) 30 YALE LAW JOURNAL, 814; *cf. Alton & Peters v. Merritt* (1920) 145 Minn. 426, 177 N. W. 770.

STATUTES—INTERPRETATION.—To an indictment under the Act of Oct. 23, 1918 (40 Stat. at L. 1015) for a conspiracy to obtain payment of a false and fraudulent claim against the United States Shipping Board Emergency Fleet Corporation, the defense was that since the statute contained no reference as to the limits of its territorial jurisdiction, it must be construed not to extend to acts committed on the high seas. *Held,* that this was no defense. *United States v. Bowman* (1922, U. S.) 43 Sup. Ct. 39.

This case seems to be a proper relaxation of the general rule that penal statutes must be strictly construed. *United States v. Corbett* (1909) 215 U. S. 233, 30 Sup. Ct. 81; Bruncken, *Interpretation of the Written Law* (1915) 25 YALE LAW JOURNAL, 129; (1919) 28 *ibid.* 616; (1918) 28 *ibid.* 97; (1920) 20 COL. L. REV. 345; (1916) 16 *ibid.* 264; (1917) 20 LAW NOTES, 184; (1915) 1 VA. L. REG. (N. S.) 512.

TRIAL PRACTICE—GENERAL VERDICT SUPPORTED BY ONE GOOD COUNT STANDS.—The plaintiff was injured by flying debris resulting from the use of dynamite by the defendants. Suit was brought upon two counts: one for common law negligence, and the other for using an agency intrinsically dangerous under the circumstances. The court instructed the jury correctly on the first point, but

incorrectly and in favor of the plaintiff on the second count. There was a general verdict for the plaintiff. *Held*, that the general verdict should stand since it might be sustained on one of the counts. *Worth v. Dunn* (1922) 98 Conn. 51, 118 Atl. 467.

This point is in conflict. *Accord: Crossett v. Whelan* (1872) 44 Calif. 200; *Bays v. Herring* (1879) 51 Iowa, 286, 1 N. W. 558; *Aaronson v. City of New Haven* (1920) 94 Conn. 690, 110 Atl. 872; *contra: Lichtenstein v. Belknap* (1917, Sup. Ct.) 165 N. Y. Supp. 936; *Wrought Iron Range Co. v. Zeitz* (1917) 64 Colo. 87, 170 Pac. 181. See *Wladyka v. City of Waterbury* (1922, Conn.) 119 Atl. 149. For a general discussion, see (1920) 30 YALE LAW JOURNAL, 197.

UNFAIR COMPETITION—CREATION OF MONOPOLY—CONTRACTS IN RESTRAINT OF TRADE.—The Federal Trade Commission pursuant to its powers to prevent unfair competition under the Act of September 26, 1914 (38 Stat. at L. 717), ordered the respondent to desist from entering into contracts prohibiting wholesalers from handling competitive publications, on the ground that such contracts violated the Clayton Act, Act of October 15, 1914 (38 Stat. at L. 730, 731). *Held*, (two judges *doubting*), that the order should be set aside. *Federal Trade Comm. v. Curtis Pub. Co.* (1923, U. S.) 43 Sup. Ct. 210.

The defendants, formerly competing bill posters, organized an incorporated association to monopolize and control all trade and commerce in bill posting in the United States and Canada. The plaintiffs, solicitors of advertising not members of the defendants' organization, as a result of the defendants' acts, were disabled from competing in the markets. They sued for treble damages under the Sherman Act, Act of July 2, 1890 (26 Stat. at L. 209, 210). The complaint was dismissed. *Held*, that the judgment should be reversed. *Ramsay v. Associated Bill Posters of the United States and Canada* (1923, U. S.) 43 Sup. Ct. 167.

The cases are reconcilable on their facts. In the first case the Court found that the wholesalers were agents, that these exclusive agencies were necessary in order to carry out the company's selling plan of distribution through school boys who required special superintendence, and that only a limited number of dealers were affected. See Kales, *Restraint of Trade* (1918) sec. 156. In the second case it was clear to the Court that the defendants held a preponderating position in the field and intended to use the power of their combination to exclude others from competition. See Kales, *op. cit.* secs. 130-136.

WORKMEN'S COMPENSATION—SUNSTROKE NOT A HAZARD CONNECTED WITH EMPLOYMENT.—The deceased, after having worked for a day and a half of extreme heat, suffered a sunstroke which resulted in his death. Suit was brought under an act providing for compensation for injuries proximately caused by accident. *Held*, (three judges *dissenting*) that the hazard was not peculiar to the employment. *Lewis v. Ind. Comm.* (1922, Wis.) 190 N. W. 101.

The instant case is entirely out of harmony with the spirit of the workmen's compensation acts, and seems impervious to state precedents. See *Ellingson Lumber Co. v. Ind. Comm.* (1918) 168 Wis. 227, 169 N. W. 568; *Radtke v. Ind. Comm.* (1921) 174 Wis. 212, 183 N. W. 168; *Gilliland v. Edgar Zinc Co.* (1922, Kan.) 209 Pac. 658; (1920) 30 YALE LAW JOURNAL, 190. For cases which include sunstroke as "accidental means" in insurance policies, see (1922) 31 YALE LAW JOURNAL, 562.