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Closely following the organization last Summer of the bureau of Comparative Law of the American Bar Association, comes that recently accomplished at Brussels of "*L'Institut de Droit Comparé.*" The Minister of Justice of Belgium is the honorary president and Dr. Émile Stocquart, who has been a collaborator of Professor Dicey of Oxford, and is a well known writer on the history of jurisprudence and institutional government, is the active president. Its object is to publish a special bulletin at frequent intervals, containing contributions by its active and corresponding members, and translations into French of such of the statutes of all countries as are deemed of special note.

The scope of the Institute, in repect to its field of work, is somewhat broader than that of the "*Société de Législation étrangère*" of Paris, and it hopes, by a system of international correspondence, to be able to report the general progress of the world's legislation with greater promptitude. Each, no doubt, will help to spur on the other to better work.

Among the committee of organization of the new Institute we note the names of M. Pholien of Brussels, the "*premier avocat général,*" Professor Vauthier of the university of that place, and the "*directeur au Ministère de la Justice,*" M. Hallewyck, who has been specially delegated to this office by the Belgian government.

PUBLIC CONTROL OF AUTOMOBILES — EXTENT AND CONSTITUTIONALITY

That the law in its development to meet the needs of society, keeps an almost equal pace with the progress of invention, is, indeed, well illustrated in the assumption by the legislatures of the various states, of the regulation and control of the use of automobiles. Although otherwise governed by the same rules which regulate the use of the road by other vehicles, yet because of their peculiar appearance, the noise accompanying their locomotion, the rate of speed attainable by them, the manner of locomotion, and the uncertainty of control, and because of the danger therefore to life and property attendant upon their unrestrained use of the streets, statutes and ordinances, for the protection of the traveling public, have been passed regulating the use by automobiles of the streets. At every turn the constitutionality of such statutes and ordinances has been assailed, but the courts, without exception, have upheld their validity on the ground that public welfare necessitates such legislation.

In the recent case of *State v. Swagerty*, 102 S. W. (Mo.) 483, the defendant was convicted in the Justice of the Peace Court of St. Louis County, Missouri, of exceeding the speed limit provided for automobiles by statute, and fined. The Circuit Court, on appeal, affirmed the judgment and the case was further appealed.

The defendant insisted that the act upon which the prosecution was based is unconstitutional and void, in that it is a special law and operates only upon automobiles and not upon all vehicles using the public highways. He also insisted that the speed limit is unreasonable (1) as it applies only to automobiles and (2) because it is a speed less than that at which other vehicles and even persons on horseback go.

The court, however, held that the law in question "does not refer to particular persons or things of a class, and is, therefore, a general and not a special law; that the act is a police regulation and clearly within the power of the legislature to enact; and that this court has nothing to do with the reasonableness of the act, that being left to the legislature."

The judgment of the Circuit Court was affirmed.

The fundamental reason for such legislation is the demand therefor by the public welfare. All persons making use of the streets are entitled to such a use thereof as is proper and as will not interfere with the rights of others in an equal use thereof. In other words the rights of all travelers on the highway are reciprocal. Each is entitled to be free and unmolested in such use except as he is subject to reasonable regulations of proper authorities. The power to protect such rights is exercised by the legislature by virtue of its police power. The health, comfort, safety and welfare of society are involved and it becomes necessary that the rights, duties and liabilities of the owners and users of vehicles as between them and the traveling public should be

declared. *Radnor Township v. Bell*, 27 Pa. Super. Ct. 1; *Christy vs. Elliot*, 216 Ill. 31.

The automobile is a very recent invention. In appearance it presents a striking difference from other vehicles. It has a shape and form peculiar to itself. Moreover while in motion it is accompanied by the noise of its propelling engines. Its use is limited, by reason of the recentness of its invention, principally to the larger cities, and in the smaller towns and rural districts horses have not as yet become accustomed to its strange appearance and noise. Then, too, they are often of very great weight and are capable of being driven at a very high rate of speed, some reaching a speed of over a mile a minute. And the tendency is to drive them at an exceedingly high speed in reckless disregard of the rights of others. Great knowledge and skill are required in such cases to render such driving free from danger, and as a rule such knowledge is not possessed by the driver. So the legislature in order to reduce the danger to a minimum has assumed control of the use by them of the streets. *People v. Schneider*, 103 N. W. (Mich.) 172; *Radnor Township v. Bell* (supra); *Commonwealth v. Boyd*, 188 Mass. 79; *People v. MacWilliams*, 86 N Y. Supp. 357.

In order to enforce such laws it is necessary that the automobile may be easily and quickly identified. A great many automobiles are similar in appearance, and this, together with the fact that the face of the operator is partially, and sometimes wholly, concealed, makes it impossible to distinguish the driver or the machine. And so long as identification is impossible, the laws may be violated at the pleasure of the driver. So the legislature requires the owner or operator to place in a conspicuous place on his automobile a tag with a number printed thereon in very large figures. In case the law is violated, the number of the machine can be easily ascertained and by examination of the record of numbers, the name of the owner and operator may be found out, and penalties inflicted Knowing this, the driver, through fear of discovery and punishment, is deterred from violating the laws. *People v. Schneider* (supra).

The nature and extent of the the control exercised by the legislature or by the municipalities by virtue of power delegated by the legislature to them may be seen by an examination of the statutes and ordinances enacted. Such statutes and ordinances are classified in a note in 1 L. R. A. (N. S.) 215 as follows: (1) Registration, numbering, license, tax. (2) Regulations as to speed and safety appliances. (3) Prohibited hours and places. (4) Regulation of automobiles used for hire. (5) Restrictions as to transportation of gasolene carried by automobiles. For cases involving the above mentioned, 1 L. R. A. (N. S.) 215.

It is insisted that such statutes are unconstitutional in that they discriminate against automobiles, in that they limit and restrict the use of them in the public highway; that drivers of automobiles are entitled to the same rights and privileges in the use of the street, as drivers of other vehicles. The courts, however, hold this to be a valid exercise by the legislature of its

police power and that the act is uniform inasmuch as it affects all members of the same class alike. *Christy v. Elliot* (supra).

In some statutes it is provided that the rule as to registration, etc., shall not apply to a person manufacturing or dealing in automobiles or motor vehicles, except those for his own private use. In such cases it is contended that such provisions exclude the dealer and manufacturer from the operation of the statute, and that, therefore, the law is unconstitutional, it being class legislation. The courts hold such not to be the case. They hold that the statute is uniform as it applies to all vehicles used upon the public highway, for private use or for hire, and does not apply to machines while they are kept in stock for sale and not so used. *Commonwealth v. Densmore*, 29 Pa. Co. Ct. Rep. 217; *People v. MacWilliams* (supra).

Nor is the general act invalid because it fails to provide for taxing the vehicles of non-residents who habitually use the streets of the city. *Kersey v. City of Terre Haute*, 161 Ind. 471.

It is objected that the legislature by giving a municipality power to regulate, does not thereby give it power to license. The court holds that "the grant of authority to accomplish a certain purpose carries with it authority to use any proper and lawful means without which that purpose cannot be accomplished," and as the speed of automobiles cannot otherwise be regulated, such power to license was necessarily granted with the power to regulate. *People v. Schneider* (supra).

Nor is the license fee a tax, placing a double burden of taxation upon the owner, and therefore rendering the act unconstitutional. *Unwen v. State*, 64 Atl. (N. J.) 163; *Commonwealth v. Boyd* (supra); but see *City of Chicago v. Collins*, 175 Ill. 442.

A rather peculiar objection to the statute regulating speed is that speed means action, and is directly opposed to stopping, which is inaction. And the stopping a machine does not come within the meaning of regulation of its speed. The court held, however, that regulating the stopping of a machine was auxiliary to the object of regulating the speed, and that the act was not void as embracing more than the one subject expressed in the title. *Christy v. Elliot* (supra.)

CONSTITUTIONAL LAW—POLICE POWER—SLEEPING CARS

One more instance of our modern haphazard legislation, which is the result of acceding to the clamor of special interests without careful study of the whole situation, is found in the recent Wisconsin statute declared unconstitutional in the case of *State v. Redmon*, 114 N. W. (Wis.) 137. This statute was entitled, "An act—relating to the health and comfort of occupants of sleeping car berths;" and provided that whenever a person paid for the use of a double lower berth in a sleeping car, he should have the right to direct whether the upper berth should be left open or closed unless the upper berth was actually occupied by some other person; and the proprietor of the car and the person in charge of it should comply with such direction.

As liberty and property are so carefully protected by express provisions in our constitutions, it is natural that most of the attacks on these rights should be made under the guise of an exercise of the state's police power. This is because of the fact that our courts have ever held to the doctrine that the police power is so obviously essential to the public welfare that it is presumed that the framers of our constitutions did not intend to prohibit its exercise where reasonably necessary therefor, though such exercise might invade the scope, viewing the language in the literal sense, of some of the fundamental prohibitions protecting liberty and property. *Munn v. Illinois*, 94 U. S. 113; *People v. Ewer*, 141 N. Y. 129; *Lochner v. New York*, 198 U. S. 54. Here then was a loop hole in the constitution for the exponents of class legislation. As a result the police power has been stretched so far at times that it has been wittily defined as the power to pass unconstitutional laws.

No doubt the reason why the exercise of the police power has been so persistently abused is because the courts in defining it have fixed its limits in variable terms or else have admitted, as did Judge Brewer in *State v. Kansas City. etc., R. Co.*, 32 Fed. Rep. 723, "that no one knows its limits." Such must necessarily be the case from its very nature. The police power is not a fixed quantity because it is the expression of social, economic, and political conditions which are ever changing with the times. Yet no one denies that it has limits. In the first place we begin with the proposition that under its police power the state can legislate to promote the public health, safety, morals, and general welfare; and furthermore that when such legislation interferes with an individual's liberty and property, the federal constitution offers no protection. But thus broadly stated, the principle would be broad enough to include almost any legislation Therefore we find the courts attempting to hedge this power about with various limitations. In doing this they have recognized the fact that to curb the police power by fixed or rigid rules would be to destroy its very purpose and future usefulness. Therefore the limits have been fixed in such general and variable terms as: "that its purpose must affect the *public generally*;" and "that the means used are *reasonably necessary* for the accomplishment of the purpose and not *unduly oppressive* upon individuals " What then is meant by these terms, "public generally," "reasonably necessary," and "unduly oppressive?" It is impossible to exactly define them. At most our courts have merely given us a mass of individual decisions applying these variable tests to the facts in each individual case.

Thus the Supreme Court of Wisconsin in determining the unconstitutionality of this statute regulating the use of sleeping car berths has given us another illustrative case as to the limits of the state's police power. In the title of the act the legislature expressly stated that its purpose was to "promote health." But the court held that though such a statement in the title of an act was evidence of its real purpose yet such was not conclusive because it is a judicial function to define the proper sub-

jects for the exercise of police power. Although this doctrine has been repeatedly reaffirmed since so clearly enunciated by Chief Justice Marshall in *Marbury v. Madison*, 1 Cranch (U. S.), 178, yet social and class legislation is continuously appearing headed with titles declaring its purpose to be to promote the public health.

In considering whether or not the statute under consideration was one which affected the public generally, the court decided that it was not because it gave the person to be benefited an option. He could have the upper berth thrown back or not at pleasure. The court was clearly right here because it is contrary to the whole theory of the exercise of the police power in protection of health, that the recipient of the intended benefit should receive it or not as he wishes. Imagine a statute forbidding factory owners from employing women more than ten hours a day unless such women wished to work that long. It is absurd. The benefit is not intended to accrue to the individual as such but to the public at large through the individual. *In re Jacobs*, 98 N. Y. 98; *Holden v. Hardy*, 169 U. S. 366.

The court furthermore decided that even though such a statute did promote to some degree the public health, yet the benefit obtained thereby was very slight in proportion to the restraint and requirement imposed upon the owners of sleeping cars. Therefore the law was an unwarranted interference with property rights. In reaching this conclusion the court applied the recognized test of "reasonableness." In fact this word, "reasonableness," is the keystone of the whole doctrine of police power. The final question asked by our courts about any police power legislation is as to whether or not it is reasonable. *Bessette v. People*, 193 Ill. 334; *Health Department v. Rector*, 145 N. Y. 32; *Minneapolis, etc. Ry. Co. v. Minnesota*, 186 U. S. 268; *Southern Ry. Co. v. McNeil*, 155 Fed. 756. But what is unreasonable at one time may be reasonable at another. Circumstances change and public opinion, which must eventually find expression in the opinions of our judges, also changes. Hence the law of police power is variable and yields to the changing conditions of society. We see greater power in this respect readily conceded to the most democratic of governments to-day than despotic governments would have dared to claim in former times.

This great broadening of the scope of the state's police power in recent years has been a convenient cloak under which to rush through our state legislatures much poorly considered and unduly oppressive class legislation. The Wisconsin case under discussion is one more authority to help stem this tide of impulsive and ill-conceived legislation.

EFFECT OF FAILURE OF FOREIGN CORPORATION TO COMPLY WITH STATUTORY REQUIREMENTS

Can a foreign corporation, which has not complied with the requirements of the statutes of another state, recover from an agent in that state on his promisory note? The Supreme Court

of Minnesota has answered this question in the negative, in *Thomas Mfg. Co. v. Knapp*, 112 N. W. 989, mainly on the ground that the broad and controlling principles of public policy should not be subverted to that rule of private law which forbids an agent to question the right of his principal to money collected by him for his principal.

The fundamental proposition that a corporation has no existence beyond the limits of the sovereignty which created it, is well settled and admits of no question. Having only this existence and no absolute right of recognition in other states, but depending for such recognition and enforcement of its contracts upon their assent, it follows as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose; they may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion. These statutory provisions are police regulations intended to protect people and property in one state against spurious and irresponsible companies and it is plainly their intent to compel all such companies to comply with local laws and submit to our courts. Such statutes make compliance with them a condition precedent to entering into lawful contracts in that state *In re Comstock*, 3 Sawyer, 218; *Seamans v. Christian Bros. Mill Co.*, 66 Minn. 205.

There is a general proposition that if a foreign corporation fails to comply with the laws of a state, such as filing a certificate of the amount of the corporation's capital, or recording the appointment of an authorized agent on whom process may be served, the contracts which are made are not void, but action thereon is merely suspended until compliance with the statutes. This interpretation rests on the theory that the object of these laws is rather to induce the observance of the conditions, than to accomplish the forfeiture of a right of action belonging to a foreign corporation. *Carson Rand Co. v. Stern*, 129 Mo. 387; *Goddard v. Crefield Mills*, 75 Fed. 818; *Nat'l Mut'l. Fire Ins. Co. v. Pursell*, 10 Allen, 231. But it is interesting to note that Minnesota has taken the contrary view, with the result that a foreign corporation which has not complied with the statutes, at the time the contract was consummated, will not be allowed to maintain an action on the contract even though the requirements are met after the suit is begun. *Heileman Brewing Co. v. Peimeisl*, 85 Minn. 121. Minnesota has evidently favored the strict construction of such statutes, as being for the best interests of its citizens and tending to prevent litigation on contracts made in disregard of the law.

The defendant in this suit had ordered goods of one of the company's agents and it was found that he himself was an agent with certain clearly defined powers and duties. For these goods the defendant had given his promissory note and the plaintiff sued to recover thereon. The defense, the truth of which was not contested, was that the corporation had not complied with the

laws of Minnesota, which would prohibit it from maintaining the action, and the note was held unenforceable. That the agent had in turn sold the goods does not appear, but the court said the result would be the same, whether the suit were on a promissory note or for money had and received to the use of the principal.

The authority most nearly in point, and that relied upon by the plaintiff, is *United States Express Co. v. Lucas*, 36 Ind. 361, which allowed the principal to recover under similar circumstances. In the course of the opinion, the court observed: "We doubt very much whether the legislature intended, in the enactment of the statute in question, to produce or sanction any such consequences as that the agent, after having received the money, and after the transaction between the principal and third persons was completed, should be allowed to repudiate the agency and keep the money, applying it to his own use. The obligation of the agent to account for the money is separate and distinct from the contracts of the company with third persons, which were the subject matters of the statute. To hold that the agent is not bound to account for the money is to sanction an act of the grossest dishonesty, and bad faith on the part of the agent, without the accomplishment of any equivalent benefit to any one, or to the public. 'The contract of the agent to pay is not immediately connected with the illegal transaction; but it grows out of the receipt of the money for the use of the principal who may recover. *Story on Agency*, § 347." This seems to suggest that the illegality existed as between the corporation and third persons, and not as between the corporation and its agents; but where the statute expressly says, as does the Minnesota statute, that without compliance with the named requirements, no suit may be maintained on any demand, whether arising out of contract or tort, the result would seem to be clear that as to the corporation, there is no distinction between agents or third persons.

The court said further: "We think the agent is estopped to dispute the principal's title to money which he has received for him. A tenant cannot dispute the title of the landlord—a bailee cannot dispute the title of the bailor; especially he cannot set up title in himself. Why should an agent be allowed to place himself in a position of hostility to his principal and himself claim that which he has received for him?" But this question is answered by the Minnesota court thus: "The question is not what the agent, as between himself and his principal, should be permitted to do, but what the delinquent corporation is permitted to do, by the laws of the state."

There are numerous authorities which show that when the principal employs an agent, he contracts both for his zeal in the employment and vigilance to the exclusive advantage of the employer; so that the agent cannot make himself an adverse party. *Brooks v. Martin*, 2 Wall 70; *Murray v. Vanderbilt*, 39 Barb. 140. There is also a distinction, made in England, as to the actual receipt of the money by the agent; the rule being

that if the money has been actually paid to the agent, the principal may recover—not because it completes an illegal contract, but when the contract is at an end the agent, whose liability arises solely from the fact of having received money for another's use, can have no pretense to retain it. But if the agent has not actually received the money, but has debited himself with the amount in his account, to pay it to his employer, that will not enable the latter to support an action for money had and received to his use. *Paley on Agency*, p. 62. This distinction does not seem to be so carefully drawn in this country, but *United States Express Co. v. Lucas*, *supra*, tends to support the first part of the rule, although this would not be approved by the case under review.

A more recent text book writer has said: "If the main object for which the agent is employed is legal, yet if by the terms of the contract, and as a part of it, the agent is to act in an illegal character or manner in another part of the transaction, the whole contract is contaminated thereby, and the agent can recover no compensation even for his legal acts under the contract. Neither can the principal enforce any of his obligations; for the law will not assist any persons in evading the obligations imposed upon the whole community to conform to its direction and prohibitions, and as between the principal and his agent, the guilt is deemed to be equal. *In pari delicto, potior est conditio defendentis.* Therefore they must trust exclusively to the personal faith of each other as to the fulfilment of their mutual stipulations in illegal transactions." *Story on Agency*, § 195; 344.

That the Minnesota court has taken the stronger position on this question, we feel sure; not that agents should be allowed to retain moneys justly and morally belonging to their principals, but that, since statutes of this kind are neither onerous nor oppressive, corporations should not first entirely neglect to comply therewith, and then endeavor to do the very thing the law has forbidden. Compliance with these statutes is a mark of good faith, which opens the doors of the courts to the painstaking, and justly closes them to the careless and delinquent.