CURRENT DECISIONS

ACKNOWLEDGMENTS—TAKING SEPARATE ACKNOWLEDGMENT BY TELEPHONE.—A husband and wife executed a trust deed, and the wife's acknowledgment was taken over the telephone. The Code of Tennessee requires that a wife's acknowledgment be taken separately and after privy examination. The wife, claiming the trust deed was void as to her, sought to enjoin a sale of her homestead. *Held,* that her privy examination could not legally be taken over the telephone, that the notary's certificate could be impeached by her testimony, and that the deed was void as to her homestead rights. *Roach v. Francisco* (1917, Tenn.) 197 S. W. 1099.

It is not an uncommon practice of notaries to take acknowledgments by telephone, yet the courts have very seldom passed upon the validity of such acknowledgments. The principal case follows an earlier Tennessee decision. Only one other case has been found. *Banning v. Banning* (1889) 80 Cal. 271, 22 Pac. 210. There the court held that the notary's certificate could not be impeached by the wife's testimony. *Cf. Sullivan v. Bank* (1904) 37 Tex. Civ. App. 228, 83 S. W. 421 (holding that the oath to an affidavit cannot be taken over the telephone).

ALIEN ENEMIES—RIGHT TO SUE—SUMMARY SUSPENSION OF SUIT.—A German partnership, of which two members were subjects of Germany and resident therein and the third was a German subject resident in London, began suit in 1910 to recover funds embezzled by an agent and paid to the defendants. When the United States entered the war, the evidence had been closed, and the case was pending before a referee whose decision was being withheld to await the submission of briefs. A motion to dismiss the suit, made after our declaration of war, was denied on the ground that the alien enemy status of the plaintiffs must be set up by answer. It also appeared by affidavit that in 1910 the plaintiffs had assigned their cause of action to American citizens, as trustees for the benefit of creditors, of whom some were American banks and others alien enemies. *Held,* that the court had jurisdiction summarily to suspend prosecution of the suit whenever it was established by affidavit, or otherwise, that the plaintiffs were non-resident alien enemies, and that this defense need not be raised by supplemental answer; also that the prejudice to the American banks by suspending the suit was not a sufficient reason to refuse suspension; with a *dictum* that the Alien Enemy Property Custodian might intervene and continue the prosecution of the suit. *Rothbart v. Herzfeld* (1917, Sup. Ct.) 167 N. Y. Supp. 199.

On the general subject of the right of alien enemies to sue in our courts, see COMMENTS (1917) 27 YALE LAW JOURNAL 104, 108.

CONFLICT OF LAWS—MARRIED WOMAN'S CONTRACT—ENFORCEMENT IN STATE WHERE COMMON LAW DISABILITY PREVAILS.—In a suit brought in Idaho on a joint promissory note of a woman and her husband, made and payable in Oregon, judgment and execution was sought against the woman's separate property. In Idaho a *feme coverte* can contract only for her own benefit; Oregon has removed all common law disabilities. *Held,* that the wife's separate property was subject to execution. Budge, C. J., *dissenting. Meier & Frank Co. v. Bruce* (1917, Idaho) 168 Pac. 5.

The weight of authority, following *Milliken v. Pratt* (1878) 125 Mass. 374, is that a married woman's capacity to contract is to be determined by the law of the place where the contract is made rather than by that of her domicile. *A fortiori* is this true where the place of making and the place of performance coincide, as here. The dissent seeks to bring the case within the rule as to contracts contrary to the settled policy of the forum, being apparently influenced largely by the fact, not discussed by the majority, that the note was given to an Oregon assignee of a debt previously contracted in Idaho. *Cf.* as to extra-territorial effect of disability to contract marriage (1917) 27 YALE LAW JOURNAL 131.

CONSTITUTIONAL LAW—EQUAL PROTECTION OF THE LAWS—OHIO WORKMEN'S COMPENSATION ACT.—The Compensation Act of Ohio provides for compulsory contribution by employers to a state insurance fund from which compensation is paid to injured employees; but section 22 authorizes "employers who will abide by the rules of the state liability board of awards and may be of sufficient financial ability or credit to render certain the payment of compensation," to pay individually and directly to the injured employees the compensation provided for in the Act. In proceedings to oust certain insurance companies from the franchise of writing accident insurance for such employers, the constitutionality of section 22 was challenged on the ground that it prevented the Act from having a uniform operation. *Held,* that the section was a valid enactment. *State v. United States Fidelity etc. Co.*

The constitutionality of other sections of the Ohio Act was upheld in *Porter v. Hopkins* (1914) 91 Oh. St. 74, 109 N. E. 629. As to the validity of compensation acts in other states, see (1917) 26 YALE LAW JOURNAL 618; *27 ibid.* 136.

CONSTITUTIONAL LAW—FREEDOM OF CONTRACT—MINIMUM WAGE LAW FOR WOMEN.—In 1915 Arkansas enacted "an act to regulate the hours of labor, safeguard the health and establish a minimum wage for females." In proceedings by the State, the defendant contended that the portion of the act which relates to fixing wages was unconstitutional. *Held,* that the act was a valid exercise of the police power, being a regulation tending to guard the public morals and public health. McCullock, C. J., *dissenting. State v. Crowe* (1917, Ark.) 197 S. W. 4.

A similar statute in Oregon was upheld by the Supreme Court of that state, and its decision was recently affirmed by the federal Supreme Court without opinion, the court being equally divided. *Stettler v. O'Hara* (1914) 69 Oreg. 519, 139 Pac. 743; s. c. (1917) 243 U. S. 629, 37 Sup. Ct. 475. *Cf. The Oregon Ten Hour Law* (1917) 26 YALE LAW JOURNAL 607.

CONSTITUTIONAL LAW—QUALIFICATIONS OF VOTERS—WOMAN SUFFRAGE IN CITY ELECTIONS.—The charter of East Cleveland conferred upon women the right to vote in city elections. The petitioner sought by mandamus to enforce her right, the defendant election officials contending that the charter provision violated Sec. 1, Art. V of the Constitution which declares that "every white male citizen . . . shall have the qualifications of an elector, and be entitled to vote at all elections." *Held,* that the charter was valid since the Constitutional definition of the qualifications of electors is controlling only in offices and elections of Constitutional origin or cognizance and does not embrace municipal elections. Jones, J., *dissenting. State, ex rel. Taylor v. French* (1917, Oh.) 117 N. E. 173.

Many of the conflicting authorities are collected in the opinions.

CORPORATIONS—POWERS OF MAJORITY STOCKHOLDERS—RENEWAL OF CHARTER.—The charter of a commercial corporation was granted for a term of twenty years with the privilege of renewal at the expiration of such term. Under the authority of a majority vote of the stockholders the corporation filed application for a renewal. Certain minority stockholders brought suit for an injunction and a receivership to wind up the corporate affairs. *Held,* that the injunction should be denied, since, in view of the express provision in the charter for renewal, the vote of the majority stockholders was controlling. Fish, C. J., and Atkinson, J., *dissenting. McKemie v. Eady-Baker Grocery Co.* (1917, Ga.) 92 S. E. 282.

The rule that a "fundamental" change in the charter or organization of a corporation cannot be made without unanimous consent does not apply to changes expressly authorized by the charter itself or by general laws in force at the time of incorporation. 2 Clark & Marshall, *Private Corporations,* 1501; 3 *ibid.* 1916, and cases cited. But this statement in turn is of course subject to the qualification that the charter or statutory provision authorizing the changes may expressly or impliedly require something more than a majority vote. It was on this point that the court in the instant case divided, the minority holding that unanimous application for this renewal was impliedly required by the statutes in force at the time of organization.

DEATH BY WRONGFUL ACT—WHO MAY SUE—ADULT CHILDREN LOSING PROSPECTIVE GIFTS.—In an action for death by wrongful act, the administrator sued for the benefit of adult children. The decedent had habitually made to each child gifts of vegetables, fruit, etc., worth in all about fifty dollars a year. *Held,* that a verdict for the defendant was properly directed by the trial court, as the loss of prospective gifts of a similar character was not a "pecuniary injury" within the meaning of the Michigan Statute. Bird, J., *dissenting. Ormsbee v. Grand Trunk Western Ry. Co.* (1917, Mich.) 164 N. W. 408.

The authorities on the point involved are conflicting. In the majority of jurisdictions a recovery is allowed on behalf of adult children under similar circumstances. Tiffany, *Death by Wrongful Act,* sec. 169.

EDUCATIONAL INSTITUTIONS—CONTROL OF STUDENTS—EXPULSION FOR DISLOYALTY.—Leon Samson, a student in the junior class at Columbia University, made an address at a public "Emma Goldman meeting" in June, 1917. The newspapers reported that he stated that "as much as we hate the German Kaiser, we hate still more the American Kaiser," and he predicted that there would be "a draft revolution." After the conclusion of the academic year Samson was notified that he could not complete his course at Columbia. He brought suit to obtain a decree that he be allowed to continue as a student. *Held,* that the plaintiff had been guilty of such conduct as entitled the University to drop him from its student body. *Samson v. Trustees of Columbia Univ.* (1917, Sup. Ct.) 167 N. Y. Supp. 202, 101 Misc. 146.

The court expressed the view that a University impliedly contracts, upon admitting a student, that he may complete his course, but only on condition that he will so conduct himself as not to injure the University or lessen its proper control over its student body or impair its influence for good upon its students and the community. Clearly the plaintiff's unpatriotic and disloyal public statements violated this condition.

EXTRADITION—WHO ARE FUGITIVES—CRIMINAL WHOSE PROSECUTION IS BARRED BY STATUTE OF LIMITATIONS.—The petitioner was arrested in New York on a warrant for extradition to Illinois. On *habeas corpus* proceedings he contended that

he had left the state of Illinois after the statute of limitations had barred criminal prosecution in that state, and that consequently he had not "fled" and was not "a fugitive from justice" within the meaning of the constitutional and statutory provisions relating to interstate extradition. *Held,* that the defense of the statute of limitations could not be entertained on *habeas corpus* proceedings and that the petitioner was properly remanded to custody for extradition. *Biddinger v. Commissioner of Police* (1917) 38 Sup. Ct. 41.

On the precise point there appear to be few authorities, although the general principle has long been established that when the papers from the demanding state are in proper form, the only evidence admissible on the *habeas corpus* hearing is evidence tending to prove that the accused was not in the demanding state at the time the crime is alleged to have been committed.

INTERNATIONAL LAW—ADMIRALTY JURISDICTION—PUBLIC VESSEL OF FOREIGN POWER.—A libel was filed against an Argentine naval transport, whose officers and crew were enrolled in the Argentine navy. The libel was based upon collision with a scow while the naval vessel was engaged in transporting a cargo of general merchandise for the benefit of the Argentine Republic and as an incident to a proposed return voyage with coal and ammunition for the account of that government. *Held,* that the ship could not be libeled, it being a public vessel of a foreign government and under its control, custody and operation. *The Pampa* (1917, E. D. N. Y.) 245 Fed. 137.

This decision is in line with the decided weight of authority. *The Parlement Belge* (1880) 5 P. D. 197; *The Exchange* (1812, U. S.) 7 Cranch 116; *The Attualita* (1916, C. C. A. 4th) 238 Fed. 909, 911. On a question indirectly related, namely the immunity of diplomatic officers, see COMMENTS, p. 392.

INTERSTATE COMMERCE—FEDERAL EMPLOYERS' LIABILITY ACT—CROSSING FLAGMAN.—A crossing flagman, engaged in flagging on a railroad where interstate and intrastate trains were operated, was struck by an interstate train. He sued under the New Jersey Workmen's Compensation Act. *Held,* that the plaintiff was engaged in interstate commerce and that the federal Employers' Liability Act excluded compensation under the state Act. *Flynn v. New York, S. & W. R. R. Co.* (1917, N. J. Sup. Ct.) 101 Atl. 1034.

The court states that no federal case has been found which passes upon the question whether a crossing flagman is engaged in interstate commerce. On the other point, that the federal act is exclusive when the injured employee is engaged in interstate commerce, the recent Supreme Court decision is conclusive. *New York Cent. R. R. Co. v. Winfield* (1917) 244 U. S. 147, 37 Sup. Ct. 546. See (1917) 27 YALE LAW JOURNAL 135; (1916) 25 *ibid.* 497.

JURY—QUALIFICATIONS OF GRAND JURORS—WOMEN INELIGIBLE.—The defendant moved to set aside an indictment against him on the ground that the grand jury which found it was composed of women as well as men. The California Code, Sec. 192, defined the grand jury as "a body of men." Section 7 of the Penal Code provided that "words used in the masculine gender include the feminine." *Held,* that women were incompetent to sit on the grand jury and that the indictment must be set aside. *People v. Lensen* (1917, Cal. App.) 167 Pac. 406.

No other case on the precise point has been found. A recent California statute settles the controversy for the future in favor of the women. St. 1917, p. 1282.

PROCESS—IMMUNITY FROM SERVICE—NONRESIDENT TRUSTEE IN BANKRUPTCY.—The defendant, a nonresident, was appointed trustee of a bankrupt's estate by the U. S. District Court for the District of Kansas. While present in Kansas to make a sale authorized by the bankruptcy court, he was served with process in the present suit. His motion to quash service on the ground that he was immune from process while attending the sale was denied, and judgment was entered against him. *Held,* that the judgment was erroneous, as the nonresident trustee was immune from service. *Eastern Kansas Oil Co. v. Beutner* (1917, Kan.) 167 Pac. 1061.

This is a novel, but, it is believed, a sound, application of the principle which, in the interests of judicial administration, exempts nonresident parties, witnesses and attorneys in attendance upon court from liability to civil process in another suit. See *Powell v. Pangborn* (1914, Sup. Ct.) 145 N. Y. Supp. 1073, 161 App. Div. 453; *Stewart v. Ramsay* (1916) 242 U. S. 128, 37 Sup. Ct. 44. But compare *Greenleaf v. Peoples Bank* (1903) 133 N. C. 292, 45 S. E. 638; *Brooks v. State* (1911, Del.) 3 Boyce 1, 79 Atl. 790.

WATERS AND WATER COURSES—PERCOLATING WATERS—"REASONABLE USER" DOCTRINE.—For the purpose of supplying the City of Ann Arbor and its inhabitants with water the city sank wells and erected a pumping station upon land which it owned. Its pumping operations caused wells upon the plaintiff's land to become dry. *Held,* that the plaintiff was entitled to damages. *Schenk v. City of Ann Arbor* (1917, Mich.) 163 N. W. 109.

The court rejected the English rule concerning the withdrawal of percolating waters (which was carried to an extreme in *Mayor v. Pickles* [1895] A. C. 587) and adopted the rule of "reasonable user" of which New Jersey and New York decisions are the chief exponents.

WORKMEN'S COMPENSATION ACT—INJURY "ARISING OUT OF" EMPLOYMENT—PERIL ATTACHED TO PARTICULAR LOCATION.—There being no sanitary convenience for women in the respondent's factory, he made arrangements whereby the claimant, the only woman in his employ, might have access to the conveniences on adjacent premises belonging to another employer. It was necessary to cross a yard to reach the other factory and, while so doing, the claimant slipped on a very small piece of wood lying on the ground. Her fall resulted in serious injuries, for which compensation was claimed under the Act. *Held,* that the injury resulted from a peril to which the claimant was exposed by obligation of her contract of service, and hence was one "arising out of" her employment. *Fearnley v. Bates etc. Ltd.* (1917, C. A.) 117 L. T. 193.

The court felt itself driven to this decision by the case of *Thom v. Sinclair* [1917] A. C. 127. The new rule which that case established as to the character of causation required to satisfy the Act, was discussed in (1917) 27 YALE LAW JOURNAL 143.