CURRENT DECISIONS

ACCRETION—RESTORATION BY RIVER OF LAND PREVIOUSLY WASHED AWAY.—The plaintiff owned land in section 31, adjoining land in section 30 owned by the defendant. The Missouri river, which bounded the plaintiff's land on the other side, gradually washed it away until it became totally submerged, so that the defendant became the riparian owner. Thereupon the land submerged was restored by gradual deposit. *Held,* that the land in question was the property of the plaintiff. *Allard v. Curran* (1918, So. Dak.) 168 N. W. 761.

The result seems sound. However, the point decided is one upon which there is a conflict of authority. In accord with the principal case are: *Gilbert v. Eldridge* (1891) 47 Minn. 210; *Ocean City Association v. Shriver* (1900, Ct. Er.) 64 N. J. L. 550, 46 Atl. 690. In Kansas and Missouri the contrary result was reached in cases which also involved the Missouri river. *Peuker v. Canter* (1901) 62 Kan. 363, 63 Pac. 617; *Widdecombe v. Chiles* (1902) 173 Mo. 195, 73 S. W. 444. The Kansas and Missouri courts followed an earlier Connecticut case. *Welles v. Bailey* (1887) 55 Conn. 292, 10 Atl. 565. There the court seemed to reach its result partly because of the difficulty of determining the boundary—a difficulty not present where, as in the principal case, the section line is the boundary.

BILLS AND NOTES—RAISING OF CHECK FACILITATED BY SPACES LEFT IN DRAWING—LIABILITY OF BANK TO DRAWER.—The plaintiff signed a check handed to him by his clerk, who kept the petty cash, and who stated that two pounds were wanted for petty cash. The body of the check was in the handwriting of the clerk. The line intended for inserting words was blank; on the line intended for figures were the figures " 2 .0.0.," but with spaces before and after the "2" large enough for the insertion of additional figures. After obtaining the plaintiff's signature, the clerk wrote into the blank line the words "one hundred and twenty pounds" and added the figures "1" and "0" on either side of the "2." He then cashed the check and absconded. *Held,* that the drawer could not recover from the bank the amount paid less the original amount of the check. *London Joint Stock Bank, Limited v. Macmillan* (1918, H. L.) 119 L. T. Rep. 387.

The Lords base their decision on the special relation between banker and depositor, which requires immediate honor by the bank of every genuine check regular on its face and covered by funds on deposit. The Lords find a corresponding duty of the depositor—though one limited to the actual transaction of drawing—to draw his checks with sufficient care not to invite fraudulent alteration. Such fraudulent alteration is regarded as a direct consequence of breach of that duty; and the banker who is thereby misled into paying over money has his remedy against the negligent depositor—though circumstances in which such remedy would be availed of are difficult to imagine—and if his remedy, then his defence by way of setoff in a suit like the present. This is the doctrine of *Young v. Grote* (1827, Eng. C. P.) 4 Bing. 253. A subsidiary ground of the decision was an estoppel of the drawer, in view of his duty toward the bank, to deny that the clerk to whom the check was delivered in its incomplete form had authority to fill it out in the way he did. This is the explanation of *Young v. Grote* given in one important line of subsequent *dicta,* reviewed by the Lord Chancellor. The opinions of the Lords are gratifying in the openness with which they face and satisfy actual business conditions.

For discussion of the whole problem involved, suggesting a broader ground of decision, see COMMENTS (1917) 27 YALE LAW JOURNAL, 242, 269, criticizing *Macmillan v. London Joint Stock Bank, Limited* [1917] 2 K. B. 439, the decision of the Court of Appeal which the principal case now reverses.

CONSTITUTIONAL LAW—PASSING ACT OVER VETO—NUMBER OF VOTES REQUIRED.—In a criminal prosecution for violating a state statute whose validity depended upon the Webb-Kenyon Act (37 U. S. St. at L. 699), the validity of this Act was attacked upon the ground that it had not been constitutionally passed. It was passed over the President's veto but received in the senate only a two-thirds vote of the Senators present (a quorum) which was less than two-thirds of all the members entitled to sit in the Senate. *Held,* that the Act was legally passed. *Missouri Pac. Ry. Co. v. Kansas* (Jan. 7, 1919) U. S. Sup. Ct. Oct. Term, No. 14.

This decision is of special interest at the present time because of the similarity between the Constitutional provision relative to passing a bill over the President's veto (sec. 7, Art. I) and the provisions empowering "two-thirds of both houses" to propose Constitutional amendments (Art. V). The opinion adverts to this similarity and relies upon Congressional precedent in the passage of Constitutional amendments and upon decisions with respect to the amendment of state constitutions. It is clear, therefore, that opponents of the Prohibition Amendment will have to abandon the argument that that Amendment was not validly proposed because adopted by less than two-thirds of the entire membership of the House and the Senate.

CONTEMPT OF COURT—CONSTRUCTIVE CONTEMPTS—USING POLITICAL PRESSURE TO INDUCE DEFENDANT'S ATTORNEY TO WITHDRAW.—While a divorce suit was pending, the complainant's father threatened the defendant's attorney, who was a candidate for reappointment as city solicitor, with political pressure unless he would cease opposition to the divorce or would withdraw from the case. Contempt proceedings were instituted at the request of the court. *Held,* that the respondent was guilty of contempt. *In re Bowers* (1918, N. J. Ch.) 104 Atl. 196.

The court reasons that the defendant's conduct was an attempt to deprive the court of the services of an officer of the court. Although a novel instance of a constructive contempt, the decision appears clearly sound.

CONTRACTS—IMPOSSIBILITY CAUSED BY ACT OF STATE—FAILURE TO PRODUCE A PRINCIPAL IN COURT.—One G, having been convicted of a misdemeanor, gave an appeal bond conditioned to appear and submit to judgment in case of affirmance. After such an affirmance he failed to appear because in the meantime he had been convicted of murder and imprisoned for a term of 40 years. *Held,* that the bondsmen were excused, since the purpose of the bond was not to secure payment of the fine but to secure the appearance of the principal, and the bondsmen's fulfilment of the condition was rendered impossible by an act of the state itself. *State v. Herber* (1918, Okla.) 173 Pac. 651.

For a discussion of an allied problem see COMMENTS, p. 399, 401, n. 11.

CONTRACTS—RESCISSION—MISREPRESENTATION OF BUYER'S IDENTITY.—Through telegraphic correspondence an individual, purporting to represent a corporation which was actually fictitious, bought a large quantity of linseed oil for future

delivery. The seller's diligent inquiries led to the belief that the buyer was a corporation with resources. On discovering that the buyer was really an individual with no financial backing, the seller gave notice that the sale was cancelled. The buyer, refusing to accede, sued for damages. An action was brought in equity by the seller to enjoin the prosecution of the action at law. *Held,* that the seller was entitled to an injunction, as the concealment of a material fact which, if known to the vendor, would have kept him from entering into the contract, was such fraud as entitled to rescission. *Fay v. Hill* (C. C. A. 8th) 249 Fed. 415.

In its determination of the parties' rights the case is amply supported by the authorities. *Fifer v. Clearfield, etc.* (1906) 103 Md. 1, 62 Atl. 1122; *Boulton v. Jones* (1857, Ex.) 2 H. & N. 564. But the form of relief given, granting an injunction against the prosecution of an action at law although the defence at law is complete, is most unusual, and contrary to the general equity rule. 2 Pomeroy, *Equitable Remedies* (3d ed., 1905) sec. 638. For thorough analysis of the relations of the parties to executory contracts subject, like that in the present case, to rescission, see COMMENTS (1918) 28 YALE LAW JOURNAL, 178, 181.

CONTRACTS—THIRD PARTY BENEFICIARY—STREET RAILWAY SUED ON CONTRACT WITH CITY TO KEEP STREET REPAIRED.—The defendant, a street railway company, in consideration of the license to build its road in the street, contracted with the city to keep the street in repair. Plaintiff was injured because of the failure of the company to keep the street in repair. *Held,* that the plaintiff could recover directly from the street railway company. *Fowler v. Chicago Railways Co.* (1918, Ill.) 120 N. E. 635.

While the precise question involved had never previously been presented for decision in Illinois, cases in other jurisdictions had already reached the same result. *McMahon v. Second Avenue R. Co.* (1878) 75 N. Y. 231; *Jenree v. Metropolitan Street R. Co.* (1912) 86 Kan. 479, 121 Pac. 510. See also 39 L. R. A. (N. S.) 1112; Ann. Cas. 1913 C, 214. The courts place the result on the ground of avoiding circuity of action. *Cf.* the analogous cases where a landlord has agreed with his tenant to repair the premises. *Payne v. Rogers* (1794) 2 H. Bl. 350; *Girdley v. City of Bloomington* (1873) 68 Ill. 47.

EXEMPTIONS—WHO ARE "DEBTORS"—JUDGMENT FOR ALIMONY AS DEBT.—The plaintiff obtained a divorce from the defendant and a judgment for alimony payable in installments at stated periods during her life or until re-marriage. Subsequently the defendant married a second wife. Certain installments of the alimony being due and unpaid, the plaintiff caused an execution to issue on the judgment for alimony and under this the defendant's employer was garnished. The defendant contended that under a statute exempting the wages of a debtor who was head of a family his wages were exempt. *Held,* that the defendant's wages were exempt from the claim of the first wife for alimony. Salinger, Stevens and Ladd, JJ., *dissenting. Schooley v. Schooley* (1918, Iowa) 169 N. W. 56.

The question is purely one of the fair construction of an ambiguous statute which gives exemption to "debtors." Does it include all "debtors"? The majority give the word a literal interpretation. Salinger, J., in a somewhat lengthy dissenting opinion argues forcibly that it does not. It may be questioned whether a husband who has given his first wife ground for divorce ought to be permitted to escape from making further payments out of his earnings for the support of the former wife by acquiring a second wife. If we believe

he ought not so to escape, we shall agree with the minority in resolving the doubt in favor of the first wife. No other cases raising the precise point of construction have been found.

INJUNCTIONS—BREACH OF NEGATIVE COVENANT—UNIQUE PERSONAL SERVICE BY WAR CORRESPONDENT.—The defendant, Frank H. Simonds, contracted to serve the complainant as an editorial writer for the New York Tribune for four years and not to write for any other publication during that term. Before the expiration of the agreed time, he resigned his editorial position and began to write war articles for competing newspapers. The complainant sought an injunction. *Held,* that the complainant was entitled to enjoin the defendant from writing for any publication other than the New York Tribune, because of the unique value of the defendant's services. *Tribune Association v. Simonds* (1918, N. J. Ch.) 104 Atl. 386.

This is an interesting application of the familiar doctrine of *Lumley v. Wagner* (1852) 1 De G. M. & M. 604—a doctrine that has been greatly criticized, perhaps deservedly so, but one which has been generally followed in this country.

MARINE INSURANCE—INSURER'S CONDITIONAL PAYMENT NO BAR TO SUIT AGAINST CARRIER IN INSURER'S INTEREST.—A cargo of sugar shipped on a certain vessel was severely damaged because of the unseaworthiness of the vessel's hull. The carrier's liability was limited by the bill of lading to negligent loss. The shipper insured the cargo under a policy which limited recovery to losses for which the carrier was not legally responsible. The insurance company after the loss advanced to the shipper "as a loan" an amount equal to the loss, taking a receipt in which the shipper agreed that the "loan" was "repayable only to the extent of any net recovery" from the carrier and that he would sue the carrier for the benefit of and at the expense of the insurance company. A libel against the carrier was filed in the name of the shipper but actually for the sole benefit of the insurance company, through their proctors and counsel, and wholly at their expense. The carrier contended that as the shipper had already been compensated for his loss the libel should be dismissed. *Held,* that the insurers were entitled to recover. *Edgar F. Luckenbach et al. v. W. J. McCahan Sugar, etc. Co.* (1918) 39 Sup. Ct. 53.

Apparently the question involved has never before been presented to the Supreme Court. The decision gives effect to the agreement of the parties. While, as the opinion says, "it is creditable to the ingenuity of business men that an arrangement should be devised which is consonant both with the needs of commerce and the demands of justice," it would seem that, under the modern rule that actions against a carrier for negligent loss of property are assignable, the result could be reached by an agreement saying in simple English that the insured assigned the claim to the insurer and that so far as the latter recovered from the carrier the loan should be discharged.

MINIMUM WAGE COMMISSION—NON-COMPULSORY MINIMUM WAGE—COMPULSORY GIVING OF EVIDENCE AS TO COMPLIANCE.—A statute of Massachusetts provided for the establishment of a non-compulsory rate that ought to be paid to female workers in the various employments. To ascertain what employers were, of their own volition, following the recommendation of the board, the statute further provided that the commission could resort to the courts to compel the employers to give evidence as to the wages actually paid

by them. After such an investigation, the commission was authorized to "enter a decree of its findings and note thereon the names of the employers . . . who fail or refuse to accept such minimum wage and to agree to abide by it." A summary of the findings and the action of the employers was to be made public. A minimum wage was established for women employed in laundries, and respondents, who conducted laundries, were summoned to give evidence before the commission as to wages paid by them. They refused, and a petition was brought to compel them to testify. They resisted on the grounds that the portion of the statute which required them to give this evidence violated the fourteenth amendment by impairing freedom of contract; also that it compelled self-crimination. *Held,* that the statute was valid. *Holcombe v. Creamer* (1918, Mass.) 120 N. E. 354.

In holding the statute constitutional, the court points out that it does not establish a compulsory minimum wage, but leaves all concerned free to contract as they desire. The policy and aim of the statute is to enforce a minimum wage, not by direct legislative and judicial action but by the pressure of public opinion. The compulsory disclosure of rates furnishes the means by which the public can be accurately informed as to those employers who are not paying a fair wage. It is obvious how such publicity may bring about the result which the statute seeks to obtain. The statute therefore presents a simple and constitutional method of obtaining in large measure the benefits of a compulsory minimum wage law without raising the difficult questions of constitutionality which an attempt to introduce compulsion would involve.

STATUTE OF FRAUDS—CONTRACT NOT TO BE PERFORMED WITHIN A YEAR.—On Monday the plaintiff was employed by the defendant for a week's trial, and on the following Saturday morning an oral agreement was made for a year's service, the defendant saying: "You will have the whole year a job with me; you go ahead." The court construed this to mean that work under the new contract was to begin on the following Monday morning and not *eo instanti* on Saturday. *Held,* that the contract was not within the statute of frauds and was enforceable. *Friedman v. Amster* (1918, Sup. Ct. App. T.) 60 N. Y. L. J. 1229.

This is contrary to several previous decisions on the point in New York, but it has never been passed upon by the Court of Appeals. It is in harmony with decisions of the Supreme Court of Alabama and the Court of Appeal in England. *Dickson v. Frisbee* (1876) 52 Ala. 165; *Smith v. Gold Coast Co.* [1903] 1 K. B. 285. A careful review of all previous decisions on the point is made by Mr. Justice Bijur. The consistent tendency of all courts to take out of the statute as many cases as possible is no doubt beneficial, on the assumption that under prevailing conditions our courts can arrive at the truth in the absence of documentary evidence. The statute remains useful, however, being held *in terrorem* and causing most agreements of importance to be reduced to writing.