CURRENT DECISIONS

ADMIRALTY—STATE WORKMEN'S COMPENSATION LAWS MAY EXCLUDE ADMIRALTY FROM JURISDICTION.—An employer had taken out the necessary insurance to comply with the Workmen's Compensation Law of New York, under which his liability in that event was confined to the compensation fixed by that statute to the exclusion of any general liability arising from his duty as master to his servants. An employee being injured on shipboard brought a libel *in rem* in the Admiralty Court against the vessel upon which he was injured. *Held,* that under the United States Judicial Code, as recently amended (which amendments are constitutional), the employer was equally absolved from any liability arising under the maritime law. *The Steamlighter Howell* (1919, S. D. N. Y.) 61 N. Y. L. J. 454.

The course of decision as to the status of compensation laws in Admiralty has previously been noted in these pages. The New York Workmen's Compensation Law has been held to conflict with the Federal Constitution. *Southern Pacific Co. v. Jensen* (1917) 244 U. S. 205, 37 Sup. Ct. 524; (1917) 27 YALE LAW JOURNAL, 255. Congress thereupon amended that provision of the Judicial Code which saved to all suitors from the grant of admiralty jurisdiction the right of a common-law remedy where the common law was competent to give it, by adding the phrase "and to claimants the rights and remedies under the Workmen's Compensation Law of any State." See *ibid.* 924. This amendment was held valid and retroactive in *Cimmino v. Clark* (1918, App. Div.) 172 N. Y. Supp. 478; (1919) 28 YALE LAW JOURNAL, 281. The present case holds that the amendment is valid even if interpreted to act prospectively. The decision is the logical corollary to the holding that the amendment is valid. It is possible, however, that the United States Supreme Court may not agree with the interpretation here put upon the *Jensen* decision, namely, that Congress has the power to determine the extent of the grant of admiralty jurisdiction in the Federal Constitution. See (1918) 27 YALE LAW JOURNAL, 924, 926.

ATTORNEY AND CLIENT—ATTORNEY FOR DEFENDENT—FORMER REPRESENTATION OF PLAINTIFF.—In a suit for divorce the petitioner made application to compel the defendant's solicitor to withdraw from the case because he had been the petitioner's solicitor in a similar suit between the same parties which was dismissed by the court in 1912. The petitioner's alleged present cause for divorce was adultery committed in 1917, while the cross-petition stated that the petitioner had deserted the defendant for more than two years past. *Held,* that the application be denied. *Wilbur v. Wilbur* (1918, N. J. Ch.) 105 Atl. 664.

The decision was grounded on the fact that the matters pleaded in the former suit were *res adjudicata* and could not be projected into the present case because both petition and cross-petition set up causes of action which arose subsequent to the termination of the relation of attorney and client between the petitioner and the solicitor for the present defendant. See *The Duties of Attorney,* by Hon. Edwin B. Gager (1911) 21 YALE LAW JOURNAL, 72.

CONSTITUTIONAL LAW—BILLBOARD RESTRICTIONS—OBLIGATION OF CONTRACTS.—The defendant city enacted an ordinance which limited the area of a billboard to four hundred square feet and the height above ground to fourteen feet. It required a space of four feet between a billboard and the ground and forbade the construction nearer than six feet to a building, or two feet to another billboard, or fifteen feet to the street line. The plaintiff sued to restrain the enforcement of this ordinance, claiming that it was in violation of the Fourteenth

Amendment; that the plaintiff's billboards were built upon private ground and were free from damages resulting from fire and wind; that contracts entered into before the enactment of this ordinance placed duties upon the plaintiff to maintain for three years advertisements of a standard size which was larger than the ordinance allowed. *Held,* that the ordinance must be upheld. *St. Louis Poster Advertising Co. v. St. Louis* (1919) 39 Sup. Ct. 274.

The instant decision reinforces the earlier cases in asserting that billboards may be placed in a class by themselves and prohibited in residential districts, or be discouraged by a high tax, or prohibited altogether; that such legislation will not be declared invalid because of an incidental effect upon duties resulting from contracts or because some of the objectionable features may have been eliminated or because of trifling requirements which are not aimed solely to satisfy basic wants. *Thomas Cusack Co. v. Chicago* (1917) 242 U. S. 526, 37 Sup. Ct. 190, discussed in (1917) 26 YALE LAW JOURNAL, 420. In support of the constitutionality of statutes forbidding advertising signs on property, see (1914) 24 YALE LAW JOURNAL, 1.

CONSTITUTIONAL LAW—DUE PROCESS—PROHIBITORY LIQUOR STATUTE.—The defendant was convicted for having liquor in his possession in violation of a prohibitory liquor statute. The statute, by its terms, did not become effective until several months after its approval, and it was in this interim that the defendant acquired his stock of liquor. It was contended that if the statute was construed to apply to liquor so acquired, it was void under the Fourteenth Amendment. *Held,* that such construction did not make the statute invalid. *Barbour v. State of Georgia* (1919) 39 Sup. Ct. 316.

It has been settled that the exercise of a State's police power cannot be obstructed by a person's entering into a contract after the enactment of the statute and with full notice of the time it is to become effective. *Diamond Glue Co. v. United States Glue Co.* (1902) 187 U. S. 611, 23 Sup. Ct. 206. The Court refused to pass on the more doubtful question as to the constitutionality of the statute if applied to liquor acquired before its enactment. The similar question as to whether the prohibition of sale may be constitutionally applied to liquor acquired previous to the approval of the statute has also been raised by the United States Supreme Court but not settled. *Bartemeyer v. Iowa* (1874) 18 Wall. 129, 21 L. ed. 929; *Beer Company v. Massachusetts* (1877) 97 U. S. 25, 24 L. ed. 989.

CONSTITUTIONAL LAW—REED AMENDMENT—NOT PROHIBITIVE OF TRANSPORTATION OF LIQUOR THROUGH A STATE.—The defendant was indicted for having transported liquor into Virginia in violation of the Reed amendment. The facts showed that the defendant was travelling on a through ticket from Maryland to North Carolina, and was arrested while the train was temporarily stopped in Virginia, although he had no intention of leaving the train until it arrived in North Carolina. *Held,* that the motion to quash was properly granted. *United States v. Gudger* (1919) 39 Sup. Ct. 323.

This decision interprets the prohibition against transporting liquor in interstate commerce "into any State or Territory the laws of which State or Territory prohibit the manufacture" as not to include the movement in interstate commerce through such a state to another. Says Chief Justice White: "The word 'into,' as used in the statute, refers to the state of destination, and not to the means by which that end is reached, the movement through one State as a mere incident of transportation to the State into which it is shipped." For a similar ruling in regard to the interpretation of a state statute of similar import, see *State v.*

Frazee (1918, W. Va.) 97 S. E. 604. For discussion of the Reed Amendment as a valid regulation of interstate commerce, see (1919) 28 YALE LAW JOURNAL, 501.

CONTRACTS—CONSTRUCTION—"TROOPS OF THE UNITED STATES."—The plaintiff railroad entered into an agreement with the Federal Government to transport "troops of the United States" at rates equal to fifty per cent. of those which individuals were charged. The Auditor of the War Department allowed only half-fare for the transportation of the following classes of persons, claiming they were "troops of the United States" within the agreement: discharged soldiers on the way home; rejected applicants for enlistment being returned to points of recruitment; discharged military prisoners; accepted applicants for enlistment on the way to recruiting depots for final examination and enlistment; retired soldiers on the way home after retirement; and soldiers on furlough returning to their proper stations. All these men travelled individually. The railroad sued to recover the difference between the amount paid and the full rate for each individual carried. *Held,* that the plaintiff could recover, as "troops" referred to soldiers collectively, and "transportation of troops" did not include any of these classes. *United States v. Union Pacific R. R.* (1919) 39 Sup. Ct. 294.

The decision greatly limits the potential duties placed upon the railroads by these agreements. But the case does not determine the status of individual soldiers *en route* from camp to camp on government business, nor how large a number is required to constitute "troops" within the meaning of such agreements.

CONTRACTS — ILLEGALITY — AGREEMENT TO OBTAIN CONTRACT FROM GOVERNMENT.—The defendant agreed to pay the plaintiff a commission on any contract for army uniforms which the latter might procure for the defendant from the United States Government. The plaintiff procured such a contract, but the defendant refused to pay the commission. *Held,* that the plaintiff's claim was against public policy and void. *Beck v. Bauman* (1919, Sup. Ct.) 173 N. Y. Supp. 772.

Such contracts are generally enforcible when the New York State government is involved. *Dunham v. Hastings* (1907) 189 N. Y. 500, 81 N. E. 1163. But not, of course, when it is proved that the parties intended to resort improperly to public officials. *Chard v. Ryan-Parker Construction Co.* (1918) 182 App. Div. 455, 169 N. Y. Supp. 622. But where the United States Government is involved, the state courts will follow the rule of the federal courts. For further discussion see (1919) 28 YALE LAW JOURNAL, 502.

CONTRACTS—IMPOSSIBILITY OF PERFORMANCE—WAR ORDER.—The defendant contracted to sell TNT to the plaintiff. A few days later the United States Government, induced by the defendant's agents, purchased the TNT at an increased price, and issued an order stating that the material was "taken" under power granted by the National Defense Act. The plaintiff sued for breach of contract, alleging that the defendant's sale to the United States was voluntary. The defendant claimed to be relieved from his contractual duties because of *vis major. Held,* that there could be no recovery, as the material was taken under "power" of the Act. *Nitro Powder Co. v. Agency of Canadian Car and Foundry Co.* (1919, N. Y. Sup. Ct.) 60 N. Y. L. J. 213 (March 29, 1919).

The court ruled that the statement in the order that it was taken under the "power" of the Act was conclusive, regardless of the motives of the defendant

in initiating the sale or of the manner in which the terms of the sale had been fixed. For discussion of the effect on contracts of war orders or other acts of state, see COMMENTS (1919) 28 YALE LAW JOURNAL, 399; also (1918) 27 *ibid.* 953; (1919) 28 *ibid.* 615.

CORPORATIONS—INTERLOCKING OFFICERS—CONTRACTS.—The plaintiff, a corporation, sued to compel specific performance of a contract. The defendant, also a corporation, answered that the contract was made under the dominating influence of a common director and that its terms were unfair and oppressive. The facts showed that the contract was engineered by the common director but that he refrained from voting at the meeting of defendant which ratified the contract; the contract was to remain in force for a number of years, but at the end of two years the defendant, having found it unfair, refused to continue performing. *Held,* that the contract was voidable at the option of the defendant. *Globe Woolen Co. v. Utica Gas & Electric Co.* (1918, N. Y.) 121 N. E. 378.

This decision rests in the sound principle that directors like trustees, where they have conflicting interests, are under a strict duty to act honestly and fairly in their dealings. Marshall, *Corporations,* sec. 377. The New York rule goes further and makes the contract voidable in such cases as the instant one, at the option of the corporation, even though there is no fraud. Clark, *Corporations,* sec. 202.

INJUNCTIONS—RESTRAINING FORMER EMPLOYEE FROM SOLICITING BUSINESS.—The plaintiff employed the defendant to manage an insurance agency. After fifteen months the defendant resigned and started an agency for himself. He secured a contract with a company which the plaintiff represented, and the plaintiff brought a bill in equity to restrain the defendant from acting as agent for this company, and from soliciting business from the plaintiff's customers. *Held,* that the injunction should not be granted. *S. W. Scott & Co. v. Samuel W. Scott* (1919, App. Div.) 174 N. Y. Supp. 583.

Where there is no contract to the contrary, a former employee is privileged, as against his former employer, to engage in a similar business. Unless there is fraud or deceit practiced, solicitation of a former employer's customers does not constitute unfair competition. For further discussion see COMMENTS (1915) 25 YALE LAW JOURNAL, 499.

MANDAMUS—CIVIL SERVICE EMPLOYEE—LACHES.—The relator, who as superintendent of the Crater Natural Park was in the classified civil service of the Government, was removed from office on June 28, 1913, by order of the defendant, Secretary of the Interior, and forcibly ejected from the government building. On April 30, 1915, he filed a petition in *mandamus* to be restored. *Held,* that whatever right the petitioner had, had been forfeited by laches. *Arant v. Lane* (1919) 39 Sup. Ct. 293.

It seems that an employee in the classified civil service is entitled to compensation during a period of wrongful suspension. *United States v. Wickersham* (1905) 201 U. S. 390, 26 Sup. Ct. 469. But by allowing twenty months to pass without instituting the petition in the instant case the petitioner has clearly permitted such a change of circumstances as justifies invoking the doctrine of laches. As to the applicability of the doctrine of laches to *mandamus* proceedings, see 9 Ann. Cas. 846, note.

OFFICES—OFFICE NOT "PROPERTY"—RESTRAINING INTERFERENCE WITH OFFICE.—The plaintiff filed a bill in equity to restrain the defendants, members of a board

of school trustees, from interfering with him in assuming his duties as a member of the board, to which he had been elected. *Held,* that a demurrer to the bill was properly sustained. *Haupt v. Schmidt* (1919, Ind.) 122 N. E. 343.

The plaintiff's political "privilege" to participate in the councils of the board was not disputed; but his choice of remedy was unfortunate. The decision by the court was grounded on the elementary principles that a public office is not "property," and that the right to hold an office and perform the duties thereof is not a "property" right, but a political right of which equity takes no cognizance. For an apposite discussion on the tendency to confuse and blend legal and non-legal conceptions, in which the concept "property" is particularly examined, see Hohfeld, *Fundamental Legal Conceptions* (1913) 23 YALE LAW JOURNAL, 16, 21-25.

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF THE EMPLOYMENT—ASSAULT BY DISCHARGED EMPLOYEE.—The decedent was head waiter at a hotel and his duties embraced the discharge of waiters in the interest of his employer. He discharged a waiter for disobedience of orders. Later the discharged employee, angry and inflamed with liquor, shot and killed him. *Held,* that the injury arose "out of" the employment. *Cranney's Case* (1919, Mass.) 122 N. E. 266.

The risk of being assaulted by one aggrieved over the exercise of authority seems clearly incidental to the duty of exercising authority. Such injuries as received in the principal case have, therefore, been held compensable. *Trim School Bd. v. Kelly* [1914] A. C. 667 (school teacher assaulted by students); *Western Indemnity Co. v. Pillsbury* (1915) 170 Cal. 686, 151 Pac. 398 (foreman in charge of section gang assaulted by laborer); *Polar Ice & Fuel Co. v. Mulray* (1918, Ind. App.) 119 N. E. 149 (bookkeeper employed to check up and collect for shortage assaulted by driver). In such case the character of the assaulting employee, whether peaceable or quarrelsome, is immaterial. *County of San Bernardino v. Industrial Acc. Com.* (1917) 35 Cal. App. 33, 169 Pac. 255. As to the situation where one not in authority is assaulted by a fellow employee, see (1918) 27 YALE LAW JOURNAL, 965.