CURRENT DECISIONS

BAILMENTS—LIABILITY OF GRATUITOUS BAILEE.—Certain securities deposited with the defendant bank for gratuitous safe keeping were kept with the bank's own securities in its safe; others, for the keeping of which the bank was paid, were kept in a safe deposit vault. The gate to the vault, but not the door of the vault, was once left open; that night the bank was burglarized and the securities stolen. The owner brought suit contending (1) that all the securities should have been kept in the vault, and (2) that the burglary was proximately caused by the bank's negligence. *Held,* that the bank was liable only for the securities which it held as a bailee for hire. *Harland v. Pe Ell State Bank* (1922, Wash.) 210 Pac. 681.

The court's apparent assumption as to an inherent difference between the respective liabilities of a gratuitous bailee and a bailee for hire seem unjustified. (1921) 21 COL. L. REV. 380; (1916) 16 *ibid.* 66; (1921) 34 HARV. L. REV. 82. Courts have held that a stricter degree of care is required where the gratuitous bailee is a banking institution. *Harper v. Elon Banking Trust Co.* (1921) 182 N. C. 298, 109 S. E. 6; (1922) 95 CENT. L. JOUR. 57. In view of the fact that explosives were required to force the safe deposit vault, the decision that the burglary was proximately caused by the bank's negligence is notable, if not dubious.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—COMMENCEMENT OF INTERSTATE JOURNEY.—The defendant town levied taxes on logs that were being floated from a town in the same state to one in another state, but resting within the defendant town because it was not practicable safely to continue the journey at the time. The plaintiff sued to recover the amount paid as taxes. *Held,* that since the logs were in the course of an interstate journey the taxation was illegal and the plaintiff could recover. *Champlain Realty Co. v. Brattleboro* (1922, U. S.) 43 Sup. Ct. 146.

Goods are not considered as engaged in interstate commerce until actually started on an interstate journey; transportation of goods to a depot within a state is preliminary work. *Coe v. Errol* (1886) 116 U. S. 517, 6 Sup. Ct. 475; Beale, *The Situs of Things* (1919) 28 YALE LAW JOURNAL, 525, 534; see (1923) 32 *ibid.* 406. But where the journey has been started, interruptions necessary to such transportation do not change its character. *Coe v. Errol* (1882) 62 N. H. 303, 313; *Prairie Oil and Gas Co. v. Ehrhardt* (1910) 244 Ill. 634, 91 N. E. 680; see (1922) 35 HARV. L. REV. 620. For discussion of the relation between the state taxing power and the Federal control of interstate commerce, see Powell, *Supreme Court Decisions on the Commerce Clause and State Taxing Power, 1910-1914* (1922) 22 COL. L. REV. 133; Powell, *The Supreme Court's Adjudication of Constitutional Issues in 1921-1922* (1922) 21 MICH. L. REV. 174, 195.

COURTS—COURT OF CLAIMS—JURISDICTION OF APPEAL FROM EXECUTIVE'S DECISION.—Section 15 of the Act of May 22, 1917 (40 Stat. at L. 84) provided that certain members of the Coast Guard should receive the same rates of pay as those prescribed for corresponding grades and ratings in the Navy. The Secretary of the Navy issued an order not in harmony with this statute. The plaintiff sued for the difference between pay received by him as yeoman in the Coast Guard and that which a chief yeoman in the Navy would have received for a like period, the duties and qualifications of these positions being similar. *Held,* that the administrative order of the Secretary of the Navy was not conclusive and that the plaintiff could recover. *United States v. Allen* (1923, U. S.) 43 Sup. Ct. 369.

Where the facts are undisputed the Court of Claims generally has jurisdiction of questions of law. *United States v. Laughlin* (1919) 249 U. S. 440, 39 Sup. Ct. 340. However, where exclusive and final jurisdiction had been conferred upon a Department, the Court of Claims has no power to review. *United States v. Babcock* (1919) 250 U. S. 328, 39 Sup. Ct. 464. See in general Crane, *Jurisdiction of the United States Court of Claims* (1920) 34 HARV. L. REV. 161.

CRIMINAL LAW—DISTINCTION BETWEEN CONDITIONAL PARDON AND PAROLE.—The plaintiff, who was under a sentence which would have expired April 5, 1922, was paroled during good behavior. Subsequent to that date, the plaintiff was recommitted to serve out his sentence. He applied for a writ of *habeas corpus* against the superintendent of the state penitentiary. *Held,* (one judge *dissenting*) that the confinement was illegal. *Crooks v. Sanders* (1922, S. C.) 115 S. E. 760.

The ancient power of pardon is a "sacred" and difficult function. Goodrich, *The Use and Abuse of the Power to Pardon* (1920) 11 JOUR. CR. L. 334. It being strictly executive, neither the legislature nor the courts may interfere with its exercise. (1921) 21 COL. L. REV. 289; NOTES (1918) 2 MINN. L. REV. 381. It includes the power of conditional pardon and parole, between which courts often fail to distinguish. *In re Convicts* (1901) 73 Vt. 414, 51 Atl. 10; *State v. Yates* (1922) 183 N. C. 753, 111 S. E. 337; *In re Prout* (1906) 12 Idaho, 494, 86 Pac. 275. It is well settled that a pardon may be revoked upon a breach of condition even after the sentence would have expired. *State v. Horne* (1906) 52 Fla. 125, 42 So. 388; (1909) 38 NAT. CORP. REP. 873. Many courts apply the same rule to parole. *Commonwealth v. Minor* (1922) 195 Ky. 103, 241 S. W. 856; *Ex parte Ridley* (1910) 3 Okla. Cr. 350, 106 Pac. 549; *Fuller v. State* (1898) 122 Ala. 32, 26 So. 146. But other jurisdictions, in accord with the principal case, reach the contrary result, namely, that a parole does not suspend a sentence. *Anderson v. Williams* (1922, C. C. A. 8th) 279 Fed. 822; *In re Prout* (1906) 12 Idaho, 494, 86 Pac. 275. This latter view seems sound and is in harmony with the general rule that a parole, unlike a conditional pardon, may be revoked summarily and without a hearing. *Ex parte Sparks* (1921) 90 Tex. Cr. 190, 234 S. W. 393; (1908) 67 CENT. L. JOUR. 188; (1905) 119 LAW TIMES 433.

DIVORCE—HOMESTEAD PROPERTY SUBJECT TO LIEN FOR ALIMONY.—In a decree of absolute divorce the award of alimony was made a lien "upon any and all real estate" of the husband. On the husband's death, his heirs brought action to quiet title in premises occupied for many years by the decedent as a homestead. *Held,* that the homestead was subject to the satisfaction of the judgment for alimony. *Luedecke v. Luedecke* (1923, Iowa) 192 N. W. 515.

The homestead exemption is for the benefit of the entire family as well as the husband. Freeman, *Law of Executions* (2d ed. 1888) sec. 240; see *Dieter v. Fraine* (1910) 20 N. D. 484, 489, 128 N. W. 684, 686; *Daniels v. Morris* (1880) 54 Iowa, 369, 371, 6 N. W. 532, 533. In accordance with this policy a divorce decree may create a lien upon the homestead. *Haven v. Trammell* (1920) 79 Okla. 309, 193 Pac. 631; *Fraaman v. Fraaman* (1902) 64 Neb. 472, 90 N. W. 245; see 102 Am. St. Rep. 709, note.

MASTER AND SERVANT—DURATION OF EMPLOYMENT CONTRACT.—The defendant engaged the plaintiff at a fixed annual salary, without any mention of the duration of the service. The plaintiff having been discharged after several months, claimed damages on the ground that the contract was for a year. *Held,* that the plaintiff could recover. *Willis v. Wyllys Corporation* (1922, N. J. L.) 119 Atl. 24.

The English rule that, in the absence of express stipulation, a hiring is for one year, was followed. Labatt, *Right to Terminate a Hiring* (1898) 34 CAN. L. JOUR. 587. The majority of courts in this country, however, hold such contracts terminable at will. (1915) 81 CENT. L. JOUR. 441; (1908) 66 *ibid.* 156; 1 Williston, *Contracts* (1920) 60.

TRUSTS—REMOVAL OF TRUSTEE—SUSPENSION PENDENTE LITE.—The plaintiff brought an action as trustee for an accounting and approval of his acts. On motion for his removal, it was proved that he had received secret profits from dealings with the trust estate. The trial judge removed him from the trusteeship. *Held,* (two judges *dissenting*) that the removal was proper. *Gould v. Gould* (1922, N. Y.) 203 App. Div. 807.

Where the removal of the trustee involves time in investigation and danger to the estate, a suspension alone seems sufficient. Although the majority of the court deny the power to suspend, it seems that such a power is included in the power to appoint a receiver *pendente lite* when the trust estate is in danger from the active misconduct of the trustee. See 2 Perry, *Trusts and Trustees* (6th ed. 1911) sec. 818; 4 Pomeroy, *Equity Jurisprudence* (4th ed. 1919) secs. 1334, 1510; *Wilmer v. Airline Ry.* (1875, C. C. N. D. Ga.) Fed. Cas. No. 17,775; *North Carolina Ry. v. Wilson* (1879) 81 N. C. 223.

TRUSTS—SPECIFIC DEPOSIT TO MEET INTEREST PAYMENTS.—A public utility company opened a special account "to cover interest coupons due" upon its bonds. The bank became insolvent. The company and the holders of the coupons sought to impress a trust upon the fund. *Held,* (two judges *dissenting*) that there was no trust. *Fralick v. Coeur d'Alene Bank and Trust Co.* (1922, Idaho) 210 Pac. 586.

The instant case is sound in following the doctrine that a depositor claiming a preference must clearly establish a trust. *Hitt Fireworks Co. v. Scandinavian Bank* (1922, Wash.) 209 Pac. 680; Morse, *Banks and Banking* (5th ed. 1917) sec. 568(a); NOTES (1922) 6 MINN. L. REV. 306; (1923) 32 YALE LAW JOURNAL, 410; *cf.* (1923) 7 MINN. L. REV. 165.

WILLS—CONTINGENT WILLS—RULE OF CONSTRUCTION.—An instrument offered for probate as a will was, under its terms, to be operative "if any thing happen to me in Constantinople or in ocean." The maker went to Constantinople, returned to Rochester, and resided there until his death sixteen years later. *Held,* that the instrument should be denied probate. *In re Poonarian's Will* (1922, N. Y.) 137 N. E. 606.

Due to the strong tendency of the courts to favor testacy, a will, whenever possible, is construed as unconditional. *Eaton v. Brown* (1904) 193 U. S. 411, 24 Sup. Ct. 487; *Walker v. Hibbard* (1919) 185 Ky. 795, 215 S. W. 800; Gardner, *Wills* (1903) 70. The determining question is, does the contingency show the inducing cause for making the will, or the condition on which it is to operate? *Skipwith v. Cabell* (1870, Va.) 19 Gratt. 758; *In re Tinsley's Will* (1919) 187 Iowa, 23, 174 N. W. 4. The instant case is one of comparatively few holding a will contingent.