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NOTES.

BENEFICIAL SOCIETIES—CHANGE OF BENEFICIARY—EQUITIES—The Supreme Court of Errors of Connecticut has ruled[1] that the administrator of the wife of a member of a fraternal beneficial order was not entitled to collect the benefit where the wife predeceased the member, and no new designation of beneficiary was made.

The charter and by-laws of the association provided that in all controversies arising with regard to benefits and rights of members the laws of Massachusetts (the domicile of the society) should control; by that law no beneficiary could take a vested interest in the benefit until the same was due and payable upon the death of the member.

The provision of the Massachusetts statute is only declaratory of what was already the established rule with regard to the interest of a designated beneficiary in certificate issued to a member of

[1] Supreme Colony of United Order of Pilgrim Fathers v. Towne, 89 Atl. Rep. 264 (Conn. 1914).

the society. It is sharply contrasted with rule in cases of life insurance, where policies payable to a person other than the insured ordinarily create a vested right in the former to the policy and its proceeds, in consequence the assured cannot in any way control or dispose of the policy except with the consent of the beneficiary.[2] In life insurance cases it is sometimes referred to as "an irrevocable trust," or as "a valid settlement not to be disturbed except by consent of the beneficiary."

In order to create any vested legal interest in the benefit prior to the death of the member it must be expressly provided in the charter or by-laws of the association. Generally speaking the member may change his designation at will, provided he conforms to the regulations of the association.[3] The voluntary payment of the member's assessments upon the certificate by the original beneficiary therein named, in the absence of any agreement with the member to do so will neither deprive the member of the right to change his beneficiary, nor entitle the original beneficiary to the insurance fund as against a subsequent beneficiary named in accordance with the rules of the association.[4] But where there is found to be an agreement between the original beneficiary and the member that such payments shall be made, the authorities are divided.[5] The same difficulty is not shown in reaching the decision that the beneficiary has acquired rights, which will be protected, at least in equity, as against a later designated beneficiary in the cases where, in making the payments upon members' assessments, the original beneficiary has relied upon an express assurance that there will be no change.[6] In *Jory* v. *Supreme Council,*[7] the court said, "We know of nothing in the law which deprives a person contemplating membership in a mutual benefit association from so contracting with the proposed

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[2] Pingrey v. Nat'l L. Ins. Co., 144 Mass. 38; 11 N. E. Rep. 502 (1887); Ricker v. Charter Oak L. I. Co., 27 Minn. 193 (1880); Weston v. Richardson, 47 L. T. (N. S.) 514 (1882); Ferndon v. Canfield, 104 N. Y. 143, 10 N. E. Rep. 146 (1887); Commonwealth v. Equ. Ben. Ass'n, 137 Pa. 412 (1890).

[3] Masonic M. B. A. v. Tolles, 70 Conn. 537, 40 Atl. Rep. 448 (1889); Leaf v. Leaf, 92 Ky. 166, 17 S. W. Rep. 354, 854 (1891); Grand Lodge v. McGrath, 133 Mich. 626, 96 N. W. Rep. 739 (1903); *semble,* Heasley v. Heasley, 191 Pa. 539 (1899).

[4] Jory v. Supr. Council A. L. H., 105 Cal. 20, 38 Pac. Rep. 524 (1894); Masonic M. B. A. v. Tolles, Leaf v. Leaf, Grand Lodge v. McGrath, Heasley v. Heasley, *supra,* n. 3.

[5] That the member has such right to change designation, Brett v. Warnick, 44 Ore. 511, 75 Pac. Rep. 1061 (1904); Bernard v. Gr. Lodge A. O. U. W., 13 S. Dak. 132, 82 N. W. Rep. 404 (1900). *Contra,* Mas. Ben. Ass'n v. Bunch, 109 Mo. 560, 19 S. W. Rep. 25 (1892); Fisher v. Fisher, 99 Tenn. 629, 42 S. W. Rep. 448 (1897).

[6] King v. Supr. Council C. M. B. A., 216 Pa. 553, 65 Atl. Rep. 1108 (1907); Grimbley v. Harrold, 125 Cal. 24, 57 Pac. Rep. 558 (1899); *semble,* Spengler v. Spengler, 65 N. J. Eq. 176, 55 Atl. 285 (1903).

[7] 105 Cal. 20, 38 Pac. Rep. 524 (1894).

beneficiary as that, when such certificate is issued equities in favor of the beneficiary are born, of such merit that the insured member has no power to defeat them. . . . As between the original and subsequent beneficiaries the whole matter seems to be rather a question of equities (as opposed to vested interest in the first) and the stronger and better equity must prevail."

That is, wherever sound equities are existing in the first beneficiary, the member should be declared estopped to change his designation; and such estoppel being in force against the insured, it is equally in force and stands against the second volunteer beneficiary.

Some courts have designated, as vested, the right of the original beneficiary to take the benefit, where he had made the payments under an agreement, sufficiently specific, between himself and the member, even though the member had subsequently changed his designation.[8] But it will be found that the use of the term "vested" results rather from haste or convenience than from full consideration of the question. "Vested interest" and "superior equities" are in many aspects analogous, and may be readily confused; but the clearer view is that announced in the California decisions.[9]

J. C. A.

CONFLICT OF LAWS—LIMITATION OF LIABILITY ON THE HIGH SEAS—The Titanic disaster, bringing in its wake claims amounting to millions of dollars, at once raises the question as to whether the federal statute limiting the shipowner's liability is applicable. The District Court for the Southern District of New York has decided that it does not apply,[1] the case is now pending before the United States Supreme Court, whose decision will be a leading one.

The statute[2] limits the liability of the owner of a vessel to his interest in the vessel and the freight pending, and in its terms is sweeping, referring to "the owner of any vessel," and not merely to American vessels. The question of its application to foreign vessels has been the subject of numerous decisions and in the case of collision between two ships is fairly well settled. The case of *The Scotland*[3] was the first case on this point. Here the British steamer *Scotland* came into collision with the American ship *Kate Dyer,* and

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[8] Stronge v. Supr. Lodge K. of P., 189 N. Y. 346, 82 N. E. Rep. 433 (1907); Supr. Council v. Tracy, 169 Ill. 123, 48 N. E. Rep. 401 (1897); Leaf v. Leaf, 92 Ky. 166, 17 S. W. Rep. 354 (1891); *semble,* Supr. Coun. C. M. B. A. v. Murphy, 65 N. J. Eq. 60, 55 Atl. 497 (1903).

[9] In accord with the view of the California courts expressed in Jory v. Supr. Council, see the rulings in the cases, *supra,* n. 6.

[1] The Titanic, 209 Fed. Rep. 501 (1914).

[2] U. S. Comp. St. 1901, pp. 2943-2945, §§4282-4289.

[3] 105 U. S. 24 (1881).

the owners of *The Scotland* claimed exemption upder the American act. Judge Bradley, in his opinion, said:

"But, if a collision occurs on the high seas, where the law of no particular State has exclusive force, but all are equal, any *forum* called upon to settle the rights of the parties would *prima facie* determine them by its own law as presumptively expressing the rules of justice; but if the contesting vessels belonged to the same foreign nation, the court would assume that they were subject to the laws of their nation carried under their common flag, and would determine the controversy accordingly. If they belonged to different nations, having different laws, since it would be unjust, to apply the laws of either, to the exclusion of the other, the law of the *forum*—that is, the maritime law as received and practiced therein —would properly furnish the rule of decision."

The United States Supreme Court accordingly held that as this was the case of a collision between British and American vessels, the American statute was applicable, being the law of the *forum*. This case has been repeatedly followed both on its part[4] and in respect to the *dictum* as to two foreign ships of the same nation,[5] with the additional qualifications laid down in *The Belgenland*.[6]

"That is the maritime law, as administered by both nations to which the respective ships belong, be the same in both respect to any matter of liability or obligation, such law, if shown to the court, should be followed in that matter in respect to which they agree. . . . "

But where one vessel alone is wrecked there are no Supreme Court decisions; and those in the District and Circuit Courts are not very satisfactory. *The John Bramall*[7] held that a British ship stranded on the coast of the United States could take advantage of the American statute because the loss occurred within the territorial limits of the United States. While in *Levison* v. *Oceanic Steam Navigation Company*,[8] a British steamer wrecked off the coast of Nova Scotia was held entitled to exemption on the theory that the statute was the adoption of a general maritime principle applicable to the owners of foreign as well as American vessels. This case, however, would be overruled by the later *dictum* in *The Scotland*, which expressly states that an injury to a British ship in British waters would be governed by British law. Nevertheless the same result was reached in *The State of Virginia*[9]

[4] The Belgenland, 114 U. S. 355 (1884); The Great Western, 118 U. S. 520 (1885); La Bourgoyne, 210 U. S. 95 (1907); *In re* Leonard, 14 Fed. Rep. 53 (1882).

[5] The Eagle Point, 142 Fed. Rep. 73 (1906).

[6] 114 U. S. 355 (1884).

[7] 10 Ben. 495, Fed. Cas. No. 7334 (1879).

[8] 15 Fed. Cas. 422 (1876).

[9] 60 Fed. Rep. 1018 (1894).

where the court said that the case of a ship wrecked on the coast of the country to which she belongs was the same as a collision between two ships of the same nation and then applied the American law to an English ship wrecked in English waters, which is obviously incorrect. There are also numerous cases where the limiting statute has been applied to foreign vessels simply because the fact that it was a foreign ship was not raised;[10] but as the court will never apply foreign laws unless they are called to their attention, they are not authorities.

It is of course fundamental that a law can have no extra-territorial force; but it is also practically universally held that a vessel on the high seas is a detached floating portion of the country whose flag she flies and is exclusively within the influence of its laws so far as the internal economy of the vessel is concerned.[11] And on the theory that the law of the flag should govern in all cases on the high seas, unless there is some good reason to the contrary, there seems to be a possible solution of the question. In the case of two vessels of the same nationality, there is no element present which can introduce any other law than that of the flag except the fact that the case may be tried in the court of another country. Since this has not been held a sufficient reason for departing from the law of the flag in the case of two ships, and as there are no more reasons, in the case where one ship is injured by collision with some floating object belonging to no country, and which carries no law, or where a vessel founders on the high seas for no appreciable cause, the result should be the same and the law of the flag should apply. Where, however, two vessels of different countries, carrying different laws, come into collision, we have two laws equally applicable from the start; and since one court cannot decide the case under two different laws, the courts have compromised on the law of the *forum,* on the theory of *The Scotland* that it would be unjust to either party to apply the law of either to the exclusion of the other. Of course this result is simply an arbitrary rule of convenience. *T. S. P.*

CONSTITUTIONAL LAW—COMMERCE CLAUSE—MUNICIPAL LICENSE AND REGULATION OF EXPRESS COMPANIES—A municipal ordinance of the Board of Aldermen of the City of New York required, *inter alia,* a local license to be obtained as a condition precedent to conducting an express business within the municipality, and also

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[10] The Strathdon, 89 Fed. Rep. 374 (1898).

[11] The Scotia, 14 Wall. 170 (1871); Crapo v. Kelley, 16 Wall. 610 (1872); Wilson v. McNamee, 102 U. S. 572 (1880); *In re* Ah Sing, 13 Fed. Rep. 286 (1882); *In re* Moncan, 14 Fed. Rep. 44 (1882); The Lamington, 87 Fed. Rep. 752 (1898); McDonald v. Mallory, 77 N. Y. 546 (1879); Wheat. Int. Law (Dana's Ed.), §106; 3 Whart. Int. Law Dig. 228; Whart. Confl. Laws, §356; 1 Kent Comm. 26.

that a bond be given "for each and every vehicle licensed" to be conditioned "for the safe and prompt delivery of all baggage, packages," *etc.*, intrusted to the owner or driver of any such licensed express. The Adams Express Company sought to restrain the enforcement of the ordinance, claiming that the ordinance constituted an unconstitutional interference with interstate commerce and denied to it the equal protection of the laws. The court[1] granted the injunction restraining the enforcement of the ordinance in question against the company, with respect to the conduct of its interstate business, holding that was an improper police regulation, since it lays a direct burden upon interstate commerce, and that parts of the ordinance were also invalid as being "repugnant to the exclusive control asserted by Congress in occupying the field of regulations with regard to the obligations to be assumed by interstate express carriers."[2]

The grant to Congress, by the Constitution of the power to regulate commerce "among the several States" also affects to some extent the exercise by the States of the power of taxation. But the States are not prohibited from taxing either the instrumentalities, or the subjects, of interstate commerce, provided that such taxation be imposed on those instrumentalities and subjects (1) as component

[1] Barrett v. New York, 34 Sup. Court Rep. 203 (1914). The Adams Express Company is a joint stock association organized under the laws of the State of New York and therefore can sue only in the name of certain of its officers, hence this suit was brought *sub nomine* Barrett, as President of the Adams Express Company, v. City of New York, *et al.*

[2] Act of June 29, 1906, 34 Stat. at Large 584, c. 3591; U. S. Comp. Stat. Supp. 1911, p. 1288. This Act was interpreted as exclusive as regards stipulations for limitation of liability in bills of lading, in Adams Express Co. v. Croninger, 226 U. S. 491, 505 (1912): "Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject and supersede all State regulation with reference to it. Only the silence of Congress authorized the exercise of the police power of the State upon the subject of such contracts. But when Congress acted in such a way as to manifest a purpose to exercise its conceded authority, the regulating power of the State ceased to exist."

The Act was again interpreted as exclusive, as regards the making and filing of rate schedules, *etc.*, in Southern Ry. v. Reid, 222 U. S. 424 (1911), and in Southern Ry. v. Reid & Beam, 222 U. S. 444, 447 (1911): "There need not be directly inhibitive congressional legislation, but congressional legislation which occupies the field of regulation and thereby excludes action by the State."

See also Northern Pacific Ry. v. State of Washington, 222 U. S. 370 (1911); Mondon v. R. R., 223 U. S. (1911). But see Missouri Pacific Ry. v. Larabee Mills, 211 U. S. 612, 623 (1908), as to the effect of the vesting in the Interstate Commerce Commission by Congress of a large measure of control over interstate commerce. At page 623, Mr. Justice Brewer says: "In other words, the mere grant by Congress to the commission of certain national powers in respect to interstate commerce does not of itself and in the absence of action by the commission interfere with the authority of the State to make those regulations conducive to the welfare and convenience of its citizens." "Until specific action by Congress or the commission the control of the State over these incidental matters remains undisturbed."

parts of the mass of property, in the States,[3] or (2) by reason of the citizenship of their owners as subjects of the sovereignty of the State,[4] and provided also, that that which is in form taxation, be not in substance a regulation of, or a restraint upon interstate commerce, or, as it is sometimes put, a direct burden on interstate commerce.[5] Hence we find that a State may require a foreign corporation which is engaged in interstate commerce to pay for the privilege of exercising the franchises of a corporation within its borders,[6] though, not for the right of transporting interstate passengers.[7] A State has the right to impose a license tax,[8] or a tax on receipts,[9] upon a company engaged in local commerce, even though the company be also engaged in interstate business, so long as the tax applies to the business of the company which is entirely local; but it cannot impose such charges upon interstate business.[10]

It would appear that a so-called "license" or "privilege" tax, when imposed upon an interstate carrier, as a condition of engaging in business, is valid only where it is imposed for business done wholly within the State.[11] If the tax, imposed as a condition, affects the whole business, both intrastate and interstate, without discrimination, it is invalid.[12] A State may tax an interstate railway, car,

[3] Namely, the inherent sovereign power of the State to raise revenue; in other words the power of taxation as such.

[4] Namely, the power of the State to regulate the health, morals, safety and general welfare of the public, sometimes called the "police power," *"Salus populi suprema lex."*

[5] Gibbons v. Ogden, 22 U. S. 201 (1824); The Passenger Cases, 48 U. S. 479 (1849); Transportation Co. v. Wheeling, 99 U. S. 280 (1878); W. F. Co. v. East St. Louis, 107 U. S. 374 (1882); California v. C. P. R., 127 U. S. 1 (1887); Brimmer v. Rebman, 138 U. S. 578 (1890); Mass. v. W. U. T. Co., 141 U. S. 40 (1890); P. T. C. Co. v. Adams, 155 U. S. 688 (1894); W. U. T. Co. v. Taggart, 163 U. S. 1 (1895); Adams Express Co. v. Ohio, 165 U. S. 194 (1896); New York v. Roberts, 171 U. S. 658 (1898); P. C. C. & St. L. Ry. v. Board of Pub. Works, 172 U. S. 32 (1898); K. & H. Bridge Co. v. Illinois, 175 U. S. 626 (1899); U. R. T. Co. v. Lynch, 177 U. S. 149 (1899).

[6] Maine v. G. T. Ry., 142 U. S. 217 (1891), by a divided court, five to four, Bradley, Harlan, Lamar and Brown, JJ., dissenting. See also Crutcher v. Kentucky, 141 U. S. 47 (1890); Ashley v. Ryan, 153 U. S. 436 (1893); New York v. Roberts, 171 U. S. 658 (1898).

[7] Allen v. P. P. C. Co., 191 U. S. 171 (1903).

[8] P. T. Co. v. Charleston, 153 U. S. 692 (1893); Osborne v. Florida, 164 U. S. 650 (1896); Pullman Co. v. Adams, 189 U. S. 420 (1902); Allen v. P. P. C. Co., 191 U. S. 171 (1903).

[9] Ratterman v. W. U. T. Co., 127 U. S. 411 (1887); W. U. T. Co. v. Alabama, 132 U. S. 472 (1889); Pacific Ex. Co. v. Seibert, 142 U. S. 339 (1891).

[10] Leloup v. Port of Mobile, 127 U. S. 640 (1888); Crutcher v. Kentucky, 141 U. S. 47 (1891).

[11] *Supra*, n. 8.

[12] McCall v. Cal., 136 U. S. 104 (1890); Leloup v. Port of Mobile, 127 U. S. 640 (1888); Crutcher v. Kentucky, 141 U. S. 47 (1891). See also Allen v. P. P. C. Co., 191 U. S. 171 (1903), to the effect that a State may

express, or telegraph company upon its property within the State, by ascertaining the value of the whole property, both tangible and intangible, of the corporation, which is used in its business and then computing the value of the line within the State by its relative length to the whole.[13] But a State cannot tax a telegraph company upon messages transmitted by it to points outside the State;[14] nor require a railway company, being a link in a through line of interstate transportation, to pay a license fee for maintaining an office for the sale of tickets;[15] nor may it require an agent of an interstate transportation line to pay a license fee for soliciting passenger traffic between points in other States;[16] nor require agents of foreign express companies to take out licenses, and satisfy the State authorities that the company has an actual capital to the amount fixed in the taxing statute.[17]

It has often been said that where State action imposes a "direct burden" upon interstate commerce, it is invalid. But the principle[18] underlying this doctrine of "direct burden" is nothing more nor less than that expressed by Mr. Justice Curtis in *Cooley* v. *Board of Wardens*:[19] "Whatever subjects of this power (the power to regulate commerce) are in their nature national, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress."

The power of Congress to regulate commerce among the several States is supreme and plenary. It is "complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution." "The genius and character of the whole government seem to be, that its action is to be ap-

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not impose a tax which is in any way a burden upon interstate commerce; but it may impose a privilege tax upon corporations engaged in interstate commerce for carrying on that part of their business within the taxing State and which tax does not affect their interstate business or their right to carry it on in that State.

[13] P. P. C. Co. v. Pennsylvania, 141 U. S. 18 (1890); P. C. C. & St. L. Ry. v. Backus, 154 U. S. 421 (1893); C. C. C. & St. L. Ry. v. Backus, 154 U. S. 439 (1893); A. R. T. Co. v. Hall, 174 U. S. 70 (1898); W. R. T. Co. v. Lynch, 177 U. S. 149 (1899); Adams Express Co. v. Ohio, 165 U. S. 194 (1896); Adams Express Co. v. Kentucky, 166 U. S. 171 (1896); W. U. T. Co. v. Massachusetts, 125 U. S. 530 (1887); W. U. T. Co. v. Taggart, 163 U. S. 1 (1895); W. U. T. Co. v. Missouri, 190 U. S. 412 (1902). But in estimating the value of the whole property the State may not include property in another State which is not used by the company in its business: Fargo v. Hart, 193 U. S. 490 (1903).

[14] W. U. T. Co. v. Texas, 105 U. S. 460 (1882).

[15] N. & W. R. R. v. Pennsylvania, 136 U. S. 114 (1890).

[16] McCall v. California, 136 U. S. 104 (1890).

[17] Crutcher v. Kentucky, 141 U. S. 47 (1891).

[18] 12 Howard, 299, 319 (1851).

[19] See opinion of Mr. Justice Holmes in The Minnesota Rate Cases, 230 U. S. 352 (1912), at page 400.

plied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a State, then, may be considered as reserved for the State itself."[20] This reservation to the States manifestly is only of that authority which is consistent with and not opposed to the grant to Congress. There is no room in our scheme of government for the assertion of State power in hostility to the authorized exercise of federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional powers to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere.[21]

The grant in the Constitution of its own force, that is, without action by Congress, established the essential immunity of interstate commercial intercourse from the *direct* control of the States with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority. It has been repeatedly declared that as to those subjects which require a general system or uniformity of regulation the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting State legislation.[22]

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[20] Per Mr. Chief Justice Marshall in Gibbons v. Ogden, 9 Wheaton, 1 (1824), at pages 195, 196.

[21] McCulloch v. Maryland, 4 Wheaton, 316, 405, 426 (1819); The Daniel Ball, 10 Wall. 557, 565 (1870); Smith v. Alabama, 124 U. S. 465, 473 (1887); B. & O. R. R. v. I. C. C., 221 U. S. 612, 618, 619 (1911); Sou. Ry. v. U. S., 222 U. S. 20, 26, 27 (1911); Mondou v. N. Y., N. H. & H. R. R., 223 U. S. 1, 47, 54, 55 (1911).

[22] Cooley v. Board of Wardens, 12 Howard, 299, 319 (1851); *Ex parte* McNeil, 13 Wall. 236, 240 (1871); Welton v. Missouri, 91 U. S. 275, 280 (1875); County of Mobile v. Kimball, 102 U. S. 691, 697 (1880); Gloucester Ferry Co. v. Penn., 114 U. S. 196, 204 (1884); Bowman v. Ry., 125 U. S. 465, 481, 485 (1887); Gulf, Colorado & Santa Fe Ry. v. Hefley, 158 U. S. 98, 103, 104 (1894); Northern Pac. Ry. v. Washington, 222 U. S. 370, 378 (1911); Southern Ry. Co. v. Reid, 222 U. S. 424, 436 (1911).

But until Congress acts, there necessarily remains to the State a wide range for the permissible exercise of power appropriate to their territorial jurisdiction, although interstate commerce may be affected. It extends to those matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they should go uncontrolled pending federal intervention.

Thus there are certain subjects having the most obvious and direct relation to interstate commerce, which nevertheless, with the acquiescence of Congress, have been controlled by State legislation from the founding of the government because of the necessity that they should not remain unregulated and that their regulation should be adapted to varying local exigencies. The absence of regulation by Congress in such matters has not imported that there should be no restriction but rather that the States should continue to supply the needed rules until Congress should decide to supersede them. Further, it is competent for a State to govern its internal commerce, to provide local improvements, to create and regulate local facilities, to adopt protective measures of a reasonable character in the interest of the health, safety, morals and welfare of its people, although interstate commerce may incidentally or indirectly be involved. Our system of government is a practical adjustment by which the national authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern and from its nature belongs to the class with which the State appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the federal power. In such case Congress must be the judge of the necessity of federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective control of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own. The successful working of our constitutional system has thus been made possible.

Thus we have seen that a State statute which regulates merely local matters, even though it affects interstate commerce, is valid, unless it conflicts with an act of Congress. In such matters while the acts of Congress are paramount, yet, so long as Congress has not acted the State may act. Such legislation is often termed regulation which does not require a national and "uniform system of regulation."[23] But a State statute which attempts to regulate interstate

[23] Thus, a State may legislate as to rivers, harbors, bridges, *etc.* Cooley v. Board of Wardens, 12 Howard, 299 (1851); Nillson v. Blackbird Creek Marsh Co., 2 Pet. 245 (1829); Gilman v. Phila., 3 Wall. 713 (1865); Pound v. Turck, 95 U. S. 459 (1877); County of Mobile v. Kimball, 102 U. S. 691 (1880); Escanaba Co. v. Chicago, 107 U. S. 678 (1882). A State may enact

commerce as such, is invalid because it is unconstitutional. The power to regulate commerce among the States as such, is granted to Congress by the Constitution and is exclusive. Such regulation is often said to impose a "direct burden" on interstate commerce, or that it is a subject which admits of but "one uniform system of regulation."[24] However when a State attempts to regulate interstate commerce, *in the exercise of its police power,* it may do so if Congress expressly permits. This is the single instance in which the "silence of Congress" becomes important.[25] This latter distinction arises from the fact that since the police power is nowhere taken from the States by the Constitution, it follows that such power remains in them except where it is used in conflict with some power which is exclusively in Congress. When it does so conflict, then (and only then) is the doctrine of the "silence of Congress" applicable. In such case the positive expressed permission of Congress is requisite. It might be asked, why this apparent exception in favor of the "police power"; why should it not apply equally when a State attempts to exercise its taxing power or some of the various other powers reserved to the States? The answer to this criticism would seem to be the fundamental doctrine of the common law, *salus populi suprema lex;* that the power over the health, safety and morals of the people is the only reserved power of such supreme importance

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quarantine laws even though interstate and foreign commerce are incidentally affected, and the power to absolutely prohibit additionally obtains where the thing prohibited is not a lawful article of commerce. Campagnie Francaise v. Board of Health, 186 U. S. 380 (1901); M. K. & T. Ry. v. Haber, 169 U. S. 613 (1897); Louisiana v. Texas, 176 U. S. 1 (1899); Reid v. Colorado, 187 U. S. 137 (1902). A State may regulate intrastate rates. Minnesota Rate Cases, 230 U. S. 352 (1912). But when Congress acts the State statutes fall. As to this see the various rules and statutes of States regarding contracts limiting the liability of common carriers. It was perfectly proper for the State courts to apply their own rules and statutes until they conflicted with the Act of Congress on the subject. Act of June 29, 1906, c. 3591, 34 Stat. 384; Adams Express Co. v. Croninger, 226 U. S. 491, 500 (1912). See also the Employers' Liability Act of April 22, 1908, 35 Stat. 65, c. 149, and amendment of April 5, 1910, 36 Stat. 291, c. 143, and Mondon v. N. Y., N. H. & H. R. R., 223 U. S. 1 (1911).

[24] Thus, a State may not require the payment of a license tax as a condition of engaging in interstate commerce. McCall v. California, 136 U. S. 104 (1890); Crutcher v. Kentucky, 141 U. S. 47 (1891); nor may a State prescribe the rates to be charged for transportation from one State to another, or to subject the operations of carriers in the course of such transportation to requirements that are unreasonable or pass beyond the bounds of suitable local protection. Covington Bridge Co. v. Kentucky, 154 U. S. 204 (1893); L. & N. R. R. v. Enbank, 184 U. S. 27 (1901); R. R. Commission of Ohio v. Worthington, 225 U. S. 101 (1912); C. C. C. & St. L. Ry. v. Illinois, 177 U. S. 514 (1899); H. & T. C. R. R. v. Mayes, 210 U. S. 321 (1907); McNeill v. Sou. Ry., 202 U. S. 543 (1905); Mississippi R. R. Commission v. Ill. Cent. R. R., 203 U. S. 335 (1906); Herndon v. C. R. I. & P. R. R., 218 U. S. 135 (1909).

[25] The Wilson Bill, Act of Aug. 8, 1890, 26 Stat. 313, c. 728. *In re* Rahrer, 140 U. S. 545 (1890).

and inherent sovereignty that does not immediately fall before the constitutional grant to Congress in the commerce clause.

From this discussion and the cases reviewed, three rules, or rather two rules and an exception, are submitted:

(1) Where the power of regulation relates to matters of local concern, the power is concurrent in the State and in Congress, but the State act must not conflict with an act of Congress.[26]

(2) Where the power relates to matters of national concern, that is, where the matters are such as admit of but one uniform system of regulation, then the power is exclusively in Congress, and an act of the State regulating such matters is invalid because it is in conflict with the Constitutional grant to Congress of the power to regulate interstate commerce.[27]

(3) There is, however, this exception to the last statement: the States may regulate matters of national concern by the permission of Congress, when such regulation is an exercise of the police power of the State. In such case the power is not exclusively in Congress but can only be exercised by the State after Congress has expressly sanctioned such exercise.[28]

The opinion of Mr. Justice Hughes in the Minnesota Rate Cases[29] is suggested as a most excellent review of the whole subject.

C. McA. S.

MORTGAGES—FUTURE ADVANCES—ACTUAL AND CONSTRUCTIVE NOTICE—There has been much diversity of opinion among the courts and legal writers as to the validity of mortgages to secure future advances. Formerly such mortgages were regarded with jealousy, but now in the absence of any statutory regulation their validity is fully recognized and established.[1] They have become a common form of security; and their frequent use has grown out of the necessities of trade, and their convenience in the transaction of business. This question again arose in the recent case of *American Savings Bank* v. *Kemp*,[2] and was disposed of in accordance with the view indicated above.

The record of a mortgage to secure future advances is notice to all subsequent incumbrancers as to advances made before their in-

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[26] *Supra*, n. 23.

[27] *Supra*, n. 24.

[28] *Supra*, n. 25.

[29] 230 U. S. 352 (1912).

[1] 1 Jones, Mortgages (5th Ed.), §364; Jones v. N. Y. Guarantee, *etc.*, Co., 101 U. S. 622 (1879); Staeffer v. Rodman, 146 Ky. 1 (1911); Diggs v. Fidelity and Deposit Co., 112 Md. 50 (1910); Citizens' Saving Bank v. Kock, 117 Mich. 225 (1898); Huntington v. Kneeland, 102 App. Div. 284 (1905), affirmed in 187 N. Y. 563 (1907); Moffitt v. Rynd, 69 Pa. 380 (1871).

[2] 132 Pac. 617 (Cal. 1913).

cumbrances.[3] And in the absence of notice of an inferior lien, the holder of the security for future advances may continue to treat the property as free from subsequent incumbrance, and therefore can safely make further loans to the debtor. His prior equity under the mortgage is superior to the subsequent equity of one who holds a later lien as to all advances made in ignorance of such subsequent incumbrance, whether made before or after it attaches to the property.[4]

As to the notice of the subsequent mortgage which it is requisite the first mortgagee should have in order to postpone his future advances to such intervening security, the adjudications are not uniform. As a general rule, it has been considered that the registry of the second mortgage will only be notice of its contents to *future* purchasers and incumbrancers, and not to *prior* incumbrancers, thus operating forward and not backward. Therefore the recording of a mortgage is not notice to a prior mortgagee to secure future advances so as to affect in any way the lien of his advances subsequently made.[5]

In support of the above view it is said that since the general scope of the recording laws is undoubtedly prospective and not retrospective, the first mortgagee takes all necessary precautions when he examines the mortgagor's title down to the making of his mort-

[3] Weissman v. Volino, 84 Conn. 326 (1911); Huntington v. Kneeland, *supra*, n. 1; McCarty v. Chalfant, 14 W. Va. 531 (1878).

[4] Cooke v. Wilton, 29 Beav. 100 (Eng. 1860); *In re* O'Byrne's Estate, 15 L. R. Ir. 373 (Ireland, 1885); Lanahan v. Lawton, 50 N. J. Eq. 276 (1892), affirmed in 50 N. J. Eq. 796 (1893); Alexandria Saving Inst. v. Thomas, 29 Gratt. 483 (Va. 1877). But several jurisdictions in the United States take the view that the first mortgagee may continue to make such future advances with safety, although he might make them with full notice of an intervening incumbrance. Hendon v. Morris, 110 Ala. 106 (1895); Gross & Company v. Chittim, 18 Tex. Court Rep. 906 (1907); Home Saving, *etc.*, Association v. Burton, 20 Wash. 688 (1899); Wisconsin Planing Mill Co. v. Schuda, 72 Wis. 277 (1888); see Gerrity v. Wareham Saving Bank, 202 Mass. 214 (1909). If by the terms of the mortgage an obligation is imposed upon the mortgagee to make the advances, the mortgage will remain security for all the advances he is required to make, although other incumbrances may be put upon the property before they are made, and he has knowledge of such incumbrances. Tompkins v. Little Rock, *etc.*, R. Co., 15 Fed. Rep. 6 (1882); Boswell v. Goodwin, 31 Conn. 74 (1862); Alexandria Saving Inst. v. Thomas, *supra*. In England, however, it is immaterial that the first mortgagee has contracted to make the future advance, if he has so contracted the making of a second mortgage on the same property by the mortgagor releases him from his covenant, and he is not protected for advances made after notice of subsequent incumbrance. West v. Williams, 68 L. J. Ch. 127 (Eng. 1899).

[5] 3 Pomeroy, Eq. Jurisp. (3rd Ed.), §1199; *In re* O'Byrne's Estate, *supra*, n. 4; Ripley v. Harris, 3 Biss. 199 (U. S. 1872); Tapia v. Demartini, 77 Cal. 383 (1888); *dictum* in Brinkmeyer v. Browneller, 55 Ind. 487, 494 (1876); Wilson v. Russell, 13 Md. 494 (1858); *dictum* in Finlayson v. Crooks, 47 Minn. 74 (1891); Reed v. Rochford, 62 N. J. Eq. 186 (1901); Ackerman v. Hunsicker, 85 N. Y. 43 (1881); Union Nat'l Bank v. Molim, 7 N. D. 201 (1897); McDaniels v. Colvin, 16 Vt. 300 (1844); Hall v. Williamson Grocery Co., 69 W. Va. 671 (1911).

gage and finds that he then has a clear, legal and valid security upon which he may rest until such information is brought home to him in fact as ought properly to impose upon him the burden of a re-examination.[6] This is highly reasonable if applied only to such past transactions as are not likely to direct the attention of the party to the registry, as where the future advances are contemplated to be made from day to day, thus involving a continuous dealing. But where the clause for securing such advances is inserted as a mere safeguard, and with no present expectation of the parties that it will be acted upon, and the parties do subsequently negotiate a further distinct loan, then there seems no hardship in requiring the first mortgagee to examine the registry before making such future loan. Accordingly, in several States, the law is well settled that the first mortgagee is bound before making his optional advances to take notice of a junior recorded mortgage—in other words, that the record of the second mortgage is equavalent to actual notice to the first mortgagee.[7]

In answer to the contention that it would be a hardship upon the first mortgagee to require him to search record every time he makes an advance, Judge Christiancy[8] said, "I have not 'been able to comprehend' this hardship. It is, at most, but the same inconvenience to which all other parties are compelled to submit when they lend money on the security of real estate—the trouble of looking to the value of the security. But, in truth, the inconvenience is very slight. Under any rule of decision they would be compelled to look to the record title when the mortgage is originally taken. At the next advance they have only to look back to this period, and for any future advances only back to the last; which would generally be but the work of a few minutes, and much less inconvenience than they have to submit to in their ordinary daily business in making enquiries as to the responsibility, the signatures and identity of the parties to commercial paper."

It was at one time thought by eminent writers that the latter rule requiring only registration of second mortgage to put first mortgagee on notice would finally prevail in all the American States, each advance when made only operating as a lien from that date and not from the date of the mortgage;[9] but the trend of modern decisions is undoubtedly in favor of the other view.[10] *W. G. S.*

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[6] Cases cited, *supra*, n. 5.

[7] Collins v. Carlisle, 13 Ill. 254 (1851); Ladue v. Detroit, *etc.*, R. Co., 13 Mich. 380 (1865); Spader v. Lawler, 17 Ohio, 371 (1848); The Bank of Montgomery County's Appeal, 36 Pa. 170 (1860).

[8] Ladue v. Detroit, *etc.*, R. Co., *supra*, n. 7, at.p. 408.

[9] Remarks of Judge Redfield in a note to the case of Boswell v. Goodwin, 3 American Law Register (N. S.), 92; 1 Washburn, Real Property (1st Ed.), p. 542.

[10] 2 Washburn, Real Property (6th Ed.), §1084; authorities cited, *supra*, n. 5.

TORTS—ACTS INJURIOUS TO THIRD PERSONS—MALICIOUS MOTIVE—It has generally been thought essential to a recovery in tort that the act complained of should, under the circumstances, be legally wrongful as regards the party complaining; that is, it must prejudicially affect him in some legal right; merely that it will, however directly, do harm to his interests, has been thought not enough.[1] An interesting decision involving this principle of law is found in the recent case of *Gott* v. *Berea College*.[2] In this case a ruling of the college faculty providing that "eating houses and places of amusement in Berea not controlled by the college must not be entered by the students on pain of immediate dismissal," was held to be justifiable and the defendants held not liable in damages to the plaintiff, a restaurant keeper, even though the latter's business was ruined by the enforcement of the ruling. Undoubtedly the decision was correct on the ground that the college was a privately endowed institution and the college authorities had therefore a right to place any reasonable restrictions upon the students.[3] Had it been a public institution, supported by State appropriations, it is doubtful whether its powers of student discipline and control would have been so broad.[4] It seems clear, however, that the authorities of any public institution of learning may lay down and enforce any reasonable rules regulating the conduct of the pupils, and will not be liable for any injurious consequences resulting therefrom.[5]

The interesting point of law in the Gott case, however, arises from the allegation in the bill of malice on the part of the defendants. Will a malicious motive make an actor liable in damages for an act apparently within his legal rights? Again, will the fact that an act done is within the legal rights of the actor justify it, if it appear that the act is prompted solely by malicious motives? Judge Cooley has said: "Bad motive, by itself, is no tort. Malicious motives make a bad act worse, but they cannot make that a wrong which in its own essence is lawful. An act which does not amount to a legal injury cannot be actionable because it is done with bad intent. Where one exercises a legal right only, the motive which actuated him is immaterial. When in legal pleadings the defendant is charged with having wrongfully and unlawfully done the act complained of, the words are only words of vituperation, and amount to nothing unless a cause of action is thereby alleged."[6] So far as it has been applied to the control and discipline of students in public institutions of learning, this broad principle of law has been sustained, and the malicious threatening, persuading and intimidat-

[1] Addison on Torts, 6th Ed. (1891), American Notes, Baylies, Chap. I, §1.
[2] 161 S. W. Rep. 204 (Ky. 1913).
[3] People v. Wheaton College, 40 Ill. 186 (1866).
[4] State *ex rel.* Stallard v. White, 82 Ind. 278, 42 Am. Rep. 496.
[5] Jones v. Cody, 132 Mich. 13, 92 N. W. Rep. 495, 62 L. R. A. 160 (1902).
[6] Cooley on Torts, Vol. II (3rd Ed.), p. 1505.

ing of scholars by the school authorities from patronizing a place of business near the school has been held not to be actionable.[7] But it is submitted that the broad ground apparently laid down by Judge Cooley cannot be taken under every set of circumstances. Even Judge Cooley himself seems to have doubted the strength of the proposition, for subsequent to its statement he also says: "The point is not without interest, and it would seem that there must certainly be some difference between the man who proposes to keep within the limits of legal rights, and also to cause no annoyance, and the man who proposes to cause what annoyance he may find possible without exceeding those limits."[8] A review of the cases shows that some of the courts have also had doubts on the point involved and there is a clear tendency in the modern decisions to hold an actor liable in damages, under certain circumstances, for injuries arising from an act done solely from malicious motives, altho the act is within the apparent legal rights of the actor.

To illustrate this tendency there is that class of cases—to which our principal case belongs—in which the defendant, acting within his apparent legal rights, has so restricted persons under his control or influence in the freedom of their actions as to cause injury to the plaintiff in his business, that being the result intended by the defendant. In each of these cases malicious motive has been alleged and urged upon the court as a ground of liability. The cases naturally fall into two groups, the one group in which recovery has been denied, and the other group in which the defendant has been held liable for the injury resulting from his act.

Group I. In this group the courts have denied recovery upon the ground that the defendant has acted within his legal rights. So an employer who maliciously refused to employ or to retain in his employ any one who rented the plaintiff's house was held free from liability for the injury resulting.[9] Where orders were maliciously issued to the employees of the defendant railroad company that they would be discharged if they continued to deal with the plaintiff, a retailer in the vicinity, no liability was held to attach for the damage resulting to the plaintiff.[10] Similarly, a defendant lumber company was held to have the right to maliciously refuse to honor pay checks, issued to its employees, and used as cash in the vicinity with the company's acquiescence, if they came through the hands of the plaintiff, a nearby retailer, who was competing with the "company store."[11] So also a lumber company was held justified in maliciously

[7] Guelther v. Altman, *et al.*, 26 Ind. App. 587, 60 N. E. Rep. 355, 84 Am. St. Rep. 313 (1901).

[8] Cooley on Torts, Vol. II (3rd Ed.), p. 1511.

[9] Heywood v. Tillson, 75 Me. 225, 46 Am. Rep. 373 (1883).

[10] Payne v. R. Co., 13 Lea, 507, 49 Am. Rep. 666 (Tenn. 1884).

[11] Robinson v. Texas Pine Land Ass'n, 40 S. W. Rep. 843 (Tex. Civ. App. 1897).

posting a notice that it would discharge all employees dealing with the plaintiff, a nearby competing retailer.[12]

Analogous to the above are cases where school authorities have maliciously enforced rules regulating the conduct of their pupils to the injury of the business of nearby store keepers.[13]

Group II. But there is another line of cases in which malicious motive has been held sufficient to entitle the injured party to recover for the injury he has suffered in his business as a result of the defendant's apparent legal act. Recovery has been allowed in cases arising under situations analogous to those in some of the cases in Group I. A railroad company was held liable for the injury resulting from orders maliciously issued to the effect that any of the company's employees "eating and drinking at the hotel of the plaintiff would be discharged."[14] The manager of a railroad company was held to be personally liable for the damage he caused by maliciously using his position and authority to coerce the employees of the company from dealing with the plaintiff.[15] An adjacent retailer was permitted to recover for the injury resulting to his business when a lumber company maliciously ordered its employees to refrain from dealing with him under threat of discharge.[16]

Again, recovery has been allowed where persons have maliciously agreed to not only themselves refrain from dealing with the plaintiff, but to induce others to do the same, the sole purpose being to injure the plaintiff in his business.[17]

Where malice is indulged in under the guise of competition, the tendency of the recent decisions is to look to the moving cause and permit the injured party to recover for the damage he has sustained. So where a banker started a barber shop for the sole purpose of driving the plaintiff out of business and closed the new shop as soon as he had accomplished his object, he was held liable for the injury caused to the plaintiff.[18] And where a wholesale oil company entered the retail field for the sole purpose of injuring a retailer who had refused to continue to deal with them, they were held liable in damages to the retailer for ruining his business.[19]

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[12] Lewis v. Huie-Hodge Lumber Company, 121 La. 658, 46 So. Rep. 685 (1908).

[13] Guelther v. Altman, *et al.*, 26 Ind. App. 587, 60 N. E. Rep. 355, 84 Am. St. Rep. 313 (1901).

[14] International, *etc.*, R. Co. v. Greenwood, 2 Tex. Civ. App. 76, 21 S. W. Rep. 559 (1893).

[15] Graham v. R. Co., 47 La. Ann. 214, s. c. on appeal, *Ibid.* 1656 (1895).

[16] Wesley v. Lumber Co., 97 Miss. 814, 53 So. Rep. 346 (1910).

[17] Ertz v. Produce Exchange, 79 Minn. 140, 42 L. R. A. 90, 81 N. W. Rep. 737 (1900); Delz v. Winfree, 80 Tex. 400, 16 S. W. Rep. 111 (1891).

[18] Tuttle v. Buck, 107 Minn. 145, 22 L. R. A. (N. S.) 599, 119 N. W. Rep. 946 (1909).

[19] Dunshee v. Standard Oil Co., 132 N. W. Rep. 371, 36 L. R. A. (N. S.) 263 (Ia. 1912).

It appears from the cases cited that Judge Cooley's broad proposition that "malicious motives cannot make that a wrong which in its own essence is lawful" must at least be qualified in cases involving injury to business. In all of the cases cited in Group II the malicious motive of the defendant has been the basis of recovery. On the other hand, in the cases of Group I, the presence of malicious motive has been held insufficient to entitle the one injured by the defendant's act to recovery. In the cases of each group the act complained of has been in its own essence lawful.

But because of the different result reached in the cases of each group it need not necessarily be concluded that they are irreconcilable on principle. An examination of the cases in Group I will show that in each—with the exception of *Payne* v. *Railroad Company*[20]—the act complained of might be justified on the ground that the defendant was acting to protect his own interests or those of his employees, or on the ground of legitimate competition, or on the ground of discipline. But in each case of Group II the sole moving cause of the defendant's act was his malicious motive to work injury to the plaintiff. The reconciling principle of these apparently conflicting groups of cases would then appear to be as follows: The doer of an act in its own essence lawful will not be liable for injury resulting therefrom because of a concurrent malicious motive, if he can justify the act on the ground of protecting his own or his employees' interests, competition, discipline, *etc.* But if malice is the sole moving cause of the act complained of, the actor will be liable for the injury resulting therefrom if his object in so acting will not result in benefit either to himself or to the community. In other words, if the actor cannot justify his act on the ground of benefit to the community at large, or on the ground of reasonable use of his social rights resulting in his personal advantage, his malicious motive will destroy all justification for an act apparently legal and he should be held liable for injuries arising therefrom. *R. M. G.*

LEGAL ETHICS—The following questions were recently answered by the New York County Lawyers' Association's Committee on Professional Ethics:

QUESTION:

A Receiver and his counsel agree to divide their fees, *i. e.*, the Receiver to pay to his counsel one-half of the commissions which the court might allow to him, and the counsel to pay to the Receiver one-half of the amount which the court awarded to him as counsel for the Receiver.

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[20] *Supra*, n. 10. The decision in this case is very doubtful, two of the five judges dissenting. On the principle advanced, it is submitted that the decision should have been the other way since the sole motive of the defendant was to maliciously injure the plaintiff. At all events, the effect of the case is nullified by statute. Shannon's Code, Supp. 285.

Query: 1. Was this agreement void as against public policy?
2. If not void, was it proper according to proper ethics?

ANSWER:

In the opinion of the Committee, the agreement is contrary to the proper rules of professional conduct, and it is probably illegal.

QUESTION:

First: When a judge of a court of review or of last resort has a dispute which he wishes to litigate, may he, without impropriety or a breach of the ethics of the profession, prosecute his suit in a court from which an appeal or writ of error lies to the court of which he is a member? Or should he, before bringing suit, resign from his office as judge?

Second: When the judgment in such case comes before the court of review or of last resort, of which the plaintiff is a member, is it sufficient to meet the requirements of the ethics of the profession, or for the due, proper, and impartial administration of the law, for the reviewing court in deciding the case merely to say that the plaintiff in the case did not sit? Or, if not, what is the proper action?

ANSWER:

First: In the opinion of the Committee, the Judge may properly prosecute his suit without resigning his office.

Second: The reviewing court could, it seems to the Committee, be fully expected to deal properly with the case. The plaintiff should, of course, not sit as a judge in his own cause, but this does not disqualify his colleagues, who should not (and doubtless would not) permit him to participate in their deliberations or influence them in any way whatever. It does not seem to us that any formal action or comment of any sort by the Court upon the Judge's disqualification is necessary. A proper precaution to avoid possible, but not probable, misunderstanding would be an informal announcement that the disqualified judge did not participate in the deliberations or action of the Court.

In the opinion of the Committee, the judge should not personally try or argue his own cause.

QUESTION:

There are some collection agencies in town which are incorporated and which solicit bills for collection. It is their custom to turn over some of them to lawyers for suit. In such cases the collection agency always wishes to deal with a lawyer as if it were his client and wishes collections remitted to it instead of directly to the creditor. In your opinion, is not that method of doing business improper? This question arises frequently and is quite troublesome because, so far as I know, there has been no adjudication of the matter.

ANSWER:

In the opinion of the Committee, the patron of the collection agency is the client, but the Committee sees no impropriety in the lawyer's complying with the wish of the collection agency in remitting to it; assuming (as the Committee does) that the agency is the authorized agent of its patron to deal in his behalf with the lawyer.

QUESTION:

I have in my employ a clerk of mature years, who wishes to have cards printed showing that he is connected with my office. He has submitted to me a draft of such a card in the following form:

A..... B.....
with C..... D.....
Counsellor at Law
(address)
(telephone)

In the opinion of the Committee would such a card convey the impression that I am holding out this clerk as a lawyer, or is it, in the opinion of the Committee, objectionable for any other reason?

ANSWER:

The Committee is not advised of any valid reason why the clerk, not being admitted to the Bar, should use a card referring to the attorney; and it appears to be beneath the essential dignity of the professional position of the attorney to permit its use, while likelihood of its abuse seems obvious.

QUESTION:

At a social entertainment given by citizens who are members of a single race, to honor a distinguished man of their number, a program was published and circulated containing paid advertisements, of which one is the following:

Telephone..... Residence Phone.....
LARGE ACCIDENT, MATRIMONIAL & CRIMINAL
ACTIONS A SPECIALTY
ALL MATTERS STRICTLY CONFIDENTIAL
.....(name)
LAWYER
.....(address).....
A ..... (stating advertiser's race) lawyer who is a ..... (stating race of distinguished guest) man's friend.
Indorsed by leaders of the community. Has estimable record in all Courts.

Is it the opinion of the Committee that this is proper professional advertising?

ANSWER:

In the opinion of the Committee the advertisement set forth in the question is improper. (See Canon 27 of the American Bar Association.)