LEGAL NOTES.

BINDING SLIPS.—Two cases, arising out of the same transaction, recently decided in the Court of Appeals of New York (*Lipman* v. *Niagara Fire Ins. Co.*, 1890, 121 N. Y. 454, and *Karelsen* v. *Sun Fire Office*, 1890, 122 N. Y. 545), deal with the proper construction and effect of what are known in insurance circles as "binding slips," and are the latest and best considered decisions in reference to these peculiar contracts. The plaintiffs, who were partners, had instructed certain insurance brokers to procure insurance on their property, and the brokers took to the defendants a "binding slip," which was accepted by them. This "binding slip" was as follows:

PELL, WALLACK & CO., Insurances,
No. 55 Liberty Street, New York, Sept. 2, 1885.

The undersigned do insure for account of Shaped Seamless Stocking Company, amounts as specified below at 1¼ for twelve months from September 2, 1885, on machinery and stock, building No. 3 (as per form, building situate Randall's Island, N. Y.). This receipt binding until policy is delivered at the office of Pell, Wallack & Co.

Company.	*Amount.*
Niagara	$2,500
Sun, England	2,500

Accepted by POLLOCK.

No premium was paid at the time. Upon receiving the binding slip the brokers immediately sent it to the plaintiff, in whose possession it remained until the day of the fire, which took place September 5, at 3 P. M. At 12.30 P. M. of that day, the Niagara Co. sent a notice to the brokers that they did not want to write the risk. In *Lipman* v. *Niagara Fire Ins. Co.* (1888), 48 Hun. 503, the Supreme Court held, as the defendant company contended, that the binding slip entitled the plaintiffs to the issue of such a policy as was then ordinarily used by the defendant, although it contained unusual terms and conditions. The policies in use at that time by the Niagara Fire Insurance Company, contained these provisions, which the plaintiffs claimed were unusual in fire insurance policies, and therefore not to be read into the binding slip, since that on its face did not purport to be subject to them, viz:

5. Relative to Issue and Cancellation of Policy.

1. If any broker or other person than the assured have procured this policy, or any renewal thereof, or any indorsement thereon, he shall be deemed to be the agent of the assured, and not of this company, in any transaction relating to the insurance.

2. This insurance may be terminated at any time by request of the assured, or by the company, on giving notice to that effect to the assured, or to the person who may have procured this insurance to be taken by this company. On surrender of the policy the company shall refund any premium that may have been paid, reserving the usual short rates in the first case and *pro rata* rates in the second case.

The Supreme Court held, accordingly, that notice to the brokers was sufficient to cancel the binding slip; but held that such notice must be

given within a reasonable time before the fire, so as to give the assured an opportunity to procure other insurance, and that the interval in this case, of two hours and a half, was not such reasonable time. The Court of Appeals, in *Lipman* v. *Niagara F. I. Co.* (1890), 121 N. Y. 454, affirmed the ruling of the Supreme Court in regard to the binding slip, stating that document to be "not a mere agreement to insure, but a present insurance to the amount specified therein," and interpreting it as follows: "The binding slip was a short method of issuing a temporary policy for the convenience of all parties, to continue until the execution of the formal one. It would be unreasonable to suppose either that the brokers expected an insurance except upon the usual terms imposed by the company, or that the company intended to insure upon any other terms. The right of an insurance company to terminate a risk is an important one. It is not reserved in terms in the binding slip and could not be exercised at all so long as no policy should be issued, unless the condition in the policy is deemed to be incorporated therein. Upon the plaintiff's contention, the company could not cancel the risk so long as the binding slip was in force, and the only remedy of the company to get rid of the risk would be to issue the policy and then immediately cancel it. The binding slip was a mere memorandum to identify the parties to the contract, the subject matter and the principal terms. It refers to the policy to be issued. The construction is, we think, the same as though it had expressed that the present insurance was under the terms of the usual policy of the company to be thereafter delivered."

The ruling of the Supreme Court in regard to the notice given, however, was reversed, the Court of Appeals holding that as no premium had been paid, and the binding slip was subject to all the terms and conditions of the usual policy of the company, the cancellation was effected *eo instante*, at the time of the service of the notice on the brokers, according to the simple terms of the contract.

In *Karelsen* v. *Sun Fire Office* (1890), 122 N. Y. 545, there was a dispute of fact as to whether the notice had been given before or after the fire. But the Court reasserted the doctrine of *Lipman* v. *Niagara Fire Ins. Co.*, in regard to the interpretation of the binding slip, as follows: "While the binding slip contained none of the conditions usually found in insurance policies, the contract evidenced by it was the ordinary policy of insurance issued by the company. So that, in any construction of the contract, it must be regarded as 'though it had expressed that the present insurance was under the terms of the usual policy of the company to be thereafter delivered': *Lipman* v. *Niagara Fire Ins. Co.*, 121 N. Y. 454."

From these cases, then, it may be concluded that: 1. A binding slip is not a mere agreement to insure, but a present, though temporary, insurance, intended to be binding until the issue of a regular policy. 2. It is not, however, itself the contract of insurance, but only a memorandum thereof, the real contract being the policy to be thereafter issued. 3. The binding slip, therefore, is to be interpreted as if it were one of the policies in general use by the company at the time, and is subject to all the terms and conditions which those policies contain. 4. In the case last cited, the

Court say: "The *Hermann Case* (100 N. Y. 411) is not applicable, for in that case the policy had been delivered to the assured and the authority of the brokers was at an end. While here the brokers had not, as yet, obtained the policies, and in the *Stone Case* had not made delivery to the assured. Consequently, their right as well as duty to represent the plaintiffs in all matters necessary to accomplish that which they had undertaken, remained." This language would seem to imply that the Court considered that the contract of insurance is not a finality, and that the authority of the brokers does not terminate, in cases where a binding slip has been delivered, until the delivery of the regular policy; a state of affairs which would seem to be directly contradictory to what was held in the same case and in the *Lipman Case*, that the binding slip was simply an evidence of the contract contained in the policy. In that view of the case, the contract made by the binding slip and policy is single, instead of being an agreement to insure, equivalent to an inchoate contract of insurance, followed by the completed contract in the policy, and the contract is at an end when the binding slip is delivered, the only remaining duty of the brokers being to receive the policy when made out and transmit it to the assured; and this, presumably, only when the binding slip, as in the present case, expressly so provides. Unless then, either the binding slip or the policy contain a provision to such effect, it would seem, in spite of the language quoted above, that after a binding slip is made out and delivered, the authority of the brokers is at an end, and that therefore notice of cancellation given to them is insufficient. In other words, unless the binding slip or policy contain an express provision that notice of cancellation may be given to the brokers who procure the insurance, such notice must be given to the assured in order to effect the cancellation. R. D. S.

LEGAL HOLIDAYS.—In addition to the statutes of Connecticut, Georgia, Iowa, Louisiana and Utah (*ante*, pages 233–5), the following have been passed since the publication of the leading article on this subject in the AMERICAN LAW REGISTER for 1890:

MICHIGAN. (See 29 AMERICAN LAW REGISTER, 169.)

Section 2274 of the Compiled Statutes has been repealed and re-enacted in somewhat enlarged language, by—

"AN ACT to provide for the taxation and regulation of the business of manufacturing, selling, keeping for sale, furnishing, giving, or delivering spirituous and intoxicating liquors, and malt, brewed or fermented liquors and vinous liquors in this State, and to repeal all acts or parts of acts inconsistent with the provisions of this act." Approved, June 28, 1887; Laws, 445, 455; 3 Howell's Gen. Stat., ed. 1890, pp. 3191–2.

"SEC. 17. All saloons, restaurants, bars, in taverns or elsewhere, and all other places, except drug stores, where any of the liquors mentioned in this act are sold, or kept for sale, either at wholesale or retail, shall be closed on the first day of the week, commonly called Sunday, on all election days, on all legal holidays, and until seven o'clock in the following morning, and on each week day night from and after the hour of nine

o'clock until seven o'clock of the morning of the succeeding day. And it shall be the duty of sheriffs, marshals, constables and police officers to close all saloons, houses or places that shall be found open in violation of the provisions of this section, and to report forthwith all such violators to the prosecuting attorney, whose duty it shall be to immediately prosecute for such violations. The word 'closed' in this section shall be construed to apply to the back door or other entrance as well as to the front door. And in prosecutions under this section it shall not be necessary to prove that any liquor was sold: *Provided*, That in all cities and incorporated villages the common council or board of trustees, or council, may, by ordinance, allow the saloons and other places where said liquor shall be sold to open at six o'clock in the forenoon and to remain open not later than eleven o'clock in the afternoon and no longer of any week day night, except on election days and holidays. Any person found in the act of violating any of the provisions of this section shall be deemed guilty of a breach of the peace and punished accordingly; and the arrest therefor may be without process, and this punishment shall be taken to be in excess of all other manner of punishment in this act provided for a violation of the provisions of this section. All officers authorized to make arrests for a breach of the peace shall have like power to make arrests under the provisions of this section as in other cases of a breach of the peace."

"SEC. 18. Any person who shall violate any of the provisions of the five preceding sections shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided in section seven of this act."

The Michigan case of *Hamilton* v. *The People*, cited 29 AMERICAN LAW REGISTER 143-4, is also reported in full in 13 Id. 679-691.

NEW YORK. (See 29 AMERICAN LAW REGISTER 174.)

In addition to the cases already cited (29 AMERICAN LAW REGISTER 145), the more recent one of *Didsbury* v. *Van Tassell, Sheriff* (1890), 56 Hun. 423, has upheld the service of a summons (in an action against a sheriff for an escape) though made upon Christmas Day. In the course of the opinion of the Supreme Court, DYKMAN, J., said: "It is to be observed, generally, that no law in this State has ever interdicted the service of any legal process, or the holding of any court on a holiday. Such days have heretofore been designated for certain specified purposes connected with commercial paper, and in no statute creating them, have legal proceedings ever received mention. No court can be opened for the transaction of business on the day of any general or special election, or on Sunday, with some exceptions, unimportant here [see 29 AMERICAN LAW REGISTER 145, 176], and that is the extent of such inhibition in this State. * * It would have been easy to prohibit the commencement of actions and the transaction of legal business upon holidays, and make them Sundays for all purposes, but it was not done, and the issuance and service of legal process remains unrestricted, as it was anterior to this law, and holidays are yet juridical. Our examination has failed to discover any case where judicial proceedings have been set aside, or nullified, because they were instituted, continued or terminated, on a legal holiday": Id. 424, 426.

Similarly, the decision in *The People* v. *Kearney* (1888), 47 Hun. (N. Y.) 129 (see 29 AMERICAN LAW REGISTER 144), has been followed in the civil case in the same Court, of *The People ex rel.* v. *Board of Supervisors* (1888), 4 N. Y. Supp. 751, where an alternative writ of *mandamus* had been served on Saturday afternoon. The Supreme Court refused to set aside this service, MARTIN, J., saying that: "Surely the service of papers in this case, cannot be regarded as the transaction of business in a public office of the State, or in a public office of the County." For additional authority, the Court cited two decisions of the New York City Court, *Fries* v. *Coar* (1887), 13 N. Y. Civil Proc. Rep. 152, and *Nichols* v. *Kelsey*: Id. 154. The former decided that the following Code provision did not apply to a Saturday half holiday:

§ 788. The time within which an act, in an action or special proceeding, brought, as specified in the last section, is required by law to be done, must be computed, by excluding the first, and including the last day; except where it is otherwise specially prescribed by law. If the last day is Sunday, or a legal holiday, it must be excluded. Where the act is required to be done within two days, and an intervening day is Sunday, or a legal holiday, it must also be excluded. Act of June 2, 1876; Laws, ch. 448.

This section was amended for some reason, by Act of June 5, 1877, Laws, ch. 416, § 1, changing "legal holiday" to "public holiday."

The other case decided that "The recent Half Holiday Act does not prevent the service of papers or the execution of writs in legal proceedings on that day or any part of it": MCADAM, Ch. J., *Nichols* v. *Kelsey* (1887), also reported in 20 Abb. New Cases 15.

Reynolds v. *Palen* (1887), 20 Abb. New Cases 11, in the Supreme Court, was a case which involved the time for serving a complaint. The last day fell upon Saturday, and the Court, without sufficient foundation, declared, *first*, that the plaintiff had the whole of Saturday to make service; and, *second*, that he was not required to act in the holiday part of the day, so that he might wait until Monday. No reason for the second resolution was given.

OHIO. (See 29 AMERICAN LAW REGISTER 177.)

"AN ACT to create an additional legal holiday." Passed April 24, 1890; Laws, page 280.

"SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the first Tuesday after the first Monday in November in each year, from and between the hours of twelve o'clock noon and two P. M., shall be, for election purposes only, a legal part holiday. And no employee who is an elector shall be compelled or required to perform any labor between said hours, nor shall any employer or his or its officers or agents discharge any such employee because he fails or refuses to labor between said hours or require or order any such employee to accompany him to the voting place of such employee, and any person violating any of the provisions of this act shall upon conviction be fined not more than twenty-five dollars."

Labor Day has been added by the following Statute:

"AN ACT to provide for the observance of the first Monday in September of each year and every year as a holiday." Passed April 28, 1890 Laws, page 355.

"SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the first Monday in September of each and every year, shall be known as labor day; and be for all purposes whatever, except for the presentment for payment or acceptance, and the protesting or the giving of notice of non-acceptance or of non-payment of all negotiable instruments, considered as the first day of the week."

PENNSYLVANIA. (See 29 AMERICAN LAW REGISTER 178.)

There is still no final decision of the Supreme Court of this State upon the character of a legal holiday. The decision of Judge WOODWARD (cited in 29 AMERICAN LAW REGISTER 150) has been followed by Judge SWARTZ, of Montgomery County, in *Worthington* v. *Hobensack* (1889), 8 Pa. C. C. Rep. 65, in refusing to strike off an appeal from the judgment of a justice of the peace, the objection being that the appeal had been entered in court upon Labor Day. The entering of the appeal was a ministerial act, which the public officers need not perform, but was valid if voluntarily performed.

Upon the trial of an issue *devisavit vel non*, in the Common Pleas of Delaware County, the Court sat during Good Friday, though the verdict was not rendered until the next day. The Court held this session no ground for a new trial, as "The matter is discretionary with the Court": CLAYTON, P. J., *Hannum* v. *Worrall* (1883), 2 Del. Co. Rep. 49, 50; thus agreeing with the decisions cited in 29 AMERICAN LAW REGISTER 145.

Another County Court decision will be noticed more at length in a subsequent number of this magazine.

VIRGINIA. (See 29 AMERICAN LAW REGISTER 182.)

Section 2844 of the Code was amended by chapter 150 of the laws of 1890 (approved February 28, 1890) by inserting the words "the nineteenth day of January (known as Lee's birthday)," among the days mentioned as legal holidays.

U. S. v. *Brewer et al.* was decided by the Supreme Court of the United States, March 23, 1891, on a certificate of division of opinion between the Circuit and District Judges in the Western District of Tennessee, upon demurrers to several counts of an indictment for removing a ballot box from the polling place to a private house before counting the votes deposited therein, at an election for a representative in Congress, held November 6, 1888, in the Third Ward of the City of Memphis. The offense was charged under § 5515 Rev. Stat. U. S. (See 29 AMERICAN LAW REGISTER 357 *et seqq.*), as being an implied violation of the Tennessee Code, §§ 1067, 1068, 1070, "no fraud being averred in the indictment, and no intent to affect the election or its result, and there being no allegation that the election, or its result, was affected": BLATCHFORD, J. Hence the answers were returned to the Circuit Court, that there was no such duty upon the election officers as required them to make the count and

announce its result before removing the ballot box from the polling place; for "Laws which create crime, ought to be so explicit that all men subject to their penalties, may know what acts it is their duty to avoid: *U. S.* v. *Sharp* (1815), Pet. C. C. 118. Before a man can be punished, his case must be plainly and unmistakably within the statute: *U. S.* v. *Lacher* (1890), 134 U. S. 624, 628."

This *Lacher Case* came into the Supreme Court on a division of opinion between the Circuit Judges for the Southern District of New York in a criminal charge against a post office employee, for embezzling a letter with a valuable enclosure. The opinion was by Chief Justice FULLER, and the sentence quoted was immediately followed by this: "But, though penal laws are to be construed strictly, yet the intention of the legislature must govern in the construction of penal as well as the other statutes, and they are not to be construed so strictly as to defeat the obvious intention of the legislature." The following authorities are then cited: *U. S.* v. *Wiltberger* (1820), 5 Wheat. (18 U. S.) 76, where Chief Justice MARSHALL declared that manslughter committed by an American seaman in a river within the Empire of China, could not be punished with fine and imprisonment, under § 12, Act of April 30, 1790, ch. 36, denouncing such an act when committed "on the high seas." The prosecution urged that this description of the place was to be interpreted by § 8, which described places where a crime punishable by the United States with the penalty of death might be committed. This contention was denied, upon an examination of the whole act, because the rule of strict construction of a penal law, "amounts to this, that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature." *U. S.* v. *Morris* (1840), 14 Peters (39 U. S.) 464, where Chief Justice TANEY answered the same Circuit Court, that an actual transportation of slaves was not necessary, if a voyage had been undertaken with that intent. The Act of May 10, 1800, §§ 2 and 3, denounced voluntary service on a vessel employed in carrying slaves, and yet it was applied where the vessel was merely on the way to load with slaves. *American Fur Co.* v. *U. S.* (1829), 2 Peters (27 U. S.) 385, where Justice WASHINGTON reversed the District Court for Ohio, because the jury had been instructed, in effect, that the Indian country, within which ardent spirits could not be sold, included territory purchased by the Government from the Indians. But otherwise the principles of the *Wiltberger Case* were followed. *U. S.* v. *Winn* (1838), 3 Sumner 209, 211, per STORY, J., "that the proper course, in all these cases, is to search out and follow the true intent of the legislature, and to adopt that sense of the words which harmonizes best with the context, and promotes in the fullest manner the apparent policy and objects of the legislature," is another and important citation. Hence the chief officer was held to be one of the crew of a ship, for whose imprisonment by the master there was a penalty provided by Act of March 3, 1835, ch. 40, § 5, punishing the master, if from malice, etc., he "imprison any one or more of the crew." Chief Justice FULLER closed his citations by quoting from Sedgwick (Stat. and Const. Law, 2d. ed. 282) a statement based upon *The King* v. *Inhab. Hodnett* (1786), 1 T. R. 96, 101,

where a marriage law, requiring the consent of the father, guardian or mother of a person under age, was applied to an illegimate and a marriage avoided for want of such consent, the mother being alive at the time of the marriage ceremony.

The Tennessee election case, therefore, appears to have turned on the intent and effect of the removal of the ballot box, and not simply upon the mere silence of the Tennessee law (See 29 AMERICAN LAW REGISTER 356, 357.

DRESSED MEAT cases still arise, notwithstanding the decision of the Supreme Court of the United States in the *Barber Case* (see 29 AMERICAN LAW REGISTER 807, *sqq.*), and one of these came into the Supreme Court by an appeal of the State officer, who had arrested a violator of the State law, but lost his prisoner on a *habeas corpus* proceeding before the United States Circuit Court for the Eastern District of Virginia: *In re Rebman* (1890), 41 Fed. Repr. 867, and *Brimmer* v. *Rebman*, decided by the Supreme Court, January 19, 1891. The petitioner, William Rebman, was tried and convicted before a justice of the peace in the City of Norfolk, for having sold Chicago dressed beef without inspection, as required by the law of Virginia:

CHAP. 80.—An Act to prevent the selling of unwholesome meat. (Approved, February 18, 1890; Laws, page 63.)

WHEREAS, it is believed that unwholesome meats are being offered for sale in this Commonwealth; therefore,

1. *Be it enacted by the general assembly of Virginia*, That it shall not be lawful to offer for sale, within the limits of this State, any fresh meats (beef, veal or mutton) which shall have been slaughtered one hundred miles, or over, from the place at which it is offered for sale, until and except it has been inspected and approved as hereinafter provided.

2. The county court of each county, and the corporation court of each city of this State, shall, in their respective counties and cities, appoint one or more inspectors of fresh meats, on the petition of not less than twenty citizens, and it shall be the duty of said inspectors to inspect and approve, or condemn, all fresh meats offered for sale in this State, which has been transported one hundred miles, or more, from the place at which it was slaughtered.

3. And for all fresh meats so inspected, said inspector shall receive, as his compensation, one cent per pound, to be paid by the owner of the meat.

4. It shall be the duty of any and all persons, firms, or corporations, before offering for sale in this State, fresh meats, which under the provisions of this Act are required to be inspected, to apply to the fresh meat inspector of the county or city where the same is proposed to be sold, and have said meat inspected; and for a failure so to do, or for offering to sell any fresh meats, condemned by said inspector, the person, firm, or corporation so selling, or offering to sell, shall be fined not less than fifty, nor more than one hundred dollars for each offense, to be recovered before any justice of the peace of the county or city where the violation occurs; *provided*, that in cities of fifteen thousand inhabitants or more,

one-half the fees of the inspectors shall be paid into the State treasury, and *provided, further*, that nothing in this Act shall apply to the counties of Accomac and Northampton.

5. The said inspectors, before discharging the duties herein imposed, shall take and subscribe an oath before the court appointing them, to faithfully discharge said duties, and the several courts are respectively empowered to remove, for cause, any inspector, and to appoint another, or others, instead.

6. This Act shall be in force from and after the first day of March, eighteen hundred and ninety.

The similarity to the Minnesota Act of 1889 (See 29 AMERICAN LAW REGISTER 807) is noticeable, and the result was the same, Justice HARLAN delivering the unanimous opinion of the Court, that "the statute is, in effect, a prohibition upon the sale in Virginia, of beef, veal or mutton, although entirely wholesome, if from animals slaughtered one hundred miles, or over, from the place of sale." And this, because a State "may not, under the guise of exerting its police powers, or of enacting inspection laws, make discriminations against the products and industries of its own, or of other States," by taxing dressed meat at one cent a pound. And following the principles of *Welton* v. *Missouri* (See 29 AMERICAN LAW REGISTER 751), the Court declared that "Any local regulation which, in terms, or by its necessary operation, denies this equality in the markets of a State, is, when applied to the people and products or industries of other States, a direct burden upon commerce among the States, and therefore void." To rebuke a forgetfulness that the local liberty, so dear to those who advocate these petty laws, depends upon the power of the whole country for its very existence, the Court also cited from *Walling* v. *Michigan* (See 29 AMERICAN LAW REGISTER 738), that this inspection fee was in reality "a discriminating tax imposed by a State [and], operating to the disadvantage of the products of other States when introduced into the first mentioned State;" this being, "in effect, a regulation in restraint of commerce among the States * * * is a usurpation of the powers conferred upon the Congress of the United States." Further, to prevent still more insignificant isolation of parts of a State, the Court cited from the *Robins Case* (See 29 AMERICAN LAW REGISTER 758), that the application of the statute to people in the enacting State will not validate it: it is the effect upon commerce and not upon persons, that is condemned.

The appellation of inspection laws to such statutes as these Dressed Meat laws, is a misnomer. An inspection law must indeed relate to the quality of such articles (See 29 AMERICAN LAW REGISTER 833), and a reasonable charge can be made for the service, but all these Dressed Meat laws are directed against the Chicago beef trade and are plainly founded upon the untenable idea that meat slaughtered at the point of consumption is necessarily good meat until sold or consumed, while meat transported for a distance between slaughtering and sale is so likely to be dangerous as to require police regulation. If all dressed meat was put under the ban, there would be more justice, and more certainty of the law being declared