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Notes on Recent Cases

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NOTES ON RECENT CASES

CONSTITUTIONAL LAW.—Pardon Power of Governor for Direct Contempt of Court.—The petitioner was sentenced for direct contempt of court and the governor issued to him a pardon which the sheriff refused to recognize on the ground that it was beyond the power of the executive whereupon the petitioner brought in habeas corpus. The only question presented was whether the power to pardon for direct contempt of court is conferred upon a governor under the provisions of the state constitution which reads: "Subject to such regulations as may be prescribed by law, the governor shall have power to grant reprieves and pardons, after conviction, for all offenses except treason and in case of impeachment." The supreme court of New Mexico *held*, that such power is within the provisions conferring upon the governor the power of pardon. *Ex Parte Magee* (N. M. 1925) 242 Pac. 332. This is probably the first case in the United States, as pointed out in briefs, to decide that a direct contempt of court, committed by words addressed to the judge, may be pardoned under such a clause. Parker, C. J. remarks, "It is sometimes said that, if a governor may pardon an offense of this kind, the independence of the judiciary as a coordinate branch of the government may be destroyed; that a governor may from personal or political bias or hatred or from mistaken sense of duty, absolutely destroy the power and usefulness of any court in the state. The answer to this suggestion is manifold. In the first place, no assumption can be indulged that a governor will ever so violate his oath, and so far depart from his duty, as to be guilty of such conduct. In the next place, if such a calamity should ever befall the state, the remedy is by impeachment if the conduct should be flagrant, or by retirement by the vote of the people at the next election. Again, the proposition that the three departments of the state government are independent of each other is only relatively, and not absolutely, true. . . . The power to punish for contempt in cases like the present is exercised under the sting of insult, and human nature may not always be able to withstand such stress without losing the poise and calm judgment so necessary to the proper ex-

ercise of judicial power." The opinion of the supreme court of the United States in *Ex Parte Grossman*, 267 U. S. 87, 45 Sup Ct. 332, 69 L. Ed. 527, 38 A. L. R. 131, seems to be controlling in the principal case. In that Grossman was sentenced for *constructive* criminal contempt in violating an injunction against the sale of liquor. He was pardoned by the President and it was held that the Constitution gave such power. Chief Justice Taft favored the exercise of such power as a check upon the arbitrary power of a judge. The authorities, generally hold that a contempt of court is an offense against the state rather than against the judge, and thus comes under the power to pardon for offenses against the state. *In re Mulke*, 17 Fed. Case No. 9,911; *In re Mason*, 43 Fed. 510, *State v. Souwinet* (La.) 13 Am. Rep. 115. Texas, however, has held that a contempt proceeding does not come within the purview of "criminal cases" which the governor has been given power to pardon. *Taylor v. Goodrich* (Tex. Cir. App.) 40 S. W. 515. The pardon power of an executive does not extend to contempt arising out of a civil suit for the benefit of the parties. *In re Nevitt*, 117 Fed. 448. Where a governor under the constitution has power to pardon for all offenses, the power extends only to offenses in violation of state laws, and the executive has no power to remit a penalty imposed for violation of a city ordinance. *State ex rel. Kansas City v. Renick* (Mo.) 57 S. W. 713. The pardoning power, whether exercised under the federal or state constitution, is the same in its nature an effect as that exercised by the representatives of the English Crown in this country in colonial times. 29 Cyc. 1563, N. 20; *People v. Bowen*, (Cal.) 43 Cal. 439, 13 Am. Rep. 148; *Ex Parte Powell* (Ala.) 49 Am. Rep. 71.

CONTRACTS—To Reveal Undiscovered Assets of Estate.

—The plaintiff, a step-brother of the testatrix, under whose will defendant was sole beneficiary, knew that the deceased up until her death had a certificate of deposit in a certain bank but did not know the amount until after distribution of the estate. Plaintiff told the executor that there was money unaccounted for belonging to the estate and the executor told him to see the defendant about it. Defendant agreed, under seal, that in consideration of revealing the place where the money was, he would pay plaintiff one-half said sum. Plaintiff gave the information, and defend-

ant collected the sum from the bank but refused to share with plaintiff as he agreed whereupon plaintiff brought this action to recover. *Held*, that a contract to reveal undiscovered assets of a decedent estate is not contrary to public policy where plaintiff was under no obligation to disclose his knowledge as to the existence of such undiscovered assets, and had not performed any acts concerning it nor caused it to be secreted. *Kaplan v. Suher* (Mass. 1926) 150 N. E. 9. Commenting on the aspects of the case involved, the court draws somewhat of an analogy between an agreement to pay for the information of this sort and an offer to pay an award to anyone of the public who may divulge information desired. It is pointed out that where one complies with the terms of a public offer of a reward for specific information it has been generally held that he may recover, citing—*Jenkins v. Kilbren*, 74 Am. Dec. 596; *Besse v. Slyer*, 85 Am. Dec. 747; 1 Williston on Contracts, section 33.

EXPLOSIVES.—Liability for Sale.—Defendant company sold illuminating oil to retailer from whom plaintiff purchased a quantity which proved inferior, and dangerous in that it was of lower “flash” test than permitted by Burn’s Ann. Statutes, 1914, Sec. 7888, 7907. *Held*, it is no defense in an action by consumer that defendant had no knowledge of its dangerous condition when it was sold to the retailers; and it is not necessary that privity of contract exist between the company selling illuminating oil and a consumer purchasing from a retailer in order to render the company liable for damages from an explosion. *Standard Oil Co. v. Robb*, (Ind. App.) 1925. 149 N. E. 567.

GARNISHMENT.—Liability of Common Carrier When Shipper is in One State and Shipment is in Another.—As a general, and so far as can be found, the universal, rule it has been determined that a common carrier is not liable to garnishment in respect to goods which are beyond the territorial limits of the court issuing the process. 10 C. J. 283. Perhaps the leading case expounding this rule is *Bates v. Chicago, Milwaukee and St. Paul Ry.*, 60 Wis. 296, 50 Am. Rep. 369, 19 N. W. 72. A notice of garnishment had been served on the carrier for goods in its possession then in transit from Milwaukee to Chicago. The court held that the railway could not be enjoined from delivering the goods in Chicago, and neither would it have been pos-

sible to arrest the goods in transit, even while the goods were in fact still in Wisconsin. To compel the carrier to hold the goods in another state would be to extend the power of a court beyond its limits of jurisdiction, which is an encroachment never intended; and to arrest the shipment would be to interfere with the prime duty of carriers—to transport safely goods from one point to another. To favor one shipper the consignments of many others would be delayed, and confusion would result. 8 Am. & Eng. Encyc. 1159.

Bates v. Railway is cited approvingly in 28 L. R. A. 600, and the principle is even extended. In the latter case the goods, consigned from West Superior, Wisconsin, to St. Paul, Minnesota, had not left West Superior when the notice of garnishment was served. As the consignment was on a siding ready to be transported, however, the court found that they could justifiably be considered in transit, and therefore refused to hold the garnishee defendant.

In accord with these cases are *Ill. Central Ry. v. Cobb*, 48 Ill. 402; *Western Ry. Co. v. Thornton*, 60 Ga. 300; *Stevenson v. Eastern Ry.*, 40 N. W. 705. All of these cases are adjudged on the theory that garnishment would be an unwarrantable extension of the court's powers into a foreign jurisdiction.

INFANTS.—Incapacity to Contract.—Plaintiff, a minor wife, bought furniture of the value of five hundred dollars, to carry on the business of keeping roomers as a separate undertaking, the husband taking no part in, nor approving of the venture. The young wife bought under a conditional sales agreement and gave a note in her own name. After she had kept roomers for a few months, she separated from her husband and while still a minor, repudiated the contract for the purchase of the furniture, tendered the return of the said furniture, and demanded the money she had paid. *Held*, plaintiff could repudiate and recover, and the fact that she was engaged in a business of trade does not remove the incapacity to contract generally, nor can purchases be made in the course of trade be regarded as necessaries. *Wallace v. Newdale Furniture Co.*, (Wis. 1925) 205 N. W. 819. The fact that an infant represents himself to be of full age does not render this contract valid, nor will it estop him from avoiding the

contract. *Carpenter v. Carpenter*, 45 Ind. 142. The rule stated in the principal case is too well settled to require further comment.

INNKEEPERS.—Liability for Injuries Caused by Guest's Negligence. Plaintiff while seated in his automobile parked on the street in front of the William Penn Hotel, was struck on the head by a bottle which had apparently fallen or was thrown from a window of the hotel by a guest who had rented a light house-keeping room there. It was shown that on several occasions prior to the accident milk bottles, jars, and grapefruit had been placed on the window sills by guests of the hotel and the hotel had provided no guards on the windows to prevent such articles from falling to the street. It was not shown, however, that the hotel management knew their guests were in the habit of placing on the window sills articles liable to fall. Plaintiff brought suit against the defendant for his injuries. *Held*, the proprietor of a hotel is not liable for injuries to third persons caused by a guest throwing bottles out of the window, where the proprietor had no reason to anticipate such act and could not prevent it. The proprietor is not required to inspect the window sills to see if articles are placed there, nor is he required to contract with a permanent guest against the latter's placing of articles on window sills, in order to be relieved of liability. Even a similar act of a transient guest does not render the proprietor liable unless he knew or should have known of such acts and failed to remedy the danger. There must be a causal connection between the fall of the objects and the acts of the hotelkeeper, their servants, or persons for whose acts they are responsible. *Wolk v. Pittsburgh Hotels Co.*, (Pa., 1925). 131 Atl. 537. A search of the authorities discloses that the principal case is new in its application of the rule that an innkeeper is not liable to strangers for acts of his guests where neither he nor his agents knew, or by the exercise of reasonable care could have known, that the manner and behavior of the guest were such as to indicate to a man of average prudence that the guest might commit acts which would naturally result in injury to others. The question was first presented in a case appearing before the Kentucky Supreme Court in 1909. In that case a person in the street was in-

jured by a bottle thrown into the street by a guest whose previous conduct had not been such as would charge the innkeeper with knowledge or with reasonable grounds to believe that the guest would be guilty of such conduct. In its decision the court held that the innkeeper was not liable. *Brunner v. Seelbach Hotel Co.*, (Ky., 1909) 133 Ky. 41, 117 S. W. 373, 19 Ann. Cas. 217.

PRINCIPAL AND AGENT.—Wife Transacting Her Separate Business Not Chargeable With Fraud of Husband Who Converted Money Paid by Wife to Him in His Capacity as Manager. Plaintiff transacting her own business contracted in good faith, for certain lots with the defendant company through their manager, plaintiff's husband, who fraudulently converted part of the purchase money. Defendant refused to convey and plaintiff sought specific performance. *Held*, the wife, acting good faith is not chargeable with her husband's fraud where he is defendant's agent. Plaintiff is therefore entitled to specific performance. *Stolberg v. Oakman*, (Mich. 1925) 206 N. W. 488. The general rule that one who clothes an agent with apparent authority to accept money is required to suffer loss where the agent misappropriates the funds, involved. *Thomas v. Smith-Wagoner Co.*, (Ore.) 234 P. 814; *Commonwealth Finance Corp. v. Schutt* (N. J.) 116 A. 722; *Sioux City Cattle Loan Co., v. Lovrien* (Ia.) 197 N. W. 914. In this day when a wife has power to transact her own business, if she deals with her husband as the agent of another it is only reasonable to hold her free from any fraud on his part unless she was a party to the fraud or acted in bad faith.

SPECIFIC PERFORMANCE.—Agreement to Convey Real Estate for Care During Old Age. Plaintiffs filed a bill in equity for specific performance against the administrator and heirs of their grandmother's sister who had made an oral agreement with the plaintiffs that in consideration of their care and comfort until death she would convey her property to them. Later she died and plaintiffs after unsuccessful attempts to secure conveyance from the heirs, brought this bill. *Held*, where the grandniece and her husband undertook to care for decedent on her oral agreement that she should convey her property to them, and they performed their part of the agreement, they were entitled to the benefit of their contract, even though decedent died shortly after the

agreement was made. *Denevan v. Belter*, (Mich. 1925) 206 N. W. 500. A contract to care for, give personal attention to, and make a home for an aged person, whether relative or stranger, in return for a promise of a testamentary gift, or devise, is a common form of an agreement which will be enforced in equity, in the majority of the courts, for the reason that the performance of services of this kind is sufficient to take the contract out of the Statute of Frauds. *Vreeland v. Vreeland*, (N. J. Ch.) 32 Atl. 3. Where performance of the agreement causes a hardship or change of position on the part of the plaintiff his equity is that much stronger. *Best v. Gralapp*, (Nebr.) 99 N. W. 837. However, if the plaintiff should have been in such circumstances prior to the agreement that in entering into an agreement he would place himself in more advantageous circumstances it is no bar to relief. *Berg v. Moreau*, (Mo.) 97 S. W. 901. It is not essential, according to some cases that performance of the agreement should cause the plaintiff any sacrifice or pecuniary loss. See 36 Cyc. 674, Note 41.

TORTS—Interference With Business or Occupation.—Plaintiff, a real estate broker, had the exclusive agency to sell a certain building and interested one of the defendants in the property. His exclusive agency expired before he could complete the sale but he continued negotiations under a general agency and obtained from one of defendants—the prospective purchaser—an offer which he submitted to the owner who was willing to sell at that figure. The prospective purchaser was induced by two others, one of whom acted as broker, and the other as the nominal purchaser, to abandon the negotiations with plaintiff and buy through them. The three conceived a plan whereby they induced the owner to sell at a lower price reciting to him that he would be relieved from paying the plaintiff's commission by dealing with them. The owner transferred the property; and plaintiff brought suit alleging that the defendants had conspired to defraud him out of his commissions to which he was entitled. *Held*, plaintiff, broker, who was deprived of the opportunity to complete negotiations by the fraudulent representations made to the owner by another broker, through whom the sale was made, is entitled to recover damages from the broker, the purported purchaser, and the real purchase as parties to the

fraud. The law does not restrict protection to rights resting on completed contracts only, but forbids unjustifiable interference with the right to pursue a lawful business or occupation and secure earning of industry through fraud, misrepresentation, intimidation, obstruction, or molestation. *Skene v. Carayanis* (Conn. 1926) 131 A. 497. It may be stated in a general way that one who uses misrepresentation, unfair, or malicious simulated competition is liable. *Boggs v. Sluncan—Schell Furniture Co.* (Iowa) 143 N. W. 482; *So. Ry. Co. v. Chambers* (Georgia) 55 S. E. 404; *Tuttle v. Buck* (Minnesota) 119 N. W. 946. Where the owner of a vineyard had listed with the plaintiff for sale and plaintiff interested a purchaser who was about to buy, when defendants interfered by threats and coercion and prevented the consummation of the deal, defendants are liable to plaintiff in damages. *Krigbaum v. Sbarboro* (Cal. App.) 138 P. 364. One cannot induce another to break a contract with a third person to the damage of the latter. *Citizen's Light and Heat Co. v. Montgomery Light Co.* (U. S. C. C. Ala.) 171 Federal 553; *Cornellier v. Haverhill Mfr's Ass'n.*, (Mass.) 109 N. E. 643.

W. L. T.