

# Michigan Law Review

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## Note & Comment

Michigan Law Review

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# MICHIGAN LAW REVIEW

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## ANNOUNCEMENT

For many years there has been felt the need of a law journal to be conducted under the auspices of the Department of Law of the University of Michigan. Various causes, however, have conspired to postpone the undertaking until the present time. Plans have been now matured for the establishment of such a magazine, and with this issue the MICHIGAN LAW REVIEW enters upon a career which it is hoped may prove to be one of usefulness and success. The purpose is to give expression to the legal scholarship of the University, and to serve the profession and the public by timely discussion of legal problems, and by calling attention to the most important developments in the field of jurisprudence.

There are, of course, several excellent legal journals already in the field, but no one of them serves quite the purpose which is the aim of this one. There is, moreover, in the great northwest, a field essentially unoccupied, while in the alumni of this department, now numbering considerably over six thousand members, there exists a loyal and influential constituency to whom, it is hoped, such a journal will prove especially attractive.

The magazine will be made up of four chief departments: *first*, leading articles upon important and interesting legal subjects; *second*, notes and comment upon current topics and significant occurrences in the legal world; *third*, abstracts and digests of the most important recent cases; and *fourth*, reviews of books and comments on legal literature.

In the first department, it is the hope to give such discussions of the legal problems of the day as will prove useful, reliable and scholarly.

In the second, may be expected interesting and profitable notes and comments upon legal events. In the third, an especial effort will be made not to refer to every case, but to give such critical and helpful analysis of the most important recent cases as will serve to show their real effect upon the development of the law. In the department of book reviews, it will be the aim to give honest, impartial and competent estimates of the newest books, and helpful reviews of the current legal literature. All articles and book reviews will appear over the signatures of the writers.

It will be the aim to make the journal practical without usurping the functions of the text-book or the digest, and scholarly without becoming so academic in its character as to be out of touch with the needs and aims of the lawyer of today. It will not be local in its character or be confined to the discussion of law-school problems.

The magazine will be under the editorial management of a member of the faculty, assisted by an Advisory Board, but all of the other members of the faculty will co-operate in conducting it. Articles from members of other faculties in the University upon subjects of legal interest may also be expected, and contributions from outside sources will frequently appear.

The magazine will contain about eighty pages in each issue, and will regularly appear on the first of each month in the college year, exclusive of October.

This enterprise is in no sense undertaken for the pecuniary benefit of its projectors, or any of them. All profits, if any, which may accrue, will be devoted to the improvement of the magazine, and to the promotion of the welfare of the Law Department.

Founded in this spirit, the projectors make bold to appeal for support to the alumni and friends of this Law School, and to the members of the legal profession in general.

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## NOTE AND COMMENT

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THE RIGHT OF A DE JURE OFFICER TO RECOVER SALARY OR FEES PAID TO A DE FACTO OFFICER.—The question of the right of a *de jure* officer, who has established his title to the office, to recover from the municipality, or from the *de facto* officer, the amount of salary or fees paid by the municipality to the *de facto* officer, was involved in the recent interesting case of *Coughlin v. McElroy, et al.*, 50 Atl. Rep. 1025, decided January 9, 1902, by the Supreme Court of Connecticut. It appeared that Coughlin and McElroy were rival candidates for the office of tax collector of the City of Bridgeport. As a result of the election, McElroy was regularly declared elected, and in good faith qualified and entered upon the performance of the duties of the office. Coughlin contested the election and was finally held to

be entitled to the office. (*Coughlin v. McElroy*, 72 Conn. 99, 43 Atl. Rep. 854, 77 Am. St. Rep. 301.) While McElroy was performing the duties of the office, he was, in pursuance of an established custom, permitted by the city authorities to retain, out of the funds collected by him, the compensation of the office. Coughlin having established his title to the office, brought this action against the city and McElroy to recover the amounts so retained by McElroy, with the assent of the city, as his compensation. The court held that the retention of the compensation by McElroy with the assent of the city, under the circumstances named, must be regarded as a payment of the same by the city to McElroy, in good faith, and before he was ousted. Proceeding from this point, the court said: "This being so, the question is whether the city, having in good faith paid to the *de facto* officer, before judgment of ouster, the fees of the office, is liable to the *de jure* officer for such fees. Upon this question the decisions of the courts of this country are in direct conflict. Quite a number of courts of high authority, among which may be mentioned those of California, Maine, Tennessee, Wyoming, and Pennsylvania, hold that such a payment does not protect the community against the claims of the *de jure* officer. *People v. Smith*, 28 Cal. 21; *Andrews v. Portland*, 79 Me. 484, 10 Atl. 458, 10 Am. St. Rep. 280; *Mayor, etc., v. Woodward*, 12 Heisk. 499, 27 Am. Rep. 750; *Rasmussen v. Board* (Wyo.) 56 Pac. 1098, 45 L. R. A. 295; *Philadelphia v. Rink* (Pa.), 2 Atl. 505. On the other hand, the courts of a majority of the states that have had occasion to pass upon this question hold that such a payment does protect the community. Among the courts holding this doctrine may be mentioned those of the states of Michigan, New York, Missouri, Ohio, Kansas, Nebraska, and New Hampshire. *Board v. Benoit*, 20 Mich. 176, 4 Am. Rep. 382; *Dolan v. Mayor, etc.*, 68 N. Y. 274, 23 Am. Rep. 168; *McVeany v. Mayor, etc.*, 80 N. Y. 185, 36 Am. Rep. 600; *State v. Clark*, 52 Mo. 508; *Westberg v. City of Kansas City*, 64 Mo. 493; *Steubenville v. Culp*, 38 Ohio St. 23, 43 Am. Rep. 417; *Commissioners v. Anderson*, 20 Kan. 298, 27 Am. Rep. 171; *State v. Milne* (Neb.), 54 N. W. 521, 19 L. R. A. 689, 38 Am. St. Rep. 724; *Shannon v. Portsmouth*, 54 N. H. 183. It seems to us that the rule laid down in this last class of cases is, in reason, the better rule. It rests upon the familiar and reasonable rule that persons having the right to do business with a *de facto* officer, like the one in question, have the right to regard him as a valid officer, and the right to make payments to him without the risk of having to pay a second time. This is the rule that protected the taxpayers in making payments to McElroy, and there appears to be no good reason why it should not be applied to payments made by the city to him in good faith, and before judgment of ouster. Our conclusion is that the city is not liable to the plaintiff for the fees paid by it to the *de facto* collector. \* \* \* \*

"The next question is whether the plaintiff is entitled to recover from the *de facto* officer the fees paid to such officer by the city; and the answer to this depends upon the answer to the further question whether this can be done at common law, and without the aid of a statute. The courts of this country that have had occasion to pass upon this last question have almost unanimously answered it in the affirmative. That, in cases like the present, the legal right to the office carries with it the right to the salary and emoluments thereof; that the salary follows the office; and that the *de facto* officer, though

he performs the duties of the office, has no legal right to the emoluments thereof—are propositions so generally held by the courts as to make the citation of authorities in support of them almost superfluous. Nearly all, if not all, cases hereinbefore cited upon both views as to the liability of the city, hold that the *de facto* officer, for fees and emoluments of the office received by him, is liable at common law to the officer *de jure*. So far as we are aware, the only well-considered case taking a contrary view of the law is that of *Stuhr v. Curran*, 44 N. J. Law, 186, 43 Am. Rep. 353; and that was decided by a divided court, standing seven to five. We think the able dissenting opinion of Chief Justice Beasley in that case shows conclusively that at common law, in a case like the present, the *de jure* officer is entitled to recover from the *de facto* officer. Another well-considered case directly in point in favor of this view is that of *Kreitz v. Behrensmeier*, 149 Ill. 496, 36 N. E. Rep. 983, 24 L. R. A. 59."

The decision of the court is undoubtedly in accordance with the weight of authority. (See *MECHEM ON PUBLIC OFFICERS*, §332.) To the list of states holding that the municipality can not be compelled to pay to the *de jure* officer after payment in good faith to the *de facto* officer, may be added:—Arizona (*Shaw v. Pima County*, Ariz. , 18 Pac. Rep. 273), South Dakota, (*Fuller v. Roberts Co.*, 9 S. Dak. 216, 68 N. W. Rep. 308. See also, *Selby v. Portland*, 14 Oreg. 243. 58 Am. Rep. 307.

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EXEMPLARY DAMAGES WHERE ACTUAL DAMAGES MERELY NOMINAL.—The United States Circuit Court of Appeals, for the second circuit, in the case of *Press Pub. Co. v. Monroe*, 19 C. C. A. 429, 38 U. S. App. 410, 73 Fed. Rep. 196, 51 L. R. A. 353, has added the weight of its authority to the list of those which hold that exemplary damages may be awarded, in a proper case, even though the actual damages which can be shown are merely nominal. The opposite view, commonly attributed to the case of *Stacy v. Portland Pub. Co.*, 68 Me. 279, proceeds upon the theory that exemplary damages are awarded not only to compensate the individual but also for the protection of the public interests, and asserts that "if the individual has but a nominal interest, society can have none. . . . If there was enough in the defense to mitigate the damages to the individual, so did it mitigate the damages to the public as well." The same view has been announced in *Kuhn v. Railway Co.* 74 Iowa, 137, 37 N. W. Rep. 116; *Maxwell v. Kennedy*, 50 Wis. 645, 7 N. W. Rep. 657; and *Schippel v. Norton*, 38 Kan. 567, 16. Pac. Rep. 804. These cases, however (and there are others to the same effect, *e. g.*: *Gilmore v. Mathews*, 67 Me. 517; *Freese v. Tripp*, 70 Ill. 496; *Meidel v. Anthis*, 71 Ill. 241; *Ganssly v. Perkins*, 30 Mich. 492), are said by the Court of Appeals, to be "plainly at variance with the theory upon which exemplary damages are awarded in the Federal courts, namely, as something additional to, and in no wise dependent upon, the actual pecuniary loss to the plaintiff, being frequently given in actions where the wrong done to the plaintiff is incapable of being measured by a money standard. *Day v. Woodworth*, 54 U. S. (13 How.) 370, 14 L. ed. 184. There is room for argument against the allowance of exemplary damages at all as anomalous and illogical. Some courts have held that it is

unfair to allow the plaintiff to recover, not only all the loss he has actually sustained, but also the fine which society imposes on the offender to protect its peculiar interests. But if it be once conceded that such damages may be assessed against the wrongdoer, and, when assessed, may be taken by the plaintiff—and such is the settled law of the Federal courts—there is neither sense nor reason in the proposition that such additional damages may be recovered by a plaintiff who is able to show that he has lost \$10, and may not be recovered by some other plaintiff who has sustained, it may be, far greater injury, but is unable to prove that he is poorer in pocket by the wrongdoing of defendant." *Wilson v. Vaughn*, 23 Fed. Rep. 229, adopts the same theory, as does also the supreme court of Alabama, in *Railroad Co. v. Sellers*, 93 Ala. 9, 9 Southern Rep. 375. The cases cited as taking the opposite view may have been rightly decided upon their special facts—and doubtless most lawyers would agree to the conclusions in the majority of them—but if exemplary damages are to be awarded at all, the cases wherein an injury, not capable of pecuniary estimation, is committed under circumstances of gross insult, indignity, contumely or malice, seem to be the very ones in which their allowance is most wholesome and effective. It is, moreover, doubtful whether a careful analysis of the cases will not demonstrate that the supposed conflict is more verbal than substantial, and whether there has not been a failure to distinguish between no injury at all, or an injury merely nominal, and a real and substantial injury incapable of being expressed in terms of dollars and cents. In this connection a comparison of *Maxwell v. Kennedy*, 50 Wis. 645, *supra*, and the later case of *Hacker v. Heiney*, 111 Wis. 313, 319; or of *Hesley v. Baker*, 19 Kan. 9, and *Schippel v. Norton*, 38 Kans. 567, *supra*, will prove suggestive.

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SEDUCTION—FICTION OF SERVICE—The doctrine that, to recover damages for the seduction of his daughter, a parent must offer some evidence of a loss of service, received a striking illustration in a case recently decided by the English Court of Appeal. The plaintiff's daughter, who was in the service of the defendant, was permitted to go out once a week for an afternoon and evening. On such occasions she went to her father's house and assisted in household duties. In an action by the plaintiff for the seduction of his daughter by the defendant while she was in the latter's service, *Held*, that there was no evidence of the relation of master and servant between the plaintiff and his daughter to support the action, *Whitbourne v. Williams*. [1901] 2 K. B. 722.

It was urged that as the action of seduction is founded on a fiction, there is no need to have any support for it in fact, but the Court of Appeal refused to yield to this argument, saying that for the fiction there must be some foundation, however slender, in fact.

On the other hand, in the recent case of *Anthony v. Norton*, (1899) 60 Kan. 341, 56 Pac. Rep. 529, 72 Am. St. Rep. 360, 44 L. R. A. 757, the supreme court of Kansas went to the other extreme. In the official headnote by Doster, Ch. J., who wrote the opinion, it is said: "The common-law rule in actions by a parent for damages for the seduction of his daughter, which required him to sue, in the capacity of a master, for the loss of her services as a servant,

although in fact permitting a recovery by him in his parental relation, was the rule of a legal fiction which no longer obtains under the reformed procedure, because of the abolition by the Code of fictions in pleading, and its requirement to state the actual facts in controversy."

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NEGLIGENCE—DRUGGIST SELLING PROPRIETARY MEDICINE WITHOUT KNOWING CONTENTS—Plaintiff's daughter was suffering from a headache, and went to the store of defendant, a druggist, and asked for and obtained a "Kohler Headache Powder." Returning home, she took the powder, and died from its effects. The action was for the recovery of damages, the plaintiff's contention being that "the vender of drugs is bound to know what he is selling, to such an extent at least, as to insure that he is not selling the ignorant public a deadly poison disguised as a useful medicine." *Held*, that there could be no recovery. *West v. Emanuel*, (1901) 198 Pa. 180, 47 Atl. Rep. 965, 53 L. R. A. 329.

It appeared that Kohler's headache powders were a well known preparation, generally kept on sale by druggists, and recognized and regarded as an efficient and proper remedy for headaches. They were prepared by Kohler and sold by him to the druggists. "In the sales of patent or proprietary medicines furnished by the compounder of the ingredients which compose them," said the court, "the druggist is not required to analyze the contents of each bottle or package he receives. If he delivers to the consumer the article called for, with the label of the proprietary or patentee upon it, he cannot be justly charged with negligence in so doing."

The liability of the druggist who in person or by his clerk negligently sells a dangerous drug for a harmless one, is abundantly established by the authorities, [*Brown v. Marshall*, (1882) 47 Mich. 576, 41 Am. Rep. 728; *Thomas v. Winchester*, (1852) 6 N. Y. 397, 57 Am. Dec. 455; *Fleet v. Hollenkemp*, (1852) 13 B. Mon. 219, 56 Am. Dec. 563; *Wise v. Morgan*, (1898) 101 Tenn. 273, 48 S. W. Rep. 971, 44 L. R. A. 548; *McCubbin v. Hastings*, (1875) 27 La. Ann. 713; *Norton v. Sewall*, (1870) 106 Mass. 143, 8 Am. Rep. 298; *Smith v. Hays*, (1886) 23 Ill. App. 244; *Peters v. Johnson*,—W. Va.—, 41 S. E. Rep. 190;] even where the person injured is a remote but naturally to be expected user, (*Thomas v. Winchester*, *supra*; *Norton v. Sewall*, *supra*; *Wise v. Morgan*, *supra*;) but the present case is easily distinguishable. It is more nearly analogous to the case of the seller who furnishes, at the request of the purchaser, a known, described and defined article, in which case, as is well settled, (Mechem on Sales, §1349,) there is no implied-warranty of fitness for intended use. It seems clear enough that druggists, in these days, could do business on no other rule. Where the druggist is himself the manufacturer of the article, and puts in harmful drugs, a different case is obviously presented. See *George v. Skivington*, L. R. 5 Exch. 1.

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PHYSICIAN—DUTY TO RESPOND TO CALL—An interesting case, apparently of first impression, but determined upon well settled principles, came lately before the supreme court of Indiana. The defendant was a practicing physician, licensed under the laws of the state, and holding himself out to

the public as a general practitioner of medicine. He had been the family physician of one Charlotte M. Burk. She became dangerously ill, and sent for defendant. The messenger informed defendant of her dangerous illness, tendered him his fee, and stated, what was the fact, that no other physician was procurable. Without any excuse whatever, as was alleged, defendant refused to respond to the call, and death resulted. The action was by the administrator of Charlotte M. Burk, to recover \$10,000 for causing her death. It was held that the action was not maintainable. The defendant, it was *said*, was under no common law duty to respond to every call, and the statute did not impose such a duty. "In obtaining the state's license (permission) to practice medicine," said the court, "the state does not require, and the licensee does not engage, that he will practice at all, or on other terms than he may choose to accept. Analogies drawn from the obligations to the public on the part of innkeepers, common carriers, and the like, are beside the mark." *Hurley v. Eddingfield* (1901)—Ind.—59 N. E. Rep. 1058, 53 L. R. A. 135. The court was doubtless right both in regard to the common law duty, and the effect of the statute, but it is also doubtless true that the statute might impose such a duty, and perhaps should do so.

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WILLS—CONTRACT TO MAKE—FRAUD IN OBTAINING CHARITY—RELIEF IN EQUITY.—An old woman without apparent means of support obtained aid from an unincorporated charitable society, to the extent of several hundred dollars, upon representations of destitution. After furnishing her for several years, the society suspected that she had property, and induced her to make a will disposing of all her property to the society. The attorney for the society drew up the will and represented to her that he was informed that she had agreed to make such a will in consideration of what the society had done, were doing, and expected to do for her; to which she assented. Later she revoked this will, and executed one disposing of all her property in favor of relatives in Germany. She died leaving \$3800, in savings bank deposits, all of which except the accruing interest she had at the time the first aid was obtained. The society filed a bill in equity, against the executor and legatees, alleging these facts, and praying that the agreement and will be decreed an irrevocable contract, "that the rights of your orators in any manner, in the estate of Minna Stager be enforced against said defendants and said estate," and the defendants be required to account. The defendants answered denying the contract and all rights of the complainants.

The court of chancery found the contract alleged by the complainants, and ordered all the property turned over to the complainants. *Anderson v. Eggers*, (N. J.) 47 Atl. Rep. 727. On appeal the court of errors held that the alleged contract had not been made out, but that the allegation of fraud was sustained, and that the prayer of the bill and the jurisdiction of the court warranted a decree in favor of the complainants for the value of the supplies obtained by the fraudulent representations of the deceased. Opinion by Dixon, J., Adams, J., dissenting. *Anderson v. Eggers* (New Jersey Court of Errors, June 17, 1901), 49 Atl. Rep. 578, 55 L. R. A. 570.

The following is from the opinion: "The claim that a legal obligation is assumed must be supported by something beyond the consent to make a will..

in the arrangement now before us, the words go no farther than the making of the will, and we must consider whether the substance fairly imports anything more. \* \* \* (Here the court reviews the facts.) At best it is not certain that the parties meant what they did to amount to a legal obligation, \* \* \* and such uncertainty is sufficient to stay the hand of a court of equity.

“But there is another basis on which the bill may rest. The testimony fully supports the allegation of the complainants that their contributions to Mrs. Stager were induced by her fraudulent representations as to her means of living, and the prayer of the bill is sufficient to entitle the complainants to relief on that ground if a court of equity is competent to afford relief. \* \* \* That the jurisdiction of the English court of chancery extended to such cases is clear. \* \* \* (Here the court reviews numerous English decisions.) Undoubtedly, the American courts have not generally upheld so broad a jurisdiction, being influenced probably, and sometimes controlled, by enactments similar to the United States judiciary act of 1789, which declares that ‘suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate, and complete remedy may be had at law.’ But New Jersey is distinguished from her sister states by her adherence to the standards of the mother country respecting both rights and remedies in equity, and I know of no constitutional or statutory provision or judicial decision in this state which can be regarded as withholding or withdrawing from our court of chancery any jurisdiction possessed by its English prototypes. True, the jurisdiction of equity in cases of fraud remediable at law has not been much invoked, but that may be accounted for in large degree by the less expensive, equally efficient, and in former times more speedy, remedy secured in the courts of law. When resorted to, however, the jurisdiction of equity has not been doubted.”

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SALE—BANK CASHING DRAFT DRAWN AGAINST CONSIGNMENT OF GOODS AS PURCHASER—LIABILITY UPON EXPRESS OR IMPLIED WARRANTY OF TITLE OR QUALITY.—The question whether a bank which cashes a draft, attached to a bill of lading and drawn against the price of the goods named therein, becomes liable, as though it were the seller, for the breach of the express or implied warranties of quality or title with which the goods were originally sold, was involved in the recent case of *Hall v. Keller*, (1902)—Kan.—67 Pac. Rep. 518. There the shipper of goods took the bill of lading to his own order, endorsed it to the consignee intended, drew a draft on the consignee for the price, and discounted the draft attached to the bill of lading at a local bank. This bank sent the draft on for collection, and on its presentation to the consignee, it was paid by him and the proceeds were remitted to the bank which had discounted the draft. Before the goods reached their destination, however, they were intercepted by a paramount title, and never came to the hands of the consignee, although he had paid for them as above indicated. The consignee brought this action against the bank, claiming that the bank stood in the attitude of seller and was liable upon the implied warranty of title. Some authority for this position was found in two recent cases involving that question,—*Landa v. Lattin* (1898), 19 Tex. Civ. App. 246, 46 S. W. Rep. 48; and *Finch v. Gregg* (1900), 126 N. C. 176, 35 S. E. Rep.

251, 49 L. R. A. 679. (MECHEM ON SALES, §1816.) These cases, however, had previously been repudiated as unsound by the Iowa court in *Tolerton & Stetson Co. v. Anglo-California Bank* (1901), 112 Iowa, 706, 84 N. W. Rep. 930, 50 L. R. A. 777, and the Kansas court concurred with the Iowa court. The same rule was applied to Keller & Dean, a firm of attorneys, who had endorsed the draft before the bank discounted it. The court said that to hold the bank liable under such circumstances as these would discourage the immense business constantly carried on in this way and would "undoubtedly cause a revolution in commercial circles."

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VOTERS—RIGHT TO VOTE FOR CANDIDATE WHOSE NAME IS NOT ON THE OFFICIAL BALLOT.—Whether a voter has an absolute right to vote for whom he pleases, or whether under the Australian ballot law his right can lawfully be limited to voting for some person only whose name is on the ticket, is a question which is growing in interest and difficulty. In the very recent case of *Chamberlin v. Wood* (1901)—S. Dak.—, 88 N. W. Rep. 109, it is held by a majority of the court that the legislature, in enacting an election law, may lawfully provide that no vote shall be counted which is not made by checking a name already printed on the official ballot, and that such a limitation involves no unlawful restriction upon the voter's constitutional rights. The argument of the majority is, in brief, that the right to vote is not a natural one, but a right conferred by the law, and that, unless restrained by express constitutional prohibition, the legislature may impose such regulations as it deems necessary to promote the public interests. Under the statute in question, a candidate's name could appear on the official ballot only when he had been nominated by a regular party organization or when twenty voters had requested it. The court conceded that there were declarations to the contrary in *Sanner v. Patton*, 155 Ill. 553, 40 N. E. Rep. 290; *People v. Shaw*, 133 N. Y. 493, 31 N. E. Rep. 512, 16 L. R. A. 606; *Bowers v. Smith*, 17 S. W. Rep. 761, 20 S. W. Rep. 101, 111 Mo. 45, 33 Am. St. Rep. 491; and *State v. Dillon*, 32 Fla. 545, 14 So. Rep. 383, 22 L. R. A. 124, but contended that in all of these cases, except the last, the expressions relied upon were mere *dicta*, while in the last case the point, though passed upon, was unnecessary to the decision of the case. Fuller, P. J., dissented.

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CONSTITUTIONAL LAW—FOURTEENTH AMENDMENT—DUE PROCESS—EQUAL PROTECTION.—The statutes of Ohio forbade the manufacture or sale within that state of any artificial butter made "in imitation or semblance of natural butter." Natural butter might be made with or without any harmless coloring matter, but artificial butter was required to be free from any coloring matter causing it to look or appear like natural butter, and, by a later act, the use of certain enumerated coloring matters, which might lawfully be used in natural butter, was forbidden in the case of artificial butter. As against a domestic corporation, engaged in making and selling artificial butter in violation of the terms of the statutes referred to, *Held*, that the statutes were not in conflict with the constitution of the United States. *Capital City Dairy Co. v. Ohio* (1901), 183 U. S. 238.

It was urged that the legislation was in conflict with the power of Congress to regulate inter-state commerce, but as the corporation was a domestic one, operating within the State, it was held that the statutes affected the product before it had become a subject of inter-state commerce. It was also urged that inasmuch as the use of harmless coloring matter was permitted in the case of natural butter, but denied in the case of artificial butter, there was a denial of the equal protection of the laws, and a taking of property without due process of law. But it was held that as the state court had decided that this was not for the purpose of discriminating in favor of butter, but only to provide a means by which the public might distinguish between natural and artificial butter, the legislation must be deemed valid. "It cannot in reason be said," declared the supreme court, "as a mere matter of judicial inference, that such regulations for such purpose were a mere arbitrary interference with rights of property, denying the equal protection of the laws, or that they amounted to a taking of property without due process of law." *Powell v. Pennsylvania*, 127 U. S. 678, and *Plumley v. Massachusetts*, 155 U. S. 461, were held to be conclusive of the questions presented.

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STATUTE OF LIMITATIONS—FAILURE TO LEAVE SUBJACENT SUPPORT IN MINING—WHEN STATUTE BEGINS TO RUN.—The supreme court of Pennsylvania had occasion, in a late case, to pass upon the vexed question as to the time when the statute of limitations begins to run, where there has been a failure to leave sufficient supports to maintain the surface—whether from the time the mineral is removed, or from the time when the surface subsides. The court held that the statute begins to run from the former date, so that in the case at bar there could be no recovery where there had been no subsidence until after the statutory period had expired, *Noonan v. Pardee*, 200 Pa. 474, 50 Atl. Rep. 255 (1901), 55 L.R.A. 410. The court cited several English cases, including *Backhouse v. Bonomi*, 9 H. L. Cas. 503, but declared that the cases in England were so conflicting that the law could not be considered as settled there. Curiously enough, however, it failed to cite (though the briefs show it had its attention drawn to) the leading and important case of *Darley Main Colliery Co. v. Mitchell*, 11 App. Cas. 127, (Mechem's Cases on Damages, 117,) wherein the House of Lords fully considered the question and came to the opposite conclusion.