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Note and Comment

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NOTE AND COMMENT.

THE EFFECT OF THE CARMACK AMENDMENT TO THE HEPBURN ACT UPON LIMITATION BY COMMON CARRIERS OF THE AMOUNT OF THEIR LIABILITY.—Two cases, decided by the Supreme Court of the United States on March 10, 1913, may be considered together. They are developments of the cases reviewed in 11 MICH. L. REV. 460. Plaintiff shipped two boxes and a barrel of "household goods" under an agreement that the goods, in case of loss, should be valued at $5 per hundred-weight. One box, weighing not over 200 pounds and actually worth $75, was lost. The Supreme Court of Arkansas affirmed a judgment against the carrier for the full value. 91 Ark. 97, 121 S. W. 932, 134 A. S. R. 56. On error the Supreme Court of the United States reversed and remanded the case for further proceedings. *Kansas City Southern Ry. Co.* v. *Carl,* 33 Sup. Ct. 391. In the other case the plaintiff shipped four bulls and thirteen cows, "show cattle," worth $10,640. The finding of the Texas Court of Civil Appeals, 128 S. W. 932, was reversed on the ground that the recovery should have been limited to $30 for each bull and $20 for each cow,

in accordance with the bill of lading. *Missouri, Kansas & Texas Ry. Co.* v. *Harriman Bros.*, 33 Sup. Ct. 397.

In 11 MICH. L. REV. 460, the *Croninger* and *Miller* cases were reviewed with the concluding statement that further decisions on this question will be awaited with interest. We now have these further cases. They dispose of some of the open questions, but not even these give a final answer to the question of the validity of an arbitrary valuation in a bill of lading, bearing no relation to the known value of the goods shipped, which has been fixed by carrier and shipper for the alleged purpose of securing a lower rate of shipment, under an agreement that goods are shipped "at owner's risk," but with an option to ship "at carrier's risk" at a higher rate. In neither of these cases does it appear that the carrier knew the true value of the goods, and the court expressly says that in this decision they "lay on one side, as not here involved, every question which might arise when it is shown that the carrier intentionaly connived with the shipper to give him an illegal rate, thereby causing a discrimination or preference forbidden by the positive terms of the act of Congress and made punishable as a crime." In the first case household goods were shipped, and these are not ordinarily valued by the hundred-weight, nor are such goods usually shipped when they are worth as little as $5 per hundred-weight. However, it is conceivable that one might ship such goods, and as they were in this case in boxes and barrels, the carrier had no means, except the statement of the shipper, by which to determine their value. In the second case very valuable animals were shipped. It would be a poor sort of a bull that is worth only $30 or a cow that is valued at $20, but there are such, and it appears that the agent never saw these cattle.

It is perfectly plain that not all animals of a kind have the same fixed value. The court, however, finds that it is not unreasonable, for the purpose of fixing freight rates and publishing tariffs, to make two classifications; those above and those below a fixed maximum amount. This, the court says, is the only practicable method and has been administratively approved by the Commerce Commission. The quotation the court gives, however, from the finding of the Commission, approves of a graduation of rates in accordance with the actual values of specific commodities. It does not say that all commodities of less than a certain value shall be shipped at one rate, and all like commodities worth more than that amount, no matter how much more, shall be shipped at another rate, with no variations for intermediate valuations. Not only does the court approve of such a classification, but it holds that the shipper must take notice of it, and if he ships goods worth more than the amount fixed, he obtains an advantage and causes a discrimination forbidden and made unlawful by the ELKINS ACT. (32 STAT. AT L. 847, Ch. 708, U. S. COMP. STAT. SUPP. 1911, p. 1309.) Query—Can the carrier in such a case have an action against the shipper to recover the greater rate? It has been held, and the court holds in this case, citing authorities therefor, that the carrier, if he carries at a less rate, cannot be compelled to surrender the goods until the full legal rate has been paid. Indeed the carrier violates the

ELKINS ACT if he does not insist upon the rate for the true value. But the shipper apparently, if he makes a mistake in the valuation, has no such right to correct his mistake, pay the additional charges and collect the full value of his goods. If he has by wilful misrepresentation misled the carrier, he is hardly in position to complain, but if, as usually happens, he had no intention to mislead, and simply accepted the bill of lading as it was offered him, without any questions asked, it is not easy to see why he should not have the same right to claim full value as the carrier has to claim full rates. The whole difficulty would soon settle itself if the courts held the carrier to liability for the actual value of the goods, unless it appears that he has in good faith tried to learn their real value and has been deceived by the shipper. It can scarcely be claimed that the present method of fixing valuations in bills of lading represents any honest attempt by the carrier to learn the true worth of what he carries. Rather it represents a persistent, and finally successful, effort on the part of the carrier to find a way that will be approved by the court by which he may cut down the liability.

The language of the court in the *Carl* case is significant, and suggests, at least, that the court when squarely confronted with the problem will make the distinction so well set forth by Commissioner LANE in *Re Released Rates*, 13 I. C. C. R. 550, between attempts in good faith by the carrier to learn the value of the goods, and arbitrary valuations known by the courts not to represent such value. The language of the court is worth quoting: "An agreement to release such a carrier for part of a loss due to negligence is no more valid than one whereby there is complete exemption. Neither is such a contract any more valid because it rests upon a consideration than if it was without consideration."

The court squarely places the ground of limitation of recovery to the declared or agreed value upon estoppel. In cases where the shipper has really misled the carrier as to the value of his goods this is certainly sound. If, however, the carrier knew the shipper was not naming the real value, then he was not misled, he did not fix his rate in reliance upon misrepresentation, and the grounds of estoppel seem to be absent.

Again, the court says in this case, as has been said in substance in many cases, "If such a valuation be made in good faith, for the purpose of obtaining a lower rate * * *." Further on the court says that such an undervaluation is a misrepresentation and a violation of the ELKINS ACT. How can a wilful misrepresentation be made in good faith? The two statements seem to be mutually contradictory. If this were a private matter, and carrier and shipper had connived, the courts might well leave them where they are, but it is not a private matter, and to allow the carrier to escape his liability by making such agreements with shippers encourages him to induce all shippers to undervalue, as in practice nearly always happens, and this is pretty clearly contrary to public policy. The carrier by making the difference in rates excessive, may drive all to undervalue the goods shipped, for if they do not, they are, as the court points out in the present cases, subject to discrimination, which is a violation of the ELKINS LAW. There is plenty of evidence that practically all shippers do take the lower rate. See 11 MICH. L. REV. 464.

This leads to the last and possibly most important point of these decisions. In 11 MICH. L. REV. 463, it is insisted that there has never been a scientific and thorough determination of differences in carrying charges based on the greater or less risk of the carrier. The *Harriman* case certainly furnishes a glaring instance of manifestly improper charge, though in this case it happens not to be in the carrier's favor. The "cost at carrier's risk" was "120 per cent of the rates named in this tariff." Shipments at this higher rate were made "without limitations of carrier's liability at common law." A more unscientific table of insurance rates could hardly be made. Certainly the Harriman Bros. could not complain of paying 120 per cent of ordinary rates in order to increase their insurance from $380 to $10,640. This might seem to furnish some evidence that the public does not care for insurance by the carrier at all. More probably it shows that the custom to take the lower rate is so universal that the agent of the carrier never shows the shipper any other bill of lading. It would be interesting to know if the agent of the carrier in the present case even had such a bill of lading that could be shown, and if the Harriman Bros. really knew that by paying 20 per cent greater carrying charges they could have increased their insurance from $380 to $10,640. The important point of this case is that the court decides that this question of whether the difference between two rates upon the same commodity is no more than a reasonable charge by the carrier for the larger responsibility, is an administrative question, to be determined by the Interstate Commerce Commission and not by the courts. So far as the courts are concerned, the filed and published tariffs must be assumed to have been properly fixed. If the present rates are not adequate to protect both carrier and shipper, the remedy is by an order of the Commission readjusting the rates. This seems to be a very satisfactory solution, although the finding of the Commission can scarcely be final, for the question of the reasonableness of an order of the Commission is always subject to judicial determination. The contention of the shipper in the *Carl* case—that the rates were not properly adjusted—the courts refused to consider. This is doubtless on the ground that either carrier or shipper must first get an order from the Commission before the courts will consider this question.

Notwithstanding the valuable additions to the law indicated above, we must still wait for a final determination of the troublesome question whether an arbitrary valuation, known by the carrier to bear no relation to the real worth of the goods, a misrepresentation made for the purpose of securing cheaper rates of shipment, is valid. It is interesting to note that in the *Carl* case Mr. Justice HUGHES and Mr. Justice PITNEY dissent, and that in the *Harriman Bros.* case Mr. Justice HUGHES concurs in the result, while Mr. Justice PITNEY dissents. The ground of these dissenting views is not given in the advanced sheets, but the fact that there is dissent, and many of the statements in the opinions written by Mr. Justice LURTON, give some ground for the hope that the United States Supreme Court, when it finally passes on this matter, will agree with the view so ably set forth by Commissioner LANE in *Re Released Rates*, 13 I. C. C. R. 550. E. C. G.

EFFECT OF COVENANTS IN LEASES UPON TENANT'S RIGHT TO REMOVE TRADE FIXTURES.—At least since the decision in *Poole's Case,* 1 Salk. 368 (1703), it has been considered as settled that a tenant has the right to remove trade fixtures placed upon the demised premises for the purpose of furthering his trade. There is a well-marked tendency in some jurisdictions to greatly extend this right of removal so as to include anything added by the tenant to the leased property "in furtherance of the purpose for which the premises were leased." *Hayward* v. *School District,* 139 Mich. 541, 102 N. W. 999; *Bircher* v. *Parker,* 40 Mo. 118; *Heddrick* v. *Smith,* 103 Ind. 203; *Wittenmeyer* v. *Board of Education,* 10 O. C. C. 119. The right of removal, in the cases where it exists, must of course be exercised within the time settled by the law of the jurisdiction, and the rules in the various states are not entirely harmonious in that regard. For example compare *Kerr* v. *Kingsbury,* 39 Mich. 150, with *Loughran* v. *Ross,* 45 N. Y. 792.

This right of removal may be lost not only by failure to remove within the proper time, but also by the terms of the lease. Leases not infrequently contain provisions that the premises shall be delivered up at the end of the term in good order together with "all future erections and additions," or words to similar effect. In a number of cases such general provisions have been before the courts for consideration, the question usually being whether they covered trade fixtures and other fixtures in their nature generally considered as removable. "In *Naylor* v. *Collinge,* 1 Taunt. 19, the things removed were buildings coming within the very words of the covenant; and yet such of them only as were affixed to the freehold, and not such as rested upon blocks were held to be included." *Holbrook* v. *Chamberlin,* 116 Mass. 155, 162, In the last cited case the lease contained a covenant to deliver up in good order "all future erections and additions" to or upon the premises. The court held trade fixtures not included. So also in *Liebe* v. *Nicolai,* 30 Ore. 364, 48 Pac. 172.

In the late case of *Lindsay Bros.* v. *Curtis Pub. Co.,* 236 Pa. St. 229, 84 Atl. 783, the court held that a covenant in a lease that "alterations, improvements and additions" made by the lessee at his own expense on the premises shall at the option of the lessor, remain on the premises and become the property of the lessor, did not cover electric power and lighting appliances installed by the tenant for the more convenient prosecution of its printing business. The court said that "The same sound policy of the law which favors a tenant in the matter of the removal of trade fixtures requires that in the construction of an agreement containing words whose meaning is doubtful the construction of the words most favorable to the tenant shall prevail. Nothing short of the clearest expression of an agreement by the parties to that effect can justify the extension of the grasp of the landlord so as to cover chattels, or personal property, brought upon the premises by the tenant, in pursuance of the business for which the premises were leased." Ten months later the Circuit Court of Appeals for the Third Circuit, in a Pennsylvania case, held in *Reber* v. *Conway,* 203 Fed. 12, that a covenant in a lease that "all improvements or additions made by the lessee shall not be detached from the property, but shall remain for the benefit of the lessor" prevented a lessee

from removing certain machines conceded by the court otherwise to be removable trade fixtures. The ground of the decision seems to be the meaning of the word "detached" considered in view of the fact that the lessee had rented a building arranged for a stable for the purpose of running an ice cream manufactory and had altered the building to make it available for that purpose.

In *Re Howard Laundry Co.*, 203 Fed. 445, the Circuit Court of Appeals for the Second Circuit held that a clause in a lease providing that "all additions and improvements which may be made by either party to or upon said premises shall be the property of the landlord" did not cover trade fixtures in the form of machinery otherwise of a removable character. The court said: "The presumption is that trade fixtures belong to the tenant and if it be the intention of the parties that they shall become the property of the landlord at the expiration of the lease, that purpose should be stated in language so clear and explicit that there can be no doubt as to its meaning." Surely the language of the lease in *Reber* v. *Conway, supra,* was not of that clear and explicit character. It is believed that the court in the last mentioned case placed a construction upon the word "detached" and the language of the covenant not warranted by the generally considered prevailing doctrine.

R. W. A.

INTERSTATE AND INTRASTATE SHIPMENTS.—The difficulty which sometimes arises in determining whether a certain shipment is interstate or intrastate is well illustrated by a recent case in the United States Supreme Court. *Texas & New Orleans Railroad Company* v. *Sabine Tram Co.*, 33 Sup. Ct. 229. The Sabine Tram Company, plaintiff below, was engaged in the manufacture of lumber at Ruliff, Texas, an inland town. The W. A. Powell Company, of New Orleans, which was engaged in buying lumber for export, bought a large amount of lumber from the Sabine Tram Company, the contract providing that the lumber should be delivered f. o. b. cars at Sabine, Texas, a port town, during September. The Sabine Company billed the lumber "Sabine Tram Co., Sabine, Texas, Notify W. A. Powell Co." The bills of lading were sent through a bank to the Powell Company, who paid the drafts attached and sent the bills to their agent at Sabine. On the arrival of the lumber at Sabine station, the agent of the Powell Company took charge of the cars and had them hauled a quarter of a mile past the station to the docks where the lumber was unloaded within reach of ship's tackle. As the ships which the Powell Co. had chartered came in, the lumber was loaded and exported. The lumber was bought by the Powell Company for export, but not to fill any particular orders. The Sabine Company had no connection with the further carriage of the lumber after it reached Sabine station, the further carriage being done solely at the instance of the Powell Co. For the carriage from Ruliff to Sabine station, defendant railroad company charged the interstate rate of 15 cents per hundred pounds on the ground that this carriage was part of a foreign shipment. Plaintiff brought this action to recover the difference between that rate and the rate of 6½ cents per hundred, the rate prescribed by the Texas Railroad Commission for intrastate ship-

ments. The Texas supreme court (97 Texas 284), held that the shipment was intrastate and allowed the plaintiff to recover. The United States Supreme Court reversed the judgment, holding that the foreign shipment began at Ruliff.

The Texas court based its decision almost entirely on *G. C. & S. F. R. Co.* v. *Texas,* 204 U. S. 403, 51 L. Ed. 540. In that case, the Hardin Grain Co. sold two car-loads of corn to be delivered at Goldthwaite, Texas. The Hardin Company to fill this order purchased from the Harroun Company two car-loads of corn which were en route from South Dakota to Texarkana, Texas, billed to the Harroun Company. On the arrival of the corn at Texarkana, the Hardin Company's agent re-shipped it in the same cars and without breaking bulk, to Goldthwaite. The shipment from Texarkana to Goldthwaite was held to be intrastate. In the principal case, the court distinguished this case on the ground that "full title to and control of the corn did not pass to the Hardin Company until the corn reached Texarkana." This distinction is not clear, as in both cases bills of lading with drafts attached were sent, and both the Hardin Company and the W. A. Powell Company paid the drafts in order to take possession of the goods. The only real distinction appears to be that in the principal case, at the time of the original shipment, the consignee intended to export the goods, while in the grain case no further carriage was contemplated until the transfer was made while the goods were en route.

The Supreme Court in reversing the judgment of the State Court relied on *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U. S. 498, 55 L. Ed. 310; and *Railroad Commission* v. *Worthington,* 225 U. S. 101, 56 L. Ed. 1004. In the former case, the Terminal Company owned wharves at Galveston and charged wharfage to those using them. Young, an exporter of cotton-seed meal, leased a part of the wharf and erected a mill thereon, paying yearly rent and no wharfage. Young bought cotton-seed cake at Texas points, had it shipped to him at Galveston, ground it to meal in his mill on the wharf and exported it. The Interstate Commerce Commission ordered the Terminal Company to desist giving Young any undue preference. This order was resisted, on the ground that the shipments to Young from points in Texas were intra-state and not within the jurisdiction of the Commission. The court held the shipments to be under the control of the Commission, saying: "They were all destined for export and by their delivery to the railway they must be considered as having been delivered to a carrier for transportation to a foreign destination." This case seems to support the view of the court in the principal case, but no reasons for the holding were given. *Railroad Commission* v. *Worthington, supra,* does not seem to involve the precise point. There the Ohio Railroad Commission placed a rate on "Lake cargo" coal, which was coal billed from Ohio coal fields to points on Lake Erie, the rate applying only to coal actually loaded on vessels for shipment out of the state, and covering the loading on the vessels and trimming as well as the carriage from the mines to the port. This was held beyond the power of the state as an attempt to regulate interstate commerce.

The section of the Interstate Commerce Act applicable to the principal

case reads: "This act applies * * * to transportation of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment." The rule always quoted by the courts in cases involving the question was first stated in *Coe* v. *Errol*, 116 U. S. 517, 29 L. Ed. 715, "that goods are in interstate or foreign commerce when they have actually started in the course of transportation to another state, or delivered to a carrier for transportation in a continuous route of journey." It is evident this rule is of little aid, for the question is generally, as in the present case, whether the goods have been delivered for transportation in a continuous route of journey. In the principal case, it seems that the fact that the consignee intended to export the lumber was the determining factor, and yet the courts deny that the intention, either of the shipper or of the consignee, can change the character of the shipment, the Supreme Court saying in *G. C. & S. F. R. R. Co.* v. *Texas, supra*: "In many cases it would work the grossest injustice to the carrier if it could not rely on the contract of the shipment it had made, know whether it was bound to obey the state or the federal law, or, obeying the former, find itself mulcted in damages for not obeying the law of the other jurisdiction, simply because the shipper intended a transportation beyond that specified in the contract." On the other hand it is well settled that the bill of lading in itself does not govern. As where goods are billed to a point in the same state to be delivered to a carrier to be shipped out, they are in interstate commerce throughout. *Houston Direct Navigation Co.* v. *Insurance Co.*, 89 Tex. 1, 30 L. R. A. 713. Likewise when billed to an agent to be re-shipped out of the state. *Cutting* v. *Florida Ry. and Nav. Co.*, 46 Fed. 641, or where the shipper bills to one point, intending himself to forward to another point. *Porter* v. *St. L. S. W. Ry. Co.*, 78 Ark. 182. While the Supreme Court in the principal case stated the above rule to be well settled, it used the following illustration in *G. C. & S. F. R.* v. *State, supra*.. "Suppose a car load of goods were shipped from Texarkana to Goldthwaite under a bill of lading calling for that transporation only, and supposing that the laws of Texas required, subject to a penalty, that such goods should be carried in a particular kind of a car—can there be any doubt that the carrier would be subject to the penalty, even though it should appear that the shipper intended after the goods had reached Texarkana to forward them to some place outside the state?" The statement in *Houston Direct Nav. Co.* v. *Insurance Co.*, *supra*, that "no direct and certain definition of Interstate Commerce has yet been fixed by the decisions of the courts and perhaps none can be found which will apply to all cases," seems quite true. And this can be said without considering those cases involving the right of a state to tax, in which the courts seem to take a still different view of when goods are in interstate commerce.

R. L. M.

THE EVASION OF LIMITATIONS ON MUNICIPAL INDEBTEDNESS.—The very generally adopted limitations on the amount of indebtedness lawfully to be contracted by a municipal corporation often run contrary to the desires and needs of such corporations, and the attempts to accomplish by indirection the forbidden result have led to many interesting decisions. In a recent case

(*Feil* v. *City of Cocur d'Alene,* 129 Pac. 543) the Supreme Court of Idaho held that the constitutional limitation of indebtedness could not be evaded by the following subterfuge. The common council passed an ordinance for the purchase of a waterworks system, specifying that the city generally should not be liable for such purchase; bonds were authorized, payment for which was expressly declared therein to come solely from a special fund created out of the net income of the purchased works; and the city covenanted to maintain proper rates to pay principal and interest at maturity and not to encumber or sell the property until full payment was made. The Idaho constitution provides that "no city, etc., shall incur any *indebtedness or liability* in any manner or for any purpose exceeding in that year the income and revenue provided for it for such year without the assent of two-thirds of the qualified electors thereof "nor unless at the time of incurring *such indebtedness* provisions shall be made for the collection of an annual tax," etc. The city was already indebted up to the constitutional limit, but no vote was had nor provision for annual tax made. The Supreme Court held that the proposed plan was in conflict with the provision of the constitution, and action on the ordinance was enjoined.

There are many courts that have tried to avoid the manifest intent of such provisions in order to meet the exigencies and encourage the growth of cities and towns. This is well illustrated by the case of *Swanson* v. *City of Ottumwa,* 118 Ia. 161, 59 L. R. A. 620, where the state court refused to enjoin the issuance of bonds, on the ground that by the present levy of an annual two-mill tax until the waterworks were paid for, the returns from the levy were so anticipated as to be considered cash in the city treasury, though the levy would extend over a period of twenty years or more. The effect of such holding was nullified by *Ottumwa* v. *City Water Supply Co.,* 119 Fed. 315, 59 L. R. A. 604, when the Circuit Court of Appeals declared this procedure a mere evasion and granted an injunction.

While differences in the wording of constitutional provisions may have frequently led to opposite results, conflicting decisions on what constitutes municipal indebtedness have been laid down. It is now generally held that contracts for supplies for a term of years calling for annual supply with payment each year for the amount furnished therein do not fall under the constitutional prohibition. *Walla Walla* v. *Walla Walla Water Co.,* 172 U. S. 1; *Lamar Water & Supply Co.* v. *Lamar,* 128 Mo. 188, 26 S. W. 1025, 32 L. R. A. 157; *City of Joseph* v. *Joseph Water Works,* 57 Ore. 586, 111 Pac. 864, 112 Pac. 1083. But these contracts are considered inseverable and as constituting an indebtedness for the aggregate amount in many jurisdictions. *Prince* v. *Quincy,* 105 Ill. 138, 44 Am. Rep. 785; *Beard* v. *Hopkinsville,* 95 Ky. 239, 23 L. R. A. 402; *Evans* v. *Holman,* 244 Ill. 596, 91 N. E. 723.

As these restrictions interfere with the freedom of contract, it is the policy of courts to give them a strict construction. It is an established rule that contracts for local improvements which are payable entirely out of special assessments upon particular property or districts are not affected by these limitations. *Quill* v. *City of Indianapolis,* 124 Ind. 292, 7 L. R. A. 681; *McGilvery* v. *City of Lewiston,* 13 Idaho, 338, 90 Pac. 348. But even in this case

if the bonds for such improvements are so drawn that the city itself is liable thereunder, the constitutional provision is violated if the amount exceeds the debt limit. *Burlington Sav. Bank* v. *City of Clinton,* 111 Fed. 439.

The payment of municipal contracts need not directly fall upon funds to be raised by general taxation to come within the meaning of "municipal indebtedness." A portion of the city's property, previously owned by it, may not be set aside by way of hypothecation or mortgage, as a special fund for the payment of an obligation, though the city's general credit is not affected. *Mayor of Baltimore* v. *Gill,* 31 Md. 375; *City of Joliet* v. *Alexander,* 194 Ill. 457, 62 N. E. 861. But the principle is generally adhered to that, if payment is to come entirely out of a special fund arising from the revenue of the acquired property and the general revenue or previously owned property of the city is not to be applied in satisfaction of the debt, no municipal indebtedness is created and the constitutional provision does not apply. *Winston* v. *City of Spokane,* 12 Wash. 524; *Brockenbrough* v. *Board of Water Com.,* 134 N. C. 1; *Connor* v. *City of Marshfield,* 128 Wis. 280; *State* v. *City of Neosho,* 203 Mo. 40; *Evans* v. *Holman,* 244 Ill. 596.

To the foregoing doctrine the principal case is opposed unless the decision can be grounded upon a greater breadth in the terms of the constitutional provision to be construed, or unless the covenants of the city to maintain the rates constitute an indebtedness against it. Though the majority opinion seemingly disapproves of the rule of the cases cited above, their determination is based upon the ground that the insertion of the word "liability" after "indebtedness" extends the application of the prohibition to the covenants of the city to maintain the rates. But the North Carolina provision reads, "No city * * * shall contract any debt, pledge its faith, or loan its credit;" this would seem to be as stringent a clause as that considered here. Furthermore indebtedness and liability coupled together in this connection appear to have the same meaning, and this conclusion is strengthened by the fact that the word "indebtedness" is alone used later in the clause. As said by STEWART, C. J., in his dissenting opinion to the principal case, "These cases in my judgment were dealing with constitutional provisions identical in meaning with the constitution of this state." The strict construction of these provisions tends to prevent "liability" being taken in its broad sense, just as it has limited "indebtedness" to its narrower meaning.

If "liability" is used with no greater signification than "indebtedness" there is little doubt that the covenants of the city do not fall within the provision. Many of the cases cited above had such a contract obligation on the part of the city. Construing the Missouri limitation, BURGESS, J., in *Saleno* v. *Neosho,* 127 Mo. 627 (approved in *State* v. *Neosho,* 203 Mo. 75) said "A debt is understood to be an unconditional promise to pay a fixed sum at some specified time." The obligation of the municipality here is not to be responsible for payment but to do something which it could be compelled to perform even without such covenant.

The principal case must therefore be based upon a nice statutory construction or be taken as contrary to all previously decided cases upon this point.

C. A. W.

REQUISITIONS UPON NEUTRAL PRIVATE PROPERTY IN TIME OF WAR.—Under the title, *"Requisitionen von neutralen Privateigentum,"* Dr. ERICH ALBRECHT discusses the subject of requisitions upon neutral private property during war, in the ZEITSCHRIFT FUR VOLKERRECHT UND BUNDESSTAATSRECHT (Vol. VI, No. 1, 1912). As to requisitions upon neutral property, two rules have been laid down,—the one, that neutral immovables are subject to the same treatment as other immovables; and the other, that neutral movables are not to be attached by the belligerent. The problem which he attacks is to determine the validity and extent of these rules concerning requisitions upon neutral private property in land warfare, either on territory belonging to the belligerent or on occupied enemy's territory, Dr. ALBRECHT deduces as a general principle the rule that, while no greater burden is to be laid upon neutral property than on that of enemy subjects, requisition is justified by military necessity. The provisions of the Conventions of the two Hague Conferences lay more rigid restrictions as to requisitions upon neutral means of transport, including neutral railroad material. Consideration of the other means of neutral transport, that of merchant-ships, involves a discussion of the *ius angariae* to which a large portion of the paper is devoted. The historical development of the *ius angariae* is traced, from the municipal provision of the Roman law, by which the fisc in case of necessity could require service of vehicles or ships, to its later use as a sovereign right applicable to all ships for purposes which were not necessarily of a military character. It is shown that the tendency in recent times is to limit more and more, or even to deny, the *ius angariae.* The author's conclusion is that, although many treaties provide otherwise, a belligerent in case of military necessity may probably requisition neutral merchant-ships in belligerent ports. In giving what he terms a "juristic construction" to the *ius angariae,* he traces its growth from the Roman conception that it was a sovereign right to the doctrine of "need" in its various senses, and finally concludes that neutral property when in enemy territory is to an extent under enemy control and may be used in cases of military necessity. Otherwise, however, as to requisition on the high seas which, although once practiced, is now not permissible.

The result reached is that in the treatment of neutral private property on enemy's territory belligerent domicile rather than neutral character is to be considered. Thus the author concludes: "It cannot be shown that there is a general rule of international law according to which neutral property in the territory of a belligerent acquires a privileged character in contradistinction from the property of the belligerent's subjects. * * * Rather, it is sufficient to state that the belligerent in the exercise of its territorial sovereignty is not prevented by international law from subjecting neutral property to requisition under the same conditions as the property of the inhabitants."

H. E. Y.