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ACCRETION—TITLE TO NEW LAND.—Certain lots in Section 31 bounded on one side by a river and on the opposite side by a section line were slowly eaten away and submerged by the action of the water. By this process the river was carried beyond the section line into Section 30 onto the land of P. After a time the river again shifted and gradually restored P's land and built new land in Section 31 where the above mentioned lots had been. As against D who had acquired tax deeds to the new land in Section 31, P brought action to quiet title. *Held,* P had no rights in the new land in Section 31. *Allard* v. *Curran* (So. Dak., 1918), 168 N. W. 761.

P's contention was based on the theory that his land having become riparian by the shifting of the river he was entitled to accretions added thereto as an incident of riparian ownership. There is authority for such view. *Welles* v. *Bailey,* 55 Conn. 292; *Peuker* v. *Canter,* 62 Kan. 363; *Widdecombe* v. *Chiles,* 173 Mo. 195. The contrary view is indicated by *Gilbert* v. *Eldridge,* 47 Minn. 210; *Ocean City Ass'n.* v. *Shriver,* 64 N. J. L. 550; *Hempstead* v. *Lawrence,* 70 Misc. Rep. (N. Y.) 52. In *Volcanic Oil & Gas Co.* v. *Chaplin,* 27 Ont. L. Rep. 34 (1912), the court after reviewing the English and American cases decided in favor of the view expressed in the latter group of cases. See 26 HARV. L. REV. 185; 29 LAW Q. REV. 3. Where a boundary is fixed by the location of a body of water the line may very well be a shifting one as the water recedes or encroaches, but where the boundary is a line in its very nature fixed and unshiftable, as a section line, wholly different considerations arise. The court in the principal case appreciated the distinction. See also *Cook* v. *McClure,* 58 N. Y. 437.

ASSAULT AND BATTERY—SELF DEFENSE.—In an action for assault and battery for damages by H against C, the plaintiff recovered judgment for $150. C pleaded self-defense, and asked the court to instruct the jury "that a person in the lawful defense of his person does not have to wait until his antagonist assaulted him, but that he has the right to bring on the fight if from the actions at the time it shall reasonably appear to him that his antagonist is about to assault him, *although the person so assaulted may have had no unlawful intent in his actions;* and you are charged that you must look at this from the standpoint of the person about to be assaulted." This was refused. *Held,* properly refused. *Chapman* v. *Hargrove* (1918), — Tex. Civ. App. —, 204 S. W. 379.

The court says: "To justify a defensive assault provoked by deceptive appearances the defendant must show not only a situation which creates a reasonable apprehension of danger to himself, *but one for which the assaulted party is culpably responsible";* also the rule is different in civil suits from that in criminal prosecutions. The facts are not set forth, and no authority is cited for this conclusion. Moreover the conclusion seems to be in direct conflict with *Dallas &c. R. Co.* v. *Pettit* (1907), 47 Tex. Civ. App. 354, 105 S.

W. 42; *Courvoisier* v. *Raymond* (1896), 23 Colo. 113, 47 Pac. R. 284; *New Orleans &c. R. Co.* v. *Jopes* (1891), 142 U. S. 18, 12 S. Ct. 109, 35 L. Ed. 919; *Zell* v. *Dunnaway* (1911), 115 Md. 1, 80 Atl. R. 215. See on the subject of *self-defense*, DICEY, LAW OF THE CONSTITUTION, 8th Ed. Note IV, pp. 489-497.

CONSTITUTIONAL LAW—ANTI-TIPPING STATUTE.—Action was brought on a writ of *habeas corpus* to test the validity of a California statute (Laws of 1917, ch. 172) which declared it a misdemeanor for any employer to require or accept from an employee, as a condition of the employment, any part of the tips received by such employee. *Held*, that the statute was unconstitutional as an unwarranted interference with the right of contract. *Ex parte Farbe* (Cal., 1918), 174 Pac. 320.

The majority of the court were of the opinion that the statute would not conduce to the elimination of the custom of tipping, which the court admitted was an evil whose eradication is desirable. No authority was cited except upon the general matter of restriction of contract. It has been held that tips turned over to an employer, in the mistaken belief that he demanded them, could be recovered by the employee. *Polites* v. *Barlin*, 149 Ky. 376; *Zappas* v. *Roumeliote*, 156 Iowa 709. Tips may be included as part of one's earnings, under the workman's compensation acts, *Sloat* v. *Rochester Taxi Co.*, 163 N. Y. S. 904; *Gt. Western Ry. Co.* v. *Helps*, (H. of L.) 1918, A. C. 141. A statute of Mississippi prohibiting the acceptance of tips, and forbidding employers to allow tipping, was assumed to be constitutional in *State* v. *Angelo*, 109 Miss. 624, and *State* v. *So. Ry. Co.*, 112 Miss. 23, although the indictments in both cases were dismissed on other grounds. A Tennessee statute (Laws of 1915, ch. 185) appears never to have been passed on.

CONSTITUTIONAL LAW—RACE-SEGREGATION ORDINANCES.—Plaintiffs sued to enjoin the City of Atlanta from carrying on criminal prosecutions under the city ordinance providing for race segregation. *Held*, injunction should issue. *Glover* v. *City of Atlanta* (Ga., 1918), 96 S. E. 526.

A similar ordinance was passed upon by the Supreme Court of the United States in *Buchanan* v. *Warley*, 245 U. S. 60, and declared unconstitutional. For a discussion of that decision see 16 MICH. L. REV. 109, and 31 HARV. L. REV. 475. The Georgia supreme court had held the ordinance valid in *Harden* v. *City of Atlanta*, 147 Ga. 248. In the instant case, however, it declared itself bound by the decision of the Supreme Court and reversed its original opinion.

EQUITY—JURISDICTION TO CANCEL WHERE LEGAL DEFENSE EXISTS.—A contract for advertising services for twelve months was superseded by another contract for sixty months, which was procured through misrepresentation that the term was only twelve months. In a suit to reform or cancel the second contract, *held* that equity has jurisdiction although the defense of fraud could be made at law. *Smith-Austermuhl Co.* v. *Jersey Railways Advertising Co.* (N. J. Ch., 1918), 103 Atl. 388.

Cancellation, except where there is some independent ground of equitable jurisdiction, must rest upon the *quia timet* principle. Theoretically if an instrument makes a *prima facie* case against the complainant, the fact that he has a legal defence does not oust the jurisdiction of equity; for the legal defence may become seriously prejudiced or even dissipated before he has opportunity to present it. Hence it is commonly recognized that the existence of a legal defence is not a bar to suit in equity . *Buxton* v *Broadway*, 45 Conn. 540; *Fuller* v. *Percival*, 126 Mass. 381; *Metler* v. *Metler*, 18 N. J. Eq. 270, 19 N. J. Eq. 457. The courts of New York have taken a different position. If a legal defence exists the complainant is told that he has adequate protection through perpetuating the testimony of his witnesses. *Allerton* v. *Belden*, 49 N. Y. 373. Perpetuation of testimony, however is but a poor substitute for the actual witness and is unavailable if the witness remains in the jurisdiction. Yet it is common experience that witnesses forget. The undesirability of allowing the holder of an instrument to delay litigation and vex the maker at a remote period was recognized in *McHenry* v. *Hazard*, 45 N. Y. 580, but in *Fowler* v. *Palmer*, 62 N. Y. 533, the doctrine of *Allerton* v. *Belden* was reaffirmed and it is still followed in New York. *Dennin* v. *Powers*, 96 Misc. 252. The principal case is sound on principle and finds general support in authority.

SPECIFIC PERFORMANCE—NEGATIVE CONTRACT—INJUNCTION.—S. entered into a written contract with the complainant, to serve it as editorial writer and have charge of the editorial page of the *New York Tribune* for four years. As part of his undertaking S. covenanted that he would not "write for or contribute to any other publication or periodical" during the term of the agreement. S. broke his contract and entered into an agreement with the McClure Syndicate for a series of articles. Complainant brought suit for an injunction. Backes, V. C., granted an injunction restraining S. from writing for any paper other than the *New York Tribune*. *Tribune Association* v. *Simonds, et al.* (N. J. Ch., 1918), 104 Atl. 386.

Mr. Frank H. Simonds, editorial writer for the *New York Tribune* and defendant in the principal case, has at last achieved distinction by breach of contract. He now belongs to the noble company of which Napoleon Lajoie, Annette Kellerman, and Mlle. Wagner (of blessed memory) are the bright particular stars. The seal of judicial approval is placed upon his unique quality. There is no other writer upon the war who can replace him, and damages however weighty can not compensate his employer. Thus Backes, V. C. It is true that the Vice-chancellor did not accept without qualification counsel's extravagant appraisal of Mr. Simonds, when in one ecstatic moment he said, "The loss to the world of Mr. Simonds's articles would be equal to that of the Huns entering Paris." But Mr. Simonds is unique, extraordinary, irreplacable, *sui generis*. His road to judicial fame was short if rugged. Though his first effort to obtain recognition in the courts was coldly received (*Kennerly* v. *Simonds*, 247 Fed. 822, 16 MICH. L. REV. 547), he was not discouraged. Perseverance brings its own reward.

Exegit monumentum aere perennius. For with the fall of brass in Berlin, who shall say that the New Jersey chancery reports will not outwear the most solemn "monument"?

STATE JURISDICTION OVER SOLDIERS.—Defendant, regularly enlisted, and acting as a dispatch driver, in the United States Naval Reserves, stationed at Newport, the headquarters of the second naval district, was arrested for exceeding the statutory speed limit of motor vehicles, in delivering a dispatch, under specific instructions of his superior officer to proceed with all possible dispatch, in an urgent matter pertaining to the conduct of the war between the United States and Germany; the naval forces stationed there were in control of the adjoining waters, and were charged with guarding the coasts from possible attacks. The lower state court certified the question of liability to the Supreme Court which *held,* Defendant not liable. *State* v. *Burton* (1918), — R. I. —, 103 Atl. R. 962.

The court says the conduct of the war rests wholly in the Federal Government. Any state law interfering therewith, or with the officers charged with prosecuting the war, is suspended for the time being. The plans of the naval authorities for the furtherance of that purpose cannot be obstructed by the enforcement of such state regulations. Federal officers cannot be prevented from performing their lawful duties by state laws or courts, without right to relief by the Federal Courts, since the Federal laws are paramount. *Cohens* v. *Virginia* (1821) 6 Wheat 264; *Tennessee* v. *Davis* (1879), 100 U. S. 257; *In re Neagle* (1889), 135 U. S. 1. Those in the military and naval service of the United States, while in the lawful performance of their duties are within this rule. *United States* v. *Clark* (1887), 31 Fed. 710; *In re Fair* (1900), 100 Fed. 149; *Ex parte Schlaffer* (1907), 154 Fed. 921; *In re Walzer* (1916), 235 Fed. 362, Ann. Cas. 1917 A-274. On the other hand an officer or soldier is not exempt from civil or criminal liability just because he is such officer, nor under a claim of performance of duty, if that is a mere subterfuge to evade liability. *In re Waite* (1897), 81 Fed. 359, 370. In time of peace the Federal Courts will not interfere with the prosecution of persons in the military service, in the State courts, for violation of State laws, unless they are at the time engaged in the actual performance of their duties as soldiers. *United States* v. *Lewis* (1906), 200 U. S. 1, 26 S. C. 229; but compare, *Ex parte Bright* (1874), 1 Utah 145. In England, the military is strictly subordinate to the civil power, and an officer, or a soldier under command of an officer, acts strictly at his peril, and is liable for the violation of the law,—"be hanged if he obeys, and be shot if he does not obey," if he violates the civil laws. DICEY, LAW OF THE CONSTITUTION, 8th Ed., pp. 297-302; notes pp. 512, 538; BATY & MORGAN, WAR, ITS CONDUCT & RESULTS, p. 147 et seq. In this country there is conflict among recent opinions. See *Commonwealth* v. *Shortall* (1903), 206 Pa. St. 165, 98 Am. St. R. 759, 65 L. R. A. 193, and *Franks* v. *Smith* (1911), 142 Ky. 232, Ann. Cas. 1912 D-319. See Notes Ann. Cas. 1917 C, pp. 9-27; L. R. A. 1917, B-702.