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ABSTRACTS

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ADMINISTRATIVE LAW — STANDARDS FOR ADMINISTRATIVE REGULATIONS — The Federal Security Administrator, acting under the Federal Food, Drug and Cosmetic Act,[1] promulgated regulations establishing "standards of identity" for various milled wheat products. These regulations excluded vitamin D from the defined standard of "farina" and permitted it only in "enriched farina," which was required to contain vitamin B_1, riboflavin, nicotinic acid and iron. The question is whether the regulations are valid as to respondent, which has for ten years been marketing a wheat product as "farina enriched by vitamin D." Respondent contended (a) that there was no substantial evidence in support of the administrator's finding that indiscriminate enrichment of farina with vitamin and mineral contents would tend to confuse and mislead consumers; (b) if so, that upon such a finding the administrator had no authority to adopt a standard of identity which excluded a disclosed nondeleterious ingredient; [2] and (c) that the regulations excluding vitamin D from "farina" were not "a reasonable definition and standard of identity." *Held*, judgment of circuit court [3] reversed, and regulations upheld. General testimony by representatives of consumer organizations that consumers lack the knowledge to dis-

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[1] 52 Stat. L. 1040 (1938), 21 U. S. C. (1940), §§ 341, 371.

[2] Sec. 401 of the act, 21 U. S. C. (1940), § 341, provides that "Whenever in the judgment of the Administrator such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity."

[3] Quaker Oats Co. v. Federal Security Admr., (C. C. A. 7th, 1942) 128 F. (2d) 76.

criminate between the value of various vitamin-enriched wheat products, even when the ingredients are disclosed, is sufficient to support the administrator's findings, and the court below should not have substituted its own judgment of the evidence. The act specifically states that the findings of the administrator, if supported by substantial evidence, shall be conclusive,[4] and the legislative proceedings show that construction of similar provisions in other acts had been considered. It was also within the power of the administrator under the act to fix standards of identity rather than simply provide for truthful labels, since it appeared that the former would be of more value to consumers "to promote honesty and fair dealing." Furthermore, the specific regulation of farina was "a reasonable definition and standard of identity." The ingredients required to be present in "enriched farina" are those naturally found in whole wheat, and it is also reasonable that vitamin D could be an optional ingredient of "enriched farina" but not of "farina." *Federal Security Admr. v. Quaker Oats Co.*, 318 U.S. 218, 63 S. Ct. 589 (1943).[5]

APPEAL AND ERROR — WHETHER TIME FOR APPEAL IS EXTENDED BY PETITION FOR REHEARING — AGRICULTURAL COMPOSITIONS — Petition to review an order of a conciliation commissioner under section 75 of the Bankruptcy Act.[1] After failing to obtain a composition or extension under section 75 (a) to (r) of the Bankruptcy Act, petitioner, a farmer, sought relief under section 75s. In due course he petitioned the commissioner to fix the rent, permit him to retain his property, and establish a stay or moratorium. In August 1940 this was granted. On September 7, 1940, orders were entered for the sale of certain property, chiefly livestock stipulated by the debtor to be perishable, under section 75s (2). After the ten days fixed for review under section 39 (c),[2] petition for rehearing on the order fixing rental, granting stay and directing a sale were filed with the commissioner by the debtor. These petitions were based on lack of representation by counsel. The commissioner found that there had been representation by counsel and denied the petitions. The debtor then filed petition for review in the district court within ten days after the entry of the commissioner's order denying rehearing. The district court denied review on the ground that the petitions were not filed within ten days after the original order and that the petition for rehearing did not extend the time. The court of appeals affirmed.[3] *Held*, affirmed. Where a petition for rehearing is granted, the time for review runs from the entry of that order, since the basis of the earlier order is again put in issue. But when a petition for rehearing is denied, the appeal must be from the original order even though the time is counted from the later order, since an appeal does not lie from the denial of a petition for rehearing. On the other hand, where the petition for rehearing is itself filed out of time and the referee or court determines that no grounds for re-examining the original

[4] 52 Stat. L. 1055 (1938), 21 U. S. C. (1940), § 371 (f) (3).
[5] See Heady, "Administrative Rule-Making under Section 701 (e) of the Food, Drug and Cosmetic Act," 10 GEO. WASH. L. REV. 406 (1942).

[1] 52 Stat. L. 939 (1939), 11 U. S. C. (1940), § 203.
[2] 52 Stat. L. 858 (1939), 11 U. S. C. (1940), § 67 (c).
[3] (C. C. A. 7th, 1941) 123 F. (2d) 543.

order are shown, that is, the petition is not considered on the merits, the time for review of the order is not enlarged. However, if the court had re-examined the basis of the original order (which it did not in the present case), the time for filing petition for review would be extended. *Pfister v. Northern Illinois Finance Corp.*, 317 U.S. 144, 63 S. Ct. 133 (1943).

ARMY AND NAVY — SOLDIERS' AND SAILORS' CIVIL RELIEF ACT — EXTENT OF DISCRETION OF COURT IN GRANTING STAY — The petitioner Boone was summoned into a state court in North Carolina in an action to require him to account as trustee of a fund for a minor daughter, to remove him as trustee, to surcharge his accounts for losses caused by illegal management and to obtain personal judgment for deficiencies in the fund. Personal service was made on Boone in North Carolina on June 23, 1941. He was then in military service as a captain, stationed in the office of the Under Secretary of War in Washington. Boone filed a verified answer denying the jurisdiction of the court, claiming that he resided in Washington, and denying all charges of misconduct of the fund. On February 2, 1942, the cause came on for hearing. Boone moved for a continuance to May 25 on the ground that his counsel expected soon to be called into service and that he would need ample time to secure new counsel. The continuance was granted, and the court directed that a certified copy of the order setting day for trial should be sent to the Adjutant General of the United States Army. When the trial day came, Boone was not present and his new counsel, who had been employed only a few days before, moved that the trial be continued under the Soldiers' and Sailors' Civil Relief Act [1] until after the termination of Boone's military service or until "such time as he can properly conduct his defense." At this time there were before the court not only the pleadings and affidavits submitted by Boone and his counsel, but also certain depositions taken in Washington and New York in the presence of Boone, and Boone's own statement of transactions concerning the securities involved. The court denied the motion for continuance, counsel withdrew from the case and the trial proceeded. The verdict of the jury was against Boone, judgment for $11,000 was entered against him, and the Supreme Court of North Carolina affirmed, on the merits as well as on the denial of the continuance.[2] The United States Supreme Court granted certiorari on the federal question whether the refusal of the continuance denied rights given by the Soldiers' and Sailors' Relief Act. *Held*, affirmed. The act clearly gives the trial court discretion, as it provides that an action against persons in military service shall be stayed "unless, in the opinion of the court, the ability of plaintiff to prosecute the action of the defendant to conduct his defense is not materially affected by reason of his military service." [3] The act makes no provision as to who shall have the burden of proof of showing that a party will or will not be prejudiced, and it is proper that the court should have discretion in this also, as circumstances may vary widely. It is not necessary that the findings of the court follow the language of the statute. Finally, the evidence supports the court's opinion. Boone was himself a lawyer, he had ample

[1] 54 Stat. L. 1178 (1940), 50 U. S. C. (1940), Appendix, § 501 et seq.
[2] Lightner v. Boone, 222 N. C. 205, 22 S. E. (2d) 426 (1942).
[3] 50 U. S. C. (1940), Appendix, § 521.

notice of the trial date, he had been able to go to New York to take depositions and he had not shown that he had applied for leave to attend the trial. He waited until only a few days before the trial to engage the counsel who made the motion for stay, and it appears that at all times he was represented by a lawyer from Detroit whose failure to appear at the trial was not adequately explained. Justice Black dissented on the ground that this construction of the act gives the trial court too much discretion in determining whether a person in military service has exercised proper diligence to secure a leave or whether it is best for the national defense that he make no application at all. *Boone v. Lightner*, (U. S. 1943) 63 S. Ct. 1223.

BANKS AND BANKING — LIABILITY OF DIRECTOR OF NATIONAL BANK TO DEPOSITORS WHERE STATUTE VIOLATED — NECESSITY OF CAUSAL CONNECTION — Depositors of the City National Bank in Miami, Florida, sued Penney for losses sustained by reason of the defendant's alleged negligence as director of the bank. The receiver of the bank intervened. The National Bank Act [1] requires a director to be a bona fide stockholder in his bank. Defendant had transferred shares to various persons to qualify them as directors, taking in return notes which gave the maker the option of returning the stock. Thereafter defendant paid very little attention to the affairs of the bank and let the other directors run it. It was contended by the plaintiffs that the violation of statute in setting up dummy directors made the defendant an insurer of the bank's losses. Adopting this theory, the district court gave judgment in favor of the receiver for a substantial recovery.[2] All parties appealed. *Held*, there are two bases of liability—one at common law for failure to exercise that degree of care which ordinarily diligent and prudent men would exercise under the circumstances, and the other under the National Bank Act where a director "shall knowingly violate, or knowingly permit" any of the bank's officers or agents to violate any provisions of the act.[3] The statutory requirement of intentional violation does not abrogate the common-law liability for negligence, or at least a deliberate refusal to investigate what it was defendant's duty to investigate is equivalent to knowledge. However, under either the common law or statutory liability, there must be a causal connection between the defendant's acts or negligence and the loss. The court proceeded to examine individual transactions to determine that causal connection and affirmed the district court's allowance of recovery as to some but reversed as to others. *Michelsen v. Penney*, (C. C. A. 2d, 1943) 135 F. (2d) 409.[4]

CITIZENS — CANCELLATION OF DECREE OF NATURALIZATION — MEMBERSHIP IN COMMUNIST PARTY — The petitioner, Schneiderman, was born in Russia on August 1, 1905, and came to the United States in 1907 or 1908.

[1] 12 U. S. C. (1940), § 72.

[2] (D. C. N. Y. 1941) 41 F. Supp. 603, noted 55 HARV. L. REV. 672 (1942).

[3] 12 U. S. C. (1940), § 93.

[4] See in general on liability of bank directors, 25 GEO. L. J. 146 (1936); 43 W. VA. L. Q. 157 (1937); 50 A. L. R. 462 (1927).

In 1922, when a 16-year-old student at a night school in Los Angeles, he became one of the organizers and charter members of the Young Workers League of California (whose name was later changed to the Young Communist League). In 1924 petitioner joined the Workers Party, which later became the Communist Party of the United States of America. During 1925 and 1926 he was corresponding secretary of the Workers Party in Los Angeles. In 1924, when he was eighteen years of age, he filed a declaration of intention to become a citizen of the United States. June 10, 1927, when nearly twenty-two, he was admitted to citizenship. Thereafter he continued to be active in the Communist Party. On June 30, 1939, the government began a proceeding under section 15 of the Act of June 29, 1906,[1] to cancel petitioner's certificate of citizenship on the ground that such certificate of citizenship was "illegally procured." The claim of illegality was that petitioner had not been "attached to the principles of the Constitution of the United States" within the meaning of the naturalization statute then in force.[2] The district court cancelled petitioner's citizenship and the circuit court affirmed.[3] On certiorari, *held*, reversed. Speaking through Justice Murphy, the Court said that in a proceeding to cancel naturalization, the burden of proof is on the government and that burden must be sustained by "clear, unequivocal and convincing evidence." The findings of the district court do not adequately show upon what its conclusions were based. Freedom of thought is one of the fundamental principles of our Constitution, and many changes in that Constitution may be advocated by peaceful and constitutional means without disagreement with its "general political philosophy" as outlined by the government attorneys in this case. No evidence has been submitted of any statement by the petitioner himself incompatible with "attachment to the Constitution." A party member does not necessarily believe in all the party stands for, and it has not even been proved convincingly that the Communist Party advocated force and violence in the United States. Chief Justice Stone was joined in dissenting by Justice Roberts and Frankfurter. Justice Jackson did not participate. *Schneiderman v. United States*, (U. S. 1943) 63 S. Ct. 1333.[4]

[1] 34 Stat. L. 601 (1906): "it shall be the duty of the United States district attorneys . . . to institute proceedings . . . for the purpose of setting aside and cancelling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured." Substantially continued by the Nationality Act of 1940, 54 Stat. L. 1137, 8 U. S. C. (1940), § 738.

[2] 34 Stat. L. 598 (1906): "it shall be made to appear to the satisfaction of the court admitting any alien to citizenship that . . . during that time [five years preceding] he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States. . . ." Cf. 8 U.S.C. (1940), §§ 709, 705.

[3] United States v. Schneiderman, (C. C. A. 9th, 1941) 119 F. (2d) 500, noted 2 BILL RTS. REV. 64 (1941), 51 YALE L. J. 1215 (1942).

[4] For cancellation of certificates of citizenship for fraud or illegality in the procurement under section 15 of the National Act of 1906, see 88 UNIV. PA. L. REV. 842 (1942); disloyalty or mental reservation, 18 A. L. R. 1185 (1922).

CONSTITUTIONAL LAW — APPLICABILITY OF CURFEW REGULATIONS AND EXCLUSION ORDERS TO PERSONS OF JAPANESE ANCESTRY — The case of *United States v. Hirabayashi*,[1] noted in the last December issue,[2] has been affirmed by the United States Supreme Court.[3] The Court found that the curfew regulations of persons of Japanese ancestry were not unconstitutional as applied to an American citizen of Japanese ancestry, in view of the conditions existing at the time the regulations were imposed.

CONSTITUTIONAL LAW — VALIDITY OF STATE LAW REQUIRING SCHOOL CHILDREN TO SALUTE FLAG — After the decision in *Minersville School District v. Gobitis*,[1] the West Virginia legislature amended its statutes to require all schools in the state to conduct courses in history, civics, and the state and national constitutions. The state board of education was directed to prescribe courses of study. The board adopted rules ordering the salute to the flag to become a regular part of the program of activities in public schools in which all teachers and pupils should be required to participate, and providing that refusal to salute the flag should be considered insubordination, to be dealt with by expulsion and refusal of readmission until compliance. Under other state laws, such an expelled child would be "unlawfully absent" and might be proceeded against as a delinquent. His parents or guardian would be liable to fine of $50 and imprisonment not exceeding thirty days. The appellees brought suit for themselves and others similarly situated asking an injunction to restrain the enforcement of the laws and regulations against Jehovah's Witnesses. Members of that sect consider the flag an "image" whose worship is forbidden by the Bible. After grant of the injunction by the district court,[2] the case was brought to the Supreme Court on direct appeal. *Held*, affirmed. The *Gobitis* case is reversed. The Court, speaking through Justice Jackson, declared that the compulsory flag salute invades a field which should be subject to no official control. It is a matter, not just of re-

[1] (D. C. Wash. 1942) 46 F. Supp. 657.

[2] 41 MICH. L. REV. 522 (1942).

[3] Hirabayashi v. United States, (U. S. 1943) 63 S. Ct. 1375. Accord: Yasui v. United States, (U. S. 1943) 63 S. Ct. 1392.

[1] 310 U. S. 586, 60 S. Ct. 1010 (1940). This case has been noted in the following publications (all 1940 unless otherwise stated): 39 MICH. L. REV. 149; 1 BILL RTS. REV. 267 (1941); 20 BOST. L. REV. 356; 15 CAL. S. B. J. 161; 40 COL. L. REV. 1067; 26 CORN. L. Q. 127; 2 GA. B. J. 74; 27 GEO. L. J. 231 (1938); 29 GEO. L. J. 112; 9 INT. JUR. ASSN. BULL. 1; 10 INT. JUR ASSN. BULL. 12; 23 IOWA L. REV. 424 (1938); 9 J. B. A. KAN. 276 (1941); 6 KAN. CITY L. REV. 217 (1938); 6 MO. L. REV. 106 (1941); 23 MINN. L. REV. 247 (1939); 18 N. Y. UNIV. L. Q. REV. 124; 14 NOTRE DAME LAWY. 115 (1938); 18 ORE. L. REV. 122 (1939); 15 ST. JOHNS L. REV. 95; 14 SO. CAL. L. REV. 57, 73; 14 TEMP. UNIV. L. Q. 545; 14 UNIV. CIN. L. REV. 444, 570; 14 UNIV. DETROIT L. REV. 38; 15 WASH. UNIV. L. REV. 265.

[2] Barnette v. West Virginia State Board of Education, (D. C. W. Va. 1942) 47 F. Supp. 251, noted 43 COL. L. REV. 134 (1943); 11 GEO. WASH. L. REV. 112 (1942); 31 GEO. L. J. 85 (1942); 56 HARV. L. REV. 652 (1943); 22 ORE. L. REV. 198 (1943); 17 TULANE L. REV. 497 (1943).

ligious freedom, but of other freedoms guaranteed by the First Amendment. Frankfurter, Roberts and Reed dissented.[3] *West Virginia State Board of Education v. Barnette*, (U. S. 1943) 63 S. Ct. 1178.[4]

CONSTITUTIONAL LAW — VALIDITY OF STATUTE REQUIRING COMMITMENT TO STATE HOSPITAL OF ANY PERSON ACQUITTED OF MURDER ON GROUND OF INSANITY — A Michigan statute [1] provides that any person acquitted of murder on the ground of insanity shall be forthwith committed to a state hospital for the criminally insane for the rest of his natural life, but that the governor may discharge such person upon recommendation of the state hospital commission based upon an investigation by it and its determination that such discharge will not be harmful to other persons or their property. Defendant, after being found not guilty of murder on the ground of insanity appealed from the order of the court committing him to the state hospital for the criminally insane, contending that the statute is unconstituional. *Held*, the statute is valid since it is not unreasonable or arbitrary to confine to a state institution a person who has been acquitted of murder on the ground of insanity. An earlier Michigan statute [2] was found unconstitutional because it excluded the confined person from afterward securing any investigation or judicial determination regarding his insanity. While the present act does not specifically provide a procedure for later having the committed person's sanity determined, it does not exclude such a determination by habeas corpus proceedings as specifically provided elsewhere in the statutes [3] and by judicial precedent.[4] *People v. Dubina*, 304 Mich. 363, 8 N. W. (2d) 99 (1943), cert. denied (U. S. 1943) 63 S. Ct. 1331.

[3] In the Gobitis case, Chief Justice Stone was the only dissenter. Justices Black, Douglas and Murphy, who participated in the Gobitis case, have now changed their positions to join with Stone and two new justices, Jackson and Rutledge.

[4] Annotations on the power of the legislature or school authorities to prescribe and enforce the oath of allegiance, "salute to the flag," or other ritual of a patriotic character are found in 110 A. L. R. 383 (1937); 120 A. L. R. 655 (1939); 127 A. L. R. 1502 (1940); 141 A. L. R. 1030 (1942).

Other periodical discussions on the flag salute in schools, in addition to those cited in notes 1 and 2, supra, are: 36 MICH. L. REV. 485 (1938); Gardner and Post, "The Constitutional Questions Raised by the Flag Salute and Teachers Oath Acts in Massachusetts," 16 BOST. L. REV. 803 (1936); 9 BROOK. L. REV. 205 (1940); 51 HARV. L. REV. 1418 (1938); Million, "Validity of Compulsory Flag Salutes in Public Schools," 28 KY. L. J. 306 (1940); 19 N. Y. UNIV. L. Q. REV. 31 (1941); 2 OHIO ST. L. J. 151 (1936); 12 ROCKY MT. L. REV. 202 (1939); 13 ST. JOHNS L. REV. 144 (1938); 13 So. CAL. L. REV. 222 (1940). And see the following discussions: Miner, "Religion and the Law," 21 CHI-KENT L. REV. 156 (1943); McCullough, "Religious Liberty Judicially Defined," 13 NOTRE DAME LAWY. 260 (1938); Wright, "Religious Liberty under the Constitution of the United States," 27 VA. L. REV. 75 (1940); Heller, "A Turning Point for Religious Liberty," 29 VA. L. REV. 440 (1943); Reeder, "A Monograph on Religious Freedom," 31 W. VA. L. Q. 192 (1925).

[1] Mich. Pub. Acts (1939), No. 259, Mich. Comp. Laws (Supp. 1940), §§ 17207-1 to 17207-4.

[2] Mich. Pub. Acts (1873), No. 168, found unconstitutional in Underwood v. People, 32 Mich. 1 (1875).

[3] Mich. Comp. Laws (1929), § 15206.

[4] In re Dahrooge, 215 Mich. 90, 183 N. W. 716 (1921).

CONTEMPT — POWER OF NOTARY TO COMMIT A DEPONENT FOR CONTEMPT IN REFUSING TO ANSWER QUESTION ON GROUND IT IS IRRELEVANT — A New York court issued a commission to an officer in Ohio to take a deposition on certain subjects from Martin. Martin declined to answer twenty-five questions, nine on the ground of privilege and sixteen on the ground of irrelevancy. On habeas corpus proceedings, the lower court refused to pass on the question of relevancy, holding it was a question for the New York court and the supreme court reversed.[1] Upon further proceedings the lower court held that all but three questions, which were privileged, should have been answered. On a second appeal, *held*, denial of writ of habeas corpus affirmed. The Ohio Code [2] recognizes the authority of a commissioner appointed by a court of another state and authorizes commitment for contempt by any officer by whom attendance or testimony of the witness is required upon an "unlawful refusal to answer as a witness." The witness' refusal to answer in the present case was unlawful as to the questions which he had been ordered to answer after making the claim that they were irrelevant. The power to commit for contempt exists if the refusal to answer is unlawful as to any question to which answer was ordered, and it is not necessary that the refusal be unlawful as to all. *Ex parte Martin*, 141 Ohio St. 87, 47 N. E. (2d) 388 (1943).[3]

CONTRACTS — ACCEPTANCE ON CONDITION THAT OFFEROR PERFORM AN OBLIGATION TO A THIRD PERSON — Plaintiff-appellant is the successor in interest to a lessee whose lease gave him the option of "first refusal" in case the lessor should receive a bona fide offer to purchase the property subject to the lease. Defendant-appellee is the successor in interest to the lessor. The lessor received an offer, which he communicated to the lessee. The lessee accepted within the required time in a letter which conformed in all respects to the offer except that it contained a condition that the lessor pay a commission of $3,737.50 to the real estate dealer who had been given an exclusive agency by the lessor. Upon the defendant's refusal to sell, plaintiff brings this action for specific performance. The trial court found that the lessee's acceptance of the offer was conditional and not an exercise of his privilege of first refusal and gave summary judgment for appellee on the ground that there was no genuine issue as to any material fact. *Held*, reversed and remanded. Where an acceptance contains a condition which would be implied in law or merely states an obligation which already exists, even if the obligation is to a third person, the condition may be regarded as mere surplusage. However, the case must be remanded for trial of issues of fact. Although the amount of the commission mentioned is the amount fixed by the city real estate board, whether the commission was due to the agent named cannot be determined on the present evidence, since the contract of exclusive agency and another document claimed to have waived the commission were not sub-

[1] Ex parte Martin, 139 Ohio St. 609, 41 N. E. (2d) 702 (1942), noted 41 MICH. L. REV. 532 (1942), 91 UNIV. PA. L. REV. 164 (1942).

[2] Ohio Gen. Code (Page, 1938), §§ 11530, 11510.

[3] Cases on power of a notary to punish for contempt are collected in 8 A. L. R. 1543 at 1574 (1920). Cf. 54 A. L. R. 318 (1928); 73 A. L. R. 1185 (1931).

mitted in evidence. *Shea v. Second Nat. Bank of Washington* (App. D. C. 1942) 133 F. (2d) 17.[1]

CONTRACTS — MUTUAL ASSENT — MISTAKE IN IDENTITY — Defendant agreed to sell a machine to the State Machinery Company for $325 delivery to be made after defendant had completed certain work on it. When the machine was ready, defendant directed an employee to telephone the State Machinery Company to inspect the machine. By mistake the employee called the Nutmeg State Machinery Corporation. The latter's agent inspected the machine and said that he would not pay more than $250. Defendant agreed on the basis that he would not argue with a good customer, believing that he was dealing with the State Machinery Company. Plaintiff's agent left a check and said he would send a truck for the machine. A few minutes later a representative of the State Machinery Company called and defendant discovered his mistake. He immediately returned plaintiff's check and told plaintiff it could not have the machine. In this suit, judgment was for defendant. On appeal, *held*, affirmed. There is some disagreement whether there can be a binding contract if A agrees to sell to B, believing B to be some other person, when B does not know of A's mistake. However, the present case does not come within that class but is of the same type as B's acceptance of an offer intended for C. An offer can be accepted only by the person to whom it is addressed, and it is immaterial that here the mistake was on the part of the offeree, who accepted what he believed was a proposal to alter the terms of an existing contract. There was no such meeting of the minds as would give rise to a contract between defendant and plaintiff. *Nutmeg State Machinery Corp. v. Shuford*, (Conn. 1943) 30 A. (2d) 911.[1]

CONTRACTS — RESCISSION — RESTITUTION AS CONDITION PRECEDENT TO SUITS AT LAW — Plaintiff brought a suit at law to rescind, on the ground of fraud, his purchase of corporate stock from defendant and to recover the purchase price. He offered to return the stock certificates and one dividend of $6 but did not tender other dividends amounting to $226. *Held*, affirming the trial court, that there are exceptions to the rule that restitution is a condition precedent to a suit at law for rescission. One of these is: "Where the party rescinding would be entitled to retain the money or property received, either by virtue of an original liability if the contract be rescinded, or under the contract itself if rescission be refused, no tender or offer of restoration is required. If, then, the thing to be restored consists of money, the amount of which can be credited in partial cancellation of the injured party's claim, a failure to restore will not preclude a suit

[1] 1 A. L. R. 1508 (1919) collects cases on acceptance of offer with condition which the law would imply.

[1] See Goodhart, "Mistake as to Identity in the Law of Contract," 57 L. Q. REV. 228 (1941). And generally, 36 MICH. L. REV. 1008 (1938); Weir, "Mistake in the Law of Contract," 19 CAN. BAR REV. 391 (1941); 26 COL. L. REV. 989 (1926); 27 COL. L. REV. 60 (1927); Edgar, "Some Aspects of Unilateral Mistake," 4 ST. JOHNS L. REV. 176 (1930).

to recover the consideration paid." The instant case comes within this exception. *Vavrica v. Mid-Continent Co.*, (Neb. 1943) 8 N. W. (2d) 674.[1]

COPYRIGHTS — VALIDITY OF ASSIGNMENT OF RENEWAL INTEREST — Graff, one of the co-authors of the song, "When Irish Eyes are Smiling," assigned to M. Witmark & Sons "all rights, title and interest" in this and other songs and conveyed "all copyrights and renewals of copyrights and the right to secure all copyrights and renewals of copyrights in the [songs], and any and all rights therein that I [Graff] or my heirs, executors, administrators or next of kin may at any time be entitled to." To that end Witmark was given an irrevocable power of attorney to execute in Graff's name all documents necessary to secure the copyright renewal. On the first day of the twenty-eighth year of the copyright (the year during which under the statute [1] renewal could be applied for), Witmark applied for and registered renewal in Graff's name and exercised its power of attorney to assign to itself Graff's interest in the renewal. Eleven days later Graff himself applied for and registered the renewal copyright in his own name and assigned his renewal interest to Fred Fisher Music Co. Both Graff and Fisher knew of the prior registration of the renewal by Witmark and of the latter's assignment to itself. Fisher published and sold copies of the song and Witmark sued to enjoin these activities. The district court granted a preliminary injunction,[2] which was affirmed by the circuit court.[3] *Held*, that as both courts below limited themselves to the question of statutory construction without considering whether equitable relief should be denied on other grounds, such as inadequacy of consideration, the sole question before this court is whether an author can assign his interest in the renewal copyright before he has secured it. After examining the history of the copyright act, the Court found that there was nothing to indicate that Congress intended to prevent such assignment and that in practice renewal interests of authors have been regarded as assignable both before and after the Copyright Act of 1909. Affirmed. *Fred Fisher Music Co. v. M. Witmark & Sons*, (U. S. 1943) 63 S. Ct. 773.[4]

COURTS — JURISDICTION — NECESSITY OF EXHAUSTING ADMINISTRATIVE REMEDY — SELECTIVE SERVICE CLASSIFICATION — Plaintiff sought a declaratory judgment against a local selective service board for a declaratory

[1] Accord, Aron v. Mid-Continent Co., (Neb. 1943) 8 N. W. (2d) 682, vacating an earlier opinion, 141 Neb. 806, 4 N. W. (2d) 884 (1942).

See Seavey and Scott, "Restitution," 54 L. Q. REV. 29 (1938); 21 NEB. L. REV. 59 (1942); 15 TEX. L. REV. 524 (1937). Cf. restitution as a condition precedent to rescission or compromise of a release, 134 A. L. R. 6 (1941).

[1] 35 Stat. L. 1080 (1909), 17 U. S. C. (1940), § 23.

[2] M. Witmark & Sons v. Fred Fisher Music Co., (D. C. N. Y. 1941) 38 F. Supp. 72, noted 12 AIR L. REV. 339 (1941); 9 UNIV. CHI. L. REV. 737 (1942); 6 UNIV. DETROIT L. J. 79 (1943); 55 HARV. L. REV. 139 (1942); 15 So. CAL. L. REV. 108 (1942).

[3] M. Witmark & Sons v. Fred Fisher Music Co., (C. C. A. 2d, 1942) 125 F. (2d) 949.

[4] See 10 AIR L. REV. 198 (1939).

judgment of plaintiff's classification as a minister of religion. Plaintiff had been classified by the board as 1-A and ordered to report for induction. On defendant's motion to dismiss, *held*, motion sustained. Under the Selective Service Act [1] the decision of the local board is final except where an appeal is expressly authorized. The declaratory judgment act does not enlarge the jurisdiction of the federal courts. There is no actual legal controversy, for plaintiff may be rejected upon medical examination. Plaintiff's remedy is by appeal or by habeas corpus after induction. *Meredith v. Carter*, (D. C. Ind. 1943) 49 F. Supp. 899.

COURTS — JURISDICTION — SUIT AGAINST FOREIGN CONSUL CONCERNING MARITAL STATUS — Plaintiff Mary Duran-Ballen, a citizen of the United States, married defendant Sixto Duran-Ballen, a citizen of the Republic of Equador, and consul general of that republic, in New York City on June 4, 1936. In 1942 they separated. In January 1943, plaintiff received from defendant by mail a document purporting to be a certified copy of a decree of divorce rendered by a Mexican court. Defendant had never resided in Mexico and had not been present there at any time after the separation. Plaintiff had had no notice of the pendency of the suit prior to her receipt of the decree. She brought action for a declaratory judgment that she is still the wife of defendant. While conceding that under New York law, the "mail order" divorce is void, defendant contended that the New York courts have no jurisdiction since the Judicial Code [1] provides that the federal courts shall have exclusive jurisdiction of "all suits and proceedings . . . against consuls or vice consuls." *Held*, judgment for plaintiff. The federal courts have never asserted any jurisdiction over domestic relations and a Supreme Court case has held that " 'suits against consuls and vice consuls' must be taken to refer to ordinary civil proceedings and not to include what formerly would have belonged to the ecclesiastical Courts." [2] *Duran-Ballen v. Duran-Ballen*, (N.Y.S. Ct. 1943) 40 N. Y. S. (2d) 617.

CRIMINAL LAW AND PROCEDURE — STATUTES — INTERPRETATION OF "FELONY" IN FEDERAL BANK ROBBERY ACT — The Bank Robbery Act [1] provides "whoever shall enter or attempt to enter any [national] bank, or any building used in whole or in part as a bank, with intent to commit in such bank or building, or part thereof, so used, any felony or larceny, shall be fined . . . or imprisoned. . . ." Petitioner was indicted under that act for entering a national bank in Vermont with intent to utter a forged promissory note and thereby defraud the bank. The utterance of a forged promissory note is a felony under the law of Vermont but not under any federal statute. Upon conviction, petitioner brought certiorari. *Held*, reversed. It cannot be inferred that Congress intended to incorporate the definitions of felony of all the states. "Felony" must be taken to mean only those federal felonies which affect the banks protected by the act. This is evidenced by the history of the act. Prior to 1934, robbery of a

[1] 54 Stat. L. 885 (1940), 50 U. S. C. (1940), Appendix § 301 et seq.

[1] 28 U. S. C. A. (1940), § 371(8).
[2] Ohio ex rel. Popovici v. Agler, 280 U. S. 379 at 384, 50 S. Ct. 154 (1930).

[1] 48 Stat. L. 783 (1934), 50 Stat. L. 749 (1937), 12 U. S. C. (1940), § 588b.

national bank was punishable only under state law. Provisions in the first bill for larceny and burglary were struck out before enactment. In 1937 the act was amended to add the above quoted section punishing "any felony or larceny" and defining larceny but not felony. *Jerome v. United States*, (U. S. 1943) 63 S. Ct. 483.

FEDERAL COURTS — POWER OF SUPREME COURT TO ISSUE WRIT OF PROHIBITION OR MANDAMUS — A ship belonging to petitioner Republic of Peru was libelled in a federal district court. The petitioner intervened, stating that its claim of ownership was not a general appearance and did not waive its sovereign immunity. With similar reservations, the petitioner procured the release of the vessel on bond, took testimony of the master, and made motions for extension of time to answer. In the meantime petitioner, following the accepted course of procedure, secured recognition by the State Department of its claim of immunity, which was communicated by the State Department to the Attorney General and through the local district attorney to the district court. Petitioner then moved that the suit be dismissed, but the court denied the motion on the ground that petitioner had waived its sovereign immunity by applying for extensions of time to answer and taking the deposition of the master. Petitioner then moved before the Supreme Court for leave to file a petition for writ of prohibition or mandamus. *Held*, motion granted. Under the Constitution, the Supreme Court has jurisdistion to grant writs of prohibition or mandamus in aid of its appellate jurisdiction. While the circuit courts of appeal have by statute been granted appellate jurisdiction from district courts and power to issue the common-law writs,[1] this Court may in its discretion in exceptional cases where a question of public importance is involved, grant the writ.[2] The present case is one involving the relation of this country to a free state and would no doubt ultimately be appealed to this Court, so that this Court will exercise its jurisdiction. Petitioner did not waive its immunity by its proceedings in the district court and the determination of immunity by the Secretary of State must be accepted as controlling. Justice Frankfurter dissented on the ground that the Supreme Court has no discretion to take jurisdiction when the matter could have gone to the circuit court, or if it does that its jurisdiction should not have been exercised in the present case. *Ex parte Republic of Peru*, (U. S. 1943) 63 S. Ct. 793.[3]

FUTURE INTERESTS — DESTRUCTIBILITY OF CONTINGENT REMAINDERS IN INDIANA — In an action to quiet title, it appeared that all the parties claimed through D. P. In 1875 by a deed in which his wife joined, D. P. conveyed the land in question to his son L, reserving a life estate to D. P. and "subject to the limitations and conditions that the said grantee, L, shall hold said lands from and after the death of the grantor, D. P., for and during the natural life of said L only, and at the termination of such life estate of said L and at his death said

[1] Judicial Code, § 262, 28 U.S.C. (1940), § 377.

[2] Ex parte United States, 287 U. S. 241, 53 S. Ct. 129 (1933).

[3] In general on the writ of prohibition in federal courts, see 34 COL. L. REV. 899 (1934).

lands to go to his children then living, and to the descendants of those that may be dead." There were other limitations not here material. In 1878 L conveyed the same real estate to D. P. by warranty deed. At this time L was unmarried and had no children. Thereafter he married and had three children. Two of them and the descendants of the third are the plaintiff-appellees. In 1883 D. P. conveyed by warranty deed to W. R., through whom defendant-appellants claim. D. P. died in 1887. L died in 1929. It was conceded by appellants that, if the rule in Shelley's case is inapplicable, the deed to L gave him a life estate with contingent remainders to his children. *Held,* affirming the lower court, that the rule in Shelley's case is not applicable and that the common-law rule, that one owning a life estate upon which contingent remainders are based and who tortiously attempts to convey a greater estate than he has forfeits the life estate resulting in destruction of the contingent remainder, does not apply in Indiana. Under the Indiana statute [1] an attempt by a tenant for life to convey a greater estate does not forfeit his estate but passes to the grantee all the estate he could lawfully convey. Therefore D. P. and W. R. received only estates for the life of L. Judgment for plaintiffs. *Rouse v. Paidrick,* (Ind. 1943) 47 N. E. (2d) 604.[2]

JOINT TORTFEASORS — RELEASE OF ONE JOINT TORTFEASOR BY A DISCHARGE OF ANOTHER — Plaintiff was injured in a collision of the taxicab in which she was a passenger with defendant's automobile. Plaintiff received a settlement from the taxicab company and gave the company a covenant not to sue which stated that the company should be completely discharged but plaintiff's right against defendant should be reserved. The trial court allowed defendant's motion for summary judgment upon the ground that the instrument was a release which automatically discharged his liability also. *Held,* reversing the previous rule in the jurisdiction,[1] a release of one joint tortfeasor should not release the others unless the settlement makes complete compensation for the injury. Any distinction between a "release" and a "covenant not to sue" is artificial. The case is remanded for further proceedings and the trial court is instructed to allow credit for the amount of settlement as follows: The judgment should be for the full amount of plaintiff's damage. If the judgment is for less than twice the amount of the settlement, defendant will pay the difference to plaintiff and the wrongdoer who settled will have an action for contribution against defendant to equalize their payments. However, if the judgment is for more than twice the amount of the settlement, defendant should pay only half the amount of the judgment, and plaintiff should bear the loss. Thus defendant will not suffer by reason of a compromise to which he was not a party and final settle-

[1] Ind. Stat. (Burns, 1933), § 56-141.

[2] Cf. McCall, "Destructibility of Contingent Remainders in North Carolina," 16 N. C. L. REV. 87 (1938); Simes, "Fifty Years of Future Interests," 50 HARV. L. REV. 749 at 757 (1937); annotation on constitutionality, construction, and effect of statutes relating to determination or extinguishment of contingent interests in real property, 69 A. L. R. 924 (1930).

[1] Kaplowitz v. Kay, (App. D. C. 1934) 70 F. (2d) 782.

ments will be encouraged.[2] *McKenna v. Austin*, (App. D. C. 1943) 134 F. (2d) 659.[3]

LABOR LAW — COURTS — JURISDICTION OF COURT TO CONTROL MEMBERSHIP OF LABOR UNION — Complainants sought an order against defendant union to reinstate those previously deprived of their membership in the union and to afford the others reasonable opportunity to apply and be accepted on equitable terms and to enjoin defendants from interfering with the right of complainants to pursue their trade. The complainants were electrical construction workers. Some had resigned from the union, others had been dropped for nonpayment of dues, and others had never been members but claimed to be qualified. They alleged that there was ample work available in the vicinity but that they were denied employment because they did not have union membership cards. *Held*, relief denied. The right to earn a livelihood is a property right protected by the constitution, and unions obtaining monopolies must be democratic and admit to their membership all those reasonably qualified for their trade. But a "voluntary" association in name should continue to be such in reality. If the future brings a change in conditions, stare decisis will not prevent a change in the law. *Carroll v. Local No. 269, International Brotherhood of Electrical Workers*, (N.J. 1943) 31 A. (2d) 223.[1]

LABOR LAW — POWER OF NATIONAL LABOR RELATIONS BOARD TO ORDER REIMBURSEMENT OF CHECK-OFF OF DUES TO COMPANY UNION — Upon finding that the employer had engaged in unfair labor practices, the National Labor Relations Board ordered it, among other things, to disestablish the company union and to reimburse its employees in the amount of dues and assessments deducted from their wages by the company and paid to the company union. The circuit court affirmed the order.[1] On certiorari, to settle a conflict

[2] The opinion was written by Associate Justice Rutledge, since appointed to the United States Supreme Court.

[3] An annotation on the release of one of two or more persons for independent tortious acts combining to produce an injury as releasing the other or others is found in 134 A. L. R. 1225 (1941). Generally on release or covenant not to sue one joint tortfeasor as affecting the liability of others, see 50 A. L. R. 1057 (1927); 66 A. L. R. 206 (1930); 104 A. L. R. 846 (1936); 124 A. L. R. 1298 (1940).

For periodical literature, see 19 BOST. L. REV. 698 (1939); 25 CALIF. L. REV. 413 (1937); 19 CORN. L. Q. 341 (1934); 26 GEO. L. J. 169 (1937); Bohlen, "Fifty Years of Torts," 50 HARV. L. REV. 725, 1225 at 1239 (1937); 28 IOWA L. REV. 515 (1943); 1 MICH. L. REV. SUPP. 15 (1935); 20 MICH. S. B. J. 622 (1941); 22 MINN. L. REV. 692 (1938); 4 UNIV. PITTS. L. REV. 148 (1938); 21 ST. LOUIS L. REV. 270 (1936); 10 VA. L. REV. 70 (1923); 19 VA. L. REV. 881 (1933).

[1] See Newman, "The Closed Union and the Right to Work," 43 COL. L. REV. 42 (1943). On legislative control of union membership, see 53 HARV. L. REV. 500, 1215 (1940).

[1] Virginia Electric & Power Co. v. National Labor Relations Board, (C.C.A. 4th, 1942) 132 F. (2d) 390, noted 3 LAWY. GUILD REV. 45 (1943); 29 VA. L. REV. 660 (1943).

with other circuits, *held*, affirmed. While each employee signed an authorization for the check-off of union dues, he had no real option in the matter, as the company union was operating under a closed shop contract. The board had authority to order "such affirmative action as will effectuate the policy" of the National Labor Relations Act.[2] It has found that the reimbursement of dues checked off will do that, and the administrative determination must stand in the absence of a showing that there is a "patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act." Three justices dissented. *Virginia Electric & Power Co. v. National Labor Relations Board*, (U.S. 1943) 63 S. Ct. 1214.

LIBEL AND SLANDER — JUDICIAL IMMUNITY — PUBLICATION OF OPINION AS JUDICIAL FUNCTION — Plaintiff attorney sued defendant county court judge for libel. Plaintiff had been attorney for the defendant in a manslaughter case. In denying plaintiff's motion to set aside the verdict of conviction and in granting the district attorney's motion to incorporate additional papers in the record on the subsequent appeal, defendant wrote two opinions. In the first he charged that plaintiff had moved for an adjournment merely in order to have the case come before a judge of his own choosing, and in the second he implied that plaintiff had not acted in good faith in omitting certain papers from the record on appeal. Defendant forwarded both opinions to the New York Law Journal and to the West Publishing Company in Minnesota with the request that they be published. They were so published. The complaint in the libel action alleged that defendant had maliciously composed and caused to be published statements concerning plaintiff which he knew to be false. Defendant pleaded absolute judicial privilege, and moved for judgment on the pleadings. The Special Term denied the motion, but on appeal the Appellate Division reversed.[1] *Held*, judgment of Appellate Division reversed and order of trial term affirmed. For the purposes of this appeal it must be assumed that plaintiff can prove his allegations of falsity and malice. The only question is that of absolute judicial privilege. The publications concerned were unofficial, and there was no duty on defendant to send his opinions to either the New York Law Journal or the New York Supplement. The statute providing for official publication requires publication of only those lower court opinions which the state reporter considers "worthy of being reported."[2] Since there was no judicial duty to publish, defendant is liable to the same extent as any private person. *Murray v. Brancato*, (N.Y. 1943) 48 N. E. (2d) 257.[3]

NATURALIZATION — ALIEN DEBARRED FROM CITIZENSHIP DURING WORLD WAR — EFFECT OF NATIONALITY ACT OF 1940 — Petitioner, a native of Norway, who had resided in the United States since 1913 and married an American born wife in 1929, had filed a declaration of intention to

[2] 49 Stat. L. 449 at 452 (1935), 29 U. S. C. (1940), § 160 (c).

[1] 264 App. Div. 862, 35 N. Y. S. (2d) 420 (1942).

[2] 29 N. Y. Consol. Laws (McKinney, 1940), "Judiciary Law," §§ 431, 432.

[3] On findings of a judge as privileged within the law of libel, see 20 A. L. R. 407 (1922). The case is noted in 43 COL. L. REV. 547 (1943).

become a citizen in 1914. Thereafter, in 1918, he withdrew his declaration, thereby accomplishing his release from liability for military service under the Act of May 18, 1917.[1] The same act provided that a person so released from military service should be forever barred from becoming a citizen of the United States. The act of 1917 was specifically repealed by the Nationality Act of 1940.[2] In 1942 petitioner petitioned for citizenship under the new act. It was argued by the naturalization examiner that the saving clause of the 1940 act applying to "any act [or] thing . . . done or existing, at the time this chapter shall take effect" continued the effect of petitioner's act in withdrawing his intention to become a citizen. *Held,* disagreeing with a court in another federal district,[3] that the purpose of the saving clause was simply not to disturb or affect naturalization proceedings awaiting disposition at the time of the effective date of the statute and should not be interpreted to prevent the specific repeal of the section debarring citizenship. Petition for naturalization granted. *Petition of Otness,* (D. C. Cal. 1943) 49 F. Supp. 220.

QUASI-CONTRACTS — RECOVERY DENIED WIFE FOR IMPROVEMENTS MADE ON LAND BELIEVED TO BE HUSBAND'S — Plaintiff filed a suit in equity to recover the value of improvements on land owned by defendant. She alleged that she married M. L. Kelly, a brother of defendant, in 1933, that he was then residing on the land in question, that he represented to her and she believed that he was the owner in fee of such property, that in reliance thereon she made the claimed expenditures for improvements, that she afterwards learned that her husband had divested himself of title prior to the making of the improvements, and that he died in 1941. Upon the court's sustaining defendant's general demurrer, plaintiff amended her petition to allege that she has since learned that at the time of making the improvements the title to the property was in her husband, but that he afterwards transferred title to defendant with the intent to defraud his creditors. The trial court again dismissed. *Held,* dismissal affirmed since plaintiff did not make the improvements under color or claim of title in herself. Her only interest was her dower or expectation of inheriting from her husband. *Kelly v. Kelly,* (Ky. 1943) 168 S. W. (2d) 339.[1]

SPECIFIC PERFORMANCE — CONTRACT FOR EXCLUSIVE DISTRIBUTION OF BEER — Plaintiff had entered into a contract with defendant brewing corporation whereby it became the exclusive wholesale distributor of defendant's brand of beer in designated Michigan counties for a period of five years. Defendant agreed not to sell beer to anyone else in the territory. Subsequently defendant gave plaintiff notice of termination of the contract on the ground that plaintiff had not fulfilled his obligations to promote the sale of defendant's beer. Plaintiff then filed this suit for specific performance of the contract and an accounting. The trial court granted defendant's notion to dismiss. *Held,* affirmed. The bill does not state a cause of action in equity. An equity court cannot

[1] 40 Stat. L. 77 (1917).
[2] 54 Stat. L. 1172 (1940), 8 U. S. C. (1940), § 904.
[3] In re Urmeneta (D. C. Wis. 1941) 42 F. Supp. 138.

[1] See 34 MICH L. REV. 577 (1936); 19 MARQ. L. REV. 143 (1934).

undertake the supervision of the affirmative obligations of the contract to supply beer to plaintiff. And for breach of the negative covenants, the remedy at law is adequate since plaintiff has not alleged defendant's insolvency, and an accounting may also be had at law. *O'Melia v. Berghoff Brewing Corporation*, 304 Mich. 471, 8 N. W. (2d) 141 (1943).[1]

TRADE MARKS AND TRADE NAMES — EFFECTIVENESS OF ASSIGNMENT OF TRADE MARK WITHOUT PHYSICAL PLANT OF FORMER OWNER — In a receivership in Wayne County of the Air-O-Cel Industries, Inc., a Michigan corporation of which Trinklein was president, director and majority stockholder, a public sale of the assets was held. The assets were sold in forty-two parcels, and Lewis was the highest bidder on a parcel of "advertising equipment and good will," neon signs, the trade marks and patents applying to the building insulation product known as "Air-O-Cel," advertising material, stationery, unfilled orders, and the use of the corporation's telephone number. On the same day that the sale was confirmed, Trinklein filed with the State Corporation and Securities Commission an amendment to the articles of an inactive real estate corporation, "Liddesdale Holding Company," changing its name to "Air-O-Cel Products Company." When Lewis attempted to file with the county clerk of Wayne County a certificate of doing business under the name of "Air-O-Cel," it was refused on the ground that Trinklein had already filed the same name in the amendment to his articles of incorporation. Lewis thereupon filed a petition in the pending receivership proceeding asking for an order to require Trinklein and the corporate defendant to show cause why they should not be restrained from using the name "Air-O-Cel." Lewis' petition was supported by sworn affidavits. Deciding the case on the pleadings without taking testimony, the trial court ordered the defendants to refrain from using the name "Air-O-Cel." On appeal, the court was equally divided, thus resulting in an affirmance of the trial court's order. The judges for reversal contended that a trade mark can have no existence apart from the business to which it belongs and with which it is identified. The judges for affirmance argued that the good will and registered trade mark was here sold along with tangible personal property and that the case was not simply one of the transfer of the good will of a dissolved corporation such as was held invalid in *Grand Rapids Trust Co. v. Haney School Furniture Co.*[1] There was no showing that any of the assets transferred to other persons were essential to the preparation of the product covered by the trademarks and patents sold to Lewis. *Lewis v. Trinklein*, 304 Mich. 542, 8 N. W. (2d) 631 (1943).[2]

[1] See Morgan, "Specific Performance of Contracts for Delivery of Personal Property," 10 MARQ. L. REV. 59 (1926); 9 DUKE B. A. J. 122 (1941); 25 IOWA L. REV. 766 (1940).

[1] 221 Mich. 487, 191 N. W. 196 (1923).

[2] See Grismore, "The Assignment of Trade Marks and Trade Names," 30 MICH. L. REV. 489 (1932); 38 MICH. L. REV. 1117 (1940); Hart, "Assignment of Trade Marks," 13 CONVEY. 66 (1928); 4 DUKE B. A. J. 117 (1936).

TRUSTS — RESULTING TRUSTS — FAILURE OF SPECIFIC CHARITABLE GIFT — The heirs of the donors of a charitable gift brought suit against the donee to have a resulting trust declared on the ground that the purpose of the gift had failed. In 1903 two members of the Church of the Ascension in Baltimore each gave $10,000 in bonds to the vestry of the church, accompanied by a letter which stated that the income was to be used only for the payment of the ground rent for the church building and for no other purpose, that if the vestry could at any time extinguish the ground rent at a satisfactory price the bonds might be sold and the proceeds applied for that purpose, and that if the vestry could buy more profitable securities they could sell the bonds but must replace them by the securities bought with their proceeds. In 1931 the church sold the property on which it had been paying the ground rent. The letter of gift was later discovered and the present suit brought. *Held*, affirming the trial court, judgment for defendant. To establish a resulting trust there must be clear and satisfactory evidence that the person transferring the property did not intend to give to the donee the entire beneficial interest in the property transferred. There is nothing in the present instrument to indicate a trust, an estate on condition, or anything except a gift of the entire beneficial interest. *Sands v. Church of Ascension*, (Md. 1943) 30 A. (2d) 771.[1]

WAR — MILITARY LAW — JURISDICTION OF CIVIL COURTS OVER MEMBER OF ARMED FORCES CHARGED WITH RAPE — *G*, a member of the armed forces of the United States, was arrested by officers of the state of Alabama on a charge of rape and committed to the custody of defendant sheriff. The commanding officers of *G* brought proceedings for a writ of habeas corpus to deliver *G* to the military authorities. *Held*, the statute [1] requires the military to surrender to state officers jurisdiction of persons in military service charged with certain offenses "except in time of war." But the statute does not give exclusive jurisdiction to the military courts in time of war or require the state to vacate its jurisdiction on demand of the military authorities. Petition for writ of habeas corpus dismissed. *United States v. Matthews*, (D. C. Ala. 1943) 49 F. Supp. 203.

[1] On the question of a charitable donation as a gift or a trust, see 19 BOST. L. REV. 655 (1939); 22 BOST. L. REV. 159 (1942); 40 COL. L. REV. 550 (1940); 53 HARV. L. REV. 327 (1939); 24 MINN. L. REV. 568 (1940); 17 N. Y. UNIV. L. Q. REV. 275 (1940); Lincoln, "A Question of Gifts to Charitable Corporations," 25 VA. L. REV. 764 (1939).

[1] 10 U. S. C. (1940), § 1546, Article 74 of the Articles of War.