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ABSTRACTS

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ABSTRACTS

*Katherine Kempfer**

ABATEMENT AND REVIVAL — SURVIVAL OF WIDOW'S CAUSE OF ACTION FOR ALLOWANCE — A widow brought claim for an allowance for support and maintenance pending administration of her husband's estate. The claim was denied by the probate court and while appeal was pending in the district court the widow died. Her executor had the district court enter a conditional order of revival to which a plea in abatement was filed. The district court overruled the plea in abatement and the executors and heirs of the husband's estate appealed. *Held*, order of revival reversed and action for allowance dismissed. While a Nebraska statute [1] provides that no action pending in any court shall abate by the death of either or both parties (with certain named exceptions), this section must be construed with another section of the statutes [2] which provides that an action does not abate by the death of a party "if the cause of action survive or continue." The widow's action for allowance did not survive at common law and there is no statute providing for her heirs or executors upon her death. Therefore the cause of action did not survive and there is nothing to revive.[3] *In re Samson's Estate*, (Neb. 1942) 7 N. W. (2d) 60.

ADMINISTRATIVE LAW — SECURITIES AND EXCHANGE COMMISSION — GROUNDS FOR DECISION — PURCHASE OF STOCK BY OFFICERS PENDING REORGANIZATION — Respondents were officers, directors, and controlling stockholders of the Federal Water Service Corporation, a holding company registered under the Public Utility Holding Company Act. The stock of the corporation consisted of preferred, and two classes of common. Respondents controlled Federal through their control of its parent, Utility Operators Com-

* Managing Editor, Michigan Law Review.

[1] Neb. Comp. Stat. (1929), § 20-1402.

[2] Id., § 20-322.

[3] The only cases exactly in point cited by the court in accord with its view were Cox v. Brown, 27 N. C. 194 (1844) and Ex parte Dunn, 63 N. C. 137 (1869). Missouri takes the opposite view. Williams v. Schneider, (Mo. App. 1928) 1 S. W. (2d) 230.

pany, which owned all the outstanding shares of Federal's Class B common stock, representing the controlling voting power in the company. At the time of registering in 1937 the management filed a plan for reorganization which was rejected by the Securities and Exchange Commission because it provided for participation by the Class B stockholders. Two subsequent plans were proposed and rejected for the same reason. Finally in March 1940 the company submitted a plan which did not provide for participation by the Class B stockholders. However, in the meantime the respondents had purchased on the open market sufficient preferred stock to give them more than ten per cent of the common stock of the new corporation. These purchases were made over-the-counter at market price—a price only one-fourth the book value of the new stock. The SEC admitted that "honesty, full disclosure, and purchase at a fair price" characterized the transactions, but held nevertheless that their fiduciary duty to other stockholders forbad respondents from dealing in stock of the corporation pending reorganization. It approved the plan for reorganization on condition that no common stock be isued to respondents but that they be paid the purchase price of the preferred stock plus four per cent interest. The Court of Appeals for the District of Columbia [1] set aside the commission's order and the latter brought certiorari. *Held,* decision remanded for further proceedings. An administrative decision, like a lower court decision dependent upon a particular finding of fact by a jury, cannot be sustained when the necessary fact determination is absent. The ruling of the SEC is apparently based on the common law as to standards imposed on corporate officers and directors, but the cases [2] cited do not go so far. Under sections 17 (a) and (b) of the Public Utility Holding Company Act [3] the SEC has power to correct abuses found "detrimental to the public interest or the interest of investors or consumers." But it does not base the present decision on that power. Justices Black, Reed and Murphy dissented on the ground that the decision of the commission should be considered as the setting of a new standard under its broad powers. Justice Douglas did not participate. *Securities and Exchange Commission v. Chenery Corp.*, (U. S. 1943) 63 S. Ct. 454.

ADMINISTRATIVE LAW — SECURITIES AND EXCHANGE COMMISSION — POWER TO ENJOIN SHAREHOLDER FROM CIRCULATING FALSE STATEMENTS REGARDING THE COMPANY — On September 16, 1924, the Electric Bond & Share Company filed with the Securities and Exchange Commission "a notice, proxy statement and form of proxy" in connection with an annual stockholders meeting to be held October 14, 1942. A few days later defendant filed copies of a letter to stockholders asking them not to sign any proxies for the company and to revoke any which they might have already signed. In this letter he made "false and misleading" statements as to the financial position of the com-

[1] Chenery Corp. v. Securities and Exchange Comm., (App. D. C. 1942) 128 F. (2d) 303, noted 10 UNIV. CHI. L. REV. 70 (1942), 56 HARV. L. REV. 126 (1942).

[2] Pepper v. Litton, 308 U. S. 295, 60 S. Ct. 238 (1940); Michoud v. Girod, 4 How. (45 U. S.) 503 at 557 (1846); Magruder v. Drury, 235 U. S. 106, 35 S. Ct. 77 (1915).

[3] 49 Stat. L. 830, § 17 (1935), 15 U. S. C. (1940), § 79 q.

pany. The SEC brought complaint before a district court asking for an injunction, alleging that defendant intended to prevent a quorum and cause a postponement of the meeting and thereafter himself solicit proxies as a means of having himself elected an officer. The district court dismissed the complaint. On appeal, *held*, the power of the commission to regulate the solicitation of a "proxy, power of attorney, consent or authorization" [1] is broad enough to include a letter, such as that here concerned, which is a step in the process of solicitation. While the date of the meeting is now past and it is not shown whether or not there was an adjournment, nevertheless the controversy has not become moot since defendant may still profit from the misinformation he has spread among the stockholders and the commission may now wish to secure an affirmative order from the district court that defendant correct that misinformation before soliciting any proxies. Judgment reversed. *Securities and Exchange Commission v. Okin*, (C. C. A. 2d, 1943) 132 F. (2d) 784, cert. den. (U. S. 1943) 63 S. Ct. 525.[2]

APPEAL AND ERROR — DIRECTION OF VERDICT ON APPEAL FROM DENIAL OF MOTION FOR NEW TRIAL.—In an action for wrongful death in an automobile accident, verdict was for defendant and plaintiff appealed after denial of motion for new trial. The errors charged were an improper instruction to the jury on the question of emergency and the submission to the jury of the questions of decedent's contributory negligence and defendant's negligence where the evidence was clear. *Held*, the evidence made a clear case for the plaintiff as a matter of law and verdict will be directed for plaintiff, the case being remanded for trial of the amount of damages only. One justice dissented on the ground that neither statute nor precedent gave the appellate court power to direct a verdict in favor of a party who had neither moved for a directed verdict during the trial nor for judgment after its conclusion. *Lee v. Zaske*, (Minn. 1942) 6 N. W. (2d) 793.[1]

ATTORNEY AND CLIENT — INTEGRATED BAR ACT AS VIOLATING DUE PROCESS — During the trial of a case, defendants objected to the appearance as one of the counsel for plaintiffs of a lawyer who was not on the "active" list of attorneys of the State Bar of Michigan, but was on the "inactive" list. The rules adopted by the Michigan Supreme Court under the Integrated Bar Act [1] provide for two classes of members of the State Bar. Active members are re-

[1] Public Utility Holding Company Act of 1935, 49 Stat. L. 823, § 12 (e), 15 U. S. C. (1940), § 79 l (e).

[2] Noted 56 HARV. L. REV. 829 (1943).

[1] In a converse situation, where the appellant had moved for judgment notwithstanding verdict or new trial in the alternative and the trial court had ruled on the first motion only, the Illinois Supreme Court refused to consider the second motion. Goodrich v. Sprague, 376 Ill. 80, 32 N. E. (2d) 897 (1941); Walaite v. Chicago, R. I. & P. Ry., 376 Ill. 59, 33 N. E. (2d) 119 (1941); 19 CHI-KENT L. REV. 275 (1941); 29 ILL. B. J. 477 (1941).

[1] Mich. Pub. Acts (1935), No. 58, Mich. Stat. Ann. (1938), §§ 27.101, 27.102.

quired to pay annual dues of $5 each. Inactive members are relieved from the payment of dues, but are prohibited from practicing law and from voting or holding office in the State Bar. Plaintiffs claimed that the practice of law is a property right and that the Integrated Bar Act in giving the court power to regulate that right took away property without due process. *Held*, the practice of law is not a property right, the supreme court has inherent power to regulate the qualifications of persons permitted to practice law in the state, and that the legislature has adopted a statute to that effect does not make the act invalid. Therefore a lawyer on the inactive list of the State Bar has no right to engage in the practice of law. *Ayres v. Hadaway*, 303 Mich. 589, 6 N. W. (2d) 905 (1942).[2]

ATTORNEY AND CLIENT — LIEN FOR FEE WHERE CLIENT AGREES TO SETTLEMENT AFTER JUDGMENT WITHOUT ATTORNEY'S KNOWLEDGE — Pope, an attorney, entered into a contract with Robinson to represent him in a personal injury action against the Jellico Coal Mining Company. Pope was to receive fifty per cent of whatever sum was realized on the claim and no settlement was to be made without the consent of all parties. In a suit on the claim, judgment for plaintiff in the amount of $1375 was had. Defendants moved for a new trial and, pending determination by the court, entered into a settlement with the plaintiff without his attorney's knowledge whereby plaintiff received $200 in cash, was employed by the company and agreed to dismiss the case. When defendants filed a copy of the settlement and requested the court to enter a dismissal, Pope objected. Upon the court's overruling defendant's motion for a new trial, Pope filed the present petition for $687.50 or one-half the amount of the judgment. The trial court entered judgment for the attorney in the amount claimed. *Held*, judgment affirmed. While that part of the attorney's contract requiring consent of all parties to settlement is void, the provision for the fee stands. Appellants had notice of the lien. The employment of Robinson must be considered to have cash value and the settlement to have been in full satisfaction of the judgment. Appellant's settlement without knowledge of plaintiff's attorney was at their peril. *Jellico Coal Mining Co. v. Pope*, (Ky. 1942) 166 S. W. (2d) 287.[1]

BANKRUPTCY — CORPORATE REORGANIZATION — RETENTION OF JURISDICTION BY COURT AFTER APPROVAL OF PLAN OF REORGANIZATION — SUBSEQUENT DEBTS AS EXPENSES OF ADMINISTRATION — The debtor, Michel, Makaik & Feldman, Inc., petitioned for reorganization in August, 1935. A plan of reorganization was submitted providing for thirty per cent shrinkage

[2] See generally as to validity of state bar acts and annual license fees, 114 A.L.R. 161 (1938). See also 66 A.L.R. 1512 (1930); 81 A.L.R. 1064 (1932).

[1] See Leish, "Attorney's Charging Lien," 15 IND. L. J. 202 (1940); Sommerich and Heilpern, "Attorney's Charging Lien in New York," 71 U. S. L. REV. 679 (1937); 26 Iowa L. REV. 840 (1941); and generally 29 CAL. L. REV. 628 (1941). See also 2 A. L. R. 337 (1919) (attorney's lien on proceeds of settlement before judgment); 67 A. L. R. 442 (1930) (attorney's right to have case continued to protect compensation).

in the claims of existing creditors, the balance to be paid in installments over a period of four years. In the event of default in any installment a creditors' committee designated under the plan was authorized to immediately liquidate the debtor's assets under the supervision of the committee or at the committee's option under the supervision of the federal district court "in the proceedings now pending." In the order of confirmation by the court it was stated that all the assets of the debtor should be deemed to be the property of the debtor free and clear of all claims of its creditors and that the court should retain jurisdiction over the debtor and its assets "until full compliance with this decree has been made." The first default under the plan occurred in 1938 and thereafter no payments were made. After granting extensions from time to time, in May 1940 the committee decided that the debtor was hopelessly insolvent and undertook its liquidation. In August 1940 after most of the assets had been reduced to cash the committee petitioned the court to "retake jurisdiction" in order to decide priorities among various classes of creditors. In particular, creditors whose claims were incurred after the confirmation of the reorganization plan claimed priority as "expenses of administration" over the old debts. The court "resumed" jurisdiction and referred the matter to a bankruptcy referee who found in favor of the subsequent creditors. The district court reversed the referee's findings. On appeal, *held,* district court sustained. The subsequent creditors have shown no ground for priority of their claims as expenses of administration. While the provisions of section 77B as to reorganizations are not very explicit, the provisions for liquidation only if no plan is agreed on and for discharge of the trustee upon confirmation of the plan [1] imply that the court's supervision ends with the confirmation of the plan of reorganization. Any jurisdiction retained is not for control of the corporation but simply to aid in the operation of the plan and to protect the old creditors. The reorganization plan in the present case seems to have proceeded on that assumption. And while the retaking of jurisdiction by the district court is ambiguous, it may be assumed that it was in pursuance of the provisions of the creditors' agreement. Furthermore all creditors have accepted that jurisdiction and cannot now challenge it. In providing for liquidation of the assets of the debtor, the parties to the creditors' agreement must have contemplated distribution according to the law the court would normally apply, i. e., bankruptcy principles, and there can consequently be no priority for persons who extended credit after the date of the reorganization. *Clinton Trust Co. v. John H. Elliott Leather Co.*, (C. C. A. 2d, 1942) 132 F. (2d) 299.[2]

BANKRUPTCY — FACTS JUSTIFYING DENIAL OF DISCHARGE — GAMBLER'S FAILURE TO KEEP BOOKS — Petitioner brought a voluntary petition in bankruptcy, stating that he had lost $15,000 in daily gambling in small transactions and showing liabilities of $8,000 to banks and friends borrowed

[1] 48 Stat. L. 917, 921, § 77B, sub. c (8), k (1934), since revised by Chapter X of the Chandler Act, 52 Stat. L. 883 (1938), 11 U. S. C. (1940), § 501 et seq.

[2] In general as to what are expenses and services under § 77B, see cases collected in 107 A. L. R. 537 (1937).

for the purpose of gambling. In 1933 petitioner had received a discharge in bankruptcy due to the same cause, and the present petition was begun just beyond the six-year period necessary under the statute [1] to make him again eligible for a discharge. One of the creditors objected to petitioner's discharge on the ground of the section of the Bankruptcy Act which provides that discharge may be refused if the bankrupt has failed to keep records "from which his financial condition and business transactions might be ascertained, unless the court deems such acts or failure to have been justified under all the circumstances of the case." [2] The bankrupt has only a notebook containing entries of the dates and amounts won or lost and he professed not to remember the names, addresses or telephone numbers of any of the various bookmakers with whom he had made bets on horse races, prize fights, etc. Under the New York law, the loser in a gambling transaction may recover from the winner all payments he has made, and this right would have passed to petitioner's trustee. The referee and the district court denied the discharge. *Held*, affirmed. The fact that most habitual gamblers do not keep a record of their losses is no excuse for petitioner's failure to keep books, especially when such memoranda as were preserved tended to cover up rather than explain the claimed transactions. *Klein v. Morris Plan Industrial Bank of New York*, (C. C. A. 2d, 1942) 132 F. (2d) 809.[3]

BANKRUPTCY — VOIDABLE PREFERENCES UNDER SECTION 60 (a) ASSIGNMENT OF ACCOUNTS RECEIVABLE WITHOUT NOTICE TO DEBTORS—The Quaker City Sheet Metal Company, being embarrassed for working capital, obtained the consent of its creditors to subordinate their claims to claims incurred for new working capital. Thereafter petitioners made loans to the company on its accounts receivable, no notice of the assignments being given to the debtors. The company having gone into bankruptcy, the trustee challenged petitioner's security because of the omission of notice. He was overruled by the referee and the district court but was sustained by the Circuit Court of Appeals for the Third Circuit [1] in an interpretation of section 60 (a) of the Bankruptcy Act [2] which conflicted with the interpretation of the Circuit Court of Appeals for the Fifth Circuit.[3] *Held*, affirmed. The present assignments are voidable preferences under the literal application of the act, which tests the effectiveness of a transfer as against the trustee by the standards which applicable state law would enforce against a good faith purchaser. There is no public policy in favor of the business of "non-notification financing"; in fact, such financing has many of the harmful effects of the secret liens which the act was intended to prevent.

[1] 30 Stat. L. 550, as amended, 11 U. S. C. (1940), § 32 (c) (5).

[2] Id., § 32 (c) (2).

[3] See generally, on failure to keep books as ground for refusal of discharge, 73 A. L. R. 1157 (1931); 55 HARV. L. REV. 282 (1941); 48 W. VA. L. Q. 278 (1942).

[1] In re Quaker City Sheet Metal Co., (C.C.A. 3d, 1942) 129 F. (2d) 894.

[2] 52 Stat. L. 869 (1938), 11 U. S. C. (1940), § 96 (a).

[3] Adams v. City Bank & Trust Co., (C. C. A. 5th, 1940) 115 F. (2d) 453.

Corn Exchange National Bank & Trust Co. v. Klauder, (U. S. 1943) 63 S. Ct. 679.[4]

BILLS AND NOTES — EFFECT OF INTERMEDIATE TRANSFER FOR GAMBLING DEBT ON RIGHTS OF HOLDER IN DUE COURSE—Defendant bank issued a negotiable certificate to Norrell, who endorsed it to King in payment of a gambling debt. Thereafter King negotiated the instrument to plaintiff, for full value and without notice of the gambling transaction. In the meantime the payee had notified the bank not to make payment. Upon the bank's refusal to pay, plaintiff sued it. From a decree of dismissal below, he appealed. *Held*, that a negotiable instrument founded upon a valid consideration does not become void in the hands of a holder in due course by reason of the fact that an intermediate negotiation was based on a gambling consideration. The statute [1] that all contracts founded on a gambling consideration shall be void must be limited to its terms. *Snoddy v. American Nat. Bank*,[2] decided by this court, holding an instrument void in the hands of a holder in due course under that statute, was a case of an instrument founded on a gambling consideration.[3] *Winecoff Operating Co. v. Pioneer Bank*, (Tenn. 1942) 165 S. W. (2d) 585.[4]

CONSTITUTIONAL LAW — VALIDITY OF CALIFORNIA MILK CONTROL ACT AS APPLIED TO SALES TO FEDERAL GOVERNMENT—A California statute [1] declares the production and distribution of fluid milk to be a business affected with a public interest and empowers the Director of Agriculture to license distributors and to establish marketing areas within which uniform prices and regulations shall prevail. Appellant was a licensed distributor in the Santa Clara County area and entered into a contract with the United States War Department to sell milk to the Quartermaster's Department at Moffett Field in Santa Clara County at less than the minimum price fixed for that area. Moffett Field is owned by the United States and under the exclusive jurisdiction of the

[4] See discussion of the meaning and history of § 60 in 41 MICH. L. REV. 473 (1942), and other law review discussions cited by the Court; also Hanna, "Some Unsolved Problems under Section 60a of the Bankruptcy Act," 43 COL. L. REV. 58 (1943).

[1] Tenn. Code (1938), § 7812.

[2] 88 Tenn. 573, 13 S. W. 127 (1889).

[3] The court cited a number of cases from other jurisdictions on both sides of the question, but explained the contrary ones on the ground that the applicable gambling statutes were much broader. Cf. Clemmer Motor Co. v. Towler, (Tenn. 1942) 165 S. W. (2d) 581.

[4] See 56 A. L. R. 1322 (1928). On effect of the Negotiable Instruments Law on earlier gambling statutes, see 8 A. L. R. 314 (1920); 11 A. L. R. 211 (1921); 37 A. L. R. 698 (1925); 46 A. L. R. 959 (1927).

[1] Cal. Agr. Code (Deering, 1937), §§ 735-738, as amended (Deering, Supp. 1941), pp. 462-467.

federal government. Complaint was filed with the Department of Agriculture charging appellant with violating the criminal provisions [2] for the enforcement of the Milk Control Act. Appellant sought a writ of mandamus from the Supreme Court of California to restrain the Department of Agriculture from proceeding to hear and act upon the complaint. Mandamus was denied,[3] and on appeal to the United States Supreme Court, *held*, that California cannot regulate the sale of milk on Moffett Field unless Congress so authorizes. The argument that it is the purchasing, handling and processing of milk on California territory, not the sale on Moffett Field, which is punished evades the issues. Our present holding is consistent with the holding this same day in *Penn Dairies v. Milk Control Commission*,[4] where state regulations were applied on land merely leased to the federal government. Justice Frankfurter dissented on the ground that no distinction could be made between land owned by the federal government and land held under lease. Justice Murphy dissented on the ground that the federal government should not insist on exclusive jurisdiction where there is no overriding national purpose to be served. *Pacific Coast Dairy v. Department of Agriculture of California*, (U. S. 1943) 63 S. Ct. 628.[5]

CONTEMPT — FEDERAL COURTS — JURISDICTION — STATUTE OF LIMITATIONS — In February 1936, the petitioners, a political boss in Missouri, the state superintendent of insurance and an insurance agent, fraudently procured a federal district court's consent to a settlement of an insurance rate case. In 1939 investigations by the Department of Internal Revenue disclosed that huge amounts of the settlement payments went to petitioners personally. The insurance case was reopened and a correct decree made. May 20, 1940, the court requested the district attorney to institute contempt proceedings against the petitioners and on July 13, 1940, an information was filed. Motions to abate and quash were overruled and petitioners were adjudged guilty of contempt.[1] The circuit court affirmed.[2] On certiorari, *held* that the petitioners' acts constituted contempt under section 268 of the Judicial Code [3] but that a criminal contempt is an offense within the meaning of the three-year statute of limita-

[2] Cal. Stat. (1941), c. 1214, p. 3008.

[3] 19 Cal. (2d) 818, 123 P. (2d) 442 (1942).

[4] (U. S. 1943) 63 S. Ct. 617.

[5] See Ball, "State Laws on Federal Lands in Alabama," 1 ALA. LAWY. 346 (1940); 6 KAN. B. A. J. 322 (1938); annotation on state laws regulating grazing and pasture of sheep and goats on federal land, 70 A. L. R. 410 (1931); annotations on applicability of state statutes to contracts for performance of work on land owned or leased by the federal government, 91 A. L. R. 779 (1934), 115 A. L. R. 371 (1938), 127 A. L. R. 827 (1940).

Case noted 11 GEO. WASH. L. REV. 381 (1943).

[1] United States v. Pendergast, (D. C. Mo. 1941) 39 F. Supp. 189, noted 29 GEO. L. J. 917 (1941),

[2] O'Malley v. United States, (C. C. A. 8th, 1942) 128 F. (2d) 676.

[3] 28 U. S. C. (1940), § 385.

tions on crimes [4] so that the proceeding is barred. Judgment reversed. *Pendergast v. United States*, (U. S. 1943) 63 S. Ct. 268.[5]

CONTRACTS — IMPOSSIBILITY — EFFECT ON ARBITRATION CLAUSE — Defendant had agreed in writing to purchase from plaintiff at a specified price 20,000 yards of rayon to be delivered "April/May when ready." At the time for delivery, defendant claimed he could not accept the goods without violating government priority regulations [1] which forbad any person having on hand more than a practicable minimum working inventory, and that the contract had therefore become impossible of performance. The contract contained arbitration provisions which plaintiff is now seeking to enforce. *Held*, reversing the trial court,[2] whatever impossibility has here arisen is due not to law but to the action of the buyer in accumulating or retaining an inventory of abnormal size. Motion to compel defendant to submit differences to arbitration is granted. The court distinguished *Matter of Kramer & Uchitelle*,[3] wherein arbitration was denied the purchaser and the seller's performance was held completely excused under a contract to supply cotton gray goods at a price higher than that permitted by maximum price regulations issued after the execution of the contract. *Federated Textiles v. Glamour Girl*, 265 App. Div. 252, 38 N. Y. S. (2d) 493 (1942).[4]

CRIMINAL LAW AND PROCEDURE — DRIVING WHILE INTOXICATED — STATUTORY CONSTRUCTION — Defendant was convicted of operating a motor vehicle while intoxicated and brings exceptions. He was sitting in the driver's seat of an automobile which was being towed by a truck ahead and whose front wheels were suspended in the air so that turning the steering wheel could not control the car. However, while going up an icy grade the defendant applied power to the rear wheels of the towed vehicle to aid progress. There was no dispute on the question of intoxication. *Held*, defendant was "operating a motor vehicle" within the language of the statute. Full control of the direction and speed is not necessary as long as there is some manipulation of the machinery of the car. While as a general rule penal statutes should be strictly construed, gasoline and alcohol are such a dangerous mixture that the hazard

[4] Rev. Stat. (1878), § 1044, 18 U. S. C. (1940), § 582.

[5] Cf. 3 UNIV. NEWARK L. REV. 102 (1938), criticizing a New Jersey case which took a contrary view. Case noted 11 GEO. WASH. L. REV. 383 (1943).

[1] Priority Regulation No. 1, § 944.14, as amended December 23, 1941, C.C.H. WAR LAW SERVICE, Priorities, ¶ 30,901.23.

[2] (S. Ct. 1942) 37 N. Y. S. (2d) 466.

[3] 288 N. Y. 467, 43 N. E. (2d) 493 (1942).

[4] See Pedrick and Springfield, "War Measures and Contract Liability," 20 TEX. L. REV. 710 (1942); 28 VA. L. REV. 72 (1941), 655 (1942); and generally 18 CHI-KENT L. REV. 164 (1940); Colson, "The Excuse of Impossibility in West Virginia Contract Law," 48 W. Va. L. Q. 189 (1942); annotations 137 A. L. R. 1199 at 1210 (1942) (performance of contract excused because illegal due to war conditions), 141 A. L. R. 1502 (1942) (price ceilings adopted as war measures as affecting pre-existing contracts).

should be reduced to the minimum. *State v. Roberts*, (Me. 1942) 29 A. (2d) 457.[1]

EQUITY — REMEDY FOR BREACH OF CONTRACT TO DEVISE — Plaintiff sued to rescind a contract with defendants whereby she had leased a house and lot to defendants and agreed to devise the premises to the lessees or the survivors of them. Plaintiff claimed that defendants had not complied with the conditions of the agreement and had conveyed the land to *N* subject to the rights of defendants. Defendants counterclaimed, requesting specific performance and a declaratory judgment that their contract is in full effect and the deed to *N* is void. *Held*, after finding that defendants had complied with the conditions of the contract, while a decree for specific performance cannot now be made, a decree may issue that the contract is valid and complete, that the conveyance to *N* is a fraud as against defendants, that *N* holds title in trust for defendants and shall convey to them or the survivor of them upon the death of plaintiff if one or both of them survive and the conditions of the contract have been fully complied with, and restraining plaintiff and *N* from conveying or encumbering the premises. *Hill v. Ribble*, (N. J. Ch. 1942) 28 A. (2d) 780.[1]

EVIDENCE — BUSINESS ENTRIES — APPLICATION OF MODEL ACT TO EMPLOYEE'S REPORT OF ACCIDENT — In a suit arising from a grade crossing accident defendants, representatives of the railroad, offered in evidence as a statement "in the regular course of business" the engineer's statements in an interview by an assistant superintendent of the railroad and a member of the Public Utilities Commission. The statement was excluded by the district court and judgment thereafter rendered for plaintiff was affirmed by the circuit court of appeals.[1] Defendants brought certiorari. *Held*, affirmed. The statement was properly excluded. The federal statute[2] embodying the model business entries act was meant to apply only to records made for the systematic conduct of a business. A report of an accident is not a typical business entry, but is made primarily for use in litigation rather than in conducting the business. To allow

[1] On construction of criminal statutes generally, see Hall, "Strict or Liberal Construction of Penal Statutes," 48 HARV. L. REV. 748 (1935); 32 MICH. L. REV. 976 (1934).

[1] See 66 A. L. R. 1439 (1930) on remedies during promisor's lifetime for breach of agreement to give property at death. Cf. 69 A. L. R. 14 (1930) and 106 A. L. R. 742 (1937) as to remedies for breach of decedent's agreement to devise, bequeath or leave property as compensation for services.

[1] Hoffman v. Palmer, (C. C. A. 2d, 1942) 129 F. (2d) 976, noted 56 HARV. L. REV. 458 (1942).

[2] 49 Stat. L. 1561 (1936), 28 U. S. C. (1940), § 695. The federal act adopted the Model Act proposed by a committee of the Commonwealth Fund, whose conclusions were published in MORGAN, THE LAW OF EVIDENCE: SOME PROPOSALS FOR ITS REFORM (1927). The Model Act has been adopted in New York and at least two other states. See discussion in 11 BROOKLYN L. REV. 78 (1941). The Uniform Business Records as Evidence Act, approved by the commissioners in 1936, is substantially similar and has been adopted in eleven states and Hawaii. See discussion in 24 MINN. L. REV. 958 (1940).

statements of interested parties to be admitted merely because they are habitually taken by the business firm would pervert the purpose of the statute, which was to facilitate admission of records shown by experience to be trustworthy. There is nothing in the act to indicate that Congress meant to extend its effect beyond the historical meaning of entries in the "regular course of business." *Palmer v. Hoffman*, (U. S. 1943) 63 S. Ct. 477.

EXECUTORS AND ADMINISTRATORS — QUALIFICATIONS OF EXECUTORS — WHETHER STATUTORY GROUNDS FOR DISQUALIFICATION EXCLUSIVE—DISTINCTION AS TO ADMINISTRATORS — Testatrix' will appointed her oldest son, Rudolph, executor. The other children objected because of ill-will existing between themselves and the nominee, and petitioned the court to appoint a disinterested person as administrator with the will annexed. The nominee filed a cross-petition for the probate of the will and issuance of letters testamentary to him. The nominee was not incompetent under any of the statutory grounds,[1] but the lower court appointed a bank as administrator with the will annexed. On appeal, *held*, reversed and remanded. The statutory grounds for disqualification of an executor are exclusive by the majority of decided cases and in California, from which the Utah statute was copied. A different rule applies in the case of administrators, where the statutory grounds for disqualification are not exclusive.[2] *In re Raat's Estate*, (Utah, 1942) 132 P. (2d) 136.

FEDERAL COURTS — APPEAL AND ERROR — EFFECT OF RULES OF CIVIL PROCEDURE ON APPEALABILITY OF ORDER TAKING PLACE OF INJUNCTION — Plaintiffs brought suit in a New Jersey state court to recover on an insurance policy. The cause was removed to the federal district court. Plaintiffs demanded a jury. Defendants answered that the policies had been obtained by fraud of the insured and were void because of material false statements in the application. Defendants also filed a counterclaim of an equitable nature praying that the policies be decreed void upon return of the premiums paid thereon and that plaintiffs be enjoined from prosecuting the action at law. The district court denied plaintiffs' motion for dismissal of the counterclaim and ordered that the equity issue should be disposed of prior to the jury trial. Plaintiffs appealed. The circuit court certified the question whether the order that the equitable issue should be tried first was appealable. *Held*, yes. Although the Federal Rules of Civil Procedure have abolished the distinction between law and equity, the separation of issues to be tried by court and jury necessitates the same result as under the old rules. If the district court finds for the defendant on the counterclaim, it will terminate the jury action. The order therefore has the effect of an injunction and is appealable under section 129 of the Judicial Code.[1] *Ettelson v. Metropolitan Life Ins. Co.*, (U. S. 1942) 63 S. Ct. 163.[2]

[1] Utah Code (1943), § 102-3-15.

[2] 136 A. L. R. 604 at 606 (1942) collects cases on personal interest, conduct or attitude as affecting appointment of a special or temporary administrator pending will contest. Exclusiveness of statutory disqualifications of administrators is discussed 26 WASH. UNIV L. Q. 106 at 118 (1940), 257 (1941).

[1] 28 U. S. C. (1940), § 227.

[2] Cf. discussion of appeals from separable legal issues under federal rules of civil procedure, 26 CORN. L. Q. 485 (1941).

FEDERAL COURTS — INJUNCTION AGAINST SUIT IN STATE COURT — RENT PROVISIONS OF EMERGENCY PRICE CONTROL ACT — The Price Administrator sued in a federal district court to enjoin execution by defendant property owner of a judgment for eviction of her tenant allegedly in violation of regulations issued under the Emergency Price Control Act.[1] Defendant contended that the court was prohibited from granting relief under section 265 of the Judicial Code[2] providing that "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State. . . ." *Held*, the court has no power to grant relief. The section of the EPCA vesting federal district courts with jurisdiction of criminal proceedings for violations of the act does not alter the express provision of section 265. Even though the acts sought to be prevented are violations of the EPCA, the remedy requested by plaintiff is prohibited. *Henderson v. Fleckinger*, (D. C. La. 1943) 48 F. Supp. 236.[3]

FEDERAL COURTS — INJUNCTION AGAINST SUIT IN STATE COURT — SUIT TO CONSTRUE WILL — Respondent, a citizen of California, brought a suit in federal district court in Illinois, against citizens of Illinois, for construction of a will probated in Illinois. Land located in Minnesota, Wisconsin and Illinois was involved. Thereafter defendants in this suit began a suit in a Minnesota state court against respondent for a construction of so much of the will as related to Minnesota land and a similar suit in a Wisconsin court. On motion of respondents, the federal district judge granted an injunction against the prosecution of the pending suits in Minnesota and Wisconsin. The circuit court of appeals affirmed.[1] On certiorari to the Supreme Court, *held* that under the federal statute,[2] except as authorized in bankruptcy proceedings "the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state." There is a long-recognized exception that as between two suits pending before a state and a federal court, both of which are in rem or quasi in rem, the court first acquiring jurisdiction or assuming control of the property is entitled to maintain and exercise its jurisdiction to the exclusion of the other. However, in the present suit the federal district court of Illinois could render only a personal judgment as to the Minnesota or Wisconsin land, so it does not have exclusive jurisdiction. Judgment reversed with directions to vacate the injunction. *Mandeville v. Canterbury*, (U. S. 1943) 63 S. Ct. 472.[3]

[1] 56 Stat. L. 23 (1942), 50 U. S. C. A. (Supp. 1943), Appendix, §§ 901-946.
[2] 28 U. S. C. (1940), § 379.
[3] On exception to § 265 where state suit is in aid of violation of federal statute, see 13 So. CAL. L. REV. 331 at 338 (1940), where suit is by federal government, see Taylor and Wills, "Power of Federal Courts to Enjoin Proceedings in State Courts," 42 YALE L. J. 1169 at 1192 (1933).

[1] Canterbury v. Mandeville, (C. C. A. 7th, 1942) 130 F. (2d) 208.
[2] Judicial Code, § 265, 28 U. S. C. (1940), § 379.
[3] See generally on pendency of action in federal court as ground of enjoining action in state court, 24 A. L. R. 1084 (1923); 122 A. L. R. 1425 (1939); 137 A. L. R. 983 (1942); 13 So. CAL. L. REV. 331 (1940).

INSURANCE — NECESSITY OF CONTINUANCE OF INSURABLE INTEREST OF CORPORATION INSURING LIFE OF OFFICER — The Weyman Mortgage Company took out a policy of insurance, payable to itself as beneficiary, on the life of Chapman, an officer and stockholder. Later the company was reorganized as Lipscomb-Ellis Company and Chapman completely severed his connections with it. However, the policy was assigned to the new company and that company paid the premiums until Chapman's death. Chapman's executor sought to restrain payment of the proceeds of the policy to the company, and the insurer paid the fund to a custodian. The lower court held for the company and the executor brought error. *Held*, the proceeds of the policy should be paid to the assignee rather than to the insured's executor. A policy of insurance which was valid when issued does not become void by the termination of the beneficiary's insurable interest unless so provided in the policy itself. *Chapman v. Lipscomb-Ellis Co.*, (Ga. 1942) 22 S. E. (2d) 393.[1]

LABOR LAW — INTERSTATE COMMERCE — INJUNCTION AGAINST RAILROAD STRIKE — EXTENSION OF TEMPORARY RESTRAINING ORDER — JURISDICTION OF FEDERAL COURT — ARBITRATION AS PREREQUISITE — Plaintiff is an interstate carrier operating between Effner, Indiana and Keokuk, Iowa, through Illinois. In October 1940 employees of plaintiff selected defendant unions to represent them under the provisions of the Railway Labor Act.[1] Following this, plaintiff and the labor unions submitted counterproposals for settlement of working conditions and rates of pay. Negotiations were carried on for a considerable period of time with the aid of the National Mediation Board, but finally after plaintiff declined a proposal to arbitrate they were terminated by the board. A strike called for December 9, 1941, was postponed at the request of the Mediation Board, but upon plaintiff's insistence that its proposed rates of pay, rules and working conditions should become effective at midnight December 29, a strike was called for that date. There was considerable violence on the part of the strikers and on January 3, 1943, plaintiff filed complaint in the federal district court seeking an injunction against defendants. The court issued a temporary restraining order and within five days plaintiff began to present its evidence in support of the application for temporary injunction. Due to the number of witnesses and voluminous testimony the court extended the temporary restraining order on January 8 and again on January 16. After the evidence was concluded on January 19, the court issued a temporary injunction. Defendants seek reversal. Three important issues were decided by the circuit court, which *held:* (1) The trial court had authority to extend the five-day limit of the

[1] On termination of insurable interest and necessity of insurable interest in an assignee, see Patterson, "Insurable Interest in Life," 18 COL. L. REV. 381 at 414 (1918); 26 CORN. L. Q. 497 (1941); 29 ILL. B. J. 482 (1941); 4 JOHN MARSHALL L. Q. 405 (1939); Collins, "The Doctrine of Insurable Interest in Illinois as Applied to Life Insurance," 9 CHI-KENT L. REV. 160 at 188 (1931); 12 LOYOLA L. J. 73 (1931); 6 Mo. L. REV. 221 (1941); 15 TEMP. L. Q. 175 (1940); 26 WASH. UNIV. L. Q. 277 (1941). See generally, Cain, "Insurable Interest in Life," 6 BOST. UNIV. L. REV. 111 (1926).

[1] 48 Stat. L. 1186 (1934), 45 U. S. C. (1940), § 152 (4).

restraining order. The purpose of the five-day limit in the Norris-LaGuardia Act[2] was to prevent restraint without a hearing on the question of substantial and irreparable injury for so long a time as to affect materially the effort of the striking employees. It was not to prevent hearings lasting longer than five days. But in any event the restraining order merged in the temporary injunction. (2) The federal court had jurisdiction of the action as arising under a law of the United States, not simply because interstate commerce was involved but because defendants' acts prevented plaintiff's carrying out the duty imposed on it by the Interstate Commerce Act[3] to provide reasonable facilities for the interchange of interstate traffic. (3) The plaintiff was not barred from relief by its refusal to arbitrate. Section 108 of the Norris LaGuardia Act provides: "No restraining order or injunctive relief shall be granted to any complainant who has failed . . . to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."[4] Arbitration is expressly stated to be voluntary not mandatory, and negotiation, mediation and arbitration are alternatives, any one of which fills the requirements where the employer acts in good faith. Furthermore, section 108 does not apply where there is violence or threatened violence. *Toledo, P. & W. R. R. v. Brotherhood of Railroad Trainmen*, (C. C. A. 7th, 1942) 132 F. (2d) 265.[5]

PROCESS — SERVICE ON AGENT WHERE INTEREST ANTAGONISTIC TO PRINCIPAL — Appellee recovered judgment against one Marion Dusheck and caused a writ of garnishment to issue against appellant employer. The writ was served on "M. Dusheck" as agent of appellant. M. Dusheck and Marion Dusheck are the same person. Answers to the interrogatories were executed and sworn to in the name of Marion Dusheck and judgment of condemnation was entered against appellant. Appellant's motion to quash the service of the writ of garnishment and to vacate the judgment were denied by the trial court and this appeal was taken. Uncontradicted affidavits of appellant in suport of its motions stated that on the day of service of the writ the local sales manager and assistant sales manager were out, and that Marion Dusheck, appellant's secretary, was the only person in appellant's office; and that prior to receipt by appellant of actual notice of the writ or judgment Marion Dusheck's services had been terminated and full payment made to her. *Held*, that assuming that Marion Dusheck was an agent of the appellant within the statute permitting service of process against a foreign corporation by service upon an agent of the corporation, mere compliance with the formalities of the statute is not enough where the circumstances are such that notice will not be likely to come to the attention of the defendant.

[2] 47 Stat. L. 71, § 7 (1932), 29 U. S. C. (1940), § 107.

[3] 24 Stat. L. 379 (1887), as amended, 49 U. S. C. (1940), § 1 (4), (6), (11), (18), and (20).

[4] 47 Stat. L. 72, § 8 (1932), 29 U. S. C. (1940), § 108.

[5] See 21 MICH. L. REV. 90 (1922) (railway strike injunction); 32 MICH. L. REV. 240 (1934) (strike as interference with interstate commerce). See also annotations on validity and effect of statutes restricting remedy by injunction in industrial disputes: 27 A. L. R. 411 (1923); 35 A. L. R. 460 (1925); 97 A. L. R. 1333 (1935); 106 A. L. R. 361 (1937); 120 A. L. R. 316 (1939); 124 A. L. R. 751 (1940); 127 A. L. R. 868 (1940).

It should have been obvious to the officer making service and certainly to appellee that the person accepting service was the judgment debtor. *Encyclopaedia Brittannica, Inc. v. Shannon,* U. S. Ct. App. D. C., decided Jan. 25, 1943.[1]

STATUTES — CONSTRUCTION OF ACT PERMITTING INFORMER'S ACTION FOR DAMAGES FOR FRAUDULENT CLAIMS AGAINST THE UNITED STATES — On November 3, 1939, the government indicted Hess and others for conspiracy to defraud. The defendants entered a plea of nolo contendere and on February 6, 1940, fines were imposed. On January 25, 1940, Marcus brought the present action in the name of the United States, based on the statute [1] allowing "any" person in behalf of the government to bring an action for damages for fraud on the United States and retain half the amount recovered. Marcus' complaint was substantially a copy of the indictment, although he asserts that he made an independent investigation and presented more evidence than the government discovered. Marcus was successful in the district court, but that judgment was reversed in the circuit court of appeals.[2] In the proceeding on writ of certiorari, the Supreme Court requested the government to file a brief amicus curiae. This brief argued that effective law enforcement requires that control of litigation be left to the attorney general; that divided control is against the public interest; that the attorney general might believe that war interests would be injured by filing suits such as this; that permission to outsiders to sue might bring unseemly races for the opportunity of profiting from the government's investigations; and finally that conditions have changed since the act was passed in 1863. *Held,* judgment for petitioner reinstated. The terms of the statute allow no room for construction and the arguments of the government should be directed to Congress, not to the court. Justice Jackson, dissenting, argued that the fact that the statute had never before been applied in this manner should establish a practical construction; also that the decision in *Francis v. United States* [3] that a civil action by the government would preclude an informer's action might very well have been extended to the institution by the government of criminal proceedings. *United States ex. rel. Marcus v. Hess,* (U. S. 1943) 63 S. Ct. 379.

TAXATION — ESTATE TAX — CHARITABLE DEDUCTIONS — DETERMINATION OF AMOUNT — Testator bequeathed the residue of his estate to four named charitable organizations. After deducting funeral and administration expenses and specific bequests, but not the federal estate tax, the residuary estate amounted to $463,103.08. Respondents claimed they were entitled to deduct this amount as a charitable gift from the gross estate in computing the estate tax. The Commissioner of Internal Revenue ruled that only that portion of the estate actually distributed to charitable donees after paying the estate tax

[1] The same result was reached by the Michigan court under almost identical circumstances. John W. Masury & Son v. Lowther, 299 Mich. 516, 300 N. W. 866 (1941), noted 5 UNIV. DETROIT L. J. 128 (1942).

[1] Rev. Stat. (1878), §§ 5438, 3490-3493, 18 U. S. C. (1940), § 80, 82-86, 31 U. S. C. (1940), §§ 231-234.

[2] (C. C. A. 3d, 1942) 127 F. (2d) 233, reversing (D. C. Pa. 1941) 41 F. Supp. 197.

[3] 5 Wall. (72 U. S.) 338 (1866).

could be deducted. He fixed the tax at $459,879.57, leaving $3,223.51 actually passing under the residuary bequest. In a suit for refund after payment under protests, the district and circuit courts [1] held for respondents on the ground that under Illinois law the federal estate tax was a charge against the entire estate and was not "payable out of" the charitable bequests within the meaning of the section 807.[2] On certiorari, *held*, reversed and the commisioner's interpretation adopted. The legislative history of section 807 shows that it was intended to overrule *Edwards v. Slocum*,[3] which had held against the government on facts substantially identical with the present case. The mathematical difficulties of determining two mutually dependent variables is without significance. *Harrison v. Northern Trust Co.*, (U. S. 1942) 63 S. Ct. 361.[4]

TAXATION — INCOME TAX — INTEREST ON COMPENSATION FOR PROPERTY CONDEMNED AS CAPITAL GAIN OR ORDINARY INCOME — Taxpayers owned a piece of real estate in New York City. In December 1932 that city's board of estimate passed a resolution as part of eminent domain proceedings directing that on January 3, 1933, title to that property should vest in the city. The eminent domain law provided that, in addition to the value of the property at the time of taking, interest from the date of vesting of title in the city to the date of the final decree should be awarded as part of the compensation to the owner. Taxpayers were awarded $73,246.57 of which $58,000 was treated as the value of the property on January 3, 1933 and the balance as interest to May 12, 1937, the date of the final decree. Taxpayers reported the difference between the total sum received and their tax basis as a capital gain, returning only part as income.[1] The commissioner assessed a deficiency on the portion of the award computed as interest on the ground that that portion was ordinary income. The Board of Tax Appeals reversed [2] but the circuit court of appeals held with the commissioner.[3] This conflicted with an earlier holding of the second circuit that the entire payments were to be considered as compensation for the land.[4] *Held*, on certiorari, whether the additional payments were con-

[1] Northern Trust Co. v. Harrison, (C.C.A. 7th, 1942) 125 F. (2d) 893.

[2] 47 Stat. L. 282, § 807 (1932), 26 U. S. C. (1940), § 812 (d): "If the [federal estate] tax . . . [is] either by the terms of the will, [or] by the law of the jurisdiction under which the estate is administered . . . payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph [charitable gifts], then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes."

[3] 264 U. S. 61, 44 S. Ct. 293 (1924).

[4] Cf. Commissioner v. Merchants Nat. Bank of Boston, (C. C. A. 1st, 1942) 132 F. (2d) 483, where it was held that no deduction for estate tax purposes could be made when the amount of the charitable gift was highly uncertain. The testator had bequeathed to charity the residue of a trust after the death of the income life tenant, for whose comfort, support, maintenance, and/or happiness the trustee in his discretion could invade the corpus.

See also, on conditional nature of gift or bequest for public, charitable or religious uses as preventing deduction in computing estate tax, 107 A. L. R. 801 (1937).

[1] 49 Stat. L. 1691, § 117 (1936), now 26 U. S. C. (1940), § 117.

[2] Henry A. Kieselbach, 44 B. T. A. 279 (1941).

[3] Commissioner v. Kieselbach, (C. C. A. 3d, 1942) 127 F. (2d) 359.

[4] Seaside Improvement Co. v. Commissioner, (C. C. A. 2d, 1939) 105 F. (2d)

sidered as interest or as compensation for delayed payment, they are ordinary income and not part of the sale price. *Kieselbach v. Commissioner*, (U. S. 1943) 63 S. Ct. 303.[5]

TAXATION — LIEN FOR ESTATE TAX ON LAND OWNED BY ENTIRETIES — RIGHTS OF MORTGAGOR — CONSTITUTIONALITY — Property held by a decedent as tenant by the entireties was not included in his gross estate in computing the federal estate tax and, prior to assessment and payment of the tax, was mortgaged by the widow to petitioner in good faith and for value. After default, the petitioner bought in the mortgaged property on foreclosure sale. The Commissioner of Internal Revenue assessed an estate tax deficiency against the decedent's estate by reason of the failure to include the value of the land held by entireties in the computation of the tax. The Board of Tax Appeals affirmed, and in the present proceeding to enforce the lien the district court found in favor of the government [1] and the circuit court affirmed.[2] On certiorari, *held*, affirmed. The estate tax lien, although unrecorded, was superior to the mortgage lien as well as to local, state and county liens for taxes which had accrued after death of the decedent. Section 315 (a) [3] of the Revenue Act of 1926 provides a special lien for the estate tax which is independent of the general tax lien provided in section 3186 of the Revised Statutes.[4] This is shown by the history of the statutes, both of which have been re-enacted on numerous occasions, and by the corollary sections to 315 (a), such as that providing for release to bona fide purchasers before assessment,[5] which would not be necessary if recording of the tax lien were required under section 3186. As so construed, section 315 (a) does not violate the Fifth Amendment. *Detroit Bank v. United States*, (U. S. 1943) 63 S. Ct. 297.

TRADE RESTRAINTS — MEDICAL ASSOCIATION OBSTRUCTING GROUP HEALTH ASSOCIATION AS VIOLATING SHERMAN ACT[1]—The American Medical Association, a corporation, the Medical Society of the District of Columbia, a corporation, two unincorporated associations, and twenty-one individuals who were officers, employees or committee members of the corporations, were indicted for conspiracy to obstruct the operations of the Group Health Association, a nonprofit corporation, organized by government employees to provide medical care and hospitalization to members and their families on a risk-sharing prepayment basis. The two corporations were found guilty in the district court on a general verdict and appealed, the other defendants having been found not guilty. From a decision of the circuit court of

990, noted 39 MICH. L. REV. 169 (1940).

[5] Case noted 11 GEO. WASH. L. REV. 396 (1943).

[1] United States v. Paul, (D. C. Mich. 1940) 41 F. Supp. 41.

[2] Paul v. United States, (C. C. A. 6th, 1942) 127 F. (2d) 64.

[3] 44 Stat. L. 80, § 315 (a) (1926), now 26 U. S. C. (1940), § 827.

[4] Rev. Stat. (1878), § 3186, 26 U. S. C. (1940), §§ 3670-3677.

[5] 44 Stat. L. 79, § 313 (c) (1926), now 26 U. S. C. (1940), § 827 (c).

[1] 26 Stat. L. 209, § 3 (1890), 15 U. S. C. (1940), § 3.

appeals affirming the conviction,[2] the Supreme Court granted certiorari on three questions, on which it *held* as follows: (1) The Group Health Association is in the business or trade of supplying medical service and hospitalization facilities to its members, so that it is not necessary to decide whether the practice of medicine or the rendering of medical services in themselves are trade. (2) The indictment charges a single conspiracy to restrain or obstruct the business of Group Health so that separate rulings on the sufficiency of each paragraph were not necessary and the general verdict may stand. The five paragraphs of the indictment did not state separate conspiracies but simply the various purposes of a single conspiracy: to restrain Group Health from doing business, to restrain members of Group Health from obtaining adequate medical care according to Group Health's plan, to restrain doctors serving Group Health in the pursuit of their calling, to restrain doctors not on Group Health's staff from practicing in the District of Columbia in pursuance of their calling, and to restrain Washington hospitals in the business of operating their hospitals. (3) The dispute was not one concerning terms and conditions of employment within the Clayton [3] and Norris-La Guardia [4] acts. Assuming that the doctors contracting with Group Health were employees of that corporation, petitioners did not represent present or prospective employees. They were not an association of employees, but an association of independent practitioners and were interested in "terms and conditions of employment" only in the sense of preventing employment altogether. *American Medical Association v. United States*, (U.S. 1943) 63 S. Ct. 326.

WILLS — WHETHER AGREEMENT A CONTRACT OR TESTAMENTARY GIFT — Appellee's decedent, *M*, paid $2,000 and $500 to appellant charitable society at different times under identical contracts. In each the society promised to pay *M* six per cent interest during her life and also upon sixty days notice to return all or any part of the principal sum. It was provided that on *M's* death the money should become the absolute property of the society. During *M's* life interest was paid as promised and $600 was refunded to *M* at her request. At *M's* death her administratrix sued the society for the return of the balance on the ground that the contracts were testamentary in character and without consideration. From a judgment for the administratrix, the society appealed. *Held*, that the contracts were not testamentary, having become effective immediately. Title to the money passed to the society at once. The contract was fully executed on the part of the decedent and appellant furnished consideration by its promise to pay interest and to return part or all of the money on request. Judgment reversed with instructions to enter judgment for plaintiff for accrued interest only. *Society of Missionary Catechists of our Blessed Lady of Victory v. Bradley*, (Ind. App. 1942) 44 N. E. (2d) 209.[1]

[2] (App. D. C. 1942) 130 F. (2d) 233, noted 29 VA. L. REV. 227 (1942).

[3] 38 Stat. L. 730, §§ 6, 20 (1914), 15 U. S. C. (1940), § 17, 29 U. S. C. (1940), § 52.

[4] 47 Stat. L. 70, §§ 4, 5, 6, 8, 13, 29 U. S. C. (1940), §§ 104, 105, 106, 108, 113.

[1] See 127 A.L.R. 634 (1940). Cf. 27 YALE L. J. 542 (1918).