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THE LAW SCHOOL.—The faculty has been strengthened this year by the addition of George E. Osborne. Professor Osborne was graduated from the University of California in 1916, receiving the A. B. degree, and from Harvard Law School in 1919, where he took his LL. B., followed by that of S. J. D. in 1920. He came to Minnesota from the Law School of the University of West Virginia, where, in addition to his duties as assistant professor of law he was editor-in-chief of the West Virginia Law Quarterly. While at Harvard he was president of the law review editorial board.

The registration in the Law School is somewhat larger than last year, the total being 297 as against 269. The freshman class is 153, compared with 119 in 1920-21.

TAXATION—STATE TAX ON NATIONAL BANK STOCK.—The power of the states to tax national bank stocks rests upon the permissive legislation of Congress, and a state tax in excess of and not in conformity with such legislation is void.[1] This permissive legislation is found in section 5219 of the Revised Statutes of the United States which provides that state taxation "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens" of the state. The main purpose of Congress in so limiting state taxation was "to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of like character" to those engaged in by national banks.[2] It is to be noted that the prohibition is not specifically confined to discrimination between national and state banks. The language of section 5219 is much broader. It prohibits discrimination against national banks and in favor of *moneyed capital in the hands of individual citizens*.[3] While the term "moneyed capital" perhaps has not been exhaustively defined, it nevertheless has come to have a well established meaning of a fairly comprehensive extent. It does not include stock in corporations not competing with banks but it does include something more than shares in banking corporations. In the leading case[4] on this phase of the subject it is said that "moneyed capital" includes "shares . . . in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money," and, further, that it "includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment." An early case[5] held it to be a prohibited discrimination where the state permitted a taxpayer to deduct from his moneyed capital the amount of his bona fide indebtedness and taxed him upon the remainder but denied him the privilege of de-

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[1]Owensboro National Bank v. Owensboro, (1899) 173 U. S. 664, 19 S. C. R. 537, 43 L. Ed. 850.

[2]Mercantile National Bank v. New York, (1887) 121 U. S. 138, 7 S. C. R. 826, 30 L. Ed. 895.

[3]Boyer v. Boyer, (1885) 113 U. S. 689, 5 S. C. R. 706, 28 L. Ed. 1089.

[4]Mercantile National Bank v. New York, (1887) 121 U. S. 138, 157, 7 S. C. R. 826, 30 L. Ed. 895. The rule of construction announced in this case has been consistently adhered to by the Supreme Court. Amoskeag Sav. Bank v. Purdy, (1913) 231 U. S. 373, 34 S. C. R. 114, 58 L. Ed. 274.

[5]People v. Weaver, (1880) 100 U. S. 539, 24 L. Ed. 705.

ducting such indebtedness from the value of national bank shares. The court there points out that the statute has reference to the entire process of assessment and embraces the valuation of shares as well as the rate imposed. This case was soon followed by a series of others to the same effect.[6] An affirmative showing must be made that the moneyed capital comes into competition with the business of national banks[7] and also that the state taxation discriminates in fact against the holders of shares in national banks.[8]

In the light of the language of the statute and of the construction of that language by the Supreme Court it might reasonably have been expected that the several states would so adjust their tax programs as not to conflict with the congressional inhibitions. The recent case of *Merchants' National Bank v. Richmond*[9] shows, however, that at least one state has not done so. The case involved the validity of certain parts of the Virginia tax laws and briefly was as follows: the rate of taxation on bank stocks (both state and national) was $1.75 per hundred dollars value while the rate on bonds, notes, and other evidences of indebtedness (i.e., on moneyed capital) in the hands of individuals was ninety-five cents per hundred dollars value There was no discrimination between state and national banks, as they were classed together and treated exactly alike. But bank stock was taxed at a greater rate than moneyed capital and it appeared that the moneyed capital was competing with the banks in the loan market. On that state of facts the court held the law to exceed the limits of section 5219 and the tax to be void.[10]

State laws imposing taxes on national bank stock doubtless will be examined anew and with closer scrutiny as a result of this decision. Already there are signs that it is being regarded with much concern by several states, particularly those which

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[6]Supervisors v. Stanley, (1881) 105 U. S. 305, 26 L. Ed. 1044; Hills v. National Bank, (1881) 105 U. S. 319, 26 L. Ed. 1052; Evansville National Bank v. Britton, (1881) 105 U. S. 322, 26 L. Ed. 1053.

[7]First National Bank of Wellington v. Chapman, (1898) 173 U. S. 205, 219, 19 S. C. R. 407, 43 L. Ed. 669; Commercial Bank v. Chambers, (1901) 182 U. S. 556, 21 S. C. R. 863, 45 L. Ed. 1227.

[8]Amoskeag Sav. Bank v. Purdy, (1913) 231 U. S. 373, 393, 34 S. C. R. 114, 58 L. Ed. 274.

[9](1921) 256 U. S. 632, 65 L. Ed. 1131, 41 S. C. R. 619.

[10]In Supervisors v. Stanley, (1881) 105 U. S. 305, 26 L. Ed. 1044, there is an interesting application of the doctrine that valid parts of a statute will be saved if they are separable from the invalid. Thus the tax statute involved in that case was held valid except so far as it did not authorize a deduction for debts of the shareholder.

have special taxes on "money and credits." At least two bills[11] have been introduced in the present Congress designed to broaden the scope of the congressional permission and thus save the tax programs of such states as find themselves within the range of the doctrine reannounced in the Richmond case. Assuming that the language of the bills is adequate for the purpose intended, the absence of a retroactive provision makes it doubtful whether either bill, if passed, would save existing tax programs, whatever might be the result of its prospective operation.

TORTS—CIVIL LIABILITY FOR INDUCING BREACH OF CONTRACT. —Ever since the law has recognized a property right in the right of the poor man to labor with his hands,[1] in the right of a man to pursue a learned profession,[2] and in the rights arising out of contract,[3] the courts have labored with the question of how far and by what means and for what ends this property right might be invaded without incurring liability. The theory of tort liability for interfering with contractual relations has grown to such dimensions that it is impossible to treat the subject in detail here.[4] So far as possible the scope of this note will be limited to interference with existing contract rights, as opposed to mere contract expectancies.

It is perhaps not safe to say that the tort of enticing away another's servant has been assimilated to the tort of interference with contract rights generally.[5] It is probably more cor-

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[11]S. 2200, introduced by Senator Nelson, July 1, 1921, providing that the taxation "shall not be at a greater rate than is assessed upon other moneyed capital used in banking," and H. R. 8015, introduced by Congressman Volstead, August 1, 1921, providing that the taxation "shall not be at a greater rate than is assessed upon other moneyed capital similarly situated and used in banking."

[1]Butcher's Union, etc. v. Crescent City, etc., Co., (1884) 111 U. S. 746, 757, 4 S. C. R. 652, 28 L. Ed. 585; Jones v. Leslie, (1910) 61 Wash. 107, 110, 112 Pac. 81, 48 L. R. A. (N.S.) 893, and note.

[2]Lawrence v. Briry, (1921) 239 Mass, 424, 132 N. E. 174; Raymer v. Trefry, (1921) 239 Mass. 410, 132 N. E. 190.

[3]Posner Co. v. Jackson, (1918) 223 N. Y. 325, 332, 119 N. E. 573.

[4]The earliest cases on the subject grew out of the economic situation in England following the Black Plague and the Statute of Laborers (23 Edw. III.), enacted to cope with it, 27 E. R. C. 106 note, et seq. From these early cases, the theory of tort liability for inducing breach of contractual obligations has grown until today it embraces the right to contract freely, as well as existing contract obligations, boycotts, strikes, unfair competition, picketing, and interference with trades and callings.

[5]Huffcut, Interference with Business in New York, 18 Harvard Law Review 423-424; 27 E. R. C. 108 note, indicates somewhat the confusion of the courts on this point.

rect to say that the latter has developed from the former.[6] True it is today, that in regard to inducing breaches of contract, few courts draw any distinction between contracts for personal service and contracts in general.[7]

A recent case from the Texas court of civil appeals[8] seems to be an exception to this modern rule. In this case, the defendant willfully and with knowledge of the contract induced the promisor to break a contract for the conveyance of real estate to the plaintiff. The court held, on general demurrer, that the complaint stated no cause of action, and nonsuited the plaintiff. The court is not clear in giving the reasons for this result, seemingly resting its decision on the ground that the law will not interfere where there is an adequate remedy in equity, such as specific performance.[9] It is submitted that this is wrong, as it should be no answer for a wrongdoer to say that the plaintiff may have recourse against another in some other or similar action.[10] The remedies should be concurrent or correlative. Did the facts support such a theory, the decision might be based on the fact that there was no actual damage.[11] By way of dictum the court seems to admit that in a proper case, even in the case of a contract relat-

[6]See note 16 L. R. A. (N.S.) 746.

[7]1 Street, Foundations of Legal Liability, 342, et seq.; 27 E. R. C. 108 note; Beckman v. Marsters, (1907) 195 Mass. 205, 80 N. E. 817, 11 L. R. A. (N.S.) 201, 11 Ann. Cas. 332, exclusive agency contract, injunction granted; American Malting Co. v. Keitel, (1913) 209 Fed. 351, 359, 126 C. C. A. 277, sale of merchandise, injunction granted; Mealey v. Bemidji Lumber Co., (1912) 118 Minn. 427, 136 N. W. 1090, logging contract; Gonzales v. Reichenthaler, (1921) 189 N. Y. S. 783, exclusive contract to operate a game; Raymond v. Yarrington, (1903) 96 Tex. 443, 73 S. W. 800, 62 L. R. A. 962, agreement not to engage in the business; Temperton v. Russell, [1893] 1 Q. B. 715, 69 L. T. 78, 41 W. R. 565, contract expectancy for building material; see note 31 Harvard Law Rev. 1017; Jones v. Stanley, (1877) 76 N. C. 355, transportation contract; see note 16 L. R. A. (N.S.) 747; also 27 E. R. C. 109.

[8]Sonnenberg v. Hajek, (Tex. Civ. App. 1921) 233 S. W. 563.

[9]The decision can be best supported, perhaps, on the theory that the court recognized the equitable property of the plaintiff arising out of the contract, and that this equitable property remained undamaged by the conveyance of the land to another who had knowledge of the contract and induced a breach thereof. That raises the question, can a law court recognize an equitable property, and if so, can it exercise any discretion in turning a suitor out of court as it did here, compelling him to proceed in equity? Even then it does not dispose of the fact that he sued for an injury to his contract rights, and not for damage to his equitable property.

[10]Raymond v. Yarrington, (1903) 96 Tex. 443, 73 S. W. 800, 62 L. R. A. 962.

[11]Bigelow, Torts, 8th Ed., p. 238, 255, 266, names actual damage as one of the elements necessary to be proved.

ing to real estate, the action would lie;[12] and then intimates further that in such a case there must be deceit or fraud, or a malicious purpose. It is elementary that an unlawful means such as fraud or deceit used to procure a breach of contract will render the actor liable.[13] On the other hand it would seem that malice in the sense of a malevolent motive is not an essential ingredient of the tort.[14] By the weight of modern authority, English and American, if the actor intended the consequences of his act he is liable unless he can justify. Such willful interference was present in the instant case.[15] Another dictum of the court is that it is not an actionable tort to procure the breach of an unenforceable contract. There is a sharp conflict on this point, but it is believed that the better authority holds the wrong actionable.[16]

The rule today seems to be that an intentional or willful interference with the contract right of another renders the actor liable unless he can justify, and the motive of the actor may, or may not, be of consequence in determining the sufficiency of the justification.[17]

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[12]Commenting on Raymond v. Yarrington, (1903) 96 Tex. 443, 73 S. W. 800, 62 L. R. A. 963, the court says, "it is held that a person who interferes with a contract for the sale of real estate, is liable in damages in a proper case."

[13]Huffcut, Interference with Business in New York, 18 Harvard Law Review 426, et seq.; 1 Street, Foundations of Legal Liability, 346, 352, et seq. Indeed, in those courts which do not follow the doctrine of Lumley v. Gye, (1853) 2 El. & B. 216, the interference is actionable only when the means used is unlawful; Glencoe Land, etc., Co. v. Hudson Bros. Co., (1897) 138 Mo. 439, 40 S. W. 93, 36 L. R. A. 804; 1 Street, Foundations of Legal Liability, 346, note 6.

[14]South Wales Miners' Fed. v. Glamorgan Coal Co., [1905] A. C. 239, 53 W. R. 593, 2 Ann. Cas. 436; Twitchell v. Glenwood-Inglewood Co., (1915) 131 Minn. 375, 155 N. W. 621; Posner Co. v. Jackson, (1918) 223 N. Y. 325, 119 N. E. 573; Lamb v. Cheney & Son, (1920) 227 N .Y. 418, 125 N. E. 817; Gonzales v. Reichenthaler, (1921) 189 N. Y. S. 783; 49 Solicitor's Journal 666, gives an excellent treatment of leading English decisions on this point. Ames, Tort Because of Wrongful Motive, 18 Harvard Law Review 411, 412,—"The question whether there was or was not just cause will depend, in many cases, but not in all, upon the motive of the actor." In other words, motive goes to the justification and not to the gist of the action. See semble, 1 Street, Foundations of Legal Liability, 344, et seq.

[15]Gonzales v. Reichenthaler, (1921) 189 N. Y. S. 783; Twitchell v. Glenwood-Inglewood Co., (1915) 131 Minn. 375, 155 N. W. 621; Chapin, 1 New Jersey Law Review 160; 49 Solicitor's Journal 666.

[16]Cumberland Glass Mfg. Co. v. DeWitt, (1913) 120 Md. 381, 87 Atl. 927; Rice et al. v. Manley, (1876) 66 N. Y. 82, 23 Am. Rep. 30; Bigelow, Torts, 8th Ed., p. 265.

[17]Another arbitrary exception to the rule made by some courts is the case of inducing breach of a contract of engagement to marry. Homan v. Hall, (1917) 102 Neb. 70, 165 N. W. 881; Guida v. Pontrelli, (1921) 186 N. Y. S. 147. It is submitted that the rule should be the same as in other

INTERSTATE COMMERCE—INTENT AS DETERMINING CHARACTER OF SHIPMENT.—In determining whether an article is subject to state or federal control, it often is important to determine the exact point of time at which interstate commerce in the article begins. The leading case on this subject is *Coe v. Errol*,[1] in which the Supreme Court of the United States said that the interstate character is not assumed until the goods are committed to the common carrier for transportation out of the state.

However, when once delivered to the common carrier for shipment, if a foreign destination is contemplated, the goods are subjects of interstate commerce even though shipped on a local bill of lading between two points in the same state. The court of appeals of Maryland, in a recent case,[2] stated the rule as follows:

"The intention as to destination with which the goods are delivered and accepted for conveyance by the carrier is held to be the determining factor in such a problem. Whether or not in a particular case the bill of lading discloses that the shipment is for export, if that was the real design with which it was started on the course of its transportation, and if it would proceed to a foreign destination as the normal result of the movement thus originated, it must be regarded and classified as foreign commerce."

The intent of the shipper as to the destination of the goods is thus material in determining the interstate character of the goods, after they have once been delivered to a carrier for shipment. Is the intent of the shipper or purchaser, previous to delivery to the carrier, material?

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contracts. Privilege should be held sufficient justification in some cases. As to what a court must consider in deciding on the sufficiency of the justification, see the language of Romer, L. J., in Glamorgan Coal Co. v. South Wales Miners' Fed., [1903] 2 K. B. 545, 574, 52 W. R. 165. See also note, 3 Virginia Law Review 385.

[1](1886) 116 U. S. 517, 525, 6 S. C. R. 475, 29 L. Ed. 715. The court states: "There must be a point of time when they [the goods] cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose in which they commence their final movement for transportation from the state of their origin to that of their destination. When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepôt for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination, or have started on their ultimate passage to that state."

[2]Fahey et al. v. Baltimore, etc., R. Co., (1921) 139 Md. 161, 114 Atl. 905, following Texas, etc., R. Co. v. Sabine Tram Co., (1913) 227 U. S. 11, 33 S. C. R. 229, 57 L. Ed. 442, and Railroad Com. of Louisiana v. Texas and Pac. Ry., (1913) 229 U. S. 336, 33 S. C. R. 837, 57 L. Ed. 1215.

It has been held that the manufacture of goods for the purpose of interstate trade is not a part of interstate commerce.[3] So also brokerage agreements for sales on commission, where the goods are intended for interstate trade, are not a part of interstate commerce but merely incidents thereof.[4] In the case of *In re Conicuh, etc., Co.*,[5] it was held that the fact that the buyer of lumber, at the time of purchasing, intended to sell the lumber so purchased only to persons in other states did not render the transaction one in interstate commerce. The right of a state to tax the goods does not end until they are actually delivered to the carrier for shipment.[6] In all these cases, the intent of the shipper previous to the actual delivery of the goods to the carrier has no effect on the interstate character of the goods.

The circuit court of appeals, eighth circuit, in a recent case[7] decided that a purchase of grain by an elevator in North Dakota from a farmer of that state is a part of interstate commerce, and accordingly held that a statute of North Dakota providing for the grading of grain and the licensing of persons buying grain was unconstitutional as imposing a direct burden on interstate commerce. In view of the cases cited above, the decision could not be supported merely on the ground that the purchaser bought the grain with the intent to ship it out of the state. The lower court gave this as its reason for holding the purchase not a part of interstate commerce. But on appeal, the decision was reversed, not on the ground of intent, but on the ground that since ninety per cent of the grain annually raised in North Dakota must be and is purchased for shipment out of the state, such course of commerce is a fact and not a matter of intention.[8] The court cited the case of *Brown v. Maryland*[9] to the effect that a sale of goods

[3]United States v. E. C. Knight Co., (1895) 156 U. S. 1, 15 S. C. R. 249, 39 L. Ed. 325; Kidd v. Pearson, (1888) 128 U. S. 1, 9 S. C. R. 6, 32 L. Ed. 346; Crescent Cotton O. C. Co. v. Mississippi, (1921) 42 S. R. C. 42.

[4]Hopkins v. United States, (1898) 171 U. S. 578, 19 S. C. R. 40, 43 L. Ed. 290; State ex rel. Beek v. Wagener, (1889) 77 Minn. 483, 500, 80 N. W. 633, 77 A. S. R. 681, 46 L. R. A. 442; State v. Edwards, (1905) 94 Minn. 225, 102 N. W. 697.

[5](1910) 180 Fed. 249. See also Brunner v. Mobile & Gulfport Lumber Co., (1914) 188 Ala. 248, 66 So. 438.

[6]Coe v. Errol, (1886) 116 U. S. 517, 6 S. C. R. 475, 29 L. Ed. 715.

[7]Farmers Grain Co. of Embden v. Langer, (1921) 273 Fed. 635.

[8]"Where a substantial part of a business is interstate commerce, the imposition of burdens and regulations thereon by state action cannot be justified by the fact that a portion of the business thus sought to be controlled and regulated is intrastate." Landon v. Public Utilities Commission, (1917) 242 Fed. 658, 688.

[9](1827) 12 Wheat. (U.S.) 419, 446-447, 6 L. Ed. 678, Marshall, C. J.

within a state after their transportation into that state was a part of interstate commerce, and said that it could see no logical disinction between a sale following transportation and a purchase preceding it.[10] It is difficult to justify the decision on any established rule of law. The decision extends the broad construction of the commerce clause of the federal constitution to a case not heretofore considered as a part of interstate commerce.

RAILWAY BONDS—AUTHORITY TO ISSUE—JURISDICTION OF STATE COMMISSION.—A fresh example of the intimate relation of the railroads to the government and business of the country is furnished by the joint issue of Great Northern-Northern Pacific fifteen year convertible gold bonds designed to retire the Burlington purchase bonds. This issue was authorized by the Interstate Commerce Commission and the business caution which is the order of the day has drawn the attention of lawyers in this state to the effect of such authorization upon the jurisdiction of the Minnesota State Securities Commission over such issues.

The securities in question are not exempt from the operation of the Minnesota Securities Act,[1] by virtue of an express provision therein. Section 2 (c) of our securities act provides that:

"The provisions of this act, except section 10 thereof, shall not apply to . . . securities of public or quasi public corporations, the issue of which securities is regulated by a public service commission of this state or of any state or territory of the United States, or securities senior thereto."

The only portion of this section which might be construed as applicable to securities approved by the Interstate Commerce Commission is the clause "securities senior thereto." Are securities regulated by a public service commission of the federal government *senior* to securities regulated by the states and territories? It is submitted that the legislative meaning of *senior* was the ordinarily accepted one: securities which are a prior lien

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[10]Swift v. United States, (1905) 196 U. S. 375, 398, 25 S. C. R. 276, 49 L. Ed. 518. Here the court said, "commerce among the states is not a technical legal conception but a practical one drawn from the course of business." Also Savage v. Jones, (1912) 225 U. S. 501, 520, 32 S. C. R. 715, 56 L. Ed. 1182. In Heyman v. Hays, (1915) 236 U. S. 178, 186, 35 S. C. R. 403, 59 L. Ed. 527, the court said, "The protection against the imposition of direct burdens upon the right to do interstate commerce is not a mere abstraction affording no real protection but is practical and substantial and embraces those acts which are necessary to the complete enjoyment of the right protected."

[1]Minn. Laws, ch. 429, 1917, as amended.

on the assets of the issuing company, or, in other words, securities which are "senior" in the sense that a first mortgage on real estate is senior to a second mortgage. If that interpretation is correct the clause would not operate to exempt securities approved by the Commerce Commission from the jurisdiction of the Minnesota State Securities Commission.

Are the securities in question nevertheless exempt by virtue of paramount law? The Interstate Commerce Act[2] provides in Title IV, sec. 439, sub-section 20 a (2) that:

"it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed 'securities') . . . even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof . . . the Commission by order authorizes such issue."

And in subdivision (7) of the same section and sub-section it is provided that:

"The jurisdiction conferred upon the Commission by this section shall be exclusive and plenary, and a carrier may issue securities and assume obligations or liabilities in accordance with the provisions of this section without securing approval other than as specified herein."

In terms the federal act clearly relieves the states of jurisdiction.

May the Minnesota State Securities Commission nevertheless exercise jurisdiction over the securities in question by virtue of the police power? The securities act rests upon the exercise of police power for the protection of our citizens. Under the police power the states may impose certain regulations on interstate carriers, even though such regulations incidentally affect interstate commerce.[3] Thus for example, Minnesota may restrict the speed of interstate trains, while traveling in this state, to forty miles per hour, and not only protect the health and safety of its people but serve their convenience by requiring the carrier to stop all passenger trains at all county seats to receive and deposit passengers.[4] If, however, the federal Congress has undertaken to regulate a subject matter over which its jurisdiction is

[2]41 Stat. at L. 494.

[3]Lake Shore, etc., Ry. v. Ohio, (1899) 173 U. S. 285, 19 S. C. R. 465, 43 L. Ed. 702; Hall v. Geiger-Jones Co., (1917) 242 U. S. 539, 37 S. C. R. 217, 61 L. Ed. 480; Elliott, The Annotated Blue Sky Laws of the U. S. 15.

[4]Gladson v. Minn., (1897) 166 U. S. 427, 17 S. C. R. 627, 41 L. Ed. 1064.

co-extensive or paramount, the authority of the state is terminated and it is ousted of jurisdiction.[5] Upon that principle federal exercise of war powers was deemed to abrogate state legislation so far as it was co-extensive;[6] and similarly it is believed that congressional action in the exclusively federal field of interstate commerce relieves the states of jurisdiction over the securities thereby subjected to federal control.[7]

RECENT CASES

ADOPTION — DEATH OF ADOPTED CHILD — RIGHT OF NATURAL AND ADOPTIVE PARENTS TO INHERIT.—The decedent died intestate survived by neither wife nor issue but by his adoptive parents and natural mother. *Held,* that in the absence of statute, his surviving parents by nature and by adoption inherit in equal proportion; and that one-third of the property should be distributed to each of the three survivors. *Baird v. Yates,* (1921) 108 Kan. 721, 196 Pac. 1077, 200 Pac. 280.

The court argues in the instant case that since, in the absence of statute, an adopted child will inherit from both its natural and adoptive parents, the right must be reciprocal. In the absence of statute, there are several views on the question of inheritance from an adopted child. The older view is that the child's natural parents only are entitled to his property, because, on a strict construction of the statute of descent, "inheritance" connotes the next of kin by blood of the deceased. *Edwards v. Yearby,* (1915) 168 N. C. 663, 85 S. E. 19, L. R. A. 1915E 462; *Heidcamp v. Jersey City St. Ry. Co.,* (1903) 69 N. J. L. 284, 55 Atl. 239, 101 A. S. R. 707; *Hole v. Robbins,* (1881) 53 Wis. 514, 10 N. W. 617; *White v. Dotter,* (1904) 73 Ark. 130, 83 S. W. 1052. Some courts limit this rule by holding that where the adopted child had derived the property by gift or inheritance from an adoptive parent, it will go to the surviving adoptive parent. *Humphries v. Davis,* (1884) 100 Ind. 274; *Lanferman v. Vanzile,* (1912) 150 Ky. 751, 150 S. W. 1008, Ann. Cas. 1914D 563, or, under a statute, to "the persons who would have been his kindred, if he had been born to his adopting parent in lawful wedlock," *MacMaster v. Fobe,* (1917) 226 Mass. 396, 115 N. E. 487. Under statutes, however, providing that after adoption the two shall sustain the legal relation of parent and child with all the rights and duties of such relation, that the adoptive parent must give the child support and education, and that the natural parents are absolved from all duties and responsibilities, the more recent cases permit the adoptive parent to inherit to the exclusion of the natural parent. *Havsgord v. Sverson,* (1914) 34 S. D. 131, 147 N. W. 378; *Estate of*

[5]Lake Shore, etc., Ry. v. Ohio, (1899) 173 U. S. 285, 19 S. C. R. 465, 43 L. Ed. 702.

[6]Konkel v. State, (1919) 168 Wis. 335, 170 N. W. 715; see 4 MINNESOTA LAW REVIEW 353, 358.

[7]In an opinion dated May 3, 1921, the Attorney General of Minnesota reached a similar conclusion.