FOREWORD

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GEORGETOWN LAW MEN IN FRANCE.

To publish a list of the Georgetown men from the Law School who are with the colors in France, and to be satisfied simply with such, would leave a duty undone. To say these men are filled with the spirit of a true patriotism would add but little to the mention of the alphabetically arranged lists, for these men by their presence show more strongly than we can write their motive. The Law men are in this grim business because of a high purpose forced by a deep conviction, that they, in particular, as students of the law can have no respect for the principles of justice if they do not lend themselves to the utmost in their defense.

True belief today, as always, means such an appreciation of the ideal as to sacrifice all, counting the continued possession as full reward. But what aside and beyond this present token are we to expect from men so peculiarly inspired to duty. How will these stalwarts help the rest of the men in the use of those principles, which they have purchased anew? The keen remembrance of extreme sacrifice will save the employment from abuse. If all of the men, and arms and treasure—today's holocaust—can cause tomorrow to sustain and keep alive one principle—"Equality before the Law"—then this torn world will not have bled in vain. For in its last analysis the reason for the present conflict was the total disregard for this basic principle, since "might makes right" caused some nations to believe a mailed fist was the only law. Respect for fundamental law, not in the abstract, but as a rule to guide the acts of men and nations, is what these men are fighting for, and the full appreciation of the end will lend force a hundredfold to their efforts. This example of lawyers fighting for the law cannot but have its effect. The future will revere them; but we of the present cannot be unmoved spectators of the conflict, rather we will give to them whatever of moral or physical aid we can, according to the best means at hand.

The men actually in France are named in the following list. These names represent but a small minority of the Georgetown men at the front. The medical school also has a large quota serving the country in their glorious profession. In addition to these men, a great number
are engaged in the war in both arms of the service. If their names do not appear they may be found in the list published in the October issue of the College Journal. A large number of Georgetown men are in the service, but whose names are not included in either list, since they are still in this country.

GEORGETOWN MEN IN FRANCE.

H. A. Burns . . . . . . . ex-Law 1919.. Ordnance Corps, A. E. F., France.
F. E. Carney . . . . . . . . ex-Law 1918.. Amer. Ex. Forces, France.
Bert Emerson . . . . . . . L.L.B. 1915.. Medical Corps, A. E. Forces.
T. A. Flynn . . . . . . . . Law 1916.. Ordnance Corps, A. E. Forces.
J. S. Galleher . . . . . . L.L.B. 1915.. Amer. Red Cross, France.
J. E. Gillespie . . . . . . Law 1915.. Ordnance Corps, A. E. Forces.
Paul G. Gnau . . . . . . . Law 1918.. Intermediate Ordnance Depot.
D. Heywood Hardy . . L.L.B. 1917.. Amer. Red Cross, Petrograd, Rus.
Frank J. Kelly . . . . . . L.L.B. 1916.. Amer. Red Cross, France.
Elmer McD. Kintz . . L.L.B. 1915.. Amer. Red Cross, France.
R. J. Lodge . . . . . . . . Law 1916.. Amer. Ex. Forces, France.
Geo. H. Lynch . . . . . . L.L.B. 1917.. J. A. G. Amer. Ex. Forces, France
W. C. McCabe . . . . . . ex-Law 1918.. J. S. Air Force, France.
J. T. McGarry . . . . . . ex-Law 1918.. Amer. Ex. Forces, France.
John Ruppa . . . . . . . . L.L.B. 1918.. Field Clerk, A. E. F., France.
A. Shefferman . . . . L.L.B. 1917.. Field Clerk, A. E. F., France.
J. D. Simpson . . . . ex-Law 1919.. Ambulance Corp, A. E. F., France.
GEORGETOWN LAW MEN IN FRANCE.

A. W. Suelzer . . . LL.B. 1914. . Field Clerk, A. E. F., France.
James J. Meade . . . . . . LL.B. 1917. . U. S. M. C., France.
D. W. Gustin . . . . . . LL.B. 1914. . Army Field Clerk, A. G. O., France.
Benjamin Kay . . . . . . ex-Law 1913. . Army Field Clerk, A. G. O., France.
H. S. Laughlin . . . . . ex-Law 1919. . Army Field Clerk, A. G. O., France.
David A. Hart . . . . . LL.B. 1914. . Army Field Clerk, A. G. O., France.

WM. J. CULLINAN, ’18.
THE "TRADING WITH THE ENEMY" ACT.

In Relation to Patents, Trademarks and Copyrights.

At Common Law trade with an enemy is forbidden. The purpose of the "Trading with the Enemy" Act is to give statutory definitions to "trading," "enemy," and "ally of enemy," to fix appropriate penalties for violation of law; to provide for the administration of the law, and to confer upon the Executive the authority in proper cases to permit any prohibited act.

All authority in this respect is by the act bestowed upon the President, and by Executive order his power and authority is bestowed on designated officers.

There are three matters affecting patents provided for in the act which are not strictly germane. These are, First: A grant of an extension of nine months within which any enemy may perform any act incident to the filing or prosecution of an application for a United States patent beyond the period otherwise limited by law.

This is an extension to enemies and allies of enemies of the privileges provided for in the act approved August 17, 1916, granting a similar extension to all citizens of countries who should grant to citizens of this country a reciprocal allowance of time.

Second: Authority to withhold the granting of patents upon any applications, the disclosure of the subject matter whereof might be deemed to be of advantage to the enemy. The "Trading with the Enemy" Act confers this authority upon the President, who by executive order has delegated it to the Federal Trade Commission. But concurrently with the passage of that act an independent act was passed conferring like authority upon the Commissioner of Patents. It is to be hoped that the President will revoke the delegation of authority upon this point to the Federal Trade Commission and will delegate whatever authority he may have to the Commissioner of Patents.

Under these acts action by the Patent Office on pending applications is indefinitely suspended. The acts provide, however, that in case the invention disclosed in the application is tendered to and used by the Government and the patent is ultimately granted, the patentee may recover a judgment in the Court of Claims for use prior to the granting of his patent.

This is a departure from the general principle of the Patent Law that no recovery may be had either from the Government or a private
individual for use of an invention during a period which antedates the actual grant of the patent.

Third: The act provides for compulsory license under patents, trademarks and copyrights, including prints and labels.

Heretofore no compulsory license system has been in vogue, excepting that the Government reserves the right to use any patented invention, sending the owner of the patent to the Court of Claims to recover compensation. By virtue of its authority the Government may contract with a private party to make the infringing article for it and the contracting party cannot be stopped nor can any recovery be had from him. The compulsory license of the Government is therefore complete.

When the European war broke out many important articles were found to be covered by patents owned by foreigners, particularly Germans. The supplies from abroad of necessary drugs, e. g. salvarsan, and numerous chemicals, such as dyestuffs, were cut off and some great lines of industry were seriously threatened.

The importance of the drugs is obvious. The importance of the dyestuffs was made apparent by the development of the fact that dyes imported from abroad at an annual cost of less than ten millions were used in the cotton and woolen industries to produce products selling for hundreds of millions of dollars.

There immediately arose from the medical profession and from manufacturers a loud demand for the introduction of a compulsory license system. England, Germany and France all had compulsory license systems, why should we not introduce it? That the compulsory license is not a panacea for the difficulties was made plain by the sufferings experienced in England and France for lack of drugs of exclusively German manufacture and by disturbances of their dye industries upon the cutting off of supplies of aniline dyes from Germany. The manufacture involved large expenditure of capital and the employment of highly trained chemical engineers. It soon developed that capital could not be induced to enter the field without guarantees which would insure adequate and sufficiently permanent return on the investment. The result was that the administration did not recommend any modification of the patent laws until war was actually declared between this country and Germany.

Upon full consideration it then seemed to be wise to make a permanent amendment of the patent act which would become effective whenever war might break out in the future; for at any time we
might be importing essential supplies from a country with which war might suddenly arise. The act makes it possible for manufacturers to proceed with slight preliminary delay to supply the lack caused by the cutting off of importations.

The Federal Trade Commission, acting upon authority delegated by the Executive order, may grant licenses, either exclusive or non-exclusive, under any patents, trademark, copyright, print or label owned by a citizen or subject of a country or ally of a country with which we are at war.

A deposit of five per cent. of the gross receipts arising out of the license is to be made with the custodian of alien property to supply a fund from which royalties shall be paid.

Since, however, the enemy owner cannot be heard it was deemed more equitable not to attempt to fix the royalty, but to provide that within one year after peace was declared the enemy owner might bring suit against the licensee in the proper district court of the United States, and that the court would then determine by its judgment what the royalty should be. It may be more or less than five per cent. In case the licensee has made investments pursuant to the license, the court may continue the license for any period up to the expiration of the patent.

The act reserves the right, which ordinarily a licensee does not enjoy, of attacking the validity of the patent upon any ground which would be open to him if sued as an infringer. This provision is probably the result of agitation concerning certain chemical patents, notably on drugs, respecting which it is charged that the patents do not state the best way of making or compounding the compositions covered thereby as fully as is required by the statute. Whatever may have been the reason, the statute is so drawn that the so-called compulsory license is, in effect, merely a declaration that the licensee may not be mulcted in damages or profits, but only be made to pay royalties.

Licensees should be protected against infringers, and the owners of patents also should be protected against suits brought nominally to enforce the patents but controlled by parties who might be interested in having the patents declared void. The act therefore provides that enemy owners and owners who are allies of the enemy may sue infringers of their patents. Of course, all money recovered would be paid over during the war to the custodian of enemy property, or the accountings might be postponed until the close of the war. But injunctions against infringers could be issued.
The wisdom of including in the act trademarks, prints and labels is debatable; for the primary purpose of the trademark act is to protect the public against purchasing the goods of one manufacturer under the belief that they are goods of another. It is probable, however, that no public injury will arise, since the Federal Trade Commission in the rules which it has adopted has expressly provided that licenses for the use of trademarks, prints and labels will be granted only under exceptional circumstances. The Commission announces that it will entertain applications (1) where the alleged trademark is the name of a patented or copyrighted article and a license is granted under the patent or copyright, and (2) where the alleged trademark is the name of an article manufactured under an expired patent or copyright.

On the whole the act is drawn in a liberal spirit. In this, as in our patent statutes generally, we have set the world a notable example.

Thomas Ewing.
TWO SALIENT FEATURES OF THE ARGENTINE AND CHILEAN LAW AS TO MONEY PAID BY MISTAKE.

All the Latin-American peoples of Central and South America enjoy that greatest of jurisprudential blessings—a codified jurisprudence. In this respect the republics of Latin America are superior to their big North American sister, the law of which still generally exhibits its long-standing unenviable absence of certainty, due to lack of codification.

The two leading countries of Spanish America are Argentina and Chile. Their Civil and Commercial Codes are masterly productions, ranking equally with the modern European codes of a similar nature.2

Our subject, the obligation to restore money paid by mistake, is a quasi contract. The excellence of the Chilean Civil Code is revealed in the clarity of its treatment of quasi contracts. Chilean law defines a quasi contract as follows: "Obligations which are contracted without an agreement arise either from the law or from the voluntary act of one of the parties....If the act....is lawful, it constitutes a quasi contract."8

This definition is a succinct elaboration of the Roman law characterization of a quasi contract as "not arising from a contract, nor originating from a tort."4

Moreover, the Roman law enumeration of quasi contracts is thus repeated in Chilean law: "There are three principal quasi contracts, volunteer agency, money paid by mistake, and co-ownership of undivided property."5 All three quasi contracts are of Roman law origin: volunteer agency is the descendant of the Roman negotiorum gestio;6 money paid by mistake comes from the Roman solutio indebiti, con-

1 The exceptions in the United States are Louisiana and California, the excellent Codes of which redeem American law partially from the stigma of its present unfortunate condition of form: see Sherman, Roman law in the modern world, vol. I, §§ 263-264, 309.

2 This encomium of praise is merited, even though the Spanish-American Civil Codes are patterned after the French, and their Commercial Codes after the Spanish, Sherman, Roman law in the modern world, § 308.

3 Civil Code, 2284. This article also proceeds to state that "if the act is unlawful and committed with intent to cause damage, it constitutes a tort (delict). If the act is due to negligence, but committed without intent to cause damage, it constitutes a quasi delict."

4 Inst. of Justinian, 3, 27, pr.

5 Civil Code, 2285. Compare Inst. of Justinian, 3, 27, §§ 1-4, 6-7, for a similar enumeration.

dictio indebiti;7 and co-ownership of undivided property is the offspring of the Roman communio incidens.8 We shall consider only the second quasi contract—money paid by mistake. There is a strong similarity between this Spanish-American quasi contract of Roman origin and the scope of the English Common law action of assumpsit for money had and received.9

The salient features of the obligation to restore money or a thing erroneously given in payment for a debt not due are these two: the payment or performance, and the mistake.10

In order to recover whatever is paid by mistake both Argentine and Chilean law require the same fundamental condition, which is that the money or thing given in payment must not be owed to the person receiving it.11 Consequently no recovery is possible when the debt of another has been paid or discharged with full knowledge of this fact.12

The other salient feature of this quasi contractual obligation, namely, mistake, raises the following very important question of interpretation: does mistake mean any error, whether of law or of fact, or does mistake mean an error of fact only? As we shall see, both interpretations are firmly embedded in modern jurisprudence, and both views are entitled to great respect.

The first-mentioned interpretation—mistake in payment is an error either of fact or of law—is the law of Argentina and Chile.13 This Spanish-American interpretation agrees with the majority view of the world’s jurisprudences: similar to the law of Argentina and Chile are the laws of France, Germany, Italy, Spain, Porto Rico, Quebec and Louisiana.14

The other interpretation—mistake in payment is an error of fact only—is the minority view of the world’s jurisprudences, and is held by the Common law of England and the United States.15

How is this irreconcilable divergence of modern law to be ex-
plained? The answer is, because modern law has incorporated a divided opinion as to the extent of mistake in Roman law. There is no doubt that money paid under a mistake of fact could not be recovered in Roman law.  

The conflict of opinion arises as to what was the Roman rule concerning the recovery of money paid under a mistake of law. In the 16th century the great French jurist Cujas, perhaps the most eminent of all Civilians, held that Roman law did not allow the recovery of money paid under a mistake of law; and there is a text in Justinian's Code which flatly denies any recovery in cases of error of law. This interpretation is also the view of the 17th century Dutch jurist Voet, and of the 19th century German jurist Savigny, whose learned opinion seems irrefutable. This interpretation of Roman law is also the doctrine of our Common law of English origin, as we have seen.

But in the 17th century the brilliant Dutch jurist Vinnius, a renowned Civilian, advanced the doctrine that Roman law allowed the recovery of money paid under any mistake, whether of fact or of law. This interpretation was adopted by other subsequent illustrious Civilians, such as the French Aguesseau. For their authority these Civilians cite no Roman law text, but claim that the above-mentioned Justinianean Code text (which is contra) needs explanation along the line of equity. At any rate, the doctrine of Vinnius was adopted in the French Civil Code promulgated by Napoleon in 1804, and has become the law of Continental European and Spanish America.

CHARLES P. SHERMAN, D. C. L., Formerly Instructor of French and Spanish Law, Assistant Professor of Roman Law, Yale University Law School.

10 Code of Justinian, 1, 18, 10; Sherman, Id., § 811.
17 Sherman, Id., § 811. See Code, 1, 18, 10.
18 Sherman, Id.
19 Supra, and Sherman, Id.
20 Sherman, Id.
21 Id.
22 See art. 1377.
23 Supra. See also Sherman, Roman law in the modern world, vol. II, § 811.
THE CONSTITUTIONALITY OF THE SELECTIVE DRAFT LAW.

Within a few weeks there will be argued before the Supreme Court of the United States one of the most important, if not the most vital question, affecting the very existence of our great country since the Civil War. The Act of May 18, 1917, popularly known as the Selective Draft Law, is to be presented before that tribunal for final decision as to its constitutionality.

Unquestionably in the minds of the great majority of our citizens there is little doubt as to the constitutionality of the Act; but there are some who are of the opinion that the legislation is invalid. Acting either on this assumption, or for less commendable reasons, there have been many strenuous objectors to the law; and the hostility towards the Government of some of these opponents has resulted in a number of prosecutions.

Pending the consideration of the question by that court, it may be of interest to review the action taken by the lower Federal courts in disposing of the cases which have come before them. In every instance the trial courts throughout the country have been unanimous in holding the Selective Draft Law constitutional and therefore valid.

The following cases have already reached the Supreme Court of the United States: United States v. Arver, from the District Court of Minnesota; United States v. Alfred F Grahl, United States v. Wang-gerin, also from the same court; Charles E. Ruthenberg, Alfred Wa-genknecht, and Charles Baker v. United States, from Ohio; Louis Kramer and Morris Becker v. United States; Kramer v. United States; and Emma Goldman and Alexander Berkman v. United States, from the Southern District of New York.

Practically all of these cases involve the same questions as to the constitutionality of the Act, and the prosecutions were instituted by the Federal authorities either because the defendants had failed to register in accordance with the terms of the Act, or because they had conspired to aid, abet and induce others of draft age to refuse to present themselves for registration. In the case against Kramer and Becker, the defendants were indicted for conspiracy, together with four others. They moved to quash the indictment upon the ground that the Act was unconstitutional, alleging that it was in violation of the Thirteenth Amendment; that it was also violative of the First Amendment, because it granted exemptions to certain classes of religious sects, and that to obtain the advantages of these exemptions they claimed they
would be forced to join one of those churches; that it was contrary to
Section Eight of the First Article in that there was no present call of
the militia to execute the laws of the United States, and there was no
insurrection or invasion; that this was a raising of an army for more
than a period of two years, because Congress had raised money for a
period of thirty years, from which money the drafted men were to be
paid; and, lastly, that the Act constituted class legislation. The mo-
tion was denied and Kramer and Becker were convicted and sentenced.
From the ruling of Judge Mayer in the lower court they have brought
the case to the highest court of the land.

The Minnesota cases were all prosecutions for the failure to register
in accordance with the terms of the Act, as was also the individual case
against Kramer in New York. The one against Alexander Berkman
and Emma Goldman was for conspiracy. They conspired, according
to the indictment, by their speeches and pamphlets, to induce men of
draft age to refuse to register. They were both convicted and the
case is now before the Supreme Court, raising questions similar to
those presented in the other cases.

In a decision handed down on October 23rd last, the United States
Circuit Court of Appeals, sitting in New York, affirmed the constitu-
tionality of the law in what is said to be the first case to be considered
by a Federal court of appeals since the passage of the law. It was
the case of John Angelus, a subject of Austria, who sought an injunc-
tion against the members of a local draft board to restrain that board
from holding him for the United States military service. Angelus
instituted suit for the purpose of obtaining a review of the action which
the board had taken under the provisions of the conscription law. He
claimed that the law was unconstitutional and that therefore the
courts possessed the jurisdiction to enjoin the board from certifying
him for service.

The decision dismissing the bill was written by Judge Rogers, with
Judges Hough and Ward, the other judges of the court, concurring.
Judge Rogers stated at the outset that the Circuit Court of Appeals
entertained no doubt as to the constitutionality of the Selective Draft
Law, citing in support of this view the decision of the late Supreme
Court Justice Field, who, in an opinion rendered in 1871, upheld the
power of the Government to raise armies.

"This Court," said Judge Rogers, "has no doubt as to the constitu-
tionality of the Act of Congress. The Constitution, Article I, Section
8, expressly provides that the Congress shall have power to raise and
support armies, and to provide and maintain a navy, and to make rules for the government and regulation of land and naval forces.

"The purpose of the Conscription Act is to raise an army, and the right to raise it does not involve the exercise of an implied power, but one expressly granted. How can the courts deny to Congress a right which the Constitution in plain and distinct terms confers upon it?

"The Constitution in conferring the power upon Congress has not prescribed the mode in which the power shall be exercised. The power is conferred fully, completely and unconditionally. It is for Congress to determine the means by which the army be raised. It is left to its judgment whether it shall be raised by conscription. At the time the Constitution was adopted conscription was not an unknown mode of raising armies, but had been resorted to by governments throughout the world. If it had been intended that Congress should not have the power to raise anything other than a volunteer army, the grant of power would have been restricted and not unconditional.

"Conscription was resorted to by both sides during the Civil War, and the validity of the draft laws was upheld by the courts in the North and South."

The Court, concluding, held that the decision of the local and district boards was final when rendered within the scope of their jurisdiction, and after a fair hearing and in good faith, and that the courts have no power to review the action of those boards when the proceedings have been held in accordance with law.

A case in which the Act is very carefully considered is that of the United States v. Sugar et al., decided by the Federal Court for the Eastern District of Michigan on July 10th last, reported in 243 Fed. Rep., 423.

Maurice Sugar and others were indicted for conspiring unlawfully to aid and abet and procure persons to violate the Conscription Act. The case came for hearing before the District Court on a motion to quash the indictment. In an able decision written by Judge Tuttle the motion was denied.

The defendants attacked, among other things, the constitutionality of the Conscription Act on the following grounds:

(1) That the Act is contrary to the Thirteenth Amendment to the United States Constitution, which provides that:

"Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."
(2) That the Act constitutes class legislation.
(3) That the Act deprives the courts of the United States of the power to pass upon the exemptions provided for in said Act.
(4) That the Act vests in the President legislative and judicial powers.
(5) That the Act is not an exercise of any power conferred upon Congress by the Constitution, and is therefore void.
(6) That the Act calls out the militia for a purpose not authorized by the Constitution.

In declaring the first contention to be without merit, the Court said: "It certainly cannot be said that military service under the properly constituted authorities constitutes any form of slavery. There are many public duties which involve compulsory effort of various kinds. Familiar examples are found in the jury system, militia duty, enforced assistance in making arrests, and many other instances which will readily suggest themselves. Surely it cannot be seriously contended that the performance of such duties constitutes slavery or involuntary servitude within the meaning either of the spirit or of the letter of the Constitution."

As to the second ground, the Court said that Section 1 of the Fourteenth Amendment to the Constitution regarding class legislation applies only to actions by the State and imposes no inhibition against the Federal Government; and cited the cases of *Flint v. Stone Tracy Company*, 220 U. S., 107, 55 L. Ed., 389; and and *U. S. v. Adair* (D. C.) 152 Fed. Rep., 737. And that therefore the Conscription Act, exempting from military service certain classes of persons mentioned, is not invalid as class legislation, not being inhibited by any constitutional provisions.

The Act was held not to deprive the Courts of the United States of the power to pass on exemptions, because the exemption boards, if they be regarded as courts, are military courts, which Congress might create under its power "to make rules for the government and regulation of the land and naval forces." (Constitution, Art. I, Sec. 8.) The Court said:

"The powers exercised by these exemption boards are certainly as military in character as those exercised by the provisional courts established by the President during the Civil War in the territory of the enemy occupied by the Federal forces, and the duty of the Govern-
ment to establish such tribunals was in the language of the Supreme Court in *Grapeshot v. Wallerstein*, 76 U. S., 129, 19 L. Ed., 651, 'a military duty to be performed by the President as commander-in-chief.'"

The fourth contention was disposed of by the Court holding that the Act is not invalid as delegating to the President legislative or judicial powers, such power not being conferred on him or the exemption boards, the exemptions being defined by the Act, and the power merely being to determine the facts which will render applicable exemption provisions of the statute. The Court in this connection commented on the cases of *U. S. v. Moody* (D. C.), 164, Fed. Rep., 269; *Butfield v. Stranahan*, 192 U. S., 470, 48 L. Ed., 525; *Ex-parte Kolock*, 165 U. S., 526, 41 L. Ed., 813; *McCall's Case*, Fed. Cas. No. 8669; *Zakonaite v. Wolf*, 226 U. S., 272, 57 L. Ed., 218; *Union Bridge Co. v. U. S.*, 204 U. S., 364, 51 L Ed., 523.

Continuing, Judge Tuttle said: "I am clearly of the opinion that there is nothing in the Constitution which prohibits the enactment of this Conscription Act. I think the conclusion is irresistible that it is a proper exercise of the power conferred upon Congress to raise armies, and that the means adopted therefor are appropriate and plainly adapted to that end, and therefore fall within the implied powers conferred by the Constitution."

The Court commented also on the cases of *Fairbanks v. U. S.*, 181 U. S., 283, 45 L. Ed., 862; *McCall's Case*, supra; *Allen v. Colby*, 47 N. H., 544; and *Kneedler v. Lane*, 45 Pa., 238.

The last question raised, as to the calling out of the militia, was not controlling, because the matter cannot be questioned by a person not affected thereby; but the Court held that the Act in drafting the members of the National Guard into the military service of the United State does not call forth the militia as such, inasmuch as the section of the National Defense Act provides that the persons so drafted shall, from the date of their draft, stand discharged from the militia.

The question was also considered in the case of *Ex Parte Dostal*, 243 Fed. Rep., 664, decided on August 16th last, in which a Federal District Court in Ohio upheld the validity of the law. This case arose upon the application by Rudolph Dostal, upon behalf of John Hackenberg, for a writ of habeas corpus. He claimed that Hackenberg was being unlawfully restrained of his liberty by the military authorities,
who had placed him under arrest and who had charged him with the violation of the Fifty-fourth Article of War, relating to fraudulent enlistments. The question involved was whether Hackenberg, who had enlisted in the Ohio National Guard, had become a member of the Federal Army by virtue of the National Defense Act of July 2, 1917, and the Selective Draft Act.

In holding that Hackenberg had become a soldier in the United States Army by virtue of his company's taking the oath of Federal enlistment, and by virtue of the authority vested in the President by the Selective Draft Act to draft into the military service of the United States all members of the National Guard, the Court held that the Act was not unconstitutional, because it gave the President authority to draft compulsorily into the services of the United States all officers and enlisted men of the National Guard, inasmuch as Congress had authority to confer such power.

A decision which has received wide-spread publicity because it is so strikingly characteristic and forceful is that rendered by Judge Speer, in the case of Story and Jones v. Perkins, 243 Fed. Rep., 997, in the Federal Court for the Southern District of Georgia on August 20th last.

Jones and Story had been imprisoned under a commitment for failure to register as provided by the Act. They made application for a writ of habeas corpus on the ground that the Act under which they were imprisoned was unconstitutional, because it provided for "involuntary servitude" and for service "without the realm," and because Congress had no power to pass such a law and could not conscript the National Guard.

As to the contention that Congress had no power to pass the law, Judge Speer said: "Clause 11 of Article I, Section 8, of the Constitution, empowers Congress 'to raise and support armies.' This power is plenary. It is not restricted in any manner. Congress may summon to its army thus authorized every citizen of the United States. Since it may summon all, it may summon any. Said the Supreme Court in the Tarble's Case, 13 Wall., 408, 20 L. Ed., 601: 'Among the powers assigned to the national government is the power to raise and support armies. . . . Its control over the subject is plenary and exclusive. It can determine without question from any State authority how the army shall be raised, whether by voluntary enlistments or forced draft,
the age at which soldiers shall be received and the period for which they shall be taken, the compensation he shall be allowed, and the service to which he shall be assigned.’”

The Court held further that the right to remain within the realm was merely a common law right, and that no court of the United States has the power to declare an Act of Congress invalid because it is inimical to the common law.

To the argument that it was in fact a form of slavery, the Judge said: “Nothing could be more abhorrent to the truth, nothing more degrading to that indispensable and gallant body of citizens trained in arms, to whose manhood, skill and courage is and must be committed the task of maintaining the very existence of the nation and all that its people hold dear.”

Regarding the question of conscripting the National Guard, it was held that: “Since those petitioners are not members of the National Guard, in no event could their rights in this way be affected. But the National Army is not the Militia. An army is a body of men whose business is war. Burroughs v. Peyton, 16 Gratt., 475. The militia is ‘a body of men composed of citizens occupied temporarily in the pursuits of civil life.’” And that by virtue of Clause 17 of Article I, Section 8, Judge Speer held that Congress can pass all laws which are necessary and proper for carrying into execution all of the powers vested by the Constituion in the Government of the United States or in any department or officer thereof.

From the foregoing review of the decisions it is evident that the Federal courts in which the question has been raised are unanimous in holding the Selective Draft Law to be constitutional. It now remains to be heard by the Supreme Court of the United States, and their decision will be awaited with interest.

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THE CALL TO ARMS

The Law School began its fall term in October under conditions far different from those prevailing at the conclusion of the last scholastic year. The entrance of the United States into the world war has interfered with the studies of many members of the Law School as well as of the other branches of the University. As a logical result, the attendance has been considerably reduced in all classes and departments. As in former wars, Georgetown has sent its quota to the military and naval services, and it is confident that wherever their duty leads they will uphold the traditions of the University set by their predecessors who gave up their studies in former years to enter the service of their government. Up to the present time, three Georgetown men have lost their lives in the line of duty. To their families and relatives the LAW JOURNAL desires to express its sincere condolence.
WAR SERVICE BY FACULTY MEMBERS

Since the United States became involved in the present war, the Federal Government has honored the Faculty of the Law School in selecting several of its members for important war work of a legal character. Three members of the Faculty, Adolph A. Hoehling, Jr., F. Sprigg Perry and Jesse C. Adkins, were selected by the Provost Marshal-General as members of the Legal Advisory Board of the District of Columbia to organize the members of the bar of the District to aid the registrants under the selective draft law in the preparation of their questionnaires.

Prof. James S. Easby-Smith, lecturer in personal property, has entered the Judge Advocate General's Department as a major. He was assigned to assist Brigadier-General Enoch H. Crowder, Provost Marshal-General, in the preparation of the questionnaire and other matters connected with the selective-service law.

Professor Clarence R. Wilson, lecturer in Agency and Common Law Pleading, has been named Food Administrator for the District of Columbia upon the recommendation of Herbert C. Hoover, the Federal Food Administrator. Professor Wilson's duties will consist in carrying out the provisions of the Food Act recently passed by Congress.

Tench T. Marye, an instructor, has entered the marine corps.

A number of other members of the Faculty are engaged in war work of a confidential character.
NOTES.

NEGRO SEGREGATION—CONSTITUTIONALITY OF LOUISVILLE ORDINANCE REGULATING OWNERSHIP OF REAL ESTATE BY NEGROES—POLICE POWER.—In a unanimous decision handed down several weeks ago the U. S. Supreme Court held that the Louisville, Ky., negro segregation ordinance prohibiting negroes from purchasing real estate except in a certain part of the city was invalid as a violation of their constitutional rights as guaranteed by the Fourteenth Amendment to the Federal Constitution. The decision, which was handed down by Associate Justice Day, is the most recent opinion of the Court on the question of civil rights of negroes, and will invalidate similar ordinances in St. Louis, Baltimore and Richmond. The Louisville ordinance was held to be a valid exercise of the police power by the Kentucky Court of Appeals (165 Ky., 559). In reversing this decision the Supreme Court said:

"The authority of the State to pass laws in the exercise of the police power, having for their object the promotion of the public health, safety and welfare, is very broad, as has been affirmed in numerous and recent decisions of this Court. Furthermore, the exercise of this power, embracing nearly all legislation of a local character, is not to be interfered with by the courts where it is within the scope of legislative authority and the means adopted reasonably tend to accomplish a lawful purpose. But it is equally well established that the police power, broad as it is, cannot justify the passage of a law which runs counter to the limitations of the Federal Constitution; that principle has been so frequently affirmed in this Court that we need not stop to cite the cases."

After citing former decisions of the Supreme Court in civil rights cases, the decision continued as follows:

"That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control, and to which it must give a measure of consideration, may be freely admitted. But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges.

"It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution."
"We think that this attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the State, and is in direct violation of the Fundamental law enacted in the Fourteenth Amendment of the Constitution preventing State interference with property rights except by due process of law. That being the case, the ordinance cannot stand. *Booth v. Illinois*, 184 U. S., 425; Otis v. Parker, 187 U. S., 606.

"Reaching this conclusion it follows that the judgment of the Kentucky Court of Appeals must be reversed and the cause remanded to that court for further proceedings not inconsistent with this opinion."

A. L. G.

**Status of Suits by Alien Enemies.**—The question concerning the status of contracts affected by the declaration of war is now before our courts. It is a well recognized principle that an alien friend can sue and be sued—this is the code of the comity of nations. It has also been decided that an alien enemy if sued can defend the suit unhampered by the fact that he is an alien enemy. Both of these provisions are for the better execution of the laws of equity and justice—if an alien enemy has wronged one of our citizens he should atone for it; and no good reason can be advanced why suits by and against alien friends should not be maintained. Hence these two well established rules.

But now we come to another phase of the question. Can an alien enemy, during the state of war, successfully maintain a suit in our courts against an American citizen? It is held by the highest authorities that he cannot, and such decisions are based on financial reasons. For it is said if the alien enemy was permitted to prosecute his claim to judgment and recovered, the sum thus recovered by him would directly or indirectly inure to the benefit of the resources of the power of which he is a subject, then hostile to the country whose court he seeks. Again, it would take money out of circulation here, and thus cut off a certain amount of revenue which would otherwise be of a substantial benefit to our own Government. In other words, by such practice we would be hurting our own cause and at the same time aiding that of our enemy. So, for reasons of financial necessity, alien enemies are not permitted to sue American citizens during the period of hostilities.

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1 *Taylor vs. Carpenter*, 3 (Story) U. S., 458.
3 *Ware vs. Hylton*, 3 Dall. (U. S.) 199.
But it might be said that such prohibition frustrates the due process of justice; permits a wrong to go unrighted; is conducive of illegal transactions. However, another phase of all our protective laws takes care of such circumstances. The Federal Court for the Southern District of Georgia recently had before it the question of the status of a suit properly filed by an alien, who subsequently became an alien enemy on account of the declaration of war. The defendant moved to dismiss the case, and the plaintiff contended that the case should merely be suspended during the continuance of hostilities between the United States and Germany.

In this case a large German concern, which was an extensive cotton trader in the South and which had been doing business in America for several years, filed a suit to recover $18,802 from an American Company. This suit was duly instituted before the declaration of war, and was pending on the Federal docket when Congress declared that a state of war existed between the United States and the German Government.

The inhibition in such cases is only coextensive with the war. The rule is not for the purpose of defeating justice, but rather for the purpose of satisfying the exigencies of the time. And therefore it follows that a suit properly instituted while the court was open to the alien may be maintained only to the extent that it does not contribute to the strength of our enemy.

So in this case the court held that the progress of the suit was to be merely suspended while hostilities continued, to be resumed thereafter if necessary; thereby overruling the contention of the defendant that the cause should be discontinued. In its opinion the court said, “to do this (to dismiss the case) would not, in my judgment, accord with the spirit of our institutions nor with the spirit of our Government, which disclaimed hostilities to the German people when it proclaimed war in defense of freedom and a common humanity.”

In another recent case in New York, the court went still further and held that a company incorporated in the United States, but whose stockholders were entirely composed of citizens of Germany, is not an alien enemy in contemplation of law, and is therefore entitled to sue in the United States Courts.

G. W. A., Jr.

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6 Fritz Schultz, Jr., Co. vs. Raines & Co., 164 N. Y. Sup. 454 (June, 1917.)
Admission of Germans to American Citizenship.—During the days of actual warfare the question of naturalization comes before the courts in all its phases.\(^1\) Especially is this true in our land, which is justly termed the melting pot of nations. Aliens coming to our shores for freedom and the accumulation of wealth sometimes are loath to declare their intentions to become American citizens.\(^2\) And again many of them, after becoming declarants, fail through negligence to prosecute their claims to complete citizenship.\(^3\) In times of peace this is not so noticeable, for we have little reason to become interested in such cases; but with the formal declaration of war last April this phase of the law was brought home to us in all its varied aspects. Circumstances were uncovered that required the enlightened interpretation of the highest tribunals to settle. One case in California was brought to our attention which, being timely in the decision promulgated, calls for special notice.\(^4\)

In this case the question was squarely presented as to whether or not a citizen of the Imperial German Government, who had filed his petition to become a citizen prior to the declaration of war, can be admitted to citizenship in the United States. In other words, can a declarant subsequent to declarations of war complete the steps necessary to attain unqualified citizenship? The main issue in this particular case was whether or not the filing of a petition in writing prior to actual warfare is the application, or its equivalent, to become a citizen provided in the statute.

Parties interested in this suit had been residents of California for more than five years, and more than two years ago, prior to the declaration of war, had made declaration of their intention to renounce all allegiance to the German Government, and to become citizens of the United States. Since the severing of relations they proposed to take the oath provided for in the statute by which they would forever separate themselves from the dominion of the Kaiser. It was strongly argued that having failed to take advantage of the law during times of peace, they could not now, under the guise of patriotism, yet supposedly prompted by the exigencies of the hour, seek refuge under the protecting arm of real American citizenship. On the other hand, it was contended that they were merely taking steps to complete their former intentions, and that the state of existing war in no way prevented this;

\(^1\) *Minneapolis vs. Reum*, 56 Fed. 576.
\(^3\) *In re Moses*, 83 Fed. 995.
that they were not "alien enemies," but in reality, being declarants, were
in contemplation of law "partial citizens."

To preface the opinion of Judge Trippet, it is well to mention that
Section 2171 of the Revised Statute referred to prohibits alien enemies
from becoming citizens. This decision takes the declarants out of the
category of such aliens, as the court in this case admitted these Ger-
mans to American citizenship upon the due execution of proper statu-
tory steps. Judge Trippet, in a strikingly common-sense decision,
quoted several phrases of the President's War Message to Congress,
wherein the President had said, "We are, let me say again, the sincere
friends of the German people. We shall, happily, still have an oppor-
tunity to prove that friendship in our daily attitude and actions toward
the millions of men and women of German birth and native sympathy
who live amongst us and share our life. We accepted the gage of
battle for the ultimate peace of the world and for the liberation of its
people, the German people included." These ideas the court gave as
the basis of its decision, and thus several more loyal Americans were
enlisted in the cause of humanity.

G. W. A., Jr.

PHONOGRAPH RECORD AS EVIDENCE.—Almost every day the courts
are being confronted with novelties and inventions attempted to be in-
troduced as evidence. The courts are rightly zealous of their dis-
criminatory power in admitting evidence, and are sometimes loath to
allow certain things to go to the jury because they do not wish to set
a precedent.

When photographic copies of printed documents first came into use
and were offered as evidence, the courts were slow to admit them as
competent. Then we had the dictaphone being offered in criminal
cases, and it was some time before the courts thought it advisable to
place these in the category of admissible evidence. The telephone also
played an important part in revolutionizing certain rules of evidence.
At first when a witness offered to testify as to the identity of the party
with whom he carried on a certain 'phone conversation, this was ob-
jected to, and in many jurisdictions this objection found favor with the
courts. This testimony is now everywhere admissible where the party
so testifying can prove a certain familiarity with the voice in question
so as to be able to distinguish it from others.¹

All these phases of evidence come before the courts as the natural
result of our ever-increasing and expanding civilization; and the courts,

¹ People vs. Willeet, 92 N. Y. 29.
in following the trend of progress, have met the exigencies of the moment and have admitted this class of evidence.

Only recently a Michigan court had before it the consideration of admitting a most novel piece of evidence. In a suit for damages caused by the noises and disturbances from defendant’s trains, the plaintiff introduced in evidence a certain phonograph record which, when reproduced on a machine, would give forth the noises complained of. In this novel manner the plaintiff had recorded these disturbances, and then offered to “play” them for the benefit of the jury, thus bringing before them noises which mere words could not justly nor adequately describe.

The defendant railroad company objected on diverse grounds, stating that a view of the premises by the jury would be the proper and only method of introducing such evidence. And again that such evidence raised a strong presumption of fraud, as it had been taken without the knowledge of the defendant. For, claimed the company, the machine would record harsher sounds if placed close to the track than if it had been placed on plaintiff’s porch or in plaintiff’s house, and that the vibrations recorded on the blank would be stronger in accordance with the size of the needle used. Again defendant contended that if such device was to be offered notice of taking same should have been given to him so that he could have prepared to have a representative present at the making of the record.

The court after due consideration admitted the record in evidence, arguing that it was real evidence coming before the court in a somewhat novel form. For, the court said, photographs and charts are admitted after having proved their authenticity by placing on the witness stand those persons who made them. From such persons it can be learned the when, where and how of the method of reproduction. And so in this case witness was produced who made the record in question, testifying as to the locus in quo, circumstances and method of recording the sounds.

This case, on account of the novel situation it presents, has caused much comment in the recent law publications, and we join with them in supporting the decision made by the Michigan court.

G. W. A., Jr.

NOTES.

1 Bayne City, Etc., R. Co. vs. Anderson, 146 Mich. 328 (1917.)
2 Gerbarsky vs. Simkin, 36 Misc. (N. Y.) 195.
Espionage Act of June 15th, 1917.—A bill was filed to enjoin the postmaster at Thomson, Ga., from withdrawing the second-class privilege of mailing the "Jeffersonian," a newspaper published in that part of the country. The action complained of had been done in obedience to the order of Hon. A. S. Burleson, Postmaster General. The court realizing the importance of the question to be decided withheld a preliminary injunction, but granted a rule to show cause why the injunction sought should not be granted. From the affidavit of the Postmaster General filed therein it appears that he had personally inspected several issues of the "Jeffersonian," and that after a conference with the Attorney General, came to the conclusion that said publication was in violation of Section 3 of Title 1, of the Espionage Act, passed by Congress on June 15th, 1917, which is as follows:

"Whoever, when the United States is at war, shall wilfully make or convey false reports or statements with the intention to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies, and whoever, when the United States is at war, shall wilfully cause or attempt to be caused insubordination, disloyalty, mutiny, or neglect of duty in the military or naval forces of the United States, or shall wilfully obstruct the recruiting or enlisting services of the United States, shall be punished by fine," etc.

And more especially this publication was in direct violation of Section 12 of Title 12, which deals particularly with newspapers and periodicals. The provisions of this section are:

"Every letter, newspaper, etc., in violation of any of the provisions of this act is hereby declared to be non-mailable and shall not be offered for the mails or delivered from any postofficee, nor by any carrier."

Upon argument of the rule to show cause the complainants contended that the Espionage Act itself was unconstitutional, and that the constitutional right of a free press and free speech in and of itself gave them the right to publish their own opinions. But the court held that this contention might hold in times of peace, but that in times of war certain matters appearing in print, which would have the tendency to injure the cause of our Government in the war in which it is engaged, could not be tolerated. And since in the Espionage Act Congress had seen fit to make such publications non-mailable, it was in so doing acting within its constitutional rights, and the law there promulgated would be enforced. The only question left to determine was
whether or not the "Jeffersonian" was a publication in violation of this act.

The opinion in this case quotes several passages alleged to bring the publication within the act, of which the following excerpt is a fair sample, and which is sufficient to show that the editorial pen of the "Jeffersonian" had violated the law:

"I advise the conscripts to wait the decision of the United States Supreme Court, and not to be clubbed by the fact of conscription into enlistment. Once you volunteer and sign up you can be sent anywhere and the law can't help you."

Having declared the Espionage Act valid, and having determined that the "Jeffersonian" came within the provisions of the act, the court, in a most vigorous opinion, commingling true patriotism with a clear, equitable decision, said, in part:

"Had the Postmaster General longer permitted the use of the great postal system for the dissemination of such poison, it would have been to forego the opportunity to serve his country afforded by his lofty station. There is, moreover, an additional consideration of the weightiest character which causes the denial of such an injunction as is here sought. An application is made to an American court of equity to compel the postal authorities to contribute its mailing facilities for the furtherance and success of a propaganda against the nation as distinct as it is truculent and dangerous. Under the familiar rule in equity, such an application is addressed largely to the discretion of the court. It is to be determined by the conscience of the chancellor, and always with proper regard to the public welfare. This imports the country's welfare, and a party seeking this extraordinary remedy under a rule equally familiar must come into court with clean hands. Can one be said to come with clean hands when the policy, methods and efforts he would maintain may cause his hands to be imbrued in the blood of the demoralized and defeated armies of his countrymen? If by such propaganda, American soldiers may be convinced that they are the victims of lawless and unconstitutional oppression, vain indeed will be the efforts to make their deeds rival the glowing traditions of their hero strain.”

G. W. A., Jr.
RECENT CASES.

Review by Certiorari in the U. S. Supreme Court—Finality of Decision of Lower Court.

The United States Supreme Court handed down its first decision construing the Act of September 6, 1916, relating to writs of certiorari several weeks ago, laying down the rule that finality continues to be an essential for the review by certiorari provided by that Act. The opinion, read by Chief Justice White, in denying a petition for a writ of certiorari filed by W. L. Bruce, administrator, v. Wm. Tobin. In its decision the Court said:

"A railroad in whose service Tobin lost his life while actually engaged in carrying on interstate commerce, admitting liability under the Act of Congress, paid the conceded loss to his administrator. A father and mother, but no children or widow, survived. The father, the respondent, sued in the State court to recover half the amount as his share of the loss. Setting aside the action of the trial court rejecting the claim, but not specifically fixing the amount of the father's recovery, the Supreme Court of South Dakota directed a new trial to accomplish that result. Application for certiorari was then made by the petitioner on the ground that such decision involved questions under the Federal Employers' Liability Act, reviewable by certiorari under the Act of Congress of September 6, 1916, c. 448.

"The Act in question, although it deprived of the right of review by writ of error which had hitherto obtained in certain cases and substituted as to such cases the right of petitioning for a review by certiorari subjected this last right to the same limitation as to the finality of the judgment of the State court sought to be reviewed which had prevailed from the beginning under Section 709, Rev. Stat. Finality, therefore, continues to be an essential for the purposes of the remedy by certiorari conferred by the Act of 1916.

"It may be indeed said that although the case was remanded by the court below for a new trial the action of the court was in a sense final, because it determined the ultimate right of the father to recover and the general principles by which that right was to be measured. But that contention is not open, as it was settled under Section 709, Rev. Stat., Sec. 237, Jud. Code, that the finality contemplated was to be
RECENT CASES.

29


"There being no final judgment within the contemplation of the Act of 1916, the petition for a writ of certiorari is denied."

A. L. G.

CONSTITUTIONAL LAW—DUE PROCESS—LIQUOR LICENSE—REGULATIONS OF EXCISE COMMISSIONERS.

Petitioner applied for a writ of certiorari to review action of Commissioner of Excise in issuing order suspending petitioner's privileges under liquor tax certificates and prohibiting him from selling alcoholic beverages, under provisions of Chapter 521 of the Laws of 1917, empowering the Excise Commissioner, with the approval of the Governor, whenever in his opinion public safety requires it, and on application of the Mayor, to suspend privileges under liquor tax certificates during present war, in such parts of a city as are in proximity to camps, barracks or munition factories. Petitioner also requested restraining order, preventing enforcement of Excise Commissioner's order pending the hearing and determination on the writ.

Petitioner conducted a grocery store within the prohibited area and had a license to sell liquor to be drunk only off the premises.

The court said that while individuals in times of war must yield to the government, nevertheless the government must proceed lawfully, as no emergency justifies an act of lawlessness. Held, that under the New York Liquor Tax Law liquor tax certificates were obtainable as a matter of right if statutory requirements were met, and that the law conferred a property right on the owner of such a certificate which could not be taken away without compensation. The court further held that the statute empowering the Excise Commissioner to suspend the privileges of the owner of a liquor tax certificate was unconstitutioinal, because it attempted to delegate legislative power to the Excise Commissioner to in effect repeal the liquor tax law at present in operation. The restraining order asked for was granted. People ex rel. Doscher v. Sission, State Commissioner of Excise. (N. Y. Sup. Ct., Special Term, August, 1917), 166 N. Y., Supp., 781.
Telegraphs and Telephones—Duty to Furnish Change.

Plaintiff, a few minutes before his train was about to leave the Los Angeles station, tendered a telegram, directing that his mail be forwarded from New York, together with a $10.00 bill and one cent, to the operator. The operator refused to accept the telegram, saying that he had no change. Plaintiff then procured a $5.00 bill from his wife, being unable to get any change from the conductor or other persons on the train, and tendered the $5.00 bill and one cent, to which there was a similar refusal. Plaintiff thereupon brought suit against Telegraph Company for expenses of his wife and himself at a hotel in Colorado Springs while he was awaiting a response to a similar telegram which he had sent from there. The lawful charge for this telegram from Los Angeles to New York was $1.01.

Held, that the rules governing a technical “tender” are wholly inapplicable to the present case, which must be governed by the duties of a public service corporation, which are analogous to those of a common carrier. A public service corporation must be prepared to furnish change to a reasonable amount, which must be judicially determined with reference to amount, time and place. The amount tendered in this case was not unreasonable and judgment for plaintiff should be affirmed.

In this case Mr. Justice Lehman handed down a dissenting opinion, in which he said: “I can find no authority or reason for such a rule. In practically all * * * * cases (in which this rule has been applied) the question arose where a passenger endeavored to pay his fare when lawfully upon a street car, having entered with the intent of paying for his transportation and relying upon the custom of the conductor being able to make a reasonable amount of change. * * * * If under such circumstances the railroad company had the right to eject such a passenger, it would frequently constitute a real hardship and interfere unreasonably with the service that a carrier is expected to render. * * * * A telegraph office will, of course, ordinarily provide its operators with sufficient change to facilitate its business. * * * * but it has no reason to anticipate any particular hardship if any particular office has no change.” Dale v. Western Union Telegraph Co. (N. Y. Sup. Ct., July 1917), 166 N. Y. Supp., 740.

W. R. G.