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Constitutional Law (1959-1967)

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3. Hans Schmidt, a citizen and resident of the State of North Carolina, brought an action in the State of Virginia against George Voss, a citizen and resident of the State of Virginia, to enforce liability under a statute of the State of North Carolina which provides:

"Every owner of a motor vehicle operated upon a public highway shall be liable and responsible for death or injuries to person or property resulting from negligence in the operation of such motor vehicle in the business of such owner or otherwise, by any person legally using or operating the same with the permission, express or implied, of such owner."

At the trial the plaintiff's evidence disclosed that Voss, while in Danville, Va., loaned his automobile to Henry Yost without restriction upon its use and knowing that Yost intended to operate the automobile in the State of North Carolina, and that while operating the automobile in North Carolina, Yost negligently ran over Schmidt. At the conclusion of the plaintiff's evidence, Voss moved for summary judgment on the ground that any attempt to hold him liable by reason of the North Carolina statute for Yost's actions in that State would violate Federal constitutional guaranties. How should the court rule on this motion?

(CONSTITUTIONAL LAW) The motion should be overruled. North Carolina has the power to make reasonable laws as to who is entitled to use her highways and under what conditions. The laws are just as applicable to residents of North Carolina as to outsiders. Hence there is equal protection and due process. The Virginia court should give full faith and credit to the North Carolina law. See Young v. Masci, 289 U.S. 253.

4. In November of 1959, Perfect Investment Corporation was indicted in the U.S. District Court for the Eastern District of Virginia on the charge of having violated the income tax laws. On December 4th, the U.S. District Attorney caused a subpoena duces tecum to be issued commanding Arthur Rasmussen, the Secretary and Treasurer of the Corporation, to produce at the trial on December 14th all the books of account and other financial records of the Corporation for the year 1958. Rasmussen now consults you and confesses that the production of such records will disclose that, on three separate occasions during the year 1958, he embezzled corporate funds. He inquires whether he may successfully refuse to produce the records on the ground that such production will tend to incriminate him. What should you advise him?

(CONSTITUTIONAL LAW) I would advise him that he must produce the books. They belong to the corporation and not to him. Besides the embezzlement is a crime against another sovereign (the Commonwealth of Virginia) and the fact that one's testimony or acts may show him to be guilty of a crime against another sovereign will not prevent
2. In October of 1959, it was learned that large quantities of narcotics were being sold to school children in the City of Richmond. Several raids to discover the source of the narcotics were made by the police department through the use of search warrants, but such raids were unsuccessful, it being apparent that service of the warrants furnished sufficient advance warning to permit concealment of the drugs. In an effort to aid the police department, and because of growing public clamor, the Council of the City of Richmond enacted the following ordinance:

"The Chief of Police, and each of his duly appointed deputies, may enter any building without warrant or other process when having reasonable belief that there will be found therein narcotics possessed or placed contrary to law."

A few days after the enactment of this ordinance, the Chief of Police without warning forcibly entered the home of John Eaton, who had a lengthy criminal record and who was strongly suspected of being a ringleader in the sale of narcotics. However, no narcotics were found on the premises. Shortly thereafter Eaton brought an action against the Chief of Police in the Law and Equity Court of the City of Richmond to recover damages of $5,000, alleging that the defendant had been guilty of a trespass in violation of the City ordinance in defense of the action. Eaton then filed a replication alleging that the City ordinance was void because it violated the Fourth Amendment of the Federal Constitution relating to searches and seizures, and (b) because it also violated the Fourteenth Amendment of that Constitution.

How should the Court rule on each of the issues raised by Eaton's replication? (CONSTITUTIONAL LAW)

(a) The City ordinance does not violate the Fourth Amendment as that amendment is applicable to the federal government only. That government is bound by both the Fourth and Fifth Amendments, while the states are only bound by the Fourteenth Amendment. Hence the states have greater leeway than the federal government.

(b) The question here is whether the ordinance allows unreasonable, arbitrary, or grossly unfair search procedure. If it does not, it is valid; take one side or the other, and argue it through. An example of an argument for its validity is: "Society is vitally interested in the suppression of traffic in narcotics. The ordinance only allows a search without a warrant when there is reasonable belief that illegal narcotics are on the premises, and there was such a belief in this case. Experience has shown that it is not practical to suppress this crime if a few moments warning must be given. This is unlike the Supreme Court Baltimore Rat Case, in that, in that case, the ordinance allowed entry without a warrant for mere purposes of inspection. The rats would not disappear over night. In the instant case the ordinance is for the reasonable enforcement of the criminal law, and hence valid."

During the course of a strike at the Universal Union Suit Co., pickets were posted by the union at the various entrances to the plant. The plant, however, continued to operate with the assistance of approximately fifty per cent of its work force who had not joined the strike but stayed on the job, and of certain non-union people who were hired to replace the strikers. In an attempt to dissuade these workers from entering the plant and to induce them to join the strike, the pickets made statements to them before the entrance of the plant embracing obscene and insulting language.

Wilbur Rutabaga, the most vociferous of the pickets, was arrested and charged with violating Section 505 of the Code of Virginia, which reads:

"It shall be unlawful for any person singly or in concert with others to interfere or attempt to interfere with another in the exercise of his right to work or to enter upon the performance of any lawful vocation, by the use of force, threats of violence or intimidation, or by the use of insulting or threatening language directed toward such person, to induce or attempt to induce him to quit his employment or refrain from seeking employment."

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The defendants argued that this legislation is an abridgment of free speech and is invalid class legislation. Is this true? (CONSTITUTIONAL LAW) No. The statute is a reasonable exercise of the police power to carry out the public policy of this state on a controversial subject. There is no freedom of speech for obscenities and pure insults. See 191 Va. 857 on p.1824 of the Constitutional Law Cases of these notes.
2. A statute of one of the states of the Union, Code §1234, requires all persons who have been licensed by the state as lawyers, doctors, architects, engineers and ministers of the Gospel, and all persons who should thereafter apply for permission to practice those professions in the state, to make the following loyalty oath: 

"I, , do solemnly swear that I am well acquainted with the terms of Code §1234, and I have carefully considered the same; that I have never, directly or indirectly, done any of the acts that Section specifies and prohibits; that I will support the Constitution of the State; that I make this oath without any mental reservation or evasion and hold it to be binding upon me."

That statute further provides that any person licensed to practice any one or more of those professions in the state who shall refuse to take the oath shall lose his license to practice. The statute also provides that any person who thereafter continues to practice any one or more of those professions without taking the oath shall, upon conviction, be punished by a fine and imprisonment, and any person who shall take the oath falsely shall be guilty of perjury.

Mr. Script, who had prior to the enactment of that statute been licensed by the state as an ordained minister, consults you. He advises you that he believes he had, prior to the adoption of that provision of the statute, violated the terms of that statute, and he is unwilling to take the oath. He wishes to know whether the state has the right to take away his license as an ordained minister. What would you advise?

(CONSTITUTIONAL LAW) No. The act is invalid because it is ex post facto, a bill of attainder, and, so far as ministers of the gospel are concerned, violation of our policy of separation of church and state.

4 Dec. 1960

519.

In April, 1960, Barnhill was indicted by the grand jury of the United States District Court for the Eastern District of Virginia, for the armed robbery of the employees of Tidewater Federal Loan Company. Armed robbery of a Federal savings and loan association's employees is a capital offense by Federal statute. In May, 1960, Barnhill was indicted by the grand jury of the Corporation Court of the City of Norfolk for armed robbery of the employees of the Corporation Court of the City of Norfolk. Both indictments referred to the same occurrence.

In June, 1960, Barnhill was tried for the Federal offense and acquitted by the jury, after which Barnhill moved the Corporation Court of the City of Norfolk to dismiss its indictment against him. He assigned as grounds for his motion to dismiss (a) that a trial on the State indictment would be in violation of the Fifth Amendment to the United States Constitution, and (b) that his trial in the State Court would constitute a denial of due process to him under the Fourteenth Amendment of the United States Constitution. Assuming that there is no statute of Virginia governing the problem, how should the Court rule on grounds (a) and (b)?

(CONSTITUTIONAL LAW) (a) The Fifth Amendment is a restriction on the United States and not on any state so his motion to dismiss for this reason should be overruled. (b) Nor is there any violation of the Fourteenth Amendment. The act was a crime against the Commonwealth of Virginia also, and it is entitled to try him unless such trial is prohibited by some statute. See 359 U.S. 121. Note: Virginia has such a statute, to wit V1931-559.
2. The Constitution of State A. provides:
"No individual or corporation or association of any kind shall enter into any contract to exclude persons from employment because of membership in or nonmembership in a labor organization."
The Federal Railway Labor Act provides:
"Notwithstanding any other statute or law of the United States, or Territory thereof, or of any State, any carrier and a labor organization duly designated and authorized to represent employees shall be permitted to make agreements requiring, as a condition of continued employment, that within sixty days following the beginning of such employment all employees shall become members of the labor organization representing their craft or class."

The Brotherhood of Trackmen and the New York and Utah Railroad entered into an agreement requiring all trackwalkers employed by the railroad to join the Brotherhood within sixty days or lose their jobs. Is this provision of the contract valid in State A.?

(CONSTITUTIONAL LAW) Yes. By the United States Constitution the Congress has control over interstate commerce. Railroad labor is so closely tied to the operation of trains in interstate commerce that it is subject to regulation by Congress. The Constitution of the United States and laws passed by Congress pursuant to powers given the United States thereunder are the supreme law of the land regardless of state laws and state constitutions. See 335 U.S. 225.

1. An ordinance of the City of Alexandria, Virginia, reads as follows: "Any person who may desire to use the streets, lanes and other public places of the City for the purpose of soliciting contributions, or selling any articles or things for charitable or other purposes, shall first obtain a written permit from the Director of Public Safety so to do, and any person who so uses the said streets, lanes and other public places of the City without first obtaining a permit from the Director of Public Safety shall be liable to a fine of not less than ten nor more than one hundred dollars."

Collier Post, a member of a crew of salesmen selling subscriptions to three of the leading news magazines, was convicted in the Corporation Court of the City of Alexandria of selling subscriptions on the streets of the city without complying with the above ordinance and fined the sum of $100. He has appealed the conviction alleging that the ordinance under which he was convicted is an unconstitutional one because it violates constitutional guarantees respecting freedom of speech and press.

How should the court rule?

(CONSTITUTIONAL LAW) The court should rule in favor of Post. The ordinance is unconstitutional for two reasons: (1) The policy of the law and the legal principles which are to control the discretion of the administrative officer are not set forth. On its face, it delegates powers essentially legislative to an administrative officer, and gives to him arbitrary and capricious power to grant or deny a permit. (2) It violates § 12 of the Virginia Constitution which provides that "any citizen may freely speak, write and publish his sentiments on all subjects." The word "publish" means "to bring before the public for sale or distribution," subject, however, to reasonable police regulations with respect to traffic and the preservation of law and order. See 95 S 2d 657, 180 Va 113 at the bottom of p. 1837 of the Constitutional Law cases in these notes.
2. Assume that a statute of Virginia provides that: "It is unlawful for any motor vehicle dealer to sell or offer for sale any new motor vehicle unless he shall have a written contract or franchise with the manufacturer or authorized distributor or dealer of that particular make of new motor vehicle."

Assume also that the statute provides that a new motor vehicle is defined as a motor vehicle which has been titled thirty (30) days or less in other than its manufacturer's or dealer's name, and has not been driven more than 500 miles.

X Company of Norfolk applied to the Commissioner of Motor Vehicles to issue a license that would permit it to sell new motor vehicles. X Company has for several years had a well-established business in the City of Norfolk and maintains a well-equipped establishment, sales room and repair shop. Does it have a cause of action against the Highway Department?

(CONSTITUTIONAL LAW) Yes, it has a cause of action against the Highway Department. The Commonwealth has consented to be sued for breach of contract. The legislation in unconstitutional since the federal constitution prohibits any state from passing any law impairing the obligation of a contract. See U.S. Const. Article 1, section 10 of the Constitution of the United States.

17 October 1, 1962, the State Highway Dept., as authorized by statute, announced its plan to build a four-lane highway from Pulaski to Wytheville, via a tunnel through Pulaski Mountain. Bids were requested for the construction of the tunnel.

After considering the bids received, the Department accepted the bid of Tunnel Tubes, Inc., and a construction contract was duly entered into between the Department and the corporation. After Tunnel Tubes, Inc., had moved all necessary equipment to the site, but before construction was begun, the General Assembly at its 1962 session enacted a statute requiring that no existing or future agreement for the construction of highway tunnels should be valid unless approved by the Governor. Although the statute was general in its terms, it was enacted because of a clear showing that the tunnel to be constructed by Tunnel Tubes, Inc., was wholly unnecessary and would result in financial loss to the Commonwealth and its taxpayers in a sum exceeding $6,000,000. Shortly thereafter the Highway Department sought the Governor's approval of the contract with Tunnel Tubes, Inc. This was refused, and the Department promptly notified Tunnel Tubes, Inc., that it would not observe the agreement. Tunnel Tubes, Inc., now consults you and shows that its reliance on the agreement has caused it to incur expenses of $32,000, and that performance of the agreement will cause it to realize a profit of not less than $1,250,000. It seeks your advice on whether it has a cause of action against the Highway Dept. for breach of contract. What should your advice be?

(CONSTITUTIONAL LAW) Yes, it has a cause of action against the Highway Department. The Commonwealth has consented to be sued for breach of contract. The legislation is unconstitutional since the federal constitution prohibits any state from passing any law impairing the obligation of a contract. See U.S. Const. Article 1, section 10 of the Constitution of the United States.
The Legislature of the State of Tennessee enacted a statute providing that one who conspires with another to injure a person in his trade or business, and causes such injury, shall be guilty of a misdemeanor and punished accordingly. In June of 1962 the Attorney General of Tennessee wrote a letter to Tennessee Tobacco Packers Union, Local No. 303, charging it with violation of the statute and stating that he intended promptly to bring proceedings to prosecute Local No. 303 therefor. Local No. 303 has now sought an injunction in the United States District Court of Tennessee to prevent such prosecution, contending in its complaint that the statute, properly construed, is not applicable to labor union activities. The Attorney General has filed a motion seeking dismissal of the proceeding, asserting that whether the statute is applicable to the activities of labor unions is an issue which should be resolved by the courts of Tennessee. How should the District Court rule on the motion of the Attorney General?

(CONSTITUTIONAL LAW) The motion of the Attorney General should be granted. The meaning of state statutes is for the state to decide. If the state decides that the statute does not apply to labor union activities then there is no need for the federal courts to pass on the matter, and no federal question will be involved. See Harrison v. N.A.A.C.P. 360 U.S. 167.

The constitution of one of the states of the union had for many years contained a provision that directors of corporations were obligated to the creditors of the corporation for funds embezzled by its officers. During the existence of this provision an officer of a corporation in that state embezzled a large sum of money belonging to the corporation, thus leaving the corporation insolvent. The creditors of the corporation commenced an action against the directors to recover for their use the amount of the money embezzled. During the pendency of this action and before judgment was obtained the provision of the constitution fixing liability upon the directors for embezzled funds was repealed. Immediately following the repeal the creditors obtained a motion of the directors to dismiss the action. The supreme court of the state sustained the lower court, holding that the liability created by the provision of the constitution was not contractual but was merely penal. Upon appeal to the Supreme Court of the United States the creditors contended:

1. That the court was not bound by the holding of the state supreme court that the constitution did not give a contractual right; and
2. That the creditors' rights were protected by the Constitution of the United States.

Are the contentions of the creditors sound?

(CONSTITUTIONAL LAW) Yes, on the authority of Coombes v. Getz, 285 U.S. 434 (1932). Merely calling the provision "penal" is not enough to prevent it from being contractual as to the creditors who became such before the State Court decision. The holding as given by the Reporter in his headnote is in part as follows:

1. The right to enforce the liability was part of the creditor's contracts, perfected and fully vested before the repeal, and was protected by the contract clause of the Constitution and by the due process clause of the Fourteenth Amendment.
2. The so-called reserved power of a State over corporations and their shareholders cannot be used to destroy the vested rights of third persons or to impair the obligations of their contracts.
O'Line was denied a permit to erect a gasoline filling station by a municipal corporation in Virginia. The applicable ordinance of the city provided:

"The application for a permit will be filed with the Commissioner of the Revenue and by him presented to the Council for its approval or disapproval. If the application be approved, the Council shall, by ordinance, authorize the issuance of a permit, but if the application be disapproved, the Council shall, by ordinance, refuse to grant a permit."

By a suit filed pursuant to the declaratory judgment act O'Line attacked the action of the city council in denying him a permit upon the ground that the ordinance authorizing the council of the city to deny a permit was unconstitutional and void. How should the court rule upon the contention of O'Line?

(CONSTITUTIONAL LAW) The Court should uphold O'Line's contention. The ordinance fails to lay down any specific standards for the guidance of the council while it is acting in an administrative capacity. The council cannot validly grant or refuse to grant its approval at its whim. To allow others to operate filling stations and to refuse that privilege to O'Line is depriving him of the equal protection of the law. Note: If the matter involved is inherently dangerous to the public, or apt to be associated with crime (as in the case of pawnshops) or demands regulation for other legitimate reasons (as in the case of taxicabs) and reasonable standards are laid down by the law, then the privilege may be given to some and withheld from others. See 199 Va. 70 on p. 1383 of the Constitutional Law Cases in these notes.

3. Reeves, a resident of Bangor, Maine, was appointed to the office of notary public by the Governor of that State, and he appeared before the Secretary of the State for the purpose of receiving his commission. Assume that a statute of Maine provides as follows:

"A notary public being required to administer oaths, no person shall be issued a commission as a notary public of this State until he shall have first declared his belief in the existence of God."

Reeves refused to declare his belief in the existence of God, as a result of which the Secretary declined to issue his commission. Reeves instituted a mandamus proceeding in the proper court, seeking to compel the Secretary to issue him the commission, contending that the statute was unconstitutional as a violation of the First and Fourteenth Amendments to the Constitution of the United States. The Secretary urged that the statute was not unconstitutional as to Reeves, because he was not compelled to hold the office of notary public. How should the court rule?

(CONSTITUTIONAL LAW) Mandamus will lie. The First Amendment to the United States Constitution is applicable to the States through the Fourteenth. Hence we cannot have any kind of a state religion and a belief in the existence of God cannot be made a condition of holding any public office. See 367 U.S. 495.

4. The Constitution of State X required that every adult citizen be permitted to vote, subject to his qualifications to vote being first determined.

Boo, an illiterate beachcomber, was domiciled in State X but had never been registered to vote therein. His interest in good government having been awakened, Boo requested the voting registrar of his home county to register him so that he could vote in the forthcoming election. The registrar read to him a portion of the Constitution of State X, as follows:

"Every person presenting himself for registration shall, unless incapable solely because of physical impairment, be able to read and write any section of the Constitution of this State in the English language. It shall be the duty of each county registrar to administer the provisions of this section."

Boo was unable to read or write any parts of the Constitution, so that the registrar refused to register him. Boo instituted the proper proceeding in a court of State X, seeking to have the above requirement declared unconstitutional as a denial of the rights guaranteed him under the Federal Constitution.

How should the court rule?

(CONSTITUTIONAL LAW) The requirement that one must be able to read and write the English language (a literacy test that is fairly applied) is a reasonable requirement for the right to vote. The ability to read and write English is necessary for any intelligent choice of public courses of action. See 360 U.S. 495.
1. Safeway Trucking Company operated a freight line from Philadelphia, Pa., to Jacksonville, Florida. Richmond, Va., was a transfer point. Theft of liquor shipments occurred at the transfer terminal, and the manager complained to a F.B.I. agent, telling him that he suspected Tony Amato of being connected with them. A day or two later, the F.B.I. agent, in company with a Richmond policeman, saw Amato and a companion, Oranto, drive up to the rear of an apartment house and saw Oranto carry some cartons from the house to the car. The officers tried to follow the car, but lost it in traffic. However, they later saw it parked and saw Amato and Oranto get in it and drive off. The officers followed and again saw the car stop at the apartment house, and Oranto go in and come back out with three cartons which he placed in the back of the car. The officers drove up, placed both men under arrest and, upon searching the car, found two cartons of radios consigned from Philadelphia to Jacksonville, and one carton of clothes consigned from Alexandria, Va., to Richmond, Va. The officers took Amato and Oranto to police headquarters and there, after further investigation, found that all three cartons had been stolen. Oranto was indicted in the U.S. District Court on the charge of possessing the stolen radios and in the Hustings Court of the City of Richmond for possessing the stolen clothes. Oranto promptly moved both Courts to suppress the evidence as to finding the radios and clothes. How should each Court rule?

(CONSTITUTIONAL LAW) The evidence should be suppressed in both courts. The arrest was illegal because without probable cause Oranto had not even been suspected of criminal activity prior to this time. Riding in a car, stopping in the rear of an apartment house, picking up packages, driving away—these were all acts that were outwardly innocent. Since there was no lawful arrest, the principle that a reasonable search incident to an arrest is legal, has no application. Henry v. United States, 361 U.S.98, 80 S.Ct.166.

The fourth amendment prohibiting unreasonable searches and seizures is applicable to the states through the 14th amendment. Napp v. Ohio, 367 U.S.646.

2. The Board of Supervisors of Albemarle County adopted an ordinance dividing the county into six types of districts, one of which was classified as "Rural." A Board of Zoning Appeals was created and authorized to grant or deny applications for zoning and rezoning "as the Board sees fit, being guided by its opinion as to whether or not the proposed use would be desirable or advantageous to the neighborhood or the community or the county at large."

A property owner consults you first, as to whether the Board of Supervisors had the right to enact a zoning ordinance and, secondly, whether the quoted ordinance is valid. How would you advise?

(CONSTITUTIONAL LAW) (1)W15-968 expressly gives the governing body of any county the right to enact zoning laws if certain conditions are complied with. (2) This particular ordinance is an invalid delegation of legislative power. It fails to set up reasonably adequate standards for the guidance of the Board of Zoning Appeals. See 200 Va.637 on p.192d of the Corporation Cases in these Notes.

3. A Florida statute granted women an absolute exception from jury duty, based solely on their sex. The statute provided that women were not to be put on the jury list unless they had voluntarily registered for jury service. Flora Brow was indicted and tried before an all male jury for murder in Florida, and that jury returned a verdict finding her guilty of second degree murder. The record made in the trial court showed: (1) that the accused objected to the use of a jury panel that did not include women therein, claiming that the panel was the product of a statute which worked an unconstitutional exclusion of women for jury service; (2) that no women in the county where the indictment was returned and where the accused was tried had voluntarily registered for jury duty; and (3) that the accused killed her husband upon learning that her husband was guilty of infidelity.

On appeal the accused sought to obtain a reversal of the judgment of conviction upon the ground that the statute was unconstitutional. How should the Court rule?

(CONSTITUTIONAL LAW) The Court should rule that the statute is valid. Women are not arbitrarily excluded because of their sex. Any who wish to serve as jurors may voluntarily register for jury duty. The classification which gives this election to women is a reasonable one. See 368 U.S.57.
J. Richmond Iron, Inc., was engaged in Virginia in the manufacture, sale and distribution of reinforcing rods. It maintained no office outside of Virginia, but sold through a manufacturer's agent in New York, who sold on commission the products of Richmond Iron and other Companies. This agent solicited business in Pennsylvania personally by trips through that State. Orders received by the agent were submitted to Richmond Iron at its Virginia office, confirmed in Virginia and delivered FOB Richmond, Pennsylvania. Sought to impose its \\$$ sales and use tax based on products so received in that State, and sought to place the responsibility, under its statute, on Richmond Iron to collect the sales and use tax on all reinforcing rods sold in the manner indicated, making provision for reimbursement to Richmond Iron of a percentage so collected in payment for said collection. Upon Richmond Iron's refusal, suit was brought in the U. S. Court of the Eastern District of Virginia by the Commonwealth of Pennsylvania against Richmond Iron, Inc., to collect the tax.

Issue was joined to test the validity of the Pennsylvania tax in two particulars:

(a) Did it place an improper burden on interstate commerce, and

(b) Did it violate the due process clause of the Fourteenth Amendment of the Constitution? How ought the Court rule?

(CONSTITUTIONAL LAW) The Court should rule in favor of the Commonwealth of Pennsylvania. There is no greater burden placed on Richmond Iron, Inc. with respect to its Pennsylvania sales and the use tax than is placed on Pennsylvania sellers in Pennsylvania with respect to such sales and the sales tax. "Equality is its theme." Hence there is no improper burden on interstate commerce.

Nor is the due process of law clause violated. It is common practice to require taxes to be withheld by those in the best position to withhold. This makes for economy of collection and lessens evasion. Cooperation in such matters is an incident of good citizenship. See 362 U.S. 207.

1. The Virginia Alcoholic Beverage Control Act, a legislative enactment, provided that the transportation of alcoholic beverages within, into, or through the State was prohibited except in accordance with regulations adopted by the Alcoholic Beverage Control Board and empowered the Board to adopt such regulations as it deemed necessary to confine such transportation to legitimate purposes. Regulations were adopted providing that any alcoholic beverage over one gallon in quantity be transported within, into, or through the State should be accompanied by a bill of lading showing the consignor and consignee and the route to be traveled, which must be a direct route and adhered to, and that the consignee must have a legal right to receive the shipment at the stated destination.

Jack Daniels, a North Carolina Citizen, was apprehended in Virginia while driving a truck licensed in North Carolina, owned by J. T. S. Brown, a North Carolina citizen, and loaded with 280 gallons of legally manufactured whiskey. Daniels had a bill of lading naming a bona fide wholesaler in Dorsett, Maryland, as consignee and J. T. S. Brown in Carrollton, West Virginia, as consignee but not designating any route to be traveled in Virginia although the truck was, in fact, on the most direct route when apprehended. Under the laws of North Carolina, Brown could not lawfully receive such a shipment.

On these facts, Daniels was convicted, and the truck and cargo were confiscated under appropriate confiscatory statutes, Brown having intervened as owner of the truck and cargo. On appeal, appellants contended that the conviction and confiscation should be reversed on the grounds that:

(1) The law violated the rights of the appellants as citizens of North Carolina as it was extra-territorial in effect and was null and void insofar as concerning the rights of a non-resident to ship or receive alcoholic beverages not destined within Virginia, and

(2) That such regulations concerning transportation through Virginia constituted an undue burden on interstate commerce.

How should the appellate court rule on each of these contentions? (CONSTITUTIONAL LAW) Both contentions are without merit. The 21st amendment to the U.S. Constitution permits the states to regulate the sale and transportation of alcoholic beverages within the states and prohibits shipments into those states in violation of their laws. The regulations in the instant case are reasonably necessary to prevent local diversions of interstate shipments of liquor. The Virginia law only applies while the liquor is being transported through Virginia and hence is not extra-territorial. The burden on interstate commerce is one that is permitted by the 21st amendment. See 181 Va. 313.
James, Keer and Long executed and delivered their promissory note for $5,000 to Murray. The note was not paid at maturity and Murray instituted action thereon against the three makers. The Clerk of the Court issued and delivered to the Sheriff notices of the motion for judgment, and the Sheriff delivered one copy thereof to James in person on April 6, 1966; on the same day he mailed another to Keer, and next day seeing Long on the street said to him: "I have at my office a notice of motion for judgment for you to appear before the Circuit Court of Roanoke County within the next twenty-one days to answer on that note you gave Murray for $5,000. You have plenty of time to get a lawyer and defend the case, if you can. You had better attend to it; he might get judgment against you."

Neither James, Keer or Long appeared and judgment was entered against all three of them on the note on May 2, 1966.

James is insolvent and Keer and Long seek your advice on May 25th as to whether they can have this judgment set aside as to them or either of them.

How ought you to advise them? (CONSTITUTIONAL LAW) Both Keer and Long may set aside the judgment against them as they have a constitutional right to personal service of process upon them respectively. Va. Constitution §11; 4th Ed. Burke, §353; 205 Va. 927; 120 Va. 30.

German Douglas was placed on trial in the Hustings Court of the City of Richmond for the crime of murder in the first degree. After a lengthy trial, the jury returned a verdict of guilty and Douglas was sentenced to life imprisonment. From this judgment, Douglas was granted an appeal by the Supreme Court of Appeals. On the appeal it was held that the lower court had committed error in instructing the jury and the conviction of Douglas was set aside. Shortly thereafter, Douglas was again brought to trial in the Hustings Court on the same indictment. He defended on the ground that he was being placed twice in jeopardy contrary to the 5th and 14th Amendments, and moved that the case be dismissed. How should the Court rule on this defense? (CONSTITUTIONAL LAW) The Court should deny the defense. Where the accused successfully seeks review of a conviction, there is no double jeopardy upon a new trial. Further, even where there is a new trial after conviction because of error, it is not the sort of hardship to the accused that is forbidden by the 14th Amendment.

An ordinance of a City in Virginia controlling the granting or denial of permits for the erection of gasoline service station provides:

"The application for a permit shall be filed with the commissioner of the Revenue and by him presented to the Council for its approval or disapproval. If, upon consideration of the application, the Council finds that the public safety would be endangered by the filling station for which application is made, the Council shall, by ordinance, refuse to grant a permit."

After a hearing and consideration of an application for a permit, the Council of the City refused to grant a permit to Tex Phillips, not because service stations are inherently dangerous but because the facts considered by the Council showed that the public would be unnecessarily endangered if the service station were erected and operated. Phillips thereupon filed a bill in chancery attacking the constitutionality of the section of the foregoing ordinance under which the request was denied, and praying that the City be required to issue the permit. Should Phillips prevail? (CONSTITUTIONAL LAW & MUNICIPAL CORPORATIONS) Yes. A city council is empowered both to legislate and administrate; in passing upon a permit to erect a gas station it is acting solely in an administrative capacity. Notwithstanding the fact that a council is deemed to have acted reasonably in the exercise of its police powers and that every presumption is in favor of the validity of its acts, where there is no rule or standard present in the ordinance under which the council is to be guided in the exercise of its administrative powers, this presumption fails and the ordinance is void. 199 Va. 70.
3. Virginia Fruit Corporation, a Delaware corporation authorized to do business in Virginia, purchased insurance policies in Wilmington, Delaware, covering risks on its property located in Virginia. The insurance company issuing these policies was not a Virginia corporation, nor was it licensed to write insurance in Virginia. Taxes on the premiums paid under these policies were assessed against the Virginia Fruit Corporation under a Virginia statute providing that if any person or corporation shall purchase from an insurer not licensed in Virginia a policy of insurance covering risks within the state, other than through an insurance agent licensed in Virginia, such person or corporation shall pay a tax of 5% on the amount of the gross premiums paid by the insured. The Virginia Fruit Corporation consults you and inquires whether it may be required to pay the tax. What would you advise?

(CONSTITUTIONAL LAW) The Virginia Fruit Corporation is not required to pay the tax. Notwithstanding the provision in 15 USC §1012(a) that the insurance business "shall be subject to the laws of the several states what relate to the regulation or taxation of such business," such state regulation or taxation is to be kept within the limits of the due process clause of the Fourteenth Amendment. A state tax on premiums payable under a policy insuring property located within the state against loss or liability is invalid under the due process clause of the Fourteenth Amendment, where all the insurance transactions involved take place entirely outside the state, the insurers are not licensed to do nor do business in the state, the insured is a foreign corporation doing business in the state, losses under the policies are payable to the insured at its principal office in another state, and the only connection between the state and the insurance transactions is the fact that the property covered by the insurance is physically located in the state. 370 U.S. 451.