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Recent Cases

M. A. M.

RECENT CASES

CONDITIONAL SALES-ATTACHMENT-PROPERTY SUBJECT TO. The plaintiff sold a trailer to X under a conditional sales contract. Before all payments had been made but at a time when X was not in default, defendant sheriff levied on the trailer under a writ of attachment issued in a suit by Y against X. Plaintiff contended that the sheriff's seizure was unlawful, since the property was that of the plaintiff. *Held,* that while in this state such a contract gives the vendee no element of title either legal or equitable, he has an interest which is subject to levy. *Hess et al v. Starwich et al.,* 49 Wash. Dec. 456, 272 Pac. 75 (1928).

This case is one of first impression in this state, for while the court cites *Cunningham v. Long et al.,* 134 Wash. 433, 235 Pac. 964 (1925) that case was decided on a different basis and the point in question was not discussed. In the principal case the court does not state what is the nature of the vendee's "interest," which can be attached. That is a troublesome question, for in this state, the vendee under a conditional sales contract obtains no title either legal or equitable. *Holt Mfg. Co. v. Jaussaud et al.,* 132 Wash. 667, 233 Pac. 35, 38 A.L.R. 1312 (1925). But he does obtain some rights, and as to third persons, his right may be likened to that of a bailee. *Stotts v. Puget Sound Traction, Light & Power Co.,* 94 Wash. 339, 162 Pac. 519, L.R.A. 1917D, 214 (1917). He has the right of possession and the right to acquire title by complying with the terms of the contract, and this interest of the vendee is assignable. *Robbins et al. v. Milwaukee Mechanics Ins. Co.,* 102 Wash. 539, 173 Pac. 634 (1918) But is this interest property within the meaning of Rem. Comp. Stat. Sec. 518 (P. C. Sec. 7835), which says that: "All property real and personal of the judgment debtor not exempt by law, shall be liable to execution." It has been so held in respect to real property. A purchaser under an executory contract for the purchase of real estate has no legal or equitable title to the property, but he has a property interest *in the contract* which is subject to execution. *Casey et al. v. Edwards et al.,* 123 Wash. 661, 212 Pac. 1082 (1923).

It would seem, then, that we may best define the vendee's interest in personal property held under a conditional sales contract, as an indefeasible contract right (as long of course, as he is not in default). At common law, intangibles were not subject to execution or attachment. A corporate franchise is not subject to execution since it is intangible property which could not be delivered by the sheriff to the purchaser. *Ammant v. Turnpike Road* (Penn.), 15 Am. Dec. 593 (1825) But that rule has been changed by statutes similar to Rem. Comp. Stat. Sec. 518, above noted. An unliquidated debt is subject to execution, as it is property within the statute, which likewise includes stocks, bonds, choses in action, etc. It is no objection that the officer cannot take it into manual possession as he may take constructive possession. *Johnson v. Dalquest et al.,* 130 Wash. 29, 225 Pac. 817 (1924). A liquor license, though intangible, must be treated as property and passes to a receiver for the benefit of creditors. *Degginger v. Seattle Brewing & Malting Co. et al.,* 41 Wash. 385, 83 Pac. 898, 4 L.R.A. (N.S.) 626 (1906). A judgment, though intangible, is personal property within the meaning of the statute and is subject to levy and sale on execution, *Acme Harvesting Mach. Co. v. Hinkley et al.,* 23 S. D. 509, 122 N. W. 482, 21 Ann. Cas. 743 (1909), and so is the possessory right which the locator of a mining claim has, *Phoenix Mining & Milling Co. v. Scott et al.,* 20 Wash. 48, 54 Pac. 777 (1898) and the same as to a membership in a Chamber of Commerce which gave the member the privilege of conducting business on the floor of the chamber. *Wagner v. Farmers' Co-Operative Exch. Co.,* 147 Minn. 376, 180 N. W. 231, 14 A.L.R. 279 (1920). Had the rule in our state been similar to that of many jurisdictions, that the vendee under a conditional sales contract acquired an equitable title to the property, it would have simplified the problem. For under Rem. Comp. Stat. Sec. 518, unlike the rule at common law, equitable interests in personal property are subject to sale on execution. *Gordon et al. v. Hillman et al.,* 107 Wash. 490, 182 Pac. 574 (1919).

No matter on what theory we justify or seek to justify the decision in the principal case, it is undoubtedly right as a matter of policy. When we consider the vast amount of business done in this state by means of conditional sales contracts, it would be very unfortunate if this interest of the vendee, unquestionably an asset and often of substantial value, could not be reached by attachment or sale on execution.

M. A. M.

CONDITIONAL SALES—RIGHTS OF INNOCENT PURCHASERS—CONFLICT OF LAW. A corporation, resident of California, sold to a resident of California, an automobile on a conditional sale in which it was provided that the contract was to be forfeited if the car was removed from the state. The contract was not filed in California nor was it by law required to be. The buyer removed the car to Utah without consent, but while there made payments that were accepted by the vendor with knowledge of the removal. The car was then removed to Washington and one payment was accepted from there. The car remained in Washington but the contract was not filed there. The plaintiffs became purchasers from the vendee in Washington. *Held*, that as to these purchasers the sale was to be considered absolute. *Sound Industrial Loan Company v. Allyn*, 49 Wash. Dec. 31, 270 Pac. 295 (1928).

In the cases upon this subject a distinction is made between those cases in which the removal of the chattel is without the consent of the vendor and those in which the removal is with the consent of the vendor. If the removal is without the consent of the vendor· The great weight of authority is to the effect that a conditional sale of chattels good in the state where made and not recorded there because recording is not required, is good and enforceable, as against innocent purchasers, in a state to which the chattels are removed without the consent of the vendor, even though the registration of such conditional sale is required by the laws of the state to which the chattels have been removed. *Rodecker v. Jannah*, 125 Wash. 137, 215 Pac. 364 (1923) *Studebaker Bros. Co. v. Mau*, 13 Wyo. 358, 80 Pac. 151 (1905) *Parker-Harris Co. v. Stephens*, 205 Mo. App. 373, 224 S. W 1036 (1920) *Baldwin v. Hill*, 4 Kan. App. 168, 46 Pac. 329 (1896) *Goetschius v. Brightman*, 211 N. Y. S. 763, 214 App. Div. 158 (1925), affirmed in 245 N. Y. 186, 156 N. E. 660 (1927). A contra view is expressed by a few courts that hold that the law of comity is not permitted to operate within a state to the prejudice of its government in opposition to its settled policy or the interest of its citizens. *Sanger v. Jesse-French Piano and Organ Co.*, 21 Tex. Civ. App. 523, 52 S. W 621 (1899) *Chambers v. Consolidated Garage Co.* (Tex. Civ. App.) 210 S. W 565 (1919), and again in 231 S. W 1072 (1921) *Turnbull v. Cole*, 70 Colo. 364, 201 Pac. 887, (1921).

If the removal is with the consent of the vendor· that is, if the contract of the conditional sale is made in one state and consent is given to its removal to another, the contract is invalid as to the creditors of the vendee and the purchasers of the property in good faith in the latter state, unless the laws relative thereto in the latter state are complied with. *Corbett v. Riddle*, 209 Fed. 811, 126 C. C. A. 535 (1913) *David Bradley & Co. v. Kingman Implement Co.*, 79 Neb. 144, 112 N. W 346 (1907) *In Re Legg*, 96 Fed. 326 (1899) *Hervey v. Rhode Island Locomotive Works*, 93 U. S. 664, 23 L. ed. 1003 (1876) *Nat'l Cash Register Co. v. Paulson*, 16 Okla. 204, 83 Pac. 793 (1905). And in *Jones v. Northern Pacific Fish & Oil Co.*, 42 Wash. 332, 84 Pac. 1122 (1906) the same conclusion is reached in this state in the case of a chattel mortgage.

Though in the principal case the removal of the property was not with the consent of the vendor, yet the fact that he learned of it and made no objection is sufficient to put the vendor in the same position as one who has consented to the removal. The present case is therefore in accord with the weight of authority. O. H. M.

CONSTITUTIONAL LAW—PRICE FIXING—BUSINESSES AFFECTED WITH A PUBLIC INTEREST. A Tennessee statute the purpose of which was to fix the prices at which gasoline may be sold within the state *held*, uncon-

stitutional. *Williams v. Standard Oil Company of Louisiana, Williams v. Texas Company*, 73 L. ed. 141 (1929).

The right of the owner to fix a price at which his property shall be sold or used is an inherent attribute of the property itself. *State Freight Tax Case*, 15 Wall. 232, 21 L. ed. 146 (1872). As such it is within the protection of the due process of law clauses of the fifth and fourteenth amendments. *Carrollton v. Bazzetti*, 59 Ill. 284, 42 N. E. 837, 31 L. R. A. 522 (1896). The right to regulate the conduct of a business may be quite distinct from the power to fix prices. *Tyson & Bro.-United Theater Ticket Offices v. Banton*, 273 U. S. 418, 71 L. ed. 722, 47 Sup. Ct. 426, 58 A. L. R. ..... (1927). The right to fix the prices at which commodities may be sold exists only where the business or property involved has become "affected with a public interest." *Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77 (1876)

The meaning and the application of the phrase "affected with a public interest" is not definite. Affirmatively, it means that a business or property, in order to be affected with a public interest, must be such or be so employed as to justify the conclusion that it has been *devoted* to a public use and its use thereby in effect *granted* to the public. *Tyson & Bro.-United Theater Ticket Offices v. Banton, supra.* Negatively, it does not mean that a business is affected with a public interest merely because it is large or because the public are warranted in having a feeling of concern in respect of its maintenance. *Id.* p. 430.

The earliest definite decision on the subject is *Munn v. Illinois, supra*, which sustained the validity of an Illinois statute fixing the maximum charges to be made for the use of elevators and warehouses for the elevation and storage of grain. Again, a state statute, forbidding under penalty, creameries to purchase cream at higher prices in one locality than in other localities, after allowance for difference in costs of transportation, was held unconstitutional. *Fairmont Creamery Co. v. Minnesota*, 274 U. S. 1, 71 L. ed. 893, 47 Sup. Ct. 506, 52 A. L. R. 163 (1927). The business of an employment agent, while subject to regulation, is not affected with a public interest to the extent that prices may be fixed. *Ribnik v. McBride*, 277 U. S. 350, 72 L. ed. 913, 48 Sup. Ct. 545, 56 A. L R. 1327 (1928). The same thing is true of selling theater tickets, *Tyson & Bro.-United Theater Ticket Offices v. Banton, supra.* Prices at which water may be sold may be fixed by legislation where there is a virtual monopoly of the sale thereof. *Spring Valley Water Works v. Schottler*, 110 U. S. 347, 28 L. ed. 173, 4 Sup. Ct. 48 (1884). It is said that *German Alliance Ins. Co v. Lewis*, 233 U. S. 389, 58 L. ed. 1011, 34 Sup. Ct. 612, L. R. A. 1915C, 1189 (1914), marks the extreme limit to which the Supreme Court has gone in sustaining price fixing legislation. It was there held that the business of fire insurance was so far affected with a public interest as to justify legislative regulation of its rates.

As a matter of policy there is no doubt that the decision of the principal case is correct, for otherwise there would be practically no limit to the businesses which could readily be found to be affected with a public interest. J. E. G.

CONTRACTS—DELIVERY—INTENT OF MANUAL DELIVERY. The plaintiff offered to buy the defendant's apple crop and make an advance payment of $600. The parties agreed thereto and a written contract was prepared in duplicate, signed by both parties, but the plaintiff took his copy and walked away, having made no payment or tender of the $600. Defendant otherwise disposed of his crop and plaintiff brought this suit for non-delivery of the apples. *Held*, there was no delivery of the contract and it never became effective. There was a mere manual transition of the contract which does not constitute a valid delivery. *Garrison v. Anderson*, 49 Wash. Dec. 155, 270 Pac. 802 (1928)

This case raises the interesting question whether delivery is necessary to the validity of an ordinary written contract, which has received almost no attention from the text book and note writers.

It seems on principle that when a party suing on a contract is relying on a written contract, there must be some words or acts evidencing the

intent of the party signing it to be bound thereby. So, if the broad, liberal mean of the term "delivery" is understood, as some manifestation by word or act on the part of the promisor that the instrument is to be immediately binding, then it is correct to say that delivery is requisite to a written contract.

Certain cases have held that delivery is an essential to the validity of a simple contract. *Murrell v. American Railway Express Co.*, 207 Ky. 322, 269 S. W 293 (1924) *Morris v. Logan* (Tex. Civ. App.) 273 S. W 1019 (1925). And others have held that an ordinary contract may become effective without delivery. *Kinney v. Schlussel*, 116 Ore. 376, 239 Pac. 818 (1925) *Fitzgerald v. Metropolitan Life Ins. Co.*, 90 Vt. 291, 98 Atl. 498 (1916) 138 A. S. R. note 29, 30. But it is submitted that the cases agree on the general principles involved and disagree only on the definition of the term "delivery" for those holding delivery was not necessary meant the manual transition of the instrument, while those stating that delivery is necessary were referring to the intention of the party signing that the instrument should become effective. Accordingly, the mere physical act of transferring or retaining possession is not conclusive in determining the existency of delivery, for an instrument signed and retained in the possession of the promisor may become effective immediately, if the parties so intend. *Weaver v. Simmons et al.*, 15 Tex. Civ. App. 154, 38 S. W 1140 (1897) *Green v. Cole*, 103 Mo. 70, 15 S. W 317 (1891) *Gund v. Roulier* 108 Neb. 589, 188 N. W 185 (1922). And an instrument may be given to the promisee with the intention that it shall not become effective until the happening of some condition, and the contract is not binding until the happening of that condition. *Stroupe v. Hewitt*, 90 Kan. 200, 133 Pac. 562 (1913) *Ware v. Allen*, 128 U. S. 590, 32 L. ed. 563, 9 Sup. Ct. 174 (1888) *Reynolds v. Robinson*, 110 N. Y. 654, 18 N. E. 127 (1888) WILLISTON ON CONTRACTS, Sec. 634.

In conclusion, it may be stated that delivery is necessary to the validity of an ordinary written contract, but that "delivery" depends upon the manifested intention of the party signing the instrument as to the moment it shall beeome effective. L. P M.

GIFTS—DEPOSIT IN BANK—DELIVERY OF CHECK AS PASSING.—Krueger had made his home with the plaintiff for many years prior to his death. He required much care and nursing, all of which was supplied by the plaintiff, no payment being made therefor. In June, 1924, Krueger executed and delivered to the plaintiff in form a check on a bank reading as follows: "Pay to the order of Carrie Gostina $ After death, 10,000 Dollars." In 1925 Krueger made a will bequeathing his estate to his brothers and sisters. On Krueger's death, a claim presented by the plaintiff against his estate and based on the purported check was refused. In an action to establish the claim, *Held*, that a recovery should be allowed since the instrument was founded upon a consideration wherein one agreed to pay another a definite sum, and since it does not partake of a testamentary character simply because the time of payment is postponed until after death. *Gostina v. Whitham*, 148 Wash. 72, 268 Pac. 132 (1928).

The great weight of authority supports the proposition that one cannot make his own check or promissory note the subject of a gift so as to make it, in the absence of payment, enforceable by the donor or his representatives. *Pullen v. Placer County Bank* (Cal.), 71 Pac. 83 (1902) *Richardson v. Richardson*, 148 Ill. 563, 36 N. E. 608, 26 L. R. A. 305 (1893) *Thromorgton v. Grigsby*, 124 Ky. 512, 99 S. W 650 (1907) *Montpelier Seminary v. Smith*, 69 Vt. 382, 38 Atl. 66 (1897). A check payable at a future day does not have the effect to transfer the money of the bank on which it is drawn before it becomes due and is not a valid and completely executed gift. *Curry v. Powers*, 70 N. Y. 212, 26 Am. Rep. 577 (1877). A check does not operate as an assignment of funds. Neg. Inst. L. sec. 189; Rem. Comp. Stat. 3579.

The presence of a consideration, however, abrogates the conception of a gift, for a gift is a voluntary conveyance or transfer of property not founded on a consideration. *Lewis' Estate*, 139 Pa. 640, 22 Atl. 625 (1891).

Hence the court in the principal case deals with the proposition on the basis of ordinary contract, based on consideration of services.

Where services are rendered a decedent by one not a member of his family or enjoying a domestic relationship, the law implies a promise to pay therefor. *Harper v. Davis*, 115 Md. 349, 80 Atl. 1012, 35 L. R. A. (N. S.) 1026, Ann Cas. 1913A (1911) *In Re Griswold's Estate.* 113 Neb. 256, 202 N. W. 609 (1925).

And where a check is actually given in payment of services rendered and to be rendered, it has sufficient consideration to support it and make it collectable as any other contract no matter how denominated by the maker. *Foxworthy v. Adams*, 136 Ky. 403, 124 S. W 381, 27 L. R. A. (N. S.) 308, Ann. Cas. 1912A, 327 (1910).

The decision in the principal case is not predicated on the decision rendered in *Phinney v. State*, 36 Wash. 236, 78 Pac. 927 (1904), where the deceased in his last sickness gave to his friend a check upon his bank in another town and sent the check to that bank but due to miscarriage it did not reach that bank until the death of the donor. It was held that the check consituted a valid gift *causa mortis.* J. E. G.

INDEMNITY INSURANCE—POLICY INURING TO BENEFIT OF THIRD PERSON—CONDITION PRECEDENT.—A liability insurer was not notified by the insured of pendency of action for injuries, and a default judgment was rendered against the insured. The policy required insured to notify insurer of any such action. *Held*: Insurer was entitled to defend on merits in a suit brought against it by injured person as insured's judgment creditor. *Merriman v. Maryland Casualty Co.*, 147 Wash. 579, 266 Pac. 632 (1928).

A condition in a policy of liability insurance which requires the assured to give notice to the insurer of any claim for damages is a condition precedent to the right to maintain an action by the assured. *London Guarantee & Accident Co. v. Siwy*, 35 Ind. App. 340, 66 N. E. 481 (1903) *Barclay v. London Guarantee & Accident Co.*, 46 Colo. 558, 105 Pac. (1909). The rights of a party for whose benefit a promise is made must be measured by the terms of the agreement between the principal parties. *Melanaphy v. Fuller & Johnson Mfg. Co.*, 125 Iowa 719, 101 N. W 640, 106 Am. St. Rep. 332 (1904). Third party beneficiaries of contracts take subject to all inherent equities arising out of the contract as affecting the principal parties. *Fish v. First National Bank of Seattle*, 150 Fed. 524 (1907) *Dunning v. Leavitt*, 85 N. Y. 30, 39 Am. Rep. 617 (1881). Consequently the view taken by the Washington court in the principal case is in accord with sound legal principles.

The main case overrules dicta in *Finkelberg v. Continental Casualty Co.*, 126 Wash. 543, 219 Pac. 12 (1923) to the effect that the rights of a third party could not be affected, as against the insurer, through the failure of the assured to give notice to the insured as stipulated in the policy. H. A. O'N.

MASTER AND SERVANT — IMPLIED AUTHORITY — LIABILITY OF MASTER. Where the work of a servant, who was engaged in building a railroad cut, accidentally started a fire, *Held*, that the starting of a back-fire was within the scope of employment, where the back-fire was started to prevent the spread of the first fire. *Netherlands American Mortgage Bank v. Eastern Railway and Lumber Co.*, 148 Wash. 249, 268 Pac. 604 (1928).

The decision, while somewhat novel as to its facts, is in accord with established principles. It can be conceded that the servant had the authority to put out the fire accidentally set, and where it is the duty of the servant to extinguish fires found on the master's premises, the master is liable for injuries to third persons for the negligence of the servant in failing to extinguish the fire. *Baldwin v. Alabama and V Ry. Co.*, 96 Miss. 52, 52 So. 358 (1910). Where the fire, to be extinguished, required the setting of back-fires, and the servant has the authority to extinguish fires, he also has the authority to set back-fires, and the fact that he was negligent, or used poor judgment, or did it contrary to the master's orders, does not relieve the master of liability. *Gould v. Northern Pacific Railway*, 50

Minn. 516, 52 N. W 924 (1892). The general rule that an employer can be held liable for the negligent acts of his servant, providing that the acts of the servant were done in the course and scope of his employment, is too well established to be questioned. 39 C. J. 1265. The test is whether the injury complained of was committed by the authority of the master expressly conferred or fairly implied in the nature of employment and the duties incident to it. *Nussbaum, v. Traung Label and Litho Co.*, 46 Cal. App. 561, 189 Pac. 728 (1920) *Rawley v. Commonwealth Cotton Oil Co.*, 88 Okl. 29, 211 Pac. 74 (1922). As long as the servant has done some act in furtherance of the master's business, he will be regarded as having acted within the scope of his employment, although he may have exceeded his authority. *Ellinghouse v. Ajax Livestock Co.*, 51 Mont. 275, 152 Pac. 481, L. R. A. 1916D 836 (1915) It follows that where the use of fire was necessary in doing the master's work, or greatly facilitated the performance of the work, the use of fire can be considered as being within the scope of the servant's employment, so as to render the master liable for injuries to the property of a third person. *Cronkhite v. Whalen*, 111 Wash. 31, 189 Pac. 94 (1920) *Gould v. Northern Pacific Railway, supra.* C. P S.

PRINCIPAL AND SURETY—MISREPRESENTATION—CONCEALMENT OF MATERIAL FACTS.—Plaintiff contracted to buy from one Hugill a quantity of shingles and to advance a lump sum to Hugill against the purchase price, taking back Hugill's note for same upon which was to be credited forty-nine cents per thousand shingles delivered f. o. b. cars in addition to the price stipulated in contract. The whole of this agreement was conditioned upon Hugill's obtaining a bond securing the faithful performance of his contract. Hugill secured from plaintiff a delivery order for the shingles which did not disclose the terms of the foregoing contract, and with that order solicited the defendant surety company for the bond. After some inquiry as to Hugill's financial ability respondent executed the bond. Soon thereafter Hugill defaulted, and plaintiff brought suit on the bond. *Held*, that failure of plaintiff to disclose the terms of the entire contract and giving of the naked delivery order to defendant was a concealment of material facts sufficient to release the surety on the bond. *W I. Carpenter Lbr Co. v. Alex W Hugill*, and *Fidelity & Deposit Company of Maryland*, 48 Wash. Dec. 540. 270 Pac. 94 (1928)

As a general rule the relation of surety and creditor and principal debtor requires the highest degree of good faith between the parties. Epecially is this true in the case of gratuitous sureties who are favorites of the law· in such cases the slightest fraud is generally sufficient to annual the contract. *Griswold v. Hazard*, 141 U. S. 260, 11 Sup. Ct. 972, 35 L. ed. 678 (1891) *Magee v. Manhattan Life Ins. Co.*, 92 U. S. 93, 23 L. ed. 699 (1875). However, in the case of compensated sureties the rule of "strictissimi juris" does not apply, the view generally being taken that they are essentially insurers. *American Bonding Co. v. Spokane Bldg. & Loan Assoc.*, 130 Fed. 737, 65 C. C. A. 146 (1904) *Guarantee Co. of N. A. v. Mechanics Savings Bank & Trust Co.*, 80 Fed. 766, 26 C. C. A. (1897).

By the overwhelming and uniform weight of authority unless the obligee creditor is under some duty to speak and fully disclose all information to the surety as to the debtor's liability on the contract or undertaking, or knows of a non-disclosure of material facts, on the latter's part, mere fraud, misrepresentation or even active concealment on the debtor's part cannot be imputed to the creditor and will not excuse the surety Especially is this true in the case of a compensated surety. *Oregon National Bank v. Gardner* 13 Wash. 154, 42 Pac. 545 (1895) *Molin v. New Amsterdam Casualty Co.*, 118 Wash. 208, 203 Pac. 8 (1922) *National Surety Co. v. Becklund*, 169 Minn. 177, 210 N. W 882 (1926) *First National Bank v. Phillips*, 203 Iowa 372, 212 N. W 678 (1927) *National Union Fire Insurance Co. v. Peck* (Tex), 296 S. W 338 (1927) *Fidelity & Deposit Co. of N Y v. Glenn*, 3 F (2nd) 913 (1925) *School v. Gilman* (Mass.), 160 N. E. 889 (1928). See also note, 8 A. L. R. 1485, and cases there cited.

Standing nakedly upon the principle that a concealment from the surety of material facts of the obligation existing between the creditor and the

debtor will release the surety, the principal case is no doubt correctly decided and in line with the practically unanimous holding of the authorities. However, aside from a reference to the sufficiency of the findings of the trial court, the case unfortunately leaves the reader in the dark as to the grounds on which the surety was exonerated, viz., whether the creditor (1) had a duty to disclose, (2) was guilty of wilful misrepresentation or non-disclosure, or (3) had reasonable grounds to believe that the debtor had used the delivery order to defraud the surety which would suggest collusion between the debtor and creditor. E. U. D.

BOOK REVIEWS

THE LEGAL EFFECTS OF RECOGNITION IN INTERNATIONAL LAW. By John G. Hervey, Philadelphia; The University of Pennsylvania Press, 1928, pp. 170.

In this handsome and readable volume, the author deals with the legal effects of recognition in international law as interpreted by the courts of the United States. It includes as its chapter headings the following: an introduction; preliminary considerations; recognition by political departments; juristic status of unrecognized governments; the retroactive effect of recognition; recognition and legal capacity; extraterritorial operation of acts of recognized and unrecognized governments; and a conclusion. In addition, there is a table of cases, a selected bibliography, and an index.

Seldom has the reviewer had the privilege of examining a book of this sort which has so much to commend and so little to criticize. To be sure, there are interpretations of some of the upwards of 200 cases analyzed and discussed by the author which are open to some question. But the question lies in the interpretation, where there is ample and legitimate room for difference of opinion. The handling of the cases, the statement of facts, and the summary and digest of the decisions are uniformly accurate. Moreover, the conclusions of the author are well reasoned.

The study is devoted essentially to the recognition question as interpreted by the courts of the United States. This restriction of the study is made clear in the title page; but the impression might prevail that it treats of the general legal effects of recognition. It is an unfortunate tendency to limit studies in international law to American sources and American practice. This is so from two standpoints. First, it gives some support, although unconscious and unintended, to the proposition, advanced in some quarters, that there is a distinct system of American international or public law. Of course these is no such thing, either for the United States, or for the western hemisphere. Then investigators and readers should think in terms of a general international law, applicable to the whole of the international society. Would it not be better, for example, to take a section of the recognition question, and to carry it through all international law sources, including the court decisions of the leading nations of the world?

The study, while not comparative, has positive merits. The author, while bearing in mind the relation of his study to the other parts of the recognition question, has kept his subject and his goal steadily in mind. The recognition problem is one of policy, of practice, and of law. Goebel's *Recognition Policy of the United States*, while not down to date, is a satisfactory account of the recognition policy of the government. There is no book on the practice of recognition, and one is needed. The book under review supplies the need for a volume on the law of recognition. International law, particularly in schools of law and in graduate courses, should more and more distinguish between what is policy, what is practice, and what is law. And especially in the United States, the law depends upon the decisions of the courts. In international law, what the Supreme Court has said is binding until it chooses to speak again. It is time to insist on the proposition that investigations in policy or practice belong to the field of international relations, whereas studies in international law are peculiarly legal studies. In this respect, Mr. Hervey's study is all it should be.

The attitude of the government of the United Steates toward the Soviet