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Constitutional Law (Tyson v. Banton, 47 S.Ct. 426 (1927))

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S. W. 740 (1905). Thus where the debtor has been lulled into a feeling of false security by the statements of the defendant, the latter is estopped from setting up the statute of frauds because the instrument was not in writing. Combs *v.* Little, 4 N. J. Eq. 310 (1843), 40 Am. Dec. 207. In view of the strict scrutiny of this class of case by the New York courts, it is doubtful whether the instant holding would be supported in New York. But it is clearly established in this jurisdiction that where the parties stand in close confidential relations, an abuse of confidence produced by fraud will move a court of equity to grant relief. Wood *v.* Rabe, 96 N. Y. 414 (1884); Goldsmith *v.* Goldsmith, 145 N. Y. 313, 318, 39 N. E. 1067 (1895); Leary *v.* Corvin, 181 N. Y. 222, 228, 73 N. E. 984 (1905).

CRIMINAL LAW—LARCENY.—The defendant was the tenant of an apartment under a lease, the term of which had expired, but the right of occupation and possession continued under statute. He inserted an ad in a newspaper offering to sub-rent by month or year. The complaining witness answered the ad and paid the defendant a sum which represented the agreed rental, but did not receive possession either on the day when the contract was made or any other time. The defendant continued to run the ad. The indictment contained two counts. The first charged obtaining money under false pretenses and the second with larceny by trick and device. The first count was dismissed and the defendant was found guilty on the second. *Held,* that the evidence was insufficient to support the indictment charging larceny by trick and device. Judgment reversed and indictment dismissed, two judges dissenting. People *v.* Noblett, 244 N. Y. 355 (1927).

For a discussion of the principles involved see supra, page 176.

CONSTITUTIONAL LAW—The action was brought to test the constitutionality of sec. 167-174 of the General Business Law of New York which forbade the resale of theatre tickets at an advance of more than 50 cents above the printed price. The case was heard by a special Constitutional Court below and the decree dismissing the bill was brought to the Supreme Court for review. *Held,* the act is unconstitutional in that it deprived the plaintiff of property without due process of law. Decree reversed and injunction granted. Tyson *v.* Banton, 47 Sup. Ct. 426 (U. S. 1927).

In this case the Supreme Court holds unconstitutional a statute of the State of New York fixing the resale price of theatre tickets by so called brokers to fifty cents above the price printed on the ticket. Other features of this statute had already been upheld by the court. See Weller *v.* New York, 268 U. S. 319 (1926). It follows that the only difficulty with the statute was that it attempted to fix prices. This the majority said can not be done in an industry not affected with a public interest. The majority reaffirm Lord Hale's proposition concerning industries affected with a public use but leaves wide open the discovery of a method of ascertaining which industries can be included under that head. It must appear therefore that the ultimate solution to the problem is to be found by the judicial method of inclusion and exclusion. The dissenting judges divide into three classes. Mr. Justice Stone points out that the statute does not necessarily fix prices but can

be interpreted as a condition attached to the license of the theatre ticket brokers. Mr. Justice Sanford does not see how the fourteenth amendment is in the way of the constitutionality of this statute. Mr. Justice Holmes with whom Mr. Justice Brandeis concurs feels that the entire distinction between industries affected with a public interest and industries not so affected is meaningless and that the real distinction is between regulations with and regulations without compensation.

INJUNCTIONS—STRIKES IN INTERSTATE COMMERCE—The defendant is a national association, divided into a number of locals. The plaintiffs for a number of years worked under agreements with the general union. Because of certain demands, these agreements were not renewed and the plaintiffs organized a union of their own. The defendants then issued an order, by virtue of their constitution, whereby no member of the association shall cut, carve or fit any material that has been cut by men working in opposition to the association. The plaintiffs seek to have the enforcement of this provision restrained. The case was dismissed in the lower court and comes up on appeal. *Held,* the order is in violation of the Anti-Trust Act inasmuch as it restrains interstate commerce. Judgment reversed and injunction granted. Bedford Cut Stone Co. *v.* Journeymen Stone Cutters' Asso. of North America, U. S. Sup. Ct. Oct. 1, 1926, No 412, 71 L. Ed. 581 (1927).

For a discussion of the principles involved see supra, page 189.

BANKS AND BANKING—PRINCIPAL AND AGENT—Plaintiff gave a power of attorney to his son to make, sign, indorse, deposit, draw and deliver checks and other orders for the payment of money on two New York City banks. The son, prior to the issuance of this power of attorney, had an individual account with one of the banks, the defendant in the action. Shortly after the issuance of the power, the son began to draw a series of 21 checks, either payable to his own order or to that of the defendant, signed "C. H. Cohan by C. H. Cohan, Jr., his Attorney." Each of these checks were deposited in the personal account and to the credit of the agent. All but two checks had been certified by the drawee bank before deposit. More than a year after the last of the series had been drawn, deposited and paid, plaintiff ascertained of the withdrawals from his account and of the crediting of the same to his agent's (son) account. The checks had been expended for purposes unknown and not beneficial to the plaintiff. *Held,* that the plaintiff was able to recover inasmuch as the defendant bank was charged with notice by the form and face of the instruments themselves as to the purpose for which the agent was drawing the checks, and where a bank of deposit permits a depositor to unlawfully apply the funds of another if it has notice which would lead a reasonable man to suspect wrong, and facts to either verify or dispel that suspicion, it is responsible for the consequences of its act. Judgment affirmed. Cahan *v.* Empire Trust Co., 9 Fed. (2d) 713 (C. C. A. 2d, 1926).

The rule enunciated above, if an agent's bank receives for deposit, to the personal account of the agent, checks drawn by the agent to his own order on the principal's fund, that bank is, by the checks themselves, charged with notice that the agent is wrongfully