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DECISIONS IN COMMERCIAL LAW.

THE QUEEN V. THE HEREFORD RAILWAY Co.—Where money is granted by the legislature and its application is prescribed in such a way as to confer a discretion upon the Crown, no trust is imposed enforceable against the Crown by petition of right. The appellant railway company by petition of right that by virtue of 51 and 52 Vic., ch. 91, the Lieutenant-Governor-in-Council was authorized to grant 4,000 acres of land per mile for 30 miles of the Hereford Railway; that by an order-in-council dated 6th August, 1888, the land subsidy was converted into a money subsidy, the 9th section of said statute enacting that "it shall be lawful," &c., to convert; that the company completed the construction of their line of railway relying upon the said subsidy and order-in-council, and built the railway in accordance with the Act and the provisions of the Railway Act of Canada, and they claimed to be entitled to the sum of \$49,000, balance due on said subsidy. The Crown demurred on the ground that the statute was permissive only, and by exception pleaded *inter alia*, that the money had been paid by order-in-council to the sub-contractors for work necessary for the construction of the road; that the president had by letter agreed to accept an additional subsidy on an extension of their line of railway to settle difficulties, and signed a receipt for the balance of \$6,500 due on account of the first subsidy. The petition of right was dismissed by the Exchequer Court, and on appeal the Supreme Court of Canada decided that the statute and documents relied on did not create a liability on the part of the Crown to pay the money voted to the appellant company enforceable by petition of right. Two of the judges dissented, but held that assuming it did create a liability, the letter and receipt signed by the president of the company did not discharge the Crown from such obligation to pay the subsidy, and payment by the Crown of the sub-contractors' claim out of the subsidy money, without the consent of the company, was a misappropriation of the subsidy.

THE UNITED STATES V. THE BERDAN FIRE-ARMS MANUFACTURING COMPANY.—Where the

officers of the Government having charge of the manufacture of muskets used a patent improvement thereon, with the permission of the patentee and his assignee, and with the understanding that the Government would pay for such use as for other private property which it might take, although they had no authority to agree upon the price, such assignee can recover for the same against the Government in the Court of Claims, according to the Supreme Court of the United States. The statute of limitations is a bar to any recovery for the use of the patented invention prior to six years before the action was commenced. Where the actual use by the Government of the device covered by patent was upon no understanding that any sliding scale existed by which the price should be reduced as the number increased, or that the manufacture was to continue for any specified time, or that any particular number of muskets containing the device were to be manufactured, and with no other agreement or understanding than that a reasonable price should be paid therefor, no time for payment being named, payment is due for each article as it is delivered. The question of a reasonable royalty is a question of fact to be determined by the Court of Claims, and its determination as expressed in its findings is conclusive upon this court, unless from other findings it is apparent that there was error.

UNITED STATES V. KNIGHT CO.—The Act of Congress of July 2nd, 1890, to protect trade and commerce from unlawful restraints and monopolies, only authorizes the circuit courts to prevent and restrain violations of the Act in respect of contracts, combinations or conspiracies in restraint of interstate or international trade or commerce, and does not authorize that court to restrain or prevent contracts and acts of defendants which relate exclusively to the acquisition of the sugar refineries, and the business of sugar refining in a State, and which bears no direct relation to commerce between the States, or with foreign nations; that trade or commerce might be indirectly affected is not enough.

POSTAL TELEGRAPH CABLE CO. V. ADAMS.—A State has the power to levy a charge upon a foreign telegraph company doing business within the State, and also doing interstate business, in the form of a franchise tax, but arrived at with reference to, and graduated according to, the value of its property within the State, and in lieu of all other taxes, and the exercise of that power by a State statute, held by the highest judicial tribunal of the State to be in harmony with the State constitution, does not amount to a regulation of interstate commerce, nor put constitutional restraint thereon, according to the Supreme Court of the United States.

HOOPER V. STATE OF CALIFORNIA.—According to the Supreme Court of the United States the right of a foreign corporation to engage in business within a State other than that of its creation, depends solely upon the will of such other State. The exceptions to this rule embrace only cases where a corporation created by one State rests its right to enter another and to engage in business therein upon the Federal nature of its business. The business of insurance does not generally appertain to interstate commerce. A State has the power to exclude foreign insurance companies altogether from her territory, whether they were formed for the purpose of doing a fire or marine business.

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