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## Constitutional Law—Due Process of Law—Compulsory Education Statutes

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point the Federal Bills of Lading Act (39 Stat. 542, 44 U. S. C. 102) virtually adopted, in section 22, the former minority view imposing liability on a carrier whose agent issued a bill of lading without all or any part of the goods having been delivered to it. The Uniform State Bills of Lading Act, similar on this point to the Federal act, has been adopted by the following states: Arizona, California, Connecticut, Delaware, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin, Alaska, and the Philippine Islands.

The Federal court below found for the carrier, arguing that the Bills of Lading Act did not cover a situation in which the employee's act was entirely in furtherance of selfish motives. *Seaboard Air Line R. v. Gleason* (C. C. A. 5, 1927), 21 F. (2d) 883. The Supreme Court, however, notes no difference between this situation and the one in which the employee's default is actuated by other sinister motives or by negligence. This view represents the general weight of authority. *Planters' Rice-Mill Co. v. Merchants' Nat. Bank* (1887), 78 Ga. 574, 3 S. E. 327; *McCord v. Western Union Telegraph Co.* (1888), 39 Minn. 181; *Lloyd v. Grace* (1912), A. C. 716, 5 B. R. C. 498. The Supreme Court does not base liability on the apparent or implied authority of the agent to issue the bill of lading, for he had no such authority. The forgery was entirely outside the master's business. The carrier is held liable on the apparent authority of the agent to tell plaintiff whether or not the goods had arrived. But section 22 of the Bills of Lading Act applies to the carrier whose agent had the actual or apparent authority to issue the bill. This decision expands the rule as laid down in the Bills of Lading Act to take in a new and slightly different situation.

B. L. W., '31.

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CONSTITUTIONAL LAW—DUE PROCESS OF LAW—COMPULSORY EDUCATION STATUTES.—Complaints were filed by the State of New Hampshire against the named defendant and others, charging in each case a failure to cause a child of defendant to attend public or approved private schools, as required by Public Laws 1926, c. 118, secs. 1, 2. The defense was that in each case the child was being taught by a private tutor in his own home in the studies required to be taught in the public schools to one of his age. The Supreme Court of New Hampshire held the statute not unconstitutional as against the guaranty of liberty in the Fourteenth Amendment to the Constitution of the United States. *State v. Hoyt* (N. H. 1929), 146 Atl. 170.

The constitutionality of general compulsory education statutes, requiring children between certain specified ages to attend schools, has been affirmatively determined. 35 Cyc. 1122; 24 R. C. L. 621; Ann. Cas. 1912A, 373; *State v. Bailey* (1901), 157 Ind. 324, 61 N. E. 730; *State v. Jackson* (1902), 71 N. H. 552, 53 Atl. 1021. Likewise, compulsory vaccination statutes have been rather universally upheld, as have statutes penalizing parents and

custodians for failure to cause children to attend school as required in states where such vaccination statutes are in force. *Jacobson v. Mass.* (1905), 197 U. S. 11; *Zucht v. King* (1922), 260 U. S. 174; *Barber v. School Board of Rochester* (N. H. 1926), 135 Atl. 159.

The power of the state over education has been somewhat limited, however, by recent decisions of the Supreme Court of the United States. A prohibition of teaching the German language to children under fourteen, unless they have completed eighth grade work, was declared to be an infringement of the guaranty of liberty found in the Fourteenth Amendment to the Constitution of the United States. *Meyer v. Nebraska* (1923), 262 U. S. 390; *Bartels v. Iowa* (1923), 262 U. S. 404, Holmes and Sutherland JJ. dissenting. In Hawaii a statute containing regulations of private foreign language schools attended by children who at the same time were compelled to attend public schools was held to abuse the privileges and immunities of citizens, and to deprive them of liberty and property without due process of law. *Farrington v. T. Tokushige* (C. C. A. 9, 1926), 11 F. (2d) 710. And an Oregon statute requiring all children to attend the public school was declared invalid for a like reason. *Pierce v. Society* (1925), 268 U. S. 510.

Justification of the decision in the principal case is made on the theory of the state's power to require attendance at schools and reasonably to regulate all schools. In the *Pierce* case, *supra*, it was said that there was no question raised as to "the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare." Citing the above quotation, the New Hampshire court maintains (p. 171) that under the interpretations of the Federal guaranty of liberty, so far as it has been declared, "it appears that attendance at some school may be required and that the state may supervise the school attended. The power to supervise necessarily involves the power to reject the unfit, and to make it obligatory to submit to supervision. The local statute does not go beyond these requirements." It is not sufficient that equivalent unsupervised instruction be given. The authorities, as understood, "do not deny the power of the state to insist upon an approval of the proposed substitute for public school attendance."

No court decision attempts to lay down the conditions which constitutionally may be provided as prerequisite to the state's approval of private schools. The extent to which such supervision may be carried remains to be determined by future decisions. That the state may demand institutional education but may not demand that the institution be public or that it refrain from teaching foreign languages—these guide posts are all that have as yet been established. The decision in the principal case seems reasonable as well as in accord with authority; for state supervision of home training would manifestly be impossible.

C. V. E., '31.