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Constitutional Law—Delegation of Legislative Power—Permitting President to Increase or Decrease Rates of Duty

"The intention . . . is a vital part of the contract." And *Brotherhood of Railroad Trainment v. Adams* (Mo., 1928), 5 S. W. (2d) 96, 98, sets out the rule that parties may agree that their contract be governed by the laws of a certain state or country, and that such contracts will be recognized and enforced in other states, notwithstanding the fact that contrary rules of law may prevail in the state asked to enforce the obligation.

In conclusion, if any prediction may be made as to Missouri's position on what law should govern contracts made in one state, performable elsewhere, it is that the law of the place of making will govern, unless we find an expression of a contrary intent. Missouri does not purport to adopt the autonomy doctrine, although the results of its decisions tend in that direction. In fact, the principal case quotes from the Restatement, which decidedly rejects the autonomy doctrine and rather follows the view that the law of the place of making (*lex celebrationis*) should govern. But as noted before, it ties a string to the Restatement rule, in adding "absent proof of a contrary intention of the parties," which virtually has the effect of repudiating the very rule set forth. D. A. M., '29.

CONSTITUTIONAL LAW—DELEGATION OF LEGISLATIVE POWER—PERMITTING PRESIDENT TO INCREASE OR DECREASE RATES OF DUTY.—Plaintiff company made an importation of barium dioxide which the collector of customs assessed at a rate higher than that fixed by statute, the rate having been raised by proclamation of the President issued by virtue of Sec. 315 of Title III of the Tariff Act of September 21, 1922, 42 Stat. 858, 19 U. S. C. 154-156. *Held*, Congress did not unconstitutionally delegate its legislative power by imposing upon the President the duty of determining with the aid of advisers, differences in cost of production here and abroad and making such increases and decreases in rates of duty as were found necessary to equalize costs of production. *Hampton & Co. v. U. S.* (1928), 72 L. Ed. (Adv.) 448, 48 S. Ct. 448.

A legislative body may not delegate its powers, but may authorize an executive officer to carry out legislation which it has adopted. The *Aurora v. U. S.* (1813), 7 Cranch 382, 3 L. Ed. 378; *State of Minnesota ex rel. Railroad and Warehouse Commission v. Chicago, M. & St. P. Ry. Co.* (1888), 38 Minn. 281, 37 N. W. 782. In the latter case the court states: "The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and the conferring an authority or discretion to be exercised under and in pursuance of the law."

In *United States v. Grimaud* (1911), 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480 the legislative power was held not to be unconstitutionally delegated to the Secretary of Agriculture by the Forest Reserve Acts making criminal the violation of the rules and regulations covering forest reservations, made and promulgated by him under authority of those statutes. In *U. S. v. Stephens* (1918), 247 U. S. 504, 62 L. Ed. 1239, 38 S. Ct. 579 it was held that the Selective Draft Act of May 18, 1917, declaring the President authorized to raise an army was not a delegation of the power vested in Con-

gress to raise an army but merely to commit to him execution of its scheme. In *Marshall Field & Co. v. Clark* (1892), 143 U. S. 649, 36 L. Ed. 294, 12 S. Ct. 495 a statutory provision was held constitutional which authorized the President to suspend free importation of specified products if a foreign country did not deal reciprocally. Such statutes are based on the impracticability of legislative action on details, and the necessity of adjustments to maintain established principles in the face of varying conditions.

But the legislature, in invoking the aid of the executive, must not leave too great a field for the exercise of executive discretion. Thus an act empowering the director of agriculture to declare oranges unfit for shipment when frosted to the extent of endangering the reputation of the industry has been held void as delegating to an administrative officer the legislative power of determining what acts or omissions of an individual are unlawful. *Ex parte Peppers* (1922), 189 Cal. 682, 209 P. 896. In *Tarpey v. McClure* (1923), 190 Cal. 593, 213 P. 983 it was held that the creation of a water storage district is a legislative act, performance of which may not be delegated by the legislature to an executive or judicial officer. The statute or ordinance must not purport to vest arbitrary discretion in the executive, but must prescribe definite rules for his guidance. *City of Shreveport v. Herndon* (1925), 159 La. 113, 105 S. 244; *Tarpey v. McClure, supra.*

It is to be noted that the statute in the principal case outlines certain rules of decision to guide the executive, and does not leave to him arbitrary discretion in executing the law. It therefore has solid basis in constitutionality as not being a delegation of legislative power. S. E., '30.

CRIMINAL LAW—KIDNAPPING—INTENT.—A divorce decree awarded custody of a minor child to her stepmother, and later the husband, who was the father of the child by a former marriage, not knowing of the decree, took the child and carried her away. *Held,* that such taking out of the custody of the person having lawful charge of the child without the consent of such custodian, and with the intent to detain and conceal the child, is sufficient to sustain an indictment for kidnapping; and that the fact that the defendant had no personal knowledge of the decree awarding the custody of the child only can be evidence that the defendant did not intend to detain or conceal the child from the person having lawful custody, and if he did so intend it would be no defense if he did not know that the custody of the child had been awarded to the stepmother. *State v. Taylor* (Kans., 1928), 264 P. 1069.

At common law kidnapping was defined as the forcible abduction or stealing away of man, woman, or child from his own country and sending him to another. 4 Blackstone COMMENTARIES 219. The definition has been modified so that the carrying away need not be to another country. *State v. Rollins* (1837), 8 N. H. 550. Kidnapping is false imprisonment, coupled with the idea of abduction. *Click v. State* (1848), 3 Tex. 282. The general rule is that a parent who takes his own child can never be guilty of kidnapping unless he takes this child without the consent of a person to whom the child's custody has been awarded by the decree of a competent