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CORPORATIONS—FOREIGN—ACTION AGAINST—FENNE—BOYER v. NORTHERN PAC. RY. CO., 66 Pac. 826 (Idaho).—*Held*, that a foreign corporation doing business in a state does not acquire a fixed residence in that state by designating an agent upon whom process may be served as required by statute.

This case well illustrates the development of corporation law. In the former case of *Easley v. Ins. Co.*, 38 Pac. 405, which is here expressly overruled, it was held that a foreign corporation could acquire a fixed residence within the state for the purpose of suing and being sued. This was also the conclusion in *N. T. v. Southern Pac. Ry. Co.*, 47 Fed. 297. But as shown in *Shaw v. Mining Co.*, 145 U. S. 444 and the recent case of *U. S. v. Schotter* 110 Fed., XI Y. L. JOUR. VFD the better opinion now is that a foreign corporation cannot acquire such residence in another state.

CORPORATIONS—UNPAID SUBSCRIPTIONS—RIGHTS OF CORPORATION CREDITORS.—HAWKINS v. DONNERBERG, 66 Pac. 691 (Or.).—A subscription agreement specified that the capital stock should be paid for within a definite time but more than six years had elapsed without payment. *Held*, that the creditors of the corporation could not enforce the liability of stockholders for unpaid subscriptions after the corporation's right to collect such subscriptions had become barred by the statute of limitations.

This conclusion rests on the theory forcibly stated in *So. Carolina Mfg. Co. v. Bank of State*, 6 Rich. Esq. 227, that as against the shareholder the creditor's only equity is to be subrogated to the rights of the corporation. Hence, if the rights of the corporation are lost or their action barred, the creditor is without remedy. But the celebrated case of *Wood v. Drummer*, 3 Mason 308, Fed. Cas. No. 17,944, and those following it, as *Payne v. Bullard*, 23 Miss. 88, are not in accord with this view. This latter line of decisions supports the more equitable doctrine that unpaid stock subscriptions constitute a trust fund held by the stockholders for the payment of the debts of the corporation.

CRIMINAL LAW—ACCUSATION OF CRIME—FAILURE TO DENY—EVIDENCE—PEOPLE v. AUGUR, 66 Pac. 794 (Cal.).—Defendant, after his arrest, was brought to the bedside of the decedent, who identified him as the man who shot him. The defendant fully understood the accusation but made no reply or denial. *Held*, that though defendant was under arrest, evidence of such failure was admissible.

This conclusion cannot be accepted as good law. In other states it has been held that silence of a person under arrest when accused of crime is not admissible as evidence against him, as such a person is not free to speak. It was so held in the leading case of *Com. v. Kenney*, 12 Metc. (Mass.) 235, and this has been followed not only in Massachusetts but in Texas, Missouri and other states.

CRIMINAL LAW—FORMER JEOPARDY—DISCHARGE OF JURY—WAIVER—SILENCE OF PRISONER—EX PARTE GLENN, 111 Fed. 257 (W. Va.).—Where a prisoner was once tried for felony by a regularly impaneled jury, which failed to agree and was discharged by the Court without the prisoner's consent or objection and without any actual necessity being shown, *held*, that the prison-

er's failure to object did not constitute a consent to the jury's discharge, and that a retrial was unconstitutional, being in violation of the fifth amendment.

There seems to be a diversity of opinion as to when and under what circumstances a disagreement by a jury will bar a second trial. Some courts hold as in the present case in regard to waiver of a constitutional right. *Caucemi v. People*, 18 N. Y. 129; *State v. Hodkins*, 35 W. Va. 250. But in *People v. Curtis*, 76 Cal. 57, and *Morgan v. State*, 3 Sued (Tenn.) 475, it is held that where the record does not show a discharge of the jury to have been without the prisoner's consent, it will be presumed that the discharge was with his consent. As to what constitutes a sufficient necessity and in what cases a judge may use his discretion in discharging a jury without barring a second trial see the following: *Williams v. Com.*, 44 Am. Dec. 403; *Page v. State* 3 Ohio St. 229; *Com. v. Townsend*, 5 Allen 216; *State v. Honeysutt*, 74 N. C. 391; *People v. Jones*, 48 Mich. 554; *Green v. State*, 10 Neb. 102; *Bishop's Criminal Law*, Sections 1033-36.

EJECTMENT—TENANT OF LIFE TENANT—MORTGAGEE.—BARSON ET AL. V. MULLIGAN ET AL., 73 N. Y. Supp. 262.—Life tenant of certain premises leased them to defendants who also purchased an overdue mortgage covering the same. On death of life tenant, plaintiffs, the reversioners, without paying the mortgage, brought ejectment to recover possession from defendants. *Held*, defendants having gone legally into possession have right to remain as mortgagees in possession, until their mortgage is paid. Van Brunt, P. J., and Hatch, J., dissenting.

The position of the Court is that consent of mortgagor or judgment upon the mortgage are not essential to constitute a party, a mortgagee in possession under the lien theory. *Winslow v. McCall*, 32 Barb. 241. Yet possession must in every case originally be lawful. *Russell v. Ely*, 2 Black (U. S.) 575. The decision is sound in reason even if it lacks precedent; as the dissenting judges assert. *Phyfe v. Riley*, 15 Wend. 248.

EQUITY—JURISDICTION—POLITICAL QUESTIONS—ENJOINING VIOLATION OF NEUTRALITY RIGHTS.—PEARSON V. PARSON, 108 Fed. Rep. 461 (La.).—Private persons asked for a bill to enjoin the shipment from a port of the United States of alleged military supplies destined for use by Great Britain in the war with the South African Republics. *Held*, that the questions involved are entirely political, and can be dealt with only by the executive branch of the government.

The complainants contended that by reason of the declaration of the treaty of Washington of May 8, 1871, relative to the "Alabama claims," in which it was declared that: "A neutral government is bound not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms," they were entitled to invoke the equity powers of this court to prevent such use. The court said that there was nothing in this treaty, when its history and purposes were considered, which would warrant the belief that the United States insisted upon inserting therein a new principle of international law. It is a well established principle of international law that private citizens of a neutral nation can lawfully sell