Conflict of Laws—Negotiable Instruments—Negotiation by Forged Indorsement in Foreign Country—[U.S.].—The United States Veterans' Bureau drew a check on the Treasury of the United States payable in the District of Columbia to X of Jugo-Slavia. Although the check was properly addressed and mailed, another person acquired possession of the check, forged X's indorsement and presented it to a Jugo-Slavian bank, which cashed it in good faith without notice of the forgery. In due course the defendant bank having innocently acquired the check for value, presented it to the Federal Reserve Bank, as United States fiscal agent, and received credit. On discovery of the forgery the United States sued defendant for the amount paid as money paid under a mistake. Under the law of the District of Columbia where the check was both drawn and payable, the indorsee acquires no title by virtue of the forged indorsement; but under the law of Jugo-Slavia, as stipulated, a *bona fide* holder for value without notice acquires a good title despite the forged indorsement. *Held*, for defendant. The validity of the negotiation of an instrument brought into a country with the consent of the owner is governed by the law of that country; Jugo-Slavian law applies. *United States v. Guaranty Trust Co.*, 55 Sup. Ct. 221 (1934).

The obligation of a negotiable instrument is generally regarded as embodied in the instrument so that a transfer of the instrument transfers the right to collect the debt. See *Spears v. Wilson Sewing Machine Co.*, 50 Mich. 535, 15 N.W. 894 (1883); Bigelow, The Law of Bills, Notes and Checks (Lile's 3d ed. 1928), § 4; Norton, Bills and Notes (4th ed. 1914), 19. Consequently, when a negotiable instrument has been negotiated in a foreign country, the courts, influenced by this doctrine, hold that the person to whom the payor is liable is determined by the law governing the negotiation, rather than by the law governing the promise. This identity of the obligation with the instrument further led the courts to regard the negotiation of an instrument as analogous to the transfer of a chattel and, hence, to apply to negotiation a rule similar to that governing the transfer of chattels: that the effect of negotiation is determined by the law of the place of the instrument at the time of the negotiation. The English courts took this view before the Bills of Exchange Act (45–46 Vict. c. 61 (1882)). *Trimbey v. Vignier*, 1 Bing. (N.C.) 151 (1833); *Bradlaugh v. De Rin*, L.R. 3 C.P. 538 (1868), L.R. 5 C.P. 473 (1870). An exception was made, however, in the case of inland bills of exchange, a bill drawn in England on an English drawee, and accepted in England, so that the indorsee acquired good title by an indorsement which was valid under the laws of England though invalid under the law of the place of the instrument at the time of the negotiation. *Lebel v. Tucker*, L.R. 3 Q.B. Cas. 77 (1867). Although § 72 of the Bills of Exchange Act, 45–46 Vict. c. 61 (1882), provides that the formal validity and interpretation of an indorsement are not to be determined by the law governing the obligation of the payor or drawer, the Act gives no rules as to the acquisition of title to the instrument. Nevertheless, the subsequent English cases continued to apply the same principle to the transfer of a negotiable instrument in a foreign country and to hold that a transferee, especially an indorsee, may acquire a good title to the instrument, even though the transfer would be invalid under the law governing the obligation of the payor or drawee. *Alcock v. Smith*, [1892] 1 Ch. 238; *Embericos v. Anglo-Austrian Bank*, [1905] 1 K.B. 677; *Koechlin v. Kestenbaum*, [1927] 1 K.B. 889. See Dicey, Conflict of Laws (5th ed. 1932), 705, rule 172; Falconbridge, The Law of Banks and Banking (4th ed. 1929), c. 52, §§ 3, 4.

The few American cases take the same view, *McClintick v. Cummins*, Fed. Cas.

No. 8, 699 (C.C. Ind. 1843); *Clanton v. Barnes*, 50 Ala. 260 (1873); *Yeatman v. Cullen*, 5 Blackf. (Ind.) 240 (1839); see *Brabston v. Gibson*, 9 How. (U.S.) 263 (1850); *Direction der Disconto-Gesellschaft v. United States Steel Corp.*, 267 U.S. 22 (1924). But where the indorsement of an instrument payable in New York was invalid under the law of the place of the instrument at the time of the negotiation but valid as tested by the law of New York, the indorsement was held sufficient to give the indorsee a valid claim against the maker, the court, however, expressing doubt as to whether the indorser acquired a claim against the indorsee. *Everett v. Vendryes*, 19 N.Y. 436 (1859). Even though § 72 of the Bills of Exchange Act has no counterpart in the Negotiable Instruments Law, it would seem that the American courts are justified on common law principles in reaching the same result as the English cases.

Modern writers favor the rule under which the acquisition of title to the negotiable instrument and the debt embodied therein is governed by the law of the situs of the instrument. Goodrich, Conflict of Laws (1927), 363; Lorenzen, Conflict of Laws Relating to Bills and Notes (1919), 140; Restatement, Conflict of Laws (1934), §§ 52, 262. This rule is all the more desirable since it is identical with that of the Geneva Convention on the Conflict of Laws as to Bills of Exchange of June 7, 1930, art. 3 and 4 (see Hudson and Feller, The International Unification of Laws Concerning Bills of Exchange, 44 Harv. L. Rev. 333 (1930)), as well as that of the Geneva Convention on the Conflict of Laws as to Checks of March 19, 1931, art. 4 and 5 (Feller, The International Unification of Laws Concerning Checks, 45 Harv. L. Rev. 668 (1931)). The result of the instant case is unique in subjecting the drawer of a check to double liability under a single claim. This result can perhaps be justified since there is no reason why the risk of loss and negotiation of an instrument under a forged indorsement should be less for the maker than for subsequent holders if the instrument was intended to be negotiated abroad.

Constitutional Law—Chain Store License Tax—[United States].—A West Virginia statute (W.Va. Acts 1933, c. 36), imposing a graduated license tax on chain stores with a maximum of $250 for each unit over seventy-five, defined store as "any store or mercantile establishment . . . in which goods, wares, or merchandise are sold." Plaintiff operating a chain of a thousand and three gasoline stations filed a bill to restrain defendant, tax commissioner, from paying into the state treasury the taxes which plaintiff had paid under protest. *Held*, (four justices dissenting) that plaintiff's gasoline stations were "stores" within the statutory definition, and that, despite the fact that gasoline chains, which handled but 5% in amount of the total chain business, paid under the statute 85% of the total chain store license tax, this was not such an arbitrary discrimination against gasoline chains as to violate the fourteenth amendment to the Constitution. *Fox v. Standard Oil Co. of N.J.*, 55 Sup. Ct. 333 (1935), reversing 6 F. Supp. 494 (S.D.W.Va. 1934).

The first attempts at chain store taxation were attacked as an unconstitutional denial of equal protection of the laws because they were thought not to satisfy the orthodox rule that classification for taxation must be reasonable and rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced are treated alike. Becker and Hess, The Chain Store License Tax and the Fourteenth Amendment, 7 No. Car. L. Rev. 115 (1928); 31 Col. L. Rev. 145 (1931); 44 Harv. L. Rev. 456 (1931); 80 Univ. Pa. L. Rev.