(University of Aix: 1911. Pp. 160), maintains that the air from the point of view of civil law is not the property of the individuals who own the land beneath it except as it is actually appropriated; and, from the point of view of international law, that the air above the territory of a state must be regarded as a part of the public domain and as subject to regulation.

In his dissertation published under the direction of the faculty of law in the University of Caen (1912. Pp. 310), entitled *Essai sur la navigation aérienne au droit interne et en droit international*, M. Henri Guibé devotes 161 pages to a consideration of the juridical nature of the atmosphere from the point of view of private individuals, and 129 pages to a treatment of the same question from the standpoint of international law.

In *La navigation aérienne au point de vue du droit international* (University of Toulouse: 1912. Pp. 224), M. Balalud de Saint-Jean maintains the principle of state sovereignty in the air above the land up to a certain limit fixed by international agreement, and holds that above the fixed limit the air should be as absolutely free as is the air above the open sea. This principle is set forth in the introduction. In part I the author treats the laws of aerial navigation in time of peace, and in part II the laws of aerial navigation in time of war.

The four writers are in agreement on the proposition that the atmosphere over a state is neither absolutely free from regulation nor strictly territorial to an indefinite height. They differ only as to the methods or measure of regulation. The first three make concessions to the territorial theory by admitting the necessity of a measure of state regulation of aerial circulation without limitation as to height, while the last concedes that a definite zone in the atmosphere above a state should be territorial and subject to the laws of the state.

RECENT DECISIONS OF STATE COURTS ON POINTS OF PUBLIC LAW

United States and States—Authority of Decisions. Rothschild and Company vs. Steger and Company. (Illinois, October 26, 1912. 99 N.E. 920.) The decision of the Supreme Court of the United States as to the requirements of civil contempt process in the courts of the District of Columbia is not binding on the courts of Illinois.

Commerce—Race legislation. Alabama Railway Company vs. Morris. (Mississippi, December 9, 1912. 60 So. 11.) A statute requiring

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carriers to provide equal but separate accommodation for white and colored passengers applies to travelers going from one state to another in an interstate train. The ultimate settlement of the question rests with the Supreme Court of the United States.

Constitutional conventions.—Opinion of justices. (New Hampshire, July 22, 1889. 85 Atl. 781.) The legislature having delegated to the constitutional convention the power to fix the time when amendments approved by the people are to go into effect, and the convention having exercised that power, the legislature can not alter the date. The opinion had not been reported before.

Constitutional amendments.—State vs. Donaghey. (Supreme Court of Arkansas, December 23, 1912. 152 S.W. 746.) An amendment to the constitution allowing amendments to the constitution to be proposed by the initiative does not abrogate the provision of the constitution that not more than three amendments shall be submitted or proposed at the same time.

Statutes.—Change of constitution.—Achison Drilling Company, vs. Flournoy (Louisiana, June 19, 1912. 59 So. 867.) A statute imposing a tax then unconstitutional, is not rendered valid by providing that it shall not go into effect until a proposed amendment to the constitution authorizing the tax shall have been adopted, and by the adoption of such amendment.

Power to declare laws unconstitutional. In re An act concerning public utilities. (New Jersey, September 27, 1912. 84 Atl. 706). The legislature may create a method of judicial procedure in which the sole question to be presented for decision is whether or not a given statute was enacted in conformity to constitutional requirements, and may give power to the court to decree the statute or any part thereof to be null and void. Compare Muskrat vs. United States. 219 U.S. 346.

Method of enacting legislation.—In re An act concerning public utilities. (New Jersey, September 27, 1912. 84 Atl. 706.) The constitution provides that if the legislature by their adjournment within the five days allowed to the Governor for returning bills presented to him, prevents the return of the bill, the bill shall not become a law by the Governor failing to return it. Held that if the legislature should recon-

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vene after the five day limit, the bill can not be returned by the Governor and any action taken by the legislature on a bill so returned is nugatory.

Separation of powers.—Legislative and judicial power. Cary vs. Mine Company. (Colorado, December 9, 1912. 129 Pac. 230.) The fact that the constitution vests judicial powers in equity in certain courts, does not prevent legislation prescribing the procedure to be followed in the exercise of such jurisdiction.

Separation of powers. Stockman vs. Leddy, (Colorado, December 9, 1912. 129 Pac. 220.) An act empowering a joint committee of the legislature to authorize the prosecution or defense of such actions as it may deem proper to protect the rights of the state, attempts to confer executive power on a collection of members of the legislature, and is unconstitutional.

Separation of powers—Judicial powers. State vs. Lloyd. (Wisconsin, January 7, 1913. 139 N.W. 574.) A provision conferring upon the state fire marshal power to issue subpoenas and to punish for contempt is unconstitutional, but does not vitiate the other provisions of the statute.

Separation of powers—Appointing power. Witter vs. Cook County Commissioners. (Illinois, December 17, 1912. 100 N.E. 148.) A probation officer exercises judicial functions, and is an assistant of the court; therefore it violates the independence of the judicial department to vest his appointment in the board of county commissioners. Two judges dissenting.

Right of suffrage—Carpenter vs. Cornish. (Court of Errors of New Jersey, November 18, 1912. 85 Atl. 240.) Denies that women have a right to vote for members of Congress, claim to vote being based on ground that constitution of 1844 was not properly adopted, that the right is guaranteed by the federal constitution, that in the absence of a provision fixing a qualification the right to vote is a natural right.

Personal Liberty. State vs. Armstead. (Mississippi, February 17, 1913. 60 So. 778.) A statute making it a misdemeanor for a laborer, being under contract in writing to render service for a time not exceeding one year to leave his employer before the expiration of his contract

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without his consent, and to make a contract of service with another party without giving him notice of the first contract,—is unconstitutional as constituting involuntary servitude.

Freedom of vocation. Hauser vs. North British Insurance Company. (New York, November 19, 1912. 100 N.E. 52.) A statute can not require that a person in order to be permitted to carry on the business of an insurance broker, show in his application that he is engaged principally in the insurance business or that he conducts the business in connection with the real estate brokerage business or with a real estate agency.

Freedom of Press—Contempt of court. McDougall, Attorney General vs. Sheridan. (Supreme Court of Idaho, January 2, 1913. 128 Pac. 954.) Original proceeding by way of information charging the publishers of the Boise *Evening Capital News* with misrepresenting the position of the court in a pending case. Held that the publication is not protected by constitutional privilege and that defendants are guilty.

Police power.—Hours of labor. State vs. J. J. Newman Lumber Company. (Mississippi, November 18, 1912. 59 So. 923.) Sustains a law limiting the hours of labor of persons employed in manufacturing or repairing to ten per day, except in cases of emergency. Relies upon the emergency provision to distinguish the case from Lochner vs. New York and upon the dissenting opinion in the latter case.

Police power. Booth vs. State. (Indiana, January 28, 1913. 100 N.E. 563.) A statute is valid which compels operators of mines to provide washrooms for miners. That the obligation arises only upon the demand of more than 20 employes does not render the act invalid. Compare Starne vs. People, 222 Ill. 189.

Equality. People vs. Harrison. (Illinois, October 26, 1912. 99 N.E. 903.) A municipality may limit the liquor business in proportion to the population; but where the statute forbids the issuance of licenses for longer than a year, an ordinance can not give the licensee or his legal representative or assignee a right to renewal or reissue. However where there are more applicants than licenses, the mayor has a reasonable discretion to determine to whom the license shall issue.

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Equality. McLendon vs. State. (Alabama, December 17, 1912. 60 So. 392.) A statute levying a license tax on the pursuit of certain professions exempts ex-confederate soldiers. Held not to violate the bill of rights of the state constitution, but held (the court being equally divided) that the exemption violates the Fourteenth Amendment.

Due Process.—Commitment of insane. Ex parte Dagley. (Oklahoma, December 3, 1912. 128 Pac. 699.) A law authorizing the commitment of insane persons to a state asylum by a board of commissioners, does not violate due process of law, since it also gives to persons so confined the benefit of the writ of habeas corpus. As to notice to insane, and effect of habeas corpus, see also McMahon vs. Mead, South Dakota, December 28, 1912. 139 N.W. 122.

Due process of law—Evidence. McRae vs. State. (Oklahoma, January 13, 1913. 129 Pac. 71.) A conviction of a criminal offense on hearsay evidence is not due process of law, and will therefore be set aside. The court holds such a conviction to be not merely illegal, but unconstitutional, no statute being involved in the decision.

Due process—Possessory remedies. Great Timber Company vs. Gray. (Louisiana, January 6, 1913. 60 So. 374.) An act allowing a person in possession to maintain against an owner a possessory action to repel a trespass, does not deprive the owner of his property without due process of law.

Municipal corporations. People vs. Chicago. (Illinois, December 17, 1912. 100 N.E. 194.) A city may be indicted and convicted for violating in its public institutions a ten hour law for women.

Municipal corporations—Ordinance power. Simpson vs. State. (Indiana, November 26, 1912. 99 N.E. 980.) A statute allowing cities to fix license fees for the privilege of selling intoxicating liquors construed as conferring power to be exercised only once, so that the ordinance fixing the fee becomes irrepealable.

Municipal corporations—Indebtedness. In re Application of State. (Oklahoma, November 15, 1912. 27 Pac. 1065.) The limitation on state indebtedness does not apply to obligations arising out of the ordi-

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nary current expenses of maintaining the state government, and intended to be paid out of current yearly revenues.

Administrative law. Sabre vs. Rutland Railroad Company. (Vermont, January 21, 1913. 85 Atl. 693.) A very full discussion of the constitutional aspects of delegation of power to administrative commissions, sustaining the validity of the usual powers of regulation and enforcement.

Labor legislation. Fitzwater vs. Warren. (206 N.Y. 355.) The defence of assumption of risk does not avail against a claim founded on neglect to provide safeguards specifically required by statue.

Statutes. State vs. Fox. (Washington, November 29, 1912. 127 Pac. 1111.) A statute making it a gross misdemeanor to publish matter which shall "tend to encourage or advocate disrespect for law or any court" is not void for uncertainty.

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