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Agreements to Repurchase

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to appoint a military commission to try enemy belligerents for offenses against the law of war and Articles of War is evident unless prevented by provisions of the Constitution relating to trial by jury. U.S. Const. Art. I, §8, cls. 1, 10-14, 18; Art. II, §1, cl. 1, §3; 41 Stat. 787-812 (1920), 10 U.S.C. §§1471-1593 (1940).

The law of war draws a distinction between the armed forces and the peaceful populations of belligerent nations, and between lawful and unlawful combatants. Lawful combatants are those who, wearing the insignia of their country, wage war in the open. Annex to Hague Convention, ratified by the U.S. Senate, 36 Stat. 2295 (1909); 2 Oppenheim, International Law (6th ed. 1940) §107. Unlawful combatants are those who, without uniform, secretly pass through the lines of the enemy for the purpose of destruction of life and property, and gathering military information. Unlawful combatants are generally held not to be entitled to the status of prisoners of war, but are triable by a military commission. 41 Stat. 789 (1920), 10 U.S.C. §1483 (Articles of War, 1940); Great Britain War Office, Manual of Military Law (1929) §445; 2 Oppenheim, International Law (6th ed. 1940) §255. Petitioners, under the undisputed facts, clearly come within the definition of unlawful combatants, and are to be treated and dealt with as such.

Our Constitution and statutes are very liberal in guaranteeing trial by jury to persons charged with offenses, and the petitioners sought to take advantage of this fact. Their rights in this respect are to be determined by the construction to be given certain constitutional provisions, particularly Art. III, §2, and the Fifth and Sixth Amendments. It was not the purpose or effect of Art. III, § 2 to enlarge the then existing right to trial by jury. The object was to preserve unimpaired trial by jury in all those cases in which it had been recognized by the common law and in all cases of a like nature as they might arise in the future. District of Columbia v. Colts, 282 U.S. 63 (1930); Kahn v. Anderson, 255 U.S. 1 (1921). The Fifth and Sixth Amendments guaranteed the continuance of certain instances of trial by jury, but did not enlarge the right guaranteed by Art. III, §2. Callan v. Wilson, 127 U.S. 540 (1888). At the time of the adoption of these provisions, military tribunals were recognized and persons charged with violation of the law of war were tried thereby and without a jury. The trial of Major John André by a military commission appointed by General Washington is an example. Van Doren, Secret History of the American Revolution (1st ed. 1941) 355-358; Sargent, Life and Career of Major André (1st ed. 1861) 347-356.

In the instant case the petitioners were not entitled to a trial by jury; they were, therefore, properly tried before a military commission.

**CONTRACTS**

**AGREEMENTS TO REPURCHASE**

The plaintiffs purchased at par value six shares of preferred stock in a lumber company. Contemporaneous with the purchase, an agreement was signed in which defendants agreed to repurchase the stock at par value plus any earned and unpaid dividends, “at any
time" after six months' notice. Five years later plaintiffs attempted to exercise their option, but defendants refused to repurchase the stock. Held, for the defendant. Haworth v. Hubbard, — Ind. — 44 N.E. 967 (1942).

The words of a contract should be given their common ordinary meaning unless it is repugnant to the intent of the parties. New York Trust Co. v. Island Oil & Transport Corporation, 34 F. (2d) 655, 656 (C.C.A. 2nd, 1929). Generally, courts hold against the theory that a contract confers a perpetuity of right or imposes a perpetuity of obligations. Holt v. St. Louis Union Tr. Co., 52 F. (2d) 1068 (C.C.A. 4th, 1931); Hess v. Iowa Heat & Powers Co., 207 Iowa 820, 221 N. W. 194 (1928).

In a contract for the return of shirts, Iye v. Brody, 156 Ill. App. 479 (1910); a friendly offer to purchase stock, Park v. Whitney, 148 Mass. 278, 19 N. E. 161 (1889); a right to remove property, Perry v. Acme Oil Company, 44 Ind. App. 207, 88 N. E. 859 (1909); a lease for cutting timber, Fletcher v. Lyon, 53 Ark. 5, 123 S.W. 801 (1909); a right to certain oil casings and rods, Terry v. Crosswy, Tex. Civ. App., 264 S.W. 718 (1924); insurance contracts for reporting losses, Pickels v. Phoenix Ins. Co., 119 Ind. 291, 21 N. E. 898 (1889); oral agreement to repurchase stock, Armstrong v. Orler, 220 Mass. 112, 107 N. E. 392 (1915); the courts have held the words "at any time" to mean "any reasonable time."

In the principal case the defendant was in a private enterprise subject to all the dangers of competition; the business was constantly threatened with radical changes in management; the plaintiffs were located in the same community as the corporation and able to watch its trends closely. It seems improbable that the parties had in mind entering into an unending obligation. "Any other theory than this would subject incautious persons—a class, it may be remarked, which includes the majority of mankind—into life long servitudes, and greatly fetter and embarrass the commerce of the world." Dover Copper Mining Company v. Doenzes, 40 Ariz. 349, 12 P. (2d) 288, 292 (1932).

**NATIONAL LABOR RELATIONS ACT**

**JURISDICTION OF STATE EQUITY COURTS**

Complainant was discharged for alleged violation of a labor contract between defendant company and defendant union. He seeks reinstatement and an injunction against the enforcement of the contract in a state court of equity. Held, action dismissed. A state court of equity has no jurisdiction over disputes cognizable under the National Labor Relations Act. Keller v. American Cyanide Co., — N.J. Eq.—, 28 Atl. 41, (1942).

The procedure prescribed by the National Labor Relations Act, 49 Stat. 449 (1935), 29 U.S.C. §151-166 (1941) is exclusive. National Labor Relations Board v. Link Belt Co., 311 U.S. 584 (1940); National Licorice Co. v. National Labor Relations Board, 309 U.S. 350 (1940); National Labor Relations Board v. Falk Corp., 308 U.S. 453 (1939). These decisions are based on §10(a) of the National Labor Relations Act, 29 U.S.C. §160 (1941) which declares that the power of the Board "shall be exclusive, and shall not be affected by any