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Recent Important Decisions

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RECENT IMPORTANT DECISIONS

ASSIGNMENTS—TRANSFER OF EXPECTANCY.—A, the apparent heir of his mother, executed a warranty deed conveying to defendants his expectancy in the realty of his mother. He died during her life, and after her death his children bring suit to have the deed cancelled as a cloud on their title. Held, that the relief prayed should be granted on the ground that the complainants were not bound by the warranty of the father, as they did not take as his heirs, but as the heirs of their grandmother, only tracing relationship through the father. Johnson v. Breeding (Tenn. 1916), 190 S. W. 545. A transfer by the heir of his expectancy is void at law, being the transfer of a mere contingency or possibility; see cases collected in 4 Cyc. 15. In Jackson v. Bradford, 4 Wend. 619, the conveyance made by the heir in the lifetime of the ancestor was declared void at the suit of one who claimed under a judgment lien entered against the heir prior to the conveyance. In Wheeler v. Wheeler, 2 Metc. (Ky.) 474, it was held that as the conveyance was void the contract fell with it, and was no defence to an action by the grantor against the executor for the estate devised to him by the will. Where the conveyance is with warranty the grantor and all claiming through him are estopped to set up an after-acquired title. Fairbanks v. Williamson, 7 Me. 96. The assignment of an expectancy is valid in equity and will be enforced as a contract to convey whenever the expectancy ripens into a vested estate. Elder v. Frasier (Ia. 1916), 156 N. W. 182. But where, as in the principal case, the expectancy never becomes a vested estate in the grantor, the assignee takes nothing. Donough v. Garland, 269 Ill. 565, 109 N. E. 1015, Ann. Cas. 1916E, 1238 and note. See also Dungan v. Kline; 81 Oh. St. 371, 90 N. E. 938.

AUTOMOBILES—INJURY TO UNLICENSED MOTORCYCLIST.—Plaintiff, an unlicensed motorcyclist, was run into by defendant, who was operating an automobile. Defendant contended that as plaintiff had no license, he was a mere trespasser on the highway, and entitled to protection only from wanton or malicious injury. Held, want of license, being in no way the proximate cause, does not preclude recovery of damages for injuries due to mere negligence. Marquis v. Messier, (R. I. 1917), 99 Atl. 527.

This is the accepted view in a majority of the states where this question has come up. Stovall v. Co., 189 Ala. 576, 66 So. 577; Armstead v. Lounsberry, 129 Minn. 34, 151 N. W. 542; Anderson v. Sterit, 95 Kan. 483, 148 Pac. 635. But the law in Massachusetts has been in a rather peculiar state, from the passage of the old Sunday law down to the cases of Chase v. Railroad Co., 208 Mass. 137, and Bourne v. Whitman, 209 Mass. 155. It has often been said that the early Massachusetts cases failed to distinguish between an illegal act as a condition, and an illegal act as a contributing cause. The cases did, however, draw this distinction in principle (McGrath v. Merwin, 112 Mass. 457; Smith v. Railroad, 120 Mass. 490), but this still left the situation unsatisfactory, for the courts could not see their way clear to hold violations of the statutes not a contributing cause. For instance,
in *McGrath v. Merwin*, supra, it was held that the fact that the plaintiff was working on Sunday was a contributing cause to his injury in that work, and in *Smith v. Railroad*, supra, where plaintiff was injured on one of defendant's railway crossings, the same was held of the fact that plaintiff was traveling on Sunday. So, following the lead of other states, KNOWLTON, C. J., in *Bourne v. Whitman*, supra, held that the test should not be: is the illegal act a contributing cause? but held that the act itself should be separated and analyzed, and the test be: is the illegal element of the act, considered by itself alone, a contributing cause? So if only that part of the act or conduct which is innocent affects the cause of action, the existence of an illegal element is immaterial. This applies only to that part of the statute requiring a personal license. This question has never yet been mooted in the Michigan Supreme Court, but will be if the Detroit justice court case of *Brause v. Adams Express Co.* goes up. As to that part of the statute requiring a license for the machine, it is usually held that failure to comply with the statute renders the machine and all its occupants trespassers on the highway, and entitled to no protection from injuries resulting from another's mere negligence. This was laid down very reluctantly in *Chase v. Railroad*, supra, but is now the established law in Massachusetts.

**BILLS AND NOTES—Effect of Negotiable Instruments Act on Usury Laws.**—The West Virginia Code declares all notes given for usurious interest void as to the excess interest. The *Negotiable Instruments Act* provides that a holder in due course takes the instrument free from any defect in the title of his vendor. *Held*, the maker of the note may set up the usury in the inception of the note against a holder in due course. *Eskridge v. Thomas* (W. Va. 1916), 91 S. E. 7.

That the desired uniformity of laws concerning negotiable paper which has led so largely to the adoption of the uniform statute is to fail in part is shown by the group of decisions—of which the principal case is an illustration—concerning the effect of that statute upon other laws of the state such as the usury laws. Prior to its adoption it was generally held that where a usury statute declared a note usurious in its inception void, either as a whole or as to the excess interest, the note was void to the specified extent even in the hands of a bona fide purchaser for value. The courts reasoned that no vitality could be given to a void instrument merely by sale or exchange. 39 Cyc. 1079 and cases cited. There was however some authority to the effect that it was the intention of the legislature in enacting the usury statute to make the instrument voidable as between the parties to the usury rather than absolutely void as an instrument; thus in effect substituting "voidable" for "void" in the statute. *Ewell v. Daggs*, 108 U. S. 145, 27 L. Ed. 682; *Myers v. Kessler*, 142 Fed. 730, 74 C. C. A. 62; *Gordon v. Levine*, 197 Mass. 263, 83 N. E. 861. The question presented by the principal case is whether in enacting §57 of the *Negotiable Instruments Act* to the effect that a holder in due course takes the instrument free from any defects in his vendor's title, and free from defenses available to prior parties among themselves, it was the intention of the legislature to repeal the voiding
statute in so far as it affected the instrument in the hands of a holder in due course. One line of authority has emphasized the desirability of securing the ample protection to purchasers of negotiable paper and the ease of circulation which are demanded by the commercial world, and considers that these factors were of such importance to the minds of the legislators that the statute should be held to repeal by implication the usury statute as far as affecting the rights of a holder in due course. And this even in states where the prior rule was that the instrument was absolutely void. Klar v. Kostiuk, 65 Misc. 199, 119 N. Y. Supp. 83; Emmanuel v. Misiciki, 149 N. Y. Supp. 905; Wirt v. Stubblefield, 17 App. D. C. 283. See also Schlesinger v. Lehman, 191-N. Y. 69, 83 N. E. 657. The contrary view supported by the principal case argues that the usury statute is of a police nature and, though the fostering of commerce is of great importance, the prevention of crime is of more, and since repeals by implication are not favored it will be deemed that the legislature did not intend to modify the usury statute. Perry Savings' Bank v. Fitzgerald, 167 Iowa 446, 149 N. W. 497; Sabine v. Paine, 166 App. Div. 9, 151 N. Y. Supp. 735; Crusins v. Siegman, 81 Misc. 357, 142 N. Y. Supp. 348; Alexander v. Hazelrigg, 123 Ky. 677, 97 S. W. 353. It would seem that the effect of the usury statute in declaring the instrument void in its inception is not merely to create a defect in the title to the instrument but to prevent the coming into existence of any instrument at all, and hence that this is not a case where there is any basis for the application of §57. If this view is sound it follows that the decision in the principal case is correct.

Bills and Notes—Negotiability As Affected by a Provision for Extension of Time.—A promissory note contained the following provision: “We authorize the holder thereof to extend the payment of same or any part thereof.” Held, that the provision did not render the note non-negotiable under the requirement of the negotiable instruments law that an instrument to be negotiable must be payable at a fixed or determinable future time. Bank of Whitehouse v. White (Tenn. 1917), 191 S. W. 332.

A provision for a definite extension or renewal after maturity does not render a note non-negotiable. American Loan & Trust Co. v. Stickney, 108 Ala. 146, 19 So. 63, 31 L. R. A. 234; Bank v. Bilstad, 162 Iowa 433, 136 N. W. 204, 49 L. R. A. N. S. 132. But see Miller v. Poage, 56 Iowa 96, 8 N. W. 799. Where the provision is not for a definite time, but at the option of the holder, the decisions are in conflict. A provision that the holder may extend the time of payment from time to time has been held to render the note non-negotiable. Woodbury v. Roberts, 59 Iowa 348, 12 N. W. 312; Rosenthal v. Rambo, 165 Ind. 584, 76 N. E. 404; Bank v. Wheeler, 75 Mich. 546, 42 N. W. 963; Coffin v. Spencer, 39 Fed. 262; Bank v. Hesselt, 84 Kan. 315, 113 Pac. 1052. Contra, Bank of Commerce v. Kenney, 98 Tex. 293, 83 S. W. 368; Bank v. Loukonen, 53 Colo. 489, 127 Pac. 947; Trust Co. v. Long, 31 Okla. 1, 120 Pac. 291; Bank v. Stover, 21 N. Mex. 453, 155 Pac. 905; Davis v. McCall, 179 Mo. App. 198, 166 S. W. 1113. In some states it has been held that a provision waiving “all defences on the ground of extension

**BILLS AND NOTES—Presumption of Consideration.**—An instrument read: “As a bequest I promise to pay the sum of $500 to be due and payable after the decease of both myself and wife without interest,” and made payable to the church of which the maker was a member. In suit against the executor of the maker, *held* to be a valid promissory note, the consideration being presumed. *First Presbyterian Church v. Dennis* (Iowa 1917), 161 N. W. 183.

The above case is interesting from two aspects. The defendant contended that the words “as a bequest” negatived the presumption of consideration which attaches to negotiable paper, and hence that the plaintiff church must prove that such existed. The court overruled this objection and held that the word “bequest” as used here must not be construed in its possible narrow sense as a “gift” for which there was no valid consideration, but rather as transforming the note into a valid agreement to pay the $500 as a bequest—i. e., as a designation of the time of payment and the purpose of the maker. The court, relying on the trend of modern decisions, held not only that the use of the word “bequest” did not have any tendency to overcome the presumption of consideration—which all negotiable paper has expressly by statute in Iowa—but also that the fact that the payee of the note was the church of which the maker was a member caused a wholly distinct and additional presumption of consideration to arise. It is well settled that where such notes are given as subscriptions, and the payee takes some action relying on them, action is sufficient consideration for the note. *Beatty’s Estate v. Western College,* 177 Illinois 280, 52 N. E. 432; *Irwin v. Lombard University,* 56 Ohio St. 9, 46 N. E. 63. The same is true where the note is used to induce others to subscribe. *Trustees v. Noyes,* 165 Iowa 161, 146 N. W. 848; *Brokaw v. McElroy,* 162 Iowa 288, 143 N. W. 1087; though the earlier decisions held such to be mere naked promises and refused to enforce them. *Albert Lea College v. Brown,* 88 Minnesota 524, 93 N. W. 670; *In re Helfenstein’s Estate,* 77 Pennsylvania 328; and it has been held that a note, payable after the death of the maker, given by her “desiring to advance the cause of missions and to induce others to contribute to that purpose” was supported by a sufficient consideration in the great interest the maker had in the accomplishment of the object in aid of which it was given. *Garrigus v. Society,* 3 Indiana App. 91, 28 N. E. 1009. See also *Hegeman v. Moon,* 131 New York 452, 30 N. E. 487.
Bills and Notes—Uncertainty of Time of Payment.—A promissory note was made payable 90 days after date, with the proviso that "this note shall become due and payable on demand at the option of the holder, when it deems itself insecure." Held, the time of payment was uncertain and the note non-negotiable. *State Bank v. Paving Co.* (Wash. 1917), 162 Pac. 870.

The majority of cases hold that the negotiability of a note is not destroyed by a provision giving the maker an option to pay it before maturity. *School District v. Hall*, 113 U. S. 135, 28 L. Ed. 954; *Lowell Trust Co. v. Pratt*, 183 Mass. 379, 67 N. E. 363; *Bank v. Kenney*, 98 Tex. 293, 83 S. W. 368. And this is the rule adopted as to notes providing for payment on or before a certain date. *Dorsey v. Wolff*, 184 Ill. 158, 56 N. E. 297; *Mattison v. Marks*, 31 Mich. 421, 18 Am. Rep. 197; *Smith v. Ellis*, 29 Me. 422; *Negot. Instr. Law*, §6. Contra, *Way v. Smith*, 111 Mass. 523; *Stitts v. Silva*, 119 Mass. 137; *Chanteau v. Allen*, 70 Mo. 335. Though the time must be fixed or determinable (see *Negot. Instr. Law*, §3) this requirement is satisfied if the note is made payable on or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening is uncertain. *Bristol v. Warner*, 19 Conn. 9; *Shaw v. Camp*, 160 Ill. 425, 43 N. E. 608; *Hegeman v. Moon*, 60 Hun. 412, 39 N. E. 487; *Negot. Instr. Law*, §6. Also a provision that the note is to become due at once, upon failure to pay any installment of either principal or interest, does not render the instrument non-negotiable. *Carlson v. Kenney*, 12 Mees. & W. 139, 13 L. J. Exch. N. S. 64; *Markey v. Corey*, 108 Mich. 184, 66 N. W. 493; *Equipment Co. v. National Bank*, 136 U. S. 268; *Hunter v. Clarke*, 184 Ill. 158, 56 N. E. 297. But see, *Kimball Co. v. Mellon*, 80 Wis. 133, 48 N. W. 1100; *Bank v. Carter*, 144 Iowa 715, 123 N. W. 237. And it has been held that notes were negotiable where the provision was that the holder might declare them due at once upon failure of the maker to perform certain conditions in an accompanying mortgage. *Thorpe v. Mindeman*, 123 Wis. 149, 101 N. W. 417; *Hunter v. Clarke*, supra; *Consterdine v. Moore*, 65 Neb. 291, 96 N. W. 1021. Contra, *Wistrand v. Parker*, 7 Kan. App. 562, 52 Pac. 59. It will be noticed that in all the above cases the provision for the acceleration of the time of payment was either within the control of the maker or else without the control of either the maker or holder. In no case was the contingency wholly within the control of the holder. Provisions giving the holder the option of declaring the note payable before the date of maturity have generally been held to render the note non-negotiable. *Richards v. Barlow*, 140 Mass. 218, 6 N. E. 68; *Bank v. Russell*, 124 Tenn. 618, 139 S. W. 734; *Yearly Meeting v. Babler*, 115 Wis. 289, 91 N. W. 678. In the instant case the court considers the contention that the provision that the holder may declare the note due when he deems himself insecure may well be construed to transform the note into one payable on demand. It points out that the exercise of the power to declare the note due does not grow out of any act or promise of the maker, but is wholly a contingency over which the maker has no control, a situation dealt with in §6 of the Statute which expressly provides that an instrument payable upon a contingency is not negotiable. This view is supported by the weight of authority. *Bank v. Carter*, 144 Iowa 715, 123 N. W. 237; *Bank v.

It will be recalled that in the case of Ives v. South Buffalo Ry. Co., 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. N. S. 162, Ann. Cas. 1912B 156, the New York court had declared Article 14a (Chapter 674 of the laws of 1910), which was an insertion to the general labor law and dealt particularly with employer's liability, to be violative of the provisions in the State constitution as to due process. The court admitted that the Legislature might abolish the rule of fellow servant, assumption of risk and contributory negligence as defenses in an action for damages sustained by a workman, but denied that "a person employed in a lawful vocation, the effects of which are confined to his own premises, can be made to indemnify another for injury received in the work unless he has been in some respect at fault." For a criticism of this case, see 9 MICH. L. REV. 704. To obviate this difficulty, the State constitution was changed by the insertion of section 19 to article 1, the amendment becoming effective Jan. 1st, 1914. This section provides, inter alia, that nothing in the constitution should be construed to prohibit the payment of compensation for injuries or death to employees regardless of fault in the employer. The statute in question was passed after the adoption of the constitutional amendment and has been held by the New York Court of Appeals to be consistent with both the State and Federal constitutions. Matter of Jensen v. Southern Pacific Co., 215 N. Y. 514.

The new statute contains much the same provisions as were found in Article 14a of the previous statute, which the court had found to be a deprivation of due process under the provisions of the State constitution as it read previous to the amendment referred to above. The new statute extends the scope of the act, making it applicable to 42 groups of hazardous occupations and "by sec. 50 each employer is required to secure compensation to his employees in one of the following ways: (1) By insuring and keeping insured the payment of such compensation in the State fund; or (2) through any stock corporation or mutual association authorized to transact the business of workmen's compensation insurance in the State; or (3) by furnishing satisfactory proof to the Commission of his financial ability to pay such compensation for himself." In answer to the argument that the Act is unconstitutional in that it creates liability without fault—the employer being liable according to a fixed scale for any injury resulting in the course of employment to employee which is not the result of the latter's willful negligence or drunkenness—the court refers to certain common law instances where one may be held liable without fault, e. g. common carrier, innkeeper, one who maintains a dangerous agency on his premises is liable for damages.
incurred through its escape. It is true that this regulation does materially limit the contractual liberty of both the employer and employee, but the law being desirable from an economic and sociological viewpoint, it may be said to have a close relation to the welfare of the public and therefore be a justifiable exercise of the police power. The Federal Supreme Court had previously upheld the constitutionality of a similar employer's liability law passed by Congress with reference to interstate commerce, Mondou v. N. Y., N. H. & H. Ry. Co., 223 U. S. 1, 32 Sup. Ct. 169, 56 L. Ed. 327, 38 L. R. A. N. S. 44; and many State courts have upheld the validity of such legislation. Opinion of Justices, 209 Mass. 607, 69 N. E. 308; Young v. Duncan, 218 Mass. 345; Borgnis v. Falk Co., 147 Wis. 327, 133 N. W. 209, 37 L. R. A. N. S. 489; State ex rel. Yable v. Creamer, 85 Ohio St. 349; Sexton v. Newark Dist. Tel. Co., 84 N. J. L. 85, 86 N. J. L. 701; Deibekis v. Link-Belt Co., 261 Ill. 454; Crooks v. Taxwell Coal Co., 263 Ill. 343; Victor Chemical Works v. Industrial Board, 274 Ill. 11; Mathison v. Minn. St. Ry. Co., 126 Minn. 286; Shade v. Cement Co., 92 Kans. 146, 93 Kans. 257; Sayles v. Foley (R. I. 1916), 96 Atl. 340; Greene v. Caldwell, 170 Ky. 571; Middleton v. Texas Power & Light Co. (Texas 1916), 185 S. W. 556. And in the case of Hawkins v. Bleakly, Auditor of State, 37 Sup. Ct. 255, decided by the Federal Supreme Court on the same day as the instant case, the Iowa Workmen's Compensation Act was held to be consistent with the 14th Amendment, the Iowa court having previously held in another case that the act was not contrary to any of the provisions of the State constitution. Hunter v. Colfax Consolidated Coal Co. (Iowa 1915), 154 N. W. 1037, 157 N. W. 143.

**CONSTITUTIONAL LAW—DUE PROCESS IN WORKMEN'S COMPENSATION ACT.**

—The State of Washington passed a Workmen's Compensation Act (Chapter 74 of Laws of 1911) which classified the various employments according to the probability of injury to employees, and provided that the employers in each group should pay into the State treasury a certain amount towards an insurance fund, the amount to be a certain percentage of their pay roll, which percentage was based on the group in which the particular industry had been classified, the lowest being $1\frac{1}{2}$% in case of textile industries and the highest being 10% in the case of powder works. "For the purpose of such payments accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class." The contributions thus exacted are the sole source of compensation for injured employees and for the dependent families of those employees who are killed in the course of their employment. *Held*, such a statute is a valid exercise of the police power and does not take property without due process of law. *Mountain Timber Co. v. State of Washington*, 37 Sup. Ct. 260.

All the arguments against the constitutionality of the New York Workmen's Compensation Act were also urged here. As to these, the court summarily disposed of them by a reference to its opinion that day rendered
in the case of *New York Central Railroad Company v. White*, supra, upholding the New York statute. But an additional factor in this case was the enforced contribution to the insurance fund—such a proceeding being optional with the employer under the New York statute. The act is also different from the Ohio statute upheld in *State v. Creamer*, 85 Ohio St. 349, 97 N. E. 602, 39 L. R. A. N. S. 694, as that statute, though providing that those who accepted the act should pay a certain percentage into a State insurance fund, did not make its acceptance compulsory, although those employers who did not accept were deprived of certain common law defenses. The statute in that State has since been changed so as to require all employers to accept the act and pay a certain percentage into the State insurance fund. Under the plan in effect in Washington, despite the fact that the employer is careful and his employees are free from accidents, yet he must pay a prescribed amount into the treasury, a part of which may be used in paying for injuries sustained by the employees of his perhaps negligent competitors. The facts of the case are similar to those involved in *Noble State Bank v. Haskell*, 219 U. S. 104, 31 Sup. Ct. 186, 55 L. Ed. 112, 32 L. R. A. N. S. 1062, Ann Cas. 1912A 487, in which the Federal Supreme Court "sustained an Oklahoma statute which levied upon every bank existing under the laws of the State an assessment of a percentage of the bank's average deposits, for the purpose of creating a guaranty fund to make good the losses of depositors in insolvent banks." And it would seem that the decision in the instant case goes even further than the decision in the quoted case, which to many seemed a radical opinion. For in the bank case it is possible to discover much more reason for requiring a State insurance fund than in the case of employers, there is more of a solidarity of interest among bankers than among employers, whose only community of interest is the fact that their trades are considered equally hazardous. In *Bank v. Haskell* the court asks itself where it will draw the line in requiring corporations to guarantee each other's solvency, but dismisses the query with the remark that these cases will be determined by the gradual approach and contact of decisions on the opposing sides. The Chief Justice, and Justices McKenna, Van Devanter and McReynolds dissented from the opinion delivered by the majority, evidently feeling that the facts here were different from those involved in *Bank v. Haskell*, and that the balance of justice lay in favor of the "due process" clause as opposed to the police power. However, the majority, speaking through Mr. Justice Pitney, was of the opinion that the general welfare of the public was so closely related to the passage of such a law as to justify such interference with private liberty or right of acquiring property as might result from the carrying into effect of such a law. It being to the interest of the State to provide some sort of industrial pension for the "soldier of organized industry" becoming unfit while in the discharge of his duty for further service, it lay within the discretion of the State to exercise its police power by laying a tax upon the industries which gave rise to these accidents and to apportion the burden of sustaining these injured workmen upon the various industries in the proportion in which they ordinarily cause injuries. "It cannot be deemed
arbitrary or unreasonable for the State, instead of imposing upon the particular employer entire responsibility for losses occurring in his own plant or work, to impose the burden upon the industry through a system of occupation taxes limited to the actual losses occurring in the respective classes of occupation.”

Constitutional Law—Equal Protection of the Law.—A California statute providing that persons may not practice drugless healing unless holding a “drugless practitioner certificate” obtainable only upon completion of a prescribed course of study and after an examination contained an exemption in favor of persons treating the sick by prayer. Held, that the exemption does not render the statute invalid as denying the equal protection of the laws guaranteed by the Fourteenth Amendment, to one who does not employ prayer in his treatment of disease, but does use faith, hope, the process of mental suggestion and mental adaptation, a form of treatment in which skill enhanced by practice is to be exercised. Crane v. Johnson, 37 Sup. Ct. 176; McNaughton v. Johnson, 37 Sup. Ct. 178.

It is fundamental that the police power of the state particularly extends to regulating trades and callings concerning public health, and practitioners of medicine are properly subject to police regulation, the details of which are primarily with the legislature, and are not to be interfered with by the Federal courts so long as constitutional rights are not violated. Dent v. West Virginia, 128 U. S. 114, 9 Sup. Ct. 231, 32 L. Ed. 623. Ex parte Ira W. Collins, 57 Tex. Cr. R. 2, 121 S. W. 501, upholds a statute which requires all who practice medicine to be licensed, and defines medicine as meaning “the art of healing by whatever scientific or supposedly scientific method may be used.” Under this classification, osteopaths were required to be licensed. In affirming the case the Federal Supreme Court stated, “We are not called upon to speculate upon other cases, or to decide whether the followers of Christian Science or other people might in some event have cause to complain.” Collins v. Texas, 223 U. S. 288, 32 Sup. Ct. 286, 56 L. Ed. 439.

It has also been held that a classification based upon whether or not the medical practitioner receives compensation is a valid method of determining who should be required to be licensed. Watson v. Maryland, 218 U. S. 173, 30 Sup. Ct. 644, 54 L. Ed. 987; Arnold v. Schmidt, 155 Wis. 55, 143 N. W. 1055. In Commonwealth v. Zimmerman, 221 Mass. 184, 108 N. E. 893, it was held that a chiropractor was a practitioner of medicine within the statute requiring practitioners of medicine to be licensed; and that the statute did not deprive him of the equal protection of the laws because those practicing Christian Science and mind cures were exempted. It will be observed that in the last quoted case the practitioners of Christian Science and also those who, though not Christian Science practitioners, effected their cures through mental suggestion, were exempted from the operation of the statute. In the instant case, a classification which differentiated between the two was upheld, those who practiced drugless healing without prayer were required to complete a prescribed course of study before being allowed to practice while no such requirement was made as to those who practiced through the
use of prayer. The court was of the opinion that the petitioner himself
admitted that his science was one in which skill is to be exercised, and the
skill with which he might pursue his calling would be enhanced by practice,
therefore it was reasonable that he be required to complete a professional
course before being allowed to practice, while, the cure of disease by prayer
being entirely a religious practice, it is not to be presumed that the efficacy
of the practitioner's methods are benefited by any preparatory course. It
must also be considered that one who assails a classification as a violation
of the equal-protection clause of the constitution must carry the burden
of showing that it does not rest upon any reasonable basis, but is essentially
337, 55 L. Ed. 369. See also comment on *Fealey v. Birmingham (Ala. 1916)*,

**Corporations—Liability for Assault by Servant.—** Defendant's agent,
who was what is known as “cut-off man,” had been expressly instructed
not to enter a house in case entry was objected to; he forced an entry into
plaintiff's apartment, on failure of plaintiff to pay arrears for lighting service,
and personally assaulted the plaintiff. Below, the defendant's demurrer was
sustained, apparently on the ground that since the acts complained of were
contrary to express instructions, the assault, if any, was committed while
the agent was acting beyond the scope of his employment. *Held*, such in­
structions would not necessarily relieve the defendant of liability for the
assault, if in fact the agent committed the assault in the course of the prose­
cution of the business intrusted to him by the defendant. *Herrman v. New

It was maintained in a few early cases that since a corporation can do
only the lawful things contemplated by the state in the bestowal of its
charter, any wrongful act of an officer or agent is necessarily outside the
260. It is well settled now, however, that a corporation is liable for the
wrongful acts or omissions of its officers or agents acting within the scope
of their authority, although in doing the act, the agent may have disobeyed
And this, even though the act be done wantonly and recklessly. *Moore v. Ry.,
26 Okl. 682, 110 Pac. 1059*. It is interesting to note that several states refuse
to accept this principle as applied to the agent's false or slanderous state­
ments, holding that even where the words are spoken in the course of the
employment, and for the benefit of the corporation, the latter is not liable
unless it had expressly authorized the agent to speak the words in question,
or had subsequently ratified them. *Behre v. National Cash Register Co.*, 100 Ga. 213, 27 S. E. 986. In *Lindsey v. St. Louis etc. R. Co.*, 95 Ark. 534,
129 S. W. 807, the court offers a reason for this distinction, saying that
slander is the individual act of him who utters it, and the utterance of a
slander by an agent of a corporation must be ascribed to the personal malice
of the agent. But why this distinction between a slander and an assault
made contrary to express instructions? It would seem that the better view
is that of Rivers v. Yazoo etc R. Co., 90 Miss. 196, 43 So. 471, that the corporation is liable for the agent's slander spoken while acting within the scope of his employment, and in the actual performance of the duties of the corporation touching the matter in question. Or as the Montana court holds, in Grorud v. Lossl, 48 Mont. 274, 136 Pac. 1069, in speaking of an act by the agent within the apparent scope of his authority: "and if the act is prompted by fraudulent or malicious motives, the agent's fraud or malice is imputable to the corporation."

Criminal Law—Information Charging Statutory Offense in Terms of Statute.—An information charged the accused with committing "the acts technically known as fellatio" made a felony by the California Penal Code of 1915. The defendant was convicted and sentenced to imprisonment. Held, that the judgment should be reversed on the ground that "the acts constituting the offense were not charged in such a manner as to enable a person of common understanding to know what is intended." People v. Carrell (Cal. 1917), 161 Pac. 995.

As a general rule, offenses proscribed and defined by a statute must be charged in the language of the statute, or in language equivalent thereto. Jackson v. State, 26 Fla. 510, 7 So. 862; State v. Stubbs, 108 N. C. 774, 13 S. E. 90; Franklin v. State, 108 Ind. 47; 22 Cyc. 336; II L. R. A. 530 note. If the statute itself enumerates every ingredient of the offense, then an indictment describing a statutory offense in the very words of the statute is ordinarily sufficient. Beale, Criminal Pleading and Practice, § 197; Pounds v. United States, 171 U. S. 35; People v. Paquin, 74 Mich. 34, 41 N. W. 852; State v. Whalen, 98 Iowa 662, 68 N. W. 554; State v. Bierce, 27 Conn. 318. In State v. Whalen, supra, the court sustained a conviction under an indictment, which, following the wording of the statute, charged the accused with "seducing" a certain female. Neither the statute nor the information defined the word "seduce." The conclusion was put upon the ground that "seducing" included all the elements of the offense meant to be charged, and sufficiently informed the accused of the crime alleged. The decision in State v. Bierce announced the same rule for a similar state of facts. The exceptions to the rule as set forth above are, for the most part, cases in which the words of the statute have a technical legal meaning different from their common meaning. The oddity of the principal case lies in the fact that the Victorian modesty of the legislature has led them to define the crime by a term which has no common meaning, which is not found in any English dictionary, law or lay, and which remains somewhat ambiguous even after reference to the Latin authorities.

Equity—Clean Hands.—In order to defeat a judgment in an anticipated suit for divorce and alimony, plaintiff, without consideration, deeded a parcel of land to his mother. He thereafter regained possession of the land and sued her to quiet title. Held, plaintiff did not come into court with clean hands, and relief should be denied. Palmer v. Palmer (Neb. 1917), 161 N. W. 277.
Relief is invariably denied where the party defendant has not participated in the unconscionable conduct, and the instant decision expresses the prevailing view even though defendant is shown to be likewise a wrongdoer. Boggs v. Bright, 222 Fed. 714; Cornelier v. Haverhill Shoe Assoc., 221 Mass. 554, 109 N. E. 643. Assistance has been given in sporadic cases where complainant has seemed the less guilty, and where it would be inequitable, in spite of his wrong, to refuse his prayer. The courts are quick to find, in these instances, that the complainant's wrong does not directly touch the matter in litigation. Warfield v. Adams, 215 Mass. 506; Pitzele v. Cohn, 217 Ill. 30, 75 N. E. 392; Gargano v. Pope, 184 Mass. 571, 69 N. E. 343. Relief has been given in one class of cases which should, on principle, include the one above. Those decisions indicate that where the suit is in its nature defensive, the maxim of "clean hands" is not applicable. Lord Portarlington v. Soulby, 3 Mylne & Keen 104; Newman v. Franco, 2 Anstruther 519. A suit to quiet title is substantially of that sort. The marketability of the property is impaired, and consequently its present value is diminished by the possibility that the claim constituting the cloud may some time be asserted in court. It is the gist of complainant's prayer that he be permitted to anticipate this assertion, and to offer his defense at once.

Evidence—Reading Medical Books to Jury on Cross-Examination of Experts.—A passenger sued for personal injuries received through the negligent management of defendants' train; defendants introduced medical experts who testified that the plaintiff's injuries were simulated. In the cross-examination of these medical experts, the court permitted plaintiff's counsel to read to the jury excerpts from acknowledged standard medical authorities, to which the witnesses had not made reference in their direct examination. Held, that the excerpts were properly read; this being an exception to the general rule which forbids the reading of books of inductive science as affirmative evidence of the facts treated of. Scullin et al. v. Vining (Ark. 1917), 191 S. W. 924.

The instant case stands practically without support on the proposition that excerpts from standard medical authorities, on which the witness has not based his opinion, may be read to the jury as evidence. There is a marked difference, between reading what is in a book as evidence to a jury, and reading excerpts from books to the witness for the purpose of testing his knowledge on the subject treated. In one case the mere opinion of a scholar is offered as evidence without opportunity to cross-examine him. In the other the opinion of the expert is tested by the opinions of other experts. Apparently the court was confused. It decided that excerpts might be read to the jury as evidence, when it apparently intended to decide only that excerpts from authorities on which the witness had not based his opinion might be read to the witness, for the purpose of testing his knowledge. The cases agree that when an expert has based his opinion on a particular authority, the counsel on cross-examination may read an excerpt from that authority, and ask for his views upon it. See Bloomington v. Schrock, 110 Ill. 219, 51 Am. Rep. 678; Clark v. Commonwealth, 111 Ky. 443, 63 S. W. 740.
Or the authority may be introduced in evidence, and such extracts as con­tradict the expert may be read to the jury, purely for the purpose of dis­crediting the witness. Union Pacific Ry. Co. v. Yates, 79 Fed. 584, 49 U. S. App. 241; Eggert v. State, 40 Fla. 527, 25 So. 144; Pinney v. Cahill, 48 Mich. 584, 12 N. W. 862; People v. Wheeler, 60 Cal. 581, 44 Am. Rep. 70. On the question whether counsel may cross-examine an expert on authorities on which the witness has not based his opinion, or only on such as he has based his opinion, there is a decided conflict of authorities. The following cases, with the instant case, allow examination on acknowledged standard authorities whether witness has based his opinion on them or not; on the theory, that expert witnesses are dangerous and every legitimate means should be used to test the soundness of their theories and show their want of knowledge. Davis v. United States, 165 U. S. 373, 17 Sup. Ct. 360, 410 L. Ed. 750; Fisher v. Southern Pac. R. Co., 89 Cal. 399, 26 Pac. 894; Hess v. Lowery, 122 Ind. 225, 23 N. E. 156, 7 L. R. A. 90, 17 Am. St. Rep. 355; Egan v. Dry Dock & R. Co., 12 App. Div. 556, 42 N. Y. Supp. 188; Byers v. Nashville & R. Co., 94 Tenn. 345, 29 S. W. 128; Clukey v. Seattle Electric Co., 27 Wash. 70, 67 Pac. 379. The following cases hold admissible excerpts only from authors upon whom the witness has based his opinion, and these may be read to the jury for the purpose of directly contradicting him. Foley v. Grand Rapids & R. Co., 157 Mich. 67, 121 N. W. 257; Marshall v. Brown, 50 Mich. 148, 15 N. W. 55; Butler v. South Carolina & R. Extension Co., 130 N. C. 15, 40 S. E. 770; Mitchell v. Leech (S. C.), 48 S. E. 290, 66 L. R. A. 723, 104 Am. St. Rep. 811.

GARNISHMENT—PROCEEDINGS AGAINST COUNTY.—The plaintiffs had furnished materials to the defendant contractors who were working for the county. Judgments against the contractor who later became insolvent were unsatisfied and the plaintiffs sought a decree of equitable garnishment against the county. Judgment was rendered by the lower court in favor of the defendants, on the ground that in the absence of a statute specially conferring the right, garnishment did not run against the county, either at law or in equity. Held, that the judgment of the lower court should be affirmed. Clark et al. v. Board of Com'rs of Osage County (Okla. 1916), 161 Pac. 791.

The authorities are divided on the question of garnishment against a county, but the great weight of authority plainly supports the view that garnishment will not lie against a county unless there is a statute specially conferring that right. For a full citation of authorities supporting both views, see Rood, GARNISHMENT, §18; 57 L. R. A. 207 note; L. R. A. 1916E 1163 note. It should be noted that the problem concerns only the construction of general garnishment statutes and that both opposing views are based on the same broad ground—public policy. After discussing the conflict of decisions and the basic question of public policy, the court in the principal case decided in accordance with the majority rule and denied the right of garnishment. Despite the tendency of the great majority of courts, it seems that public policy should favor garnishment of counties. While it is admitted by the minority view, that, to some extent, the public interest
might be interfered with by the necessity of public officers defending litigation against creditors of the county, or by the sequestration of wages of county employees, in thus promoting private interest or convenience, it is evident that such allegations are sufficiently answered by stating that the defense to such litigation involves very little trouble for the county, and further, that, since men who pay their debts will work as faithfully for the county as those who are dishonest, it is rather poor policy to induce dishonest persons to seek public employment by protecting them in such avoidance of their just debts. Rood, Garnishment, §22; Waterbury v. Board of Com'rs of Deer Lodge Co., 10 Mont. 515, 26 Pac. 1002. There are some decisions which by a bill in equity allow what may be termed “equitable garnishment” where counties are held to be exempt from the statutory garnishment at law. Pendleton v. Perkins, 49 Mo. 565; Riggin v. Hilliard, 56 Ark. 476, 29 S. W. 402, 35 Am. St. Rep. 113. However, there should be no distinction between law and equity in this regard. Statutes expressly authorizing garnishment to run against the county furnish strong evidence of the rule really demanded by the better public policy. See 4 Mich. L. Rev. 53.

Husband and Wife—Agency of Wife.—Defendant's wife bought hats and gowns of plaintiffs, who were dressmakers, for the 18-year-old daughter of the defendant, the wife telling plaintiffs that her husband would pay the bills. She had no express authority, and the goods were found not to be necessaries. Plaintiffs sent defendant bills for the purchases three months in succession, and the wife continued to trade with plaintiffs. Defendant did not answer the bills, believing that his daughter's minority, and his liability had ceased on her eighteenth birthday. Held, that the defendant's failure to disaffirm those sales amounted to a ratification. Auringer v. Cochran, (Mass. 1916) 114 N. E. 355.

The question as to ratification by the husband comes up when the wife acts without the husband's express or implied authority. To charge the husband under such circumstances, it is usually held that the credit must have been given to the husband, not to the wife. Mackinley v. McGregor, 3 Wharton (Pa.) 369. If the husband receives the benefit of the transaction, he will be held to have ratified it. Hill v. Sewald, 53 Pa. St. 271; Gates v. Brower, 9 N. Y. 205; Althof v. Conheim, 38 Cal. 230. However if the husband has expressly forbidden the goods to be bought, and so informs the vendor, he will not be liable for them, even if he afterwards uses them. Segelbaum v. Ensminger, 117 Pa. 248. If the husband afterward expressly promises to pay for goods furnished the wife, on his credit but without his authority, it is a ratification. Conrad v. Abbott, 132 Mass. 330; Shaw v. Emery, 38 Me. 484. It was held in Shuman v. Steinel, 129 Wis. 422, where the wife bought a set of books, not assuming to act as the husband's agent, and credit not being given to him, it would be a contract which could not be ratified by his express promise to pay. Where the husband fails to disaffirm his wife's unauthorized action within a reasonable time, it is held to be a ratification. If she wears jewelry in his presence suitable to his station in life (Cooper v. Haseltine, 50 Ind. App. 400), or a hat (Ogden v. Prentice,
33 Barb. (N.Y.) 169), or a silk dress (Graham v. Schleimer, 59 N.Y. Supp. 689), or false teeth (Gilman v. Andrus, 28 Vt. 241), and he does not take steps to show his dissent, he will be held to have ratified the purchase. However, the case of Evans v. Insurance Co., 130 Wis. 189, holds that where the wife executed a conveyance in the husband's absence and he received none of the benefits, his failure to disaffirm within a reasonable time did not amount to a ratification. The principal case rests on the husband's failure to disaffirm his wife's purchases within a reasonable time. If the daughter had not been a minor living at home, the defendant probably would not have been held liable. Gaffield v. Scott, 40 Ill. App. 380, presents such a situation, except that credit was given to the wife, not to the husband. In the very recent case of Altman v. Rosenfield, 162 N.Y. Supp. 678, the husband had given the wife authority to buy a "nice coat" for the grown-up daughter, "something costing about $15 to $25." The wife bought a coat costing $135. The husband was held liable, the court saying that the husband had given express authority to buy a coat, and his expression as to the price was a mere opinion.

**INJUNCTION—RIGHT OF A TRESPASSING PUBLIC SERVICE COMPANY TO INJUNCTION FOR PROTECTION OF ITS LINE.**—The plaintiff company erected a telegraph line over defendant's land without permission; the line being completed and in operation before defendant knew of its location. Defendant removed the line from his land, and plaintiff company, having instituted a proceeding to take the property under eminent domain, prays an injunction pendente lite to enjoin interference with its line by the defendant. Held, the injunction was properly refused. Postal Telegraph-Cable Co. of Montana v. Nolan (Mont. 1916), 162 Pac. 168.

The function of a temporary injunction is to preserve the status quo. In this case, a temporary injunction would be quite effective. The comparative injury to the plaintiff in case the relief is not granted and to the defendant in case the relief is granted is often considered in the granting or denying of temporary injunctions. 5 Pomeroy, Eq. Jur., § 502; Mabel Mining Co. v. Pearson Co., 121 Ala. 567, 25 So. 754; Sellers v. Parvis & Williams Co., 30 Fed. 164. But this doctrine has no application where the act of one party is admittedly wrongful. Bristol v. Palmer, 83 Vt. 54, 74 Atl. 332, 31 L. R. A. N. S. 881. Cases in which a trespasser asks the aid of the court to protect the erections which he has wilfully and wrongfully made on another's land are very rare. The Washington court in Everett Water Co. v. Powers, 37 Wash. 143, 79 Pac. 617, granted a temporary injunction in favor of the plaintiff water company, which was wrongfully diverting the water to the injury of the defendant. The court in the latter case was no doubt influenced by the fact that the plaintiff was a public service company, and had the right of eminent domain. The great weight of authority is that a court of equity will enjoin the taking of private property until the right to make an entry is obtained in accordance with condemnation statutes. See 15 Mich. L. Rev. 272. If the action of the public service company could be enjoined before it extended its lines over one's land, it is difficult to see how its wrongful
erections can be consistently protected. Although the result may appear
to be very hard upon the plaintiff, the decision in the principal case is no
doubt in accord with correct theory, and at its worst shows that a hard case
does not justify a deviation from settled principles.

INJUNCTION—SLANDER OF TITLE.—The life tenant of a parcel of land re-
peatedly declared that the fee simple thereto was in him and another, and
that he intended to sell same, thereby repudiating the title of the remainder-
men. Held, such declarations constitute slander of title and cast a cloud
thereon, and justify such relief as would fix the rights and protect the inter-
est of the true owners. Elam v. Alexander (Ky. 1917), 191 S. W. 666.

Mere verbal claims cannot cast a cloud on title. Sulphur Mines Co. v.
Boswell, 94 Va. 480, 27 S. E. 24; Devine v. City of Los Angeles, 202 U. S.
313. There are statutes which provide for the removal of a cloud on title
raised by mere assertion of claim, §500 ANN. CODE OF MISS. 1892, but the
language used is not technical. As a matter of fact, oral claims may undoubt-
edly affect marketability, and so, in the ordinary sense, becloud title, but the
legal significance of the term is not so broad. It is used in the cases, not
to cover all instances where the value of title is diminished through an im-
pairment of its marketability, but only in those cases where the means of
effecting that result is exerted in tangible form which a court of equity
may remove. Verbal claims may give rise to an action for damages, or
their repetition may be enjoined, but they constitute no cloud on title, and
the term is misused in the present case.

JUDGMENT—MERGER.—Plaintiff had a claim against one H. S.; in suing
upon this claim the writ was by misapprehension issued against a firm of
S. Bros., and service made on one J. S. alleged to be a member of that firm,
which in fact had no existence. No appearance was entered, and plaintiff
obtained a judgment by default against the supposed firm of S. Bros. This
unsatisfied judgment was never set aside. Subsequently plaintiff sued H. S.
and the latter pleaded the judgment against S. Bros. in bar. Held, the cause
of action against H. S. was not merged in a judgment against S. Bros.,

The decision reached is undoubtedly an equitable one, and seems sound
in principle. The rule that a judgment against one of two joint debtors
is a bar to an action against the other for the same debt does not cover this
case, for H. S. was not a joint debtor of any firm of S. Bros. King v. Hoare,
14 L. J. Ex. 29; Ward v. Johnson, 13 Mass. 148. The case is rather within
the rule of the Duchess of Kingston's Case (1776), 2 Smith's L. C. (12th
Ed.) 754. It was there held that a judgment may be relied on as an estoppel
only when it has resulted from a previous suit "between the same parties."
The principle in such cases is limited in its application to actions between
the same parties or any persons who were joint contractors with them in
the contract; which has been sued to judgment; or who were agents or prin-
cipals of the party. A logical support for the instant decision is that the cause
of action against S. Bros. cannot be said to be the same cause of action which
plaintiff has against H. S.
MARRIAGE—ANNULMENT FOR FRAUD.—The plaintiff, a man weakened by age and by physical and mental disabilities, was induced to marry the defendant, who represented to him that she was a virtuous woman. In fact her reputation for immorality was notorious. Plaintiff had a small amount of property. Held, that the marriage should be annulled because of the fraudulent representation. *Entsminger v. Entsminger* (Kans. 1916), 161 Pac. 607.

The almost universal rule is that a marriage will not be annulled because of ante-nuptial unchastity, either in case of mere concealment or in case of positive misrepresentations as to virtue. *Varney v. Varney*, 52 Wis. 120; *Allen's Appeal*, 99 Pa. St. 196; *Leavitt v. Leavitt*, 13 Mich. 452; *Farr v. Farr*, 2 MacArthur (D. C.) 35. In New York it is held, contrary to the general rule, that a marriage will be annulled because of fraud when false representations have been made upon such a material matter that the marriage would not have taken place but for the misrepresentation. *Di Lorenzo v. Di Lorenzo*, 174 N. Y. 467; *Domschke v. Domschke*, 122 N. Y. Supp. 892. The courts will annul a marriage more readily when the defrauded party is very young and inexperienced or is old and with impaired mental faculties. In *Lyndon v. Lyndon*, 69 Ill. 43; *Parsons v. Parsons*, 68 Vt. 95; and *Robertson v. Cole*, 12 Tex. 356, marriages into which very young and inexperienced girls were inveigled by misrepresentations were annulled, no consummation having taken place. An exception to the rule that ante-nuptial unchastity is no ground for divorce exists when the woman is pregnant by another man at the time of marriage. *Allen's Appeal*, 99 Pa. St. 196; *Donovan v. Donovan*, 91 Mass. (9 Allen) 140. But the fact that a man before his marriage conceals or misrepresents the fact that another woman is pregnant from him will not give his wife grounds to secure annulment. *Hull v. Hull*, 191 Ill. App. 307. The instant case goes very far in allowing annulment. In *Hides v. Hides*, 65 How. Prac. (N. Y.) 17, the plaintiff was old and infirm; defendant, a notoriously unchaste woman, induced him to marry her by misrepresentations as to her virtue, and by statements that the spirits commanded that they marry, she representing herself to be a medium and he being a strong believer in spiritualism. The marriage was annulled. This is a New York case where the rule as to annulment is very liberal. In *Browning v. Browning*, 89 Kans. 98, a woman of thirty induced a boy of nineteen to marry her, representing that she was virtuous and that she had obtained a divorce from her former husband, whereas she was a prostitute and her former husband had divorced her for adultery: annulment was allowed at the suit of the boy. In *Sylvester v. Sylvester*, 180 Mich. 512, the defendant wife had been unchaste before marriage; it was held that the marriage should not be annulled on the ground that it did not clearly appear that the plaintiff husband had not been intimate with her before marriage. The court was evenly divided, four judges maintaining that there was not sufficient evidence of his previous intimacy with her, and that annulment should be granted.
Master and Servant—Assault by Another Servant Not Within Federal Employers' Liability Act.—Plaintiff's husband, a section foreman, was killed by a laborer in his section gang at a time when both were at work upon defendant's road; the laborer was a dangerous and quarrelsome character, and deceased had informed his superior officer of this fact. The action was brought under the Federal Employers' Liability Act (U. S. Comp. St. 1913, §§8657-8665). The district court overruled a demurrer to plaintiff's petition. Held, on appeal, that the order of the district court should be reversed and the demurrer sustained on the ground that the assault was not committed in the course or scope of the laborer's employment, nor in furtherance of defendant's business. Roebuck v. Atchison, T. & S. F. Ry. Co. (Kan. 1917), 162 Pac. 1153.

It is indubitably true that the test to be applied in cases of this character is whether the act committed is within the "course" or "scope of" the servant's employment. If a servant step aside even momentarily to do some act unconnected with his employment the relation of master and servant is for that time suspended: Davis v. Houghtelin, 33 Neb. 582, 50 N. W. 765; Morier v. St. Paul, etc. Ry. Co., 31 Minn. 351. In this connection, also, a distinction should be noted between "scope of employment" and "during period of employment." Slater v. Advance Thresher Co., 97 Minn. 305, 107 N. W. 133; Riley v. Roach, 168 Mich. 294, 134 N. W. 14. On the above points the principal case is undoubtedly correct. However, there still remains the question of defendant's negligence. Under the Federal Employers' Liability Act, supra, the common law rules in regard to negligence apply. The master is liable only where the injury is attributable to his negligence. Seaboard Air Line Ry. Co. v. Horton, 233 U. S. 492, 58 L. Ed. 1062. In this case the Supreme Court, speaking through Pitney, J., after stating that the employer is not a guarantor of the safety of the place of work, says "the extent of its duty to its employees is to see that ordinary care and prudence are exercised, to the end that the place in which the work is to be performed * * * may be safe for the workmen." In the principal case the defendant company had notice of the character of the defendant's assailant. In view of this did defendant exercise ordinary care and prudence to make deceased's place of employment safe? It is submitted that this should have been left to the jury to decide. It is true that most of the cases on this topic are those in which the employee was a notorious drunkard or insane. Arlington Hotel Co. v. Tanner (Ark. 1914), 164 S. W. 286; Missouri, K. & T. Ry. Co. v. Day, 104 Tex. 237, 136 S. W. 435. However, there is no reason why the principle should be limited to such cases. A dangerous and quarrelsome character can render a place quite as unsafe as can a notorious drunkard or insane person.

Parent and Child—Liability for Tort of Child.—Defendant owned an automobile which he had purchased for the pleasure of himself and the members of his family; his adult son, with his father's permission, was driving the automobile for his (the son's) accommodation, and negligently in-
jured plaintiff. Held, defendant is not liable. Van Blaricom v. Dodgson (N. Y. 1917), 115 N. E.

A similar view was taken by the Supreme Court of Michigan in the recent case of Johnston v. Cornelius, 159 N. W. 318, in which the son was a minor, 17 years of age. There would seem to be little doubt as to this conclusion, and yet the contrary result has been reached by a number of courts. All the courts admit that no liability arises merely from the relation of parent and child. In Griffin v. Russell, 144 Ga. 275, 87 S. E. 10, L. R. A. 1916 F 216, it was held that in keeping the car to be used for the comfort and pleasure of her family, including her minor son, the defendant would be liable for her son's negligence in driving it, on the ground that such use was her business or affair, and that the son was her agent or servant. In other words, the son is placed in the same class with a hired chauffeur. This view may be correct in such cases as Denison v. McNorton, 228 Fed. 401, where the son was driving other members of the family at the time of the accident, for their pleasure. But it is difficult to see how the principle of respondeat superior should apply when the child is sui juris and is driving the car solely for his own pleasure. It would seem that the presumption of agency, on which these decisions are based, can be rebutted only by showing an express refusal to allow the child to run the automobile. The reasoning of the New York court seems preferable. "The question whether one person is the agent of another in respect of some transaction is to be determined by the fact that he represents and is acting for him, rather than by the consideration that it will be inconvenient or unjust if he is not held to be his agent." The question raised in these cases has previously been discussed in 7 Mich. L. Rev. 180, 526, and 12 Mich. L. Rev. 153.

Perpetuities—Fifty-Year Option as a Perpetuity.—A fifty-year option for a lease, with the right in the meantime to enter and explore for minerals, was alleged to be void because it suspended the power of alienation and violated the rule against perpetuities. Held, that the option was valid; the court remarking that to hold it void would invalidate every option for the purchase of land to be exercised within any period, no matter how short, not measured by lives in being. Mineral Land Inv. Co. v. Bishop Iron Co. (Minn. 1916), 159 N. W. 966.

The court in the instant case rests its conclusion on the construction of the statutory rule against perpetuities which prevails in Michigan and New York, as well as Minnesota, that a perpetuity is created by the suspension of the power of alienation for a period greater than the perpetuity period; but when an absolute fee can be conveyed by persons in being, as by the defendant in the instant case executing a release at the time the plaintiff conveys the title, there is no restraint on alienation, hence no perpetuity. Avern v. Lloyd, L. R. 5 Eq. 383, is followed to this extent, but see In re Hargreaves, 43 Ch. D. 401, also Winsor v. Mills, 157 Mass. 362, 32 N. E. 352. The notion that such options are void started in England in London & S. W. Ry. v. Gomm, 20 Ch. D. 256, which held that an option which might be exercised at a time more remote than the perpetuity-period was void. The
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authorities in this country are nearly evenly divided. The few cases in which the point has been decided are reviewed in 14 Mich. Law Rev. 231 in a comment on Woodal v. Bruen (W. Va. 1915), 85 S. E. 170. To the cases there cited should be added Buck v. Walker, 115 Minn. 239, 132 N. W. 205, Ann. Cas. 1912D 882, which is cited and followed by the principal case. See also In re Garde Browne, [1911] 1 Ir. R. 205, where a covenant in a fee-farm grant enabling the grantee to fine down the rent of £42 to a peppercorn, was held not to violate the rule against perpetuities. See 23 Case and Comment 835, for article by John R. Rood, on Options and the Rule Against Perpetuities.

TORTS—LIABILITY OF LABOR UNION FOR STRIKE.—Complainant is a ship company engaged as a common carrier, and as a carrier of United States mail; its employees struck, and defendants, composing the union of which they were members, picketed the wharves of complainant and intimidated other laborers from accepting complainant's offers of employment. Rocks were thrown on the wharves either by union members or by some persons who mingled with the men on strike, and complainant's business and access to its ships were in other ways interfered with by acts of violence. In a suit brought against the union, a voluntary unincorporated society, to obtain an injunction, Held, that the interference with complainant's transportation business by violence was unlawful, and that it should be enjoined. Alaska S. S. Co. v. International Longshoreman's Association of Puget Sound et al., 236 Fed. 964.

The right of workmen to strike, when free from contractual obligations, is undoubted. Pickett v. Walsh, 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 273, 6 L. R. A. N. S. 1667; Longshore Printing & Publishing Co. v. Howell, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464. But the use of force, violence or intimidation to obtain the ends for which the strike was called is illegal. Beck v. Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 497; Vegelahn v. Gunter, 157 Mass. 92, 44 N. E. 1077, 57 Am. St. Rep. 453, 55 L. R. A. 92; Goldfield Consolidated Mining Co. v. Goldfield Miners' Union, 159 Fed. 500; Quin v. Leathem, [1901] A. C. 495, 85 L. T. 289. That the individuals engaging in such illegal acts would be subject to a civil or criminal liability, or both, is selfevident. But the principal case lays down the rule that a labor union, conducting a strike, is liable for the unlawful acts of members and others associating themselves with the strikers, unless such acts be disavowed, and, in the case of members, the offenders be disciplined or expelled. That a union is liable for the acts of its pickets or members, notwithstanding the fact that it has instructed them not to use violence or intimidation or lawlessness of any kind, seems clear. Goldfield Consolidated Mines Co. v. Goldfield Miners' Union, 159 Fed. 500; Union Pac. Ry. Co. v. Ruef, 120 Fed. 102. This is on the theory that the union is liable, as having aided and abetted such unlawful conduct. Jones v. Maher et al., 116 N. Y. Supp. 180, 62 Misc. 388. The rule adopted in the principal case merely carries the same theory one step further and says that the union must be held liable for the unlawful
acts of outsiders who may join the pickets and the men on strike. This seems a sound view, for if thereafter the union continues its supervision of the strike and accepts the benefits of such terrorism, it must be deemed a party to the conspiracy. *Goldfield Consolidated Mines Co. v. Goldfield Miners' Union*, 159 Fed. 500; *Sailors' Union of the Pacific et al. v. Hammond Lumber Co.*, 156 Fed. 450, 85 C. C. A. 16; *Franklin Union No. 4 v. People*, 121 Ill. App. 647.

Workmen's Compensation—What Is Hazardous Employment?—Deceased was a nightwatchman in defendant's bakery, and was killed by a fall down a spiral stairway while on watchman duty while the plant was idle for the night. The bakery business was enumerated by the New York Act as a hazardous employment. *Held*, no recovery, as deceased was not within the statute. *Fogarty v. National Biscuit Co.*, (1916), 161 N. Y. Supp. 937.

The point involved is: Is the statute satisfied when the person injured is simply in the employment of one engaged in a business enumerated by the statute as "hazardous," or must he also have been engaged himself in a hazardous occupation at the time of his injury? The New York statute defines the term "employee" as one "**who is in the service of an employer whose principal business is that of carrying on **a hazardous employment," etc. The situation in New York, apparently the only state in which this particular question has arisen, is peculiar, inasmuch as the Court of Appeals on May 12, 1916, in the case of *In re Larson*, 218 N. Y. 252, 122 N. E. 725, held that the immediate act in the performance of which plaintiff was injured need not itself be hazardous, but that it is sufficient if such act be fairly incidental to the prosecution of the business. In that case, deceased was a general handy-man, but was killed while erecting a shelf. Then six months later the New York Supreme Court, in the principal case, without reference to the Larson case, followed its previous holdings in *Matter of Rheinwald*, 168 App. Div. 425, 153 N. Y. Supp. 593, and *Lyon v. Windsor*, 159 N. Y. Supp. 162, holding it essential that the deceased have been himself engaged in a hazardous occupation at the time of the injury. The theory of the Court of Appeals seems to be that the compensation is provided for by a system of insurance, in which the employer includes all of his employes, whether engaged immediately in hazardous occupations or not, and that the letter of the statute includes all employes. The theory of the inferior court is that the intention of the legislature was that the risks incurred by those, and only those, who do the manual work of inherently dangerous employments, should be added to the cost of the product, and that the fact that the employer insures himself against injury to all of his employes is an unsound reason for including all within the statute, as such act by the employer is unnecessary and voluntary.