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AGENCY—RESPONDEAT SUPERIOR AS TO LIABILITY OF A LODGE FOR NEGLIGENCE OF A SUBORDINATE LODGE.—The Birmingham Lodge used what was called a "branding board" for initiating new members. A current of electricity was turned on for the purpose of creating on the blindfolded candidate an impression that he was being branded. This was so effective that it killed one candidate. Nothing daunted by this the lodge tried it on another candidate, fifteen minutes later, possibly to see if it was still working. It was, and the administrator of the estate of the second deceased candidate now sues the local lodge, some of its members individually, and also the Supreme Lodge on the theory that the local lodge was acting as its agent. The judge gave an affirmative charge for the local lodge because it was unincorporated, and for the individual defendants because, he said, the evidence had not sufficiently identified them as the persons who had taken part in the fatal ceremonies. But he submitted to the jury the question of the liability of the Supreme Lodge on the ground that there was a relation of principal and agent, because the supreme instructor had approved the use of this apparatus. For refusal to charge specifically that the Supreme Lodge would not be liable unless the local lodge were found to have been negligent, it was *held* a new trial should be granted. *Supreme Lodge of the World, Loyal Order of Moose* v. *Gustin* (Ala., 1918), 80 So. 84.

The court uses language loosely. In a case like this the doctrine of *respondeat superior* applies alike whether the relation is one of principal and agent or of master and servant, but this is no case of agency. That relation involves business dealings between the principal and third persons, *Sternaman* v. *Mut. Life Insurance Co.* (1902), 170 N. Y. 13. This distinction has not been clear in the cases till very recently. *Cf. Singer Mfg. Co. v. Rohn* (1886), 132 U. S. 518, with *Kingan* v. *Silvers* (1894), 13 Ind. App. 80. In the latter case, which seems to be the first to clearly recognize the real distinction between agency and service, will be found a valuable historical discussion. That a master may be liable for the torts of his servant, even when the servant disobeys orders is, of course, common place law, *Phil. & Read. R. Co.* v. *Derby*, 14 How. 468, and the fact that the servant escapes can have no effect on the liability of the master, for tort liability is joint and several. On the other hand, it is certain that there can be no liability under the doctrine of *respondeat superior* if the evidence shows no negligence in the servant. For refusal so to charge the jury the instant case was properly reversed, though on other facts in the case, and the other charges given, two of the judges dissented from this reversal. That liability in case of an unincorporated society rests on principles of agency, the individuals doing the acts in question being agents of all members who expressly or impliedly authorize those acts, is well settled. The unincorporated society is not a person in law and can have no liability. *Ash* v. *Guie*, 97 Pa. 493. See also *Eichbaum* v. *Irons*, 6 W. & S. 67 and *Codding* v. *Munson*, 52 Neb. 560.

CONTRACTS—BY-LAW OF CORPORATION—RESTRAINT OF COMPETITION.—Plaintiff corporation was formed by the farmers of Wray, Colorado, as stockholders, for the purpose of buying and selling their grain. A by-law of the company provides "the stockholders of this company may sell grain to competitors in Wray only, by paying to the secretary of the Wray Farmers' Grain Co., the sum of one cent per bushel for each bushel of grain sold, as his proportional share of the maintenance of the company". Under this by-law plaintiff sued defendant, a stockholder, for $35 for 3,500 bushels sold to plaintiff's competitor in Wray. *Held,* the by-law (which the court considered as a contract) was illegal because in restraint of competition. *Burns* v. *Wray Farmers' Grain Co.* (Colo., 1918), 176 Pac. 487.

By holding the above by-law illegal the court destroyed the effectiveness of this corporation which was a combination in restraint of trade. Similarly, combinations of this nature were invalidated in two Iowa cases on which the court in the instant case relied. *Reeves* v. *Decorah Farmers' Cooperative Society,* 160 Ia. 194; and *Ludovese* v. *Farmers' Mutual Cooperative Co.,* 164 Ia. 197. In the cases of *Slaughter* v. *Thacker Coal & Coke Co.,* 55 W. Va. 642, and *Pocahontas Coke Co.* v. *C. & C. Co.,* 60 W. Va. 508, contracts between the corporations and their members aimed to accomplish the same result as the by-law in the instant case; and they likewise were held illegal. Therefore, attempts to enforce such a combination either by contract or by-law appear to be futile. Combinations like that in the instant case are unlawful because they aim to confer the power to control prices. Neither avowed purposes of public service. *Detroit Salt Co.* v. *Nat. Salt Co.,* 134 Mich. 120; *Pocahontas Coke Co.* v. *C. & C. Co.,* 60 W. Va. 508; *Morris Run Coal Co.* v. *Barclay Coal Co.,* 68 Pa. 173; *Judd* v. *Harrington,* 139 N. Y. 105, nor is the actual accomplishment of results conducive to the public welfare sufficient to make them valid. 20 AM. & ENG. ENC. LAW 849; *Anheuser-Busch Brew. Assoc.* v. *Houck, 27* S. W. 692; *People* v. *Sheldon,* 139 N. Y. 251.

COURTS—JURISDICTION OVER FOREIGN CORPORATIONS DOING BUSINESS IN THE STATE.—The Atchison, Topeka and Santa Fe Railway Company had no railroad lines in Texas, and had no state permit to do business in the state. It did, however, maintain an office in Amarillo, Texas, near the border, from which the general manager of its Western lines, with the aid of a trainmaster, general foreman, mechanical superintendent, and a clerical force, directed the operation of its lines outside the state. *Held,* that the railway company was not doing business within the state so as to subject it to personal service of state process. *Atkinson, Topeka & Santa Fe Ry. Co.* v. *Weeks* (U. S. Cir. Ct. of App., 5th Cir., 1918), 254 Fed. 513.

The case is of value as another application of the rule that "in order to render a corporation amenable to the service of process in a foreign jurisdiction, it must appear that the corporation is transacting business in that district to such an extent as to subject it to the jurisdiction and laws thereof".—*St. Louis Southwestern Ry. Co.* v. *Alexander, 227* U. S. 218, 226. No rule more definite than this has been stated, and "each case of this kind must de-

pend upon its own facts".—*Washington-Virginia Ry. Co.* v. *Real Estate Co.*, 238 U. S. 185. In the former case a railroad which did not run east of Illinois was held to be doing business in New York by reason of its having an office there for soliciting freight and adjusting claims. In the latter case a railroad company which operated its lines exclusively outside the state was held to be doing business within it because it maintained a part-time office there for its president, treasurer and bookkeeper, and transferred stock at that office. On the other hand, the Chicago, Burlington & Quincy Railway Company, which had no line east of Chicago, but maintained an office and an agent for soliciting freight and passenger traffic, with a force of clerks, in the City of Philadelphia, was held not to be doing business there so as to be subject to personal service of summons. *Green* v. *Chicago, B. & Q. Ry. Co.*, 205 U. S. 530. See also *People's Tobacco Co.* v. *Am. Tobacco Co.*, 246 U. S. 79, Ann. Cas. 1918 C, 537, note p. 539.

CRIMINAL LAW—COMBINATIONS IN RESTRAINT OF TRADE.—Defendant was indicted for creating and engaging in a combination to maintain the resale price of products which it manufactured, in contravention of the Sherman Anti-trust Act. The method of procedure charged was, in the main, that the defendant urged its distributing dealers not to resell below a stated price, and refused to sell to dealers who did not obey these promptings. *Held*, that the indictment stated no crime. *United States* v. *Colgate and Co.* (D. C., E. D. Va., 1918), 253 Fed. 522.

There was no evidence that the defendant was acting in concert with other manufacturers to maintain prices. The only combination or conspiracy alleged was based upon the acts of the defendant and its distributing customers. It has been indisputably settled that a contract which is part of a system to maintain the resale price of articles in interstate commerce is illegal, as a restraint of trade. *Boston Store* v. *American Graphophone Co.*, 246 U. S. 8; *Ford Motor Co.* v. *Union Motor Co.*, 244 Fed. 156; *Hill Co.* v. *Gray and Worcester*, 163 Mich. 12; 38 U. S. Stat. 730. *Contra, Ingersoll and Bro.* v. *Hahne and Co.*, 88 N. J. Eq. 222. Even a patentee, if he sells the embodiments of his invention at all, can not limit their resale price; public policy requires him in this respect to open his monopoly completely or not at all. *Bauer* v. *O'Donnell*, 229 U. S. 1; *Straus* v. *Victor Talking Mach. Co.*, 243 U. S. 490; *Motion Picture Co.* v. *Universal Picture Co.*, 243 U. S. 502. The contracts of the defendant in this case would, therefore, have been illegal, in the sense of being unenforcible. The decision that the defendant's acts were not indictable is based on two grounds. One is, that the manufacturer of an article may sell it, "with the understanding that such customer will resell only at an agreed price" and may refuse to sell to those who do not conform to such an understanding, without incurring any criminal liability. The other is, that "no averment is made of any contract or agreement having been entered into whereby the defendant, the manufacturer, and his customers bound themselves to enhance and maintain prices, further than is involved in the circumstance that the manufacturer, the defendant here, refused

to sell to persons who would not resell at indicated prices, and that certain retailers made purchases on this condition, whereas, inferentially, others declined so to do".

DAMAGES—LOSS OF PUBLICITY.—Defendants entered into a contract whereby they engaged the plaintiff, a music-hall artiste, to perform at their music-hall for specified periods in four successive years at a weekly salary. The music-hall was a famous place of amusement and a successful engagement there added to the reputation of the performer. The defendants repudiated this contract. *Held,* "damages for loss of publicity were not recoverable in law." *Turpin* v. *Victoria Palace, Limited* [1918], 2 K. B. 539.

This case involves two points that have given the courts a great deal of trouble and in the decision of which they have been very cautious in their advance into an uncharted field. In the earlier English and American cases the courts refused to allow the recovery for the loss of a chance. In *Pierson* v. *Post,* (1805), 3 Caines N. Y. 75, the court said the plaintiff who had almost caught a fox, but was deprived of this good chance by defendant killing and appropriating the fox, had no cause of action and this, too, although the action was in case. This has been generally assumed to mean that a "chance" was not "property" for the loss of which an action would lie. It was not until quite recently, *Chaplin* v. *Hicks* [1911], 2 K. B. 793, that the court decided that to take away from the plaintiff an "opportunity" to compete for a prize "deprived the plaintiff of something that had monetary value" and thus gave a right of action. In *Bunning* v. *Lyric Theatre,* (1894), 71 L. T. 396, there was an express stipulation to advertise the plaintiff daily. In *Marcus* v. *Myer* (1895), 11 Times L. R., the defendants had contracted to insert an advertisement in a particular place in their newspaper. Plaintiff recovered substantial damages in either case, the rule of certainty in the measure of damage not being allowed to interfere with the exercise by the jury of its discretion on the evidence available. In the instant case the court did not call into question the property right established in *Chaplin* v. *Hicks,* but distinguished *Bunning* v. *Lyric Theatre* and *Marcus* v. *Myer* by the terms of the contracts, there being no evidence in the principal case that damages for loss of publicity were within the contemplation of the parties, and that to allow a recovery would "involve a dangerous extension of the right to damages."

DEATH—ACTION UNDER DEATH ACT—CONSTRUCTION OF STATUTES.—While in D's employ, and due to D's negligence, deceased sustained injuries which caused his death ten years afterwards. P, his widow, sued therefor under the Death Act of Pennsylvania, which provided that whenever death is caused by "unlawful violence or negligence", and no suit is brought by the deceased during his life, his widow or representative may sue and recover for the death thus occasioned. *Held,* P could recover, even though an action by the deceased had been barred by the statute of limitations. *Western Union Telegraph Co.* v. *Preston,* (C. C. A., 3rd Circ., 1918), 254 Fed. 229.

It is unquestionably the purpose of the Death Acts to change the common law rule that a personal action dies with the person. See TIFFANY, DEATH

BY WRONGFUL ACT, Sec. 124. The original tort is therefore held to be the only cause of action to support an action either by the deceased or his representative, and to enure to the representative subject to all of its infirmities and defences. *Michigan Central R. R. Co.* v. *Vreeland,* 227 U. S. 59, 70; *Hecht* v. *Ohio and Mississippi Ry. Co.,* 132 Ind. 507, 511; *Centofanti* v. *Pennsylvania R. R. Co.,* 244 Pa. 255, 262. Although there is but one cause of action, it is generally held that "the act does not transfer the right of action of his death, it is clear that anything that would bar the deceased's right of of action on different principles". *Blake* v. *Midland Ry. Co.,* 18 Q. B. 93, 110; *Michigan Central R. R. Co.* v. *Vreeland, supra; Mason* v. *Union Pacific Ry. Co.,* 7 Utah 77, 81; *Hamilton* v. *Jones,* 125 Ind. 176, 179. Where the statute expressly provides that the right of action of the representative is dependent on the existence of the right of action of the deceased at the time of his deah, it is clear that anything that would bar the deceased's right of action would also bar the representative's, including the statute of limitations. *Fowlkes* v. *Nashville and Decatur R. R. Co.,* 56 Tenn. 829; *Littlewood* v. *Mayor of N. Y.,* 89 N. Y. 24, 28; *Read* v. *Great Eastern Ry. Co.,* L. R. 3, Q. B. 555; *Louisville and St. Louis R. R. Co.* v. *Clarke,* 152 U. S. 230, 235; *Southern Bell Telephone Co.* v. *Cassin,* 111 Ga. 575, 576. But where, as in Pennsylvania, the right of action under the statute does not depend upon whether the deceased could have sued, had he lived, an action thereunder would be barred only when the cause of action itself had been extinguished. The defence of the statute of limitations in the instant case seems, then, to have been correctly held untenable, since it merely barred the remedy and not the cause of action of the deceased. Though such a construction might be said to contravene the original purpose and intention of the death acts; yet the main principle underlying the new right of action, which the statute gives to the representative, is that of compensating the dependents, and this is realized.

DEDICATION—RIGHT OF WAY OVER RAILROAD TRACKS.—P seeks an injunction to restrain the use of a way across its railroad tracks, which D city claims to have been dedicated by P, the evidence showing that the public had used the way for over twenty years, that at times P had placed a watchman there to protect the public from accident, and that accommodation trains had stopped there to discharge passengers. *Held,* D had no right of way across the tracks, the evidence not being sufficient to evince an intention to dedicate. *City of Atlanta* v. *Georgia R. and Banking Co.* (Georgia, 1919), 98 S. E. 83.

It is quite uniformly held that a railroad company may dedicate land for a public street across its right of way. ANGELL, HIGHWAYS, Sec. 134; ELLIOTT, RAILROADS, Sec. 425; ELLIOTT, ROADS AND STREETS, Sec. 146; 9 AM. AND ENG. ENC. 33; note, 8 L. R. A. (N. S.) 966; *Northern Pacific R. Co.* v. *Spokane,* 56 Fed. 915; *People* v. *Eel River and Eureka R. R. Co.,* 98 Cal. 665, 670; *Central R. R. Co. of N. J.* v. *Bayonne,* 52 N. J. L. 503. Such a dedication, to be valid, must not interfere materially with the performance of the company's charter duties. *Matthews* v. *Seaboard Air Line Ry.,* 67 S. Car. 499, 508; *Augusta* v. *Georgia R. R. and Banking Co.,* 98 Ga. 161, *semble.* In the

determination of what will constitute an intention to dedicate, the courts have recognized a distinction between private and railroad property. A right of way in the public is so inconsistent with the rights and obligations of the railroad company that it cannot be presumed to have consented to a dedication, except on the production of clear, unequivocal evidence, amounting virtually to an express dedication. *Central R. R.* v. *Brinson*, 70 Ga. 207, 241; *Louisville and Nashville R. R. Co. v. Childers*, 155 Ky. 652; *Ill. Central R. R. Co.* v. *People*, 49 Ill. App. 538; *Hast* v. *Railroad Co.*, 52 W. Va. 396. In the last case the court said, "a dedication by a railroad company, to bind the corporation, must be made by the directors, or recognized by them or by such public use as to justify the inference of ratification". In some cases the evidence has been held to be sufficiently strong and conclusive to warrant an implication of consent. *Union Co.* v. *Peckham*, 16 R. I. 64; *Lake Erie and Western R. R. Co.* v. *Boswell*, 137 Ind. 336; *St. Paul, Minneapolis, and Manitoba Ry. Co.* v. *Minneapolis*, 44 Minn. 149. Although the evidence in the principal case strongly tended to show an intention to dedicate, yet the court held that the use was merely permissive, because the railroad company could not be presumed to have dedicated the way, since it would thereby suffer a loss of the use of one-third of its yards, at a cost of several hundred thousand dollars.

INTERSTATE COMMERCE—INTOXICATING LIQUORS—REED AMENDMENT.—The defendant Hill was indicted under the Reed Amendment (Comp. St. 1918, 8739a, 10387a-10387c) which prohibited transportation of liquor into a state forbidding its manufacture and sale. The laws of West Virginia, into which Hill brought one quart of liquor from Kentucky, forbade the manufacture and sale thereof, but allowed a person to have one quart a month brought in for personal use. On a motion to quash the indictment, it was *held*, that the power of Congress to regulate commerce may in proper cases take the character of prohibition, the act in question being a proper exercise of its power. *United States* v. *Hill* (U. S., 1919), 39 Sup. Ct. Rep. 143.

That the power of Congress to regulate interstate commerce is supreme, has often been declared, *Gibbons* v. *Ogden* (1824), 9 Wheat 1; *Brown* v. *State of Maryland* (1827), 12 Wheat 419; *Cooley* v. *Board of Port Wardens* (1851), 12 Howard 299; *Railroad Co.* v. *Husen* (1877), 95 U. S. 465; *Bowman* v. *Chicago &c. Ry. Co.* (1888), 125 U. S. 465. And when Congress exercises its authority, state laws at variance must give way, *Houston &c. Ry. Co.* v. *Texas &c. Ry. Co.* (1914), 234 U. S. 342; *Minnesota Rate Cases* (1913), 230 U. S. 352, Ann. Cas. 1916A, 18. It has further been held that this power to regulate means that Congress has the power to prohibit the importation of that which is injurious to the public morals, as in the Lottery or White Slave Cases, *Lottery Case* (1903), 188 U. S. 321, 356-358; *Hoke* v. *United States* (1913), 227 U. S. 308. And under the taxing power Congress may tax the manufacture of colored oleo out of existence, thus preventing the use of the commodity in interstate commerce, and discouraging manufacture, even though the main reason for the tax was the prevention of a fraud on the public. *McCray* v. *United States* (1904), 195 U. S. 27, 54. In the *Child*

Labor Case (*Hammer* v. *Dagenhart*) (1918), 247 U. S. 251, 3 So. Law Q. 175, 17 Mich. Law Rev. 83, although the element of deceit was present, it was held that Congress could, under the commerce clause only, prohibit evils *subsequent* to interstate commerce, but not evils *antecedent* thereto. This decision, which was very much criticised, was based on the fact that the act would tend to regulate the hours of labor of children in factories, a purely state authority. Clearly under the commerce clause Congress has the power to prohibit interstate commerce in proper cases, and, as the evil aimed at in the instant case *followed* importation, the case is not open to the objection which the court in the *Child Labor Case, supra,* seemed keen to find in order to uphold the right of the states to control their manufactures under the power reserved to them by the Tenth Amendment. That the Reed Amendment was constitutional was based on the same reasoning as that applied in the *James Clark Distilling Co.* v. *W. Md. Ry. Co.* (1917), 242 U. S. 311, 2 So. Law Q. 112, L. R. A. 1917B, 1218, Ann. Cas. 1917B, 845, it there holding that it was constitutional for a state under the Webb-Kenyon Act to make it unlawful for a carrier to bring liquor into the state. The court decided that there was no delegation of authority to the states, for the states, in their police regulations necessarily affecting interstate commerce, were acting under the will of Congress; and, that the act itself was uniform, for "it uniformly applies to the conditions which it calls into play", and, further, that there is no constitutional requirement that regulation shall be uniform throughout the United States. When the Wilson and Webb-Kenyon acts were passed, Congress had in view the laws of the states, but by the Reed Amendment it exerted a power of its own in accordance with its views of public policy.

Landlord and Tenant—Assignment—Liability of Assignee on Contract with Lessor.—Defendant being in possession of certain premises under a lessee, informed the lessor that he would pay the rent and "assume" the lease. *Held,* that defendant was an assignee: further, that he remained liable for rent for the term of the lease, though dispossessed under Civil Code Procedure, section 2253. *Mann* v. *Ferdinand Munch Brewing Co.* (N. Y., 1919), 121 N. E. 746.

As between the lessor and the lessee, the latter is liable for rent by reason of privity of estate. Tiffany, Landlord and Tenant, p. 1029. Consequently upon a cessation of this privity the liability also ceases. Ordinarily such liability is augmented by a covenant for rent creating a contractual relation between the parties. The privity of estate may be concluded by the lessee's assignment of his interest. Such assignment operates to vest the privity of estate but not the privity of contract in the assignee. Tiffany, Landlord and Tenant, pp. 918, 1123; *Peck* v. *Christman,* 94 Ill. App. 435. Generally the assignee's liability is dependent upon the existence of this privity of estate. *Sexton* v. *Chicago Store Company,* 129 Ill. 318, 327; *Sutcliff* v. *Atwood,* 15 Oh. St. 192. As in the case of the lessee, an assignee may assume independent liability. *Bonetti* v. *Treat,* 91 Calif. 223; *Springer* v. *DeWolf,* 194 Ill. 218, wherein an assumption of the lease by the assignee was held to create a contract and entitle the lessee to sue the assignee for rent after assignment.

Though the agreement was made with the lessee, the rule in Illinois allows a party for whose benefit a contract is made to sue on it in his own name. *Bristow* v. *Lane,* 21 Ill. 194. In jurisdictions where this rule does not obtain, such as Massachusetts, *Marston* v. *Bigelow,* 150 Mass. 45; Minnesota, *Union Storage Co.* v. *McDermott,* 53 Minn. 407; New Hampshire, *Curry* v. *Rogers,* 21 N. H. 247; Virginia, *Newberry* v. *Newberry Land Co.,* 95 Va. 111, the lessor would probably be without direct remedy on such an agreement. In the instant case, it did not appear that defendant, though in possession, had actually taken an assignment, but under the rule of presumption as to one in possession, it was so found by the trial court. TIFFANY, LANDLORD AND TENANT, p. 950; *Ebling* v. *Tuylien,* 2 Mo. App. 252; *Frank* v. *Ry. Co.,* 122 N. Y. 197. Such presumption does not operate to bind the assignee on the personal covenants of the lease, *Frank* v. *Ry. Co., supra; Congregational Society of Sharon* v. *Rix* (Vt.), 17 Atl. 719. The defendant's letter to the plaintiff in which he "assumed" the lease was held by the court in effect to establish a contract directly between the parties, finding the assignment by the lessee and the permission to assign by the lessor to be the consideration for the assignee's assumption of liability on the personal covenants. That a covenant by an assignee to remain liable for rent after assignment or dispossession if based on a valuable consideration is valid, is conceded. *Consumer's Ice Co.* v. *Bixler,* 84 Md. 437. The Court directs most of its attention to the proper construction of the word "assume" contenting itself with the statement that the assignment and consent were consideration for the contract. Whether defendant's promise was supported by the requisite consideration was, it is submitted, the real question in the principal case.

MASTER AND SERVANT—INJURIES TO SERVANT—ESTOPPEL OF INFANT SERVANT.—Plaintiff, a girl under sixteen, was hired by defendant on representations by her that she was older than sixteen, the age required by the state's Child Labor laws. She sued for an injury to her hand caused by working at a mangle machine. Defendant claimed that plaintiff was guilty of contributory negligence, and was estopped by her previous assertions from setting up her true age and that she was hired contrary to statute. *Held*: since plaintiff was under the age required by statute, contributory negligence was no defense, and she was not estopped from setting up her true age. *Sanitary Laundry Co.* v. *Adams* (Ky., 1919), 208 S. W. 6.

The court goes on the theory that one who hires an infant must ascertain at his peril that the employe is a member of the class of persons he may lawfully employ, and if the hiring be unlawful, the master is an insurer of the child's safety. The principle underlying the cases that follow this view is that the statute is aimed at the master and not at the servant, that the latter does nothing unlawful, but the former does. *American Car* v. *Armentraut,* 214 Ill. 509. The Indiana court holds that it is negligence *per se* to hire a young person unlawfully, hence contributory negligence is no bar. *Waverly Co.* v. *Beck,* 180 Ind. 523. But other courts do not go to the same length. In New York it has been decided that the hiring is not negligence *per se,* but that proper vigilance must be exercised by the employer. *Koester*

v. *Rochester Candy Works,* 194 N. Y. 92. The Michigan court seems the most lenient towards the employer, and where a boy under sixteen was hired contrary to statute, without even being asked his age, and with no false representations on his part, he was refused recovery for injuries to his hands and fingers, because of contributory negligence. *Beghold* v. *Auto Body Co.,* 149 Mich. 14. See also *Pequignot* v. *Germain,* 176 Mich. 659. Where there were no Child Labor statutes, but merely employers' rules against hiring infants, minors who misrepresented themselves to be adults to secure employment have been allowed to claim only that duty of care towards them that the employer would owe to an adult. *Denver & Rio Grande R. Co.* v. *Reiter,* 47 Colo. 417; *Matlock* v. *Williamsville, etc., Ry. Co.,* 198 Mo. 495.

MASTER AND SERVANT—SAFETY DEVICES—DUTY TO FURNISH.—Plaintiff, a man of less than average height, injured his hip while jumping from a box car in which he was working as an employe of the defendant. The floor of the car was about four feet and a half from the ground. Under a statute providing that a master must furnish his servant with a safe place of employment, and explaining "safe" to mean "as free from danger to the life, health, or safety of employees as the nature of the employment will reasonably permit," a jury found for the plaintiff. On appeal by the defendant, *held,* (three justices dissenting) it was within the province of the jury's discretion to find as it did, since it is possible to have ladders or steps on box cars to aid in descent. *Van de Zande* v. *Chicago & N. W. Ry. Co.* (Wis., 1919), 170 N. W. 259.

Drastic legislation and judicial ruling have been resorted to in Wisconsin to induce employers to come under that state's Workmen's Compensation Act. In *Rosholt* v. *Worden-Allen Co.,* 155 Wis. 168, BARNES, J., says, "It is evident that the legislature desired that employers generally should come under the act, and that some of its provisions were designed to make it as comfortable for them to come in as to stay out. * * *The statute in terms imposes an absolute duty on the employer to make the place of employment as free from danger as the nature of the employment will reasonably permit." In that case the employe fell and was injured while carrying planks over a runway on the roof of a building. The statute itself is a great advance in stringency over the common law rule that a master need exercise but reasonable care and skill to the end that the place where he requires his servant to perform his labor be as reasonably safe as is compatible with its nature and surroundings. *Smith* v. *Peninsular Car Works,* 60 Mich. 501; *Armour & Co.* v. *Russell,* 144 Fed. 614. The majority opinion in the principal case that the jury was justified in finding a box car to be unsafe is directly in harmony with the attitude of the same court that the employer is practically an insurer of his employe's safety. In *Kuligowski* v. *Kieckhefer Box Co.,* 160 Wis. 320, where the plaintiff injured himself while lifting boxes from a wagon to a doorway about ten feet above the ground, the jury decided that the place of employment was safe within the terms of the statute, the court, however, granted a new trial on the grounds that the verdict was perverse. It may be questioned

whether the court does not go too far in its attempts to protect employees, and there was a strong dissenting opinion in *Roshola* v. *Worden-Allen Co., supra,* as well as in the principal case.

NAVIGATION—RIPARIAN RIGHTS—EFFECT OF STATUTE.—Section 4620, Revised Statutes Missouri, 1919, provides that, "Every person who shall willfully and maliciously burn, injure or destroy any pile or raft of wood * * * or cut loose or set adrift any such raft * * * or shall cut, break, injure, sink or set adrift any boat, canoe, skiff or other vessel, being the property of another, shall be adjudged guilty of a misdemeanor". A lumber company floated a raft down a navigable stream and, having reached the point of destination in the evening, tied the raft for the night to a tree on the bank of an island owned by the defendant, president of a rival concern, although defendant had warned the company not to make such use of his property. Defendant cut loose the raft. *Held,* that defendant was guilty of a misdemeanor under the statute which plainly intended to protect commerce and "to subject the rights of riparian owners of land to the erasement of using such streams as public highways". *State* v. *Wright* (Mo., 1919), 208 S. W. 149.

Conceding that the legislative intent embraced the situation presented by the principal case,—and that contention is not beyond question,—it is by no means evident that the statute was to protect commerce by operating in the manner suggested by the decision. The opinion seems to imply that legislation had imposed a new servitude upon the riparian owner, yet such cannot be the fact, for the invasion of the latter's rights has been held to come within the constitutional inhibition against deprivation of private property without due process of law, and can be accomplished only under the power of eminent domain. *Yates* v. *Milwaukee,* 10 Wall. 497. If, on the other hand, the right of which the company took advantage existed at common law as an incident to navigation, it is difficult to see why the court found it necessary to deduce from a statute containing nothing of direct import on the subject, an inference merely declaratory of the common law. It is, however, extremely doubtful whether the privilege as here exercised by the lumber company, is to be regarded as a part of the common law of the state of Missouri. The code of continental Europe recognized little, if any, legal distinction between the use of the river bank and that of the river itself. FARNHAM, WATERS AND WATER RIGHTS, Vol. I, Sec. 143a. But the common law, as determined in England, had more regard for the riparian owner. *Ball* v. *Herbert,* 3 Term. 253. Likewise in this country, the civil law, at least in its full application, has been almost universally repudiated. *Reimold* v. *Moore,* 2 Mich. N. P. 15; *Ledyard* v. *Ten Eyck,* 36 Barb. 102; *Smith* v. *Atkins,* 110 Ky. 119; *The Magnolia* v. *Marshall,* 39 Miss. 109, (and cases cited): *Ensiminger* v. *People,* 47 Ill. 384; *Weise* v. *Smith,* 3 Ore. 445. And the right of navigation in the case of navigable fresh waters, as a general rule, ceases at the water's edge. GOULD, WATERS, Sec. 99. It is hence safe to say that today in most states, including those formed from the Louisiana Territory where the civil law early prevailed under Spanish dominion, except the state of

Louisiana itself, the use of river banks is limited to that dictated by nothing less than a reasonable necessity. *Bass* v. *State,* 34 La. Ann. 494, which the United States Supreme Court refused to follow in *Hollingsworth* v. *Parish of Tensas,* 17 Fed. 109; *Hunter* v. *Moore,* 44 Ark. 184; *O'Fallon* v. *Daggett,* 4 Mo. 343. Although the latter case has frequently been invoked to support the argument for a liberal doctrine in favor of the public, the rule therein established is restrictive, and the court in *Smith* v. *City of St. Louis,* 21 Mo. 36, subsequent to a discussion of *O'Fallon* v. *Daggett,* says, "We are not aware that the Spanish law, in relation to riparian grants on the Mississippi, in Louisiana, has ever been considered as obtaining in Missouri."

PRIZE LAW—ENEMY GOODS—TRANSFER IN TRANSITU.—A cargo of tea consigned to a German firm at Bremen was shipped from a Chinese port in July, 1914, on a German vessel. Upon learning of the outbreak of war, the vessel took refuge on August 7, 1914, in the neutral port of Padung in Sumatra, where the cargo was unshipped and stored. In 1916 the tea was sold to a Dutch firm in Amsterdam. Fresh bills of lading were made out and the tea was reshipped on a Dutch steamship for London. It was discharged and warehoused at the port of London, where it was seized as prize. The tea was claimed as neutral property. *Held,* that the transfer *in transitu* was ineffective to defeat the belligerent's right of capture. *The Bawean* (1917), 14 Asp. M. C. 255.

The rule was well established, at least as early as the time of Lord STOWELL, that risk of capture once incurred cannot be divested by transfer *in transitu.* See *The Vrow Margaretha* (1799), 1 C. Rob. 366; *The Packet De Bilboa* (1799), 2 C. Rob. 133; *The Carl Walter* (1802), 4 C. Rob. 207; *The Jan Frederick* (1804), 5 C. Rob. 128. The rule has been criticized as peculiarly favorable to sea power. It has always been unpopular among neutral traders, among whom there has been a good deal of misapprehension with respect to its real significance. It will hardly be relaxed, however, while war and the right of capture are recognized. See *The Southfield* (1915), 13 Asp. M. C. 150; *The Bawean, supra.* Compare *The United States* (1916), 13 Asp. M. C. 568. The *raison d'être* for the rule was cogently stated by Mr. Justice STORY as follows: "Such contracts, however valid in time of peace, are considered, if made in war or in contemplation of war, as infringements of belligerent rights, and calculated to introduce the grossest frauds. In fact, if they could prevail, not a single bale of enemy's goods would ever be found upon the sea." *The Ship Ann Green* (1812), 1 Gall. 274, 291.

PRIZE LAW—NEUTRAL OR ENEMY CHARACTER OF MERCHANT SHIPS.—Article 57 of the Declaration of London provided that the neutral or enemy character of a merchant ship should be determined by the flag which the vessel is entitled to fly. It was urged by the drafting committee, in its report to the Naval Conference, that this test should be relied on exclusively and all considerations connected with the personal status of the owner discarded. The futility of such artificial tests and the ruthless elimination of technicality from prize law are well illustrated in two of the more recent English prize cases. The *Proton* was registered as a Greek ship and entitled to fly the Greek flag.

In April, 1915, one Kouremetis, a domiciled Greek and landlubber of practically no means, appeared in Athens with his pockets full of money. He purchased the *Proton* and engaged in the Ottoman trade. The vessel was captured while loading a cargo of oats at a Turkish port. Ship and cargo were claimed as neutral property, but Kouremetis did not offer himself for examination. The Court found that he did not buy the vessel for himself, but only figured as owner in order that she might continue to fly the Greek flag, and that in view of his German associations he must have bought with German money for the German Government, the only party likely to be interested in laying out so much money on so dubious a venture. It was contended that the flag was conclusive as to character. *Held,* on appeal, by the Judicial Committee of the Privy Council, that the Prize Court was not bound by the Order in Council adopting the Declaration of London, that the character of the *Proton* should be determined by the entire body of relevant circumstances, and that the finding that Kouremetis was not the true owner was warranted by the evidence. Accordingly, the claimant's appeal failed. *The Proton* (1918), 87 L. J. P. C. 114, 14 Asp. M. C. 268.

The *Hamborn* wase registered in Holland and was flying the Dutch flag. At the time of capture it was running under a time charter with an American firm on a voyage from New York to Cuba. The vessel was owned by the Hamborn Shipping Company, a limited company registered in Holland. The entire share capital of this company was held by two companies which were registered in Holland but were controlled by German directors resident in Germany. The company was managed by two German subjects resident in Holland. The centre and effective control of its business was in Germany. *Held,* that the *Hamborn* was a German vessel and should be condemned as prize. *The Hamborn* (1917), 87 L. J. P. 64, 14 Asp. M. C. 204.

In the first case, the rule of the Declaration of London had been adopted by Order in Council, but the prize court refused to be bound by it. The Crown cannot, by Order in Council, prescribe or alter the law to be administered by a court of prize. *The Zamora* (1916), 85 L. J. P. 89, 94, 95. In the second case, the Order in Council had been revoked at the date of capture. In neither case, therefore, was the test recommended by the Naval Conference applied. Nor is this test likely to be applied by any state which is obliged to rely upon sea power. While the flag is binding against the owner of the captured vessel (*The Tommi; The Rothersand* (1914), 84 L. J. P. 35), English and American courts do not treat it as binding against the captor. Lord STOWELL, in *The Fortuna* (1811), 1 Dods. 87. Where the vessel is owned by a company it is hardly to be expected that its character will be determined exclusively by the location of the company's registered office. See *Daimler Co.* v. *Continental Tyre and Rubber Co.* (1916), 85 L. J. K. B. 1333. Prize courts are not bound by technicalities. See *The Indian Chief* (1800), 3 C. Rob. 12; *The Fortuna* (1817), 2 Wh. 161 and 3 Wh. 236; *The Ocean Bride* (1854), 2 Spinks 8; *The St. Tudno* (1916), 85 L. J. P. 1. As was said in the case of *The Hamborn, supra,* "It is a settled rule of prize law, based on the principles upon which Courts of Prize act, that they will penetrate through and beyond forms and technicalities to the facts and realities.

This rule, when applied to questions of the ownership of vessels, means that the Court is not bound to determine the neutral or enemy character of a vessel according to the flag she is flying, or may be entitled to fly, at the time of capture. The owners are bound by the flag which they have chosen to adopt, but captors as against them are not so bound. It has been said that 'it is no inconsiderable part of the ordinary occupation of a Prize Court to pull off the mask and exhibit the vessel in her true character'."

SALES — CONDITIONAL SALES — RIGHT OF VENDOR TO RESERVE TITLE AND RIGHT TO SUE FOR PRICE.—Plaintiff was a purchaser at an execution sale of goods levied on as those of a purchaser under a conditional sale providing for the right to retake and for retention of title by the vendor. The vendor had sued out judgment against the vendee and later assigned all his rights to the defendant. *Held,* plaintiff did not acquire title as against the defendants, assignees of the vendor. *Wiedenbeck-Doblin Co.* v. *Anderson* (Wis., 1919), 169 N. W. 615.

The conflict of authority on this subject is brought out by a comparison of the principal case with the case of *Young* v. *Phillips,* 169 N. W. 822, decided by the Supreme Court of Michigan, December 27, 1918, wherein the court on the authority of *Atkinson* v. *Japink,* 186 Mich. 335, without a statement of facts, held a provision for retention of title in the vendor with a right to sue for the price would be construed as intending merely to give the vendor a lien for security and result in an absolute sale, the right to retain title and sue for the price being inconsistent. In effect, the decisions are in conflict. In Wisconsin, a seller may retain title to the goods and at the same time sue for the price. In Michigan, if the seller attempts to secure himself by retaining title and at the same time reserve the right to sue for the price, the courts will declare the remedies inconsistent, the sale absolute and the seller relegated to a lien for his security. In neither case does the decision appear to rest on a statute. Commonly a buyer's liability for the purchase price is contingent on the passage of title. But the parties by contract may base the liability on possession of the goods and right to acquire title in which case the seller may have his action for the price with the buyer's right to possession as the *quid pro quo. White* v. *Solomon,* 164 Mass. 516; *Burnly* v. *Tufts,* 66 Miss. 48; *Tufts* v. *Griffin,* 107 N. C. 47. In *J. M. Arthur and Company* v. *Blackman,* 63 Fed. 536 and *Randall* v. *Stone,* 77 Ga. 501, the court found the destruction of the goods before payment and the consequent inability to pass title relieved the vendee of liability on the ground of failure of consideration. Conceivably, parties might contract for the sale of goods, the buyer's liability to be contingent on his acquisition of possession and right to acquire title. If from a reasonable construction of the contract, this intention appears, it hardly lies with the court to gainsay it. If by "inconsistent" the Michigan court means merely that it is unreasonable, it lays itself open to the objection of re-writing the contract. If, on the other hand, its meaning is to hold that retention of title and a right to sue for the price cannot legally stand together it is tantamount to holding that the only consideration the law recognizes for a buyer's agreement to pay is

the seller's agreement to pass title. In *Atkinson* v. *Japink, supra,* while the seller and his assignee were awarded a right analogous to a statutory lien against the chattel, it was held that the contract reserving to the seller both the title and the right to sue for the price showed that the parties intended title should be reserved to the plaintiff only as a security for the price, *i. e.,* in the nature of a lien and that therefore there was not a conditional but an absolute sale. The Wisconsin court, on the contrary, holds the existence of these two remedies to be not inconsistent but cumulative and hence imposed no alternative to elect between them. In cases where passage of title is not the consideration for the price, this may be true. However, where it clearly appears that payment of the price is in consideration of the passage of title, it is submitted that the right to sue for the price to be paid for the title and the retention of the title are inconsistent.

SALES — CONSIDERATION FOR WARRANTY. — Plaintiff agreed to purchase a specified horse from defendant, and paid part of the stipulated purchase price. Thereafter, but before delivery of the horse and payment of the balance of the price, defendant warranted the horse. *Held,* the warranty was enforcible. *Bowen* v. *Zaccanti* (Mo., 1919), 208 S. W. 277.

The court makes the sole issue whether title had passed at the time of the agreement, holding that it had not. On the usual presumption, however, title had passed, as nothing except delivery and payment remained to be done. *Bill* v. *Fuller,* 146 Cal. 50; *Kessler* v. *Veio,* 142 Mich. 471. But what has passing of title to do with the binding quality of a warranty? The courts have held that a warranty made after the passing of title is enforcible only when there is a new consideration. *Baldwin* v. *Daniel,* 69 Ga. 782; *Congar* v. *Chamberlain,* 14 Wis. 258. The court in the principal case seems to have concluded from this proposition that a warranty made before title had passed is, *ipso facto,* binding regardless of consideration. The court bases its decision on *Douglas* v. *Moses,* 89 Ia. 40, and *McGaughey* v. *Richardson,* 148 Mass. 608. While *Douglas* v. *Moses* supports the decision, it is itself based upon the other case cited, which in no way is authority for its holding. In *McGaughey* v. *Richardson* the vendor of horses at auction had advertised that warranty would be given purchasers at the sale, and the vendee after having a horse knocked down to him had the vendor insert a warranty in the bill of sale. The warranty was one of the terms of the contract, and unless it had been made, the vendee might well have claimed a recission of the bargain.

STATUTORY CONSTRUCTION — UNINTENTIONAL OMISSION OF WORD "NOT" FROM STATUTE.—Statute prohibited the use of automobile lights unless designed to throw a ray "which shall rise above 42 inches" at a distance of 75 feet. Defendant's lights threw a ray which did not rise above 42 inches at this distance. Expert testimony clearly showed to the court that ligths in conformity with the requirements of the statute were "blinding," while those throwing a ray *not* above 42 inches at the stated distance were not; and that the latter alone was what the legislature could have intended. *Held,* that it is not within the power of the court to read the word "not" into the

statute, and that there had been a failure of legislation with reference to the statute. *State* v. *Claiborne* (Iowa, 1919), 170 N. W. 417.

In this case there were three possibilities of decision. The court might have held it without its powers to insert the word "not" into the statute, and yet held the statute valid; it might have deemed it within the province of the judiciary to construe into the statute the word "not", so as to effectuate the obvious intention of the legislature; or it might have proceeded as it did and declared the statute of no effect inasmuch as it was not the function of the court to legislate. To have allowed the statute to remain enforcible strictly according to its letter would have been unjust and caused an absurd condition. Such a course was out of the question. But could the court insert the omitted word into the statute, thereby making the statute read in direct opposition to the legislative draft? While it is true that when the intention of the lawmakers can be collected from the whole statute, from the title or preamble, or from related provisions, words may be supplied so as to obviate any inconsistency with such intention, LEWIS'S SUTHERLAND'S STATUATORY CONSTRUCTION, Sec. 410, however in the principal case there was none of these tangible hints at which the court could grasp in its construction. Here the language presented no ambiguity, and the court followed the established rule that it cannot qualify it by interpolation. *People* v. *Sands,* 102 Cal. 12; *Swarts* v. *Siegel,* 117 Fed. 13; *U. S.* v. *Diamonds,* 139 Fed. 961. In *Manhattan* v. *City of New York,* 147 N. Y. S. 835, the court said, "If the legislature fails to insert such provisions in the law as will accomplish the result intended, their omissions cannot be remedied by construction, and the law must, to that extent, be considered defective and inoperative, the court having no power to interpolate words or phrases." Also see *U. S.* v. *Ragsdale,* Hemst, 497. Where a statute as printed omitted the word "not", which appeared in the enrolled act, and afterwards the statute was amended and reenacted and the word "not" omitted from both the enrolled and printed acts, it was held to be a clerical error and the omitted word construed into the amended act. *Hutchings* v. *Com'l. Bank,* 91 Va. 68. Here the omission made the act unintelligible and incongruous, while in the principal case the meaning was perfectly plain and there was no inconsistency caused by passing the act as it was. It being quite evident in the case at bar that to enforce the act as it stood would have wrought a condition conflicting with reasonable requirements of conduct, and inasmuch as the court would have laid itself open to the frequent adverse criticism of judicial legislation by inserting the omitted word, the holding of the court was logical and expedient in declaring there had been a failure of legislation where the act would have wrought the very evils it sought to remedy.

WORKMEN'S COMPENSATION ACT — DEPENDENCY. — Under a Workmen's Compensation Act (Code § 3193k, Sec. 140, par. 8, 29 Laws of Delaware 763. p. 771) providing that if there be neither widow, widower nor children of deceased, compensation shall be paid "to the father and mother, or the survivor of them, if dependent to any extent upon the employee for support at the time of his death", *held,* that if the wages of a minor son deceased had

helped to supply the family with such means of living as would enable them to live in a style and condition and with a degree of comfort suitable and becoming to their station in life, and the father was lacking in the health or ability requisite to furnish such means by his own reasonable efforts, the father was dependent upon the son for support within the meaning of the statute. *Benjamin F. Shaw Co.* v. *Palmatory, et al.* (Del., 1919), 105 A. 417.

This rule of law, to which the jury must apply the evidence in a determination of the question of dependency in fact, has, in so far as dependency is defined to mean dependent for the ordinary necessities of life for a person of that class and position in life, been widely approved and employed as the most just standard capable of practical application. *Simmons* v. *White Bros.*, 80 L. T. N. S. 344; Lord Shand in *Main Colliery Co.* v. *Davies*, 83 L. T. N. S. 83; *Dazy* v. *Apponaug Co.*, 36 R. I. 81; *Hotel Bond Co.'s Appeal*, 89 Conn. 143; *Parson* v. *Murphy*, 101 Neb. 542 (546, 547); *Poccardi* v. *State Compensation Com'r*, 79 W. Va. 684; *In re Carroll* (Ind., 1917), 116 N. E. 844; *Jackson* v. *Erie, etc.*, 86 N. J. L. 550; BOYD, WORKMEN'S COMPENSATION, Secs. 232, 234, 496; BRADBURY'S WORKMEN'S COMPENSATION, 2nd Ed., Vol. I, p. 571. The further requirement, as expounded by the principal case, to establish a condition of dependency, namely, that the father be deficient in the physical or mental capacity to support the family by his own reasonable efforts, also commends itself as founded in common sense and good reason. Most of the cases, however, are barren of discussion on this point and do not seem concerned with more than a consideration of the claimant's actual reliance for support, as above explained, upon the wages of the deceased at the time of injury or death. *Simmons* v. *White, supra; Howells* v. *Vivian and Sons*, 85 L. T. N. S. 529; *State* v. *District Court of Rice County*, 134 Minn. 324; *Conners* v. *Public Service Electric Co.*, 89 N. J. L. 99; *Havey* v. *Erie Railroad Co.*, 88 N. J. L. 684. Yet in at least three states governed by statutes substantially similar to that of Delaware, the courts have expressed themselves as opposed to such an interpretation of the law. *Herrick's Case*, 217 Mass. 111; *Kenney's Case*, 222 Mass. 401; *McMahon's Case*, 229 Mass. 48; *In re Lanman* (Ind., 1917), 117 N. E. 671; *Blanton* v. *Wheeler and Howes Co.*, 91 Conn. 226 (232). And see also *State* v. *District Court of Ramsey County*, 134 Minn. 131, decided under a 1915 amendment to the Minnesota Act of 1913.

WORKMEN'S COMPENSATION ACT—DEPENDENCY—REMARRIAGE OF DECEASED WORKMAN'S WIDOW.—Plaintiff, widow of a workman fatally injured while in employ of defendant company, remarried before expiration of the period during which she was entitled to compensation by award under the Workmen's Compensation Act. Upon application of the defendant company to vacate or modify the award on the ground that plaintiff was then dependent, within the meaning of the Act, solely on her second husband, it was *held* that the former decree could not be reviewed and that plaintiff's remarriage did not affect her right to compensation. *Newton* v. *Rhode Island Co.* (R. I., 1919), 105 Atl. 363.

The court bases its decision upon the construction of the Workmen's

Compensation Act of Rhode Island (1912 Pub. Laws, Ch. 831) which provides for adjustment of compensation when an injured employee's incapacity is increased, diminished or ended, but which is absolutely silent about the right to or procedure for modification or vacation of décree in case of subsequent change in the financial condition of a deceased workman's dependents. Section 7 of the Act, in part, reads: "The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee: (a) A wife upon a husband with whom she lives or upon whom she is dependent at the time of his death". A consideration of this definition would seem to warrant the inference that dependency is determined with reference to the situation at the time of the workman's death and not, as the court states, "at the time of the injury which results in his death." However that may be, the first clause of paragraph (a) plainly indicates that the wife need not be *in fact* either partially or wholly dependent financially upon her husband at the time of his death to entitle her to compensation, and the court's finding that her subsequent financial independence would not terminate her right to compensation, certainly appears to be in keeping with the legislature's intention. *Botts Case,* 230 Mass. 152, 119 N. E. 755, decided under a similar act, supports the principal case and concludes that, "Whatever incongruity there may be in continuing payments to a person on the presumption that she is dependent on a deceased husband when in fact she is receiving ample support from a new husband is a matter for the Legislature and not for the courts to remove". Whether or not in like recognition of such "incongruity", the New Jersey Act of 1911 (P. L. p. 134) was amended in 1913 (P. L. p. 302) to cut off the widow's right to compensation if she remarried before the end of the period covered by weekly payments may not be entirely clear. Yet in *Hansen* v. *Brann and Stewart Co.* (N. J., 1917), 103 Atl. 696, the court refused to stop compensation the right to which vested before passage of the 1913 amendment, although the widow remarried after that legislation went into effect. Maryland provides (Acts 1914, Ch. 800, Sec. 42) that if the widow remarries without *dependent children,* "all compensation under this amendment shall cease." In Illinois (Hurd's Rev. St. 1915-16, Ch. 48, Sec. 7) compensation is paid to the widow if the deceased workman was under legal obligation to support her at the time of his injury or contributed to her support within four years previous to that time, and it has been held that no proof of dependency is necessary to a recovery *American Mill Co.* v. *Industrial Board of Illinois,* (Ill., 1917) 117 N. E. 147.

WORKMEN'S COMPENSATION ACT—"TOTAL DISABILITY."—Previous to his employment by the Wabash Railway Co., Williams, the applicant for compensation, had lost an arm. While in the employment of the railroad he lost a leg. *Held,* in view of the former incapacity the loss of a leg constituted "total disability" within the Workmen's Compensation Act. *Wabash Railway Co.* v. *Industrial Commission* (Ill., 1918), 121 N. E. 569.

The Illinois Workmen's Compensation Act provides that the loss of both hands or both arms, both feet, both legs, both eyes, or any two of them, shall constitute total and permanent disability. *Hurd's Rev. St.* 1917, c. 48, Sec.

133. The instant case decides that the loss of any one of these members when combined with the loss of another member previous to the employment constitutes "total disability." The question of the instant case, under similar statutory provisions, has arisen in only four other American cases. Three of these cases are in accord with the instant case. *Eugene Branconnier's Case,* 223 Mass. 273 and *In re J. & P. Coats (R. I.) Inc.* (R. I., June, 1918), 103 Atl. 833 (holding the loss of the remaining eye during employment constituted "total disability"); *Schwab* v. *Emporium Forestry Co.,* 153 N. Y. S. 234 (loss of the remaining hand during employment "total disability"). The fourth case (*Weaver* v. *Maxwell Motor Co.,* 186 Mich. 588), which is *contra* to the instant case, allows only partial disability compensation because to allow compensation for "total disability" would be to hold the employer accountable for something that occurred before the employment began. The instant case, and the cases in accord, rest on the theory that the employee's pay was limited on entering the employment, by reason of his incapacity, so that the allowance of "total disability" compensation, based on this limited pay, is no hardship to the employer. For an interesting discussion of both views see 1 CORNELL L. Q. 292. After the New York decision *supra* the New York *Workmen's Compensation Act* was amended (Consol. Laws, Ch. 67) so as to provide that only partial disability compensaion could be recovered under the situation discussed in this article. The Minnesota Act has a provision to the same effect. Minn. Gen. St., Sec. 8209.