Michigan Law Review

Volume 16 | Issue 2

1917

Recent Important Decisions

Michigan Law Review

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Recommended Citation

Michigan Law Review, *Recent Important Decisions*, 16 MICH. L. REV. 120 (1917).
Available at: https://repository.law.umich.edu/mlr/vol16/iss2/4

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RECENT IMPORTANT DECISIONS

ADMIRALTY—MEANING OF "SHORE."—Certain sections of a dry dock containing a tug were driven by a violent storm across the Mobile River and left on the land above the ordinary high water mark. *Held,* subject to salvage, and a suit to recover for replacing the tug in the water within admiralty jurisdiction. *The Gulfport,* (Dist. Ct., S. D. Ala., 1917), 243 Fed. 676.

In the case of *The Ella,* 48 Fed. 569, the Court was confronted with an analagous situation and allowed salvage. But in that case the question of jurisdiction does not appear to have been raised. Salvage is due for assistance in dangerous situations at sea and for property preserved after having been cast on shore. *Waite* v. *The Antelope,* Fed. Cas. No. 17,045; *Cope* v. *Vallette Dry Dock Co.,* 119 U. S. 625. "Shore" is defined as that space between ordinary high and low water mark, *Shively* v. *Bowlby,* 152 U. S. 1; *Elliott* v. *Stewart,* 15 Ore. 259. In the instant case the violence of the storm assisted by a time-worn definition had apparently placed the tug beyond the jurisdiction of the admiralty court. But the court was equal to the situation and extended the "shore" to include land on which waters have deposited things which are the subject of salvage. This is in accord with the liberal doctrine of admiralty courts which look to the subject matter rather than to narrow rules and definitions.

ADOPTION—RIGHT OF INHERITANCE—SECOND ADOPTION.—The Comp. Laws, 1897, provide that on adoption the child shall become and be an heir at law of the adoptive parents. There was a second proceeding for the adoption of a child which was signed and assented to by the parties. *Held,* that it *ipso facto* revoked or superseded the first order of adoption of the child by other parties, and the child lost his right to inherit from his first adoptive parents. *In re Klapp's Estate,* (Mich., 1917), 164 N. W. 381.

The cases decide that unless the statute expressly provides otherwise, the adopted child will inherit from his natural parents as well as from his adoptive parents. *In re Walworth's Estate,* 85 Vt. 322; *Clarkson* v. *Hatton,* 143 Mo. 47; *Flannigan* v. *Howard,* 200 Ill. 396, 15 MICH. L. REV. 161. In *Patterson* v. *Browning,* 146 Ind. 160, the court held that the second adoption did not revoke the right of inheritance from the first adoptive parent on the ground that the adopted child according to the statute inherits as if it were a natural child. "At all events there is no reason why the second adoption should destroy the relation created by the first adoption and the legal capacity to inherit thereby created." *Russell's Admin.* v. *Russell's Guardian,* 14 Ky. Law Rep. 236, was decided the same way but no reasons were given for the decision. In the instant case the court said that the second adoption having destroyed the rights and obligations of the prior adoptive parents, destroyed the reciprocal right of inheritance. It differentiates this result from that of inheriting from natural parents even though adopted. "In the one case, by no act of the parent, can he prevent the child becoming his heir.

In the other case, the child cannot become his heir without his consent." This reasoning seems strong from the standpoint of free interpretation of the statute. But construing the statute strictly it would seem to follow that when the child becomes adopted its right to inherit becomes vested and could not be revoked by a subsequent adoption.

BANKS AND BANKING—ALTERATION OF AMOUNT OF CHECK—SPACE FOR AMOUNT IN WORDS LEFT BLANK.—Plaintiff's clerk presented blank check for signature to plaintiff, but there were the figures £2.0.0. in the space intended for figures. The check was signed and clerk raised the figures and wrote "one hundred and twenty pounds" in the space left for the words. Check was paid at the bank. Plaintiff sues for difference. *Held,* that the mandate to the bank was to pay £2 only and the circumstances did not constitute negligence on part of plaintiff. *Macmillan* v. *London Joint Stock Bank Limited,* (1917), 2 K. B. 439.

The scope of the case of *Young* v. *Grote,* 4 Bing. 253, is limited, and Scrutton, L. J., decides it is no longer authority. There is implied authority to fill blanks of a signed note but not to alter the terms. *Angle* v. *N. W. Ins. Co.,* 92 U. S. 330. The alteration of a note by filling in spaces and increasing the amount for which it was made avoids the note. *Greenfield Savings Bank* v. *Stowell,* 123 Mass. 196; *Shipman* v. *State Bank,* 126 N. Y. 318; *Crawford* v. *W. S. Bank,* 100 N. Y. 50. *Hall* v. *Fuller,* 5 B. O. C. 750. The marginal figures being no part of the instrument, it has been held that where the holder of a note, in blank, filled it up and negotiated it for a larger sum than was indicated by the marginal figures, this does not vitiate the note although he also altered the figures. *Schryver* v. *Hawkes,* 22 Oh. St. 308. *Johnston Harvester Co.* v. *McLean,* 57 Wis. 258. The American cases hold that a depositor who signs blank checks assumes the risk. *Trust Co. of America* v. *Conklin,* 119 N. Y. Supp. 367. It is hard to reconcile the decisions with that in the instant case, for a check is a bill of exchange, and under the same facts, except that a check is not used, the drawer is held liable; *Harvester Co.* v. *McLean, supra,* even though the court decided that there was no negligence on the part of the drawer.

BANKRUPTCY—DISCHARGE—"OBTAINING PROPERTY BY FALSE PRETENSES".—The plaintiff took the defendant's note in renewal of a former note relying on defendant's false statement of assets, the former note having been given almost two years before. *Held,* that defendant's fraud would not render him criminally liable on the charge of obtaining property by false pretenses, nor would it keep him from being discharged in bankruptcy proceedings. *Carville* v. *Lane,* (Me. 1917), 101 Atl. 968.

Section 17 of the BANKRUPTCY ACT of 1898 provides, "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as * * * are liabilities for obtaining property by false pretenses or false representations * * *". The recent case of *In the Matter of Dunfee,* 219 N. Y. 188, held that a guaranty on a bond was "property" within the meaning of the section. For a thorough review of cases in point see 15 MICH. L. REV. 245.

BILLS AND NOTES—NEGOTIABILITY—PROVISION FOR EXTENSION OF TIME.—A promissory note contained a provision that "all parties to this note, including sureties, indorsers and guarantors, hereby * * * consent to extensions of time". *Held,* the provision rendered the time of payment uncertain and the note non-negotiable under the statutory requirement that a negotiable instrument must be payable on demand or at a fixed or determinable future time. *Cedar Rapids National Bank* v. *Weber,* (Iowa, 1917), 164 N. W. 233.

The court apparently was influenced and governed largely by previous Iowa decisions to the effect that a provision that the holder may extend the time of payment from time to time renders the note non-negotiable. *Woodbury* v. *Roberts,* 59 Ia. 348; *Miller* v. *Poage,* 56 Ia. 96. But, as has been pointed out in a previous number of this REVIEW, the authorities are in conflict upon this point, and the trend of modern decisions under the NEGOTIABLE INSTRUMENTS ACT appears to be toward the contrary view. 15 MICH. L. REV. 510; *First National Bank* v. *Baldwin,* 100 Neb. 25. The theory underlying the latter view is that such a provision does not place upon the payee a duty to extend the time of payment, but rather that its sole purpose is to protect the holder against discharge of indorsers, guarantors, and sureties in case of an agreement between the holder or payee and the maker to extend the time of payment. *Longmont National Bank* v. *Loukonen,* 53 Colo. 489. In *First National Bank of Albuquerque* v. *Stover,* 21 N. Mex. 453, a note containing a provision similar to that of the instant case was held negotiable, the same construction being applied as in the cases holding negotiable a note providing that the holder may extend the time of payment; that though the provision refers to "all parties," it does not give the maker or any other party authority to extend payment without the consent of the holder. While the construction applied in the instant case appears to follow more closely the literal statement of the provision in the note, yet the construction applied in *First National Bank of Albuquerque* v. *Stover, supra,* would seem justifiable on the ground that the parties did not intend to do a vain act, such as the contract would virtually become if the maker could extend the time of payment at will.

CARRIERS—CARRIAGE OF PASSENGERS—LIMITED TICKET.—Plaintiff bought a ticket from a railroad company on the face of which was printed, "Good continuous passage, beginning date of sale only on train scheduled to stop at destination, otherwise passenger transfer to local train." *Held,* a valid provision, being a reasonable regulation by the carrier. *Louisville & N. R. Co.* v. *Rieley* (Va. 1917), 93 S. E. 574.

There are two distinct lines of authority in cases like the above involving a time regulation on what is known as a general or straight ticket. The weight of authority is to the effect that in the absence of statutory prohibition a reasonable limit imposed by a carrier of passengers upon the time within which tickets sold by it may be used for passage will be upheld where the passenger has notice of the restriction. The conflict arises where the purchaser has not had notice of the regulation. One view is that the mere stamping or printing of a limitation upon a railroad ticket and the acceptance of such ticket by a passenger are not sufficient to bind him to such limitation

in the absence of actual notice of it, and his assent thereto when he purchases the ticket. *Louisville & Nashville R. R. Co.* v. *Turner,* 100 Tenn. 213. To the same effect is *Dagnall* v. *Southern Ry.,* 69 S. C. 110, affirming *Norman* v. *Southern Ry.,* 65 S. C. 517, in which it is held, that a passenger has a right to ride on a ticket for which he has paid full fare, at any time unless his attention has been called to such limitations and he has assented thereto. The above cases go on the ground that the time limit should be dealt with as a term of a contract entered into between passenger and carrier and hence dependent for its validity, upon an actual or implied, "meeting of the minds," of the parties. The other class of cases claims that it should be considered a regulation of the carrier for the efficient conduct of its business and hence dependent for its validity, not upon the consent of the passenger, but upon whether or not it is reasonable. This view is supported by the larger number of cases. In *Freeman* v. *Atchison, Topeka and Santa Fe Ry. Co.,* 71 Kan. 327, it was held that the purchaser will be presumed to consent to a reasonable limitation as to the time of the use of the ticket, which regulation is plainly expressed on the contract, though he does not sign the contract. That such a limitation is reasonable and that there could be no recovery for the ejection of plaintiff from the train was held in *Trezona* v. *Chicago G. W. Ry. Co.,* 107 Iowa 22. Whether a ticket is to be regarded as evidencing a contract or as a token or voucher of the payment of fare only, the effect is the same; if the latter, it is the duty of the passenger who desires not to pay upon the cars to see that he has a proper voucher. *Elmore* v. *Sands,* 54 N. Y. 512. The present case only adds one more to the long list of cases holding that a ticket in its primary sense is evidence of the passenger's right to transportation and that a time regulation if reasonable is valid. It may be noted that those cases holding the contract view are comparatively recent cases.

COMMERCE—INTERSTATE TELEGRAM—FAILURE TO DELIVER MESSAGE—LIABILITY.—A message announcing the death of plaintiff's mother was sent from Virginia to North Carolina, August 27, 1917, and through the negligence of the defendant was not delivered. Plaintiff asks damages for the consequent mental anguish which would be recoverable in North Carolina. *Held,* that since the act of Congress of June 18, 1910, (36 Stat. 539, c. 309), Congress has so taken over the regulation of the entire field of commerce with respect to the telegraph that state decisions in conflict with the law as administered in the Federal Courts are thereby superseded, *Norris* v. *Western Union Telegraph Co.* (N. C., 1917), 93 S. E. 465.

In this country a number of states, chiefly southern, have by statute or decision recognized mental anguish as a foundation for damages. The Federal Courts, however, and the weight of American authority follow the common law in denying recovery. *So. Express Co.* v. *Byers,* 240 U. S. 612. A long line of decisions in North Carolina sustain such damages both for interstate and intrastate messages. The latest of these cases, *Penn* v. *Western Union Telegraph Co.,* 159 N. C. 306, was decided in 1912, two years after the Act of Congress relied upon in the principal case. In that case, the facts be-

ing precisely identical with those in the principal case, Judge Walker, who delivered the opinion in the Norris case, concurred with the majority of the court in awarding damages to the plaintiff. The Norris case rests its apparent *volte-face* upon a decision of the preceding term. *Meadows* v. *Postal Telegraph & Cable Co.*, (No. Car., 1917), 91 S. E. 1009, which in turn rests its decision upon *Gardner* v. *Western Union Telegraph Co.*, 231 Fed. 405. In that case, decided Feb., 1916, it was ruled that by the aforesaid ACT, "Congress having taken possession of the field of interstate commerce by telegraph, the provision of the constitution of Oklahoma relied upon [by the plaintiff] has become inoperative," and concluded in general that: "Congress has not only taken possession of the field of interstate commerce by telegraph, but has also specifically prescribed the rules which shall govern the transaction of such commerce." The novelty of the principal case lies in the North Carolina Court's apparent misconception of the scope of that ACT of CONGRESS upon which they predicate their decision. This misconception is doubtless traceable, in part at least, to the ultra-broad language of the decision in the Gardner case, above cited, which quotes among its authorities, *Adams Express Co.* v. *Croninger*, 226 U. S. 491. It is true that the Supreme Court there declares the intent of Congress to take possession of the subject of the liability of a carrier under contracts for interstate shipment, and to supersede all state regulations with reference to that subject. But there is no intimation, either in that decision, in the CARMACK AMENDMENT which it professes to interpret, or in the ACT OF JUNE 18, 1910, upon which the principal case relies, which may conceivably be interpreted to intend that Congress assumes exclusive control of the entire field of interstate commerce.

COMMERCE—REGULATION—POWERS OF STATES OVER COMMUTATION RATES.—The Pennsylvania Railroad Company sought an injunction to restrain the Public Service Commission of Maryland from enforcing a schedule of intrastate rates for commutation tickets. The railroad, recognizing the propriety and necessity of rendering a peculiar service to suburban communities, had already established rates lower than the legally fixed standard one-way single passenger fare. *Held*, the state has the right to fix reasonable rates for the special services accorded commuters, different from those fixed for the general service. *Pennsylvania R. Co.* v. *Towers et al.*, (1917), 38 Sup. Ct. 2.

The right to issue tickets at reduced rates, good for limited periods, upon the principle of commutation was recognized in the leading case of *Interstate Commerce Commission* v. *B. & O. R. Co.*, 145 U. S. 263. In that case the court held that a party rate ticket for the transportation of ten or more at a less rate than was charged a single individual did not amount to a discrimination against that individual within the meaning of the INTERSTATE COMMERCE ACT. Such differences in rates were based upon substantial differences in the character of the services rendered, and the resulting discrimination was reasonable. In 1903, some years after the decision in the above case, the ELKINS ACT was enacted, which provided against all discrimination. The court, by their decision in the instant case, have declared their intention to

abide by their previous interpretations of Congressional provisions against discrimination. Three of the Justices, including the Chief Justice, dissented from the decision, but no reasons were given for their action.

CONSTITUTIONAL LAW—CONSTITUTIONAL AND CHARTER PROVISIONS—RIGHT OF WOMEN TO VOTE.—The constitution of the state prescribed the qualifications of the electors for all elections held to fill offices which the constitution itself provided for, and in all elections upon questions submitted to a vote pursuant to provisions of the constitution, to be that voters should be male citizens of the age of twenty-one. A charter was granted by the legislature to a municipality containing a provision which conferred upon women the right to vote in municipal elections. In a proceeding in *mandamus* to compel the commissioners to permit the plaintiff to vote, *held,* that the charter provision was constitutional and therefore the *mandamus* was granted. *State* v. *French,* (Ohio, 1917), 117 N. E. 173.

COOLEY in his CONSTITUTIONAL LIMITATIONS (7th Ed. 99) says that, wherever the constitution has prescribed the qualifications of electors, they cannot be changed or added to by the legislature, or otherwise than by an amendment to the constitution. The description of those entitled to vote as required by the constitution excludes all others. *McCafferty* v. *Guyer,* 59 Pa. 109. An act conferring upon women the right to vote for school commissioners, when the constitution provided that male citizens should be electors, was held unconstitutional. *In the Matter of the Cancellation of the Name of Matilda Joslyn Gage,* 141 N. Y. 112. The contrary decisions follow the theory expressed by JONES, J., dissenting in the instant case, wherein he says, "if the majority opinion be followed, the Legislature of the state may confine the elective municipal franchise solely to women, or to others, as it may choose." But this does not follow, for the legislature cannot nullify the constitutional requirements; it cannot exclude those who have been given the right, but must include them, though it may enlarge the class. Those authorities that are in accord with the principal decision contend that the constitutional requirements are a description of those who shall not be excluded. The principle *expressio unius est exclusio alterius,* in the interpretation of provisions of the constitution, must be applied with great caution, and only those things expressed in such positive affirmative terms as to plainly imply the negative of what is omitted, will be considered as prohibiting the powers of the legislature. *Pine* v. *Commonwealth,* (Va. 1917), 93 S. E. 652. The Michigan court has taken both views. *Belles* v. *Burr,* 76 Mich. 1; *Coffin* v. *Election Commissioners of Detroit,* 97 Mich. 188. The constitution is to be looked to, not to ascertain whether a power has been conferred, but whether it has been taken away. The legislature is practically omnipotent in the matter of legislation, except in-so-far as it is restrained by the constitution, expressly or by necessary implication. It must be conceded that all persons can vote who possess the qualifications described in the constitution, but it does not follow that no others can vote. The instant case expresses the modern doctrines that the constitutional qualifications are not exclusive, but merely inclusive.

CONSTITUTIONAL LAW—SCHOOL TEACHERS' PENSION FUND.—In an appeal from a judgment directing and commanding the defendant as county treasurer to set aside from the county tuition fund a sum equal to ten cents for each child of school age and to transmit the same to the state treasurer to be credited to "the teachers' insurance and retirement fund, *held,* under statutes of North Dakota that the act was constitutional. *State ex rel Haig* v. *Hauge* (N. Dak., 1917), 164 N. W. 289.

The constitution of North Dakota provides: "No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied" and, "Neither the state nor any county, city, township, town, school district, or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation, except for the necessary support of the poor * * *." There are two classes of teachers' pension fund cases in which this question arises, depending upon the sources of their funds. In one class the fund is created by statutes which provide that a certain per cent of the teachers' salary shall be deducted and placed in the fund, and in the other class the fund is created by taxation. In some instances the fund is supplemented by state appropriations, gifts and bequests. This question involves, "the due process clause" of the Constitution of the United States. It has been held that a statute requiring the deduction of a certain per cent from a teacher's salary for such purpose or fund is unconstitutional, as interfering with the teacher's constitutional right to use his property for his own benefit. *State* v. *Hubbard, 22* Oh. Circ. Ct. 252, 64 N. E. 109. That case takes the view that the amounts retained are either taxes imposed upon teachers and invalid because not uniform, or they are a taking of private property without due process of law. The case, however, is unsupported by authority. On the other hand there are many cases which hold that such a statute is a part of the contract and that by the terms of the agreement the salary to be paid is a net and not a gross amount, therefore, there is no taking of property. *Pennie* v. *Reis,* 80 Cal. 266; *Ball* v. *Trustees,* 71 N. J. L. 64. In the second class of cases the question is entirely one of taxation. In order that a tax be valid, the tax must be for a public purpose and the classification of persons or property which it concerns, reasonable. A tax in aid of the construction of a railroad is for a public purpose in practically all jurisdictions except Michigan. *People* v. *Salem Twp.,* 20 Mich. 452. A tax to aid in the construction of a grist mill is for a public purpose. *Burlington Twp.* v. *Beasley,* 94 U. S. 310. It would seem to follow that a tax creating a fund for pensioning teachers was closely enough connected with the general subject of education to be considered as for a public purpose and not as a gift to any person or class of persons. In *Fellows* v. *Connelly,* (Mich., 1916), 160 N. W. 581, it was held that the act providing for a fund for pensions to school teachers did not violate the constitutional provision forbidding extra compensation to public employees, since it extends an equal inducement to teachers already under contract and those who are induced by the act to enter public service. In the present case the objection is that it takes money from a fund raised for one purpose and applies it to another purpose and this in violation of the

state constitution. This feature only adds the question of interpretation. The fund was originally created for school purposes. In view of the many decisions as to what is a public purpose in taxation it would seem, that this decision which says that the creation of a teachers' pension fund is germane to the general purposes for which the tax was authorized is reasonable. An extended discussion of the constitutionality of teachers' pensions will be found in 11 MICH. L. REV. 451, and 12 MICH. L. REV. 105.

CONSTITUTIONAL LAW—TAXATION OF FOREIGN CORPORATIONS—PRIVILEGE OF DOING DOMESTIC BUSINESS.—A statute provided that every foreign corporation should pay the commonwealth, in addition to a tax imposed by a previous statute, an excise tax of one-hundredth of one per cent of the value of its capital stock in excess of $10,000,000, the entire authorized capital stock to be used for a measure of the tax. Plaintiff sought to recover money paid under such act. *Held,* the act is constitutional and the tax is collectible by the state. *International Paper Co.* v. *Commonwealth,* (Mass., 1917), 117 N. E. 246.

Cases in the early history of corporation law held that a state had the power to tax a foreign corporation for the privilege of engaging in domestic business, even though such corporation was engaged at the same time in interstate commerce. *Bank of Augusta* v. *Earle,* 13 Pet. 519; *Western Union Tel. Co.* v. *Alabama,* 132 U. S. 472. But in *Western Union Tel. Co.* v. *Kansas,* 216 U. S. 1, the court declared, a statute which taxed the foreign corporation by a graduated scale for the privilege of doing intrastate business, unconstitutional, as violative of the Fourteenth Amendment and burdening interstate commerce, because the tax was considered by the court as a tax upon the interstate business as well as the domestic business. See 8 MICH. L. REV. 572. Later, in *S. S. White Dental Mfg. Co.* v. *Massachusetts,* 231 U. S. 68, a tax for the same privilege with a fixed maximum of $2,000, the tax was held valid and the Kansas case is distinguished on the ground that the interstate and local business was not so connected as they were in the Kansas case. See 12 MICH. L. REV. 210. The instant case goes further, and the pendulum is swinging back to where it was in the early history of corporation law. In the principal case there was no maximum; a tax measured by the entire capital stock, though it had only a small portion of its property within the state, was to be paid for the privilege of doing domestic business. Inasmuch as the power to tax carries with it the power to destroy, this decision holds that the state may totally prohibit the doing of intrastate business by a foreign corporation carrying on interstate commerce. The case will undoubtedly be carried to the United States Supreme Court and it will be of interest to note whether the dissenting opinion by HOLMES, J., in the Kansas case will at last come into its own.

CONTRACTS—RESTRICTION UPON RESALE PRICE.—Plaintiff, as manufacturer of Ford Automobiles sued to restrain defendant "from engaging in what the plaintiff claims to be unfair practices, by which its rights are violated and the public is deceived." It appeared that defendant pretended to be a distributing

"agency" for Ford cars and sold them below the price stipulated in the contracts which plaintiff made with its authorized agents. *Held,* the judgment of the lower court dismissing plaintiff's bill, should be reversed and further proceedings ordered. *Ford Motor Co.* v. *Benj. E. Boone, Inc.* (C. C. A. 9th Circ., 1917), 244 Fed. 335.

The court based its ruling on the proposition that by using the recognized Ford trademarks and otherwise leading the public to believe it was an authorized agency the defendant was guilty of "unfair and deceptive practices" from which the plaintiff was entitled to protection. This had nothing whatever to do with validity of contracts between the plaintiff and its real agents; indeed the court expressly assumed for the sake of argument that such contracts were invalid. The court then, however, to what end is not clear, discussed the legality of the contracts. This is of interest in comparison with the case of the same plaintiff against the UNION MOTOR SALES CO., noted below. The contract here involved, unlike that in the *Union Sales Co.* case, specifically provided that title should not pass from the plaintiff, even though the full agent's price had been paid, until the plaintiff should have signed a bill of sale to some one purchasing a car for use, not merely for re-sale. It was contended that this reservation of title was "only an adroit attempt to avoid the effect of certain decisions" such as those on which the *Union Sales Co.* decision was based, and that it ran counter to the rule of such cases. The court held the reservation of title to be valid and effective and that the plaintiff could, therefore, legally limit the price at which cars might be sold to users. In discussing such cases as those in which the *Union Sales Co.* decision was based the court strongly indicates that the contracts involved in those cases were invalid because they effected "the exclusive control of a useful or desirable article of commerce" while the contracts in the present case covered only one type of desirable articles. The court cites no authority in support of the effect of its distinction, but its idea is probably the same as that more pertinently considered in *Ghirardelli Co.* v. *Hunsicker,* 164 Cal. 355.

CONTRACTS—RESTRICTION UPON RESALE PRICE—INVALID.—Plaintiff sued to restrain defendant from inducing authorized distributors of Ford automobiles to sell them at less than the price which they had contracted with plaintiff to maintain. *Held,* the injunction should be denied. *Ford Motor Co.* v. *Union Motor Sales Co.* (C. C. A. 6th Circ., 1917), 244 Fed. 156.

Refusal to grant the relief asked was predicated upon the proposition that the agreements not to resell below a fixed price were contrary to public policy and illegal, being an improper restraint of trade. "* * * It is the general and well-settled rule," said the court, "that a system of contracts between a manufacturer and retail dealers, by which the manufacturer, in connection with absolute sales of his product, attempts to control the resale prices for all sales, by all dealers, eliminating all competition, and fixing the amount which the ultimate purchaser shall pay, amounts to restraint of trade, and is invalid both at common law and, so far as it affects interstate commerce, under the SHERMAN ANTI-TRUST ACT." *Dr. Miles Medical Co.* v. *Park & Sons Co.,* 220

U. S. 373; *John D. Park & Sons Co.* v. *Hartman,* 153 Fed. 24, 12 L. R. A. (N. S.) 135; *United States* v. *Kellogg Toasted Corn Flake Co.,* 222 Fed. 725. The court found specifically that title to the machines had been passed from the plaintiff to its distributors. In the *Hartman* case, cited, the court called attention particularly to the fact that, "The reasons which might uphold covenants restricting the liberty of a single buyer might prove quite inadequate when there are a multitude of identical agreements." It is this "system of contracts", as the courts call it, which distinguishes such cases as these from the numerous ones holding single contracts in restraint of trade to be valid and enforcible. A single contract not to resell below a stipulated price was upheld in *Garst* v. *Harris,* 177 Mass. 72 and in *Clark* v. *Frank,* 17 Mo. App. 602. Even systems of such contracts have been held valid and enforcible in particular circumstances. See *Ghirardelli Co.* v. *Hunsicker,* 164 Cal. 355, distinguishing *Park & Sons Co.* v. *Hartman, supra,* on the ground that the contracts in that case involved the entire public supply of the product while those in the particular case, although they applied to all that the parties could control, covered only a part of the entire supply available to the public; *Fisher Flouring Mills Co.* v. *Swanson,* 76 Wash. 649, 51 L. R. A. (N. S.) 522; *Grogan* v. *Chaffee,* 156 Cal. 611, 27 L. R. A. (N. S.) 395; *Com.* v. *Grinstead,* 111 Ky. 203; 56 L. R. A. 709; *Cleland* v. *Anderson,* 66 Neb. 252, 5 L. R. A. (N. S.) 136N. In accord with the principal case is *Hill Co.* v. *Gray & Worcester,* 163 Mich. 12, 30 L. R. A. (N. S.) 327. A contention was made by counsel that the automobiles were covered by patents and that it is lawful "to create a monopoly in patented articles." The court answered, on the authority of such cases as *Bauer* v. *O'Donnell,* 229 U. S. 1, and *Motion Picture Patents Case,* 243 U. S. 502, that, inasmuch as plaintiff had passed the title to the distributors, the chattels were no longer subject to the patent monopoly. The court made no reference to the fact, and counsel seems not to have presented it, that a monopoly in the use, manufacture, or sale of patented articles is already created by the patent statute, and that contracts such as those involved in the case do not "create" any monopoly but simply limit the extent to which the owner of the statutory monopoly has released it. 15 MICH. L. REV. 581; *John D. Park & Sons Co.* v. *Hartman, supra.* However, even if it be logically unsound to ignore this, the cases seem likely to stand as law, if only upon the doctrine of *communis error.*

CONTRACTS—RESTRICTION UPON RESALE PRICE—VALID.—Plaintiff sued, as manufacturer of Ingersoll watches, to restrain defendant from reselling them at a price below that required by a notice affixed to each watch originally sold by plaintiff. *Held,* a motion to dismiss the bill should be denied. *Robt. H. Ingersoll & Bro.* v. *Hahne & Co.* (N. J. Ct. of Ch., 1917), 101 Atl. 1030.

The decision in this case is in flat conflict with that of the *Ford Motor Co.* case, *supra.* The facts do not show any privity of contract between the parties, but the court apparently assumes that there was a contract. In disposing of the defendant's contention that the contract, so far as it restricted the resale price, was invalid, the court said, "On the argument there was, and in counsels' brief there is, a long discussion as to whether the contract against

price cutting, evidenced by the notice, is contrary to public policy, and defendant relies upon cases in the Supreme Court of the United States as follows: (Citing the same cases relied upon as supporting the decision in the *Ford Motor Co.* case). I am now considering the public policy of the state of New Jersey as distinguished from any public policy of the United States. Unless the article is the subject of interstate commerce, I am not bound by the opinions of the Supreme Court of the United States. They are entitled to great weight and careful consideration, but it must not be overlooked that the effect of the case of *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502, * * * (decided April 9, 1917) is a complete reversal of *Henry* v. *Dick Co.*, 224 U. S. 1. * * * Suffice it to say that, after careful consideration, I have come to the conclusion that, upon the general proposition, I agree with the dissenting opinion of Mr. Justice Holmes in *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U. S., at p. 411."

CRIMINAL LAW—SUFFICIENCY OF INDICTMENT.—An information, charging the defendant with the crime of obtaining money by false pretenses, failed to show any causal connection between the alleged false pretenses and the surrender of the money. The defendant demurred generally to the information. The demurrer was overruled, and the defendant was convicted. He was denied a new trial, and appealed, on the ground that his demurrer should have been sustained. *Held,* that there was no ground for a reversal. *People* v. *Griesheimer,* (Cal., 1917), 167 Pac. 521.

The majority of the court, in the principal case, displayed no hesitation in totally ignoring what has become a well-settled rule of pleading. The court admits that there is no direct allegation to the effect that the money was given to the defendant because of the alleged false pretenses, states that "a direct allegation to this effect would have been more in accord with technical requirements"; but avers that "no person of common understanding could fail to understand that it was substantially charged, by necessary inference at least, that the money was paid because of the alleged false representation, and for the purpose suggested thereby," and relies, for its refusal to grant a reversal, on the provision of the California constitution providing that no judgment shall be set aside or new trial granted for error as to pleading unless the court is of the opinion that it resulted in a miscarriage of justice. In a strong and well-reasoned dissenting opinion, HENSHAW, J. takes issue with the majority of the court, and upholds a fundamental rule of pleading that every indictment or information must contain direct averments, and only those inferences may be drawn therefrom which the law itself draws, and the omission to charge the causal connection between the false representations and the deprivation of property is a fatal defect in the indictment or information, of which the defendant may avail himself by a general demurrer. The minority opinion likewise attacks the argument of the majority based on the constitutional provision, declaring that, merely because a guilty man has been found guilty, it does not follow that there has been no "miscarriage of justice," but that there has been a "miscarriage of justice" whenever any man has been forced to trial upon a criminal charge under an indictment or infor-

mation which does not measure up to the rules of legal sufficiency; that there has been a "miscarriage of justice," even though the evidence may show guilt, if there was no proper procedure before the court to justify the taking of that evidence. It is to be noted that, in reaching its decision in the principal case, the court was divided four to three, and that the majority opinion fails to cite a single authority in support of its proposition, while the minority has substantiated its argument with unnumbered authorities.

ESPIONAGE ACT—POST OFFICE—NON-MAILABLE MATTER—SEDITIOUS PUBLICATIONS.—In an action to enjoin the postmaster of the city of New York from keeping the plaintiff's publication, *"The Masses,"* out of the mail, *held,* that, under the ESPIONAGE ACT OF JUNE 15, 1917, the defendant was not warranted in excluding the journal in question. *Masses Publishing Co.* v. *Patten,* (Dist. Ct. S. D., N. Y., July 24, 1917), 244 Fed. 535.

The particular portions of the ESPIONAGE ACT construed by the court in the principal case were those making it an offense to "willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies," and declaring such matter non-mailable as has the effect either of willfully causing or attempting "to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces of the United States" or willfully obstructing "the recruiting or enlistment service of the United States to the injury of the service" or which contains "any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States." The court says that a willfully false statement includes only a statement of fact which the utterer knows to be false, and that the act does not have the effect of making it an offense to make any statement which is within the range of opinion or criticism, or which is certainly believed to be true by the utterer; that the right to criticize is not invaded by the act, and the utterer of any statement may fall back upon a defense similar in nature to the defense of "fair comment" in libel suits. The act is held not to be violated by any action short of urging upon others that it is their duty or their interest to resist the law. One may not counsel or advise others to violate the laws of the United States as they stand, but any action other than a *direct* advocacy of resistance to the existing law is held not to be a violation of the act. It would seem that such an interpretation of the act deprives it of much of its force; and that the opposition and agitation attendant upon its enactment was, in view of such an application of it, all a crossing of a bridge which has not been built as yet. (NOTE.—Press reports are to the effect that the Circuit Court of Appeals has reversed the holding in the principal case.)

FISH—PUBLIC RIGHTS—NAVIGABLE WATERS.—Plaintiff, owner of marsh land in part within the boundaries of an arm of Sandusky Bay, off Lake Erie, sought to enjoin defendants from hunting and fishing on plaintiff's land. *Held,* defendants as members of the public were entitled to hunt and fish on the land of plaintiff within the limits of the bay even though the water

covering such land was not deep enough to be navigable. *Winous Point Shooting Club* v. *Slaughterbeck*, (Ohio, 1917), 117 N. E. 162.

This case puts the waters of the Great Lakes and the bays and arms thereof in precisely the same class, so far as rights of hunting and fishing are concerned, as tidal waters, and navigability in fact is not a test of the right. The court also disposes of whatever uncertainty there may have arisen as a result of *Bodi* v. *Winous Point Shooting Club*, 57 Oh. St. 226, as to the right of the public to fish in navigable, non-tidal *streams* the beds of which are owned privately. The principal case interprets the earlier case as holding that in such waters there is no public right of fishing. See 16 MICH. L. REV. 37.

GIFT—ON CONDITION—ENGAGEMENT RING—RIGHT TO RETURN OF RING.—Upon her promise of marriage, the plaintiff presented the defendant with an engagement ring which she wore in the ordinary way for several months. She then broke off the engagement, whereupon the plaintiff brought suit for the recovery of the ring. *Held*, plaintiff can recover. *Jacobs* v. *Davis* (1917), 2 K. B. 532.

The court relies upon the historical development of the practice of giving engagement rings. Their conclusion is that the ring is a "pledge or something to bind the contract of marriage," and is given upon the implied condition that it should be returned if the donee should break off the engagement. Whether the ring should be considered as a pledge or a conditional gift was not expressly determined in this case, the result being the same on either theory. In *Stromberg* v. *Rubenstein*, 44 N. Y. Supp. 405, recovery of an engagement ring was denied on the ground that the defendant was an infant. The decision may be justified if we treat the transaction as a contract, but it is rather difficult to see how infancy would constitute a defense if we adopt the conditional gift theory. With regard to presents of tangible property, other than engagement rings, exchanged between parties to a marriage contract, several rather early English cases allow recovery, apparently proceeding on the theory that such presents are conditional gifts. 1 FONB. EQ., Ed. 3, 439; *Young* v. *Burrell*, Cary 77; *Robinson* v. *Cumming*, 2 Atk. 409. One case reported in 14 VIN. ABR. TIT. GIFT, pl. 7, seems to support the pledge doctrine. In *Williamson* v. *Johnson*, 62 Vt. 378, a sum of money was sent by a young man to his fiancée to enable her to buy her trousseau and to travel to his home. Although the trial court found as a fact that the money was intended as an unconditional gift, made in expectation of marriage, the Supreme Court permitted recovery. Several theories were advanced which are not wholly consistent: that it was a conditional gift; that it was not a gift in a strict legal sense, being "made in expectation and under an arrangement that they were for specific purposes," upon failure of which "the depositor" might recover; that it was a case of failure of consideration. See WOODWARD, QUASI-CONTRACTS, § 48.

GRAND JURY—MEN—WOMEN.—Defendant filed a motion to set aside an indictment upon the ground that the grand jury that found the indictment was not a legal grand jury in that it was composed of eleven men and eight wo-

men and that twelve men could not concur in the indictment. *Held,* that the word *men* as used in the CODE OF CIVIL PROCEDURE, Sec. 190, defining a jury as a body of *men* did not include *women* notwithstanding Pen. Code, Sec. 7, which provides that the words used in a masculine gender shall include women, and hence that the indictment was not found as prescribed by the CODE. *People* v. *Lensen,* (Cal. App., 1917), 167 Pac. 406.

Upon examination of the cases cited in support of the principal case it is found that in no one of them was the question raised as to the right of a woman to be a juror. *Hunnel* v. *State,* 86 Ind. 431; *Smith* v. *Times Publishing Company,* 178 Pa. 481; *State* v. *McClear,* 11 Nev. 39. In *Rosencrantz* v. *Terr.,* 2 Wash. Terr. 267, a married woman could be a grand juror under a code provision that all householders and electors shall be competent grand jurors, but this case was overruled by *Harland* v. *Terr.,* 3 Wash. Terr. 131, on the ground that the above mentioned act was void for defective title so that although the decision in *Rosencrantz* v. *Terr.,* (*supra*) is overruled, nothing is decided affirmatively in that state as to whether a women could be a grand juror. No other states have interpreted the word *men* as used in this connection. *Re Goodell,* 39 Wis. 232 and *Re Lockwood,* 9 Ct. Cl. 346, hold that *men* cannot include *women* even though, as in the principal case, there is found a provision that words importing masculine gender shall include the feminine. In *Bloomer* v. *Todd,* 3 Wash. Terr. 599, it was held that an adult citizen meant only a male inhabitant. Acts to give women the right to vote for school and city officers were held to be in violation of constitutional restrictions which give to *men* the right to vote. *Coffin* v. *Bd. of Election Commissioners of Detroit,* 97 Mich. 188; *Gougar* v. *Timberlake,* 148 Ind. 38; *Allison* v. *Blake,* 57 N. J. L. 6. But *Wheeler* v. *Brady,* 15 Kan. 26; *State* v. *Cones,* 15 Neb. 444, and *Plummer* v. *Yost,* 144 Ill. 68 hold to the contrary. But the pronouns *he* and *his* include women as well as men. So there is no statutory inhibition by the use thereof. *State* v. *Jones,* 102 Mo. 305. *Re Thomas,* 16 Col. 441. *Richardson's Case,* 3 Pa. Dist. R. 299. It may be true that the framers did not contemplate that women should be jurors. But it does not follow that they intended the contrary. The truth is that they had no intention one way or the other and that the matter was not even thought of. If it is held that the construction of the statute is to be determined by the admitted fact that its application to women was not in the minds of the legislature when it was passed, where shall the line be drawn?

HUSBAND AND WIFE—HUSBAND'S LIABILITY FOR HIS WIFE'S TORT.—Husband and wife were joined as defendants in an action for alienating the affections of the plaintiff's husband. The plaintiff admitted that the defendant husband was not a joint tort-feasor and sought to sustain a judgment which she recovered against both defendants on the ground of the husband's general liabilty for his wife's torts. *Held,* that the husband was not liable. *Claxton* v. *Pool,* (Mo., 1917), 197 S. W. 349.

The Supreme Court of Missouri found itself in an unfortunate position. The tort had been committed before the enactment of the statute freeing the husband from liability for his wife's torts, and the precedents were opposed

to the just result the statute would have reached. SESSION ACTS 1915, 269. Missouri had followed the majority of states in allowing a married woman to maintain an action for the alienation of her husband's affections. *Clow* v. *Chapman,* 125 Mo 101; *Weber* v. *Weber,* 113 Ark. 471, L. R. A. 1915 A 67 note. Again with the majority, Missouri had strictly construed its MARRIED WOMAN'S ACT leaving the husband liable, as at common law, for his wife's torts generally. *Taylor* v. *Pullen,* 152 Mo. 434. The wrong was not connected with the wife's separate estate, so that fairly well established distinction could not be invoked, as it had been in *Boutell* v. *Shellaberger,* 264 Mo. 70. The opinion in *Nichols* v. *Nichols,* 147 Mo. 387, clearly upheld the husband's liability, but it is said to be *dictum.* Perhaps so, but the *Boutell* case *supra* cites it for this *dictum.* Even "on the facts" of the decided cases, slander uttered by the wife (for which the husband had been held liable in *Taylor* v. *Pullen, supra*) would have had to be distinguished. This the lower court tried to do, basing the distinction on whether the wife's wrongful act was also a separate wrong to the husband. *Claxton* v. *Pool,* 182 Mo. App. 13. The Supreme Court seeks the "larger consistency" that the common law has been said to be noted for. The "spirit and trend of legislation," "recent customs and methods of dealing," woman's "freedom of action and independence" triumph. The Missouri court meets the issue as squarely as could be expected. The same result was reached in Iowa without reference to statutes and without discussion. *Heisler* v. *Heisler,* (Ia., 1910), 127 N. W. 823; *Pooley* v. *Dutton,* 165 Ia. 745. The other cases since the note in 6 MICH. L. REV. 405, seem to have been based on statutes.

NAVIGABLE WATERS — RIPARIAN RIGHTS — ACCRETION. — Where a gradual, imperceptible addition to riparian land on Lake Michigan was caused jointly by the natural action of the water and by piers, built out into the lake by other landowners, *held,* that this addition constituted accretion which belonged to the owner of the contiguous riparian land. *Brundage* v. *Knox,* (Ill., 1917), 117 N. E. 123.

The typical case of accretion is the increase to riparian land by natural causes, for instance, by the natural action of the water. Accretion is sometimes confined to this case. BOUVIER, LAW DICT.; ANDERSON, LAW DICT.; *In re Driveway in City of New York,* 93 N. Y. Supp. 1107. But by the great weight of authority the doctrine of title by accretion is extended to accretion resulting from artificial causes. *Lovingston* v. *County of St. Clair,* 64 Ill. 56; *Tatum* v. *City of St. Louis,* 125 Mo. 647. Any one of the leading theories of the basis of title by accretion supports this extension. One theory asserts that the loss of land by erosion should be compensated for by allowing title by accretion. 2 BLACKSTONE'S COMM., 262. Public policy is the keynote of another theory, viz., that all land should have an owner and that it is most convenient that accretion should follow the ownership of the shore. *Wallace* v. *Driver,* 61 Ark. 429. The doctrine of title by accretion, says a third theory, rests on the necessity of preserving to the riparian landowner the right of access to the water. *Lamprey* v. *State of Minnesota,* 52 Minn. 181. A distinction is taken where the accretion is caused, wholly or in part, by an arti-

ficial condition created by the riparian owner purposely to effect an accretion to his own land. Generally, title by accretion is disallowed in such a case. *Att'y Gen.* v. *Chambers,* 4 De G. & J. 55, 5 Jur. N. S. 745; *C. B. & Q. Ry.* v. *Porter Bros. & Hackworth,* 72 Ia. 426. Yet the English court, in *Doe* v. *East India Co.,* 10 Moo. P. C. 158, says that no such distinction can be made. It would be interesting to know if the courts would make the same distinction where the accretion results from an artificial condition created by the riparian owner, but not with the purpose of causing an accretion to his own land.

NUISANCE—LANDLORD AND TENANT—OVERHANGING TREES—LESSOR'S DUTY TO TENANT.—The plaintiff was a tenant of the defendant who owned and occupied an adjoining farm. On the defendant's land three feet from the fence stood a yew-tree. In January, 1917, the branches of this tree projected more than three feet beyond the fence and the plaintiff's mare ate of them and died. The evidence showed that the branches were overhanging at the commencement of the tenancy. *Held,* by Rowlatt, J., that the landlord was not liable because a lessee takes the land as he finds it. Coleridge, J., dissenting insisted that the defendant was liable within the principle, *"sic utere tuo ut alienum non laedas." Cheater* v. *Cater,* (C. A.) [1917], 2 K. B. 516.

The liability of an adjoining owner for bringing a dangerous substance on his land, if it escapes to his neighbor's injury, was established in the case of *Rylands* v. *Fletcher,* L. R. 3, H. L. 330, the substance being in that case water artificially confined. At first blush the analogy between overhanging branches and escaping water may not seem striking, but they are at least alike in their inherent possibilities for mischief. The early case of *Lonsdale* v. *Nelson,* 2 B & C, 302, established that a landowner is maintaining a nuisance if his trees overhang. In *Crowhurst* v. *Amersham Burial Board,* 4 Ex. D. 5, quoting *Rylands* v. *Fletcher, supra,* and followed in *Smith* v. *Giddy,* [1904], 2 K. B. 448, quoting the same, it was held that a landowner is liable to an adjacent owner in tort for the death of cattle which eat the projecting branches of poisonous trees. The case of *Erskine* v. *Adeane,* L. R. 8 Ch. App. 756, upon which the decision in the principal case rests, the question was one of warranty, but Mellish, J., added *obiter* the principle of *caveat* lessee, *i. e.,* the tenant taking a lease must take the land as he finds it; or else ask an express warranty against such existing conditions as he fears may become dangerous. Coleridge maintains that if the parties were merely neighbors, the defendant would be liable and that the relation of landlord and tenant should rather increase than diminish the duty owed. Admitting the soundness of Mellish's dictum he declares that it does not here apply because the nuisance and therefore the liability came into existence after the lease was consummated. Until the cattle could reach the branches there was no nuisance. Rowlatt admits the liability of adjoining owners without privity of estate, or even that between vendor and vendee where the title passes to everything *usque ad caelum* but reiterates the dictum *caveat* lessee as a bar to recovery in the present instance. That a landlord who is also an adjacent owner is liable to his tenant as to a stranger for a nuisance on his own adjoining property, is dismissed with a casual sentence or altogether ignored by

the textwriters. 1 UNDERHILL, THE LAW OF LANDLORD AND TENANT, 481; TIFFANY, LANDLORD AND TENANT, § 90, quoting *Smith* v. *Faxon*, 156 Mass. 589. Just why the relation existing between the parties should result in a forfeiture of the protection owing from one neighbor to another is difficult to analyze logically, and practically no light is thrown on the question in the reported cases. It would seem then that the decision in the principal case based as it is upon dictum unsupported by case or text citation, makes so startling a departure in the hitherto established responsibility of landholders that the vigorous dissent of Coleridge appears amply justified both by logic and in the light of precedent.

NUISANCE—UNDERTAKING ESTABLISHMENTS.—Defendant proposed to transfer his undertaking business, including a morgue, to a building immediately adjoining the plaintiff's residence in a residential section of the city. Defendant had always conducted his business in a sanitary manner and in accordance with the rules of the state board of health. In decreeing an injunction against the establishment of the business in the residential section, *held*, although an undertaking business is not a nuisance *per se*, its location in a residential district would constitute a nuisance. *Saier, et al.* v. *Joy*, (Mich., 1917), 164 N. W. 507.

An interesting feature of the instant case is that an undertaking business, although properly conducted, is deemed a nuisance in a residential district solely because it would serve the persons living nearby as a constant reminder of death and consequently would cause them mental depression. The instant case follows *Densmore* v. *Evergreen Camp No. 147, W. O. W.*, 61 Wash. 230. On the same principle the court in *Barth* v. *Christian Psychopathic Hospital Association*, (Mich., 1917), 163 N. W. 62, enjoined the maintenance of a private insane asylum in a residential district, although on similar facts, an injunction was refused in *Heaton* v. *Packer*, 116 N. Y. Supp. 46. The maintenance in a residential district of a private hospital for consumptives was enjoined in *Everett* v. *Paschall*, 61 Wash. 47, and of one for victims of cancer in *Stotler* v. *Rochelle*, 83 Kans. 86, the court in each case holding such an institution became a nuisance, if located in a residential district, because it created a fear of infection causing mental unrest, although, in the light of medical science, such fear is probably unfounded. A hospital, in a residential district, for crippled children was held not a nuisance "though undoubtedly pain and distress will sometimes be caused by the sight of suffering to those living nearby." *Hall* v. *House of St. Giles the Cripple*, 91 N. Y. Misc. Rep. 122, (affirmed in 158 N. Y. S. 1117). A cemetery or burial ground in a residential section is not a nuisance which can be enjoined. *Sutton* v. *Findlay Cemetery Ass'n*, 270 Ill. 11; *Monk* v. *Packard*, 71 Me. 309; *Harper* v. *City of Nashville*, 136 Ga. 141.

SEAMEN—WHO ARE SEAMEN—WIRELESS TELEGRAPH OPERATOR.—A wireless telegraph operator who was required to sign ships articles at a stated wage of twenty-five cents per month, and who was classed as an officer and messed with them, sued for failure to furnish him medical care. *Held*, to be a sea-

man and a member of the ship's crew and as such entitled to such care, even though in fact he was hired and paid by the Marconi Company and was on board pursuant to a contract between it and the ship owners. *The Buena Ventura,* (D. Ct. S. D. N. Y., 1916), 243 Fed. 797.

This case appears to be the first case determining whether a wireless telegraph operator is a seaman, but seems to be a logical application of the general rules laid down by former cases. In *The Chicago,* 235 Fed. 538, it was held that a person contracting to work for another for hire and incidentally rendering services upon a vessel is not a seaman if the services are not to be rendered to the vessel or charterer as such, while in *The Marie,* 49 Fed. 286, the rule is that the crew of a vessel in a general sense comprises all persons who in pursuance of *some contract* or *arrangement* with the owner are on board the same, aiding in the nagivation thereof. In the principal case it should be noted that although the operator was under contract with the Marconi Company he was required to sign the ships articles, was there in pursuance of some arrangement with the owner of the vessel, was under his orders and that his services were rendered in aid of navigation thereof, since his presence increases the safety of the vessel in times of danger. The broadest principle however that has yet been recognized is that the service rendered must be necessary or at least contribute to the *preservation* of the vessel or of those whose labor and skill are employed to navigate her. *Trainer* v. *The Superior,* Fed. Cas. No. 14,136. Thus a carpenter is required for the preservation and repair of the ship in case of accident, a cook to feed the crew and a physician to administer to the sick. It might also be said that a wireless operator is needed for protection of both the vessel and those engaged in her operation. Every service which contributes in contemplation of law to the management, safety, or benefit of vessel has a maritime character and privilege. *D. C. Salisbury,* Fed. Cas. No. 3694. The word *seamen* has been enlarged so as to include bartenders, *The J. S. Warden,* 175 Fed. 314; fishermen, *Carrier Dove,* 97 Fed. 111; pursers, *Spinetti,* v. *The Atlas Steamship Co.,* 80 N. Y. 71; cooks, *Lawson* v. *The James H. Shrigley,* 50 Fed. 287; coopers, *U. S.* v. *Thompson,* Fed. Cas. No. 16,492; pilots, deck hands, engineers, firemen, *Wilson* v. *The Ohio,* Fed. Cas. No. 17,825; and others, but not to include musicians, *Trainer* v. *The Superior, (supra),* servants of the master, *Sunday* v. *Gordon,* Fed. Cas. No. 13,616, and masters, *Grennell* v. *The John A. Morgan,* 28 Fed. 895.

TORTS—INTERFERENCE WITH EMPLOYMENT—RIGHT TO STRIKE—SECONDARY STRIKE.—Defendant, Brotherhood of Carpenters, in order to enforce a union rule prohibiting its members from working with non-union men or upon materials made in shops employing non-union men, sent out a circular letter warning owners, contractors, and builders not to secure materials made in non-union shops or defendant's men would refuse to work on them. Plaintiff conducted an open shop for the manufacture of building materials. *Held,* that defendant's acts were not illegal and would not be restrained. *Bossert* v. *Dhuy,* (New York Ct. of App., 1917), THE DAILY RECORD, Rochester-Syracuse, October 15-16, 1917.

The instant decision affirms *National Protective Association* v. *Cumming*, 170 N. Y. 315, and fully commits the New York courts to the doctrine that a strike primarily for the betterment of the union or its members is legal, even though directed against third parties with whom the union has no trade dispute. Upon the point here involved, that is, whether it is legal to strike against A., with whom there is no dispute, in order thus indirectly to enforce demands against B., there is a sharp conflict of authority. The courts supporting the doctrine of the instant case base their decision largely on the ground that whatever an individual workman may lawfully do laborers in combination may also lawfully do; that they may quit when they see fit, with or without reason, so long as no contract is broken, and so long as the act is not done with malice; that it is not illegal to refuse to allow union members to work with non-union men, and that, by the same reasoning, it is not illegal to refuse to allow union members to work upon materials furnished by non-union shops, since such action has relation to work to be performed by the men and directly affects them. *Parkinson Company* v. *Building Trades Council*, 154 Cal. 581; *State* v. *Van Pelt*, 136 N. Car. 633. The opposite view is supported by Lord Macnaghten, in *Quinn* v. *Leathem*, [1901], A. C. 495, not on the ground of malicious intention, "but on the ground that a violation of legal right committed knowingly is a cause of action, and that it is a violation of legal right to interfere with contractual relations recognized by law if there be no sufficient justification for the interference". The TRADE DISPUTES ACT of 1906 (6 Edw. 7, c. 47) seems to have changed the rule in England. Several American courts, however, still hold squarely that labor unions shall not strike against persons with whom they have no trade dispute. *Burnham* v. *Dowd*, 217 Mass 351; *Pickett* v. *Walsh*, 192 Mass. 572; *Plant* v. *Woods*, 176 Mass. 492; *Purvis* v. *United Brotherhood*, 214 Pa. St. 348; *Gatzow* v. *Buening*, 106 Wis. 1. See, also, 16 MICH. L. REV. 57.