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Recent Important Decisions

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BAILMENT — ARTISAN'S LIEN — SELLING AUTOMOBILE TIRES. — Appellee sought to enforce a lien on three touring cars for the price of eight casings sold and fitted on them by him. No charge was made for taking off the old casings and putting on the new ones. The lien was based on the statute giving a lien to wheelwrights who performed work and labor on carriages, wagons, farm implements, and other articles for such work and labor, and for all materials furnished by them and used in such product or repairs. ACTS OF ARKANSAS, 1903, p. 260. *Held,* (one judge dissenting), the taking off of old casings and putting on new ones is merely an incident of the business of selling tires not constituting plaintiff a "wheelwright". *Weber Implement and Automobile Co.* v. *Pearson,* (Ark., 1918), 200 S. W. 273.

An automobile repairer is a wheelwright within the meaning of the statute. *Shelton* v. *Little Rock Auto Co.,* 103 Ark. 142. At common law every bailee or mechanic who by his labor and skill imparts an additional value to the goods has a lien upon the property for his reasonable charges. "This includes all such mechanics, tradesmen and laborers as receive property for the purpose of repairing or otherwise improving its condition." *Grinnell* v. *Cook,* 3 Hill (N. Y.) 485. The objection that the garage is the modern substitute of the ancient livery stable and that therefore the owner has the right reserved to use the machine at his pleasure thereby disturbing continuous possession which is essential to a lien at common law is wiped out by many of the statutes. *Smith* v. *O'Brien,* 46 Misc. (N. Y.) 325. By these statutes continuous possession is not necessary to preserve the lien. *Lowe Auto. Co.* v. *Winkler,* 127 Ark. 433. The purpose of the statutes seems to be to extend the lien to those mechanics who had no lien at common law and they are therefore an extension of the common law doctrine, and not in derogation of it, which should warrant a liberal interpretation. In *Kansas City Automobile School Co.* v. *Holcker-Elberg Mfg. Co.,* (Mo. App., 1906), 182 S. W. 759, it was held the defendant was entitled to a lien for a body sold and fitted on the framework by him. The very question decided in the principal case arose in *Courts* v. *Clark,* 84 Ore. 179. The court held one who sold tires and put them on an automobile was an automobile repairer within the terms of the statute. The theory of the principal case that the work performed must be such as requires a skilled mechanic is technical and seems out of harmony with the spirit of the statutes.

BANKRUPTCY — FALSE REPRESENTATIONS TO COMMERCIAL AGENCY AS BAR TO DISCHARGE.—Plaintiff opposed the defendants' discharge in bankruptcy because they had given a commercial agency a materially false financial statement in writing. Three months thereafter plaintiff, before extending credit, had asked the agency for a report on defendants and relied upon the false statement which it had supplied. The printed form upon which the statement was written recited that it was made "as a basis of credit", but the re-

port had not been procured at the request of any creditor nor was there any apparent purpose of getting goods from any particular dealer on the strength of it. *Held,* that the discharge could not be denied. *J. W. Ould Co.* v. *Davis et al.,* (C. C. A., 4th Circ., 1917), 246 Fed. 228.

Sec. 14b of the BANKRUPTCY ACT, as amended in 1910, reads: "The judge shall * * * discharge the applicant unless he has * * * (3) obtained money or property on credit upon a materially false statement in writing made by him to any person or his representative for the purpose of obtaining credit from such person." As applied to materially false statements in writing made to a commercial agency, there has been some conflict of opinion, although all of the cases may perhaps be distinguished on their facts. Where a discharge has been denied, there has generally been shown a clear intention to defraud; while in the cases that have allowed a discharge, there has been no such intention apparent. Judged by this standard the principal case is unexceptional, since the words of the printed form can hardly establish any definite intention to defraud. The court's opinion, however, sets up no such distinction. The intention of Congress at the time the amendment was passed is sought in the report of the Judiciary Committee of the Senate. The House of Representatives had passed an amendment which clearly denied discharge in case the bankrupt had made to a commercial agency materially false statements which were relied on by the creditor. As the Senate Committee considered this too harsh, the present provision was substituted. In its report the committee says, "It is a sufficient ground of opposition to discharge that the bankrupt has obtained property from a creditor by a materially false statement in writing *where that statement was specifically asked for by the creditor or the creditor's representative.*" On this account the court in the principal case finds itself unable to construe § 14b (3) so as to cover "general statements to mercantile agencies, *not specifically asked for by prospective customers.*" *In re Russell,* 176 Fed. 253; *In re Zoffer,* 211 Fed. 936. This view, then, would refuse a discharge only when the statements had been asked for by the commercial agency as the actual representative of the objecting creditor; if such fact appeared, however, the discharge would be denied even though the fact of the request had been unknown to the bankrupt and even though he may not have had any specific intention to defraud. *In re Carton & Co.,* 148 Fed. 63. On the other hand, in cases where a false statement is given to a commercial agency which is not at the time acting as the representative of a prospective creditor, a discharge is allowed even though there is an intention to defraud generally, and logically from the words of the committee, a discharge should be allowed even if there is an intention to defraud a particular person. Opinions based on a literal interpretation of the statute—a second view—consider the 1910 amendment as broadening the scope of the previous provision which denied discharge if the bankrupt had "obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit." *In re Simon,* 201 Fed. 1004; *contra, In re Pinsker,* 25 Am. B. R. 494. Under this provision some courts had denied discharge on the ground that the commercial agency was the agent of the

creditor; since 1910, they consider the addition of the words "or representative" as a direct legislative sanction of that view. *In re Kyte,* 174 Fed. 867; *In re Cloutier Bros.,* 228 Fed. 569. A third view makes discharge depend on whether the bankrupt makes the commercial agency his agent for circulating the false report. *In re Dresser,* 146 Fed. 383; *In re Pincus,* 147 Fed. 621; *In re Augspurger,* 181 Fed. 174; *In re Foster,* 186 Fed. 254; *Novick* v. *Reed,* 192 Fed. 20; *In re Haimowich,* 232 Fed. 378; *Haimowich* v. *Mandel,* 243 Fed. 338. This theory alone can account for the denial of a discharge where the creditor was not, at the time the false statement was made, a subscriber to the commercial agency.

BILLS AND NOTES—ACCEPTANCE BY TELEGRAPH—SUFFICIENCY.—An intending purchaser of a draft drawn upon defendant bank, sent a telegram to the defendant bank asking if it would *pay* a draft of a certain description to which the defendant replied, also by telegram, "the draft is *good.*" The draft was assigned to the plaintiff who now sues defendant on its alleged acceptance. *Held,* the above answer was not an acceptance nor an agreement to accept. *Colcord* v. *Banco de Tamaulipas,* (Sup. Ct., 1918), 168 N. Y. S. 710.

The drawee of a bank check cannot be held liable upon a claimed contract of acceptance external to the bill; unless the language used clearly and unequivocally imports an absolute promise to pay. *First Nat. Bank of Atchison* v. *Commercial Savings Bank,* 74 Kan. 606. It is not disputed that a valid acceptance of commercial paper may be made by telegraph. *Whilden* v. *Merchants and Planters Nat. Bank,* 64 Ala. 1; *Coffman* v. *Campbell and Co.,* 87 Ill. 98; *Garrettson* v. *North Atchison Bank,* 39 Fed. 163. The answer "Yes" to an inquiry whether checks were good, was held not to constitute an acceptance in *Kahn* v. *Walton,* 46 Ohio St. 195. In case of *Meyers* v. *The Union Nat. Bank,* 27 Ill. App. 254, in response to an inquiry whether checks would be paid if presented on a certain date, the answer was, "Drafts named are good *now.*" The court held that here was no acceptance and in so deciding placed much emphasis on the use of the word "now." But in *Garrettson* v. *North Atchison Bank* (*supra*) a telegraphic response "Tate is good. Send on your paper" in answer to telegram asking a bank if it would pay it was held to be an acceptance on the ground that it could not be supposed that the bank intended to return an ambiguous answer for purpose of misleading the party asking the question and held that if the answer were limited to the words, "Tate is good" there would be grounds for holding that the bank intended an affirmative answer to the categorical question. We have then only the *dictum* of the above case to oppose the principal case in its decision, but the reasoning of the Garrettson case appears to be the most logical, since the inquiry was not as to the validity of the draft or as to the sufficiency of the account of the depositor.

CARRIERS—CARRIAGE OF PASSENGERS—INITIAL CARRIER—CONNECTIONS.—The plaintiffs in error, as receivers, through their agent sold decedent, Barber, a two-coupon ticket from Toledo to Piqua, *via* their own lines, and from

Piqua to Columbus, *via* the Pennsylvania lines. The ticket contained a stipulation that "this company acts only as agent and is not responsible beyond its own lines". When Barber arrived at Piqua, he was *given* an inter-depot transfer ticket, entitling him to be carried to the Pennsylvania station. Through negligence of the motor car driver Barber was killed. *Held,* plaintiffs in error were liable for the negligence of the motor car driver, the provision that the initial carrier should not be liable beyond its own lines relating to other *railroad* transportation, *Harmon* v. *Barber,* (C. C. A., 6th Circ., 1918), *247* Fed. 1.

In England the doctrine is that the initial carrier is liable for injuries to passengers occurring on the lines of connecting carriers, *Buxton* v. *N. E. Ry. Co.,* L. R. 3 Q. B. 549; *Great Western Ry.* v. *Blake,* 7 H. & N. 987; *Thomas* v. *Rhymney Ry.,* L. R. 6 Q. B. 266. And this view has been taken in some American courts, *Central Ry.* v. *Coombs,* 70 Ga. 533. The general rule in the United States in the absence of special contract is that the initial carrier acts as agent of the connecting lines, *Pennsylvania Ry. Co.* v. *Jones,* 155 U. S. 333; *Brook* v. *Brooklyn U. E. R. Co.,* 133 N. Y. S. 253; *Brooke* v. *Grand Trunk R. Co.,* 15 Mich. 332; *Pennsylvania Co.* v. *Loftis,* 72 Oh. St. 288. The usual method when issuing coupon tickets is for the initial carrier to state expressly on the ticket that it acts as agent of other carriers. In such cases each coupon is considered a distinct contract by each road and each road is liable for its own negligence, *Clark* v. *Galveston, H. & S. A. Ry. Co.,* (Tex. Civ. App., 1911), 137 S. W. 716; *Auerbach* v. *N. Y. C. &c. Ry. Co.,* 89 N. Y. 281; *Knight* v. *Portland, S. & P. R. Co.,* 56 Me. 234; *Young* v. *Pennsylvania R. Co.,* 115 Pa. 112; *Cowen* v. *Winters,* 96 Fed. 929; *Mosher* v. *St. Louis, I. M. & S. Ry.,* 127 U. S. 390. The English doctrine of holding the initial carrier liable for the negligence of connecting carriers causing injuries to passengers was an extension of the doctrine which held the initial carrier liable for loss of luggage through the negligence of connecting carriers, *Muschamp* v. *Lancaster & P. J. R. Co.,* 8 Mees. & Wels. 421; *Watson* v. *A. N. & B. Ry. Co.,* 3 Eng. L. & Eq. 497; *Mytton* v. *Midland R. Co.,* 4 Hurl. & N. 615. In America the Carmack Amendment allows the passenger to recover from the initial carrier for loss of goods or luggage caused by the negligence of the connecting carrier, but there has been no similar legislation in regard to personal injuries to passengers. Not only are railroads considered common carriers of passengers, but also stage coaches, *McKinney* v. *Neil,* 1 McLean (U. S.) 540; hacks, *Bonce* v. *Dubuque St. R. Co.,* 53 Ia. 278; jitneys, *Memphis* v. *State ex rel. Ryals,* 133 Tenn. 83; taxicabs, *Van Hoeffen* v. *Columbia Taxicab Co.,* 179 Mo. App. 591, and transfer companies, *Fields* v. *Holland,* 158 Ky. 544, that carry all indiscriminately for a reasonable charge have been held to the same degree of care as that due from the railroads. The initial carrier is not bound to carry passengers beyond the limits of its own lines, but it may contract for the whole trip, including connecting carriers, and thus make itself liable for the negligence of connecting carriers, *Quimby* v. *Vanderbilt,* 17 N. Y. 306; *Chi. & A. R. R. Co.* v. *Dumser,* 161 Ill. 190; *Wheeler* v. *S. F. & A. Ry. Co.,* 31 Cal. 46. In the instant case it was decided that the initial carrier assumed the duty of transporting the

decedent Barber from its station to the Pennsylvania station. Because the original ticket contained no coupon for inter-station transfer and the initial carrier paid the compensation for such transfer, the limitation in the original ticket that the "company was not responsible beyond its own lines" could not exempt the company from liability for the negligence of the inter-station transfer company's driver. Similarly, in *Buffett* v. *Troy & B. R. Co.*, 40 N. Y. 168, where the railway hired a stage coach to bring its intending passengers from the village to the depot, the railway was held liable for the stage driver's negligence. And a hotel keeper, who furnished a bus to carry his guests without charge from the station to the hotel, was held liable for injuries to a guest resulting from the negligence of the driver, *Barker* v. *Pollock*, 26 Can. L. T. 182.

CARRIERS—SUFFICIENCY OF NOTICE OF LOSS—WAIVER.—Carloads of berries shipped over defendant's road were received in damaged condition and examined by defendant's agent in company with the consignee. An inspection report was made by the agent as well as a notation on the freight receipt, of the extent of the damage. After such examination plaintiff sent to defendant a written notice reading "Consignee will file a claim" etc. *Held*, that such notice, though in the future tense, was sufficient to satisfy the requirements of the uniform bill of lading approved by the Interstate Commerce Commission that claims for loss or damages be made in writing within four months. Further such a proviso was waived by defendant's action in conducting negotiations anent the claim without other formal notice. *E. H. Emery & Co.* v. *Wabash R. Co.*, (Iowa, 1918), 166 N. W. 600.

The instant case is an illustration of the courts' tendency to consider the spirit rather than the letter of the law on the subject of interstate commerce, and more particularly in the construction of the uniform bill of lading, providing for a written claim within a stated period. Substantial compliance has been repeatedly upheld. For example a telegram announcing consignee's intention to sue was deemed sufficient in *Georgia, Fla., & Ala. R. R.* v. *Blish Milling Co.*, 241 U. S. 190; and *Shark* v. *Great Northern Ry. Co.*, 164 N. W. 39 (N. D.) so considered an oral claim acted upon by the company, as did *So. Pac. Ry.* v. *Stewart*, 233 Fed. 956. Though the bill of lading expressly directed such notice to be given to a specified agent, a letter to a different agent was held effective in *Ill. Central R. R.* v. *Bauer*, 114 Miss. 516. In view of the court's decision as to the sufficiency of the notice, the question of waiver becomes unimportant. The state courts are inclined to allow such waiver; see *Cleveland, C. C. & St. L. R. Co.* v. *Rudy*, 173 Ind. 181, *Gilliland* v. *So. R. Co.*, 85 S. C. 26 and *Watkins Mdse. Co.* v. *Mo., Kan., and Texas R. Co.*, 82 Kan. 308. However when the question has been touched upon in the United States Courts, they have declared against waiver as tending to discrimination and thus repugnant to the spirit of the Interstate Commerce Commission Acts. It should be observed that these utterances are largely *dicta*, and are directed towards attempted waivers which will release the carrier, rather than the shipper, from liability. *Cf.* the *Blish* case *supra* and *Mo., Kn. and Tex. R. Co.* v. *Ward*, 37 Sup. Court 617.

COMMERCE—FEDERAL EMPLOYERS' LIABILITY ACT—EMPLOYMENT IN "INTERSTATE COMMERCE."—The plaintiff was a section foreman of the defendant with the duty of keeping the tracks in repair. Acting under instructions, he was on his way to repair a washout supposed to be on the main track, but was injured before he arrived there. It later appeared that the washout was on a spur track owned by a different corporation. *Held,* that the jury might infer that at the time of his injury he was engaged in interstate commerce within the EMPLOYERS' LIABILITY ACT, April 22, 1908, c. 149, 35 Stat. 65, (U. S. Comp. St. 1913, secs. 8657-8665), *Atlantic C. L. R. Co.* v. *Tomlinson,* (Ga. App. 1918), 94 S. E. 909.

In order for the plaintiff to recover he must show that the carrier was engaged in interstate commerce and that he was employed therein, *Pedersen* v. *Delaware, L. & W. Ry.,* 229 U. S. 146. To determine whether the employee is "employed in such commerce" the Supreme Court of the United States in the *Second Employers' Liability Cases,* 223 U. S. 1, 47, did not particularize, but contented itself with the broad doctrine that the employment must have a real or substantial connection with interstate commerce. The nature of the work being done at the time of the injury and its effect on interstate commerce is to be considered, *Lamphere* v. *Oregon R. & Nav. Co.,* 196 Fed. 336. But each case is to be decided in the light of its particular facts, *N. Y. Cent. & H. R. R. Co.* v. *Carr,* 238 U. S. 260, 263. In accord with these views it has been held that one engaged in repairing interstate tracks comes within the act, *Zikos* v. *Oregon R. & Nav. Co.,* 179 Fed. 893; *Jones* v. *Chesapeake & O. Ry. Co.,* 149 Ky. 566. If the railway accept freight on through bills of lading, though its tracks be entirely within the state, an employee engaged in repairing the tracks can recover under the act, *Cholerton* v. *Detroit, J. & C. Ry.,* (Mich., 1917), 165 N. W. 606; 16 MICH. L. REV. 385. But an employee working on a private spur, *In re Liberti,* 167 N. Y. S. 478, or doing local work on a short branch leading to a private smelter, *Southern Ry. Co.* v. *Murphy,* 9 Ga. App. 190, is not entitled to protection of the Act. An engineer injured on his way to the roundhouse where he was to take out an interstate train, *Mo., Kan. & Tex. Ry.* v. *Rentz,* (Tex. Civ. App. 1913), 162 S. W. 959, and an employee riding on a hand car furnished by the railroad to his work of pumping water for interstate trains, *Horton* v. *Oregon-Wash. R. & Nav. Co.,* 72 Wash. 503, have been held entitled to recover under the Act. In the instant case, however, the court extends the scope of the Act to include an employee who *thinks* he is on his way to engage in interstate commerce, but who would not have been engaged in interstate commerce if he had been sent to the spur track and no error had been made. What will be the next step?

COMMERCE — INTERSTATE TRANSPORTATION—INTOXICATING LIQUORS.— Petitioner was convicted of violating the prohibition laws of the state of Alabama, by having in his possession a large quantity of intoxicating liquors, while driving along the public roads of the state in an automobile. It appeared, and the petitioner set it up as a defense, that the carrying of the liquors in question was a part of an interstate shipment. *Held,* that the state

prohibition statutes, as extended by the WEBB-KENYON ACT, March 1, 1913, c. 90, 37 Stat. 699 (U. S. Comp. St. 1916, sec. 8739), were inapplicable to such an interstate shipment. *Moragne* v. *State,* (Ala., 1917), 77 So. 322.

In the trial court and on appeal, in the instant case, it was held that the effect of the Alabama prohibition statutes, in connection with the WEBB-KENYON BILL, made the carrying of such liquors along the state highways, though the carrying be merely through the state as a necessary part of an interstate routing, a violation of the Alabama prohibition statutes. The Supreme Court did not so construe the state and federal statutes. It held that the state statutes did not apply, were never intended to apply, and would be unconstitutional and void if they did apply, to such an interstate carrying or possession of such goods, for the sole purpose of transportation; and that the WEBB-KENYON BILL did not have the effect of extending the statutes to such a case. The broadest scope which any cases have given to the WEBB-KENYON ACT is that it prohibits the shipment or transportation of liquor from one state into another, either when it is intended to be sold in violation of any law of the latter state, or when it is to be received, possessed, or used, in any manner, in violation of the state law; but no case has ever held, and the instant case expressly holds to the contrary, that it was intended to apply to interstate shipments of liquors, where the liquors are merely passing through the state, and are not bought, sold, possessed, stored, or used there in any manner. For full notes on the construction and effect of the WEBB-KENYON BILL, see: L. R. A., 1916C, 299; L. R. A. 1917B, 1229.

CONSTITUTIONAL LAW—ARMY AND NAVY—FREEDOM OF THE PRESS.—A state statute made it a criminal offense to advocate that men should not enlist in the military forces or aid in prosecuting the war. *Held,* circulating a pamphlet which impugns the motives of the President and Congress in entering into the war and seeking by unfounded assertions to incite antagonism to the war, the natural tendency of which is to defer enlistments, is a violation of the statute, which is constitutional. *State* v. *Holm,* (Minn., 1918), 166 N. W. 181.

The defense in this case was that the statute was unconstitutional because it conflicted with section 8 of article 1 of the Federal Constitution, giving Congress power to raise and maintain an army and because it abridges freedom of speech secured by the 14th Amendment. Further the defendant contended that this statute had been superseded and abrogated by the Espionage Law of June 15, 1917. The defendant proceeded on the ground that the power to raise armies and make all laws necessary for carrying conferred powers into effect is exclusive and that this statute is in conflict. Even assuming that the power is exclusive it is hard to see how this act trenches upon the power of the national government. The court held that in enacting it as a police regulation the legislature was well within its province. A law of the state of Illinois prohibiting any body of men other than the militia of the state and the troops of the United States from drilling or parading without a license from the governor is constitutional. *Presser* v. *People of Illi-*

nois, 116 U. S. 252. A statute of Pennsylvania providing that a member of the militia of the state, who was called into the services of the United States and who refused to obey such call, should be tried by a state court martial is valid. *Houston* v. *Moore,* 18 U. S. (5 Wheat) 1. It was not shown in this case that the statute was in conflict with the Espionage Law. Concerning a similar situation it is said in *Ex parte Siebold,* 100 U. S. 371, that Congress may make regulations on the same subject or may alter or add to those already made; the paramount character of those made by Congress has the effect to supersede those made by the state so far as the two are inconsistent, and no farther. As to the defense of the conflict with the Fourteenth Amendment, that is still a mooted question. There is no doubt, however, that at a time like this such an act would be sustained because of the great importance of the public safety. The court said, "The United States is at war and we think the legislature did not exceed its power."

CONSTITUTIONAL LAW—SEED GRAIN LAW—LOANS TO FARMERS.—The state constitution provided that the several counties of the state shall provide as may be prescribed by law, for those inhabitants who by reason of age, infirmity or other misfortune may have claims upon the sympathy and aid of society. *Held,* a law providing for loans upon certain conditions to farmers who are unable to secure seed is for a public purpose and constitutional. *State ex rel. Cryderman* v. *Wienrich,* (Mont., 1918), 170 Pac. 942.

The question involved in cases of this kind is whether this is a loaning of the public credit for a private purpose. Taxation cannot be imposed for a private purpose and if the state can appropriate for a private purpose the money in its treasury and then replace it by taxation it can do indirectly what it cannot do directly. That one is not a proper subject of relief until he is actually a pauper was held in *State ex rel. Griffith* v. *Osawkee Twp.,* 14 Kan. 418. A statute authorizing the city of Boston to issue bonds and lend the proceeds on mortgage to the owners of land, the buildings upon which were destroyed by the great fire of 1872 was unconstitutional. *Lowell* v. *City of Boston,* 111 Mass. 454. The Supreme Court of the United States has decided that a statute authorizing a town to issue its bonds in aid of a manufacturing enterprise is invalid. *Loan Assoc.* v. *Topeka,* 20 Wall 655. Apparently the only state in which public aid to a privately owned railroad is not allowed in Michigan. *People* v. *Salem,* 20 Mich. 452. A statute appropriating money to be loaned to farmers except those having more than 160 acres free from incumbrance, for the purpose of buying seed grain, appropriate public money for a private use and is unconstitutional. *William Deering & Co.* v. *Peterson,* 75 Minn. 118. The contrary view is upheld in *State* v. *Nelson Co.,* 1 N. D. 88. In this last mentioned case the distress was widespread. Every case of this kind must stand on its own peculiar facts. This decision seems correct in view of the enormous demand for food products in all parts of the world. It is simply a war measure. Otherwise the case would seem to be parallel with *Lowell* v. *Boston,* and a different decision should be reached. See *Pennsylvania R. Co.* v. *United States,* 246 Fed. 881, which laid emphasis on

the fact that since the United States was at war and great demands were being made upon its transportation systems, it could not be said as a matter of law that defendant had violated the Hours of Service Act.

CRIMINAL LAW—EVIDENCE OF OTHER OFFENCES—ADMISSIBILITY.—On a trial for conducting a hotel as a disorderly house, in order to show the bad and discredited character of D's housekeeper, a witness in his behalf, and hence to impeach her credibility, the court admitted her testimony on cross-examination, which was to the effect that she had entered and remained in D's employment at various hotels, with knowledge that he had maintained such hotels as disorderly houses and had been convicted therefor. *Held*, on appeal, that it was error to admit such testimony. *People* v. *Richardson*, (N. Y., 1917), 118 N. E. 514.

It seems clear that such evidence does not come within the purview of the general rule which permits the introduction of evidence of one's bad character for truth and veracity in order to discredit a witness. And, according to the prevailing doctrine, evidence of the witness' bad general character is inadmissible for this purpose. 1 GREENLEAF, EV., 461 a. But this rule assumes a relaxed form when the impeaching testimony is elicited on cross-examination of the witness himself, where the range of evidence admissible for the purpose of discrediting is very liberal and defined only by the discretion of the trial judge. 2 WIGMORE, EV. 944. Thus, it has been held that questions affecting the general character of the witness are not incompetent on cross-examination. *Brockett* v. *N. J. Steamboat Co.*, 18 Fed. 156; *State* v. *Pugsley*, 75 Iowa 742; *State* v. *Kent*, 5 N. D. 516, *semble*. *Contra*: *State* v. *Houx*, 109 Mo. 654; *Pratt* v. *Rawson*, 40 Vt. 183. The witness may be interrogated as to his particular traits of character or habits, chastity, and occupation. *Campbell* v. *State*, 23 Ala. 44; *Johnston* v. *Farmers' Fire Ins. Co.*, 106 Mich. 96; *State* v. *Merriman*, 34 S. C. 16; *People* v. *Webster*, 139 N. Y. 73; *People* v. *Giblin*, 115 N. Y. 196; *Boles* v. *State*, 46 Ala. 204; *State* v. *Coella*, 3 Wash. 99; *Thompson* v. *State*, 35 Tex. Cr. R. 511. *Contra*: *People* v. *Un Dong*, 106 Cal. 83; *State* v. *Gleim*, 17 Mont. 17; *State* v. *Weems*, 96 Iowa 426; *Howel* v. *Com.*, 5 Grat. 664. A comprehensive array of cases establishes the rule that a witness may be asked concerning particular acts or facts. *Oxier* v. *U. S.*, 1 Ind. T. 85; *State* v. *Hack*, 118 Mo. 92; *People* v. *Williams*, 92 Hun. 354; *State* v. *March*, 46 N. C. 526; *Baker* v. *Trotter*, 73 Ala. 277. *Contra*: *Thiede* v. *Utah*, 159 U. S. 510; *Holbrook* v. *Dow*, 78 Mass. 357; *Bessette* v. *State*, 101 Ind. 85; *State* v. *Wooderd*, 20 Iowa 541. These cases indutiably indicate that the interrogation of a witness on cross-examination is permissible, if, within the judgment of the trial court, such is relevant to the inquiry concerning the witness' credulity; so it seems that on this score there was no error in admitting the housekeeper's testimony. But the court went on the theory that "the evidence was inadmissible, not because it did not legitimately tend to prove an immoral and discredited character of the witness, but because illegitimately and beyond obviation it would subject the defendant to the prejudice and injustice which the reasons declare and condemn". The sec-

ond question then simply is whether, conceding the evidence was admissible to impugn the witness' credit, it was rendered inadmissible because it was apt to be prejudicial to D. It is unquestionably the rule that evidence of the bad character of the defendant is inadmissible, except to rebut evidence of good character introduced by him, unless the defendant has testified in his own behalf, which would subject him to the same impeachment as any other witness. See GREENLEAF, EV., 14b; 1 WIGMORE, EV., 57, 58; 1 JONES, EV., 148a. In the instant case, D. introduced no evidence of his good character, nor did he testify in his own behalf, so that the scope of that rule could not justify its admission; and it seems that it was on this theory that the instant case was decided. The court apparently disregarded the rule, equally well established, that evidence inadmissible for one purpose will not be thereby rendered inadmissible for another purpose. See 1 WIGMORE, EV., 13; 1 JONES, EV., 173, p. 895.

CRIMINAL LAW—PRESUMPTIONS—CHARACTER OF DEFENDANT.—Where trial court refuse to instruct the jury that the defendant was presumed to be a person of good character and that the supposed presumption should be considered as evidence in favor of the accused, *Held*, such refusal proper. *Greer* v. *United States*, 38 Sup. Ct. 209.

This judgment upholds a carefully reasoned decision in *Price* v. *United States*, 218 Fed. 149, and numerous state cases and text-books; but as another Circuit Court of Appeal had taken a different view, *Mullen* v. *United States*, 106 Fed. 892, also taken by other cases and text-books it became necessary for the Supreme Court to settle this doubt. The Supreme Court was of the opinion that their's was the only reasonable view since a presumption upon a matter of fact, when it is not merely a disguise for some other principle, means that common experience shows the fact to be so generally true that courts may notice the truth. Whatever the scope of the presumption that a man is innocent of the specific crime charged, it cannot be said that by common experience the character of most people indicted by a grand jury is good. For authorities and clear discussion of principles involved see 13 MICH. L. REV. 504.

MASTER AND SERVANT—INJURY TO THIRD PERSON—THE RELATION—HIRING CHAUFFEUR.—Defendant (for a fixed amount) hired of a company, for his use, for a period of 3 months, an automobile with a chauffeur, all orders to be taken from the defendant. While the defendant was riding in the automobile, it struck and killed plaintiff's intestate, as a result of the negligence of the chauffeur. *Held*, that the chauffeur had become *pro hac vice* the defendant's servant, making defendant liable for the negligent driving. *McNamara* v. *Leipzig*, (App. Div., 1917), 167 N. Y. S. 981.

The first reported case involving the point involved in the instant case was *Laugher* v. *Pointer*, 5 B. & C. 547, where the owner of a carriage hired of a stable-keeper a pair of horses to draw the carriage for a day, and the owner of the horses provided a driver, through whose negligence an injury was done to a horse belonging to a third person; and the four members of

the Court of King's Bench were evenly divided on the question of the liability of the carriage owner to be sued for such injury. The next case involving the point was *Quarman* v. *Burnett,* 6 M. & W. 498, where the owners of a carriage were accustomed to hire, from a stable-keeper, horses, for a day or drive; and the owner of the horses provided a driver. The same driver was always furnished, and the owners of the carriage had a suit of livery made for him, which he wore while driving for them. The driver's regular wages came from the stable-keeper. A third party was injured by the driver's negligence, and it was held that the owners of the carriage were not liable to be sued for such injury. This decision has been recognized and followed in England. *Rapson* v. *Cubitt,* 9 M. & W. 711; *Milligan* v. *Wedge,* 12 Ad. & E. 737; *Hobbit* v. *London & N. W. Ry. Co.,* 4 Welsby, H. & G., 254; *Jones* v. *Mayor of Liverpool,* 14 Q. B. D. 890. The doctrine of the English courts has been generally approved and followed by the courts of the United States. *Huff* v. *Ford,* 126 Mass. 24; *Driscoll* v. *Towle,* 181 Mass. 416; *Ash* v. *Century Lumber Co.,* 153 Ia. 523 (containing a thorough discussion of the cases); *Frerker* v. *Nicholson,* 41 Colo. 12; *Joslin* v. *Grand Rapids Ice Co.,* 50 Mich. 516; *Higham* v. *Waterman Co.,* 32 R. I. 578; *Morris* v. *Trudo,* 83 Vt. 44; *Little* v. *Hackett,* 116 U. S. 366; *Standard Oil Co.* v. *Anderson,* 212 U. S. 215. The New York courts appear to have had some difficulty in determining the questions raised by this class of cases, but seem to have concluded to draw a line of distinction between those cases in which the employee is exclusively at the service of the hirer, and those cases in which the employee is at the service of others as well as that of the hirer; making the hirer liable, as his master, in the former class, and the general employer in the latter. *Lewis* v. *Long Island R. R. Co.,* 162 N. Y. 52; *Kellogg* v. *Church Charity Foundation,* 203 N. Y. 191; *Schmedes* v. *Deffaa,* 214 N. Y. 675 (reversing 153 App. Div. 819); *Hartell* v. *Simonson,* 218 N. Y. 345. The court in the instant case divided three to two. There is no dispute as to the proper test to be applied, which, all courts agree, is: whose work is being done, and who, during the course of the work, has or exercises control of the doing of the work. The conflict comes in the attempts to apply the test. The majority in the instant case held that it was the defendant's work that was being done, and that he had control of the doing of it; while the minority was of the opinion that it was the general employer's work that was being done, and that it had control of the doing of it.

PARENT AND CHILD—INJURY FROM ACT OF CHILD—NEGLIGENCE OF PARENT FOR JURY.—The defendant, owner of a gun for which he no longer had any use, broke the stock, leaving however the operative parts intact, and threw it under his bed, intending to conceal it there, from his children. The gun was found by his son, a boy of about thirteen years, who knew of his father's possession of the gun, but who had never been given any instruction as to the danger of its use, and who was ignorant of the fact that it was still loaded. The son repaired the gun stock and in play shot the plaintiff, who brings suit by his father as next friend for injuries sustained thereby against the defendant. *Held,* under facts of above case whether defendant was neg-

ligent in allowing his son to get possession of a loaded rifle and whether such negligence was the cause of the injury, were questions for the jury. *Salisbury* v. *Crudale,* (R. I., 1918), 102 Atl. 731.

The rule is well settled that a parent is not liable for the torts of his child. *Chastain* v. *Johns,* 120 Ga. 977. *Kumba* v. *Gilham,* 103 Wis. 312. But acts of the parent may be so related to acts of the child as to constitute negligence in the parent, his acts being the *causans* of the injury. *Palm* v. *Ivorson,* 117 Ill. App. 535. For instance there may be a legal duty upon a parent towards the general public to guard against a boy obtaining possession of guns or other dangerous weapons. *Sullivan* v. *Creed,* (1904), 2 Ir. K. B. D. 317. The liability rests on the duty of every man to use his own property so as not to injure the person or property of others. *Carter* v. *Towne,* 98 Mass. 567. In cases of this character the question of the negligence of the parent is a question for the jury. *Brittingham* v. *Stadiem,* 151 N. C. 299; *Sullivan* v. *Creed, supra; Meers* v. *McDowell,* 110 Ky. 926; *Binford* v. *Johnston,* 82 Ind. 426; *Phillips* v. *Barnett,* (N. Y.), 2 City Ct. R. 20. But in *Swanson* v. *Crandall,* 2 Pa. Super. Ct. 85 it was held that the discovery of a revolver in a bureau drawer by a child of five years could not have been reasonably anticipated and that there was no evidence to go to the jury on the question of negligence. In *Phillips* v. *Barnett,* (N. Y.), (*supra*) on almost the same facts the question of negligence was submitted to the jury. In *Hagerty* v. *Powers,* 66 Cal. 368 it was held that the father of a child eleven years old is not liable for negligently allowing him to have a loaded pistol with which he carelessly shot another child. This case was poorly decided in that the court totally ignored the question of the father's negligence and based their decision entirely on the theory that a father is not liable for the torts of the son. A parent is not liable for the tort of his infant son arising from permitting his son to use fire arms where it appears that such son was twelve years of age, experienced in the use of fire arms, acquainted with their construction and proper mode of carrying, handling and discharging the same and had been habitually careful. *Palm* v. *Ivorson,* (*supra*).

SALES—IMPLIED WARRANTY IN SALES OF FOOD.—Defendant, a druggist, sold to the plaintiff, for consumption, ice-cream, which he had prepared. Plaintiff became violently sick after eating it due to the presence in it of a poison known as tyrotoxicon. *Held,* defendant was liable on an implied warranty that the ice-cream was fit for human consumption. *Race* v. *Krum,* (N. Y., 1918), 118 N. E. 853.

Whenever special reliance is placed by the vendee on the vendor in the selection of wholesome food, the courts uniformly hold there is an implied warranty as to fitness. *Bigge* v. *Parkinson,* 7 H. & N. 955; *Beer* v. *Walker,* 37 L. T. N. S. 278; *Burrows* v. *Smith,* 10 T. L. R. 246; *Wallis* v. *Russell* [1902] 2 Ir. R. 585, even though the vendee is a skilled tradesman buying to sell again, *Copas* v. *The Anglo-American Provision Co.,* 73 Mich. 541; *Bailey* v. *Nickols,* 2 Root (Conn.) 407; *Truschel* v. *Dean,* 77 Ark. 546; or if the food is for animals: *Coyle* v. *Baum,* 3 Okla. 695; *Deason* v. *McNeill,* 133 Ill.

App. 304; or where the contract is executory, and the vendee has no opportunity to examine the goods until delivery: *Armour* v. *Gundersheimer*, 23 App. Cas. (D. C.) 210; *Bigge* v. *Parkinson* (*supra*). But there is no warranty if the vendee is a trader not relying on the judgment of the vendor: *Humphreys* v. *Comline*, 8 Blackf. (Ind.) 516; *Jones* v. *Murray*, 3 T. B. Mon. (Ky.) 83; *Zielinski* v. *Potter*, (Mich., 1917), 161 N. W. 851; *Emerson* v. *Brigham*, 10 Mass. 197; *Hanson* v. *Hartse*, 70 Minn. 282; *Moses* v. *Mead*, 5 Den. (N. Y.) 617; *Goldrich* v. *Ryan*, 3 E. D. Smith (N. Y.) 324; *Needham* v. *Dial*, 4 Texas Civ. App. 141. But where, as in the principal case, the vendor was the manufacturer or producer, and he sells directly to the consumer the warranty is always implied, and he sells at his peril. 3 Bl. Com., 165; *Moore* v. *McKinley*, 5 Calif. 471, (*dictum*); *Moses* v. *Mead* (*supra*) (*dictum*); *Flessher* v. *The Carstens Packing Co.*, 93 Wash. 48; *Getty* v. *Rountree*, 2 Chandler (Wis.) 28 (*dictum*). The same rule prevails under the civil law. *Doyle* v. *Fuerst and Kraemer*, 129 La. 838, 906; Ann. Cases, 1913 B, 1110, 40 L. R. A. (N. S.) 480. In the following cases it was held there was an implied warranty where the vendor was not the maker of the food products. *Wiedeman* v. *Keller*, 171 Ill. 93; *Askam* v. *Platt*, 85 Conn. 448; *Rinaldi* v. *Mohican Co.*, 157 N. Y. Supp. 561; *Leahy* v. *Essex Co.*, 148 N. Y. Supp. 1063. It did not appear in this case whether the defendant, a restaurant keeper, had made the pie or not. But see *Farrell* v. *The Manhattan Market Co.*, 198 Mass. 271, 126 Am. St. Rep. 436, 15 L. R. A. (N. S.) 884; where a retailer was held not liable to a consumer on an implied warranty that a chicken he sold her was wholesome food. In that case, however, the vendee selected the chicken herself. In *Chapman* v. *Roggenkamp*, 182 Ill. App. 117, it was held the warranty was implied that the peas were fit for consumption, in a sale of canned peas by a retailer to a consumer. But see *Bigelow* v. *The Maine Cent. R. R.*, 110 Me. 105; *Julian* v. *Laubenberger*, 16 Misc. (N. Y.) 646, (*contra*). Where the vendor is not a regular dealer there is no implied warranty: *Burnby* v. *Bollett*, 16 M. & W., 644; *Emmerton* v. *Mathews*, 7 H. & N. 586; *Smith* v. *Baker*, 40 L. T. N. S. 261; *Farrell* v. *Manhattan Market Co.*, (*supra*) (*dictum*); *Hoover* v. *Peters*, 18 Mich. 51 (*contra*) nor is a warranty implied where the food is bought for immediate consumption by animals: *Nat'l Cotton Oil Co.* v. *Young*, 74 Ark. 144, 4 Ann. Cas. 1123; *Lukens* v. *Freiund*, 27 Kan. 664; *Houk* v. *Burg* (Tex.) 105 S. W. 1176; *Houston Cotton Oil Co.* v. *Trammell*, (Tex. Civ. App.), 72 S. W. 244. There is no principle which will reconcile all the cases. In *Winsor* v. *Lombard*, 18 Pick. (Mass.) 57, Shaw, C. J., said that the retail vendor of food for domestic consumption is from the nature of his calling presumed to know whether a given article is sound and wholesome. This principle is made the basis of many decisions. See note, 15 L. R. A. (N. S.) 884. It does not, however, account for *Chapman* v. *Roggenkemp*, (*supra*), nor *Hoover* v. *Peters*, (*supra*). In the former case it was said: "Where, however, articles of food are purchased from a retail dealer for immediate consumption, the consequences resulting from the purchase of an unsound article may be so serious and may prove so disastrous to the health and life of the consumer that public safety demands that there should be an implied warranty

on the part of the vendor that the article sold is sound and fit for the use for which it was purchased." This doctrine will not reconcile all the cases, though they all seem to follow the one rule or the other.

SALES—SALE FOR "CASH ON DELIVERY"—PASSING OF TITLE.—F. made a bid for cotton brought to market by H., and left instructions to have the cotton ginned at a certain gin, if his bid was accepted. H. accepted the bid and took the cotton to the gin. About this time, exactly when does not appear, the plaintiff, a judgment creditor of H., garnished F. as having in his hands money due to H. F. returned the cotton, and justifies his act on two grounds, one being that the sale to him was for cash on delivery, and since he had not yet paid for the cotton, the title to it remained in H. *Held,* defense good, that where a sale is for cash on delivery no title passes to vendee until payment of the purchase price. *Hamra Bros.* v. *Herrell,* (Mo., 1918), 200 S. W. 776.

It is a presumption of the law of sales, that in contracts for the sale of specific goods in which nothing remains to be done but the making of delivery or paying of the purchase price, or both, title passes immediately to the vendee. *Tarling* v. *Baxter,* 6 Barn. & Cress. 360; *Clark* v. *Greeley,* 62 N. H. 394. This presumption may, of course, be overcome by showing the intent of the parties that title shall remain in the vendor until such time as they desire. The court in the principal case holds, that as a matter of law, the making of the terms of the sale "cash on delivery" rebuts the presumption of immediate passage of title, and makes the payment of the purchase price a condition precedent to such passage. The use of the term "cash on delivery" here is rather unfortunate. The great majority of cases where goods are sent "C. O. D." by common carrier hold that title passes on delivery to the carrier, and the payment of the price is merely a condition precedent to the delivery of possession. *Commonwealth* v. *Fleming,* 130 Pa. 138; *Pilgreen* v. *State,* 71 Ala. 368. But see *Lane* v. *Chadwick,* 146 Man. 68. Missouri also has taken this view, *State* v. *Rosenberger,* 212 Mo. 648, cited with approval in *State ex rel. Weatherby* v. *Brewing Co.,* 270 Mo. 100; *State* v. *Palmer,* 170 Mo. App. 90. In these cases the meaning of "C. O. D." is, apparently, primarily "collect on delivery". But it also has the connotation "cash on delivery". *Newhook* v. *Ryan,* 9 Newf. 220. Yet the courts, when using the full term "cash on delivery", rather than the abbreviation "C. O. D.", tend to apply it to cases where the shipment is not by carrier, and to use it as synonymous with "cash sale". See *Paul* v. *Reed,* 52 N. H. 136, where the payment was to be made in person to the vendor, and *Boyd* v. *Bank of Mercer County,* 174 Mo. App. 431, where a check was to be mailed to the seller. The tendency in these cases is to consider the payment of the purchase price a condition precedent to the passage of title, not merely of possession. *Leven* v. *Smith,* 1 Denio (N. Y.) 571; *Pinkham* v. *Appleton,* 82 Me. 574. The distinction is clearly marked as running throughout the Missouri cases, *State* v. *Rosenberger, supra,* being cited as the law in C. O. D. by carrier cases, and holding that title passes and possession merely is held up; and *Johnson-Brinkman Co.* v. *Central Bank,* 116 Mo. 558, in the others, of "cash on deliv-

ery" without the intervention of the common carrier as an agent of collection. See *Skinner and Kennedy Stationery Co.* v. *Lammert Furniture Co.*, 182 Mo. App. 549; *Boyd* v. *Bank of Mercer County, supra.* Commercial usage and the courts seem to have well established this line of cleavage in apparently analogous cases. The matter is discussed by Henderson, J., in *Keller* v. *State* (Tex.) 87 S. W. 669, who comments on the restriction of the meaning of "C. O. D." to small packages sent by common carrier, and says that the doctrines of the two types of cases are too well established to change either to conform to the other. The use of the term "cash sale" instead of "cash on delivery" where the transaction is between the parties themselves, would remove much of the mist in which the subject is enveloped.

SCHOOLS AND SCHOOL DISTRICTS—FORBIDDING PUPIL'S ATTENDANCE AT MOVING PICTURES.—The governing authorities of a public school established a rule prohibiting the attendance by pupils at any show, moving picture show or social function on any school night, excepting Friday night. Certain pupils, with the consent of their parents, violated the rule by attending a moving picture show on one of the forbidden nights, and were threatened with expulsion unless they and their parents should agree to observe the regulation in the future. The parents filed a petition for an injunction against the proposed enforcement of the rule. *Held,* the injunction should be denied, the rule relating to attendance at moving picture shows being a reasonable exercise of the school board's discretionary power of discipline. *Mangum et al.* v. *Keith,* (Ga., 1918), 95 S. E. 1.

The power of school authorities over pupils is not confined to the school room or school grounds, but may affect their conduct after they have reached home. MECHEM, PUBLIC OFFICERS, § 730. The extent to which their regulations may go is subject to some conflict. Thus, it has been held that a school board has power to exclude a child of immoral and licentious character, although such character is not manifested by any acts within the school, *Sherman* v. *Inhabitants of Charlestown,* 8 Cush. 160; and that a pupil may be expelled for drunkenness, though not guilty of any misconduct on the school grounds. *Douglass* v. *Campbell,* 89 Ark. 254. Rules forbidding membership in secret societies have been upheld. *Wayland* v. *Hughes, et al,* 43 Wash. 441; *Wilson* v. *Board of Education of Chicago,* 233 Ill. 464. See note, 5 MICH. L. REV. 69. On the other hand, a rule that no pupil should attend a social function during the school term was held to be beyond the school board's power, *Dritt* v. *Snodgrass,* 66 Mo. 286; and a rule requiring all pupils to remain at home and study from seven to nine o'clock on school nights was held to be an unwarranted invasion of parental rights to the control of children. *Hobbs* v. *Germany,* 94 Miss. 469. These cases limit the power of school authorities in making regulations to control the child after it has reached home to matters which would *per se* have a direct and pernicious effect on the moral tone of the school, or have a tendency to subvert the proper administration of school affairs. This limitation seems to be well supported by authority, but the court in the instant case has evidently not seen fit to adhere to it.

SCHOOLS AND SCHOOL DISTRICTS—PUBLIC SCHOOL FUNDS—SUPPORT OF PAROCHIAL SCHOOLS.—Plaintiff brought suit to enjoin directors of an incorporated school district from appropriating or paying out public school funds for the support, aid or maintenance of a parochial school. *Held,* the injunction should be granted. *Knowlton* v. *Baumhover,* (Ia., 1917), 166 N. W. 202.

In this case the evidence showed the study of the Catholic catechism, the display of emblems, the use of Catholic prayer books and the wearing by the teachers of robes peculiar to their order. That the Constitution of the United States and state constitutions and statutes prohibit the use of the public schools for sectarian religious purposes is not disputed. Just when a certain use comes within the prohibition is not always so clear. The holding of morning exercises in the public schools, consisting of reading by the teacher without comment of extracts from the Bible, King James' version, and repeating the Lord's prayer and the singing of appropriate songs in which pupils are not required to join does not amount to sectarian teaching within the constitutional prohibition. *Church* v. *Bullock,* 104 Texas 1. This case represents the prevailing view and is supported by *Pfeiffer* v. *Board of Education,* 118 Mich. 560; *Billard* v. *Board of Education,* 69 Kan. 53; *Hackett* v. *Brooksville Graded School District,* 120 Ky. 608; *Donahue* v. *Richards,* 38 Me. 379. The contrary view is reached in *People ex rel. Ring* v. *Board of Education,* 245 Ill. 334 and *State ex rel Weiss* v. *District Board,* 76 Wis. 177. A regulation of the department of public instruction prohibiting teachers in public schools from wearing a distinctively religious garb while engaged in the work of teaching is not unreasonable. *O'Connor* v. *Hendrick,* 184 N. Y. 421. This case was followed in *Commonwealth* v. *Herr,* 229 Pa. 132. The case of *Hysong* v. *Gallitzin Borough School District,* 164 Pa. 629 (1894) held that persons could not be excluded from the public schools because they wore the garb of a particular religious order. In 1895 the statute involved in *Commonwealth* v. *Herr* was passed which prohibited the wearing of such apparel. The holding of parts of graduating exercises of public schools in churches as well as permitting ministers to deliver prayers is not giving sectarian instruction. *State* v. *District Board,* 162 Wis. 482. A contract between the trustees of a graded school and a sectarian school by which the sectarian school leased to the graded school two rooms in its school building and turned over the control and supervision of the graded school to the president of the sectarian institution is a violation of the constituional prohibition against religious use. *Williams* v. *Board of Trustees, Stanton Common School District,* 173 Ky. 708. The present case seems to be in accord with the prevailing view.

SUNDAY LABOR—"DAILY NECESSITY".—Appellant operated a moving picture show in a city in close proximity to Fort Roots, one of the national army cantonments, at which were stationed some five thousand soldiers and eight thousand laborers. Sunday was practically the only day on which these men had an opportunity to attend shows or indulge in other forms of recreation. Appellant, admitting the operation of the show on Sunday, was convicted of violating a statute prohibiting labor on Sunday other than that of "daily ne-

cessity, comfort or charity". *Held,* the operation of the show was not a work of necessity within the meaning of that word as employed in the statute. *Rosenbaum* v. *State,* (Ark., 1917), 199 S. W. 388.

In most jurisdictions statutes exist specifically prohibiting concerts, shows and other theatrical performances on Sunday. It has been held, however, that such statutes do not apply to moving picture shows. *People* v. *Hemleb,* 127 App. Div. 356. In the absence of such special statutes, the operation of theaters has been prevented under statutes similar to that involved in the instant case. *Quarles* v. *State,* 55 Ark. 10; *Topeka* v. *Crawford,* 78 Kan. 583. The same result has been reached with regard to moving picture shows. *State* v. *Ryan,* 80 Conn. 582; *Moore* v. *Owen,* 58 Misc. 332. In all these cases the courts have uniformly rejected the contention that such performances were works of necessity, and have professedly adhered to the classic definition evolved in *Flagg* v. *Inhabitants of Millbury,* 4 Cush. 243, to the effect that "a moral fitness or propriety of the work and labor done, under the circumstances of any particular case, may well be deemed a necessity within the statute." Whether, in view of the conditions existing in the present case, the labor came within the exception might be more open to question than the court is willing to admit. It must be remembered, however, that the construction and enforcement of these statutes depend in a large measure upon the state of public sentiment as to the strictness with which the Sabbath should be observed, and Arkansas has consistently adhered to a severe interpretation of their "blue laws". HARRIS, SUNDAY LAWS, §§ 98-119.

TAXATION—PUBLIC PURPOSE.—Respondent sought to recover taxes paid under protest, which had been assessed to it under a law for the partial support of mothers who are dependent upon their own efforts for the support of their children. Under the law, the child must be under fifteen years of age, living with the mother. The allowance is only to be given when by means of it the mother will be able to remain at home with her children. She must in the judgment of the county commissioners or juvenile court be a proper person for the bringing up of her children. And the allowance must be necessary to save the child or children from neglect. *Held,* that the tax was for a public purpose. *Denver & R. G. R. Co.* v. *Grand County,* (Utah, 1917), 170 Pac. 74.

Assumed powers of doubtful legality have gone unchallenged more often perhaps in this class of cases than in any other. 14 L. R. A. 474, note. In *Baltimore* v. *Keeley Institute of Maryland,* 81 Md. 106, taxation for treatment of habitual drunkards in a private institution was held constitutional. *Re House,* 23 Colo. 87, accord. *Wisconsin Keeley Institute Co.* v. *Milwaukee County,* 95 Wis. 153, *contra.* A tax for needy blind was held constitutional in *State ex rel.* v. *Edmondson,* 89 Ohio St. 351; but the law must insure the application of the money to the support of the individual or to prevent him from becoming a public charge or in some measure to control its use by him. *Davies* v. *Boyles,* 75 Ohio St. 114, 7 L. R. A. (N. S.), 1196. In *Hager* v. *Kentucky Children's Home Society,* 119 Ky. 235, an appropriation of public funds to be expended by a private corporation organized to provide homes

for destitute children was held not to be void as local or special legislation when it was for the benefit of all children of the class within the state generally. The case seems completely to cover the question here. The object of the statute in the principal case is clearly to provide for the welfare and training of the children. This has too long been a recognized public purpose to admit of doubt, and the question of whether the mother is as proper a guardian of the child as a corporation seems too close to admit of judicial doubt in determining the constitutionality of the tax. The case is undoubtedly stronger than those above, holding taxation for the cure of drunkards constitutional.

TRUSTS—WRONGDOER NOT PERMITTED TO PROFIT BY HIS CRIME—ESTATE BY ENTIRETIES.—One was seised of land by entireties with his wife. He murdered her and killed himself immediately afterwards. The wife's heirs brought suit in equity to have themselves declared owners of the land. The husband's heirs defended on the grounds that the murder was not committed with the intent to get the deceased's property, and that, as it passed by descent and not by will, the law should not deprive them of it. *Held,* plaintiff's prayer should be granted; one cannot profit by his own wrongdoing, whether he takes by descent or by will, and whether he commits the murder with the intent to enrich himself or with some other felonious design. *Van Alstyne* v. *Tuffy,* (N. Y., 1918), The Daily Record, Feb. 23, 1918.

Whether a slayer may take or keep the property of his victim has been much debated in the courts since *Owens* v. *Owens,* 100 N. C. 240 (decided in 1888), holding that he may, and *Riggs* v. *Palmer,* 115 N. Y. 506, which arose the following year, holding that he may not. The English courts have had no difficulty with the matter. The one who commits murder or manslaughter can get nothing, *Estate of Hall,* [1914] Pro. 1. The case of *In Re Houghton,* (1915), 2 Ch. 173, did allow an insane killer to inherit, but it is easily reconcilable on the facts, for the slayer was not brought to trial, but was placed in an insane asylum, and Joyce, J., who wrote the decision, says, that even "if he had been found guilty of the act, he would not have been found guilty of any offense." The Roman law origin of the doctrine that the slayer shall not take, and its development in modern times, are treated of in 7 MICH. L. REV., 160; and in 13 MICH. L. REV., 336. New York has steadfastly held this view since *Riggs* v. *Palmer, supra,* though it is not the weight of authority in the United States. The New York Surrogate Court, in *Matter of Wolf,* 88 Misc. (N. Y.) 433, ventured the opinion that unless the death were caused with intent to profit, the laws of succession should not be interfered with. That decision is expressly repudiated in the principal case. Tennessee follows the general doctrine of *Riggs* v. *Palmer.* See *Box* v. *Lanier,* 112 Tenn. 393. But in a case exactly like the principal case, it allowed the husband's heirs to take the land which had been held by entireties, on the reasoning that persons so seised are seised *per tout et non per my,* and that to take the property from the survivor would be to exact a forfeiture on commission of a crime, which it could not countenance; *Beddingfield*

v. *Estill and Newman,* 118 Tenn. 40. This however, gives the wrongdoer a surviving interest in property which it is by no means certain he would have gotten but for his crime. A means of avoiding the difficulty is to hold the husband a constructive trustee during his life of the interest which was his wife's, and on his death to give the entire estate to the heirs of the wife, on the presumption that she would have outlived him but for his causing her death. This theory is advanced by James Barr Ames in 36 AMER. L. REG. and REV. (N. S.) 225, 238.

WORKMEN'S COMPENSATION—ADMIRALTY—RIGHT TO COMPENSATION.—Petitioner, a longshoreman in the service of defendants who were stevedores, was injured while unloading a ship lying at a dock in navigable waters. He claimed compensation under the state Workmen's Compensation Act. On the ground that such Acts are not applicable to injuries received while within the jurisdiction of admiralty the court decided that petitioner should not recover. On rehearing it was *held* that under the Amendment of October, 1917 (Act of Congress October 6, 1917, c. 97, 40 Stat. 395) of the Judicial Code, petitioner should recover. *Veasey* v. *Peters, et al.,* (La., 1918), 77 So. 948.

The first decision was, of course, based on *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205. See comment thereon in 15 MICH. L. REV. 657. The Supreme Court there held that such state legislation does not extend to navigable waters over which there is admiralty jurisdiction, and further that a claim for compensation under the Act is not a "right of a common-law remedy" within the saving clause of the original judiciary act conferring upon the Federal District Courts "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, * * * saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it." Act, Sept. 24, 1789, c. 20, section 9, 1 Stat. 73, 76. Jud. Code, section 24 (3), 36 Stat. 1087, 1091, c. 231. In October, 1917, Congress amended that act by adding "And to claimants the rights and remedies under the Workmen's Compensation law of any state". The original decision in the principal case was announced June 30, 1917. On the rehearing the court considered the October amendment applicable to the case. In the opinion on rehearing the court also sought to distinguish the case from the *Jensen Case,* in that the proceeding in the earlier case was against the ship while here it was against individuals. The court was in error in this; the *Jensen Case* was not a proceeding *in rem.* There was a further suggestion that the employment of the petitioner here was not maritime in nature, so there was no admiralty jurisdiction, and *Atlantic Transport Co.* v. *Imbrovek,* 234 U. S. 52, was explained on the ground that there the injured party was loading the ship while here he was unloading. That distinction the court, however, failed to observe had been foreclosed by the decision in the *Jensen Case* where the injured employee also was engaged in unloading.