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STATE OF CONNECTICUT v. FRANK MCGUIRE, 84 CONN. 80 ATL. R.

In this case the Court in its opinion, written by Thayer, J., has rendered a valuable service to the profession by clearing away the obscurity that is found in text books and in practice as to the meaning of the term *malice aforethought* in the definitions of murder and manslaughter. The usual definition of murder is: that murder is the unlawful killing of one person by another with malice aforethought; and the definition of manslaughter is, that manslaughter is the unlawful killing of one person by another without malice aforethought. Given a homicide not excused or justified by law the question whether it is murder or manslaughter, is determined, by the definition, by the presence or absence of malice aforethought. On the face of this situation it would seem to the uninitiated student and practitioner, that the distinction between the two crimes was to be sought in the state of mind of the person who had unlawfully slain another.

Upon this rock text-book writers and practitioners have gone to wreck. Without rehearsing the opinion, and its brief historical survey which should be examined by all practitioners and stu-

dents, the following conclusions are either directly expressed in the opinion or logically deduced from it.

1. Malice aforethought in the definition of murder and manslaughter does not relate merely to the state of mind of the person who unlawfully kills another.

2. Malice aforethought relates to the moral aspects of the act causing death, as indicated by all the conditions and circumstances attending it, including the state of mind of the assailant.

3. The law defines the circumstances under which the killing of one person by another is justified or excused.

4. If the killing of one person by another is not excused or justified in law, and is therefore unlawful, the law defines the circumstances attending the unlawful act causing death, which will mitigate the act and reduce the crime to manslaughter.

5. The determination of what circumstances and conditions attending an act causing the unlawful death of another mitigates the killing and reduces the crime to manslaughter is not a question of fact for the jury, but a question of law for the Court.

6. The only question for the jury is as to the existence or non-existence of such facts as the Court informs them would so mitigate an unlawful killing as to reduce the crime to manslaughter.

7. Malice aforethought has therefore now become merely a technical term denoting that the circumstances attending an act unlawfully causing the death of another are not such as the law defines as sufficient to extenuate the act and reduce the crime to manslaughter.

8. A killing of one person by another in the absence of circumstances attending the act causing death sufficient in law to justify or excuse the act, or to mitigate it so far as to reduce the crime to manslaughter, is murder.

9. It is not the duty of the Court to attempt to define the term malice aforethought to the jury.

10. It is practically impossible to so define the term malice aforethought as to bring it within the comprehension of the average juror.

11. It is entirely impossible to define this term as a state of mind.

12. The jury can be instructed that if they find that an unlawful homicide has been committed by the accused and that the crime is murder, certain circumstances (defined by statute and stated to them) attending the act of killing will make the crime murder in the first degree, and that if such circumstances are not found proven by the requisite evidence the crime is murder in the second degree.

13. In a case of homicide, when there are not present within the range of the evidence any circumstances in law justifying, excusing or extenuating the homicide and no claim is made that any such circumstances are present, the trial judge ought to so state to the jury leaving the issue, if guilt is found, between murder of the first and second degree.

To any person who has given the subject in question any consideration, the ordinary treatment of malice aforethought express and implied, in homicide cases, has necessarily seemed confusing to the jury, and irrational. This case leads the way to a rational treatment of this subject in homicide cases.

ADVISORY OPINIONS

The purpose of the courts of this country is primarily to try cases. Questions which come before them in moot form they refuse to consider at all. Nevertheless in some jurisdictions the courts of last resort are found advising the state legislature as to the constitutionality of certain bills pending before that body. The recent case of *In re House Resolution No.* 10, 114 Pac., 293 (Colo.) calls attention to the fact that the exercise of this extra-judicial function is peculiar to but a few states in this country.

Historically the exercise of this extra-judicial function by the judges dates back to very early times in English jurisprudence. But even in those early times the judges were rather reluctant in giving their opinion in matters pending before Parliament and they usually did so with the understanding that they could change their minds if a case involving the same point were to come

before them sitting as a court. It seems that when the advice of the judges was sought by the King himself, they gave it rather from their reverence, respect and subordination to the King than from a sense of duty as judges.

In 1460 when the Duke of York placed before Parliament his claim against the title of Henry VI to the Crown, which was delivered to the Chancellor by way of petition to the House of Lords, the Lords sent for the King's judges to have their advice in the matter. They presented the petition and claim to the judges and required them in the King's name to advise them therein and to search and find arguments for the King against this claim. The judges in answer said that they were the King's judges to determine matters that were actually before them in law, between party and party, and that in such matters between party and party they would not be of counsel. Therefore they refused to answer because the matter was between the King and the Duke of York as parties. Also that it had not been the custom to call the King's judges to counsel in such matters, and especially such a matter which was so high in its nature and touched the King's estate, and Royal Crown which is above the common law. *Fortescue's Reports,* 384.

The Lords again sent for the judges to advise them on other questions, and again the judges said that they dare not answer, but the Lords would not allow it and they asked several questions of the judges which they answered. In *George Sackville's Case,* 2 Eden, 372, decided in 1760, the King referred this question to the judges: "Whether an officer of the army, having been dismissed from His Majesty's service, and having no military employment, is triable by a court martial for a military offence lately committed by him while in actual service and pay as an officer?" They answered the question in the affirmative, but they expressly said that they should be ready to change their opinion, if they should see cause, upon objections that might be laid before them. According to *Opinion of Justices,* 126 Mass., 562, this is the last case in which the judges were called on to give an opinion by the Crown. However, Parliment continues even to this day to ask such advisory opinions of the judges and they are given.

Some years previous to this the judges were called into consultation to aid in settling the question as to whether the sov-

ereign had the right to dictate in regard to the education and marriage of the Prince of Wales. 15 Howells State Tr., 1195. In *Peachman's Case,* Vol. 4 of Bacon's Works, p. 595, a minister was indicted for certain treasonable passages published in a sermon. When Lord Coke was called upon to give an advisory opinion he was most reluctant to do so. A similar degree of caution was exhibited in a great case which occurred in the reign of Queen Anne, in the year of 1711. Of the twelve judges sitting, four thought it proper for the court to give an advisory opinion, but the remaining eight thought that, though they would answer the questions asked, they had the right to reserve the power to change their opinion if due cause were shown. *Barnett's Own Times,* Vol. III, p. 325. The same caution was shown in *MacNaghten's Case,* 10 Cl. & F., 200, and also in *Queen Caroline's Case,* 2 Br. & Bing., 284. In these cases it is stated that the opinion of the judges as rendered in cases of this nature is of no binding effect. It has no judicial significance, except in so far as it is their own private opinion.

The origin of this extra-judicial function in this country is to be found in the oldest constitution now extant, that of Massachusetts, a document that was adopted as early as 1780. Chapter III, Article 2, reads as follows: "Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the supreme judicial court, upon important questions of law, and upon solemn occasions."

An attempt was made in the convention which framed the Federal Constitution to incorporate into it a provision which was a verbatim copy of that of the Massachusetts Constitution, but it was unsuccessful. *Madison's Journal of the Federal Convention (Scott's Edition,* 1894), 558, 559. During Washington's term as President he once asked the United States Supreme Court to give construction to the treaty with France. They refused absolutely. There has never been an instance since that time in which that court has been called upon for an opinion of this nature.

There are seven states in the Union at present with the constitutional provisions requiring their courts to give advisory opinions: Colorado, Florida, Maine, Massachusetts, New Hamp-

shire, Rhode Island, and South Dakota. It is needless to say that the provisions of the Maine and New Hampshire constitutions are identical with that of Massachusetts in requiring the courts to give opinions "upon important questions of law and upon solemn occasions." There was virtue in every law enacted by the Mother Colony.

The constitution of Colorado, which governs the principal case, has an amendment similar to the provision of the Massachusetts constitution. Article V, Section 13, of the constitution of South Dakota reads as follows: "The governor shall have authority to require the opinions of the judges of the supreme court upon important questions of law involved in the exercise of his executive powers and upon solemn occasions." This, of course, differs from the others in that only the governor may ask for the opinion, and then only upon questions which relate to the conduct of his office or upon solemn occasions. Florida's constitution of 1887 follows this idea and limits the right to an opinion to the governor. The "Upon solemn occasions" phrase is also omitted and the governor must confine his questions to those dealing with "the interpretation of this constitution upon any question affecting his executive powers and duties." The Rhode Island constitution seems to give the broadest scope of any of the constitutions. It reads as follows: "The judges of the Supreme Court shall give their written opinion upon any question of law whenever requested by either branch of the legislature or by the governor."

In Vermont the matter is controlled by statute, and acting under this statute the supreme court of that State has answered a question placed before it. *Opinion of Judges,* 37 Vt., 665. But not so in Minnesota where a similar statute existed at one time. In the case of *Matter of Application of Senate,* 10 Minn., 78, the statute was declared unconstitutional, because, said the court, it is the duty of each department of government to abstain from and oppose encroachments on either of the others, and, furthermore, the duty sought to be imposed is neither a judicial act, nor is it sought to be performed in a judicial manner. An unauthorized expression of opinion by a judge or court, especially one of last resort, upon a matter which may subsequently come before the court for adjudication, is improper.

The supreme court of Nebraska has answered questions without the authority of a constitutional provision or even of a statute. The auditor of public accounts asked for an opinion in regard to the conduct of his office and got it. *In re Babcock,* 21 Neb., 500. In the case of *In re School Fund,* 15 Neb., 684, the court advised the school board as to an investment of funds. *In re G. A. Brown, Reporter,* 15 Neb., 688, is a case in which the reporter of the decisions of the Supreme Court sought information of the court as to the price he should pay for the binding of the decisions in volumes. The desired information was given.

It is evident that this extra-judicial function is very limited in its use both in this country and in England. There the King no longer seeks advisory opinions of the courts and when it is considered that the court of last resort of that country is composed of members of the House of Lords it is not strange that that body should seek the opinions of the court. But even under these conditions opinions are not asked very often. In this country the courts give the opinions of this nature in but nine of the states and seven of these are controlled by constitutional provision. It is a duty that is ordinarily placed upon the attorney general's office. Even in the states where this function is exercised the courts are most reluctant to give an opinion and avoid doing so as often as possible. One of the greatest objections to placing this duty upon the courts is that expressed by the Minnesota court when it said that the theory of the independence of the three departments of government was destroyed when this extra burden was placed upon the courts.

STATES—ACTION BY TAXPAYER—INJUNCTION—AUTHORITY.

In the absence of a statute, a taxpayer, according to *Long v. Johnson,* 127 N. Y. Sup., 756, having no rights aside from those possessed by taxpayers as a whole, may not sue to restrain a State commission appointed by the governor to construct a prison plant, though the commission has not been economical, has shown favoritism, and also has made errors in judgment in adopting plans and advertising for bids.

Courts of equity cannot by injunction control the exercise of political, judicial or legislative functions by public officers, al-

though the passage of a void ordinance may sometimes be enjoined, nor will they thus control the exercise of discretion by public officers and authorities, *Jones v. No. Wilkesboro,* 150 N. C., 646, except to prevent a manifest abuse of discretion and to require that such discretion be exercised according to law. *Cooke v. Iverson,* 108 Minn., 388. But equity will not restrain acts of authorized officers for mere irregularities or for mere mistakes in judgment. *Long v. Shepherd,* .... Ala., ... Nor can it be invoked to declare in advance that proposed or threatened acts will, if performed, be illegal and void. *Tiulcer v. O'Dell,* 134 App. Div., 272. "The true test in all such cases is as to the nature of the specific act in question, rather than as to the general functions and duties of the officer. If the act which it is sought to enjoin is executive instead of ministerial in its character, or if it involves the exercise of judgment and discretion upon the part of the officer, as distinguished from a merely ministerial duty, its performance will not be prevented by injunction." 2 *High on Injunctions,* Sec. 1326.

One of the most frequent occasions for the intervention of equity is to protect taxpayers from an unreasonable increase of their burdens by the waste or illegal disposition of public funds. *Flulcer v. Union Point,* 132 Ga., 568. And generally official acts will not be enjoined until some injury to the complainant is at least threatened and a taxpayer seeking the injunction must show a personal interest which will be affected by the threatened act. *Lagoo v. Hill,* 143 Ill. App., 523.

Where a state board, of which the governor was a member, was acting under the authority of an unconstitutional law, any person who sustained injury thereby and whose remedy at law was incomplete or inadequate, could enjoin the board from such action. *Board of Liquidation v. McComb,* 92 U. S., 531. But the court will not interfere by injunction to arrest the action of public officers in the performance of a public duty unless it clearly appears that it is in violation of the constitution or without legal warrant. The business affairs of a municipality are committed to the corporate authorities and the courts will not interfere at the suit of taxpayers, except in a clear case of mismanagement or fraud, by restraining such public officers by injunction from making contracts. *McMaster v. Mayor, etc., of Waynesboro,* 122 Ga., 231.

Unless it is clearly shown that a state board of education has transcended its powers in providing for a central depository for text books, it will not be restrained at the suit of an injured individual taxpayer, where his interest is small and the plans of the board have been carried almost to completion. *Duncan v. Hayward,* 74 So. Car., 560. Taxpayers of a municipal corporation are proper parties to invoke the preventive aid of equity in restraint of illegal action on the part of the municipality or its officers and it is held that a citizen and taxpayer has such an interest in the subject matter as to entitle him to an injunction to prevent the authorities of a municipal corporation from incurring indebtedness in excess of the maximum fixed by the constitution of the State as the limit beyond which municipal corporations' indebtedness shall not be incurred. *City of Springfield v. Edwards,* 84 Ill., 626.

An individual taxpayer cannot enjoin a state prison superintendent from supplying his family out of state funds for prison purposes, where the secretary of state receives the accounts of all prison expenditures and audits them, and no money is expended except on warrants issued by him. And even if a superintendent of the penitentiary may be receiving the labor of prisoners for his own profit and is liable for malfeasance in office, yet this is no ground for equitable interference at the suit of a taxpayer. *Sears v. James,* 47 Oreg., 50. But where the fund has already been wasted or paid out, the action to recover it back must be brought by the state or municipality to which it belonged. *Brownfield v. Hauser,* 30 Oregon, 534.

Actual and material injury, not fanciful or theoretical or merely possible, must be shown as the necessary or probable result of the action sought to be restrained. "The complainant who seeks an injunction must be able to specify some particular act, the performance of which will damnify him, and it is such an act alone that he can restrain. This court has no power to examine an act of the legislature generally and declare it unconstitutional. A suitor who calls upon a court of chancery to arrest the performance of a duty imposed by the legislature upon a public officer, must show conclusively not only that the act about to be performed is unconstitutional, but also that it will inflict a direct injury upon him." *Gibbs v. Green,* 54 Miss., 592.

Equity will not entertain a suit for injunction where there is a full and complete remedy at law. Where a remedy for any particular wrong or injury has been provided by statute, the general rule is that no relief in equity can be afforded in such a case by injunction. *Weber v. Timlin,* 37 Minn., 274. It seems that this general doctrine is applicable, although the provisions of the statute may conflict with the notions of natural justice entertained by a court of equity. *Glenn v. Fowler,* 8 Gill. & J., 340. The rule is subject to a few exceptions. It has been held that the fact that a statutory method of procedure exists does not take away the right of a court of equity to interfere by injunction for the prevention of a multiplicity of suits where the circumstances render such interposition proper. *Bishop v. Rosenbaum,* 58 Miss., 84. Under the *English Judicature Act* of 1873, Sec. 25, Subsection 8, which enables the court to grant an injunction in all cases in which it appears just and convenient to the court, it would seem that the existence of a statutory remedy would be no obstacle in the way of granting an injunction. *Cooper v. Whittingham,* 15 Chan. Div., 501.

The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a Federal Court, is not to be conclusively determined by the statutes of the particular state in which suit may be brought. One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court; and he cannot be deprived of that right by reason of his being allowed to sue at law in a state court on the same cause of action. *Smyth v. Ames,* 169 U. S., 466.

In the case at hand, since the taxpayer had no special grievance arising from the acts of the state commission, beyond what all other taxpayers had, and since he sustained no actual injury, he cannot proceed in equity to restrain the actions of the commission, and for a public wrong redress must be sought only through the state or its officcers and not by an individual.

THE RULE THAT CROSS BILLS AND ORIGINAL BILLS MUST BE GERMANE AS APPLIED TO INJUNCTIONS.

Equity is never content to do justice in halves, but rather seeks to right the wrongs of all parties whenever those wrongs relate to

the subject matter of a bill filed in its courts. It is as solicitous for a defendant as for a complainant. It is but natural that a complainant urge the redress of his own wrongs and be unmindful of the sufferings of the defendant. Circumstances are often such that he may consistently do this even with due regard for the maxim: He who seeks equity must do equity. A practical method by which one who has been made a defendant in a suit in equity, may obtain affirmative relief is that of filing a cross bill. A cross bill must seek discovery or relief, and is not to be used as a means of producing defensive matter which would be equally available by way of answer to the original bill. Its subject matter must be germane to the original bill, that is, it must confine itself to the same matter as the original bill, and it cannot introduce a new controversy not embraced in the original bill. Such bills are introduced in injunction proceedings as well as in other suits in equity, as is evident from an examination of the recent case of *Root v. Root,* 130 N. W., 194 (Mich.).

The parties to this cause were husband and wife. They were engaged in the business of selling musical instruments. A dispute as to the management of the business caused the wife to leave her husband, and start a business similar in character in the same city. Thereupon the husband filed a bill in which he averred his ability and willingness to support his wife, and prayed that she be enjoined from continuing against his will to prosecute the competitive business established by her. Along with her answer the defendant filed a cross bill in which she charged the complainant with extreme cruelty and prayed for a divorce. The question then arose, was such a cross bill germane to the original bill? In what manner did the prayer for divorce relate to a bill seeking to enjoin a wife from engaging in a business similar to that conducted by her husband? The trial court regarded the cross bill as proper, dismissed the original bill, and granted the divorce. On appeal the Supreme Court sustained the lower court as far as the propriety of the cross bill was concerned. To reach the conclusion that the cross bill was proper it was necessary to show that the subject matter of the cross bill was germane to that of the original bill. The court reasoned that the relation of husband and wife was the real basis of the husband's right to enjoin the wife from engaging in the same business. Therefore a divorce was the means of destroying that relation, and once that relation

was severed the husband's right to an injunction was lost. However, the purpose of the cross bill failed, inasmuch as the higher court set aside the decree granting the divorce, on the ground that the cruelty averred was not sufficiently proved. The injunction sought by the husband was granted. One dissenting member of the court declared that the cross bill should never have been considered in such a proceeding, but he, of course, concurred in the result.

In *Mathiason v. St. Louis,* 156 Mo., 196, the complainant sought by injunction to restrain the defendant from interfering with a drain pipe which the complainant had constructed, and which led from his fertilizer factory under a public highway to a private sewer. The defendant filed a cross bill in which it sought to have the factory declared a public nuisance. The court held that such a bill was not germane to the original bill, the subject matter of which was the drain pipe leading from the factory. Another case concerning a drain was that of *Wetmore v. Fiske,* 15 R. I., 354, where the court held that, in an action brought to restrain the defendant from stopping the flow of water in a drain, the defendant might properly set up by way of cross bill, that the complainant was wrongfully disposing of the sewage through the drain and pray that he might be restrained from so doing, as the cross bill pertained only to the subject matter of the original bill, namely, the use of the drain.

Where there are two mills situated on the banks of the same stream, one below the odther, and the owner of the upper mill brought suit to restrain the owner of the lower mill from so increasing the height of his dam that the water would flow back in the mill race of the upper mill and injure the machinery there, it was held that the defendant might file a cross bill in which he alleged that he had been injured because the complainant had diverted waters of the stream, to the use of which the defendant was entitled, because such a bill related to the rights of the respective parties in the use of the stream which furnished the power for each privilege, which was the subject matter of the original bill. This ruling is to be found in the case of *Atlanta Mills v. Mason,* 120 Mass., 244. But a somewhat similar situation existed in *Brownlee v. Warmack,* 90 Ga., 775. The complainant had secured by deed the right to obtain water to operate his

mill from a spring which was situated on the land of the defendant. The latter threatened to dig ditches about the spring and thus cut off the water supply to the defendant. The mill owner filed a bill asking that the defendant be restrained from the performance of his threat. With the answer came a cross bill asking for a decree awarding the defendant damages for an injury suffered by him because of the tortious act of the complainant in failing to repair his mill race, and allowing breaches in the banks thereof, whereby water escaped unto the defendant's land. The matter complained of in the cross bill was a tort, and the court held that it was not germane to any mater in the original petition.

One Doremus, in *Doremus v. Patterson*, 70 N. J. Eq., 296, instituted proceedings to restrain the city of Patterson from polluting a certain river which flowed past his property. The city introduced a cross bill, admitting the nuisance complained of, but averred that a certain water company had diverted, unlawfully, for the use of another city, certain water which would have flowed past the defendant city and helped to dilute the water. This cross bill was held to be improper, since it was not germane, for, said the court, it tended to involve the complainant in a new controversy, that is, whether the water company had the right to divert the water.

According to *Stansel v. Hahn*, 50 South., 696, where a trustee of an estate sued to enjoin the sale of a beneficiary's interest in a trust, the sale being under execution, a cross bill which alleged that the income due the beneficiary from the estate was sufficient to support him and pay all his bills was not germane to the original petition. In *Peters v. Case*, 57 S. E., 733, state Peters owned a tract of land, between which and the public highway was another tract owned by Case, who also owned land on the other side of Peters' property. A private road ran through Case's land on the farther side of Peters' tract, through that belonging to Peters, then through Case's second portion of land, and thus unto the main highway. Peters had some time before erected a building on that part of the private road which ran through his property. Case retaliated by erecting a structure on the section of road running through his land to the public highway. It was this act of Case's which Peters sought to enjoin by an injunction. Case

then filed a cross bill complaining of Peters' action in erecting a building on the roadway also. To support his cross bill Case relied on the maxims: He who comes into equity must do so with clean hands, and, He who seeks equity must do equity. However, the court refused to regard the cross bill as germane to the original bill, nor would it apply the maxims because the defendant sought the application for an alleged wrong, which was wholly foreign to the particular wrong complained of in the petition.

From these analogous cases it would appear that the judgment rendered in the principal case was really an extension of the rule. The reasoning is nice, in the true sense of that word, but it bears the scars of a struggle on the part of the court to make the two bills germane. As the rule is generally understood, it is the subject matter of the two bills that must be germane. The cross bill concerned itself with the cruelty of the husband. The original bill with the competitive business of the wife. It is difficult to conceive how the one is akin to the other. The affirmative relief asked for by the wife was freedom from the husband's cruelty, and a divorce was the means of accomplishing this. True, the court has argued that if the divorce were granted, then the husband's right to the injunction would fail, and it is this connection that satifies the demand for the relevancy of the two bills. Is this not an extension of the rule? The connection as viewed by the court operates to deny the relief sought by the complainant, and by this indirection to relieve the defendant. In *Mathiason v. St. Louis,* cited above, the court, reasoning in the same manner, might have declared the factory a nuisance and the use of the drain would have necessarily been discontinued. Therefore, by the extension of the rule as laid down by the Michigan court, an original bill and a cross bill will be considered germane whenever the means of relief asked for in the cross bill is destructive of the right to seek the relief asked for in the original petition.

COMMERCE—INTERSTATE COMMERCE—REGULATION—CONSTITUTIONALITY OF "WHITE SLAVE TRAFFIC ACT."

The act of June 25, 1910, c. 395, 36 Stat., 825, known as the "White Slave Traffic Act," making it a criminal offence to knowingly transport or to procure the transportation of women from

one state into another for immoral purposes, is not unconstitutional as an attempted infringement of the police powers belonging to the states, and is within the powers conferred on Congress by the commerce clause of the Constitution. The case of *United States v. Westman,* 182 Fed., 1017, so held.

The constitutionality of this act is sought to be challenged on the ground that it is an unwarrantable attempt on the part of Congress to exercise police powers, which powers, generally speaking, belong to the states. The keeping, harboring and maintenance of a woman wholly within the confines of a single state for purposes of prostitution was held to be a matter for the police regulations of the state and not of the United States. *Keller v. U. S.,* 213 U. S., 138. But in the case under discussion the basis of the suit is the act of transportation, or causing to be transported, or aiding or assisting in the transportation by the purchase or supplying with tickets therefor, from one state into another; the said transportation being for some unlawful purpose denounced by the law.

The meaning of the word "commerce" has from time to time been interpreted to include sales of goods and commodities and intercourse necessary to accomplish the first. *Swift v. United States,* 196 U. S., 375, says, "Commerce is the sale or exchange of commodities, but that which the law looks upon as the body of commerce is not restricted to specific acts of sale or exchange. It includes the intercourse, all the initiatory and intervening acts, instrumentalities and dealings that directly bring about the sale or exchange."

It was said in the *Passenger Cases,* 7 How., 283, "Commerce is defined to be an 'exchange of commodities.' But this definition does not convey the full meaning of the term. It includes navigation and intercourse. That the transportation of passengers is part of commerce is not now an open question." And to the same effect is *Butler Bros. Shoe Co. v. U. S. Rubber Co.,* 156 Fed., 1, saying, "Importation from one state into another is the indispensable element of interstate commerce and every negotiation, contract, trade and dealing which contemplates and causes such importation, whether it be of goods, persons or information, is a transaction of interstate commerce."

Accordingly, acts requiring carriers to provide separate coaches for the transportation of white and colored passengers, and making it an offense for a passenger to refuse to occupy the car to which he is assigned by the conductor, are held valid in so far as they affect commerce wholly within the state, but invalid as to interstate passengers under the commerce clause of the federal constitution. *Hart v. State,* 100 Md., 595. And so the court said, "The thousands of people who daily pass and repass over the bridge from the Kentucky to the Ohio shore may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool." *Covington Bridge Co. v. Kentucky,* 154 U. S., 204.

The view taken of the meaning of commerce by the United States courts clearly allows the United States to legislate against the white slave traffic in the manner in which the "White Slave Traffic Act" provides.