

## RECENT CASE NOTES

**AGENCY—MASTER AND SERVANT—LIABILITY OF MASTER FOR INJURY TO INFANT VOLUNTEER.**—The driver of the defendant's three-horse van, without authority to hire servants for the master, requested the plaintiff, a fourteen-year old boy, to assist him. The plaintiff was injured by one of the horses and brought an action for personal injuries. *Held*, that the plaintiff could not recover, although the driver was negligent in intrusting the handling of the horses to him, since the latter was in no better position than a hired servant. *Heasmer v. Pickfords, Ltd.* (1920, K. B.) 36 T. L. R. 818.

The view is well settled in England, that a volunteer, as regards the master's liability towards him, is in the same position as if he were a servant, and assumes all the ordinary risks of service, including that of negligence of a fellow servant. *Degg v. Midland Ry.* (1857, Exch.) 1 H. & N. 773; Pollock, *Torts* (9th ed. 1912) 106-7. But a master will be liable to a volunteer who assists in the use of an instrumentality not fit and proper for its purpose. See *Bass v. Hendon Urban District Council* (1912, C. A.) 28 T. L. R. 317. Some duty of the master to instruct an infant servant in the use of dangerous instrumentalities, is recognized though it is capable of being delegated. *Cribb v. Kynock* [1907] 2 K. B. 548; *Young v. Hoffman Mfg. Co.* [1907] 2 K. B. 646. Minor servants assume only those risks pointed out to them or discernible by a person of their age, capacity, and experience, in the exercise of ordinary care. 4 Thompson, *Negligence* (2d ed. 1904) sec. 4685; 1 Bailey, *Personal Injuries* (2d ed. 1912) 681. If the boy is in the position of a servant so as to bar recovery for the driver's negligence, he should be in the position of a servant as regards the master's duty to see that a minor servant is properly instructed. But no point was made in the instant case of the failure to warn and instruct. The majority of the workmen's compensation acts cannot help a volunteer, for besides depending, usually, on contract, express or implied, they exclude casual employees from their operation. 20 Halsbury, *Laws of England* (1911) secs. 326-330; 3 Bailey, *Personal Injuries* (2d ed. 1912) sec. 871 ff. (text of American acts); see *State v. District Court* (1917) 138 Minn. 416, 165 N. W. 268 (emergency); also (1917) 27 YALE LAW JOURNAL, 571. In the United States, at common law, a volunteer is not at all on the footing of a servant, for the relation lacks the consent of the master, and such a person assumes all the risks of the situation, save that of wanton or wilful injury, not merely all the ordinary risks. *Hot Springs Ry. v. Dial* (1893) 58 Ark. 318, 24 S. W. 500; *Hunter v. Corrigan* (1909) 139 Ky. 315, 122 S. W. 131; 43 L. R. A. (N. S.) 187, note. See also (1917) 27 YALE LAW JOURNAL, 1086. Age and mental capacity are then irrelevant inquiries. *Atlanta & W. P. Ry. v. West* (1905) 121 Ga. 641, 49 S. E. 711; cf. *Wells v. Kentucky Distilleries Co.* (1911) 144 Ky. 438, 138 S. W. 278 (*ratio* analogous to attractive nuisance cases). However, the tendency in the United States is to permit recovery by a volunteer who acts to prevent possible injury to property or persons as a result of a defendant's negligence. See (1917) 27 YALE LAW JOURNAL, 960. The plaintiff's act in the instant case was a little less commendable. The decision in the instant case is in accord with the great majority of the English and American cases, though it seems highly artificial to base it on the doctrine of common employment. Both the English and American views are, it would seem, unsatisfactory in their result to society.

**CONTRACTS—ILLEGALITY—TRANSFER OF TITLE WITHOUT DELIVERY OF POSSESSION.**—The plaintiff built a house and sold it to the defendant for immoral purposes, taking notes and a deed of trust in payment. After payment of

some of the notes, default was made and the property sold under the deed of trust to the plaintiff, who, upon the defendant's refusal to surrender possession, brought trespass to try title. *Held*, that the sale by the trustee executed the contract so that the plaintiff was entitled to his remedy. *Hall v. Edwards* (1920, Tex. Com. App.) 222 S. W. 167.

Before the sale by the trustee the plaintiff was without remedy. In cases of illegal leases or conditional sales some courts have allowed the lessor or the vendor to recover his goods upon non-payment. *Case v. Monk* (1913) 7 Ala. App. 419, 62 So. 268. Other courts have not allowed recovery. *Phillip Levy & Co. v. Davis* (1914) 115 Va. 814, 80 S. E. 791. But where the complete title has passed the cases are nearly uniform in not allowing the vendor to recover his property. *St. Louis, V. & T. H. Ry. v. Terre Haute & I. Ry.* (1892) 145 U. S. 393, 12 Sup. Ct. 953; *Roy v. Harvey Peak Tin Mine, Milling & Mfg. Co.* (1906) 21 S. D. 140, 110 N. W. 106. And this rule applies although the transferee has but partly performed. *Perkins v. Savage* (1836, N. Y. Sup. Ct.) 15 Wend. 412. In the instant case the conveyance to the vendee has been executed; and a second sale has taken place by the trustee to the plaintiff, after which the court will enforce the plaintiff's rights if such sale executes the contract. *St. Louis, V. & T. H. R. Co. v. Terre Haute & I. R. Co.*, *supra*. The question, therefore, in the instant case is whether the contract has been executed by this second sale by the trustee before the plaintiff has regained possession from the vendee. Where a deed has been made to defraud creditors, the grantor remaining in possession, a majority of courts will not sustain the grantee's action of ejectment. *Harrison v. Hatcher* (1872) 44 Ga. 638; *Kirkpatrick v. Clark* (1890) 132 Ill. 342, 24 N. E. 71; *contra, Mosely v. Mosely* (1857) 15 N. Y. 334; *Raguet v. Roll* (1836) 7 Ohio, Part 2, 70. In the instant case the parties are reversed, and the original grantor is seeking relief; considerations of sentiment would aid the plaintiff, but decisions as to illegal contracts should be divorced of sentiment. *Cf. Deans v. McLendon* (1855) 30 Miss. 343. Courts differ as to when an illegal contract is executed, and therefore it seems likely that no uniformity of decision will result in cases raising this question.

CONTRACTS—UNCERTAINTY OF TERMS—PROMISE OF A "LIBERAL AND VERY SUBSTANTIAL BONUS."—The plaintiff brought an action on a contract by the terms of which the defendant promised to pay him \$250.00 a month with "a liberal and very substantial bonus" in addition. The plaintiff was paid only the monthly salary, and he sought to recover 5 per cent. of the receipts as a bonus. *Held*, that the contract as to the bonus was so indefinite and uncertain as not to be enforceable. *McDonald v. Acker, Merrall & Condit Co.* (1920, App. Div.) 182 N. Y. Supp. 607.

Where no statement is made as to compensation for services, the law invokes the standard of reasonableness, and the fair value of the services is recoverable in an action on the contract. *Rowell v. Ross* (1913) 87 Conn. 157, 87 Atl. 355. If, however, the terms of the promise mention some remuneration, but do not indicate the specific compensation the promisee is to receive, and the words used exclude the supposition that reasonable remuneration is intended, no contract can arise. *Butler v. Kemmerer* (1907) 218 Pa. 242, 67 Atl. 332 (promise to divide profits on a liberal basis). But if a benefit is conferred in the honest, though mistaken, belief that such a promise is binding, a recovery will be allowed on a *quantum meruit*. *Bluemner v. Garvin* (1907) 120 App. Div. 29, 104 N. Y. Supp. 1009 (promise of a fair share of the profits). However, if the terms of a promise indicate that the promisee did not rely on it as a contractual obligation, but trusted to the fairness and liberality of the defendant, there is not only no contract, but no reliance on a supposed contract, and consequently no legal duty

on the defendant whatever. Woodward, *The Law of Quasi Contracts* (1913) sec. 65; 1 Williston, *Contracts* (1920) 82, note 53. It seems that the principal case falls under the last proposition named. The provision for a specific monthly salary excludes the probability that the bonus was intended as compensation and indicates that the plaintiff was relying on the defendant's fairness and liberality. This gives rise to only a moral obligation, and the principal case seems correct in refusing a recovery. However, if the plaintiff can show a custom that a certain percentage was usually paid as a bonus in those trades, and that the parties had such a custom in mind when entering into the agreement, then it is probable that a recovery would be allowed on the contract. See *Varney v. Diimars* (1916) 217 N. Y. 223, 233, 111 N. E. 822, 826.

**EQUITY—INJUNCTION—ERROR TO ENJOIN CASE ON APPEAL.**—A lessor sued a tenant for rent due from a subtenant who remained in possession after the end of the term. Because of the small judgment, he appealed to the circuit court and simultaneously brought another action for later rent, but before either the appeal or the new case had been tried, the tenant perpetually enjoined him from bringing any more suits and also from further prosecuting the case pending an appeal. *Held*, that the chancellor erred in enjoining the lessor from proceeding with the appeal and should have only enjoined later actions until the termination of the first. *Kansas City Breweries Co. v. Markowitz* (1920, Mo. App.) 221 S. W. 398.

There is no authority for restraining an action at law in which all issues may be fully determined nor for enjoining a case on appeal. *Fraley & Carey v. Delmont* (1906) 110 App. Div. 468, 97 N. Y. Supp. 408; *Galey v. Montgomery Co.* (1910) 174 Ind. 181, 91 N. E. 593; Judicature Act (1873) 33 & 37 Vict. c. 66. But where a multiplicity of suits seems threatened, all may be enjoined but one. *Cuthbert v. Chauvet* (1891, Sup. Ct. Gen. T.) 14 N. Y. Supp. 385; 1 Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 254. And the discretion of the judge alone apparently decides which of the actions should proceed. See *Cuthbert v. Chauvet*, *supra*, at p. 386. By older and more prevalent practice an injunction would not be granted restraining successive legal actions unless the plaintiff in equity had previously successfully defended his case at law. *West v. Mayor of N. Y.* (1844, N. Y. Ch.) 10 Paige, 539; *Cleland v. Campbell* (1898) 78 Ill. App. 624. But by the more modern minority rule an injunction may issue before any suit at law has been brought. *Aimee Realty Co. v. Haller* (1907) 128 Mo. App. 66, 106 S. W. 588; see *Galveston etc. Ry. v. Douw* (1888) 70 Tex. 5, 10, 7 S. W. 368, 370. But no general rule can be found. Each case rests upon its own merits and the prevention of multiplicity should not be considered more important than the adequacy of the legal remedy, or suppose all successive actions to be vexatious. *Pioneer Truck Co. v. Clark* (1919, Calif.) 186 Pac. 839; 1 Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 254 ff.; see *Hale v. Allinson* (1902) 188 U. S. 56, 77, 23 Sup. Ct. 244, 252. In every case of such an injunction it must be possible to determine the different suits by the settlement of one or more issues of law or of fact common to all. *St. Louis etc. Ry. Co. v. Woldert* (1914, Tex. Civ. App.) 162 S. W. 1174. The decision in the one suit may be a decision of all, *i. e.*, if a point of law. *Third Ave. R. R. Co. v. Mayor etc. of N. Y.* (1873) 54 N. Y. 159. The injunction, therefore, at the most, merely postpones the time of enforcement of the demands in issue. *Norfolk etc. Hosiery Co. v. Arnold* (1894) 143 N. Y. 265, 38 N. E. 271. The principal case seems sound, although its exercise of equitable jurisdiction is necessarily somewhat unusual, because of circumstantial limitations.

**MUNICIPAL CORPORATIONS—LIABILITY FOR TORTS—DEFECT IN ORIGINAL PLAN OF HIGHWAY COMMISSIONER.**—The plaintiff sought damages from the State Highway

Commissioner for injuries caused when the wheels of his motor truck crushed through a drain built under the roadway. The highway had been improved pursuant to a plan adopted by the Commissioner and a drain placed under the road. At the place of the accident the drain was covered with gravel a foot in thickness, which was insufficient to support the weight of the plaintiff's truck. The lower court found that the Commissioner had knowledge of the manner of construction from plans and specifications in his possession, but that he had not been negligent in failing to keep the road in proper repair. *Held*, that the Commissioner was liable, not for any defect in the original plan, but for a continuance of that defect after notice. *Perrotti v. Bennett* (1920, Conn.) 109 Atl. 890.

The courts have generally accepted the rule that municipal corporations or their officers are not liable for injuries caused through a defect in the original plan of an improvement where the defect arises through an error in judgment. 4 Dillon, *Municipal Corporations*, (5th ed., 1911) sec. 1626. In making such an improvement the corporation is exercising a discretionary and legislative power. 6 McQuillin, *Municipal Corporations* (1913) sec. 2633. But where the defect has arisen through plans negligently adopted and is not the result of a mere error in judgment, there is liability. *North Vernon v. Voegler* (1885) 103 Ind. 314, 2 N. E. 821; *Kelsey v. New York* (1908) 123 App. Div. 381, 107 N. Y. Supp. 1089. In numerous cases regarding defects in sewers and drains which have caused a direct invasion of the plaintiff's real property or have constituted a nuisance, the courts have held that there was liability for a defective plan, placing emphasis upon the idea that there had been a direct trespass upon the plaintiff's land. *King v. Kansas City* (1897) 58 Kans. 334, 49 Pac. 88; *Ashley v. Port Huron* (1877) 35 Mich. 296; *contra*, *Buckley v. New Bedford* (1891) 155 Mass. 64, 29 N. E. 201. Notice of the defective plan is generally said to be a condition precedent to liability, for not until after notice does there arise a duty to remedy the defect. *Seifert v. Brooklyn* (1886) 101 N. Y. 136, 4 N. E. 321; *Stoddard v. Winchester* (1891) 154 Mass. 149, 27 N. E. 1014. But if the defect is inherent in the plan, this fact is sometimes held operative in place of actual notice. *Hart v. Neillsville* (1909) 141 Wis. 3, 123 N. W. 125. The Connecticut statute imposes liability only for a neglect to repair. Conn. Rev. St. 1918 sec. 1414. See *Hoyt v. Danbury* (1897) 69 Conn. 341, 351, 37 Atl. 1051, 1054. In the instant case the court held that the drain constituted a defect from the time it was laid, and that the continuance of the defect was such a failure to keep the road in proper repair, as placed liability upon the commissioner.

PERSONS—MARRIAGE—ANNULMENT FOR FRAUD BEFORE CONSUMMATION.—The petitioner, a young girl, sued to annul a marriage for misrepresentations by the defendant regarding his moral character and habits. The marriage was not consummated and was promptly disaffirmed by her on discovery of the fraud. *Held*, that the marriage might be annulled. *Ysern v. Horter* (1920, N. J. Eq.) 110 Atl. 31.

As a general rule, habits and character are not held such an essential of the marital relation that a misrepresentation regarding them is ground for annulment. 18 R. C. L. 414. It is against public policy to declare children illegitimate and destroy the home for such cause. See Fessenden, *Nullity of Marriage* (1899) 13 HARV. L. REV. 110, 112. But, in the instant case, the court makes a distinction, not generally recognized, between consummated and unconsummated marriages. 1 Bishop, *Marriage and Divorce* (6th ed. 1881) secs. 166, 172; *Wier v. Still* (1870) 31 Iowa, 107. In this case there is no possibility of children, and the parties have not actively entered into the marriage relation. Their status is similar to that of parties to an executory contract. 19 Am. & Eng. Encyc. 1184. Fraud is not a cause of divorce. See *Henneger v. Lomas* (1896)

145 Ind. 287, 297, 44 N. E. 462, 465. And annulment is therefore a necessary remedy, as it would seem contrary to public policy to condemn the defrauded party to a perpetual and unhappy association with the wrongdoer. See *Robertson v. Cole* (1854) 12 Tex. 356, 364. It appears impossible to form a definite rule for a question so complicated by particular circumstances. See 1 Blackstone, *Commentaries* (Cooley's 2d ed. 1872) 438, note. But the differences between marriage and other contracts are due to the great importance of the marriage relation itself. Cf. 18 R. C. L. 385; *Randall v. Kreiger* (1874) 90 U. S. 137, 147; *Maynard v. Hill* (1888) 125 U. S. 190, 205, 8 Sup. Ct. 723, 726. And, under the circumstances of the instant case it seems sound to hold the marriage voidable for such fraud as would render a contract voidable. The decision appears to tend to improve the marriage status more than to endanger its permanence, but the rule should be carefully limited.

PERSONS—HUSBAND AND WIFE—ALIENATION OF AFFECTIONS—SEPARATION NO DEFENSE.—The plaintiff, a married woman, sued another woman for the alienation of her husband's affections. The declaration set forth an interference by the defendant with the marital relation while husband and wife were living together, and a wilful continuance of that influence after they had separated. The plaintiff's request to instruct the jury that separation or unhappiness between husband and wife was no defense to the action was refused. *Held*, that such instruction should have been given. *Dey v. Dey* (1920, N. J. Sup. Ct.) 110 Atl. 703.

At common law it was well settled that a wife could not maintain an action for the alienation of her husband's affections, because the husband by virtue of his position would be joined as party plaintiff, and recover damages for his own wrong. See *Haynes v. Nowlin* (1891) 129 Ind. 581, 584, 29 N. E. 389, 390; (1918) 32 HARV. L. REV. 576. In most jurisdictions, however, the enactment of Married Women's Property Acts has been held to create in the wife a right to sue for alienation of affections. *Haynes v. Nowlin, supra*. The mere alienation of affections, unaccompanied by adultery, enticing, or procuring, has been held to be insufficient to maintain the action. *Houghton v. Rice* (1899) 174 Mass. 366, 54 N. E. 843. The weight of authority, however, permits the plaintiff to recover for the mere alienation of the spouse's affections. *Adams v. Main* (1892) 3 Ind. App. 232, 29 N. E. 792; *Rinehart v. Bills* (1884) 82 Mo. 534, 52 Am. Rep. 385. The decisions are not agreed as to whether evidence of a lack of conjugal affection at the time of the defendant's interference is a bar to the action. A few jurisdictions refuse to recognize the defendant's duty not to hinder, under the circumstances, the possibility of reconciliation between husband and wife. *Servis v. Servis* (1902) 172 N. Y. 438, 65 N. E. 270; *Hall v. Smith* (1913) 80 Misc. Rep. 85, 140 N. Y. Supp. 796. The principal case is in line with the majority rule in holding that a blameless spouse, after separation, has a right against interference with the marital relationship by the defendant, and that a lack of affections, or a separation, affects only the question of damages. *Moelleur v. Moelleur* (1918) 55 Mont. 30, 173 Pac. 419. Where, however, the plaintiff's own infidelity or cruelty is the moving cause of the separation, the other spouse is privileged to live apart. *Rodgers v. Rodgers* (1920, N. Y.) 128 N. E. 117. And it follows that under those circumstances the defendant's acts would also be privileged. *Smith v. Rice* (1916) 178 Ia. 673, 160 N. W. 6. See (1918) 28 YALE LAW JOURNAL, 88.

PRIVATE CORPORATIONS—IMPLIED POWERS—GUARANTY OF CUSTOMER'S INDEBTEDNESS.—The defendant corporation was chartered to "deal in lumber and other building materials both at wholesale and retail, and generally to do and perform

all matters and things incident or necessary in such business." "The defendant corporation became surety on a building contractor's bond, and he promised to buy the materials for the building from it. This was an action on the bond. *Held*, that the plaintiff should not recover, because this was an indirect method of fostering the defendant's business, and hence *ultra vires*. *Bowman Lumber Co. v. Pierson* (1920, Tex.) 221 S. W. 930.

It is a well-settled general rule that in addition to its express powers a corporation has the implied powers to do whatever is reasonably adapted to further the enterprise for which it was chartered. There are various tests for determining whether a certain act by a business corporation, calculated to foster its business, is *ultra vires*. In the instant case the court requires such act to be a *direct* attempt to secure business. In a case involving identical facts the Supreme Court of Washington held the question to be one of business custom and found that the custom on Puget Sound at that time made it necessary for a lumber corporation to guarantee the bonds of contractors in order to secure their business, because non-corporate lumber companies customarily did so. *Wheeler, Osgood & Co. v. Everett Land Co.* (1896) 14 Wash. 630, 45 Pac. 316. The power of business corporations to enter into contracts of suretyship for the benefit of customers or prospective customers has frequently been upheld. 27 L. R. A. (N. S.) 186, note. The question has been most frequently adjudicated where a brewery corporation has signed the lease or bond of a saloon keeper in exchange for his promise to sell only the products sold by the corporation. Such contracts of guaranty are generally held valid. *Timm v. Grand Rapids Brewing Co.* (1910) 160 Mich. 371, 125 N. W. 357; *Miller v. Northern Brewing Co.* (1917, D. Ore.) 242 Fed. 164; *Holm v. Claus Lipsius Brewing Co.* (1897) 21 App. Div. 204, 47 N. Y. Supp. 518. It is sometimes said that where the special circumstances make it reasonably necessary for the corporation to guarantee its customers' indebtedness it has power to do so. So a corporation authorized to own patents and license their use can become surety for a licensee of its patents in order to tide the licensee over a period of depression. *Edwards v. International Pavement Co.* (1917) 227 Mass. 206, 116 N. E. 266. But it is submitted that this calls for no more than an investigation as to the business custom. "The objection to the guaranty is that it risks the funds of the company in a different enterprise and business under the control of another and different person or corporation, contrary to what its stockholders, its creditors, and the state have the right from its charter to expect." See *Humboldt Min. Co. v. American Manufacturing, Mining & Milling Co.* (1894, C. C. A. 6th) 62 Fed. 356, 362. But it is also to the interest of each of these parties that the corporation be financially successful, and it should therefore be allowed to meet competition of non-corporate companies by doing those things which business custom dictates.

SALES—"C. I. F." CONTRACTS—RISK OF SHIPMENT ON THE BUYER.—The plaintiff shipped to the defendant 325 drums of fish under a contract calling for 1025 drums "c. i. f." ("cost, insurance, and freight") Philadelphia. Immediately after shipment the plaintiff forwarded to a bank in Philadelphia the insurance policy, the invoice and a through bill of lading, all indorsed in blank and attached to a sight draft on the defendant. The ship was sunk two days after shipment and the goods were totally destroyed. The bill of lading and the sight draft were duly tendered to the defendant after the destruction of the cargo, but he refused to accept the draft or pay any part thereof, whereupon this suit was instituted for the value of the shipment. *Held*, that the plaintiff should recover. *Smith & Co. v. Marano* (1920, Pa.) 110 Atl. 94.

Under the Sales Act, sec. 19, rule 5, when the seller is to pay the freight to the buyer or to a particular place, title does not pass until the goods reach their destination, unless a different intention appears. See Woodward, *Cases on Sales* (1913) 758. In the instant case, the court held that procurement by the seller of insurance for the benefit of the buyer, as is the case in a normal "c. i. f." contract, was enough to show a different intention. There are almost no American cases on the point, because "c. i. f." clauses have not until recently been used in our sales contracts. The English authorities are overwhelmingly in favor of the proposition that under a "c. i. f." shipment, title passes to the buyer immediately on delivery to the carrier. *Karberg v. Blythe* [1916, C. A.] 1 K. B. 495; *Biddell v. E. Clemens Horst Co.* [1911] 1 K. B. 214. The few American courts that have decided this point also hold that title and risk pass to the buyer immediately on the delivery to the carrier. *Mee v. McNider* (1888) 109 N. Y. 500, 17 N. E. 424; see *Thames & Mersey Insurance Co. v. U. S.* (1915) 237 U. S. 19, 26, 35 Sup. Ct. 496, 498. A recent English case held that under a "c. i. f." contract even after the safe arrival of the goods, the buyer was not bound to accept them because the seller had not insured them. *Orient Co. v. Brekke* [1913] 1 K. B. 531, Ann. Cas. 1914 C, 214, note. The policy of insurance is considered an essential item in these cases. *Yuill & Co. v. Robson* [1907, Com. Ct.] 1 K. B. 685; *Landauer v. Craven* [1912] 2 K. B. 94. The reasoning of the court in the instant case, that if the buyer had no property in the goods during shipment, he surely would not have been concerned with any stipulations regarding insurance, is very forceful; and it will be of interest to note its effect on the future American cases involving such contracts.

SALES—CONDITIONAL VENDOR—RIGHTS IN AUTOMOBILE FORFEITED BECAUSE OF TRANSPORTATION OF INTOXICATING LIQUOR.—The plaintiff had put an automobile into the possession of one Haygood under a conditional sales contract. The automobile was seized by the state under a statute similar to the Volstead Act, while in the possession of Haygood, because it was used in the illegal transportation of prohibited liquors. The plaintiff showed that the purchase money had not been paid and demanded the return of the car. Held, that the plaintiff should recover. *Flint Motor Car Co. v. State* (1920, Ala.) 85 So. 741.

In order to recover in the jurisdictions which are in accord with the instant case, it is agreed that the conditional vendor must be innocent of knowledge of the use to which the vehicle has been put. He has the burden of proving such innocence, but he is not an insurer against the illegal use. *State v. Davis* (1919, Utah) 184 Pac. 161; *Mays v. Curry* (1920, Ga.) 103 S. E. 458. There is serious conflict with the instant case in other jurisdictions which have similar statutes. It is there maintained that the innocence of the conditional vendor is immaterial. His rights are subordinate to the right of the state to seize the machine. *Pennington v. Commonwealth* (1920, Va.) 102 S. E. 758. If the person found with the car obtained possession of it lawfully, it is subject to forfeiture, even though his continued possession is wrongful and he has thereby become a thief. *Bucholz v. Commonwealth* (1920, Va.) 102 S. E. 760. It is generally conceded that if the car has been taken from the owner's possession, without his knowledge or consent, he may recover it. *Smith v. Spencer-Dowler Co.* (1919, Ga.) 100 S. E. 651; see *Bucholz v. Commonwealth, supra*, at p. 761. The question has not yet been decided by the Supreme Court of the United States, but by the analogy to the smuggling cases, authority can be found which would justify the holding that the "due process" clause is not being violated by such seizures. *United States v. One Saxon Automobile* (1919, C. C. A. 4th) 257 Fed. 251. It is submitted that the instant case followed the more expedient rule. It is impossible for a conditional vendor to determine the use to which

an automobile is to be put, once it has left his hands. Consequently, the other rule would seriously interfere with the conditional sale of automobiles. Sales of this kind have become so widespread that such interference would work undue hardship upon the public in general, and particularly upon automobile dealers and banks who make loans upon such security. Furthermore, by placing the burden of proving innocence upon the plaintiff, any advantage which might be given to illicit dealers is offset and there is no serious hindrance to the enforcement of the prohibition statutes.

**TORTS—ASSAULT—SURGICAL OPERATION ON MINOR WITHOUT CONSENT OF PARENT.**—The plaintiff sued the defendant under a "Wrongful Death Act" for the death of his eleven-year-old daughter caused by an operation performed without his consent. The daughter, in the temporary custody of her adult sister, was brought to the defendant, who performed an operation, for the removal of diseased tonsils and adenoids, which resulted in her death while under the influence of the anaesthetic. *Held*, that the plaintiff should recover, because there was no evidence showing the immediate need of the operation, and because the operation amounted to an assault for which the child could have recovered had she survived. *Moss et al. v. Rishworth* (1920, Tex. Cdm. App.) 222 S. W. 225.

There is a scarcity of authority on the particular point in question, but the general proposition is that a surgeon is under a duty not to operate on a patient without his consent, express or implied. *Mohr v. Williams* (1905) 95 Minn. 261, 104 N. W. 12, 1 L. R. A. (N. S.) 439, note; *Pratt v. Davis* (1906) 224 Ill. 300, 79 N. E. 562, 8 Ann. Cas. 197, note. Generally an operation on an infant requires the consent of the parent as well as that of the infant. 21 R. C. L. 393. There is a case, however, where the court held that consent of the parent was not necessary, but that the infant's consent alone was sufficient. *Bakker v. Welsh* (1906) 144 Mich. 632, 108 N. W. 94, 8 Ann. Cas. 195, note. The court, in this case, based its decision chiefly on the fact that the parent could easily have been presumed to have knowledge of the operation, as the child went home for a few days between the consultation with the surgeon and the day of the operation. The fact that the infant was seventeen years of age and therefore mentally competent to decide, was also mentioned as a ground for its decision. There is an analogous case where it was held that a husband's consent was not necessary in a suit under a "Wrongful Death Act" for performing an operation on his wife, who was mentally competent to decide, without his consent. *State v. Housekeeper* (1889) 70 Md. 162, 16 Atl. 382. But see also *Pratt v. Davis, supra*. It does not follow that an infant's consent is sufficient even where such infant is mentally competent to decide, as the distinction between the relationships is obvious. There is, however, one class of cases where it has been held that a surgeon may perform an operation on an infant without the parent's consent, namely where an immediate operation is necessary to save the infant's life. *Luka v. Lowrie* (1912) 171 Mich. 122, 136 N. W. 1106. In cases of this kind the courts, chiefly on the grounds of public policy, "imply" the parent's consent. The fact that the operation was a minor one and that the father was easily accessible, confirms the correctness of the instant case. The surgeon could easily have waited till the parent's consent was obtained without endangering the infant's life in the least.

**TORTS—CONTRIBUTORY NEGLIGENCE—ANIMALS ON RAILROADS AND HIGHWAYS.**—The plaintiff's mule was struck by one of the defendant's engines in a jurisdiction where neither railroads nor cattle owners are under a duty to fence their lands. The engine, equipped with an electric headlight, was on a straight track, and the mules could have been seen by the engine crew if they had kept a

lookout. It appeared that the fireman called to the engineer that they were about to run into some stock, and the latter slackened his speed until a mule was seen to leave the track, when steam was again turned to the engine. An action was brought to recover for the death of a mule which was struck. *Held*, that the plaintiff should recover, and that the amount of damages should not be reduced in the proportion in which the act of the animal contributed to the injury, because the comparative negligence statute had no application to injury to personal property. *Henderson & Mathis v. Hine* (1920, Miss.) 83 So. 589.

By what seems the weight of authority, it is the duty of those in charge of locomotives to keep a reasonable lookout for live stock on or near the tracks, not merely to exercise care after discovery to prevent injury thereto. *Mobile and G. R. R. v. Caldwell* (1888) 83 Ala. 196, 3 So. 445; *Gulf, etc., R. R. v. Washington* (1892, C. C. A. 8th) 49 Fed. 347; see 24 L. R. A. (N. S.) 858, note. This seems to be the better rule, certainly where the presence of animals is to be anticipated, as where fields are unfenced. Greater liability is imposed if the animal is led to the track by attractive substances negligently exposed. *Crafton v. Hannibal & St. Joseph R. R.* (1874) 55 Mo. 580; *Page v. North Carolina R. R.* (1874) 71 N. C. 222. But the railroad's first duty is to passengers and that is paramount to their duty to avoid injury to animals on or near the track. *Kirk v. Norfolk & W. R. R.* (1896) 41 W. Va. 722, 24 S. E. 639; *Bemis v. Conn. & P. R. R.* (1869) 42 Vt. 375. When animals have been discovered in time to avoid collision, blowing the whistle is not ordinarily enough; the train should be brought to a stop if there is a reasonable apprehension that the animal will stay on, or go upon the track. *Grimmell v. Chicago etc. R. R.* (1887) 73 Iowa 93, 34 N. W. 758; *Little Rock etc. R. R. v. Trotter* (1881) 37 Ark. 593. It is a matter of common experience that such classes of personal property as dogs and fowl will generally hurry to safety on the mere blowing of a whistle. So it is not necessary for the engine to come to a dead stop, where such an animal appears to be able to get off the track. *Moore v. Charlotte etc. R. R.* (1904) 136 N. C. 554, 48 S. E. 822; *Richardson v. Florida, etc. R. R.* (1899) 55 S. C. 334, 33 S. E. 466; *Lewis v. N. S. R. R.* (1913) 163 N. C. 33, 79 S. E. 283; *contra, James v. A. C. L. R. R.* (1914) 166 N. C. 572, 82 S. E. 1026. The duty of an automobilist in regard to animals in the highway presents a somewhat different question, for he can stop more quickly or swerve to one side of the road. *Cf. James v. Railroad, supra.* Some jurisdictions have by legislation made it a nuisance *per se* to allow certain animals at large in the highway, thus destroying this duty to stop. See (1916) 26 YALE LAW JOURNAL, 250; see (1920) 29 *ibid.*, 466. However, the courts uniformly avoid saying that there can be negligence by animals. They prefer to regard only the amount of fault in the defendant, measured by the intelligence and agility of which each class of animals is capable.

TORTS—NEGLIGENCE—BUSINESS VISITORS—RECOVERY BY FIREMAN FOR INJURY.—The defendant brewery had constructed across its property a paved driveway leading to a stable in the rear. This driveway was used by the defendant and by those who had business with it. Back one hundred and fifty feet from the street, across half of this pavement, ran an unguarded coal hole. The plaintiff was chief of the local fire department. A fire occurred on the premises at night and the plaintiff, while answering the alarm, fell into the coal hole and sustained the injuries for which this action was brought. *Held*, that the plaintiff should recover, because he had a privilege to be on the premises and the defendant owed him a duty to use reasonable care in keeping the premises safe. *Hiscock, C. J. Collins and Elkus, J. J. dissenting. Meiers v. Fred Koch Brewery* (1920, N. Y.) 127 N. E. 491.

Persons who enter land on ordinary business at the express or implied invitation of the owner have a right to be protected against unsafe conditions of the

premises. *Bennett v. Louisville & Nashville Ry.* (1880) 102 U. S. 577; see (1918) 27 YALE LAW JOURNAL, 1086. A more appropriate name for these persons is business visitors. No duty to keep the premises safe is owed to trespassers or licensees. *Cowen v. Kirby* (1902) 180 Mass. 504, 62 N. E. 968. It has been generally held that policemen and firemen are mere licensees. *Lunt v. Post Printing & Pub. Co.* (1910) 48 Colo. 316, 110 Pac. 203; see (1918) 27 YALE LAW JOURNAL, 415; see 3 Shearman and Redfield, *Negligence* (6th ed. 1913) 1850; see Cooley, *Torts* (3d ed. 1906) 648. A duty toward them, however, may be imposed on the owner by statute. *Parker v. Barnard* (1882) 135 Mass. 116; *Drake v. Fenton* (1912) 237 Pa. 8, 85 Atl. 14. But in the absence of statute the owner of the premises is under no duty to such persons except to avoid wilful harm. *New Omaha Electric Light Co. v. Anderson* (1905) 73 Neb. 84, 102 N. W. 89. Thus the owner is not liable if a fireman falls into an unguarded elevator well or uncovered air-shaft. *Beehler v. Daniels* (1894) 18 R. I. 563, 29 Atl. 6; *Woods v. Miller* (1898) 30 App. Div. 232, 52 N. Y. Supp. 217. There is no duty to pay damages for injuries received by a policeman in shutting a defective door which the owner has left open. *Burroughs Adding Machine Co. v. Fryar* (1915) 132 Tenn. 612, 179 S. W. 127. Nor for the death of a policeman who boarded a train for the purpose of "apprehending criminals." *Creeden v. Boston & Maine R. R.* (1906) 193 Mass. 280, 79 N. E. 344. But a policeman who is invited on the premises to make an arrest is a business visitor and may maintain an action if he falls into an unguarded well. *Learoyd v. Godfrey* (1885) 138 Mass. 315; cf. *Cameron v. Commercial Co.* (1899) 22 Mont. 312, 56 Pac. 358. However, a fireman who answers an alarm turned in by the owner is not an invitee of the owner, as he would have the same privilege to enter the premises had the alarm been turned in by a stranger. *Lunt v. Post Printing & Pub. Co.*, *supra*. The principal case regards it as immaterial whether the plaintiff had an invitation to come on the defendant's premises or not, holding he entered "as of right." It is submitted that the decision is clearly contrary to the weight of authority, and has the effect of imposing upon the owners of property an unreasonable duty in respect to coal holes, airshafts on the tops of buildings, etc., which they could not anticipate would ordinarily prove perilous to business visitors; and that the reasonable claim of the fireman for injury received in the exercise of duty should be met by governmental insurance of men employed in this perilous work.

TORTS—NEGLIGENCE—PROXIMATE CAUSE—INTERVENING RESPONSIBLE AGENT.—

The plaintiff employed the defendant as his confidential agent in financial matters, and in connection therewith sent him a letter which was libellous of third persons. Through the negligence of the defendant this letter came into the hands of a business associate of those who had been libelled, who (although he was told that it was personal and not to read it) read it and communicated its contents to them. The latter sued the plaintiff for the publication of the libel to the defendant and recovered. The plaintiff then sued the defendant for negligence in permitting the letter to be exposed. The plaintiff was given a judgment for nominal damages by the Court of Appeals. He then brought this appeal claiming that he was entitled to damages to the full amount recovered against him in the libel suit, as assessed by the jury in the court of first instance. *Held* (two judges *dissenting*), that the plaintiff could not recover, although the defendant was negligent, since the voluntary wrongful act of a third person intervened between the defendant's negligence and the plaintiff's damage. *Weld-Blundell v. Stevens*, (1920, H. L.) 36 T. L. R. 640.

The instant case reflects the confusion and narrow points of view which are found in a great many cases which have involved the question of causation. See *Vicars v. Wilcox* (1806, K. B.) 8 East, 1. Where the intervening act has been instinctive, the courts have followed the "squib" case. *Scott v. Shepherd* (1773,

K. B.) 2 W. Bl. 892; *Ricker v. Freeman* (1870) 50 N. H. 420. Where the intervening act was negligent, the defendant is not liable if the later act of negligence could not have been foreseen as a consequence of the defendant's negligence, it being said that the later act of negligence "insulates" that of the defendant. *Horton v. Forest City Telephone Co.* (1907) 146 N. C. 429, 59 S. E. 1022. See Henry T. Terry, *Proximate Consequences in the Law of Torts* (1914) 28 HARV. L. REV. 10. Where, however, the intervening act was a wilful wrong, practically all courts have exonerated the defendant. *Alexander v. Town of New Castle* (1888) 115 Ind. 51, 17 N. E. 200; *Andrews v. Kinsel* (1901) 114 Ga. 390, 40 S. E. 300. But a broader view has been taken that the intervening act of a third person, whether negligent or wilful, does not necessarily break the causal connection, if in fact the intervening act was foreseeable as a *not unlikely* consequence of the defendant's negligent conduct. *Lane v. Atlantic Works* (1872) 111 Mass. 136; *Brower v. N. Y. C. & H. Ry.* (1918) 91 N. J. Law 190, 103 Atl. 166. See Jeremiah Smith, *Legal Cause in Actions of Tort* (1911-12) 25 HARV. L. REV. 103, 223, 303. The instant case may be sound in denying the plaintiff the damages he asked, for the other reason given,—public policy,—but to say that the defendant's negligence was not the proximate cause merely because the voluntary act of a third person intervened, would in many cases be too lenient on a wrongdoer. The decision may, perhaps, be explained as a survival of the hidebound doctrine, to which the English courts have adhered rather closely, that the original publisher of defamation is not liable for the damage which results from an unauthorized re-publication by a third person. See *Ward v. Weeks* (1830, C. P.) 7 Bing. 211.

TORTS—UNIONS—APPLICATION OF STATUTE TO CLOSED SHOP STRIKE.—In a jurisdiction where there was a statute in force denying the right to enjoin strikers where the dispute was over "terms and conditions of employment," a strike for a closed shop was called by the defendants in several factories. On application for an injunction by the plaintiff the trial court held that the statute applied, and modified the preliminary order. Held (on other grounds), that the appeal should not be granted, with a *dictum* that a strike for a closed shop did not come within the statute. *A. J. Monday Co. v. Automobile, Aircraft, & Vehicle Workers of America, local no. 25 et al.* (1920, Wis.) 177 N. W. 867.

It is now well settled that a strike for an advance in wages, a reduction in the hours of labor, or any other legitimate advantage, conducted in a lawful manner and under such conditions as not to inflict injury wantonly or maliciously on persons or property, is lawful. *State v. Stockford* (1904) 77 Conn. 227, 58 Atl. 769; *Jersey City Printing Co. v. Cassidy* (1902) 63 N. J. Eq. 759, 53 Atl. 230. Recent decisions have generally held that a closed shop is a legitimate advantage, because it strengthens the union. *Cohn & Roth Electric Co. v. Brick Layers, Masons, & Plasterers local No. 1* (1917) 92 Conn. 161, 101 Atl. 659; *Bossert v. Dhuy* (1917) 221 N. Y. 342, 117 N. E. 582. But on the other hand a strike for this purpose was held illegal even before a statute in Massachusetts, for, it was said, the primary object is to injure the employer or non-union man and the purpose of strengthening the union is too remote. *Folsom v. Lewis* (1911) 208 Mass. 336, 94 N. E. 316. And it has been held that interference with an employer's right to employ whom he pleases cannot be justified. *Erdman v. Mitchell* (1903) 207 Pa. 79, 56 Atl. 327. A strike for a closed shop has been held to come under the Clayton Act, from which the statute in the instant case is copied. *Duplex Printing Press Co. v. Deering et al.* (1918, C. C. A. 2d) 252 Fed. 722. Yet the Supreme Court of the United States had said that a strike for a union mine was illegal and did not come under the Clayton Act. See *Hitchman Coal & Coke Co. v. Mitchell* (1917) 245 U. S. 229, 38 Sup. Ct. 65, L. R. A. 1918 C, 497, note. But Justices Brandeis, Holmes, and Clarke, dissented and recognized the advantage to the union and the lawful-

ness of such a strike. See Cook, *Privileges of Labor Unions in the Struggle for Life* (1918) 27 YALE LAW JOURNAL, 779; NOTES (1918) 31 HARV. L. REV. 482, 648. In England a threatened strike over the employment of a man belonging to another union was held to be a trade dispute within the meaning of Trade Dispute Act of 1906 (6 Edw. VII c. 47). *White v. Riley and Wood* (1920, C. A.) 36 T. L. R. 849. It is suggested that the growing tendency is to recognize the closed shop as a legitimate object of trade dispute and therefore that such statutes as that in the instant case should apply to a closed shop strike. See COMMENTS (1920) 29 YALE LAW JOURNAL, 790, 791.

TRUSTS—CHARITABLE USE—PRIVATE BURIAL GROUND.—The plaintiff brought a bill in equity to declare void, as violating the rule against perpetuities, a bequest of shares of stock in trust for the upkeep of a family burial ground. *Held*, that the trust was void as a perpetuity, as it was not for a charitable use. *Shippee v. Industrial Trust Co.* (1920, R. L.) 110 Atl. 410.

In the absence of statute, a trust for the upkeep of a family or individual tomb is usually held invalid, if it is to continue longer than the period of perpetuities. *Bird v. Lee* [1901] 1 Ch. 715; *McCartney v. Jacobs* (1919) 288 Ill. 568, 123 N. E. 557; *Van Syckel v. Johnson* (1912) 80 N. J. Eq. 117, 70 Atl. 657. Some few courts have held, even at common law, that such a trust was valid. See *Nauman v. Weidman* (1897) 182 Pa. 263, 265, 37 Atl. 863; *Swasey v. American Bible Society* (1869) 57 Me. 523; overruled by *Piper v. Moulton* (1881) 72 Me. 155. But, if the trust is for the upkeep of a public cemetery, or one attached to a church, then it is for a charitable use, and is valid. *Attorney General v. Lucas* [1905] 1 Ch. 68; *Chapman v. Newell* (1910) 146 Iowa, 415, 125 N. W. 324; *contra*, *Van Syckel v. Johnson*, *supra*. A trust to erect and maintain a monument to a public character has been held valid. *Gilmer v. Gilmer* (1868) 42 Ala. 9. Local statutes in some states have rendered trusts similar to that in the instant case enforceable. See *Morse v. Natick* (1900) 176 Mass. 510, 57 N. E. 996; *Hewitt v. Wheeler School & Library* (1909) 82 Conn. 188, 72 Atl. 935; *Driscoll v. Hewlett* (1909) 132 App. Div. 125, 116 N. Y. Supp. 466. It is submitted that further statutory enactment validating such trusts is desirable. No depth of misfortune or poverty can deprive one of the members of civilized society of the privilege of having a grave, and a rule of law which would deny a generous testator the privilege of establishing a trust for such uses, and yet uphold a trust to pave the street, build a bridge, etc., would lack the elements of both reason and consistency. See *Chapman v. Newell* (1910) 146 Iowa, 415, 421, 125 N. W. 324, 327.

TRUSTS—SAVINGS BANK DEPOSITS WITHOUT CESTUI'S KNOWLEDGE—DEATH OF SETTLOR.—The defendant was administrator of the intestate estate of A. A had made several deposits of her own money in various savings banks in the form "A, trustee for B," in favor of the several petitioners, who received no notice of the existence of such deposits until after A's death. The deposits were increased at various times and in one case, withdrawals were made of some of the accrued interest. *Held*, that a valid trust was created in favor of B upon making such deposits. *Czallis v. Ingraham* (1920, Me.) 110 Atl. 359.

The Massachusetts court would have arrived at a contrary decision, since it arbitrarily requires notice to the cestui to establish the trust. *Cleveland v. Hampden Savings Bank* (1902) 182 Mass. 110, 65 N. E. 27; *Clark v. Clark* (1871) 108 Mass. 522. Other courts would not have found the necessary intent to create an immediate, irrevocable right in the cestui at the time of making the deposit, on the facts of this case. *Nicklas v. Parker* (1907) 71 N. J. Eq. 777, 61 Atl. 267; *Marcy v. Amazeen* (1881) 61 N. H. 131. Under the doctrine of "tentative trusts," the New York court by a different process of reasoning would have arrived at the same conclusion as that in the principal case. *Matter of Totten* (1904) 179 N. Y. 112, 71 N. E. 748; *cf. Walso v. Latterner* (1918)

140 Minn. 455, 168 N. W. 353. Although it is a clear departure from orthodox theory, the doctrine of the Totten case possesses the virtue of most closely approximating the true intent of the depositor. It has been suggested that this desirable result might be better attained by legislation. See Larremore, *Judicial Legislation in New York* (1905) 14 YALE LAW JOURNAL, 315. But the courts would then be so restricted to close interpretation as to make the legislation abortive. The doctrine further affords a practical method for poor persons to transmit property without a will. Of course, it is here in conflict with the Statute of Wills. See *Nicklas v. Parker* (1907) 71 N. J. Eq. 777, 61 Atl. 267. Furthermore there is danger of its being applied to analogous cases. See (1905) 19 HARV. L. REV. 207. The effect on inheritance taxation should also be considered. See (1919) 29 YALE LAW JOURNAL, 465. Evidently Maine prefers to be less practical and to remain orthodox.

**WILLS—EXECUTORS AND ADMINISTRATORS—STATUTE OF NON-CLAIM—NO WAIVER BY FRAUDULENT CONDUCT OF ADMINISTRATOR.**—The plaintiff, relying on the assurances of the administrator of a decedent's estate that the presentation to him of an itemized claim would be a compliance with the statute, failed to file her claim with the probate court according to law. Proceedings were instituted to review an order refusing to extend the time. *Held*, that the statute of non-claim could not be waived by any conduct of the administrator, however fraudulent. *State ex rel. Scherber v. Probate Court of Hennepin County, et al.* (1920, Minn.) 177 N. W. 354.

The decisions in the United States are almost uniform in holding that these statutes of non-claim, that are so like statutes of limitations, are imperative and mandatory and cannot be waived or tolled by the personal representatives under any circumstances. See 2 Schouler, *Wills, Executors, and Administrators* (5th ed. 1915) sec. 1390; Wood, *Limitation of Actions* (4th ed. 1916) sec. 188; L. R. A. 1915 B, 1042, note; *Security Trust Co. v. Black River National Bank* (1902) 187 U. S. 211, 23 Sup. Ct. 52; *Abbott v. Johnson* (1917) 130 Ark. 1, 195 S. W. 676. The same has been held as to the filing of claims for classification. *Spaulding v. Suss* (1877) 4 Mo. App. 541. The above cases differ from the instant case in lacking the element of fraud, but there are dicta to the effect that not even fraud could alter the iron-clad rule. See *Nagle v. Ball* (1893) 71 Miss. 330, 335, 13 So. 929, 930; *Vanderpool v. Vanderpool* (1914) 48 Mont. 448, 454, 138 Pac. 772, 774. In the cases under consideration, however, there is no such fraud as should work an estoppel in any event, the misrepresentation being one of law and the means of knowledge being equally accessible to the creditor and to the administrator. See Burdick, *Torts* (3d ed. 1913) sec. 449; Smith, *Frauds* (1907) secs. 14, 247. The result is quite inconsistent with that in an overwhelming majority of jurisdictions, allowing the personal representative to stop the running of the general statute, and with a decided authority to the effect that he may also waive it after it has run. See L. R. A. 1915 B, 1016, note. The distinction attempted by many courts—one of doubtful validity—is that the general statute is a bar to the remedy and the special, to the right. See *Branch Bank at Decatur v. Hawkins* (1848) 12 Ala. 755, 759; *Rhodes v. Cannon* (1914) 112 Ark. 6, 15, 164 S. W. 752, 754. But the statutes in some states allow the owners of claims so barred to reach after-discovered assets, and this result would suggest that the true explanation lies in the policy back of the statute of non-claim, namely, the provision of a speedy and effective mode of distribution of the property of decedents, fair to all concerned. See *Waughof v. Bartlett* (1896) 165 Ill. 124, 128, 46 N. E. 197, 198; *Vanderpool v. Vanderpool* (1914) 48 Mont. 448, 454, 138 Pac. 772, 774. The instant case would seem to be quite sound in requiring the creditor to safeguard his own interests by inquiring as to the law from some authoritative source.