

RECENT CASES

ACCESSION—DOCTRINE—EFFECT OF.—BLACKWOOD TIRE & VULCANIZING Co. v. AUTO STORAGE Co., 182 S. W. (Tenn.) 576.—*Held*, where the purchaser of an automobile, title to which was retained by the seller, fitted the machine with tire casings and the seller on nonpayment retook the machine, title to the tire casings passed to the seller, the seller of the casings not having retained title, for such is the rule of accession, which denotes the right of the owner of corporeal property to any increase thereof from any cause either actual or artificial.

The case carries the doctrine of accession too far. Tire casings are very easily detached. Such easily distinguishable appliances to machinery may be detached if done without injury to the principal thing. *Alley v. Adams*, 44 Ala. 609. Nor does the doctrine of accession apply in chattel mortgages or conditional sales where new parts of machinery replace those worn provided they are readily distinguishable and can be removed without damage to the whole. *Fowler v. Hoffman*, 31 Mich. 215. Ordinary repairs upon a personal chattel become a part thereof by accession, but if easily separable and capable of being distinguished from the articles to which they have been added, the rule is otherwise. 1 *Cyc.* 226; 1 *R. C. L.* 119; *Clark v. Wells*, 45 Vt. 4. It is held that a mortgage upon a stock of merchandise attaches only to such as was in stock and not to that added by purchase. *Godfrey & Son Co. v. Citizens' National Bank*, 64 Nebr. 477. Similarly where there has been substitutions of one press for another in a printing establishment, the one under the original mortgage being set aside. *Vinall v. Hendricks*, 33 Ind. App. 413. The principal case extends the doctrine beyond the limits set down by prior cases.

A. S. B.

CARRIERS—NOTICE OF CLAIMS FOR DAMAGE TO LIVESTOCK—EFFECT OF TIME LIMITATION AS TO RECOVERY FOR INJURIES SUBSEQUENTLY APPEARING.—BROADHEAD v. ATCHISON, T. & S. F. RY. Co., 155 PAC. (KAN.) 20.—Due to defendant's negligent delay, plaintiff's shipment of cattle was temporarily unloaded, enroute, into pens then being disinfected by order of the Bureau of Animal Industries. For injury to the cattle by the dipping and the rough treatment incidental thereto, plaintiff brought suit without having given notice as required by the contract providing that as condition precedent to recovery some officer of the company must be notified in writing before removal or slaughter of the stock, or intermingling with other stock. Verdict for plaintiff, both as to injuries apparent on arrival of the cattle at destination, and injuries developing later. Defendant appealed. Reversed and remanded. *Held*, that written notice, before removal, was not required as to damages apparent on delivery, but was required as to damages thereafter appearing. West, J., *dissents*.

In general, a stipulation in the contract of shipment that as a condition precedent to recovery of damages, written notice of claim must be

filed before removal of the stock or within a limited time, is reasonable and valid. *St. Louis & S. F. Ry. Co. v. Wynn*, 153 P. (Okla.) 1156; *St. Louis Southwestern Ry. Co. v. Burnett*, 174 S. W. (Ark.) 16; *Contra: Nashville, C., & St. L. Ry. Co. v. Hinds*, 60 So. (Ala. App.) 409. But such a stipulation is to be construed liberally in favor of the shipper. *Chicago R. I. & P. Ry. Co. v. Spears*, 31 Okla. 469. It usually does not prevent recovery for injury to stock which is evident on arrival at its destination, even though notice be not given, since the carrier has sufficient means of inspecting and notice would not benefit him. *Southern Ry. Co. v. Bacon*, 159 S. W. (Tenn.) 602; *Ray v. Mo. K. & T. Ry. Co.*, 90 Kan. 244. Nor is this provision held to apply to claims for damage from fall in market price or loss of market due to the carrier's delay, since inspection of the shipment is here immaterial. *Riddler v. Mo. Pac. Ry. Co.*, 184 Mo. App. 709; *Estes v. Denver & R. G. Ry. Co.*, 113 Pac. (Colo.) 1005; *Hayes v. Mo. K. & T. Ry.*, 84 Kan. 1. Even where the protection afforded the carrier is material, however, the right of the shipper to know and estimate the extent of his full loss is paramount. To this effect see *Eoff & Snapp v. Scullin*, 179 S. W. (Ark.) 663; *Burns v. Chicago, R. I. & P. Ry. Co.*, 132 S. W. (Mo. App.) 1; *Pierson v. Northern Pac. Ry. Co.*, 112 Pac. (Wash.) 509. In these cases it was held that the stipulation did not apply when the shipper could not discover the injury to his property or ascertain its extent within the limited time. The decision in the principal case is probably against the weight of authority.

C. B.

CONFLICT OF LAWS—SECONDARY CONTRACTUAL OBLIGATION—LAW GOVERNING.—*LINDSAY v. COLLINGS*, 182 S. W. (Tex.) 879.—In an action brought in Texas on a note made and payable in California, and secured by a mortgage on land there situated, *held*, that a California statute providing that a foreclosure of the mortgage shall bar any subsequent action on the note thus secured, is binding as a part of the law of the contract, and that a foreclosure of the mortgage may be pleaded in bar of the Texas suit. Higgins, J., *dissenting*.

"It is impossible to consider a contract separately from the remedy given by the law of (for?) its enforcement, because it is this that supplies it with legal validity. . . . It is a branch of its vital existence—the thing that gives it life. Without it the contract ceases to be. . . . The statute invoked provides an absolute defense in the state where the contract was made; therefore it must be so held in the state where the suit was brought." Prin. case, 881. The use of the word "remedy" in this connection is misleading, but it is clearly used to denote the secondary legal relations under the contract, and not matters of procedure, like statutes of limitation. See YALE LAW JOURNAL, Vol. XXV, p. 147.

C. R. W.

CONSTITUTIONAL LAW—POLICE POWER—CLASS LEGISLATION—DISCRIMINATION.—*PEOPLE v. WEINER*, 110 N. E. (Ill.) 870.—*Held*, that the Act of July 1, 1915, of the Illinois legislature which related to the use of second-hand materials in the manufacture of mattresses, quilts and bed com-

forters, but contained no similar provision regarding pillows, was discriminatory, and unconstitutional as class legislation.

The states by adopting the Fourteenth Amendment could not have intended to impose restraints on the exercise of their powers for the protection of the safety, health or morals of the community. *Mugler v. Kansas*, 123 U. S. 623; *Powell v. Pennsylvania*, 127 U. S. 678; *Minn. & St. L. R. R. Co. v. Beckwith*, 129 U. S. 26. The determination as to the proper exercise of the police power is not exclusively with the legislature but is subject to the supervision of the courts. *Lawton v. Steel*, 152 U. S. 133; *Atkin v. Kansas*, 191 U. S. 207. The legislature in carrying out an ordained purpose may classify, whenever the propriety in doing so appears to exist. *Chicago Ry. Co. v. R. R. Com.*, 173 Ind. 469; *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79. The classification as a general rule must be based on some sound reason and must be applicable to all who are within the natural scope of its enactment. *Gulf Ry. Co. v. Ellis*, 165 U. S. 150; *State v. Pennoyer*, 65 N. H. 113; *State v. Gabroski*, 111 Iowa 496; *Barber v. Connolly*, 113 U. S. 31. However, having a reasonable basis, it need not operate with mathematical nicety. *Batchell v. Wilson*, 204 U. S. 36. A legislative classification may rest on narrow distinctions, and a discrimination is valid if not arbitrary in that it is outside of the wide discretion which the legislature may exercise. *Ozan Lumber Co. v. Union County Bank*, 207 U. S. 251. *Heath & Milligan Mfg. Co. v. Worst*, 207 U. S. 338 (distinction between mixed and paste paints); *German Alliance Ins. Co. v. Lewis*, 233 U. S. 389 (statute exempting farmers' mutual insurance companies from its operation). In the recent case of *Chang Sing et al. v. City of Astoria*, 155 Pac. 378, the supreme court of Oregon, on the other hand, declared a statute invalid as class legislation and discriminatory in which stores selling hardware, dry goods, and the like were regulated, but those selling tinware, crockery and tobacco were not included. So, as regards the principal case, it is difficult to ascertain on what reasonable ground, in the light of the authorities, the legislature could have drawn a valid distinction between the subjects included and those excluded from the operation of the act.

J. McD.

MASTER AND SERVANT—INJURIES TO THIRD PERSON CAUSED BY SERVANT—SCOPE OF EMPLOYMENT.—*MANIACI v. INTERURBAN EXPRESS CO.*, 182 S. W. (Mo.) 981.—Where a consignee of goods, while signing a receipt, under protest, at request of agent of the Express Company, was shot by said agent suddenly and without just cause, *held*, that a declaration setting forth these facts states a cause of action, in that the agent was acting within the scope of his employment. Woodson, C. J., and Blair and Walker, JJ., *dissenting*.

A master is liable for the wilful or malicious acts of his servants where they are done in the course of his employment and within its scope, i. e., to promote the master's business. *Houston & T. Cent. Ry. Co. v. Bell*, 73 S. W. (Tex.) 56; *Peddle v. Gally*, 109 N. Y. App. Div. 178. On the other hand, the master is not liable where the servant is acting for personal reasons. *Brown v. Boston Ice Co.*, 178 Mass. 108;

Fairbanks v. Boston Storage Warehouse Co., 189 Mass. 419; *Meehan v. Morewood*, 52 Hun (N. Y.) 566. In determining whether or not an act is within the scope of employment, the purpose of the act, rather than its method of performance, is the test. *Cobb v. Simon*, 119 Wis. 597. An assault by a servant may be within the scope of the employment so as to render the master liable. *McClung v. Dearborne*, 134 Pa. St. 396; *Barden v. Feich*, 109 Mass. 154; *Houston & T. Cent. Ry. Co. v. Bell*, supra. However, an assault by a servant not committed as a means or for the purpose of performing the work which he was employed to do is ordinarily not within the scope of his employment and the master is not liable. *Mogk v. Chicago City Ry. Co.*, 80 Ill. App. 411; *Fairbanks v. Boston Storage Warehouse Co.*, supra; *Meehan v. Morewood*, supra. If a servant shoots a third person, the act is ordinarily not within the scope of his employment, especially where he is not a watchman or detective or the like. *Lytle v. Crescent News & Hotel Co.*, 27 Tex. Civ. App. 530; *Turley v. B. & M. Ry. Co.*, 70 N. H. 348; *Bowen v. Ill. Cent. Ry. Co.*, 136 Fed. 306 (Defendant company held not liable for the shooting of a consignee of goods by a freight agent, without just cause, after the consignee had signed a receipt and was about to leave the office). In the principal case the act complained of was clearly unnecessary to the performance of the agent's duties, and the ruling seems contrary to the weight of authority.

E. J. M.

RAILROADS—LEASE OF TRACKAGE—LIABILITY OF LESSOR.—CENTRAL OF GEORGIA RY. CO. v. BESSINGER, 87 S. E. (Ga.) 920.—Plaintiff in error leased trackage rights to a lumber company. Defendant in error, an employee of lumber company, was injured while being carried to his work on a lumber train. *Held*, employee sustained relation of passenger to railroad company to the extent that it is bound to exercise extraordinary diligence to keep from injuring him. Russell, C. J., *dissenting*.

In the absence of authority to lease its road a railroad company that so leases is liable for all the negligence of the lessee affecting the public. *Hukill v. Maysville & B. S. R. Co.*, 72 Fed. 745. This is because it is contrary to public policy that public duties imposed by law be shifted without authority, and the lessee is therefore treated as the agent of the lessor. *Arrowsmith v. Nashville & D. R. Co.*, 57 Fed. 165. To grant trackage rights over a railroad is not an abdication of duties but a proper exercise of the franchise to operate a railroad. *Union Pacific v. C. R. I. & P. R. Co.*, 163 U. S. 564. Under such conditions there is no relation of principal and agent, and the only liability of the owner company is for failure to keep its tracks free from defects. *Hamilton v. Louisiana & N. W. R. Co.*, 117 La. 243. The holding of the principal case seems to stand alone.

R. C. W.

TITLE TO WILD GAME—CHANGE OF COMMON LAW RULE, BY STATUTE.—PEOPLE v. WILLIAMS, 155 PAC. (Colo.) 323.—The defendant was charged with unlawfully and wilfully having in his possession a portion of the

carcass of a deer contrary to the fish and game laws. The information was quashed on the ground that it charged no offense, stated no facts that constituted an offense, and was in violation of Sec. 25, Art. 2, of the state constitution, which provided that no person shall be deprived of life, liberty, or property without due process of law. The people brought error. Reversed and remanded.—*Held*, that the Revised Statutes of 1908 declaring, by Sec. 2739, all game and fish not already legally acquired, to be the property of the state, and, by Sec. 2748, possession unaccompanied by license or permit to be prima facie evidence of illegal taking and holding, made the defendant's possession of a portion of a carcass of a deer, unexplained, a violation of the act, and cast upon him the burden of proving an affirmative defense. White, Hill and Teller, JJ., *dissenting*.

At common law title to wild game was nowhere until reduced to possession. The right to regulate and even prohibit the taking thereof has, however, always been an attribute of sovereignty. 2 *Bl. Comm.* 410. And under the modern police power it vests in the respective states. *Rupert v. U. S.*, 181 Fed. 87; *Commonwealth v. McComb*, 227 Pa. 377; *People v. Martin*, 107 N. Y. S. 1076. But it is a police power only; those decisions which speak of a title to wild game in the whole of the people of the state collectively, do not refer to a true property right such as the state, like an individual, has in physical objects reduced to its control. *Bondi v. Mackay*, 89 Atl. (Vt.) 228; *Commonwealth v. Patson*, 231 Pa. 46; *State v. Ashman*, 135 S. W. (Tenn.) 325. Accordingly, at common law the individual had a right to take game except as prohibited, and an indictment for violation of the game laws must show which particular provision of the statute is relied upon. 22 *Cyc.* 324. The reversal of this procedure, sustained by the majority opinion in the principal case, depends upon a literal interpretation of the statute, i. e., transmission of actual title to the state. The dissent points out that since, if such were the fact, a general prohibition would be inferable, the only essential part of the statute would be the express permissions contained in Secs. 2833, 2749, 2801, 2809, and that Secs. 2753, 2759, 2876, 2877, in so far as they are prohibitions (as the majority holds) and not merely fixing of penalties, are "unnecessary and tautological." As regards the possibility of statute vesting true title in the state, see opinion of Field in *Geer v. State*, supra, and the case of *U. S. v. Shauver*, 214 F. 154 (same as regards title in migratory birds in the United States, holding it impossible by the nature of the subject matter). Also see *Acklen v. Thompson*, 122 Tenn. 43, where a statute similar to that in the principal case was held not to change the common law doctrine.

C. B.